

MCCOOK CITY COUNCIL

REGULAR MEETING

Monday, June 19, 2023
5:30 PM - City Council Chambers

Roll Call.

Excuse Absences.

Open Meetings Act Announcement.

Invocation - McCook Ministerial Association - Kyle Dellevoet, McCook Christian Church.

Pledge of Allegiance.

Call to Order.

Items.

1. Announcements & Recognitions.
2. Presentation.
 - A. Paul Grieger with D.A. Davidson regarding the upcoming swimming pool bond issue.
 - B. Consider Ordinance No. 2023-3069 of the City of McCook, Nebraska, on first reading and under suspension of the rules, authorizing and providing for the issuance of municipal improvement bonds, Series 2023, of the City of McCook, Nebraska, in the principal amount of, not to exceed, \$6,700,000 for the purpose of paying the costs of constructing public infrastructure improvements related to the new McCook Municipal Swimming Pool.
 1. Chairperson asks Clerk to read Ordinance by title.
 2. Consider statutory rule requiring reading on three separate occasions be suspended. Motion to suspend the rule must be adopted by three-fourths of the Council.
 3. Final passage of Ordinance No. 2023-3069.
 4. Chairperson declaration after vote, if approved.
3. Consent Agenda.

**The Consent Agenda is approved on one motion. Any item listed on the Consent Agenda may, by the request of any single Council member or public in attendance, be considered as a separate item under the Regular Agenda.*

 - A. Approve the minutes of the June 5, 2023 regular City Council meeting.
 - B. Receive and file the claims for the month of May 2023, published June 9, 2023.
 - C. Ratify the City of McCook Corrective Action Plan with the Nebraska Department of Transportation regarding the reporting of federal assistance

received on the Schedule of Expenditures of Federal Awards (SEFA) in the annual single audit.

- D. Approve the amended request from Starla Werkmeister to change the date to host a Color Fun Run Fundraiser utilizing city streets from June 10, 2023 from 6:45 A.M. to noon, to June 24, 2023 at the same time.
 - E. Approve and authorize the Mayor to sign the 2023/2024 contract with the West Central Area Agency on Aging (WCNAAA) for the purpose of defining and specifying the separate and mutual responsibilities of each in the management, operation, support, monitoring, and evaluation of the McCook Heritage Senior Center.
 - F. Approve the agreements between the Nebraska Department of Health and Human Services and the City of McCook for the purpose of providing home delivered meals, exempt public transportation, local medical transportation for appointments and other local transportation and authorize the Mayor to sign.
 - G. Ratify the Mayor's appointment to the Library Advisory Board - reappoint Staci Blomstedt - term expires June 2027.
 - H. Authorize the City Manager to fill the comprehensive Plan Steering Committee with a cross-section of community representatives.
 - I. Approve an application from Telcom Construction to occupy City right-of-way for the purpose of replacing telephone cable for 204 West "P" Street
 - J. Ratify the approval of the application for a Special Designated Liquor License submitted by Donna Vlasin, Liquor License #CK-097364, for a wedding reception to be held at The Barn, 1701 US Hwy. 83, on July 1, 2023 from 4:00 P.M. to 12:00 A.M.
4. Regular Agenda.
- A. Approve for the City of McCook to receive a \$25,000 donation from the McCook Community Foundation to assist in the establishment of the Rural Workforce Housing Fund.
 - B. Approve the contract between the City of McCook and Carrothers Construction Company for construction management services for the new McCook Municipal Pool.
 - C. Ordinance No. 2023-3067 permitting a zoning change from Residential Medium Density (RM) District to Business Commercial (BC) District for the following described property: Replatted Lot Three, Block Six, Second High School Addition to the City of McCook, Red Willow County, Nebraska.
 - 1. Chairperson asks Clerk to read Ordinance by title.
 - 2. Consider approval of Ordinance No. 2023-3067 upon its third and final reading.
 - 3. Chairperson declaration after vote, if approved.
 - D. Ordinance No. 2023-3068 allowing for a zoning change from Agricultural (AG) District to Industrial Heavy (IH) District for the following described property: a tract of land located in the SW 1/4 Section 28, Township 3 North, Range 29 West of the 6th P.M. in Red Willow County, Nebraska, said property located in the proposed McCook Business Park - Phase II Addition to the City of McCook, Red Willow County, Nebraska.
 - 1. Chairperson asks Clerk to read Ordinance by title.

2. Consider approval of Ordinance No. 2023-3068 upon its third and final reading.

3. Chairperson declaration after vote, if approved.

E. Discuss and approve the 2023-2024 budget schedule.

F. Council Comments.

Adjournment.

**CITY MANAGER'S REPORT
JUNE 19, 2023 MCCOOK CITY COUNCIL MEETING**

ITEM NO. 2.A. Presentation from Paul Grieger with D.A. Davidson regarding the upcoming swimming pool bond issuance.

BACKGROUND:

Paul Grieger with D.A. Davidson will be present to give a presentation on the bond issuance of the new swimming pool.

APPROVALS:



Nathan A. Schneider, City Manager

June 15, 2023



Lea Ann Doak, City Clerk

June 15, 2023



Tera Koetter, Assistant City Manager

June 15, 2023



D | A | DAVIDSON

FIXED INCOME CAPITAL MARKETS

D.A. Davidson & Co. member SIPC and FINRA

**City of McCook, Nebraska
Tax Supported Bonds, Series 2023
Preliminary Timeline**

June 1, 2023	Draft documents circulated for review
June 19, 2023	Council considers bond ordinance and related proceedings; GMP and draw schedule established
June 26, 2023 at 10:00 am	Call with rating agency (Moody's)
June 30, 2023	Bond rating received; Preliminary Official Statement ("POS") approved for distribution
July 13, 2023	Sale date
July 14, 2023	Bond Purchase Agreement ("BPA") signed by the city and Davidson
August 1, 2023	Closing



D|A|DAVIDSON
FIXED INCOME CAPITAL MARKETS
D.A. Davidson & Co. member SIPC and FINRA

City of McCook, Nebraska Tax Supported Bonds, Series 2023 Preliminary Timeline

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SOURCES AND USES OF FUNDS

**CITY OF McCOOK, NEBRASKA
TAX SUPPORTED SALES TAX REVENUE BONDS, SERIES 2023 & SERIES 2024
Swimming Pool & Ballfield
Assumes BQ, 'A+' Rating, 2043 Final Maturity
[Preliminary -- for discussion only]**

	Dated Date Delivery Date	08/01/2023 08/01/2023	03/15/2024 03/15/2024	
Sources:		Ser. 2023 (Swimming Pool)	Ser. 2024 (Ballfield)	Total
Bond Proceeds:				
Par Amount		6,230,000.00	5,335,000.00	11,565,000.00
Net Premium		196,075.80	159,863.55	355,939.35
		<u>6,426,075.80</u>	<u>5,494,863.55</u>	<u>11,920,939.35</u>
Other Sources of Funds:				
CCCCFF Grant		562,000.00		562,000.00
Masonic Temple Fundraising		250,000.00		250,000.00
Previously Committed Sales Tax		130,000.00		130,000.00
		<u>942,000.00</u>		<u>942,000.00</u>
		<u>7,368,075.80</u>	<u>5,494,863.55</u>	<u>12,862,939.35</u>
Uses:				
		Ser. 2023 (Swimming Pool)	Ser. 2024 (Ballfield)	Total
Project Fund Deposits:				
Swimming Pool		6,399,567.00		6,399,567.00
Engineering		374,000.00		374,000.00
Soil Sample		6,500.00		6,500.00
Extra Expenses		2,500.00		2,500.00
Ballfield			5,000,000.00	5,000,000.00
		<u>6,782,567.00</u>	<u>5,000,000.00</u>	<u>11,782,567.00</u>
Other Fund Deposits:				
Debt Service Reserve Fund		490,012.50	414,600.00	904,612.50
Cost of Issuance:				
Cost of Issuance (est'd)		93,450.00	80,025.00	173,475.00
Other Uses of Funds:				
Rounding Amount		2,046.30	238.55	2,284.85
		<u>7,368,075.80</u>	<u>5,494,863.55</u>	<u>12,862,939.35</u>

BOND SUMMARY STATISTICS

**CITY OF McCOOK, NEBRASKA
TAX SUPPORTED SALES TAX REVENUE BONDS, SERIES 2023 & SERIES 2024
Swimming Pool & Ballfield
Assumes BQ, 'A+' Rating, 2043 Final Maturity
[Preliminary -- for discussion only]**

	Ser. 2023 (Swimming Pool)	Ser. 2024 (Ballfield)	Aggregate
Earliest Dated Date	08/01/2023	03/15/2024	08/01/2023
Earliest Delivery Date	08/01/2023	03/15/2024	08/01/2023
First Coupon	03/15/2024	09/15/2024	03/15/2024
Last Maturity	09/15/2043	09/15/2043	09/15/2043
Arbitrage Yield	4.089602%	4.093738%	
True Interest Cost (TIC)	4.291324%	4.284022%	4.288106%
Net Interest Cost (NIC)	4.356612%	4.346975%	4.249763%
NIC w/Interest only	4.613519%	4.608051%	4.502429%
NIC w/Interest & OID	4.356612%	4.346975%	4.249763%
NIC w/Interest, OID & Und. Discount	4.356612%	4.346975%	4.249763%
All-In TIC	4.456014%	4.458260%	4.457003%
Average Coupon	4.613519%	4.608051%	4.502429%
Average Life (years)	12.251	11.478	12.181
Weighted Average Maturity (years)	12.090	11.336	
Duration of Issue (years)	9.116	8.631	9.178
Par Amount	6,230,000.00	5,335,000.00	11,565,000.00
Bond Proceeds	6,426,075.80	5,494,863.55	11,920,939.35
Total Interest	3,521,104.72	2,821,625.00	6,342,729.72
Net Interest	3,325,028.92	2,661,761.45	5,986,790.37
Bond Years from Dated Date	76,321,444.44	61,232,500.00	140,873,500.00
Bond Years from Delivery Date	76,321,444.44	61,232,500.00	140,873,500.00
Total Debt Service	9,751,104.72	8,156,625.00	17,907,729.72
Maximum Annual Debt Service	490,012.50	414,600.00	903,125.00
Average Annual Debt Service	484,593.83	418,288.46	889,947.92
Underwriter's Fees (per \$1000)			
Average Takedown			
Other Fee			
Total Underwriter's Discount			
Bid Price	103.147284	102.996505	103.077729

Bond Component	Par Value	Price	Average Coupon	Average Life	Average Maturity Date	PV of 1 bp change
Serial Bonds	4,425,000.00	106.349	5.000%	5.728	04/23/2029	1,736.30
Term Bond due 2038	3,160,000.00	104.860	5.000%	12.936	07/08/2036	1,453.60
Term Bond due 2043	3,980,000.00	98.026	4.250%	17.922	07/02/2041	5,159.20
	11,565,000.00			11.894		8,349.10

