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**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, October 2, 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

- Introduction of Youth Council members:
 - Brynn Bettenhausen, Shawnee Mission East
 - John Gagen, Shawnee Mission East
 - Robbie Lashmet, Plaza Academy
 - Isabelle Zschoche, Notre Dame de Sion
- National Arts and Humanities Month proclamation

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 prior to 3 p.m. on October 2. 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 – September 18, 2023
2. Consider approval of expenditure ordinance #3030
3. Consider approval of the purchase of a new telephone system and service agreement with Allegiant Technologies
4. Consider bid award for 2023 tree trimming program
5. Consider agreement with Evergy Metro, Inc. for Mission Road - 79th Street to 83rd Street mill and overlay
6. Consider change order for 2023 residential paving program construction contract

IX. COMMITTEE REPORTS

X. MAYOR'S REPORT

XI. STAFF REPORTS

XII. OLD BUSINESS

COU2023-58 Consider removal of accessory dwelling units, housing study recommendation and lot size modifications from Council prioritization list
Terrence Gallagher / Greg Shelton / Dave Robinson

XIII. NEW BUSINESS

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

Neighborhood design guidelines update discussion
Chris Brewster

XV. ANNOUNCEMENTS

XVI. ADJOURNMENT

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

CITY OF PRAIRIE VILLAGE

Proclamation

National Arts and Humanities Month – October 2023

WHEREAS, the nation's 120,000 nonprofit arts organizations, the National Endowment for the Arts, the National Endowment for the Humanities, the nation's 4,500 local arts agencies in communities across the country, and the arts and humanities councils of the 50 states and the six U.S. jurisdictions and districts have regularly issued official proclamations on an annual basis designating October as National Arts and Humanities Month; and

WHEREAS, cities and states - through their local and state arts agencies, which represent thousands of cultural organizations - have celebrated the value and importance of culture in the lives of Americans and the health of thriving communities during National Arts and Humanities Month for nearly 30 years; and

WHEREAS, the humanities help diverse communities across the United States explore their history and culture with the support and partnership of the National Endowment for the Humanities, the 50 state and six jurisdiction and district humanities councils, and local educational and cultural institutions; and

WHEREAS, the arts and humanities embody so of much of the accumulated wisdom, intellect, and imagination of humankind; and

WHEREAS, the arts and humanities enhance and enrich the lives of everyone in America; and

WHEREAS, the arts and humanities play a unique role in the lives of our families, our communities, and our country; and

WHEREAS, the nation's arts and culture sector - nonprofit, commercial, and education - is an \$877 billion industry that supports 4.6 million jobs representing 4.2% of the nation's economy, a larger share of GDP than powerhouse sectors such as agriculture, transportation, and utilities (2020); and boasts a \$33 billion international trade surplus (2019); and

WHEREAS, the nonprofit arts industry alone generates \$27.5 billion in government revenue and \$166.3 billion in economic activity (2015) annually by organizations and audiences - including spending by attendees to arts events of \$31.47 per person, per event, beyond the cost of admission on items such as meals, parking, and lodging, making the arts a vital income source for local businesses.

NOW, THEREFORE, I, Eric Mikkelson, Mayor of the City of Prairie Village, do hereby proclaim October as National Arts and Humanities Month in the City of Prairie Village, Kansas, and call upon our community members to celebrate and promote the arts and culture in our nation, and to specifically encourage greater participation by said community members in taking action for the arts and humanities in their towns and cities.

Mayor Eric Mikkelson

Adam Geffert, City Clerk



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
SEPTEMBER 18, 2023**

The City Council of Prairie Village, Kansas, met in regular session on Monday, September 18, 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, Inga Selders, Ron Nelson, Lauren Wolf, Bonnie Limbird, Dave Robinson, Piper Reimer, Greg Shelton, Courtney McFadden, and Terrence Gallagher. Staff present: Byron Roberson, Chief of Police; Keith Bredehoeft, Director of Public Works; City Attorney David Waters, Spencer Fane LLP; Wes Jordan, City Administrator; Nickie Lee, Deputy City Administrator; Tim Schwartzkopf, Assistant City Administrator; Meghan Buum, Assistant City Administrator; Jason Hannaman, Finance Director; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Dave Robinson made a motion to approve the agenda as presented. Mr. Nelson seconded the motion, which passed 10-0.

INTRODUCTION OF STUDENTS AND SCOUTS

No students or scouts were present at the meeting.

PRESENTATIONS

- Mayor Mikkelson read a proclamation declaring September as National Suicide Prevention Month. Sierra Wright, Manager of Prevention Services for the Johnson County Mental Health Center shared information about the county's efforts to promote awareness of the issue.
- Mayor Mikkelson noted that September 18 - 24 was National Diaper Need Awareness Week, and that a proclamation was included in the meeting agenda packet.
- Chief Roberson read a proclamation declaring September 18 - 22 as National Co-Responder and Crisis Responder Week. Johnson County Co-Responder Deputy Division Director Jessica Murphy, Team Leader Jen Melby and Leawood/Prairie Village Co-Responder Amy Hennes were present to discuss the program.



- Every staff members Tisha Johnson, Donnie Miles, Michael Bloom and David Martin gave a presentation on efforts by the company to improve electric utility services in Prairie Village and provided information about significant improvements and upgrades at the two substations serving the City. They also shared information about new programs to isolate outages and reduce their frequency and duration.

Mayor Mikkelson asked how power restoration was prioritized after an outage. Ms. Johnson stated that issues that were potentially life-threatening, such as a live wire on the ground, were given priority, followed by immediate threats to property. Next, critical infrastructure and large customers, such as hospitals were addressed, followed by areas with the largest outages.

Ms. Limbird asked what Every’s long-term plan was to deliver reliable service to older suburban communities like Prairie Village. Ms. Johnson said that two new programs, known as DEMI-3 and DEMI-6, had been implemented to address and minimize outages more quickly. Ms. Limbird also asked whether there was a plan to bury power lines in the future. Mr. Bloom stated that a pilot study was underway to evaluate what would be required to bury lines, adding that doing so would be costly.

Ms. Selders asked whether trimming vegetation near power lines could be completed more frequently. Mr. Martin said that crews currently trim vegetation on a five-year cycle. He noted that the company was researching potential methods to modify the process for trimming and maintenance.

PUBLIC PARTICIPATION

- Pam Justus, Ward 6, and Jan Lane, Ward 1, shared their thoughts on the 2024 budget, petitions, and the community center and city hall projects
- Tom Heintz, Ward 3, and Constance Carlyle, Ward 3, expressed frustration with the sound level of the new pickleball courts at Windsor Park

CONSENT AGENDA

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

1. Consider approval of special session City Council meeting minutes - September 5, 2023

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, Selders, Nelson, Wolf, Limbird, D. Robinson, Reimer, Shelton, McFadden, Gallagher. The motion passed 10-0.



COMMITTEE REPORTS

- Mr. Gallagher stated that the Parks and Recreation Committee had reduced the hours during which pickleball could be played at Windsor Park to 8:00 a.m. to 8:00 p.m. to address concerns from residents. Additionally, he noted that the committee would soon begin a sound study to determine methods to reduce the volume level of pickleball games.

Mr. Gallagher also said that the committee would be presenting new park branding and signage guidelines to Council at an upcoming meeting.

- Mr. Dave Robinson thanked those who had participated in the JazzFest event that was held September 9, noting that attendance was among the highest in the event's history.
- Mrs. McFadden reported that a blood drive would be held at Westwood City Hall on September 19 to address a blood shortage in the community.
- Ms. Limbird said that the 2023 State of the Arts exhibit was currently on display at City Hall, and that the call for artists for 2024 exhibits was open.
- Ms. Reimer shared the following updates:
 - The Shawnee Mission School District Board of Education approved its 2023 - 2024 budget
 - The Shawnee Mission Education Foundation held its annual fall breakfast on September 13
 - Applicants for the 2023 - 2024 Youth Council would be introduced at the October 2 Council meeting
 - The United Community Services Substance Use Continuum of Care met with applicants to consider programs to be funded from the alcohol tax fund and opioid settlement dollars
 - The "Go Green" environmental fair, sponsored by the Environmental Committee, would be held on Saturday, September 23
 - A community recycling event would be held on September 30
- Mr. Shelton reported that two members of the Environmental Committee attended the Climate Action KC Summit. He also noted that he had moderated a panel on the adoption of electric vehicles.

MAYOR'S REPORT

- The Mayor stated that he had participated in the following events since the previous Council meeting:
 - Several individual and group meetings with residents



PRAIRIE VILLAGE
KANSAS

- A tour of the Great Plains Animal Shelter, used by Police Department animal control staff
- A meeting of the Johnson County / Wyandotte County Mayor's group on September 6
- A meeting of Northeast Johnson County Mayors on September 15
- A Zoom call with the Mayor of Prairie Village's sister city, Dolyna, Ukraine, to celebrate its 1,044 anniversary
- The annual NAACP Freedom Fund banquet on September 17
- The Mayor noted the following upcoming events:
 - A United Community Services board meeting
 - A Mid-America Regional Council board Meeting on September 26
 - A Prairie Village Foundation board meeting on September 26
- The Mayor also shared the following information:
 - The Council would begin reviewing building design guidelines in October, and the Planning Commission would consider changes to R-2, R-3, R-4, and Commercial zoning districts based on feedback from two public forums held earlier in the summer.
 - On September 15, Johnson County District Court Judge Rhonda Mason issued a decision on the three submitted petitions and determined that only the "abandonment" petition could be placed on a ballot. However, the Johnson County Election Official stated that it was too late to add the petition to the November 2023 ballot.

STAFF REPORTS

- Mr. Jordan provided an update on on-going issues with trash and recycling services, noting that staff had recently met with the service provider's local management team to discuss ways to improve performance.

OLD BUSINESS

None

NEW BUSINESS

COU2023-54 Consider purchase request for police vehicles

Chief Roberson said that on an annual basis, the police department replaced older vehicles due to age, mileage, and/or maintenance problems. The department received authorization to place an order for three new police units in March 2023. Since that time, only one of the ordered vehicles had been received. In the past, the department utilized the Mid-America Regional Council's cooperative bidding process to purchase vehicles, but no local vendors opted to participate in the process in 2023.



Staff researched alternatives for replacing the ordered vehicles with options offered by other manufacturers and found that the Chevrolet Tahoe was a commonly used police vehicle that met all needed specifications. Chief Roberson noted that no local dealerships had vehicles available for purchase, but that a Wichita-area dealership did. The purchase price for two vehicles would total \$99,000.00.

Chief Roberson added that electric vehicles were not yet at the point where they could be used by police departments, primarily because police vehicles were often driven 24 hours a day, which prohibited dedicated recharging time.

Council previously approved the purchase of three vehicles as part of the 2023 public safety budget for a total of \$136,746.00. The purchase price of the two Chevrolet Tahoe vehicles would cause an overage of \$7,836.00, which would be absorbed within other areas of the public safety budget.

Mrs. McFadden made a motion to approve the purchase of two 2023 Chevrolet Tahoe vehicles to replace two existing police vehicles. Mr. Gallagher seconded the motion, which passed 10-0.

Mr. Shelton made a motion for the City Council to move to the Council Committee of the Whole portion of the meeting. The motion was seconded by Ms. Selders and passed 10-0.

COUNCIL COMMITTEE OF THE WHOLE

COU2023-55 Consider approval of the purchase of a new telephone system and service agreement with Allegiant Technologies

Mr. Schwartzkopf stated that in November 2022, the City contracted with Swartz Consulting to assist with the selection of a new telephone system. An RFP was sent out in March 2023 and the City received six responses. Along with the consultant, a selection team from the City with representatives from all departments reviewed and graded the responses. Two vendors, Allegiant and Towner Communications, were selected to move forward and provided presentations to the City.

Melissa Swartz with Swartz Consulting said that after the presentations, City staff conducted reference checks and had subsequent follow-up meetings. The decision was made to recommend moving forward with Allegiant Technologies, whose final proposal was the most competitive of the vendors. She noted that Allegiant currently serviced the City's phone system and was familiar with its architecture, which would help provide a more seamless transition.



Ms. Swartz added that the Allegiant solution allowed for either on-site equipment or a cloud-based system. The selection team determined that a premise-based solution was preferred due to the needs of the public safety phone system utilized by the 9-1-1 communications center.

Mr. Schwartzkopf said that the quote for hardware, three years of pre-paid support, and transition to the Allegiant data center totaled \$81,230.79. An additional contingency of 10%, or \$8,100.00, was also requested. One-time costs would total no more than \$89,330.79.

The monthly fees include a 500 Mbps fiber connection (\$1,255.84) for access to the new system, Allegiant SIP trunk lines (\$252.50) for the outside dial tone services, and connection to the Allegiant data center for redundancy (\$229.99), totaling approximately \$1,738.33 per month, plus applicable taxes, for telephone services. By comparison, Mr. Schwartzkopf noted that the City currently spent \$3,100.00 per month for a fiber connection and SIP trunks, with no redundancy solution. He added that funding for on-going monthly costs would come from the City's operating budget.

Mr. Dave Robinson proposed that moving to a cloud-based solution was preferable for redundancy purposes and to eliminate maintenance of premise-based equipment. Ms. Swartz stated that it was discovered that connecting the police department's administrative phone line recorder to a cloud-based system would be challenging because of how the recorder was integrated with 9-1-1 equipment. She added that the system could be moved to a cloud-based solution in the future if staff decided to do so.

Mrs. McFadden made a motion to recommend approval of the purchase of a new telephone system and service agreement with Allegiant Technologies for no more than \$89,330.79. Mr. Herring seconded the motion, which passed 10-0.

Mr. Herring moved that the City Council end the Council Committee of the Whole portion of the meeting. The motion was seconded by Ms. Reimer and passed 10-0.

EXECUTIVE SESSION

At 8:40 p.m., Mr. Nelson made the following motion:

"I move that the Governing Body recess into Executive Session for 25 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 Administrators, and City Attorney. The regular meeting will resume at 9:05."

Mr. Shelton seconded the motion, which passed 10-0.



PRAIRIE VILLAGE
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The regular meeting reconvened at 9:05 p.m., at which time Mr. Nelson made the following motion:

“I move that the Governing Body recess into Executive Session for 10 additional 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 Administrators, and City Attorney. The regular meeting will resume at 9:15.”

Mr. Shelton seconded the motion, which passed 10-0.

The regular meeting reconvened at 9:15 p.m.

ANNOUNCEMENTS

Announcements were included in the Council meeting packet.

ADJOURNMENT

Mayor Mikkelson declared the meeting adjourned at 9:16 p.m.

Adam Geffert
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

October 2, 2023

Copy of Ordinance
3030

Ordinance Page No. ____

An Ordinance Making Appropriate for the Payment of Certain Claims.

Be it ordained by the governing body of the City of Prairie Village, Kansas.

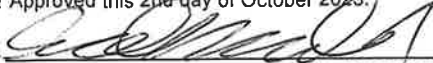
Section 1. That in order to pay the claims hereinafter stated which have been properly audited and approved, there is hereby appropriated out of funds in the City treasury the sum required for each claim.

NAME	DATE	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
28934-29026	8/4/2023	1,709,503.39	
29027-29038	8/11/2023	179,107.26	
29039-29101	8/18/2023	798,709.72	
29102-29111	8/25/2023	6,845.41	
Payroll Expenditures			
8/17/2023		492,379.18	
8/25/2023		463,515.44	
Electronic Payments			
Electronic Pmnts	8/9/2023	42,269.88	
	8/11/2023	25,238.15	
	8/15/2023	1,776.46	
	8/16/2023	3,678.64	
	8/22/2023	14,688.42	
	8/24/2023	40,141.26	
	8/29/2023	285.84	
	8/31/2023	864,000.00	
TOTAL EXPENDITURES:			4,642,139.05
Voided Checks	Check #	(Amount)	
N. Lee	29103	(177.00)	
K. Bredehoeft	29104	(191.00)	
Daniel Mapes	29108	(371.25)	
TOTAL VOIDED CHECKS:			(739.25)
GRAND TOTAL CLAIMS ORDINANCE			4,641,399.80

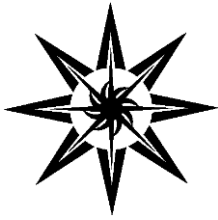
Section 2. That this ordinance shall take effect and be in force from and after its passage.

Passed this 2nd day of October 2023.

Signed or Approved this 2nd day of October 2023.

ATTEST: 
City Treasurer

ATTEST: 
Finance Director



ADMINISTRATION

Council Committee Meeting Date: September 18, 2023
Council Meeting Date: October 2, 2023

COU2023-55

Consider approval of the purchase of a new telephone system and service agreement with Allegiant Technologies

RECOMMENDATION

Motion to approve the purchase of the new telephone system and service agreement with Allegiant Technologies for no more than \$89,330.79.