	TIC	All-In TIC	Arbitrage Yield
Par Value	11,565,000.00	11,565,000.00	
+ Accrued Interest			
+ Premium (Discount)	355,939.35	355,939.35	
- Underwriter's Discount			
- Cost of Issuance Expense		-173,475.00	
- Other Amounts			
Target Value	11,920,939.35	11,747,464.35	
Target Date	Multiple	Multiple	Multiple
Yield	4.288106%	4.457003%	

BOND DEBT SERVICE BREAKDOWN

**CITY OF McCOOK, NEBRASKA
TAX SUPPORTED SALES TAX REVENUE BONDS, SERIES 2023 & SERIES 2024
Swimming Pool & Ballfield
Assumes BQ, 'A+' Rating, 2043 Final Maturity
[Preliminary -- for discussion only]**

Date	Ser. 2023 (Swimming Pool)	Ser. 2024 (Ballfield)	Total	Annual Total
03/15/2024	183,742.22		183,742.22	
09/15/2024	302,650.00	326,550.00	629,200.00	
09/30/2024				812,942.22
03/15/2025	143,775.00	121,550.00	265,325.00	
09/15/2025	343,775.00	291,550.00	635,325.00	
09/30/2025				900,650.00
03/15/2026	138,775.00	117,300.00	256,075.00	
09/15/2026	348,775.00	297,300.00	646,075.00	
09/30/2026				902,150.00
03/15/2027	133,525.00	112,800.00	246,325.00	
09/15/2027	353,525.00	297,800.00	651,325.00	
09/30/2027				897,650.00
03/15/2028	128,025.00	108,175.00	236,200.00	
09/15/2028	358,025.00	303,175.00	661,200.00	
09/30/2028				897,400.00
03/15/2029	122,275.00	103,300.00	225,575.00	
09/15/2029	367,275.00	308,300.00	675,575.00	
09/30/2029				901,150.00
03/15/2030	116,150.00	98,175.00	214,325.00	
09/15/2030	371,150.00	313,175.00	684,325.00	
09/30/2030				898,650.00
03/15/2031	109,775.00	92,800.00	202,575.00	
09/15/2031	379,775.00	317,800.00	697,575.00	
09/30/2031				900,150.00
03/15/2032	103,025.00	87,175.00	190,200.00	
09/15/2032	383,025.00	327,175.00	710,200.00	
09/30/2032				900,400.00
03/15/2033	96,025.00	81,175.00	177,200.00	
09/15/2033	391,025.00	331,175.00	722,200.00	
09/30/2033				899,400.00
03/15/2034	88,650.00	74,925.00	163,575.00	
09/15/2034	398,650.00	334,925.00	733,575.00	
09/30/2034				897,150.00
03/15/2035	80,900.00	68,425.00	149,325.00	
09/15/2035	405,900.00	343,425.00	749,325.00	
09/30/2035				898,650.00
03/15/2036	72,775.00	61,550.00	134,325.00	
09/15/2036	412,775.00	351,550.00	764,325.00	
09/30/2036				898,650.00
03/15/2037	64,275.00	54,300.00	118,575.00	
09/15/2037	424,275.00	359,300.00	783,575.00	
09/30/2037				902,150.00
03/15/2038	55,275.00	46,675.00	101,950.00	
09/15/2038	430,275.00	366,675.00	796,950.00	
09/30/2038				898,900.00
03/15/2039	45,900.00	38,675.00	84,575.00	
09/15/2039	440,900.00	373,675.00	814,575.00	
09/30/2039				899,150.00
03/15/2040	37,506.25	31,556.25	69,062.50	
09/15/2040	452,506.25	381,556.25	834,062.50	
09/30/2040				903,125.00
03/15/2041	28,687.50	24,118.75	52,806.25	
09/15/2041	458,687.50	384,118.75	842,806.25	
09/30/2041				895,612.50
03/15/2042	19,550.00	16,468.75	36,018.75	
09/15/2042	469,550.00	396,468.75	866,018.75	
09/30/2042				902,037.50
03/15/2043	9,987.50	8,393.75	18,381.25	
09/15/2043	479,987.50	403,393.75	883,381.25	
09/30/2043				901,762.50
	9,751,104.72	8,156,625.00	17,907,729.72	17,907,729.72

**CITY MANAGER'S REPORT
JUNE 19, 2023 MCCOOK CITY COUNCIL MEETING**

ITEM NO. **2.B.** Approve Ordinance No. 2023-3069 of the City of McCook, Nebraska, on first reading and under suspension of the rules, authorizing and providing for the issuance of municipal improvement bonds, Series 2023, of the City of McCook, Nebraska, in the principal amount of not to exceed \$6,700,000 for the purpose of paying the costs of constructing public infrastructure improvements related to the new McCook Municipal Swimming Pool.

BACKGROUND:

In November of 2022, the citizens of McCook voted to impose an additional one-half of one percent (0.50%) sales and use tax to pay the costs to construct, acquire, improve, furnish, and equip public infrastructure projects, including swimming pool and ballpark facilities. Pursuant to an ordinance passed following the November of 2022 election, the McCook City Council passed an ordinance that imposed the .5% sales tax on all taxable transactions within the City, with said sales tax continuing for ten years or until a related bond issuance is paid in full. In April of 2023, the Nebraska Department of Revenue began withholding the newly approved .5% sales tax on taxable transactions within McCook.

In order to fund the swimming pool construction, it is now necessary for the City to issue bonds which will pledge the .5% sales tax receipts for a new swimming pool. An ordinance authorizing the issuance is required to proceed. An illustration of the bond form is included in the ordinance.

Paul Grieger with D.A. Davidson (the bond underwriting firm contracted by the City of McCook relative to this bond issuance) will be present at the June 19, 2023 meeting to discuss the bond issuance in more detail.

APPROVALS:



Nathan A. Schneider, City Manager

June 15, 2023



Lea Ann Doak, City Clerk

June 15, 2023



Tera Koetter, Assistant City Manager

June 15, 2023

ORDINANCE NO. 2023-3069

AN ORDINANCE AUTHORIZING THE ISSUANCE OF MUNICIPAL IMPROVEMENT BONDS, SERIES 2023, OF THE CITY OF MCCOOK, NEBRASKA, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED SIX MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$6,700,000) FOR THE PURPOSE OF PAYING THE COSTS OF CONSTRUCTING PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY; PRESCRIBING THE FORM OF SAID BONDS; PLEDGING FUNDS TO BE RECEIVED BY A SALES AND USE TAX AND OTHER SOURCES OF FUNDS FOR THE PAYMENT OF SAID BONDS; PROVIDING FOR THE LEVY AND COLLECTION OF SAID TAXES TO PAY THE SAME; PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE DELIVERY OF THE BONDS TO THE PURCHASER; PROVIDING FOR THE DISPOSITION OF BOND PROCEEDS; AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCCOOK, NEBRASKA:

Section 1. The Mayor and City Council (the "Council") of the City of McCook, Nebraska (the "City"), hereby find and determine that:

- (a) The City imposes a sales and use tax in the amount of 1.50% (the "1.5% Sales Tax") upon the same transactions within the City on which the State of Nebraska is authorized to impose a tax pursuant to the Local Option Revenue Act (Sections 77-27,142 to 77-27,148, R.R.S. Neb., as amended, the "Act").
- (b) An election (the "Election") was duly called and held in conjunction with the Statewide General Election on November 8, 2022, pursuant to the Act, to impose an additional one-half of one percent (0.50%) sales and use tax to pay the costs to construct, acquire, improve, furnish, and equip public infrastructure projects, which shall include swimming pool and ballpark facilities (collectively, the "Project"), at which Election a majority of all the qualified electors voting on said proposition voted in favor of the levy and collection of the additional one-half of one percent (0.50%) sales and use tax (the "0.5% Sales Tax"; and together with the 1.5% Sales Tax, the "Tax").
- (c) Pursuant to an ordinance passed and approved by the Mayor and Council, the City has imposed the 0.5% Sales Tax applicable to all taxable transactions within the City and continuing for a period of ten years, unless bonds are issued and some or all of the revenues from the 0.5% Sales Tax are pledged for payment of the bonds, in which case the 0.5% Sales Tax shall remain in effect until payment in full of said bonds and any refunding bonds, whichever date is later.
- (d) The City is authorized to issue bonds pursuant to the Act to provide financing for the Project and to pledge receipts of the Tax and dedicate a portion of its property tax levy authority as provided in Section 77-3442, R.R.S. Neb., as amended, for payment of such bonds.
- (e) All conditions, acts and things required to exist or to be done precedent to the issuance of Municipal Improvement Bonds, Series 2023, (or such other title as determined in a Designation as described below, the "Bonds") of the City of McCook, Nebraska, in one or more series in the aggregate principal amount of not to exceed Six Million Seven Hundred Thousand Dollars (\$6,700,000) pursuant to the Act to provide financing for a portion of the cost of the Project do exist and have been done as required by law.

Section 2. (a) To provide funds for the purpose of paying and reimbursing the costs of the Project as set forth in Section 1 hereof, there shall be and there are hereby ordered issued the Municipal Improvement Bonds of the City in one or more series, in the aggregate stated principal amount of not to exceed Six Million Seven Hundred Thousand Dollars (\$6,700,000); provided, however, such amount may be increased as necessary to the extent the Bonds are sold at a net original issue discount.

(b) The Bonds or any portion thereof are hereby authorized to be sold pursuant to a negotiated sale with D.A. Davidson & Co., as initial purchaser (the "Underwriter"). In connection with such sale, the Mayor and City Manager (each, an "Authorized Officer") are hereby authorized to specify, determine, designate, establish and appoint, as the case may be, in one or more written designations which may be included in a bond purchase agreement (each, a "Designation"), the following with respect to the Bonds: (i) the aggregate purchase price of the Bonds and the underwriting discount which shall not exceed 1.25% of the aggregate stated principal amount thereof, (ii) the form and contents of any bond purchase agreement in connection with such sale, (iii) for each series, the title, dated date, aggregate principal amount (which aggregate stated principal amount shall not exceed \$6,700,000; provided, however, such amount may be increased as necessary to the extent the Bonds are sold at a net original issue discount), and the final maturity date, which shall not be later than December 15, 2043, (iv) the principal amounts maturing in each year and whether maturities will be issued as serial or term bonds (v) the rate or rates of interest to be borne by each principal maturity, and any original issue premium or original issue discount, provided that the true interest cost of the Bonds shall not exceed 5.5%, (vi) the principal payment dates and interest payment dates, (vii) whether the Bonds will be subject to redemption prior to their stated maturity, and if subject to such optional redemption, the provisions governing such redemption, including a redemption price not to exceed 104% of the principal amount then being redeemed plus accrued interest to the date of redemption, (viii) whether to establish a debt service reserve fund for each series of Bonds, and the amount and provisions related such debt service reserve fund; (ix) the amount and due date of each sinking fund installment for any of the Bonds issued as term Bonds, (x) the designation of the Paying Agent and Registrar and the form and content of any

agreement between the City and such entity, and (xi) all other terms and provisions of the Bonds not otherwise specified or fixed by this Ordinance.