BACKGROUND

In November 2022, the City contracted with Swartz Consulting to assist with the selection of a new telephone system. An RFP was sent out in March 2023 and the City received six responses. Along with the consultant, a selection team from the City with representatives from all departments reviewed and graded the RFP responses. Two vendors, Allegiant and Towner Communications, were selected to move forward and provided presentations to the City. After the presentations, City Staff conducted reference checks, and had subsequent follow-up meetings. City staff, along with Swartz Consulting, recommends moving forward with Allegiant Technologies. Allegiant's system final proposal was the most competitive of the vendors. Allegiant currently services our phone system and is familiar with our architecture and should provide a more seamless transition. Allegiant's on-going maintenance and software update costs were higher than Towner, however their responsiveness, service team, and holistic proposed solution resulted in their selection as the preferred vendor.

During the telephone system review, staff determined that Allegiant Technologies could provide a comprehensive solution that meets all our phone system needs. They offer off-site redundancy for the phone system for improved reliability. Their proposal also includes the dial tone services needed to connect the system to the outside world, replacing expensive existing services.

Overall, this solution will improve reliability, reduce monthly costs, and simplify operations by providing staff a single point of contact for all phone system issues, including billing.

The quote for hardware, three years of pre-paid support, and transition to the Allegiant Data Center is \$81,230.79. An additional contingency of 10%, \$8,100.00, is also being requested. One-time costs total no more than \$89,330.79.

The monthly costs include a 500 Mbps fiber connection (\$1,255.84) for access to the new system, Allegiant SIP trunk lines (\$252.50) for the outside dial tone services, and connection to the Allegiant Data Center for redundancy (\$229.99) for a total of approximately \$1,738.33 month (plus applicable taxes) for telephone services.

For comparison, today the City pays \$3,100 per month for the fiber and SIP trunks only and has no redundancy solution.

The on-going monthly costs will come from the City's operating budget.

The City Attorney has approved the master services agreement as to form.

FUNDING SOURCE

ARPA funds – for one-time costs

Operating Budget – monthly recurring costs

ATTACHMENTS

Allegiant Proposal

Allegiant Master Service Agreement

PREPARED BY

Tim Schwartzkopf

Assistant City Administrator

September 12, 2023

Proposal for City of Prairie Village



Delivering Exceptional User Experiences

Empower your organization's IT and Voice team with the support of our trusted experts

Sourcewell Mitel Pricing for RFP

Quote No: ATQQ12573-01

Prepared On: 7/20/2023

Prepared for:

City of Prairie Village

Dan Clark

(913) 385-4606

dclark@pvkansas.com

Prepared by:

Allegiant Technology

Jim Walker

(913) 402-2232

jim.walker@allegiantnow.com



Prepared For:
 Dan Clark
 (913) 385-4606
 dclark@pvkansas.com

Prepared By:
 Jim Walker
 (913) 402-2232
 jim.walker@allegiantnow.com

Quote No: ATQQ12573-01
Prepared On: 7/20/2023
Expires On: 11/1/2023

City of Prairie Village
 7700 Mission Rd
 Prairie Village, KS 66208-4230
 United States

Allegiant Technology
 10983 Granada Lane
 Suite 300

Core Telephony Infrastructure

Qty	Description	Term	Unit Price	Ext. Price
3	MiVoice Business Console Bundle		\$1,092.00	\$3,276.00
2	MiVB on SMB Controller		\$1,230.00	\$2,460.00
2	SMB Controller 8/38G		\$690.00	\$1,380.00
2	SMBC rack mount kit		\$30.00	\$60.00
3	System Module 2 DSPX		\$286.65	\$859.95
1	Enterprise License Group		\$600.00	\$600.00
2	UCCv4.0 STND User for MiVoice Bus x50		\$0.00	\$0.00
1	NPUM Record A Call		\$0.00	\$0.00
3	MiCb NPUM Mailbox Calldir x1		\$0.00	\$0.00
5	MiVoice Bus License - Enterprise User		\$0.00	\$0.00
1	MiCClient Licnse - Peering Adv Server		\$0.00	\$0.00
1	MiCClient Licnse - Federation Adv Server		\$0.00	\$0.00
1	MiCollab Virtual Appliance		\$0.00	\$0.00
3	MiCollab Client presence for MiVB Consl		\$0.00	\$0.00
3	MiCb Client user for MiVBC operator		\$0.00	\$0.00

Allegiant Technology

10983 Granada Lane, Suite 300

Overland Park, KS 66211

24/7/365 Help Desk: 913.599.6900

allegiantnow.com

ATQQ12573-01

CONFIDENTIAL

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Devices

Qty	Description	Term	Unit Price	Ext. Price
89	6920w IP Phone		\$243.00	\$21,627.00
11	6930w IP Phone		\$312.00	\$3,432.00
2	6970 IP Conference Phone		\$474.00	\$948.00
2	PWR CRD C7 2.5A 125V-NA PLUG NON POLRIZD		\$8.40	\$16.80

System Warranty & On-Going Support

Qty	Description	Term	Unit Price	Ext. Price
3	SWA Adv 3y MiVBus Console		\$298.80	\$896.40
1	SWA Adv 3y MiVBus DLM		\$0.00	\$0.00
5	SWA Adv 3y MiVBus User		\$22.85	\$114.25
1	SWA Adv 3y MiCollab System		\$219.60	\$219.60
3	SWA Adv 3y MiCollab UM Mailbox		\$7.53	\$22.59
100	SWA Adv 3y UCC Std MiVB		\$45.20	\$4,520.00
2	SWA Adv 3y MiVBus on SMB Controller		\$261.60	\$523.20
102	Remote Care Standard User Support (5 Months Pre-Paid) - Prorated 2023 Year (8/1/2023 - 12/31/2023)		\$17.50	\$1,785.00
102	Remote Care Standard User Support (1 Year Pre-Paid) - Full 2024 Year (1/1/2024 - 12/31/2024)		\$42.00	\$4,284.00
102	Remote Care Standard User Support (1 Year Pre-Paid) - Full 2025 Year (1/1/2025 - 12/31/2025)		\$42.00	\$4,284.00
102	Remote Care Standard User Support (1 Year Pre-Paid) - Full 2026 Year (1/1/2026 - 12/31/2026)		\$42.00	\$4,284.00

Implementation

Qty	Description	Term	Unit Price	Ext. Price
30	Project Coordination & Training Labor (Onsite & Remote - Time & Materials)		\$149.00	\$4,470.00
90	Implementation Labor (Onsite & Remote - Time & Materials)		\$189.00	\$17,010.00
4	Implementation Labor - Overtime (Onsite & Remote - Time & Materials)		\$283.50	\$1,134.00

Allegiant Technology

Resilient Configuration in Allegiant Data Center

Qty	Description	Term	Unit Price	Ext. Price
10	Internet Access Bandwidth - Per Mbps	36 months	\$5.00	\$50.00 (Billed Monthly)
1	Public IPv4 Address	36 months	\$10.00	\$10.00 (Billed Monthly)
1	Rack Unit & Power 1-5 RU	36 months	\$70.00	\$70.00 (Billed Monthly)
1	Allegiant Hosted Data Center Firewall with Basic Security	36 months	\$99.99	\$99.99 (Billed Monthly)
8	Implementation Labor (Onsite & Remote - Time & Materials)		\$189.00	\$1,512.00

- Resilient Configuration in Allegiant Data Center Total is \$229.99 monthly and \$1,512.00 one-time.

Resilient Allegiant SIP Trunking

Qty	Description	Term	Unit Price	Ext. Price
150	US Domestic DID Telephone Number per Month	36 months	\$0.55	\$82.50 (Billed Monthly)
1	Base Domestic US Minutes of Usage - Inbound/Outbound - Tier 0 - (Per Min)	36 months	\$170.00	\$170.00 (Billed Monthly)

- Resilient Allegiant SIP Trunking Total is \$252.50 monthly.

Dedicated Fiber Internet Service

Qty	Description	Term	Unit Price	Ext. Price
500 Mbps AT&T Dedicated Fiber Internet for City Hall				
1	AT&T Managed Internet Service Port - 500 Mbps	36 months	\$760.00	\$760.00 (Billed Monthly)
1	AT&T Managed Internet Service Access	36 months	\$495.84	\$495.84 (Billed Monthly)
8	Implementation Labor (Onsite & Remote - Time & Materials)		\$189.00	\$1,512.00

- 500 Mbps AT&T Dedicated Fiber Internet for City Hall Total is \$1,255.84 monthly and \$1,512.00 one-time.

Allegiant Technology

One Time Charges Summary	
Subtotal:	\$81,230.79
Recurring Charges Summary	
Billed Monthly Total:	\$1,738.33

 **Acceptance**

By signing via signature below you acknowledge that you have authority to sign this document on behalf of your company and agree to the terms and conditions of the attached Quote and related documents including the Master Service Agreement and applicable product or service terms and conditions located at <https://allegiantnow.com/legal/>.

Customer Name: _____

Title: _____

Customer Signature: _____

Date: _____

Master Service Agreement

Allegiant ("Allegiant, we or us")	Customer ("Customer, you or your")
Name: Allegiant Networks LLC Street Address: 10983 Granada Lane, Suite 300 City: Overland Park State/Province: KS Zip Code: 66211 Country: USA	Name: City of Prairie Village, Kansas Street Address: 7700 Mission Road City: Prairie Village State/Province: Kansas Zip Code: 66208 Country: USA

Article I: Introduction & Definitions

- 1. Agreement.** This Master Service Agreement is entered into between you and Allegiant for the purpose of setting forth the terms and conditions for your purchase of Products and Services from us.
- 2. Definitions.** In this Agreement the following definitions shall have the following meanings, and all other capitalized terms have the meanings given to them elsewhere in this Agreement.
 - 2.1. "Allegiant, we, or us"** means Allegiant Networks, LLC. DBA Allegiant Technology.
 - 2.2. "Agreement"** means this Master Services Agreement together with any schedules or appendixes annexed hereto.
 - 2.3. "Colocation Services"** means Customers operation of or use of the Customer Colocation Hardware located at Allegiant's Data Center Site.
 - 2.4. "Colocation Space"** means the designated area in the Data Center Site where the Customer's Colocation Hardware is kept.
 - 2.5. "Commencement Date"** means the date on which the Products or Services are made operational for use by Customer or would have been made available for use but for Customer's delay or default.
 - 2.6. "Confidentiality"** means any information relating to the disclosing party ("Disclosing Party") that is of a confidential or proprietary nature used in or otherwise relating to the Disclosing Party's business, operations, customers or financial or other affairs, including the relations of a party with its customers, employees and service providers, and any such information of employees, customers, affiliates or representatives of a Disclosing Party, which is received by the receiving party ("Receiving Party"), whether communicated in written form, orally, visually, demonstratively, technically or by any other electronic form or other media, or committed to memory, and designated, marked, labeled or identified as confidential or proprietary, including any data or information described above which the Disclosing Party has obtained from a third party and which the Disclosing Party treats as proprietary or designates as Confidential Information, whether or not owned or developed by the Disclosing Party. Confidential Information also includes: the marketing of goods or services including, without limitation, existing and future customer names and lists and other details of existing and future customers; future products, business development or planning, commercial relationships and negotiations; information relating to the Products, and Allegiant's Intellectual Property Rights; information received from third parties that a party is obligated to treat as confidential (including any Third Party Provider Intellectual Property Rights); all information disclosed or made available by a Disclosing Party to the Receiving Party hereunder in connection with this Agreement or the performance of obligations hereunder, whether marked as confidential or proprietary or disclosed orally, after the Effective Date; any personal information; and this Agreement. Notwithstanding the foregoing, the terms "Confidential" and "Confidential Information" shall not include any information the disclosure of which is required, in the opinion of Customer, to be disclosed under applicable law, including but not limited to the Kansas open records act, as amended.
 - 2.7. "Customer, you, or your"** means the Customer as defined in this Agreement.
 - 2.8. "Customer Colocation Hardware"** means any physical hardware (excluding Software) that is owned by Customer and located at Allegiant's Data Center Site.
 - 2.9. "Customer Content"** means any and all software, materials and data owned or licensed by Customer, including text, information, data, images (still and moving), trade-marks, and logos, and any portion thereof and used by Customer in connection with the Products or Services hereto.
 - 2.10. "Customer Hardware"** means any physical hardware (excluding Software) that is owned by Customer.
 - 2.11. "Data Center Site"** means Allegiant's data center.
 - 2.12. "Fees"** means the Prices for the Products or Services and all other fees and charges referenced in this Agreement.
 - 2.13. "Hardware"** means any physical hardware (excluding Software).
 - 2.14. "Hardware Maintenance and Support Services"** means certain maintenance and support services provided by Allegiant for Customer Hardware as defined in this Agreement and on one or more Service or Purchase Orders.
 - 2.15. "Installation Fees"** means the set-up fees for installing the Service.
 - 2.16. "Installation Services"** means the installation of certain Services listed on a Service or Purchase Order.
 - 2.17. "Intellectual Property Rights"** means any and all proprietary rights provided under: patent law, copyright law, trade-mark law, design patent or industrial design law or any other statutory provision or common law principle applicable to this Agreement, including trade dress and trade secret law, which may provide a right in either ideas, formulae, algorithms, concepts, inventions, know-how or show-how generally, or the expression or use of such ideas, formulae, algorithms, concepts, inventions, know-how or show-how; and any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing.
 - 2.18. "Laws"** means all applicable statutes, laws, codes, ordinances, decrees, rules, regulations, by-laws, orders, decisions, rulings or awards, policies, permits, licenses, authorizations, directions, voluntary restraints, guidelines, or any provisions of the foregoing, including general principles of common and civil law and equity, binding on or affecting the party referred to in the context of which such word is used and "Law" means any one of the foregoing.
 - 2.19. "Payment Schedule"** means an agreement (including related attachments) or other document between Allegiant and Customer that is attached to or is later executed by the parties and references this Master Service Agreement. A Payment Schedule identifies the Purchase Order it applies to, and any special payment terms and conditions applicable for that Purchase Order.

- 2.20. **“Products”** means any Hardware, Software or Equipment, as defined in this Agreement and on one or more Purchase Orders.
- 2.21. **“Purchase Order”** means the documents that make up the agreement between Allegiant and Customer for the purchase of Products listed on a Quote.
- 2.22. **“Recurring Service Fees”** means the monthly fees for the Services being provided as defined in this Agreement and on one or more Service or Purchase Orders.
- 2.23. **“Recurring Variable Service Fees”** means monthly fees associated with the increased usage of certain Services as defined in this Agreement and on one or more Service Orders.
- 2.24. **“Services”** means any and all Services provided by Allegiant as defined in this Agreement and on one or more Service Orders, and including, without limitation the provision of people, infrastructure resources, support and access to and the use of Allegiant’s licensed software (including, without limitation, the Software) the Hardware (including without limitation the MSP Hardware), data center resources and interconnection to other third party networks and any other services provided by Allegiant in connection with the Services.
- 2.25. **“Service Contract”** means an agreement between Allegiant and Customer (including related attachments) that describe the Services to be provided, the additional terms and conditions specific to that particular Service (including payment obligations) and the term for which such Services are to be provided by Allegiant for (“Service Contract Term”).
- 2.26. **“Service Order”** means the documents that make up the agreement between Customer and Allegiant for the purchase of Services listed on a Quote.
- 2.27. **“Software”** means any computer application or code in object (binary) form.
- 2.28. **“Statement of Work”** means an agreement between Allegiant and Customer, which defines project-specific activities, deliverables and their respective timelines.
- 2.29. **“Third Party End User License Agreement”** means an agreement between Customer and a Third Party Provider that Customer must agree to and sign in order to license and use the Software.
- 2.30. **“Third Party Products”** means any Hardware, Software, or Products or Services not provided by, manufactured or created by Allegiant.
- 2.31. **“Third Party Provider”** means any third party that is a manufacturer and/or owner of the Intellectual Property rights in the Hardware, Software or Products or Services.
- 2.32. **“Quote”** means an electronic or paper document which lists the estimated pricing and descriptions of the Products.

- 3. Addendums to this Agreement & Order of Precedence.** Certain Products and Services may be provided to you in accordance with the terms of this Agreement (including any schedules or appendixes annexed hereto) and one or more Service Contracts, Service or Purchase Order, and/or Statements of Work. Each Service Contract, Purchase Order, or Statement of Work shall be incorporated hereto by referencing this Agreement and the applicable Service or Purchase Order it applies to and shall be interpreted separately from any other Service Contracts, Service or Purchase Orders, or Statements of Work. In the event of a conflict or ambiguity between this Agreement and any Service Contract, Purchase Order, or Statement of Work, the agreements shall be interpreted in the following order: (1) This Agreement, (2) The Service or Purchase Order, (3) The Statements of Work, and (4) Allegiant’s proposal to Customer.
- 4. Term.** This Agreement shall become effective from your execution or acceptance of this Agreement (“Effective Date”) and will continue for 12 months or until the expiration of the Service Term listed in your Service Contract or Service Order (“Initial Term”). After the initial Term, this Agreement will auto-renew for twelve (12) month terms unless either Party provides 30 days’ advance written notice of termination for convenience, as long as any applicable Service Contract or Service Order or any other obligation of either party has expired or was terminated pursuant to the terms of this Agreement. If there is no term listed in your Service Order or Service contract, the Service Term for your Service Contract or Order will be 12 months from the date the Services are installed and billed by Allegiant (“Initial Service Term”). After the Initial Service Term, your Service Order or Contract will auto-renew for 12 months terms, unless either party provides 30 days advance written notice before the end of any such renewal term.