(c) The Bonds shall be issued in fully registered form in the denomination of \$5,000 or any integral multiple thereof. The date of original issue for the Bonds shall be date of original delivery. Interest on the Bonds, at the respective rates for each maturity, shall be payable semi-annually such dates as may be determined in the Designation (each an "Interest Payment Date"), and the Bonds shall bear interest from the date of original issue or the most recent Interest Payment Date, whichever is later. The interest due on each Interest Payment Date shall be payable to the registered owners of record as of the fifteenth day immediately preceding the Interest Payment Date (the "Record Date"), subject to the provisions of Section 4 hereof. The Bonds shall be numbered from 1 upwards in the order of their issuance. No Bond shall be issued originally or upon transfer or partial redemption having more than one principal maturity. The initial bond numbering and principal amounts for each of the Bonds issued shall be as directed by the initial purchaser thereof. Payments of interest due on the Bonds prior to maturity or earlier redemption shall be made by the Paying Agent and Registrar, as designated pursuant to Section 3 hereof, by mailing a check or draft in the amount due for such interest on each Interest Payment Date to the registered owner of each Bond, as of the Record Date for such Interest Payment Date, to such owner's registered address as shown on the books of registration as required to be maintained in Section 3 hereof. Payments of principal due at maturity or at any date fixed for redemption prior to maturity, together with unpaid accrued interest thereon, shall be made by said Paying Agent and Registrar to the registered owners upon presentation and surrender of the Bonds to said Paying Agent and Registrar. The City and said Paying Agent and Registrar may treat the registered owner of any Bond as the absolute owner of such Bond for the purpose of making payments thereon and for all other purposes and neither the City nor the Paying Agent and Registrar shall be affected by any notice or knowledge to the contrary, whether such Bond or any installment of interest due thereon shall be overdue or not. All payments on account of interest or principal made to the registered owner of any Bond in accordance with the terms of this Ordinance shall be valid and effectual and shall be a discharge of the City and said Paying Agent

and Registrar, in respect of the liability upon the Bonds or claims for interest to the extent of the sum or sums so paid.

Section 3. The Authorized Officers shall determine in the Designation the Paying Agent and Registrar for the Bonds, which may be the City treasurer or a bank or trust company. If a bank or trust company is designated, such bank or trust company shall serve as Paying Agent and Registrar in such capacities under the terms of an agreement entitled "Paying Agent and Registrar's Agreement" between the City and said Paying Agent and Registrar, the form of which is hereby approved. The Mayor and City Clerk are hereby authorized to execute said agreement on behalf of the City in the form as an Authorized Officer shall deem appropriate on behalf of the City. The Paying Agent and Registrar shall keep and maintain for the City books for the registration and transfer of the Bonds at its office. The names and registered addresses of registered owner or owners of the Bonds shall at all times be recorded in such books. Any Bond may be transferred pursuant to its provisions at the office of said Paying Agent and Registrar by surrender of such bond for cancellation, accompanied by a written instrument of transfer, in form satisfactory to said Paying Agent and Registrar, duly executed by the registered owner in person or by such owner's duly authorized agent, and thereupon the Paying Agent and Registrar on behalf of the City will deliver at its office (or send by registered mail to the transferee owner or owners thereof at such transferee owner's or owners' risk and expense), registered in the name of such transferee owner or owners, a new Bond or Bonds of the same interest rate, aggregate principal amount and maturity. To the extent of the denominations authorized for the Bonds by this ordinance, one such bond may be transferred for several such bonds of the same interest rate and maturity, and for a like aggregate principal amount, and several such bonds may be transferred for one or several such bonds, respectively, of the same interest rate and maturity and for a like aggregate principal amount. In every case of transfer of a Bond, the surrendered Bond shall be canceled and destroyed. All Bonds issued upon transfer of the Bonds so surrendered shall be valid obligations of the City evidencing the same obligation as the Bonds surrendered and shall be entitled to all the benefits and protection of this Ordinance to the same extent as the Bonds upon transfer of which they were delivered. The City as said Paying Agent and Registrar shall not be required to transfer any Bond during any period

from any Record Date until its immediately following Interest Payment Date or to transfer any Bond called for redemption for a period of 30 days next preceding the date fixed for redemption.

Section 4. In the event that payments of interest due on the Bonds on an Interest Payment Date are not timely made, such interest shall cease to be payable to the registered owners as of the Record Date for such Interest Payment Date and shall be payable to the registered owners of the Bonds as of a special date of record for payment of such defaulted interest as shall be designated by the Paying Agent and Registrar whenever monies for the purpose of paying such defaulted interest become available.

Section 5. Bonds shall be subject to redemption, in whole or in part, prior to maturity at any time on or after the fifth anniversary of the date of original issue thereof at par plus accrued interest on the principal amount redeemed to the date fixed for redemption (or such other date as may be determined in the Designation). The City may select the Bonds to be redeemed for optional redemption in its sole discretion. Bonds for mandatory redemption shall be selected by the Paying Agent and Registrar using any random method of selection determined appropriate by the Paying Agent and Registrar. Bonds redeemed pursuant to the requirements for mandatory redemption shall be redeemed at par plus accrued interest on the principal amount redeemed. The Bonds shall be redeemed only in amounts of \$5,000 or integral multiples thereof. Bonds redeemed in part only shall be surrendered to said Paying Agent and Registrar in exchange for a new Bond evidencing the unredeemed principal thereof. Notice of redemption of any Bond called for redemption shall be given, at the direction of the City in the case of optional redemption and without further direction in the case of mandatory redemption, by said Paying Agent and Registrar by mail not less than 30 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of such Bond at said owner's registered address. Such notice shall designate the Bond or Bonds to be redeemed by maturity or otherwise, the date of original issue, series and the date fixed for redemption and shall state that such Bond or Bonds are to be presented for prepayment at the office of said Paying Agent and Registrar. In case of any Bond partially redeemed, such notice shall specify the portion of the principal amount of such Bond to be redeemed. No defect in the mailing of notice for any Bond shall affect the sufficiency of the proceedings of the City designating the Bonds called for redemption or the effectiveness of such call for Bonds for which

notice by mail has been properly given and the City shall have the right to further direct notice of redemption for any such Bond for which defective notice has been given.

Section 6. If the date for payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in McCook, Nebraska, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

Section 7. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA

STATE OF NEBRASKA
COUNTY OF RED WILLOW

CITY OF MCCOOK, NEBRASKA
MUNICIPAL IMPROVEMENT BOND, SERIES 2023

No. R- _____ \$ _____

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
%	_____, 20__	_____, 2023	

Registered Owner: Cede & Co.
13-2555119

Principal Amount: _____ DOLLARS

KNOW ALL PERSONS BY THESE PRESENTS: That the City of McCook, Nebraska, hereby acknowledges itself to owe and for value received promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above in lawful money of the United States of America on the date of maturity specified above with interest thereon to maturity (or earlier redemption) from the date of original issue or most recent Interest Payment Date, whichever is later, at the rate per annum specified above, payable on _____, 20__, and semiannually thereafter on _____ and _____ of each year (each of said dates an "Interest Payment Date"). Said interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The principal of this bond is payable upon presentation and surrender of the bond at the office of _____, _____, Nebraska, as Paying Agent and Registrar. Interest on this bond due prior to maturity or earlier redemption will be paid on each Interest Payment Date by a check or draft mailed by the Paying Agent and Registrar to the registered owner of this bond, as shown on the books of record maintained by the Paying Agent and Registrar, at the close of business on the fifteenth day immediately preceding the Interest Payment Date, to such owner's registered address as shown on such books and records. Any interest not so timely paid shall cease to be payable to the person entitled thereto as of the record date such interest was payable, and shall be payable to the person who is the registered owner of this bond (or of one or more predecessor bonds hereto) on such special record date for payment of such defaulted interest as shall be fixed by the Paying Agent and Registrar whenever monies for such purposes become available.

This bond is one of an issue of fully registered bonds of the total principal amount of _____ Dollars (\$ _____), of even date and like tenor except as to date of maturity, rate of interest and denomination which were issued by the City to pay the costs to construct, acquire, improve, furnish, and equip public infrastructure improvements of the City. The issuance of this bond and the bonds of this issue has been authorized by proceedings duly had and Ordinance No. ____ (the "Ordinance") legally passed and approved by the Mayor and City Council of said City on _____, 2023.

All Bonds of this issue are subject to redemption at the option of the City, in whole or in part, at any time on or after _____ years after the date of delivery, at par plus interest accrued on the principal amount redeemed to the date fixed for redemption.

Notice of redemption shall be given by mail to the registered owner of any bond to be redeemed at said registered owner's address in the manner specified in the Ordinance authorizing said issue of bonds. Individual bonds may be redeemed in part but only in \$5,000 amounts or integral multiples thereof.

This bond is transferable by the registered owner or such owner's attorney duly authorizing in writing at the office of the Paying Agent and Registrar upon surrender and cancellation of this bond, and thereupon a new bond or bonds of the same aggregate principal amount, interest rate and maturity will be issued to the transferee as provided in the Ordinance authorizing said issue of bonds, subject to the limitations therein prescribed. The City, the Paying Agent and Registrar and any other person may treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment due hereunder and for all purposes and shall not be affected by any notice to the contrary, whether this bond be overdue or not.

If the date for payment of the principal or interest on this bond shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of McCook, Nebraska, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or a day on which such banking institutions are authorized to close, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

For the prompt payment of the principal and interest on this bond and the other bonds of the same issue, as described in the Ordinance, the City of McCook, Nebraska, has pledged funds received and to be received from revenues from the City's 1.5% Sales Tax and its 0.5% Sales Tax as defined and described in the Ordinance (together, the "Tax"), with receipts from such Tax to be allocated by the City to payment of principal and interest as the same fall due. In addition, the City has covenanted and agreed in the Ordinance that it shall designate a portion of its property tax authority pursuant to Section 77-3442, R.R.S. Neb., as amended, in such amount as will provide funds which, together with receipts from the Tax as pledged to the payment of such principal and interest and any other money made available and used for such purpose, will be sufficient to make payment of the principal of and interest on this bond and the other bonds of the same issue as the same fall due.

AS PROVIDED IN THE ORDINANCE REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE ORDINANCE, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE ORDINANCE TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE ORDINANCE.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.