Article II: Terms of Sale

1. Prices; Quotes & Service or Purchase Orders.

- 1.1. **Prices and Quotes.** The prices (“Prices”) for the Products and Services shall be set forth in one or more Allegiant Quotes which shall be prepared for you upon request by us. Prices shall remain valid until the expiration date listed on the Quote (or if not listed, thirty (30) days from the Quote creation date listed in the top right corner of your Quote). Quoted Prices for Third Party Products are dependent upon availability at the time of sale..
- 1.2. **Service or Purchase Orders.** During the Term of this Agreement, you may enter into one or more Service or Purchase Orders with us for certain Products or Services we offer by: signing and submitting to Allegiant a valid Quote together with any Service Contracts and/or Statements of Work that correspond to the Products or Services listed on your Quote. Service or Purchase Orders you submit us are subject to our acceptance at our sole discretion, and upon our acceptance, shall create a legally binding contract between you and Allegiant. Each Service or Purchase Order we accept is non-cancellable by you except as otherwise provided in this Agreement and shall be interpreted as a single agreement, independent of all other Service or Purchase Orders.
- 1.3. **Changes to your Service or Purchase Order.** If you request a change to the Products or Services to be delivered or the scope of the Products or Services provided on your Service or Purchase Order, you shall submit details of the requested change to Allegiant in writing and upon Allegiant’s approval, Allegiant shall, within a reasonable time, provide a written estimate to you of: the likely time required to implement the change; any variations to Allegiant’s Prices arising from the change; the likely effect of the change; and any other impact of the change on the terms of your Service or Purchase Order. If you wish for Allegiant to proceed with the change, Allegiant has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to Allegiant’s Prices, and any other relevant terms of your Service or Purchase Order to take account of due to the change.
- 1.4. **Additions to your Service or Purchase Order.** If Allegiant provides additions to the Products or Services you are currently receiving or any other Products or Services to you, such additions and other Products or Services will be agreed to in advance between Allegiant and you in writing as part of a separate Service or Purchase Order.

2. Billing & Payment.

- 2.1. **Invoices.** Allegiant may invoice parts of a Service or Purchase Order separately or together in one invoice. Except as otherwise defined in this Agreement and on your Service or Purchase Order, invoices are due and payable within 30 days from the date the invoice was issued.
- 2.2. **Installation Fees.** The installation Fees for the Products or Services shall be payable within 30 days of the date of the invoice unless specified otherwise in your Service or Purchase Order.
- 2.3. **Recurring Service Fees.** Your first month's Recurring Service Fees will be due upon the Commencement Date of your applicable Service or Purchase Order. Recurring Service Fees are billed monthly in advance and are due on the 1st of the Month.
- 2.4. **Variable Service Fees.** Allegiant will invoice you monthly in arrears for any Variable Service Fees that become payable as a result of the Services that we provide. Those Variable Service Fees will be calculated in accordance with the Prices set out in your Service or Purchase Order.
- 2.5. **Credit Card Authorization.** Upon your purchase of the Services, you may provide Allegiant with a valid credit card number from an issuer that is accepted by Allegiant. If provided, you authorize Allegiant to charge the credit card number provided by you for all Fees arising from your use of the Services. You agree to notify Allegiant of any change to the credit card information, including, but not limited to: changes in account number, expiration date or billing address. Allegiant shall not be responsible for any charges made by the credit card issuer to your credit card account for exceeding credit limit, insufficient funds or other reasons.
- 2.6. **Credit Terms.** All Products or Services provided to you and covered by this Agreement shall at all times be subject to credit approval or review by Allegiant. You will provide such credit information or assurance as is requested by Allegiant at any time.
- 2.7. **Late Payments.** Late payments shall accrue thirty (30) days after the invoice due date and will be subject to interest on the unpaid invoice amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable Law.
- 2.8. **Taxes.** Prices set forth in a Quote are exclusive of taxes and you shall pay all taxes (excluding those on Allegiant's net income), surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges (and any associated interest and penalties resulting from your failure to timely pay such taxes or similar charges) relating to the installation, license, use or provision of the Products or Services, except to the extent you provide us with a valid tax exemption certificate with your Service or Purchase Order.
- 2.9. **Billing Disputes.** You shall have the right to reasonably and in good faith dispute any invoice, or portion thereof provided that you: pay the undisputed portion within the invoice due date; provide Allegiant written notice of the dispute no later than ninety (90) days from the date of the invoice; and specify with reasonable detail, the amount disputed and the reason for the dispute. Following Allegiant's notice of the results of its investigation of such a claim, payment of all properly due charges and properly accrued late payment Fees must be made within ten (10) days, and Allegiant will reverse any amounts including late payment Fees that were invoiced in error.

3. **Shipping and Delivery.** Delivery of Hardware and physical copies of Software shall be by F.O.B. destination. If Software is provided to you by electronic download, delivery shall be by F.O.B. origin. Shipping and delivery dates are provided as estimates only and Allegiant is not responsible for shipping delays unless expressly stated otherwise in writing in the documents that make up your Purchase Order.

4. **Title; Risk of Loss and Security Interest.** Title to and risk of loss for Hardware you purchase from Allegiant shall pass to you upon delivery. Title to the Software shall remain with the Third Party Providers of such Software. Allegiant reserves the right upon notice to you to take a present and continuing security interest in any applicable Products, together with any accessories, additions, substitutions and replacements (and any proceeds thereof if the Products are sold), regardless of whether the Products are attached to real property, until Allegiant has been paid in full for the Products pursuant to the terms hereof. You agree to execute any documents, which may be reasonably necessary or appropriate to perfect Allegiant's security interest in the Products. Upon payment as provided herein, Allegiant will undertake to execute any releases reasonably required by you.

5. **Sales & Returns.** All sales are final unless otherwise specified in writing in the documents that make up your Purchase Order. You must notify Allegiant in writing within thirty (30) days upon receiving the Products listed in your Purchase Order (in part or in whole) if there are any wrong, damaged, missing, or otherwise non-conforming Products. This does not eliminate any manufacturer warranties.

6. **Software.** Your use of Software is governed by the respective Third Party End User Licensing Agreements, applicable to such Software. Subject to your compliance with the terms and conditions contained in any Third Party End User License Agreements, Allegiant grants you a limited, revocable, non-transferable, non-exclusive right to use the Software for your own Internal use and for no other purpose.

7. Installation Services.

- 7.1. If Allegiant is providing you with Installation Services for Products listed in your Service or Purchase Order, Allegiant will install the Products and Services within the estimated date(s) set forth in your Service or Purchase Order, but Allegiant shall have no liability should there be any delay in installation of the Products or Services caused by you or any Third Party Providers contracted to install the Products or Services.
- 7.2. You will be responsible for securing at your own cost, any necessary rights of entry (both remote and physical), licenses, permits or other permission necessary for Allegiant to install the Products or Services on the pre-arranged installation date(s) and you will also be responsible for providing the adequate physical space, air conditioning, necessary power, electrical power outlets, network connections and environmental conditions to support the Products and Services including, pre-drilling holes and wire ways through concrete, plaster, metal floors, walls or ceilings when required. If Allegiant is required to have physical access to your sites to install the Products or Services, you will ensure that your sites are safe, secure, and in compliance with all applicable industry and OSHA standards.

Article III: Terms of Service

1. **Terms of Service.** The terms and conditions listed in this Article III, shall apply to all Services provided by Allegiant pursuant to this Agreement, additional terms and conditions specific to certain Services not described in this Article III, shall be set forth below in a separate Article.

2. Provision of the Services.

- 2.1. **Service Commencement Date.** Allegiant will commence the provision of the Services to you within the estimated date(s) set forth in your Service or Purchase Order, but Allegiant shall have no liability should there be any delay in the provision of the Services caused by you or any Third Party Providers contracted to provide such Services.
- 2.2. **Technical Support.** Allegiant will provide support for your enquiries relating to the Products or Services, retrieval of data or faults in the Products or Services in accordance with the support and escalation procedures defined in your Service or Purchase Order (if applicable).
- 2.3. **Rights Granted.** Subject to your compliance with the terms and conditions of this Agreement, Allegiant grants you a limited, revocable, non-transferable, non-exclusive right to access and use the Products or Services during the Service Contract Term defined in your Service or Purchase Order, solely for your business purposes. Except for the rights expressly granted to you under this Article III: Section 2.3, Allegiant and its Third Party Provider's shall retain all right, title, and interest in and to the Services, and other Intellectual Property Rights created, used, or provided by Allegiant to you pursuant to this Agreement, including all modifications or derivatives of, and improvements to, the Services, excluding any Customer Content. You further acknowledge Allegiant's and its Third Party Provider's claims that their respective Intellectual Property Rights include: data, modules, components, designs, utilities, objects, processes, program listings, tools, models, diagrams, analysis frameworks, leading practices, trade-marks, patents, industrial designs, know-how, show-how, software, and specifications owned or developed by Allegiant and/or its Third Party Providers.
- 2.4. **Customer Content.** In connection with Allegiant's performance of its obligations hereto, Allegiant may be required to host, store, manage, back-up and otherwise access the Customer Content for purposes of providing certain Services hereunder. You hereby grant Allegiant a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license to use and access the Customer content as is reasonably necessary solely to provide the Services. The parties agree that at all times you shall retain ownership and legal title to the Customer Content. Allegiant will at all times maintain confidentiality of customer information.
- 2.5. **Hardware as a Service.** Allegiant may rent to you under the terms of a separate agreement, or otherwise provide to you for the Service Contract Term set forth in your Service or Purchase Order, certain devices, including, but not limited to servers, phones, routers, and switches, etc. ("MSP Hardware"), for use on your premises or at Allegiant's Data Center Site. Title to the MSP Hardware shall at all times remain with Allegiant or the Third Party Providers of the Services as the case may be. Allegiant may vary the technical specifications of the MSP Hardware, provided that at all times such changes do not materially impair or degrade the Service.
- 2.6. **Software as a Service.** If Software is being provided as part of the Services described in your Service or Purchase Order, your use of the Software is governed by the respective Third Party End User Licensing Agreements applicable to such Software. Subject to your compliance with the terms and conditions contained in any Third Party End User License Agreements, Allegiant grants you a limited, revocable, non-transferable, non-exclusive right to use the Software for your own internal use and for no other purpose. Title to the Software shall at all times remain with Allegiant or the Third Party Providers of the Services as the case may be.
- 2.7. **Maintenance Downtime.** Allegiant may suspend provision of the Services or any part thereof for the purpose of carrying out or implementing necessary repairs, maintenance or improvements provided that in the event of such suspension Allegiant will ensure that reasonable notice is given to you and minimum disruption to the Services is caused.

3. Customer Obligations.

- 3.1. **Access Rights.** You will be responsible for securing at your own cost, any necessary rights of entry (both remote and physical), licenses, permits or other permission necessary for Allegiant to install, maintain, repair, improve, upgrade, substitute or replace the Services (including any Software or Hardware) and you will also be responsible for providing adequate physical space, air conditioning, necessary power, electrical power outlets, network connections and environmental conditions necessary to support the Services including, pre-drilling holes and wire ways through concrete, plaster, metal floors, walls or ceilings when required. If Allegiant is required to have physical access to your sites to perform any obligations contained herein, you will ensure that your sites are safe, secure, and in compliance with all applicable industry and OSHA standards.
- 3.2. **Service Proprietary Rights.** Except as expressly permitted by Allegiant or to the extent expressly authorized by the Service, you will not (and will not expressly allow any third party acting on behalf of you to): translate, adapt, reverse engineer, decompile, disassemble, unlock or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Service; modify, translate, or create derivative works based on the Service; rent, lease, distribute, sublicense, resell, pledge, assign, or otherwise transfer or encumber rights to the Service; use the Service for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove or otherwise alter any proprietary notices or labels from the Service or any portion thereof.
- 3.3. **Compliance with Laws.** You shall not use the Services for any illegal or unlawful purpose in violation of any Laws or in a manner which constitutes a violation or infringement of the rights (including any Intellectual Property Rights) of any other party. You shall at all times maintain all registrations and comply with all applicable Laws as may be necessary for the use of the Services.
- 3.4. **Acceptable Use Policy.** You will not use the Services to store, reproduce, transmit, communicate or knowingly receive any material, including the Customer Content, which is offensive, abusive, indecent, defamatory, obscene, racist, homophobic, menacing, or in any manner other than in conformance with any acceptable usage policies that you have agreed to with Allegiant. YOU ARE SOLELY RESPONSIBLE FOR THE CONTENTS OF THE CUSTOMER CONTENT, AND IN NO CIRCUMSTANCES SHALL ALLEGiant BE HELD LIABLE FOR THE CONTENTS OF ANY CUSTOMER DATA USED WITH THE SERVICES.
- 3.5. **Use of MSP Hardware.** You will not acquire any rights of ownership in the MSP Hardware or the Software installed on the MSP Hardware by virtue of the Agreement and shall not have, by operation of law or otherwise, any lien or other similar right over or in relation to the MSP Hardware. In the event MSP is located on your premises, you shall: provide electric power for the MSP Hardware and keep the MSP Hardware physically secure and free from liens and encumbrances; take reasonable care of the MSP Hardware and not damage it, tamper with it, move or remove it or attempt to repair it; bear the risk of loss or damage to MSP Hardware (other than ordinary wear and tear) except to the extent caused by Allegiant or its agents; not remove any sign, label or other marking on the MSP Hardware identifying that Allegiant is the owner thereof; and on either the termination of this Agreement or an applicable Service or Purchase Order, allow Allegiant and its employees and agents reasonable access to your premises to remove the MSP Hardware.
- 3.6. **Payment of Fees.** You will pay the Installation Fees, Recurring Service Fees and all other Fees defined in this Agreement and on your Service or Purchase Order.