IT IS HEREBY CERTIFIED AND WARRANTED that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this bond did exist, did happen and were done and performed in regular and due form and time as required by law and that the indebtedness of said City, including this bond, does not exceed any limitation imposed by law.

This bond shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar.

IN WITNESS WHEREOF, the Mayor and City Council of the City of McCook, Nebraska, have caused this bond to be executed on behalf of the City with the manual or facsimile signatures of the Mayor and the City Clerk and by causing the official seal of the City to be impressed or imprinted hereon, all as of the date of original issue specified above.

THE CITY OF McCOOK, NEBRASKA

(facsimile signature)
Mayor

ATTEST:

(facsimile signature)
City Clerk

(SEAL)

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds authorized by Ordinance of the Mayor and City Council of the City of McCook, Nebraska, described in the foregoing bond.

_____, _____, NEBRASKA
as Paying Agent and Registrar

By: _____
Authorized Signature

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Type Name, Address and Social Security Number
or other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ agent to transfer the within Bond on the Bond Register kept by the Paying Agent for the registration thereof, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular.

Medallion Signature Guarantee:

Section 8. Each of the Bonds shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and City Clerk of the City. The Bonds shall be issued initially as “book-entry-only” bonds using the services of The Depository Trust Company (the “Depository”), with one typewritten bond per maturity being issued to the Depository. In such connection said officers are authorized to execute and deliver a letter of representations (the “Letter of Representations”) in the form required by the Depository, for and on behalf of the City, which shall thereafter govern matters with respect to registration, transfer, payment and redemption of the Bonds. Upon the issuance of the Bonds as “book-entry-only” bonds, the following provisions shall apply:

(a) The City and the Paying Agent and Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which the Depository holds Bonds as securities depository (each, a “Bond Participant”) or to any person who is an actual purchaser of a Bond from a Bond Participant while the Bonds are in book-entry form (each, a “Beneficial Owner”) with respect to the following:

(i) the accuracy of the records of the Depository, any nominees of the Depository or any Bond Participant with respect to any ownership interest in the Bonds,

(ii) the delivery to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any notice of redemption, or

(iii) the payment to any Bond Participant, any Beneficial Owner or any other person, other than the Depository, of any amount with respect to the Bonds.

The Paying Agent and Registrar shall make payments with respect to the Bonds only to or upon the order of the Depository or its nominee, and all such payments shall be valid and effective fully to satisfy and discharge the obligations with respect to such Bonds to the extent of the sum or sums so paid. No person other than the Depository shall receive an authenticated Bond, except as provided in (e) below.

(b) Upon receipt by the Paying Agent and Registrar of written notice from the Depository to the effect that the Depository is unable or unwilling to discharge its responsibilities, the Paying Agent and Registrar shall issue, transfer and exchange Bonds requested by the Depository in appropriate amounts. Whenever the Depository requests the Paying Agent and Registrar to do so, the Paying Agent and Registrar will cooperate with the Depository in taking appropriate action after reasonable notice (i) to arrange, with the prior written consent of the City, for a substitute depository willing and able upon reasonable and customary terms to maintain custody of the Bonds or (ii) to make available Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging such Bonds shall designate.

(c) If the City determines that it is desirable that certificates representing the Bonds be delivered to the Bond Participants and/or Beneficial Owners of the Bonds and so notifies the Paying Agent and Registrar in writing, the Paying Agent and Registrar shall so notify the Depository, whereupon the Depository will notify the Bond Participants of the availability through the Depository of bond certificates representing the Bonds. In such event, the Paying Agent and Registrar shall issue, transfer and exchange bond certificates representing the Bonds as requested by the Depository in appropriate amounts and in authorized denominations.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of the Depository or any nominee thereof, all payments with respect to such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations.

(e) Registered ownership of the Bonds may be transferred on the books of registration maintained by the Paying Agent and Registrar, and the Series 2022 Bonds may be delivered in physical form to the following:

(i) any successor securities depository or its nominee;

(ii) any person, upon (A) the resignation of the Depository from its functions as depository or (B) termination of the use of the Depository pursuant to this Section.

(f) In the event of any partial redemption of a Bond unless and until such partially redeemed Bond has been replaced in accordance with the provisions of this Ordinance, the books and records of the Paying Agent and Registrar shall govern and establish the principal amount of such Bond as is then outstanding and all of the Bonds issued to the Depository or its nominee shall contain a legend to such effect.

If for any reason the Depository resigns and is not replaced or upon termination by the City of book-entry-only form, the City shall immediately provide a supply of bond certificates for issuance upon subsequent transfers or in the event of partial redemption. In the event that such supply of certificates shall be insufficient to meet the requirements of the Paying Agent and Registrar for issuance of replacement bond certificates upon transfer or partial redemption, the City agrees to order printed an additional supply of bond certificates and to direct their execution by manual or facsimile signature of its then duly qualified and acting officers. In case any officer whose signature or facsimile thereof shall appear on any Bond shall cease to be such officer before the delivery of such Bond (including any bond certificates delivered to the Paying Agent and Registrar for issuance upon transfer or partial redemption) such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer or officers had remained in office until the delivery of such Bond. After being executed by the Mayor and City Clerk, said Bonds shall be delivered to

the Treasurer of the City who shall be responsible therefor under his/her official bond and such Treasurer shall maintain a record of information with respect to said Bonds in accordance with the requirements of Section 10-140, R.R.S. Neb., as amended, and shall cause the same to be filed with the Auditor of Public Accounts of the State of Nebraska. The Bonds shall not be valid and binding on the City until authenticated by the Paying Agent and Registrar. The Bonds shall be delivered to the Paying Agent and Registrar for registration and authentication. Upon execution, registration and authentication of the Bonds, they shall be delivered to the City Treasurer, who is authorized to deliver them to the Underwriter, as initial purchaser thereof, upon receipt of the purchase price thereof plus accrued interest thereon to date of payment of the Bonds. Such initial purchaser shall have the right to direct the registration of the Bonds and the denominations thereof within each maturity, subject to the restrictions of this Ordinance. The Underwriter and its agents, representatives and counsel (including the City's bond counsel) are hereby authorized to take such actions on behalf of the City as are necessary to effectuate the closing of the issuance and sale of the Bonds, including, without limitation, authorizing the release of the Bonds by the Depository at closing. The Bond Purchase Agreement (the "Purchase Agreement") to be entered into between the City and the Underwriter with respect to the purchase of the Bonds from the City, in such form as the Authorized Officer executing the Purchase Agreement shall in the exercise of his or her own independent judgment and absolute discretion determine to be necessary, proper, appropriate, advisable, or desirable in order to effectuate the issuance, sale, and delivery of the Bonds, be and the same is hereby in all respects authorized, adopted, specified, accepted, ratified, approved and confirmed.

Section 9. The City Clerk is directed to make and certify a transcript or transcripts of the proceedings of the Mayor and City Council precedent to the issuance of said Bonds, a copy of which shall be delivered to the Underwriter.

Section 10. The proceeds of the Bonds shall be applied to the costs of the Project as described in Section 1 hereof, including reimbursement of any prior expenditures and payment of issuance expenses for the Bonds. Pending such application the City Treasurer shall hold such proceeds.

Section 11. The Bonds are special obligations of the City payable from, and secured as to the payment of principal and interest by a pledge of the Tax, which includes the 0.5% Sales Tax (as described and defined in Section 1 hereof) approved by the voters at the Election. The City hereby pledges the Tax to the payment of the principal of and interest on the Bonds. The City hereby further agrees that it shall dedicate such portion of its property tax levy authority (as provided in Section 77-3442, R.R.S. Neb., as amended) as is necessary to provide funds which, together with receipts from the Tax as pledged to the payment of the Bonds and any other monies made available and used for such purpose, will be sufficient to pay the principal of and interest on the Bonds as the same fall due (including mandatory sinking fund redemptions). The pledge of the Tax provided for in this Section 11 for the Bonds shall not prevent the City from otherwise applying receipts from the Tax in any year so long as sufficient receipts from such fund have been set aside for the payment of principal and interest falling due in such year on the Bonds. In addition, the City further reserves the right to issue additional bonds payable on par with the Bonds equally and ratably secured by a pledge of receipts from the Tax.

If a debt service reserve fund is established for the Bonds as provided in Section 2(b) of this ordinance (the "Debt Service Reserve Fund"), the following provisions shall apply:

(a) all amounts paid and credited to the Debt Service Reserve Fund shall be expended and used by the City solely to prevent any default in the payment of interest on or principal of the Bonds on any maturity date or Interest Payment Date if the City determines there are insufficient moneys on hand from the Tax to pay the interest on or principal of said Bonds as they become due. So long as the Debt Service Reserve Fund aggregates the amount determined to be held in the Debt Service Reserve Fund pursuant to Section 2(b) (the "Debt Service Reserve Requirement"), no payments into the Debt Service Reserve Fund shall be required. If the City is ever required to expend and use a part of the moneys in the Debt Service Reserve Fund for the purpose herein authorized and such expenditure reduces the amount of the Debt Service Reserve Fund below the Debt Service Reserve Requirement, the City shall transfer amounts from the Tax, after providing sufficient amounts to pay the amounts due on the Bonds on the next Interest Payment Date, until said Debt Service Reserve Fund shall again aggregate the Debt Service Reserve Requirement. Any investment earnings or accrued interest in the Debt Service Reserve Fund above and beyond the Debt Service Reserve Requirement shall be transferred to pay debt service on the Bonds.

(b) The amounts required to be paid and credited to the Debt Service Reserve Fund pursuant to this Section shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to the debt service reserve funds established for any bonds issued on a parity with the Bonds.

(c) Moneys in the Debt Service Reserve Fund may be used to call the Bonds for redemption and payment prior to their Stated Maturity, provided all of the Bonds at the time Outstanding are called for payment and funds are available to pay the same according to their terms. Moneys in the Debt Service Reserve Fund shall be used to pay and retire the last outstanding Bonds unless such Bonds and all interest thereon are otherwise paid.

(d) If at any time the moneys in the Revenue Fund are insufficient to make in full the payments and credits at the time required to be made to the Debt Service Reserve Fund and to the debt service reserve funds established to protect the payment of any Parity Bonds, the available moneys in the Revenue Fund shall be divided among such debt service reserve funds in proportion to the respective principal amounts of said series of bonds at the time outstanding which are payable from the moneys in such debt service reserve funds.

Section 12. The Mayor and City Council hereby authorize the Authorized Officers, or each individually, to approve and deem final, within the meaning of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended, a Preliminary Official Statement with respect to the Bonds and the information therein contained and to approve and deliver a final Official Statement for and on behalf of the City. The Authorized Officers, or any one or more of them, are hereby further authorized to take any and all actions and enter into any and all agreements and execute any documents deemed necessary or appropriate in connection with the issuance and sale of the Bonds, and any such actions previously taken are hereby ratified and confirmed.

Section 13. The City hereby (a) authorizes and directs that an Authorized Officer execute and deliver, on the date of issue of the Bonds, a continuing disclosure undertaking (the "Continuing Disclosure Undertaking") in such form as shall be satisfactory to the City and in compliance with Rule 15c2-12 of the Securities and Exchange Commission, and (b) covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Undertaking. Notwithstanding any other provision of this resolution, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an event of default hereunder; however, any Participating Underwriter (as such term is defined in the Continuing Disclosure Undertaking) or any Beneficial Owner or any Registered Owner of a Bond (as such terms are defined in the Continuing Disclosure Undertaking) may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this section.

Section 14. The City hereby covenants with the purchasers and holders of the Bonds herein authorized that it will make no use of the proceeds of said issue, including monies held in any sinking fund for the payment of principal and interest on said Bonds, which would cause said Bonds to be arbitrage bonds within the meaning of Sections 103 and 148 and other related sections of the Internal Revenue Code of 1986, as amended (the “Code”), and further covenants to comply with said Sections 103 and 148 and related sections and all applicable regulations thereunder throughout the term of said issue. The City hereby covenants and agrees to take all actions necessary under the Code to maintain the tax exempt status (as to taxpayers generally) of interest payable on the Bonds. The City hereby authorizes the Authorized Officers, or any one or more of them, as, if and to the extent appropriate, to designate the Bonds as its “qualified tax-exempt obligations” pursuant to Section 265(b)(3)(B)(i)(III) of the Code and covenant and warrant on behalf of the City that the City does not reasonably expect to issue tax-exempt bonds or other tax-exempt interest bearing obligations aggregating in principal amount more than \$10,000,000 during the calendar year in which the Bonds are issued (taking into consideration the exception for current refunding issues). The City agrees to take all further actions, if any, necessary and appropriate to qualify the Bonds herein authorized as such “qualified tax-exempt obligations” as and to the extent permitted by law.

Section 15. The City’s obligations under this Ordinance with respect to any or all of the Bonds herein authorized shall be fully discharged and satisfied as to any or all of such Bonds and any such Bond shall no longer be deemed to be outstanding hereunder if such Bond has been purchased by the City and canceled or when the payment of principal of and interest thereon to the respective date of maturity or redemption (a) shall have been made or caused to be made in accordance with the terms thereof, (b) shall have been provided for by depositing with a national or state bank having trust powers, or trust company, in trust, solely for such payment (i) sufficient money to make such payment and/or (ii) direct general obligations (including obligations issued or held in book entry form on the books of the Department of Treasury of the United States of America) of or obligations the principal and interest of which are unconditionally guaranteed by the United States of America (herein referred to as “U.S. Government Obligations”) in such amount and bearing interest payable and maturing or redeemable at stated fixed prices at the option of the holder as to

principal, at such time or times, as will ensure the availability of sufficient money to make such payments; provided, however, that with respect to any Bond to be paid prior to maturity, the City shall have duly called such Bond for redemption and given notice of such redemption as provided by law or made irrevocable provision for the giving of such notice. Any money so deposited with such bank or trust company in excess of the amount required to pay principal of and interest on the Bonds for which such monies or U.S. Government Obligations were deposited shall be paid over to the City as and when collected.

Section 16. All documents, agreements, certificates, and instruments related to the Bonds shall be valid, binding, and enforceable against the City when executed and delivered by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by electronic signatures laws, including any relevant provisions of the Uniform Commercial Code, in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each document, agreement, certificate, and instrument related to the Bonds may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same document, agreement, certificate, or instrument, as applicable.

Section 17. This Ordinance shall be in full force and effect from and after its passage and publication in pamphlet or electronic form as provided by law.

PASSED AND APPROVED this ____ day of _____, 2023.

ATTEST:

Linda Taylor, Ex-Officio Mayor
and President of the Council

Lea Ann Doak, City Clerk-Treasurer

[SEAL]

**CITY MANAGER'S REPORT
JUNE 19, 2023 CITY COUNCIL MEETING**

ITEM: 3.A.

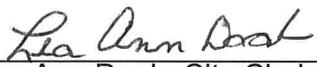
Approve the minutes of the June 5, 2023 regular City Council meeting.

BACKGROUND:

Receive and approve the minutes.

**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

June 15, 2023

McCook City Council
June 5, 2023
5:30 P.M. Central

A MEETING OF THE MAYOR AND COUNCIL OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 5:30 o'clock P.M. in the City Council Chambers.

Present: Mayor Taylor, Councilmembers Calvin, Weedon, Muehlenkamp, Rambali.

Absent: None.

City Officials present: City Manager Schneider, City Attorney Shifflet, City Clerk Doak, Assistant City Manager Koetter, Library Director Crocker, Utilities Director Fawver, Public Works Director Potthoff, Senior Services Director Siegfried, Police Chief Smith, and Firefighter/Paramedic Yager.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on June 1, 2023, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the Mayor and members of the City Council and a copy of the Acknowledgement of Receipt of such notice is attached to these minutes. Availability of the agenda was communicated in the advance notice to the Mayor and Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Mayor Taylor announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and available for public review. Invocation was provided by Jeff Donelan, McCook Evangelical Free Church. Following the Pledge of Allegiance to the flag of the United States of America, Mayor Taylor called the meeting to order.

1. Announcements & Recognitions.

There were not announcements or recognitions.

2. Presentations.

- 2.A. Presentation by Tim Wozny of Platte Valley Communications regarding impact of purchase and installation of Motorola radio repeater on City of McCook Police radio operations.

Police Chief Smith explained that the Council approved purchase of radio equipment from Motorola to replace the outdated radio system and allowed the Police Department to join the statewide radio system updating from an analog to digital radio system. While the system has benefited the Department by providing more secure communications and interoperability with allied agencies, officers have experienced issues with building penetration and coverage across parts of the city while using their portable radios. To alleviate this issue, Motorola has proposed the installation of a digital to analog radio repeater be installed on a water tower.

Mr. Wozny of Platte Valley Communications explained the process of how he and the Police

Department worked to determine that the installation of a digital to analog system (which is VHF) on the west water tower would alleviate these issues.

Councilmember Calvin expressed concerns regarding why this guarantee was not included in our original package from Motorola.

3. Consent Agenda.

Councilmember Calvin requested that Item G be removed from the Consent Agenda and placed on the Regular Agenda.

Motion to approve the remaining consent agenda. This motion, made by Calvin and seconded by Muehlenkamp, passed.

Taylor: YEA, Calvin: YEA, Weedon: YEA, Muehlenkamp: YEA, Rambali: YEA

YEA: 5, NAY: 0

- 3.A. Approve the minutes of the May 15, 2023 regular City Council meeting and the May 25, 2023 special City Council meeting.
- 3.B. Approve the application for a Special Designated Liquor License submitted by the McCook Chamber of Commerce for a 40 Year Celebration Mixer to be held at VK Electronics, 606 West "B" Street, on August 3, 2023, from 8:00 A.M. to 11:59 P.M.
- 3.C. Approve the application for a Special Designated Liquor License submitted by A & N Restaurant, LLC, Liquor License #I-088659, for a wedding reception to be held at the Red Willow County Fairgrounds Community Building, 1412 West 5th Street, on June 24, 2023 from 3:00 P.M. to 12:00 A.M.
- 3.D. Approve the application for a Special Designated Liquor License submitted by A & N Restaurant, LLC, Liquor License #I-088659, for a wedding reception to be held at the McCook Municipal Auditorium, 302 West 5th Street, on July 1, 2023 from 3:00 P.M. to 12:00 A.M.
- 3.E. Accept the minutes of the March 8, 2023 Library Advisory Board meeting.
- 3.F. Receive and file the claims for the month of April published May 16, 2023.
- 3.H. Authorize City of McCook staff to form a McCook Planning and Steering Committee for the preparation of the updated McCook Comprehensive Plan.

4. Regular Agenda.

- 3.G. Ratify the findings and determinations of the City of McCook Health Board from the April 11, 2023 meeting.

Councilmember Calvin questioned the process that determined these selected, or prioritized properties, when there are other properties in town that might be a greater nuisance.

Motion to ratify the findings and determinations of the City of McCook Health Board from the April 11, 2023 meeting. This motion, made by Calvin and seconded by Muehlenkamp, passed.
Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 5, NAY: 0

4.A. Update regarding the swimming pool and ballpark projects.

City Manager Schneider informed the Council that a concept has been approved and work has begun on the contract with Carrothers which will establish the GMP (Guaranteed Maximum Price). The total cost of the build out was agreed upon at \$6,399,567. Engineering is contracted at \$374,000. there is a provision for extra expenses of \$2,500, a soils report at \$6,500, making the GMP \$6,782,567. Total available revenue is \$6,812,000, which includes the bond being issued in a face amount of \$6,000,000, \$562,000 from the CCCFF grant, and \$250,000 from the Masonic Temple. Construction is slated to begin the beginning of August with completion to occur around Memorial Day 2024.

Staff is working with D.A. Davidson to complete the official statement for the bond issuance. Our bond counselor, Mike Rogers, is drafting the bond ordinance. Our plan is to bring these documents to the Council at the June 19 meeting.

On the ballpark side a meeting of the stake holders - McCook College Foundation, McCook College, Community Hospital, and Mr. and Mrs. Benjamin, is scheduled for June 12. Staff is meeting with McCook College and Community Hospital regarding grant funding on June 8. The impact statement to be used during fund-raising is close to being finalized.

4.B. Ordinance No. 2023-3067 permitting a zoning change from Residential Medium Density (RM) District to Business Commercial (BC) District for the following described property:
Replatted Lot Three, Block Six, Second High School Addition to the City of McCook, Red Willow County, Nebraska.

Mayor Taylor asked the Clerk to read Ordinance No. 2023-3067 by title.

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA AMENDING MCCOOK ZONING ORDINANCE NO. 2016-2929 CHANGING THE ZONING CLASSIFICATION OF BLOCK 6, REPLATTED LOT 3, SECOND HIGH SCHOOL ADDITION TO THE CITY OF MCCOOK, RED WILLOW COUNTY, NEBRASKA, FROM RESIDENTIAL MEDIUM DENSITY (RM) DISTRICT TO BUSINESS COMMERCIAL (BC) DISTRICT; PROVIDE FOR THE REPEAL OF ANY OTHER CONFLICTING ORDINANCES; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

Ordinance No. 2023-3067 has been introduced, read by title, and I move to approve upon its second of three readings. This motion, made by Calvin and seconded by Rambali, passed.
Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 5, NAY: 0

4.C. Approve the Final Subdivision Agreement for the McCook Business Park - Phase II Addition.