Article IV: Hosted Telephony Services

- 1. Hosted Telephony Services.** These additional terms and conditions listed in this Article IV, shall apply if Allegiant is providing you with hosted PBX, SIP trunking, voice channels, or any other hosted telephony Services ("Hosted Telephony Services").
- 2. Telephone Number.** Any telephone number provided by Allegiant ("Number") to you shall be leased and not sold. You are not to use the Number with any other device other than Hardware authorized by Allegiant, without the express written permission of Allegiant.. Ownership of telephone numbers that are currently owned by Customer and ported to Allegiant shall remain with Customer and can be used in any legal manner by Customer.
- 3. Local Number Portability (LNP) Port Out.** You may be able to take, or port, your current phone Number(s) to another service provider. If you request your new service provider to port a number from us, and Allegiant receives your request from that new service provider, Allegiant will treat it as notice from you to terminate the Hosted Telephony Services for that Number upon successful completion of porting. After the porting is completed, you will not be able to use the Hosted Telephony Services for that number. You will remain responsible for any early Termination Fees, and for all other Fees and charges through the end of the Service Contract Term specified in your Service or Purchase Order, just like any other termination.
- 4. Phone Numbers and Service Discontinuance.** Upon expiration, cancellation or termination of the Hosted Telephony Services, you shall relinquish and discontinue use of any Numbers and voice mail access Numbers leased and assigned to you by Allegiant or its Third Party Providers.
- 5. Electronic Recording.** You acknowledge and understand that there are federal and state statutes governing the electronic recording of telephone conversations and that Allegiant will not be liable for any illegal use of such Services. Because circumstances vary widely, you should carefully review your own circumstances when deciding whether to use any recording features with the Hosted Telephony Services and it is your responsibility to determine if the electronic recordings are legal under the federal and state statutes. ALLEGIANT IS NOT RESPONSIBLE FOR ANY MISINTERPRETATION, LACK OF UNDERSTANDING OR LACK OF KNOWLEDGE REGARDING THE USE OF ELECTRONIC RECORDINGS BY YOU WHETHER LEGAL OR ILLEGAL.
- 6. Regulatory Recovery Fee & Toll Fees.**
 - 6.1. USF Fees.** Allegiant will cap any Cost Recovery or non-pass-through fees at 9%.
 - 6.2. Toll Fees.** Every call to or from Hardware using the Hosted Telephony Services that originates or terminates in the Public Switched Telephone Network ("PSTN"), including other VoIP networks, is subject to the then applicable toll charges that are associated with the Hosted Telephony Services ("Toll Fees"). Calls to a phone Number outside the United States and Canada to a non-Allegiant Number will be charged at the current rates applicable to such calls. The duration of each call is to be calculated in one minute increments and rounded up to the nearest one-minute increment for any fraction of minutes used. If the computed charge for a call includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. If the computed charges for taxes and surcharges include a fraction of a cent, the fraction is rounded up to the nearest whole cent. When you dial an International PSTN phone Number, charges may apply regardless of whether the party on the other line answers the call. Calls made by you to an International mobile, rather than landline, or premium rate telephone Number, may result in higher toll charges.
- 7. 911/E911 Emergency Services & Limitations.** The following terms and conditions apply to your use of 911/E911 emergency services ("911/E911 Emergency Services") with Allegiant's Hosted Telephony Services.
 - 7.1. 911/E911 Emergency Services & Limitations Overview.** You acknowledge and understand that Hosted Voice 911/E911 Emergency Services do not support traditional 911 and access to emergency service providers. The 911/E911 Emergency Services differs from traditional emergency 911 services that you receive from the telephone company in several important ways described below. You and any of your end users should maintain an alternative means of calling emergency 911 services. YOU BEAR SOLE RESPONSIBILITY FOR PROVIDING ANY EMERGENCY SERVICES TO YOUR END USERS AND FOR ANY COSTS ASSOCIATED WITH PROVIDING THESE SERVICES AND PAYMENT OF ANY GOVERNMENTAL FEES OR ASSESSMENTS RELATED TO THE 911/E911 EMERGENCY SERVICE OR ALTERNATIVE 911 SERVICES. NEITHER ALLEGIANT NOR ITS OFFICERS OR EMPLOYEES MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS, AND, TO THE EXTENT PERMITTED BY LAW, YOU HEREBY SHALL INDEMNIFY ALLEGIANT AND WAIVE ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION, ARISING FROM OR RELATING TO THE 911/E911 EMERGENCY SERVICE.
 - 7.2. Direct Dialing, Notification, and Location.** When properly installed, operated and managed, the 911/E911 Service enables you to directly dial 911 without having to first dial an extra digit, prefix, or code, such as "9." The 911/E911 Service also enables, when properly installed, managed, and operated, notification that a 911 call is being made. The notification will be sent simultaneously with the 911 call to a central location at the facility where the services are installed, or to another person or organization regardless of location. **It is your responsibility to identify the person or location to receive this notification, and to maintain that information's accuracy at all times, including during the initial set up as well as for any subsequent changes.** As of January 6, 2021, the 911/E911 Service will enable the automatic transmission with a 911 call of your street address or more specific location information such as a room or floor number if necessary for first responders to quickly locate the caller. Allegiant is and shall be responsible for ensuring that its services and products comply with "Kari's Law" and "RAY BAUM'S ACT", as amended.
 - 7.3. Number and Location.** Unlike traditional emergency 911 services, when you or your end users call 911 using the 911/E911 Emergency Service, the emergency personnel receiving the call may not be able to automatically identify the phone number or the physical address from which the call originates. You or your end users might need to tell the emergency personnel the nature of the emergency, give them the phone number, and describe the physical location. If the call is dropped for any reason, emergency personnel may not be able to call back or find the location. Therefore, you must register an accurate location when you initiate your service and every time you move the equipment associated with Hosted Telephony Services.
 - 7.4. Incorrect Service Address.** If you register for the 911/E911 Emergency Service using an incorrect physical address, emergency calls may be routed to the incorrect emergency service provider. The emergency personnel may not be able to respond to the emergency, transfer the call to the geographically appropriate emergency center or otherwise provide assistance.
 - 7.5. Geographic Location.** Emergency service personnel cannot accurately track the location through our system and it is therefore important that the location registration remains updated by you. For example, if you live and use the 911/E911 Emergency Service with a telephone in Virginia where the area code is 703, but your assigned telephone number has an area code of 212, an area code associated with New York City, when you dial 911, you may not be able to reach any emergency personnel. Even if you do reach emergency personnel, you may not be calling the emergency personnel near your actual location (the

Virginia caller may be calling emergency services located in New York) and the emergency personnel may not be able to transfer the call to respond to the emergency, or otherwise provide assistance.

- 7.6. **Change of Location.** It is important that the location of the 911/E911 Emergency Service is accurately registered every time the Hardware using the 911/E911 Emergency Service is moved. If the Hardware is moved to another location without reregistering, when a call is made to 911, the call may not reach any emergency personnel. Even if emergency personnel are reached, the call may not be completed to the emergency personnel near the actual location if the location has not been updated, and the emergency personnel may not be able to transfer the call, respond to the emergency, or otherwise provide assistance.
- 7.7. **Outages.** Outages in the electricity and problems with the connection, including network congestion, will disrupt the 911/E911 Emergency Service making emergency calling using the 911/E911 Emergency Service unavailable.
- 7.8. **Third-Party Software.** The 911/E911 Emergency Service is not supported for use in conjunction with any Third-Party Software unless Allegiant expressly states otherwise in writing.
- 7.9. **Mobile Devices.** Allegiant's Hosted Telephony Services are provided to mobile devices through the use of Third-Party Software that is installed on each mobile device registered for the Hosted Telephony Services. Allegiant is and shall be responsible for ensuring that its services and products comply with "Kari's Law" and "RAY BAUM'S ACT", as amended, so long as each mobile device has Allegiant's recommended configurations.
- 7.10. **Disconnection of the Service.** The 911/E911 Emergency Service will not work if the Hosted Telephony Services are disconnected. If a service outage occurs due to a suspension of the Hosted Telephony Services, whether due to billing issues or for any other reason, the 911/E911 Emergency Service will not be available for making any emergency calls.

Article V: Colocation Services

1. **Colocation Services.** These additional terms and conditions listed in this Article V, shall apply if Allegiant is providing you with Colocation Services at Allegiant's Data Center Site.
2. **Limitation of Rights.** Allegiant grants a non-exclusive, revocable right to you to operate the Customer Colocation Hardware in the Colocation Space under the terms set forth herein. This right is subject and subordinate to Allegiant's lease of the Data Center Site containing the Colocation Space ("Data Center Lease"). Allegiant has no obligation to provide you with additional space or power other than as described in your Service or Purchase Order. You further acknowledge that you have not been granted any real property interests.
3. **Insurance.** You must provide Allegiant with an applicable insurance policy covering the Customer Colocation Hardware in the amount of \$5,000.00. You may satisfy the insurance requirements herein through qualified plans of self-insurance, providing Allegiant with reasonable evidence of such prior to using the Colocation Services and upon request thereafter. The minimum limits of required insurance in no way limits or diminishes your liability, and may be subject to increase if necessary for adequate protection. Within thirty (30) days of demand for such increased coverage, you must provide Allegiant with a Certificate of Insurance reflecting the increased coverage and other required insurance provisions. IN NO EVENT SHALL ALLEGiant BE HELD LIABLE FOR ANY DAMAGE TO, OR LOSS OF, THE CUSTOMER COLOCATION HARDWARE OR RESULTING BUSINESS INTERRUPTION, INCLUDING HARDWARE AND BUSINESS INTERRUPTION OF YOUR END USERS.
4. **Installation and Relocation of Customer Colocation Hardware.**
 - 4.1. **Installation of the Customer Colocation Hardware.** Allegiant will prepare and install the Customer Colocation Hardware according to the specifications detailed in your Service or Purchase Order.
 - 4.2. **Customer Provided UPS.** You are not permitted to provide your own uninterruptable power supply ("UPS") for the Customer Colocation Hardware without Allegiant's prior written consent, which may be withheld at Allegiant's sole discretion. If Allegiant provides its consent, including without limitation approval of the Colocation Hardware, design and manner of installation. Allegiant shall have no responsibility for the operation or performance of the UPS Hardware. You shall be responsible, to the extent permitted by law, for any and all liabilities, claims, demands, costs, damages, fines, penalties or expenses arising from the operation, maintenance, or repair of your UPS or inverter hardware, including without limitation damage to the Colocation Space or the Data Center Site arising from such operation, maintenance or repair.
 - 4.3. **Relocation of Customer Colocation Hardware.** Allegiant will not arbitrarily or capriciously relocate the Customer Colocation Hardware; however, upon thirty (30) days' prior written notice (or, in the event of an emergency, such notice as may be reasonable under the circumstances), Allegiant may be required to relocate the Customer Colocation Hardware. The relocation site must provide comparable environmental conditions and accessibility. The reasonable costs of relocating the Customer Colocation Hardware and of improving the relocation site will be at Allegiant's expense.
5. **Power Consumption and Fees.**
 - 5.1. **Power Rate Fees.** Power is charged on a breakered amp basis which includes the applicable power utility rate and associated support costs ("Power Rate Fees"). If the utility provider increases the costs for power to Allegiant's Data Center site, Allegiant may increase your Fees for the power, but only in an amount necessary to cover Allegiant's additional costs associated with providing the power to the Customer Colocation Hardware.
 - 5.2. **Fee Suspension due to Damage to the Data Center Site.** If the Data Center Site or Colocation Space is damaged by fire or other casualty and is rendered unusable for the Customer Colocation Hardware, and neither the applicable landlord nor Allegiant terminate the underlying Data Center Lease, and Allegiant elects or is required to restore the Data Center Site to substantially the same condition it was in prior to the damage, the Fees for the Customer Colocation Hardware will proportionately abate, for the period from the occurrence of the damage to the date it is repaired.
6. **Use of the Customer Colocation Hardware.** You may only use the Colocation Space for operating and maintaining the Customer Colocation Hardware in the Co-Location Space. You may not use the Colocation Space for any other purpose including any unlawful purposes. You may not use the Customer Colocation Hardware in the Colocation Space to connect with other telecommunications providers without the prior written consent of Allegiant, which consent may be withheld in Allegiant's sole discretion. If Allegiant provides its consent, you must utilize Allegiant as the underlying transport service provider from the Colocation Space to the other telecommunication provider's service location. You are not permitted to sublicense the Colocation Space or to resell or share power. You are required to establish, adhere to, and maintain full compliance with all EPA, OSHA, state, local and jurisdictional safety laws, requirements, regulations, codes, and

ordinances. You are also required to comply with all policies and procedures applicable to Allegiant's Data Center Site. You may not ship the Customer Colocation Hardware directly to the Data Center Site without Allegiant's prior written consent. Allegiant is not responsible, and you expressly waive any and all claims, for any harm, damage or theft of the Customer Colocation Hardware that is shipped to the Data Center Site without Allegiant's express written consent.

- 7. Removal of Customer Colocation Hardware upon Termination.** Within fifteen (15) days following the end of the Service Contract Term specified in your Service or Purchase Order, you must make arrangements with Allegiant to remove the Customer Colocation Hardware. You will reimburse Allegiant for the reasonable cost of performing this Service, including any shipping costs. If you do not make arrangements with Allegiant within fifteen (15) days following the end of a Service Contract Term, then you shall be deemed to have abandoned the Customer Colocation Hardware and its title shall pass to Allegiant under this Agreement as by a bill of sale, without any further notice to you. To the extent permitted by applicable law, you shall be responsible for the cost of removal, storage and disposal of such abandoned Customer Colocation Hardware as well as any damages caused by such removal. Allegiant shall not be liable to you for disposing of the abandoned Customer Colocation Hardware (including without limitation destruction) or for any proceeds resulting from any sale of the abandoned Customer Colocation Hardware. Notwithstanding any other provision contained in this Agreement, Allegiant reserves the right and without any liability to you, to shut off the Customer Colocation Hardware and prevent your access or removal of the Customer Colocation Hardware in the event any past due amounts are owed to Allegiant for the Colocation Services.

Article VI: Maintenance & Support Services

- 1. Maintenance & Support Services.** These additional terms and conditions listed in this Article VI, shall apply if Allegiant is providing Maintenance and Support Services for the Customer Hardware independently or in conjunction with certain Services provided under this Agreement that are operating on the Customer Hardware.
- 2. Service Authorization.** Some warranties or service contracts for Third-Party Products may become void if Allegiant provides Maintenance and Support Services for Customer Hardware covered by such warranties and service contracts. ALLEGiant SHALL NOT BE RESPONSIBLE FOR ANY EFFECT THAT THE MAINTENANCE AND SUPPORT SERVICES MAY HAVE ON THOSE WARRANTIES OR SERVICE CONTRACTS FOR CUSTOMER HARDWARE YOU AUTHORIZE ALLEGiant TO WORK ON.
- 3. Maintenance & Support Exclusions.** Repairs made necessary to Customer Hardware due to the scenarios listed below, expressly fall outside the scope of this Agreement and shall be subject to additional charges at Allegiant's current standard rates for time and materials: Installation Services; Maintenance and Support Services for Customer Hardware not defined/outside the scope of your Service or Purchase Order; Force Majeure events; the replacement cost of Customer Hardware; neglect, theft, misuse, loss or negligent damage of the Customer Hardware by you or your agents; any repair made necessary where Allegiant either orally or in writing indicated system failure was likely and imminent, and you made the determination not to act; use of the Customer Hardware in a manner that is inconsistent with the manufacturer intended purpose or is incompatible with their intended design; repairs made necessary by the unauthorized: tampering, maintenance, modification, or interference of the Customer Hardware by your agents, employees, or any third party contracted by you without the prior authorized written consent of Allegiant; and the failure of you to provide and maintain a suitable environment for the Customer Hardware with all facilities prescribed by the manufacturer including, but not limited to proper electrical power, ventilation, air conditioning, and humidity control.

Article VII: General Terms and Conditions

- 1. Termination and Breaches of this Agreement.**
- 1.1. Material Breach.** If either party fails to perform or observe any material warranty, representation, term or condition of this Agreement, including non-payment of Fees, and such failure continues un-remedied for thirty (30) days after receipt of notice, the aggrieved party may terminate the affected Service or Purchase Order(s); and, if the breach materially and adversely affects the entire Agreement, terminate the entire Agreement.
- 1.2. Bankruptcy.** Either party can promptly terminate this Agreement if the other party is: declared or becomes insolvent or bankrupt; if a petition is filed in any court to declare the other party bankrupt or for a reorganization under bankruptcy law or any similar statute and such petition is not dismissed in ninety (90) days; or if a trustee in bankruptcy or a receiver or similar entity is appointed for the other party.
- 1.3. Termination or Suspension for Non-Payment.** Allegiant, without waiving any other rights or remedies and without liability to you, may suspend or terminate any or all Service or Purchase Orders and refuse additional Service or Purchase Orders until all overdue amounts are paid in full, provided that Allegiant has supplied you prior notice and thirty (30) days' opportunity to cure such deficiency.
- 1.4. Fraud or Abuse.** Allegiant may suspend, terminate, withdraw or discontinue all or a part of an Service or Purchase Order immediately and without liability on its part by providing you with such advance notice as is reasonably practicable under the circumstances, when Allegiant reasonably believes: any part of the Service or Purchase Order is prohibited by Law; you are involved in fraudulent or illegal activity; you are in violation of the terms of this Agreement and such violation may: expose Allegiant to sanctions, liability, prosecution or other adverse consequences under applicable Law if Allegiant were to allow the violation to continue; harm or interfere with the integrity, normal operations or security of Allegiant's network or networks with which Allegiant is interconnected; or otherwise presents an imminent risk of harm to Allegiant, Allegiant's customers or its respective employees.
- 1.5. Termination by Customer.** With the exception of a Carrier contract where Allegiant is subject to a termination fee, you may terminate this Agreement and any Service or Purchase Order(s) at your convenience with thirty (30) days' notice of termination. In the event a Carrier contract has a termination fee those charges will be passed through to you upon termination. You shall be responsible for the full amount of the Fees for the month during which the notice of termination of Service is provided to Allegiant. In accordance with Article VII: Section 1.6 below, termination Fees may apply. A termination for cause as provided in Section 1.1 of this Article VII shall not be deemed a termination for convenience.
- 1.6. Termination Fees.** If Allegiant terminates a Service Order for cause in accordance with this Agreement following a breach by you of this Agreement, or you fail to give sufficient notice of termination for convenience in accordance with the terms of this Agreement and/or your Service Order, you shall be liable and will pay any termination or cancellation fees set out in your Service Order, or in the absence of such specified charges, the early termination liability is 100% of the Fees due for remaining Service Contract Term of your Service Order, excluding fees for support services to be provided in the future. You shall also be responsible for reimbursing Allegiant for any Installation Fees for prior work Allegiant has performed and any third party charges resulting from the termination. If Allegiant terminates a Purchase Order for cause in accordance with this Agreement following a breach by you of this Agreement, You shall be

liable and will reimburse Allegiant for the cost of the Products Allegiant is unable to cancel with the Third Party Providers of such Products, any Installation Fees for prior work Allegiant has performed, and any third party charges resulting from the termination. Any such fees will be defined as “Termination Fees” for purposes of this Agreement. No Termination Fees shall be payable in the event you terminate this Agreement or any Service or Purchase Order(s) for cause.

1.7. Recurring Services Termination Fees. You will be liable and will pay any termination or cancellation fees set out in your Service Contract or Service Order, or in the absence of such specified charges, the early termination liability for Recurring Services Fees is 50% of the Monthly Recurring Charges (including any taxes or regulatory charges) due for the remaining Term set forth in your service order or the Term set forth in Article I Section 4. You shall also be responsible for reimbursing us for any installation fees or amortized labor charges for prior work we have performed and any third-party charges resulting from the termination, if any (“Termination Fees”). If you receive a promotion for manufacturer phones that require a corresponding term commitment for hosted telephony services, the promotional commitment term will govern.

1.8. Survival. The provisions of Article VII: Section 1, Article VII: Section 4, Article VII: Section 5 (including all Articles and Sections referenced therein), Article VII: Section 9, Article VII: Section 6, Article VII: Section 19, and any provisions related to the payment obligations of the parties, will survive the termination of this Agreement and shall continue in full force and effect. Termination or suspension of a Service or Purchase Order by either party does not waive any other rights or remedies a party may have under this Agreement and will not affect the rights and obligations of the parties regarding any other Service or Purchase Order.

2. Representations and Warranties of the Parties. Each party hereby represents, warrants and covenants: that It is duly organized, validly existing and in good standing; It has the requisite power and authority, to execute and perform its obligations under this Agreement; It exists under the laws of its own jurisdiction and is not under any contractual obligation that would preclude it from entering into this Agreement; it shall at all times maintain all registrations and comply with all applicable Laws as may be necessary to perform its obligations under this Agreement; It will adhere to the terms and conditions of this Agreement.

3. Third-Party Products. All Third Party Products are sold by Allegiant “as is.” Allegiant makes no independent representations, warranties or covenants with respect to the Third Party Products supplied under this Agreement. You chose any/all Third Party Providers based on your judgment. You may contact us or the Third Party Provider for a statement of the warranties, if any, that the Third Party Provider is providing. We assign to you any warranties given to us. Any Third Party Provider warranties are the exclusive remedies of you with respect to such Third Party Products. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, ALLEGiant HAS NO DEFENSE, SETTLEMENT, INDEMNIFICATION OR OTHER OBLIGATION OR LIABILITY ARISING FROM THE ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY BASED ON HARDWARE, SOFTWARE AND SERVICES NOT MANUFACTURED OR CREATED BY ALLEGiant.

4. Disclaimer of Warranties & Limitations of Liability. In addition to the disclaimer of warranties and limitations provided elsewhere in this Agreement, the following terms and conditions shall apply.

4.1. Disclaimer of Warranties. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ALLEGiant SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING AND MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE SERVICES, INCLUDING BUT NOT LIMITED TO: ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; FOR THE PERFORMANCE OF OR RESULTS TO BE OBTAINED FROM YOUR USE OF THE SERVICES; THAT THE SERVICES WILL OPERATE OR BE PROVIDED WITHOUT INTERRUPTION OR ERROR; FURTHER, ALLEGiant MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT ALLEGiant’S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER’S OR ITS END USER’S DATA AND INFORMATION.

4.2. Disclaimer of Liability. IN NO CIRCUMSTANCES SHALL ALLEGiant BE LIABLE FOR: INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF ANTICIPATED SAVINGS, LOSS OR CORRUPTED DATA, COST OF CAPITAL,. NOR SHALL ALLEGiant BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, HARDWARE, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS; UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER’S OR ITS END USER’S (OR THEIR AFFILIATES’, USERS’ OR THIRD PARTIES’) APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS; THE OCCURRENCE OF TOLL FRAUD; OR THE UNAUTHORIZED USE OF VOICE PROCESSORS AND VOICE MAIL SYSTEMS. AS THE INSTALLER OF THE SYSTEM, ALLEGiant IS RESPONSIBLE FOR PROPER CONFIGURATION AND SECURITY OF THE SYSTEM INITIALLY.

4.3. Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN THE EVENT ALLEGiant IS FOUND LIABLE FOR ANY BREACH UNDER THIS AGREEMENT, ALLEGiant’S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED: THE PURCHASE COST OF THE SYSTEM, INSTALLATION AND PROFESSIONAL SERVICES CHARGES, AND TOTAL FEES ACTUALLY PAID BY CUSTOMER TO ALLEGiant FOR SUPPORT SERVICES.

4.4. Application. THE LIMITATIONS SET FORTH IN THIS ARTICLE VII: SECTION 4 AND THE LIMITATIONS SET ELSEWHERE IN THIS AGREEMENT, APPLY TO ANY CLAIMS AND CAUSES OF ACTION WHATSOEVER, REGARDLESS OF THE FORMS OF THE ACTIONS, AND WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY.

5. Indemnification.

- 5.1. **Customer Indemnification Obligations.** To the extent permitted under applicable law, you will indemnify defend and hold harmless Allegiant and its affiliates, owners, officers, directors, employees, from any and all third party actions (including claims by your end users or their affiliates), liability, damages, costs and expenses: due to a breach by you of Article III: Section 3, Article VII: Section 2, Article VII: Section 6, Article VII: Section 7, Article VII: Section 8, Article VII, Section 9; arising from, relating to, or is covered by: Article IV: Section 5, Article IV: Section 7, Article V: Section 2, Article V: Section 3, Article V: Section 7, Article VI: Section 2, Article VII: Section 3; or otherwise arising from or relating to: any failure, breakdown, interruption or deterioration of the Services; the contents of the Customer Content; modifications to the Services by you, your end users, or a third party without Allegiant's express written consent; your violation of any Third Party End User License Agreements governing Software furnished in connection with the Services; or otherwise resulting from your use of the Services in violation of this Agreement.
- 5.2. **Allegiant Indemnification Obligations.** Allegiant will indemnify defend and hold harmless you and your affiliates, owners, officers, directors, employees, from any and all third party actions, liability, damages, costs and expenses: Article VII: Section 2, Article VII: Section 6, Article VII: Section 7, Article VII: Section 8, Article VII, Section 9; for a claim alleging that a Service provided to you under this Agreement infringes any patent, trademark, copyright or trade secret, but not where the claimed infringement arises out of or results from the exemptions listed above in Article VII: Section 5.1. or from the combination of the Products or Services with any non-Allegiant Services, and in such circumstances, Allegiant shall either procure the right for you to continue using the infringing Service(s), or replace or modify the Products or Services so that they are non-infringing.
- 5.3. Each party's indemnity obligations under this Article VII: Section 5, are contingent on the other party promptly notifying the other party (the "Indemnitor") in writing of any claim or threat thereof, promptly tendering to the Indemnitor sole control of the defense and any settlement of such claim, and providing to Indemnitor (at Indemnitor's cost) reasonable assistance necessary to such defense or settlement. The Indemnitor will not be responsible for any settlement it does not approve in writing.
- 5.4. This Article VII: Section 5, sets forth both party's entire liability in regards to the indemnity obligations contained herein.

6. Confidentiality.

- 6.1. Each party agrees: to keep confidential all the other party's Confidential Information (whether written or oral) which it has obtained or received as a result of the discussions leading up to or the entering into, or obtains or receives in performance or during the term of this Agreement; not to disclose the other party's Confidential Information in whole or in part to any third party without the disclosing party's written consent, save to those of its employees, agents and contractors involved in the implementation of this Agreement and who have a need to know the same and are bound to keep if confidential; to use the other party's Confidential Information solely in connection with the performance of the Agreement and not otherwise or for the benefit of any other third party. Such obligations will apply during the term of this Agreement and for a period of 2 years after termination of this Agreement.
- 6.2. The provisions of this Article VII: Section 6, shall not apply to the whole or any part of Confidential Information which is: lawfully obtained free of any duty of confidentiality otherwise than directly or indirectly from the disclosing party; already in a party's possession other than as a result of a breach of this Article VII: Section 6; in the public domain (other than as a result of a breach of this Article VII: Section 6); or necessarily disclosed pursuant to a statutory obligation.
- 6.3. Each party, upon the request of the other, shall: return all of the other party's Confidential Information and copies in its possession to the other party, or destroy such Confidential Information and copies as directed by the other party and provide to such party a certificate of an officer of the party certifying such destruction.
- 6.4. Each party further acknowledges and agrees that: the restrictions set forth in this Article VII: Section 6, are reasonable in the circumstances; a violation of any of the provisions of this Article VII: Section 6 shall result in immediate and irreparable harm and damage to the Disclosing Party; and In the event of any violation of any provision of this Article VII: Section 6, the Disclosing Party shall, in addition to any other right to relief, shall be entitled to equitable relief by way of temporary or permanent injunction and to such other relief as any court of competent jurisdiction may deem just and proper.

7. **Proprietary Rights.** Nothing in this Agreement shall be construed to give any ownership interest in or constitute an assignment or transfer of any such intellectual Property of the other party.

8. **Real Property.** This Agreement is not intended to and does not grant a lease or license over any real or personal property of Allegiant or its Third Party Providers. In particular, you acknowledge and agree that you have not been granted any real property interest in the MSP Hardware, Allegiant's Data Center Site or Allegiant's other premises, and you have no rights as a tenant or otherwise under any real property or landlord/tenant/tenant laws, or regulations.

9. **Mutual Non-Solicitation.** [Intentionally deleted.]

10. **Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business.

11. **Import/Export Control.** Neither party will use, distribute, transfer or transmit any Hardware, Software, Products or Services or technical information provided under this Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

12. **Trademarks.** Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

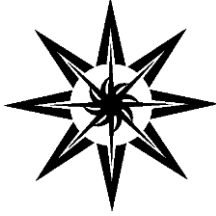
13. **Independent Contractor.** The parties are independent contractors. Neither party will have any rights, power or authority to act or create an obligation on behalf of the other party except as specified in this Agreement. Neither party's employees, agents, nor consultants shall be considered under any circumstances to be employees of the other party.

14. **Force Majeure.** Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies or other causes beyond such party's reasonable control.

- 15. Amendments and Waivers.** Any supplement to or modification of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. The failure by either party to exercise or enforce any right conferred by the Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of any such right on any later occasion.
- 16. Assignment and Subcontracting.** Allegiant has the right to assign, subcontract, or delegate in whole or in part this Agreement, or any of its rights, duties, obligations or liabilities provided that if it subcontracts its duties, Allegiant shall remain responsible for the performance of such obligations under this Agreement. You may not assign this Agreement without Allegiant’s permission.
- 17. Severability.** If any portion of this Agreement is found to be invalid or unenforceable or if applicable Law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.
- 18. Injunctive Relief.** Nothing in this Agreement is intended to or should be construed to prohibit a party from seeking preliminary or permanent injunctive relief in appropriate circumstances from a court of competent jurisdiction.
- 19. Legal Action.** Any legal action arising in connection with this Agreement must be filed within two (2) years after the cause of action accrues, or it will be deemed time-barred.
- 20. Counterparts/Facsimile.** This Agreement may be executed by the parties in one or more counterparts, each of which will be considered one and the same agreement, and will become effective when one or more counterparts have been signed by each party and delivered to the other party. This Agreement may be delivered by facsimile, email or other functionally equivalent electronic means of transmission agreed upon in writing by the parties.
- 21. Notices.** Any required notices under this Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice shall be sent to the office of the recipient set forth on the cover page of this Agreement or to such other office or recipient as designated in writing from time to time.
- 22. Governing Law/Jurisdiction/Arbitration.** This Agreement is in all respects governed by and construed in accordance with the internal laws of the State of Kansas, United States of America, without regard to its conflicts of law principles. Any disputes that may arise under this Agreement must be resolved exclusively in accordance with such laws of the State of Kansas. Each party shall be entitled to seek and obtain injunctive or other equitable relief or remedies in any court of competent jurisdiction to enforce the provisions of this Agreement concerning or relating to confidentiality and/or intellectual property rights or to enforce the foregoing arbitration provision. Each Party hereby irrevocably submits to the jurisdiction and venue agreed in this Section 22.
- 23. Modifications.** Any modifications to this Agreement must be made in writing and signed by authorized representatives of both parties to this Agreement hereto.
- 24. No Third-Party Beneficiaries.** This Agreement is for the benefit of Allegiant and Customer and does not provide any third party (including users) the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.
- 25. Headings.** The headings in this Agreement are for convenience only and shall not in any way affect the interpretation or enforceability of this Agreement.
- 26. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and all oral or written agreements relating to the same subject matter and existing prior to the date of the Agreement are expressly cancelled. Except as otherwise stated in this Agreement, this Agreement supersedes all other agreements, proposals, representations, statements and understandings, whether written or oral, concerning the Products or Services or the rights and obligations relating to the Products or Services, and the parties disclaim any reliance thereon.
- 27. Non-Discrimination.** The Parties agree that each shall abide by the Prairie Village Non-Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry. If the Customer determines that the Allegiant 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 Customer may cancel, terminate, or suspend this agreement in whole or in part.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed and delivered by their respective authorized signatures as of the Effective Date.

Allegiant Authorized Representative	Customer Authorized Representative
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:



PUBLIC WORKS DEPARTMENT

Council Consent Agenda Date: October 2, 2023

CONSIDER BID AWARD FOR 2023 TREE TRIMMING PROGRAM

RECOMMENDATION

Staff recommends the City Council approve the award of a bid to Kansas City Tree Care, LLC for \$89,500 for trimming trees in City right-of-way and parks.

BACKGROUND

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

Kansas City Tree Care, LLC has completed this work for the City in a previous year with good results.

Three bids were received and opened on September 22, 2023, by the City Clerk. The bid tab is:

Bidder	Total
KC Tree	\$ 89,500
Smith Brothers	\$ 117,985
Arbor Masters	\$341,175

FUNDING SOURCE

Funds are available in the 2023 Public Works Operating Budget.

ATTACHMENTS

Construction Agreement for Tree Trimming
Tree Trimming Area Map

PREPARED BY

Keith Bredehoeft, Director of Public Works

September 25, 2023

CONSTRUCTION AGREEMENT



2023 Tree Trimming

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

Kansas City Tree Care, LLC

CONSTRUCTION CONTRACT
FOR
2023 Tree Trimming

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
_____ Kansas City Tree Care, 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 _____ Kansas City Tree Care, LLC _____, hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project 2023 Tree Trimming , (the “Project”) designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

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

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

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

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

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

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

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

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

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

4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of 89500 DOLLARS () for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

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

6. PROJECT MANAGER

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

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

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

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

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

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

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

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

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

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

7. WORK SCHEDULE:

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

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

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

8. DELAYS AND EXTENSIONS OF TIME

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

delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

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

9. ADVERSE WEATHER:

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

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

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

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

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

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

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

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

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

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

10. LIQUIDATED DAMAGES

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- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.
- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor

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

- 11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.

11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

12. COMPLETION AND FINAL PAYMENT

12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager's execution of a final Certificate for Payment.

12.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

13. CLAIMS BY THE CONTRACTOR

13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.

13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily

encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

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

calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.

- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

14. CHANGES IN THE WORK

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

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

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

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

15. INSURANCE AND BONDS.

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

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

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

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

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

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

Limits -

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

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

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

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

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

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

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

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

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

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

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

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

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

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

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

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

18. NON-DISCRIMINATION LAWS

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

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

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

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

19. FEDERAL LOBBYING ACTIVITIES

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

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

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

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

20. RELATIONS WITH OTHER CONTRACTORS:

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

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

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

21. RIGHT OF CITY TO TERMINATE

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

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

22. MISCELLANEOUS:

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

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

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

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

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

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

Kansas City Tree Care, LLC
(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

Zachary Johnson
(typed name)

Mayor

(typed title)

City of Prairie Village

Kansas City Tree Care, LLC
(typed company name)

7700 Mission Road

1505 Merriam Lane
(typed address)

Prairie Village, Kansas 66208

Kansas City, KS 66103
(typed city, state, zip)

913-894-4767
(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Adam Geffert

City Attorney, David Waters

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

GENERAL CONSTRUCTION PROVISIONS

1. DEFINITIONS: Capitalized terms not defined herein shall have the meanings set forth in the Construction Contract for the Project dated _____, 20____.
- 1.1. Following words are given these definitions:
 - Alternate Bid or alternate** is an amount stated in the bid to be added to or deducted from the amount of the base bid, if the corresponding change in the work, as described in the Bid Documents, is accepted.
 - Base Bid** is the sum stated in the bid for which the bidder offers to perform the work described in the Project Manual, without inclusion of any alternate bids.
 - Concrete** shall mean Portland cement concrete.
 - Day** shall mean a calendar day unless otherwise described.
 - Pavement** shall be a rigid or flexible type riding surface placed upon a previously prepared sub-grade or base.
 - Street** shall mean the whole area of any roadway within the right-of-way limits.
 - Sub-Grade** shall be that portion of the construction area which has been prepared, as specified, and upon which a layer of specified material, base, sub-base course, pavement or other improvement is to be placed.
 - Temporary Construction Easement** shall mean the land provided by the City for temporary use by the Contractor during the construction of the work.
- 1.2. Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words that so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.
- 1.3. Whenever in these Contract Documents the words “as ordered,” “as directed”, “as required”, “as permitted”, “as allowed”, or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City Project Manager is intended.
- 1.4. Whenever any statement is made in the Contract Documents containing the expression “it is understood and agreed”, or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5. The words “approved”, “reasonable”, “suitable”, “acceptable”, “properly”, “satisfactorily”, or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City and/or the Project Manager.
- 1.6. When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

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- 1.7. All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ABBREVIATIONS

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

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

3. Standard Detailed Specifications

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

4. Drawings To Be Furnished By Contractor

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

5. Responsibility Of Contractor

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

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

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

6. Safety Rules

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

(or other, later revision) "Standards For Safeguarding Building Construction and Demolition Operations".