City Manager Schneider informed the Council that following the May 15 Council meeting, the McCook Economic Development Corporation (MEDC) reconceptualized the proposed subdivision agreement to address some of the concerns expressed by residents of Ravenswood Road. City staff, including myself, Public Works Director Potthoff, and Fire Chief Harpham, reviewed the proposed subdivision agreement and are comfortable with the proposed amendments. As a result of the revisions to the subdivision agreement, the Preliminary Plat/Final Plat for the McCook Business Park Phase II has been modified to reflect the subdivision agreement changes. It is the intent of the MEDC and the City to address the concerns expressed by the resident of Ravenswood Road.

Charlie McPherson, MEDC Director, stated that there is only one lot available in the current Industrial Park making it vital that expansion occur to the east. This area was indicated as future Industrial Use in the 1978 City of McCook Comprehensive Plan. The MEDC heard the concerns of the residents along Ravenswood Road and have tried to address those concerns by making amendments to the plat and subdivision agreement.

Greg Wolford, MEDC Engineer addressed the changes made. To keep traffic from Ravenswood Road, only the current entrance onto Industrial Park Drive will be used. The north south road has been renamed East 17th Street and will have gated access only and will be used only for emergency purposes. A Phase I rock turn around and drive easement is included at the intersection of Industrial Park Drive and East 17th. Lot 4 will only be allow accessed off of Industrial Park Drive not East 17th. The drainage outlet on the east side will drain into Kelley Creek. Any lot over ½ acre, which all lots are, must do a drainage plan when developed. A landscape easement has been added on the east side of Lot 4. The MEDC still requests the Industrial Heavy Zoning, which will allow flexibility in the type of future business development. Mr. and Mrs. Case want McCook to grown and to grow right, what will be a benefit to McCook.

Motion to approve the Final Subdivision Agreement for the McCook Business Park - Phase II Addition. This motion, made by Calvin and seconded by Weedin, passed.

Taylor: YEA, Calvin: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA

YEA: 5, NAY: 0

- 4.D. Approve Resolution No. 2023-09, rescinding in part and amending Resolution No. 2023-07, authorizing the Preliminary Plat/Final Plat for McCook Business Park - Phase II Addition, a tract of land located in the SW 1/4 of Section 28, Township 3 North, Range 29 West of the 6th P.M. in Red Willow County, Nebraska, and incorporating the terms of the final subdivision agreement between the City of McCook and the McCook Development Corporation.

Councilmember Calvin questioned if the increased traffic on Industrial Park Drive would create the need for a traffic light at the entrance to the Business Park.

Mr. Wolford noted that was addressed in the subdivision agreement, not at that entrance but at the South Highway 83 and South Street intersection. A study would be conducted regarding traffic generated by Parker, Valmont, current businesses in the Business Park as well as any future development in Phase II of the Business Park, with the costs of the traffic control being shared by all businesses proportionately.

Adam Johnson expressed concerns regarding the construction of the proposed rock turnaround and Kathleen Eiler thanked the MEDC and Council for listening to their concerns and making adjustments to the proposal, noting that it would have been better if they were informed before it was presented to the Council, and that she still had concerns with drainage.

Motion to approve Resolution No. 2023-09 rescinding in part and amending Resolution No. 2023-07, authorizing the Preliminary Plat/Final Plat for McCook Business Park - Phase II Addition, a tract of land located in the SW 1/4 of Section 28, Township 3 North, Range 29 West of the 6th P.M. in Red Willow County, Nebraska, and incorporating the terms of the final subdivision agreement between the City of McCook and the McCook Development Corporation. This motion, made by Calvin and seconded by Rambali, passed.

Taylor: YEA, Calvin: YEA, Weedon: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 5, NAY: 0

4.E. Ordinance No. 2023-3068 allowing for a zoning change from Agricultural (AG) District to Industrial Heavy (IH) District for the following described property: a tract of land located in the SW 1/4 Section 28, Township 3 North, Range 29 West of the 6th P.M. in Red Willow County, Nebraska, said property located in the proposed McCook Business Park - Phase II Addition to the City of McCook, Red Willow County, Nebraska.

Mayor Taylor asked the Clerk to read Ordinance No. 2023-3068 by title.

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA AMENDING MCCOOK ZONING ORDINANCE NO. 2016-2929 CHANGING THE ZONING CLASSIFICATION OF LAND LOCATED IN THE SW 1/4 OF SECTION 28, TOWNSHIP 3 NORTH, RANGE 29 WEST OF THE 6TH P.M., IN RED WILLOW COUNTY, NEBRASKA, SAID PROPERTY LOCATED IN PROPOSED MCCOOK BUSINESS PARK - PHASE II ADDITION TO THE CITY OF MCCOOK, RED WILLOW COUNTY, NEBRASKA, FROM AGRICULTURAL (AG) DISTRICT TO INDUSTRIAL HEAVY (IH) DISTRICT; PROVIDE FOR THE REPEAL OF ANY OTHER CONFLICTING ORDINANCES; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

Ordinance No. 2023-3068 has been read by title and I move to approve upon its second of three readings. This motion, made by Calvin and seconded by Weedon. Discussion followed.

Nic Curl presented information regarding the difference between Industrial Heavy and Industrial Light. Industrial Light has more requirements. He requested that if the Council opts to vote for Industrial Heavy, that they mandate some of the Industrial Light performance standards via a covenant to provide some protection to the current residents of the area.

Kathleen Eiler, Trista Curl, Adam Johnson, Linda Brunswick expressed concerns with the Industrial Heavy zoning and suggested that at least the southern Lots 2 - 4 be zoned Industrial Light giving the residents some sort of protection; concerns with property values; and what happens when Mr. and Mrs. Case no longer are in control.

Brian Calvin agreed that the area residents have valid concerns, but encouraged the Council to vote for what is best for the citizens of McCook.

Councilmember Muehlenkamp questioned if the MEDC and/or the Cases would be responsible for addressing the noise, pollutants of future development and for maintenance of the subdivision.

After discussion, the motion on the floor was considered and passed.

Taylor: YEA, Calvin: YEA, Weedon: YEA, Muehlenkamp: YEA, Rambali: YEA

YEA: 5, NAY: 0

4.F. Presentation by Councilmember Weedon regarding the recent Choice Gas Selection Period and the future of ACE.

Councilmember Weedon gave an update regarding the recent Choice Gas Selection Period and the future of ACE. Since 1998 the City of McCook has received \$172,000 from ACE that has been used to fund various projects throughout the City. Currently there are seven natural gas suppliers for customers to select from. With this many suppliers over the years the share of the total market for ACE has declined. As a result, the profit margin has declined, making it harder for ACE to stay in the game. He believes that ACE truly benefits the City and its citizens. He asked what we need to do as a council to encourage the citizens of McCook to select ACE as their natural gas supplier in April of 2024.

4.G. Council Comments.

Mayor Taylor thanked City Staff for all that they did to keep our citizens safe during the recent nine plus inches of rain that flooded several areas of the City.

Adjournment.

There being no further business to come before the Council, Mayor Taylor declared the meeting adjourned at 7:06 P.M.

Linda Taylor, Ex-Officio Mayor
and President of the Council

ATTEST:

Lea Ann Doak, City Clerk-Treasurer

**CITY MANAGER'S REPORT
JUNE 19, 2023 2022 CITY COUNCIL MEETING**

ITEM: 3.B.

Receive and file the claims for the month of May 2023, published June 9, 2023.

BACKGROUND:

Claims are presented to the Council and published each month as outlined in the City Code of Ordinances.

Staff is always available to address any questions that the Council may have regarding a specific claim.

**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

June 14, 2023



Tera Koetter, Assistant City Manager

June 14, 2023



Nathan A. Schneider, City Manager

June 14, 2023

CITY OF MCCOOK
CLAIMS FOR MAY 2023

ABBREVIATIONS FOR LEGALS: PS - PERSONAL SERVICES; S- SUPPLIES; SC - SERVICES & CHARGES; CO - CAPITAL OUTLAY; BT - BUDGET TRANSFERS

20/20 TECHS-SC 4438.25; ACE-S 1786.50; ACME PRINTING-S 831.20; AKRS-S 8257.39; ALL STAR AUTO GLASS-S 390.15; AMERICAN AG LAB-SC 1925.76; AMERICAN ELECTRIC-S 321.82; AMERITAS-CLAIMS-SC 1445.52; ANYTIME TRI STATE TOWING-345.00; ARROW CAR WASH-S 73.13; ARROW SEED CO-S 275.00; AT&T MOBILITY-SC 5846.11; AURORA COOP-S 15071.08; B STREET AUTO SPA-S 69.70; BARCO MUNICIPAL-S 205.80; BETTER HOMES & GARDEN-S 38.60; BLACK HILLS ENERGY-SC 3951.79; BW TELECOM-SC 144.14; C&K-S 808.44; CAHOJ EARTHMOVING-CO 85039.20; CAMBRIDGE TELEPHONE-SC 234.12; CARPENTER BRELAND FUNERAL HOME-CO 23183.52; CARQUEST-S 2246.28; CASH WA-S 11404.56; CDW-G-SC 895.85; CENTURY LINK-SC 774.32; CITY OF MCCOOK-PS 404156.46; CITY SELF INS-BT 166893.75; TRANSFER STATION-S 30.03; SALES TAX-47435.22; UTILITIES-SC 4416.75; CLINE WILLIAMS, WRIGHT JOHNSON-SC 120.00; COLFER, WOOD, LYONS & WOOD-SC 180.00; COMMON SCENTS-S 805.00; CONSOLIDATED MGMT-SC 972.50; CPS HR CONSULTING-SC 462.00; CRAWFORD SUPPLY-S 230.02; CROELL-CO 1383.30; CULLIGAN-S 86.00; D & S HARDWARE-S 1249.00, SC 62.26; DANKO EMERGENCY EQUIP-S 199.05; DAS ACCT-SC 830.00, S 66.00; DELTA INDUSTRIAL-S 10034.56; DEMCO, INC-S 198.47; DEVENY-S 104.97; DIAMOND VOGEL-S 4235.64; DIVERSIFIED INPECTION-SC 2143.36; L DOAK-SC 575.37; DULTMEIER-S 18.44; DUO-SAFETY-S 109.65; EAKES-S 235.02, SC 273.17; FASTENAL-S 102.31; FICA-PS 20541.95; FRENCHMAN VALLEY COOP-S 1612.75; FRONTIER COMM-SC 34.19; GALLS-S 2585.13; GARRISONS-S 110.00; GOOGLE SVCS-SC 534.00; GRAHAM TIRE OF KEARNEY-S 4034.88; GREAT PLAINS COMM-SC 2843.54; HENNING BROS-SC 59.00; HERITAGE SENIOR CENTER-SC 75.00; HOMETOWN LEASING-SC 757.83; IDEAL LINEN-S 123.05; ISLAND SPRINKLERS-S 186.32; J BAR J LANDFILL-SC 47258.77; K & C GRAIN-S 5097.50;K-C MOTOR AND ELEC-S 52.50; KOHL'S AUTO-S 341.20; LA QUINTA-SC 567.00; LAKESIDE SAND & GRAVEL-CO 24066.24; LIFE-ASSIST-S 460.76; LINCOLN WINWATER WORKS-S 483.75; MARC-S 120.77; MATHESON-LINWELD-S 279.32; MC