- 6.6. The Contractor shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions. It shall designate a responsible member of its organization on the project whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to the City by the Contractor.
- 6.7. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from Project Manager or City, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss.
- 6.8. The Contractor shall give prompt written notice of any significant changes in the Work or deviations from the Project Manual caused or necessitated by the emergency. A Change Order shall thereupon be issued covering the changes and deviations involved in such bona fide emergency. If Contractor believes that additional work done in an emergency, which arose from causes beyond its control, entitles it to an increase in the Contract Price or an extension of the Contract Time, the Contractor may make a claim therefore as provided herein.
- 6.9. The Contractor shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc., which shall be in compliance with all federal, state and local laws and ordinances. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed work, buildings, equipment, and the position of cranes. The Contractor shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not the City shall have reviewed said plan.
- 6.10. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such work to be done and materials to be furnished at places, as the City may consider necessary and adequate. The cost and expense of such work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills thereof, such costs shall be deducted from any amounts due or to become due the Contractor.
- 6.11. The performance of such emergency work shall in no way relieve the Contractor of responsibility for damages, which may occur during or after such precaution has been duly taken.

7. Approval of Equals

- 7.1. "Approved Equals", where permitted by the Project Manual or otherwise made feasible

by market conditions, shall be approved as follows:

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

8. Cutting, Patching and Digging

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

9. Temporary Facilities/Utilities

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

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- 9.5. The operations of the Contractor shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Contractor shall supply safe and sufficient drinking water to all employees. The Contractor shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious disease and the spread of the same.
 - 9.6. All water used in the course of the Work shall be hauled in or purchased from the local Water Company's distribution system at the Contractor's own cost and expense.

10. Right-Of-Way Limits

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

11. Completed Work

- 11.1. Before final acceptance of the Work, all mechanical and electrical equipment and devices shall be tested and each part shall be in good condition and working order, or shall be placed in such condition and order at the expense of the Contractor.
- 11.2. All tests of such completed work required under this Contract shall be made in the presence

of the Project Manager or its authorized representatives.

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

12. Maintenance Period

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

-
- 12.5.2. If around manholes or utility valves, there will be more than one-half (1/2) inch vertical differential between a plane surface passing through the top of the pavement, measured 24 inches horizontally from the edge of top of structure. (This will be measured utilizing a straight edge with one half-inch spacer feet mounted at each end of the straight edge.)
 - 12.5.3. If the settlement creates a situation such that the walk is outside of the ADA Accessibility Guidelines, it shall be replaced.
 - 12.5.4. If adjacent sections of concrete walk, pavement or curbs settle or heave so that there is more than one-fourth (1/4) inch vertical offset between such adjacent sections.
 - 12.5.5. If the flow line of any concrete gutter, or of any concrete curb and gutter pockets water or does not drain properly resulting in three-eighth (3/8) inch of standing water.
 - 12.5.6. If, any newly placed pavements surfaced with asphalt concrete pockets water or does not drain properly resulting in three-eighths (3/8) of standing water.
 - 12.6. The Contractor shall repair cracks which appear for any reason, but which may or may not indicate failure of sub-grade, base or surface, and which are wide enough in cool weather to be sealed by high standard crack sealing methods. Crack filling shall be done during relatively dry weather and at temperatures when the cracks will be near maximum width. Materials and methods shall be based on width of crack. Materials shall be of such consistency as to minimize whipping out under traffic. Cracks shall be thoroughly blown and cleaned and filler installed without superficial bridging.
 - 12.7. The intent of the guarantee period is that the Owner will have a durable and serviceable pavement; that defective materials and workmanship will have been corrected. All materials and construction for such work will be at the Contractor's expense.
 - 12.8. All corrective and maintenance work shall be done promptly upon notification by the Owner, in order to prevent unnecessary further deterioration and in order not to inconvenience the traveling public unduly.
 - 12.9. All work shall be in accordance with the highest standards of the construction industry and shall be of such nature as to be substantially permanent.

13. Equipment Guaranty

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

-
- 13.3. The Contractor shall ensure that a copy of operating and maintenance manuals for all equipment shall be kept on the site during construction of the Work and shall be open to inspection by the City or its agents.

14. Public Complaints

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

15. Notification

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

16. Progress Meetings

- 16.1. Periodic Progress meetings shall be held at a predetermined location on the site. These meetings will be held once every week or sooner as events dictate. These meetings will be organized by the City or Project Manager. Participation in this meeting by representatives of the prime contractor and each of the subcontractors is required. These representatives must be empowered to make decisions affecting the prosecution of the work and shall be the Owner of the construction firm and/or his/her superintendent. The Project Manager will conduct the meetings and the discussion will include, but is not limited to the following:
- Proposed construction schedule for duration of contract for both Prime and Subcontractors
 - Identification of any known utility/contractor conflicts and proposed resolution of same

-
- Coordination of other trades.
 - Specialty items. (Fences, shrubs, monuments, sprinkler systems, etc.)
 - Completion date requirements.
 - Review of traffic control plan as it pertains to area of work.
 - Problems and/or complaints and remedial measures taken or proposed.

17. Uncovering and Correcting Work

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

18. City May Accept Defective or Non-conforming Work

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

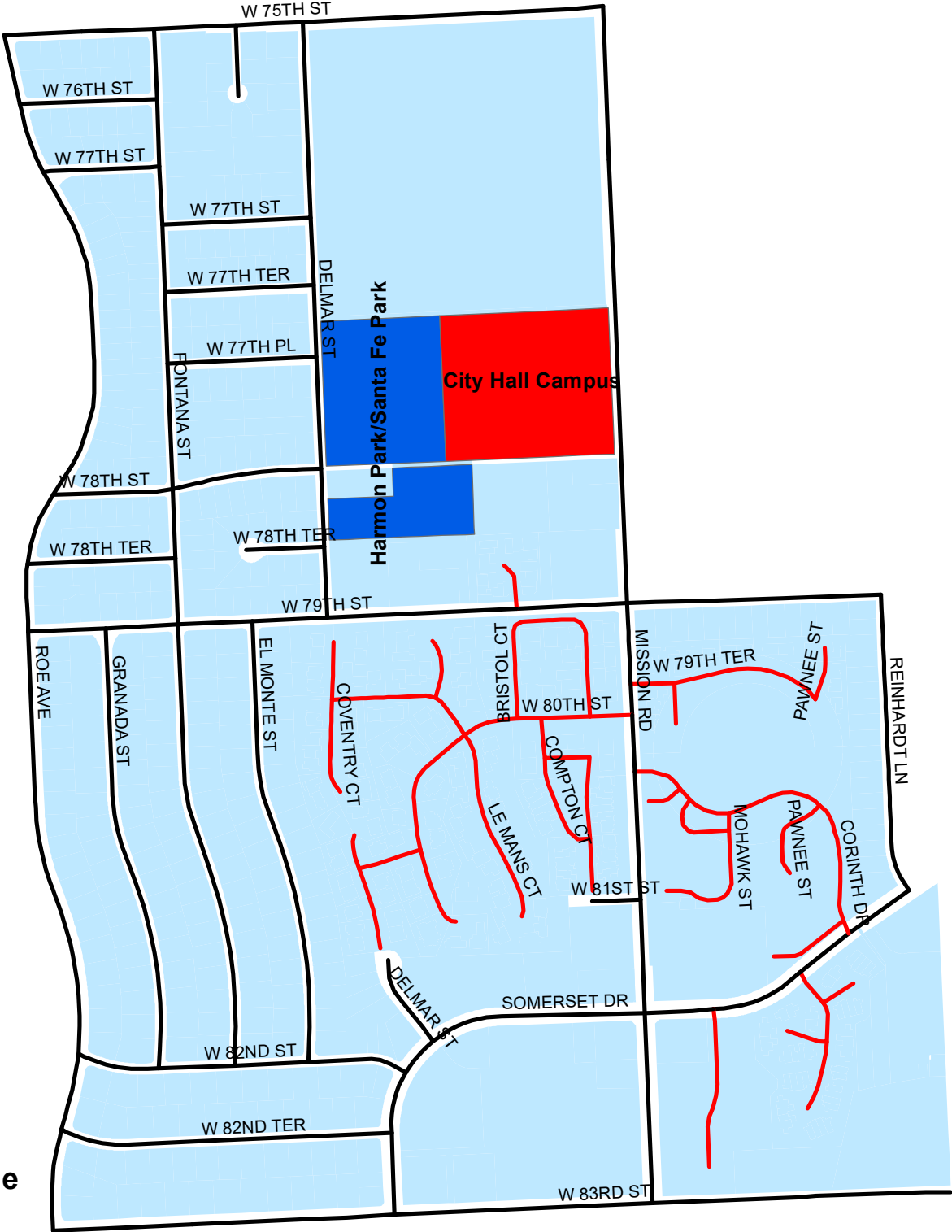
END OF SECTION

SPECIAL CONDITIONS

1. The APWA Section 1100 General Conditions is negated and not to be applied as part of this Project Manual.
2. The City has a budget limit for this tree trimming program. Therefore, the bids will be awarded separately for each area until the budget limit is reached. For example, if the sum of all the area bids exceeds the budget limit, then one of the areas will not be awarded or the list of trees will be reduced.
3. The City will accept, in lieu of but subject to the conditions of the Performance Bond, Maintenance Bond and Statutory Bond, a certified check or bank cashier's check made payable to the City of Prairie Village in the amount of the total bid cost and will be held by the City in a non-interest bearing depository. The Contractor agrees that the check is subject to being forfeited to and becoming the property of the City of Prairie Village as liquidated damages and not as penalty, together with other legal remedies the City may choose to invoke for non-performance as provided in the Contract. Said check, less any liquidated damages, will be returned to the Contractor upon completion of the Contract.
4. The trimming work will be completed between the dates of **October 3, 2023** and **February 23, 2024**.
5. Contractor is responsible for placing flyers at all properties where tree trimming will occur within 48 hours of work commencing. The City will provide the flyers.
6. Area maps will be provided by the City. These maps are used to track the completion of work. It will be required to place a date on each street segment indicating when work was completed on that street segment. For Park trimming, dates that trimming occurred in that park should be listed on that park's map. These maps are required to be turned in as part of the prerequisite for payment.
7. The Contractor will review the overall health of the City ROW Tree and if it is determined to be hazardous or in severe decline the Contractor will update the Public Works Field Superintendent by the next business morning with a list of those trees which should include: address, tree species and description/severity of decline.
8. The Contractor is to notify the Public Works Field Superintendent each morning after 7AM, but before beginning work, as to which streets the Contractor will be working.
9. The Contractor shall not trim trees with branches within 10 feet of the overhead power lines. The Contractor must stay at the minimum safe distance of 10 feet from overhead power lines up to 50kV. The Contractor shall request a line clearance from the power utility. Once the tree is trimmed to the minimum safe distance, the Contractor will trim the trees to the City's requirements. Communication lines do not require this line clearance.
10. The Contractor will follow all Local, State and Federal regulations including but not limited to all quarantine regulations.

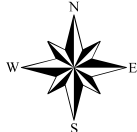
Area 42 Tree Trimming Map

DO NOT TRIM ON PRIVATE STREETS



Area 42 Centerline

- Private
- Public



Instead of Inventory Sheets each street segment will be marked with a date of completion.

APPROXIMATELY 635 TREES IN AREA 42



THE CITY OF PRAIRIE VILLAGE
Star of Kansas Created by Public Works CIS

August 21, 2023

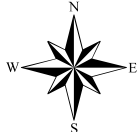
Area 43 Tree Trimming Map

DO NOT TRIM ON PRIVATE STREETS



Area 43 Centerline

- Private
- Public



Instead of Inventory Sheets each street segment will be marked with a date of completion.

APPROXIMATELY 665 TREES IN AREA 43



THE CITY OF PRAIRIE VILLAGE
Star of Kansas Created by Public Works CIS

August 21, 2023

Park Tree Trimming Map



2023_Parks

PARK

- Harmon Park
- Municipal Campus
- Windsor Park



THE CITY OF PRAIRIE VILLAGE
Star of Kansas
Created by Public Works CIS

August 21, 2023

Windsor Park Tree Trimming Map

7170 Windsor St



PLEASE NOTE PAGE 2 SHOWING AREA IN PARK NOT TO BE TRIMMED DUE TO CONSTRUCTION PROJECT



THE CITY OF PRAIRIE VILLAGE
Star of Kansas Created by Public Works CIS

August 21, 2023

Municipal Campus Tree Trimming Map

7700 Mission Rd



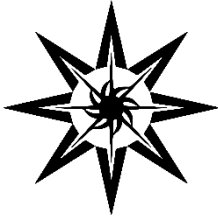
THE CITY OF PRAIRIE VILLAGE
Star of Kansas Created by Public Works CIS

August 21, 2023

Harmon Park & Santa Fe Park Tree Trimming Map

7721 Delmar St





PUBLIC WORKS DEPARTMENT

Consent Agenda: October 2, 2023

CONSIDER AGREEMENT WITH EVERGY METRO INC. FOR MISSION ROAD - 79TH TO 83RD MILL AND OVERLAY

RECOMMENDATION

Move to approve the interlocal agreement with Evergy Metro, Inc (Evergy) for Mission Road from 79th Street to 83rd Street to be included in the 2023 Paving Program contract.

BACKGROUND

Evergy Metro, Inc has constructed new infrastructure on Mission Road between 79th Street and 83rd Street. This new infrastructure is primarily in the southbound lanes of Mission Road and has resulted in utility patches at the surface. The full restoration of Mission Road in this area will be completed in the same method as the section of Mission Road from 83rd Street to 95th Street.

This section of Mission Road was milled and overlaid in 2017. The normal schedule for surface rehabilitation work would be sometime 2025-2027. In order to preserve the synchronized maintenance schedule of both the north and south bound lanes, the City of Prairie Village is participating in the mill and overlay of the north bound lanes.

ESTIMATED TOTALS for all of the above work are:

Evergy	\$ 181,252.00
City of PV	\$ 160,732.90
Total	<u>\$ 341,984.90</u>

FUNDING

Evergy's portion will be reimbursed to the City and the City of PV portion will be moved from the streets unallocated account to the 2023 Paving Program.

ATTACHMENTS

1. Evergy Metro Inc. agreement

PREPARED BY

Melissa Prenger, City Engineer

September 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 21st day of September, 2023, by and between **Evergy Electric Services Company** (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 from 79th Street to 83rd Street, 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 **\$341,984.90**, 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:

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 ELECTRIC SERVICES COMPANY

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

EXHIBIT A

NS362

Mission Rd. (79th to 83rd)

Neil Shacklett

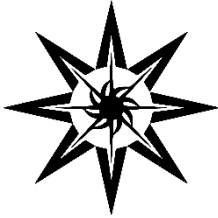
9/11/2023 1:00 PM

BID PROPOSAL

Biditem	Description	Quantity	Units	Unit Price	Bid Total
10	Mobilization	1.000	LSU	7,500.00	7,500.00
20	Traffic Control	1.000	LSU	16,000.00	16,000.00
30	Asphalt Milling 2"	12,965.000	SY	3.50	45,377.50
40	Concrete Milling 2"	2,875.000	SY	7.10	20,412.50
50	Asphalt Paving 2' (APWA 6-01R)	1,800.000	TON	92.10	165,780.00
60	Solid White Lane Lines 4"	800.000	LF	1.80	1,440.00
70	Broken White Lane Line 4"	4,350.000	LF	1.80	7,830.00
80	Solid & Broken Yellow Line 4"	5,208.000	LF	1.80	9,374.40
90	Yellow Crosshatch Lines 12"	135.000	LF	7.50	1,012.50
100	Ennis Flint Decorative Crosswalks	1.000	LSU	55,000.00	55,000.00
110	White Stop Line 24"	150.000	LF	15.00	2,250.00
120	Preformed Turn Arrows	12.000	EA	384.00	4,608.00
130	Message Boards	6.000	EA	900.00	5,400.00
	Bid Total				534,984.90

COST SPLIT SHOWN BELOW:

53%	\$ 181,252.00	Evergy
47%	\$ 160,732.90	City of Prairie Village
	\$ 341,984.90	



PUBLIC WORKS DEPARTMENT

Consent Agenda: October 2, 2023

CONSIDER CHANGE ORDER FOR 2023 RESIDENTIAL PAVING PROGRAM CONSTRUCTION CONTRACT

RECOMMENDATION

Authorize the Mayor to sign the change order for PAVP2023 2023 Residential Paving Program to include restoration of Mission Road From 79th Street To 83rd Street.

BACKGROUND

Every Metro, Inc has constructed new infrastructure on Mission Road between 79th Street and 83rd Street. This new infrastructure is primarily in the southbound lanes of Mission Road and has resulted in utility patches at the surface. The full restoration of Mission Road in this area will be completed in the same method as the section of Mission Road from 83rd Street to 95th Street.

This section of Mission Road was milled and overlaid in 2017. The normal schedule for surface rehabilitation work would be sometime 2025-2027. In order to preserve the synchronized maintenance schedule of both the north and south bound lanes, the City of Prairie Village is participating in the mill and overlay of the north bound lanes.