CLINIC-SC 140.30; MC GAZETTE-SC ; MC HUMANE SOCIETY-S 4122.22; MPPD-SC 1529.45; MPS-SC 342.71; MC NET SC 69.95; MCKESSON MEDICAL-S 495.87; MEDICARE-PS 4645.46; MEAD-S 44.99; MEDTECH FORENSICS-S 40.00; MICROMARKETING-S 2806.27; MIDWEST CONNECT-S 324.09, SC 1937.87; MILLER AND ASSOC-SC 1137.09, CO 7610.00; MNB INS-SC 140.00; MOUSEL, BROOKS, SCHNEIDER, MUSTION, SCHIFFLET-SC 4218.40; MUNICIPAL SUPPLY-S 16199.09; NAEMT/PHTLS-SC 30.00; NDEE-SC 630.00; NDEE LOAN PMT-SC 22364.42; NE DEPT REV-SALES TAX-SC 9870.74; NE PUBLIC HEALTH-SC 19.00; NE SAFETY AND FIRE-S 378.00; NE LAW ENFORCEMENT INTEL-SC 432.00; NEBRASKA TRUCK CENTER-S 835.60; NEBRASKALAND TIRE-S 160.32; NICK'S DIST-S 625.73; NPPD-SC 27765.12; NUTRI SYSTEM-S 133.62; O'REILLY-S 158.30; ONE BILLING SOL-SC 6649.86; ONE CALL-SC 117.68; OUTDOOR RECREATION-S 1777.10; PATHOLOGY SRVS-SC 346.39; PAULSON, INC-S 1744.19; PINPOINT COMM-SC 69.99; PLATTE VALLEY COMM-S 310.00; PRAIRIE STATES-SC 220.50; PROTEX CENTRAL-S 388.50; QUILL-S 272.47; RAVENSWOOD ELECTRIC-CO 1012.50; RED WILLOW CO TREASURER-CO 28508.33; N RENNER-SC 104.00; S RENNER-SC 208.00; RJ THOMAS MFG CO-S 870.00; RUGGLES TRAILER SALES-SC 3094.00; RUTT'S HEATING-S 2112.00; SANDRY FIRE SUPPLY-SC 2566.50, CO 3456.70, S 23.25; SHELCO CONST-CO 59535.00; B SIEGFRIED-S 82.17, SC 134.93; SOUTHWEST FARM & AUTO-S 605.12; STATE OF NE-SC 90.00; TASTE OF HOME-S 154.72; THE FLATLAND PROJECT-SC 600.00; TITAN MACHINERY-S 165.79; TOPKOTE, INC-CO 59812.14; TREE REBATE-S 975.00; UMR-SC 230018.57; UNION BANK AND TRUST-SC 583044.44; US FOODS-S 868.41; UTILITY REFUNDS-302.02; VOLZ-S 2227.42; WAGNER CHEVROLET-S 1048.11; WAGNER FORD-S 37.02; WALMART-S 1392.28; WEX BANK-S 14263.72; WITMER PUBLIC SAFETY-S 1025.06.

-s- Lea Ann
Doak City Clerk

Publish: JUNE 9, 2023

**CITY MANAGER'S REPORT
JUNE 19, 2023 2022 CITY COUNCIL MEETING**

ITEM: 3.C.

Ratify the City of McCook Corrective Action Plan with the Nebraska Department of Transportation regarding the reporting of federal assistance received on the Schedule of Expenditures of Federal Awards (SEFA) in the annual single audit.

BACKGROUND:

As requested in the letter from the Nebraska Department of Transportation (NDOT) regarding the reporting of Federal Pass Through funds on the annual single audit, staff prepared the attached Corrective Action Plan.

Amounts reported on the Schedule of Expenditures of Federal Awards will be compared to the NDOT confirmation of payments, eliminating reimbursements for amounts spent in prior fiscal periods, and adding amounts spent during the fiscal year and not yet reimbursed. The significant lag in reimbursement by NDOT contributed to the variance reported for the year ended September 30, 2022, as expenditures for July - September 2022 were added to the amount reported on the SEFA, but expenditures for June 2022 were inadvertently omitted. The amount reported on the SEFA will be reviewed to ensure the proper twelve months of expenditures are reported in the future.

As noted by Marcy Luth with our auditing firm, June 2022 expenditures were not included in the amount reported on the SEFA, as NDOT was 4 months behind on reimbursements at 9/30/22 and they only picked up July - September 2022 on the SEFA.

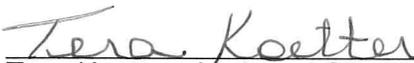
**FISCAL
IMPACT:** None.

APPROVALS:



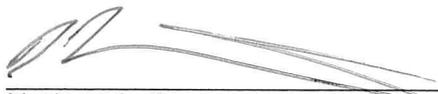
Lea Ann Doak, City Clerk

June 15, 2023



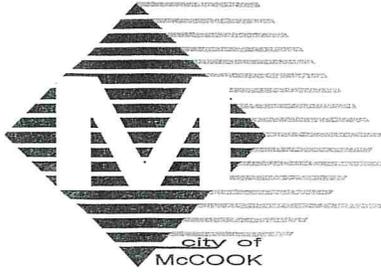
Tera Koetter, Assistant City Manager

June 15, 2023



Nathan A. Schneider, City Manager

June 15, 2023



P.O. BOX 1059 · 505 West C Street · McCOOK, NE 69001 · PHONE (308) 345-2022 · FAX (308) 345-1461



June 6, 2023

Tami Applebee
Highway Audit Manager
PO Box 94759
Lincoln NE 68509-4759

RE: City of McCook Corrective Action Plan

As requested in your letter of May 11, 2023 the following is the Corrective Plan for the City of McCook to guarantee all Federal Pass Through funds will be reported on the annual single audit.

Pass-Thru Agency	Planned Corrective Action	Anticipated Completion Date	Responsible Contact Person
Nebraska Department of Transportation	Amounts reported on the Schedule of Expenditures of Federal Awards will be compared to the NDOT confirmation of payments, eliminating reimbursements for amounts spent in prior fiscal periods, and adding amounts spent during the fiscal year and not yet reimbursed. The significant lag in reimbursement by NDOT contributed to the variance reported for the year ended September 30, 2022, as expenditures for July - September 2022 were added to the amount reported on the SEFA, but expenditures for June 2022 were inadvertently omitted. The amount reported on the SEFA will be reviewed to ensure the proper twelve months of expenditures are reported in the future.	June 15, 2023	Lea Ann Doak

Respectfully,

Lea Ann Doak
City Clerk-Treasurer

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

May 11, 2023

Lea Ann Doak
City of McCook
1312 W 5th Street
McCook, NE 69001

Dear City Council:

The Nebraska Department of Transportation (NDOT) has completed a review of the 2022 audit for the fiscal year ending September 30, 2022, as issued by AMGL, P.C.

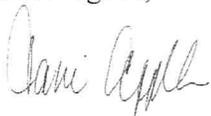
With regard to the following federal award findings and questioned costs:

It is required that all federal assistance received be reported on the annual Schedule of Expenditures of Federal Awards (SEFA). NDOT confirmed the SEFA reported \$93,364 of expenditures under CFDA 20.509 (Formula Grants for Rural Areas), Control #71120N. However, NDOT passed through \$103,292 for expenditures incurred during the fiscal year ended September 30, 2022, Under CFDA 20.509 (Formula Grants for Rural Areas), Control #71120N, Project #M7310222.

NDOT requests a corrective action plan be submitted by June 15, 2023 to guarantee all Federal Pass Through funds will be reported on the annual single audit.

NDOT looks forward to providing continued grant funding to the City of McCook. If you have questions, please contact NDOT.ControllerSubrecipient@nebraska.gov.

Best regard,



Tami Applebee
Highway Audit Manager

Vicki Kramer, Director

Department of Transportation

MAILING ADDRESS
PO Box 94759
Lincoln, NE 68509-4759

PHYSICAL ADDRESS
1500 Nebraska Parkway
Lincoln, NE 68502

PHONE 402-471-4567
EMAIL NDOT.ContactUs@nebraska.gov

dot.nebraska.gov

potthoff@cityofmccook.com

From: Starla Werkmeister <swerk42@hotmail.com>
Sent: Monday, June 5, 2023 2:53 PM
To: potthoff@cityofmccook.com
Subject: Re: Color Run

Thank you!

Get [Outlook for iOS](#)

From: potthoff@cityofmccook.com <potthoff@cityofmccook.com>
Sent: Monday, June 5, 2023 2:49:16 PM
To: 'Starla Werkmeister' <swerk42@hotmail.com>
Subject: RE: Color Run

Starla,

That would be fine. I will get an agenda item on the City Council meeting for June 19th with your requested change of date.

Have a great week.

Kyle

From: Starla Werkmeister <swerk42@hotmail.com>
Sent: Monday, June 5, 2023 2:08 PM
To: potthoff@cityofmccook.com
Subject: Color Run

Hi Kyle

We didn't get very many participants for the Color Run. Is it okay if we postpone it to June 24th? Same time and same place?

Thank you!

Starla

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**CITY MANAGER'S REPORT
JUNE 19, 2023 CITY COUNCIL MEETING**

ITEM: 3.E.

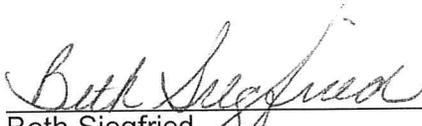
RECOMMENDATION:

Approve and authorize the mayor to sign the 2023/2024 contract with the West Central Area Agency on Aging (WCNAAA) for the purpose of defining and specifying the separate and mutual responsibilities of each in the management, operation, support, monitoring, and evaluation of the McCook Heritage Senior Center.

BACKGROUND:

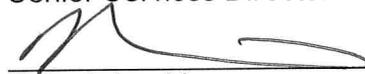
The contract between the City of McCook and WCNAAA is an agreement that the WCNAAA will provide technical assistance, payments from the older Americans' Act, orientation and training for the Senior Center Staff and Board, and the support and assistance in the coordination of other agencies; and organizations; programs or services to the Heritage Senior Center. In return, the City of McCook will provide an appropriate, safe and assessable senior service facility, qualified and appropriate staff, and time and training of staff, necessary local match funds in-kind services. The City of McCook will operate and manage the programs outlined in the Senior Services Manuel supplied to the Provider by the Agency, including compliance with all local, state, and federal laws, including, but not limited to the Nebraska Community Aging Services Act and the Federal Older Americans ACT.