ESTIMATED TOTALS for all the above work are:

Everygy	\$ 181,252.00
City of PV	\$ 160,732.90
Total	<u>\$ 341,984.90</u>

FUNDING

Everygy's portion will be reimbursed to the City and the City of PV portion will be moved from the streets unallocated to the 2023 Paving Program.

ATTACHMENTS

1. Change Order with Superior Bowen

PREPARED BY

Melissa Prenger, City Engineer

September 27, 2023

**CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT**

CONSTRUCTION CHANGE ORDER PROJECT PAVP2023



City's Project: PAVP2023

Date Requested: SEPT 27, 2023

Contract Date: May 18, 2018

Contractor's Name: Superior Bowen aka O'Donnell and Sons Construction

REQUIRED CHANGES TO PRESENT CONTRACT

Contract Quantity	Previous Amount	Unit	Item Description	Adj. Quant.	Unit Price	Adjusted Amount
0	\$0.00		Final mill and overlay of Mission Road, 79 TO 83	1	\$341,984.90	\$341,984.90

TOTAL

TOTAL

EXPLANATION OF CHANGE - This change order is to cover the following items:

The full restoration of Mission Road in this area will be completed in the same method as the section of Mission Road from 83rd Street to 95th Street.

The Consultant does **not** anticipate a related Engineering Change Order.

	Contract Value	Contract Days
Original Contract	PAVP2023	
This Change Order	\$341,894.90	

Neil Shacklett
Contractor
Superior Bowen

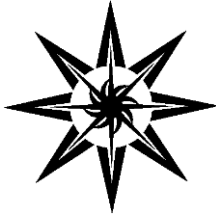
9/27/2023
Date

Keith Bredehoeft, Public Works Director
City of Prairie Village, KS

Date

Eric Mikkelson, Mayor
City of Prairie Village, KS

Date



COU2023-56 Consider Removal of Accessory Dwelling Units, Housing Study Recommendations and Lot Size Modifications from the Council Prioritization List

MOTION

Remove accessory dwelling units, housing study recommendations and lot size modifications from the April 24, 2023, council prioritization list regarding R-1 residential zoning areas.

BACKGROUND

Councilmembers David Robinson, Terrence Gallagher, and Greg Shelton requested that these topics be placed under Old Business for clarification and consideration. On April 24, 2023, the Governing Body held a work session to discuss the following topics that included but were not limited to:

1. Neighborhood Design Guideline Update
2. Short Term Rentals
3. Building Permit Fees and/or Incentives
4. Accessory Dwelling Units
5. Housing Study Recommendations
6. Lot Size Modifications

During the meeting, the Governing Body established a prioritization list for staff to review and make future recommendations based on discussion. The accessory dwelling units (ADUs), housing study recommendations and lot size modifications were at the bottom of the list. Although these items were not removed, staff understood these items would not be a priority for consideration. Councilmembers Robinson, Gallagher, and Shelton are recommending further clarification for staff as they work through these priorities by removing these bottom three items from the April 24, 2023, prioritization list.

ATTACHMENTS:

Prioritization exercise results

PREPARED BY

Wes Jordan
City Administrator
September 28, 2023

**City Council Work Session
Monday, April 24, 2023
Prioritization Exercise Results**

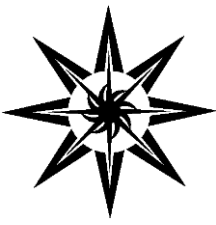
***Original Instructions:
Cumulative Voting***

Please spread up to 20 points across the categories below to show emphasis and prioritization for continued study on these topics. You may assign zero points or less than 20, but no more than 20. You may put all of the points on one category or spread in any increment you wish.

Allocating points to an item does not necessarily mean you are in favor of changing anything - just that you believe that item is worthy to continue through the process with additional staff research, public input, Planning Commission feedback, and ultimately Public Hearings and official ordinances.

Prioritization Exercise Results

Topic	Total Points
Housing Study	16
Accessory Dwelling Units	24
Neighborhood Design Guidelines	107
Building Permit Fees/Incentives	25
Lot Size	7
Short Term Rentals	46
Other (Long Term Rentals)	14



Neighborhood Design Guidelines Update Discussion

BACKGROUND

The City Council had a [work session](#) on April 24, 2023 to discuss next steps in the housing discussion related to the R-1 zoning areas. At the work session, Council completed a prioritization exercise to provide staff direction for which areas to address first. The top two [results](#) were updating the Neighborhood Design Guidelines and researching further regulations and/or fees for short term rentals.

The current [Neighborhood Design Guidelines](#) went into effect February 1, 2019 with the understanding they may be revisited to address any issues with the guidelines. The guidelines include requirements for street trees, greenspace, window and door openings, size restrictions, and impervious coverage limits. The housing discussion has brought up questions about whether the design guidelines went far enough to limit size and scale of homes, especially teardown/rebuilds. Council directed staff to look into reducing the size and scale to better fit into existing neighborhoods, and also review green space and lot coverage requirements. At this point, guidelines will focus on the R-1B zoning areas.

Staff proposed the following Plan of Action in May 2023:

Objectives:

- Focus on R-1B zoning districts
- Reduce the scale of buildings further than current development standards and design guidelines
- Review / update design standards

Process

- Staff Review and Discussion - internal options and strategies
- City Council Discussion (October 2, 2023)
- Planning Commission Work Session - options direction (moved to after City Council discussion)
- Public open house / comment (TBD based on options / direction)
- Planning Commission - Public Hearing
- City Council - Review / Decisions

R-1B Issues

- Height / Stories
- Foundation / First floor Elevation
- How height is measured
- Lot coverage (building coverage; impervious surface coverage)
- Lot size (maximum / lot merger limits)
- Massing standards / Wall Plane Limits - simplification and improvement for outcomes and objectives; clean-up and “lessons learned” from implementation

Staff has conducted an internal review and discussion and identified two preliminary options for further discussion by the City Council.

Option 1: Simple Size Restrictions

- Reduce the height from 29' to 27'
- Reduce the building coverage from 30% to 25%

This will result in smaller footprints, but may not reduce the overall massing of structures, and particularly as they relate to adjacent properties.

Option 2: Refined Massing Standards

- Reduce massing within 10' of side setback line
 - 12' wall plane height
 - 19' gable or dormer height (under sloped roof)
 - 500' wall plane limit
- Leave building coverage at 30%
- Reduce overall building height to 27'

This will result in 1-story or 1.5 story massing nearest the side property lines, and 2-story massing more central to the lot, but may have implications to typical floor plans and garage placement.

Each of these options would retain the current approach to other design standards that focus on breaking up the massing of facades in “style-neutral” ways; accommodate 2-car front-loaded garages with some limitations; promote front entry features that engage streetscapes; and prioritize street trees and frontage landscape as a prominent neighborhood character element.

Following City Council discussion of these options, or other options based on the direction of the Council, staff anticipates bringing these issues up with the Planning Commission for further refinement and drafting of proposed amendments. Additional status updates can also be provided to the Council prior to any specific amendments being proposed for a formal public review and adoption process.

Attachments

- Presentation

PREPARED BY

Nickie Lee, Deputy City Administrator
Chris Brewster, City Planner, Multistudio
Date: September 27, 2023

Neighborhood Design Guidelines

Update Discussion



City Council
October 2, 2023

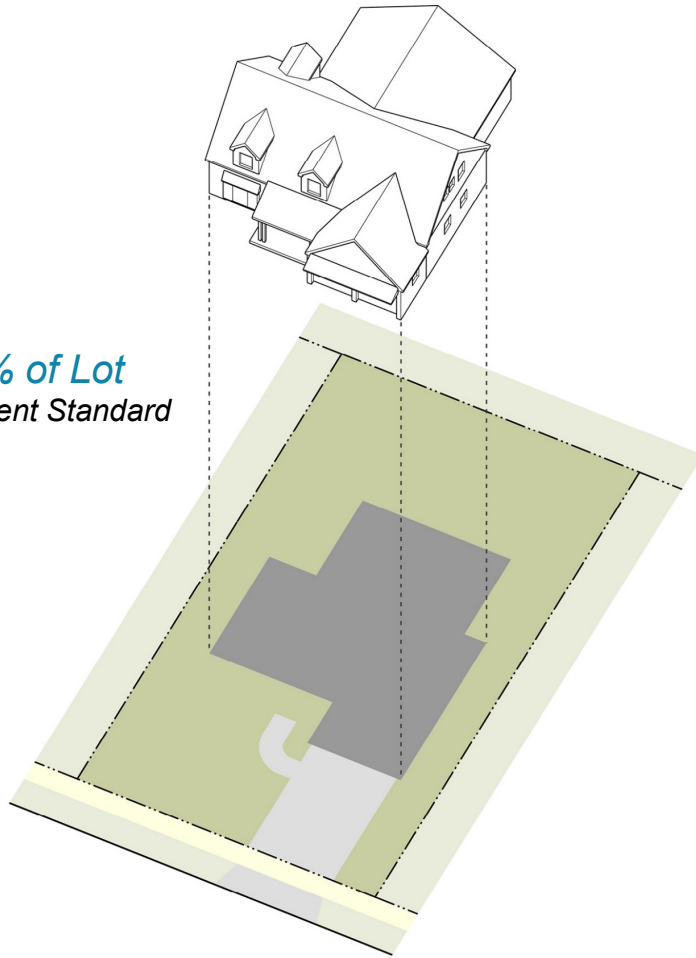
Introduction

Action Plan (5/15/23 City Council Direction)

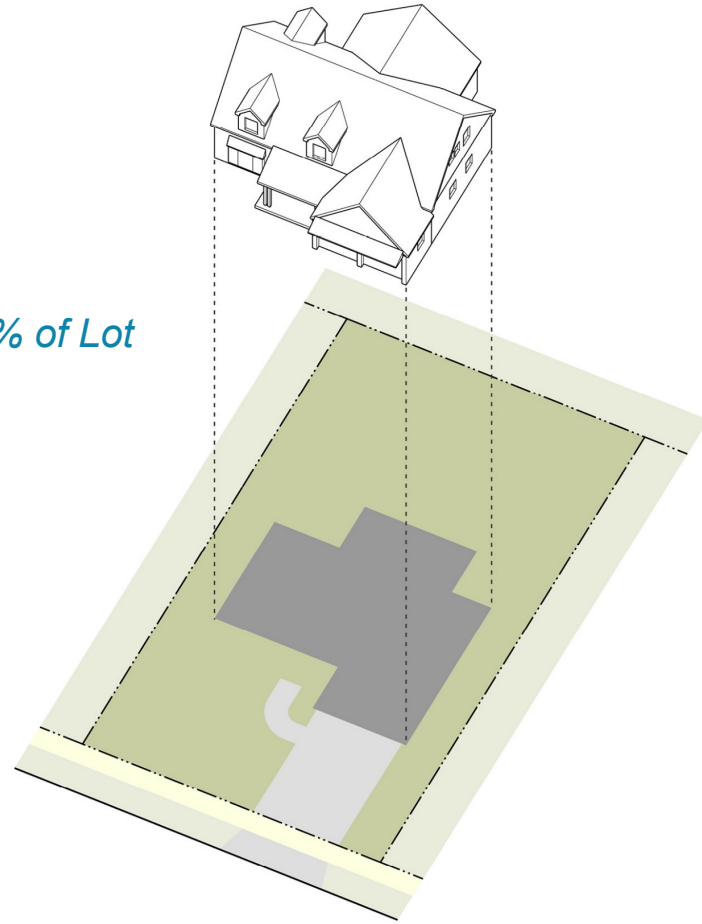
1. Address Neighborhood Design Standards in R-1B only
2. Consider a range of strategies to reduce building scale
 - ❑ *Height*
 - ❑ *Building Coverage*
 - ❑ *Massing standards*
 - ❑ *Lot sizes – minimum and maximum*
3. Process
 - ❑ *Staff Review & Discussion (internal options and strategies)*
 - ❑ *CC Discussion (tonight)*
 - ❑ *PC Work Session – options & direction*
 - ❑ *Public comment - open house or PC meeting / forum*
 - ❑ *Formal recommendations and adoption process*
 - *PC Public Hearing*
 - *CC review / decision*

Building Coverage

30% of Lot
Current Standard



25% of Lot



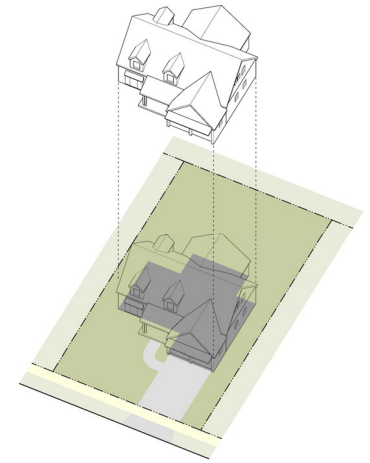
Data

2022 and 2023 R-1B Permits

72% > 25%
Building Coverage

72% over 25% building coverage
(50 out of 69)

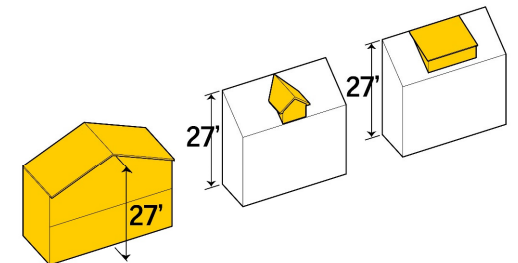
- 13 are only slightly over
- Under 25% are typically larger lots – 10,000 s.f. +
- Building footprint range -1,800 to 3,000 square feet.



68% > 27'
Building Height

68% over 27' high (47 out of 69)

- 13 of those are only slightly over
- All under 29'





< 27'

> 27'



< 27'

< 27'



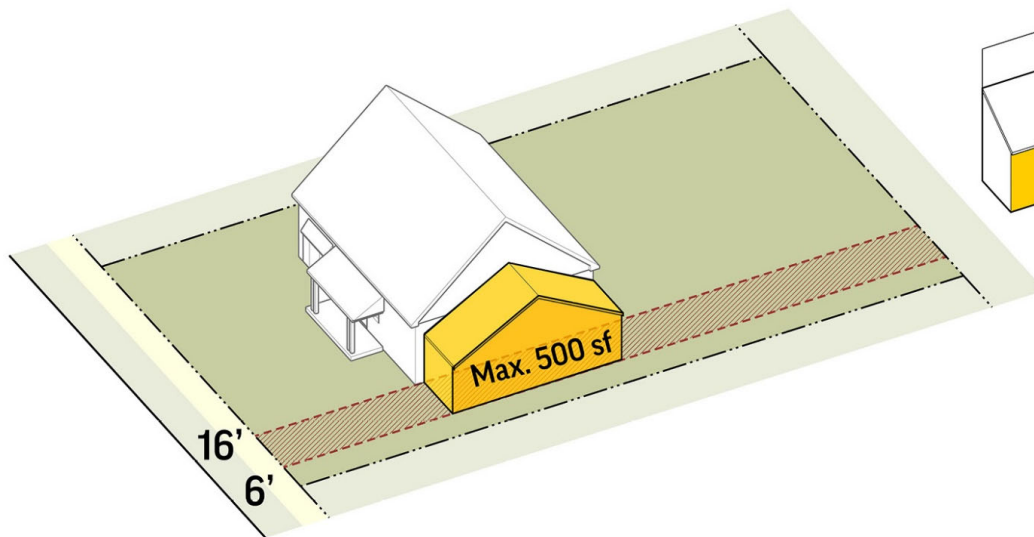




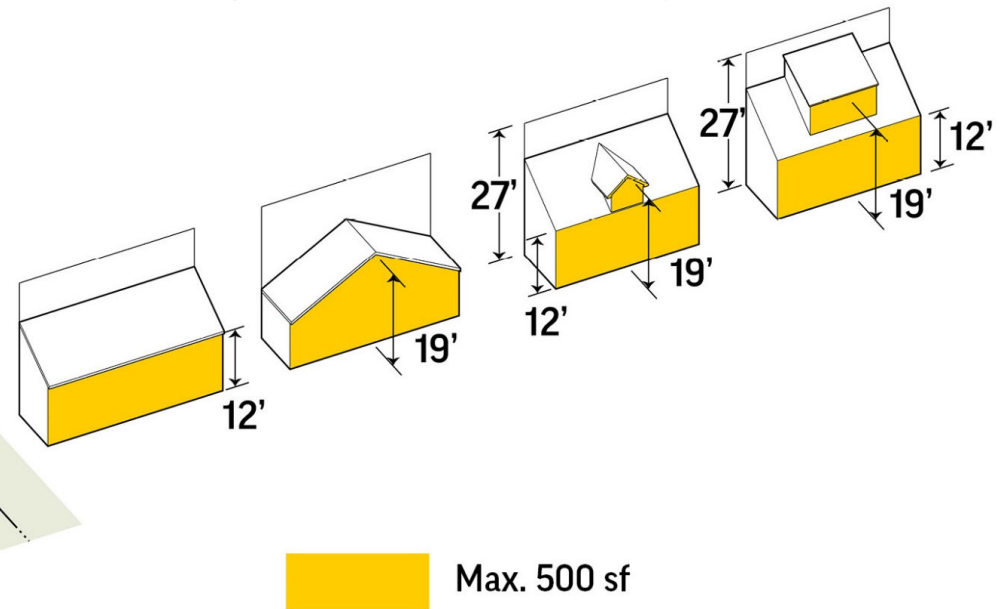
Refined Massing Standards

Reduced Massing Near Side Setback (6' to 16')

- 12' height wall plane
- 19' height roof peak (gable or dormer)
- 500 s.f. total wall area



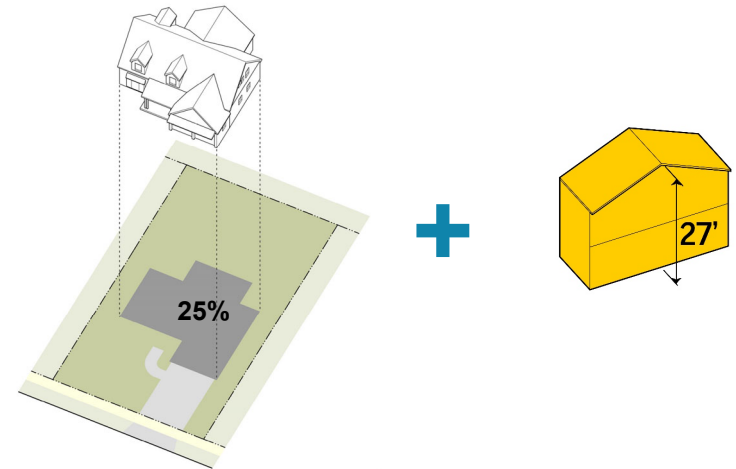
Options for Varied Massing



Options / Discussion

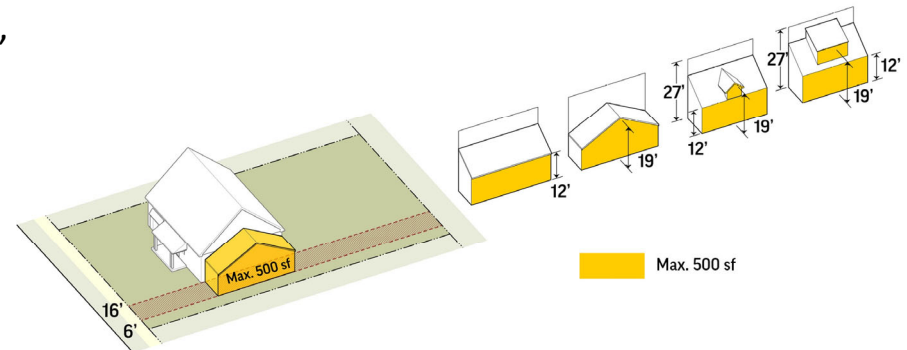
Option 1: Simple Size Reduction

- Reduce height from 29' to 27'
- Reduce building coverage from 30% to 25%



Option 2: Refined Massing Standards (Side)

- Reduce height and massing within 10' of side setback (6' 16' from side property line)
 - 12' for any wall plane
 - 19' for any gable or dormer under a sloped roof
 - 500 s.f. maximum wall plane
- Reduce height from 29' to 27'
- Leave building coverage at 30%



MAYOR'S ANNOUNCEMENTS
Monday, October 2, 2023

Planning Commission	10/03/2023	7:00 p.m.
Insurance Committee	10/04/2023	11:30 a.m.
Tree Board Fall Seminar	10/04/2023	7:00 p.m.
Diversity Committee	10/10/2023	4:00 p.m.
Parks and Recreation Committee	10/11/2023	5:30 p.m.
Police Pension Plan Trustee Meeting	10/12/2023	2:00 p.m.
City Council	10/16/2023	6:00 p.m.

INFORMATIONAL ITEMS
October 2, 2023

1. Prairie Village Foundation meeting minutes – March 28, 2023
2. Arts Council meeting minutes – July 12, 2023
3. October plan of action

Prairie Village Foundation Members Meeting
March 28, 2023 | 5:30 p.m.
Prairie Village City Hall

Attendance: President Marianne Noll, Mayor Eric Mikkelson, Meghan Buum, Marti Hatridge, Kim Huyett, Marcia Jacobs, Cindy Jenny, Wes Jordan, Dave Robinson, McKay Stangler, Bretta Watkins

- I. **Welcome and Introduction of New Board Members**—Marianne Noll opened the meeting. Board Members introduced themselves. New board members include Marti Hatridge, Kim Huyett, and Bretta Watkins.
- II. **Election of Members as Directors**—Cindy Jenny moved to elect the Foundation Board Members as Directors. Marcia Jacobs seconded the motion and it passed unanimously.

Ms. Noll outlined the Board of Directors agreement and asked the Board Members to sign and return to city staff.

- III. **Nomination and Election of Officers**—Eric Mikkelson moved to elect the proposed slate of officers. Dave Robinson seconded the motion and it passed unanimously.

President	Marianne Noll
Vice President	McKay Stangler
Secretary	Meghan Buum
Treasurer	Wes Jordan

Prairie Village Foundation Board of Directors Meeting
March 28, 2023 | 5:45 pm
Prairie Village City Hall

Attendance: President Marianne Noll, Mayor Eric Mikkelson, Meghan Buum, Marti Hatridge, Kim Huyett, Marcia Jacobs, Cindy Jenny, Wes Jordan, Dave Robinson, McKay Stangler, Bretta Watkins

- I. **Approval of Minutes from September 20, 2022 and January 31, 2023**— Marcia Jacobs moved to approve the minutes. Cindy Jenny seconded the motion and it passed unanimously.
- II. **Approval of Financial Report**—Eric Mikkelson moved to approve the financial report. Dave Robinson seconded the motion and it passed unanimously.
- III. **Reports from 2022 Events**—Ms. Noll provided updates on the Mayors Tree Lighting, Gingerbread House Party, and Shop with a Cop. All three events were very successful.

IV. Giving

- A. Receipts for 2022—The Foundation took in \$11,140 during the holiday giving season.
- B. Suggested Donations—Ms. Noll shared a variety of potential donation opportunities for spring 2023 giving for a total of \$13,000.

Organization	Donation
Shawnee Mission Cares Fund	\$ 3,000.00
Village Presbyterian Food/Clothing Pantry	\$ 500.00
Johnson County Utility Assistance	\$ 2,000.00
Back to School with a Firefighter	\$ 3,000.00
Johnson County Rental Assistance	\$ 2,000.00
Asbury United Methodist Food Pantry	\$ 500.00
Nall Avenue Baptist Food Pantry	\$ 500.00
St. Ann's Angel Fund	\$ 500.00
PV Police Citizen's Assistance Fund	\$ 500.00
Code Enforcement Fund	\$ 500.00
Totals	\$ 13,000.00

Ms. Jenny had reached out to the school district about unfunded lunch balances but did not determine it to be a pressing need.

Mr. Robinson asked about funding the school nurses again. Ms. Noll reminded him that they had already been funded in this school year. She and Ms. Jenny will reach out to the principals about how to best support the schools.

Mayor Mikkelson asked Foundation Board Members, particularly new members, to consider new ways to support our community members in need.

Kim Huyett recommended partnering with a community clinic to fund sports or school physicals. Ms. Noll and Ms. Huyett will investigate that through the school district.

Ms. Jenny moved to approve the allocations as presented. Mayor Mikkelson seconded the motion and it passed unanimously.

- V. **Back to School with a Fire Fighter** - Ms. Noll reviewed the proposed budget for Back to School with a Fire Fighter in the amount of \$4,000. Mayor Mikkelson moved to approve the budget. McKay Stangler seconded the motion and it passed unanimously.
- VI. **Committees for 2023**—Ms. Noll reviewed the 2023 event planning committees.

VII. Approve Donation Policy for Parks and Tree Committees—Ms. Buum provided information on the Prairie Village Foundation donation policy. In 2019, the Prairie Village Foundation discussed potential changes to the donation levels however the discussion was tabled in favor of other projects. The discussion is currently being revisited. Because of the impact on other City Committees, the Parks and Recreation Committee and Tree Board were asked to provide input on the process. Both committees affirmed their desire to maintain existing donation levels for plaque recognition, with the Tree Board eliminating the \$500 donation level due to limited space for planting and increased costs. After this review by the Prairie Village Foundation, the City Council will ultimately approve the suggested levels.

Mayor Mikkelson stated his desire to see this policy removed, and his belief that the intent of a donation should be goodwill without reciprocation. If the policy continues, he believes the price should be raised to \$50,000. The \$5,000 doesn't match inflation over the course of 20+ years.

Ms. Noll stated her belief that the plaques on benches and trees shouldn't be maintained in perpetuity, and that a length of time needs to be established.

Mr. Robinson asked if the policy had to be approved at this meeting to incorporate some of these items. Staff asked for a recommendation from the Foundation board this evening, so that all three committee recommendations can go to the Council at an upcoming meeting for final review and approval.

Mayor Mikkelson moved to remove the \$500 donation policies, with plaque commemoration for a tree or bench to be available at a \$15,000 donation level with a 5-year expected placement. The motion died for a lack of second.

Ms. Jacobs made a motion for plaque commemoration for a tree or bench to be available at a \$15,000 donation level for a 10-year expected placement, barring unforeseen circumstances. Mayor Mikkelson seconded the motion and it passed unanimously.

Mr. Robinson moved to remove the \$500 donation levels. Mayor Mikkelson seconded the motion and it passed unanimously.

Wes Jordan moved to clarify in the policy that the donation are in memorial of a deceased person, and requests beyond that are subject to City Council approval. Mayor Mikkelson seconded the motion and it passed unanimously.

VIII. Establish a Public Art Fund for the Arts Committee - The Prairie Village Arts Council is establishing a Public Art Fund, funded primarily through the Transient Guest Tax in the amount of \$10,000 annually, plus any funds remaining in the Arts Council account at the end of each year will be rolled over to this account. The Arts Council and Parks and Recreation Committee leadership will be developing a policy on fund expenditure as well as art selection and placement. The committee is asking for these funds to be maintained in a separate line item within the Foundation bank account for administrative purposes. This needs to be approved by the Foundation Board.

Mr. Stangler shared that the Arts Council would like to grow and expand Public Art within the City.

Mayor Mikkelson moved to establish the public art fund line item. Ms. Jacobs seconded the motion and it passed unanimously.

- IX. Other Business**—Ms. Noll announced the next meeting of the Prairie Village Foundation would be held at 5:30 p.m. on September 26, 2023.

Meeting adjourned at 7:10 p.m.

PRAIRIE VILLAGE ARTS COUNCIL | MEETING MINUTES
MPR, City Hall
July 12th, 2022
5:30 pm

BUSINESS MEETING

Bonnie Limbird called the meeting to order at 5:36 pm. Council members present were Amy Bagnall, Renee Duvall, Kellen Jenkins, Nickie Lee (city staff), Bonnie Limbird, Reese Naftel, Trinity Ready (youth member), Abby Margariel and Trudy Williams.

Reese and Amy moved and seconded respectively to approve the agenda. The agenda was approved unanimously.

Public Participation: none

These minutes were recorded by Renee

Bonnie gave the **City Council Report**.

- The 2024 budget was reviewed and options for a new city hall and police department were discussed. The art gallery would be included in these improvements.
- Civic Community Center discussions are ongoing, and an owner's representative to guide the process has been elected.
- Windsor Park now has pickleball courts.
- Villagefest and Juneteenth festivities were well attended.

Nickie gave the **Current Year Financial Update**. Nickie proposed a policy for a public art fund. This will be discussed at the City Council meeting on August 2nd and then could be potentially approved in September. We will have around \$30,000 and the Arts Council will need to outline how we spend these funds. Park & Rec will keep a list of potential locations to display the art. The City Council would have final approval.

Old Business: Bonnie provided information on the Arts Council Symposium that will be held October 11-12 in Salina, KS. The symposium brings together councils from across the state to share ideas. The registration fee is \$45/person. Amy and Abby moved and seconded respectively to approve covering the registration fees for all Arts Council members. This totaled \$405.

New Business: None

The Business Meeting adjourned at 5:59 pm.

PLANNING MEETING
6:00 pm

Past Show/Events

The **Art of Photography** exhibit has closed and was taken down on Saturday, 7/8. The reception was well attended and 3+ pieces were sold. Several artists requested to pick up their pieces on Friday. The group discussed potentially adding time on Friday afternoon for artwork pickup for future juried shows.

The **Prairie Village Art Show** had good representation from the Arts Council. The booth had ducks available for a donation.

Bonnie represented the Arts Council at **VillageFest**. The council shared a booth with the Environmental Committee, which provided Monarch butterfly crafts.

Upcoming Event Updates

ArtWalk is postponed indefinitely.

The **July/August** exhibit featuring Shannon Trevethan & Shannon Brouk was installed. There was miscommunication on the hanging requirements and additional D rings were needed. The council noted that it would be helpful to have additional D ring supplies on hand, as well as additional bars and clips at Meadowbrook. Kellen will reach out to his contact at JCPRD about the hardware at Meadowbrook.

The communication team (Kellen, Amy, Renee) has created a content schedule for email newsletters, website updates, and social media posts. The newsletter will be the anchor for the communication and will coordinate information with social media. The goal is to send these twice a month and make them actionable. The communication team will meet prior to each Art Council meeting to coordinate and plan.

There was a lot of discussion around creating blog posts for the website. The group discussed featuring local artists and art collectors. Names mentioned were Jennifer Ginesco (sp?) and Susan Brown. The communication team will add the topic of blog posts to their 9/12 meeting agenda.

KCUR Radio ads for State of the Arts will start on 9/5.

Planning Ahead

JazzFest will be held Saturday, 9/9 and the Arts Council will have a tent. Last year, we had a backdrop and props. We may have art to sell at the event. Justin was the liaison, but he has resigned from the council.

The **State of the Arts** call for entry is open until 7/23.

The **2024 Call for Artists** will be opening soon.

Bonnie has continued to reach out to Alex Toepfer about creating a **community band**. Renee will follow-up with him after JazzFest.

Sign-ups are still open for 2023 activities

- Sign-up sheet for note taking, exhibits, and liaisons
- Sign-Up Genius for Installs & Receptions 2023
 - Installs: bit.ly/2023installs
- 2023 Exhibit Schedule & Leads - still need leads

Ongoing/Future Meeting/Other


Discussion of Arts Council percentage of sales and allocation – the council discussed adding this to the September agenda for further discussion.

THE CITY OF PRAIRIE VILLAGE

STAR OF KANSAS

DATE: September 28, 2023

TO: Mayor Mikkelson
City Council

FROM: Wes Jordan 

SUBJECT: OCTOBER PLAN OF ACTION

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

- Flu Shot Coordination - Cindy (10/23)
- Legislative Updates to Council - Nickie (10/23)
- November/December Village Voice - Ashley/Staff (10/22)
- Community Center
 - Process to Select Architect for Community Engagement/Project Design Study - Keith (08/23)
- Insurance Committee
 - Health-related Benefits Review - Tim/Cindy (10/23)
 - Property & Casualty Insurance Mid-year Review - Jason/Nickie (10/23)
- Audit Services RFP - Jason/Nickie (10/23)
- Youth Council Kickoff - Meghan/Piper (10/23)

In Progress

- Social Media Policy - Staff (09/23)
- Holiday Event Planning - Meghan/JD (09/23)
- Summer Recreation Program and Fee Review - Meghan (09/23)
- Project Updates and Cleanup to Website - Staff (08/23)
- Housing Forum follow Up discussion in R-2/R-3/R-4/Commercial - Nickie/Chris (08/23)
- Accounting and Software Upgrade Implementation - Jason (06/23)
- Update Design Guidelines in R1-B - Nickie/Chris (05/23)
- Short Term Rental Update - Nickie/Chris (05/23)
- KERMIDA Sustainability Program Implementation - Meghan/Ashley (03/23)
- Research Federal Infrastructure/Job Act Grants - Jason/Nickie/Keith (12/22)
- Park Sign Replacement and Branding Process - Melissa (09/22)
- 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)

- American Rescue Plan Act Fund Uses & Expiration - Staff (04/21)
- Research Viability of Interior Rental Inspections - Nickie (06/19)

Completed

- Lancer Day Parade - PD/PW (09/23)
- Community Center
 - RRQ for Community Engagement/Project Design Study - Keith (08/23)
- 2023 Budget
 - Exceeding Revenue Neutral Rate Hearing - Jason (09/23)
 - Budget Adoption Hearing - Jason (09/23)
- PV Foundation Fall Meeting - Meghan (09/23)
- State of Arts Event September 13 - Arts Council/Staff (09/23)
- End of Pool Season Wrap Up - Meghan (09/23)
- Antisemitism Awareness Town Hall - Tim/Diversity Committee (09/23)
- JCRB Antisemitism Employee Training - Cindy (09/23)
- Emergency Management Exercise w/JOCO - Tim (09/23)
- Youth Council Recruitment - Piper/Meghan/Ashley (08/23)
- JazzFest - JD/Staff (07/23)
- Marketing Strategy Evaluation - Ashley/Meghan (01/23)
- Annual Everyg Update - Wes (12/22)
-

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 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]