APPROVALS:



Beth Siegfried
Senior Services Director

June19,2023



Nate Schneider
City Manager

June19,2023

PROGRAM INSTRUCTION

DATE: April 2023
TO: Senior Center and Meal Site Contractors
FROM: Erin Arensdorf
SUBJECT: Senior Center & Meal Site Contracts for Fiscal Year **2023-2024**

Enclosed you will find a contract for Senior Center & Meal Site meal operations for Fiscal Year 2023-2024. We are pleased to announce that the WCNAAA Governing board has approved the below increased reimbursement rates:

0	- 3,000 meal units	\$4.00
3,001	- 6,000 meal units	\$3.85
6,001	- 15,000 meal units	\$3.65
Over	15,001 meal units	\$3.25
NSIP – per meal		\$0.70

Please have a witness and your Board Chairperson sign the contract with original signatures on page 5.

Please **do not date the ‘Executed date’ on page 5 as it will be dated when the WCNAAA Board Chairperson signs.**

Mail your signed contract to the Agency by **June 2, 2023** as the Governing Board Meeting will be held on **Thursday, June 22, 2023**. The WCNAAA Board Chairperson will sign the contract at our Board meeting, then we will mail you a fully signed copy of the contract.

If you contract with a vendor/restaurant for your meals, we have enclosed a vendor/restaurant contract, you will need to complete the blanks, sign it with the vendor, and return the original along with the Agency contract, keeping a copy for yourself.

**West Central Nebraska Area Agency on Aging
Provision of Services to Senior Citizens
Contract FY 2024**

THIS Contract is made and entered into this 1st day of July, 2023 by and between the **WEST CENTRAL NEBRASKA AREA AGENCY ON AGING, 115 North Vine Street, North Platte, Nebraska 69101**, an intergovernmental agency serving the Nebraska counties of Arthur, Chase, Dawson, Dundy, Frontier, Gosper, Grant, Hayes, Hitchcock, Hooker, Keith, Lincoln, Logan, McPherson, Perkins, Red Willow, Thomas and hereinafter called the AGENCY, and **CITY OF McCOOK**, with the following mailing address: **P.O. Box 1059, McCook, NE 69001**, hereinafter called the Contractor for the purpose of defining and specifying the separate and mutual responsibilities of each in the management, operation, support, monitoring, and evaluation of the Contractor's comprehensive, coordinated service system for older persons hereinafter called 'Program'.

WHEREAS, the Agency has been designated by the Nebraska Department of Health and Human Services, Division on Aging as the Agency responsible for the on-going planning, development, coordination, monitoring, evaluation and partial support of a comprehensive, coordinated service system for older persons in the seventeen county area; and

WHEREAS, the Contractor has demonstrated an interest and ability to perform as the service provider through its previous contracts with the Agency and/or its operations of other Federal, State, and locally funded programs, and has in existence an advisory council/committee/board comprised for the majority of senior citizens, who review, comment, and advise on the program; and

WHEREAS, the Agency has been awarded funds for the "Older Americans Act Title III Grants for State and Community Programs on Aging" through the Administration for Community Living from the Older Americans Act of 1965 as amended through P.L. 114-144, enacted April 19, 2016, other applicable Federal statutes and their implementing regulations, State of Nebraska statutes DHHS program regulations and the terms and conditions of this Contract for **Fiscal year 2024** as specified in its State approved Area Plan for the support of specified services and activities in the seventeen county area and

WHEREAS, it is agreed and understood by both parties that this Contract is dependent upon Federal and State funding and in the event that such funding is decreased or eliminated this Contract is null and void.

NOW THEREFORE, the parties to this Contract jointly agree as follows:

SECTION ONE:

The Agency shall provide the Contractor the following:

- A. Technical assistance with the planning, establishment, monitoring, and operations of the Center and with other matters affecting and concerning older citizens; and

B. Remit to Contractor earned funds in the following manner:

1. Only Title III-C certifiable meals are eligible for payment; and
2. These meals must be accompanied by supportive services in the ratio of one unit of supportive service for every three claimed meals; and
3. This combination reflects a minimum acceptable level of supportive service; and
4. Payments from the Older Americans' Act and/or Community Aging Services Act based on the fee schedule specified below:

0	- 3,000 meal units	\$4.00
3,001	- 6,000 meal units	\$3.85
6,001	- 15,000 meal units	\$3.65
Over	15,001 meal units	\$3.25

City of McCook

FY 23-24 Allocation of Funding

Allocation of AOA Supportive Services and Meals

<u>CFDA #-FAIN#</u>		Allotted Units	Dollars	
93.044-17AANET3SS	Title IIIB Supportive Services-Access	10,639	\$27,844.26	
93.045-17AANET3CM	Title IIIC1 Congregate Meals	10,987	\$28,755.93	
93.045-17AANET3HD	Title IIIC2 Home Delivered Meals	15,098	\$39,515.52	
93.045-17AANET3HD	Title IIIC2 To-Go Meals	5,831	\$15,261.29	
Total AOA		42,555	\$111,377.00	

Allocation of Nutrition Services Incentive Program (NSIP)

<u>CFDA #-FAIN#</u>		Allotted Meals	Rate	Dollars
93.053-17AANENSIP	Title IIIC1 Congregate Meals	10,987	\$0.70	\$ 7,690.90
93.053-17AANENSIP	Title IIIC2 Home Delivered Meals	15,098	\$0.70	\$10,568.60
93.053-17AANENSIP	Title IIIC2 To-Go Meals	5,831	\$0.70	\$ 4,081.70
Total NSIP		31,916		\$22,341.20

Total AOA and NSIP Funding \$ 133,718.20

Any meal units served over **the above allotted amount** will be reimbursed only as funds are available. In general, the Contractor shall be paid on a monthly basis and only after necessary documentation and reporting has been completed and approved by the Agency.

A. Orientation and training of Contractor staff and various boards as needed and required as related to this Contract and Program; and

B. Support and assistance in the coordination of other agencies' and organizations' programs of services with those of the Program.

SECTION TWO:

The Contractor shall provide for the Agency the following:

- A. Arrange for the provision of an appropriate, safe, and accessible senior service facility;
- B. Provide qualified and appropriate staff for the daily management of the Program;
- C. Provide necessary time and conditions for the training of Program staff, specifically those trainings sponsored by the Agency and are part of the Agency's overall training program; and
- D. Provide necessary local match funds and in-kind services;
- E. Operate and manage the Program as outlined in the Senior Center Services Manual supplied to the Contractor by the Agency, including compliance with all local, state, and federal laws, including, but not limited to the Nebraska Community Aging Services Act and the Federal Older Americans Act;
- F. Assure that the monthly fiscal reports will be received by the Agency no later than the fifth (5th) working day of the month; and,
- G. Operate and manage the Program and the facilities utilized in the program in compliance with all local, state, and federal laws and regulations, including, but not limited to the Nebraska Community Aging Services Act and the Federal Older Americans Act.
- H. Record-keeping - The Contractor shall establish and maintain such program services, activity and accounting records, systems and procedures as are needed to control and support all program services, activities and fiscal activities under this Contract. The Contractor assures the maintenance and inspection by the Agency of such records, accounts and supporting documents of Contract and Program related services, activities and fiscal activities in such form as would provide for an accurate and expeditious determination of the performed output and status of the Project funds at any time.
- I. Reporting - The Contractor shall prepare and submit reports of Contract Program services, activities and fiscal activities of the Program to the Agency according to the established schedule, in such form, and containing such information as the Agency shall require. The Contractor shall maintain the records on file and shall afford reasonable access thereto as the Agency may find necessary to assure correctness and verification of such reports.

SECTION THREE:

Project Funds - Project funds shall be all public grant, allotment, or subsidy revenues of all fees, donations, or generated by said funds and which are received by and for the purpose of the Program services and activities specified and designated in this Contract whether by appropriation, reimbursement of service, sale of Program crafts and articles, contribution, or donation. Project funds shall be considered public and subject to accounting, review and inspection, and audit of such that individual contributions shall not be open to public inspection as per the confidentiality requirements of the Older Americans Act as amended.

SECTION FOUR:

The Older Americans Act Amendments of 2000 (Public Law 106-501) reauthorized the Nutrition Program for the Elderly. This law changed the basis for funding from a per meal reimbursement to a grant based on prior year's meal service. The program's name was changed to the "Nutrition Services Incentive Program" (NSIP).

NSIP funds are to be used for United States agricultural commodities and other food for nutrition projects. OAA Sec. 311 (d)(2) defines food criterion. If a Contractor chooses to purchase an item that is not a United States grown food such as bananas Non-NSIP funds (such as Title III C or match, etc.) may be used to purchase them.

SECTION FIVE:

Claims of Third Parties - The Contractor shall indemnify the Agency and hold the Agency harmless from any and all claims of third parties arising from the conduct or the management of the business of the senior service center organization by the Contractor, or otherwise arising by reason of any alleged negligence of Contractor, Contractor's agents or employees.

SECTION SIX:

The Agency reserves the right to review, comment, and/or modify any sub-contracts involving services and funds under this Contract for conformance with the terms and conditions of this Contract.

SECTION SEVEN:

Contract Performance Monitoring, Review, and Evaluation - In carrying out its responsibilities under the Older Americans' Act to monitor and periodically evaluate the performance of all Contractors under the Area Plan, the Agency will make occasional site visits and require routine and special reports to monitor the on-going daily performance and will conduct periodic assessments with written reports to evaluate performance of the Contractor and the effectiveness of the Program.

SECTION EIGHT:

Termination - This Contract may be terminated at any time upon mutual written consent by both parties. If the Contractor is in default of this Contract as determined by the Agency, then, and in that event, the Agency may give the Contractor a thirty (30) day notice of termination by regular mail at the Contractor's address indicated above, describing the default and the steps necessary to remedy the default, if such remedy is possible. If the default is not remedied within thirty (30) days of the mailing of the notice by the Agency, this Contract shall terminate on the 30th day after the notice was sent. This Contract shall automatically terminate if the Agency no longer has access to the local, state, or federal funding which supports this Contract.

SECTION NINE:

Distribution of Assets Upon Termination - Upon termination of this Contract, all property purchased with Project funds, shall remain the property of the Contractor. The Contractor will return any moneys received from the Agency which have not been expended.

SECTION TEN:

Term - This Contract upon execution by both parties shall be in full force and effect for the period beginning **July 1, 2023** and ending **June 30, 2024**.

Employee Work Eligibility Status

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of **all** employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of **all** employees

Conflicts of Interest

In the performance of this program the Contractor shall avoid all conflicts of interest and all appearances of conflicts of interest. The Contractor shall not acquire an interest either directly or indirectly which will conflict in any manner or degree with performance and shall immediately notify the Agency in writing of any such instances encountered.

EXECUTED this _____ day of _____, **2023** by

Attest: West Central Nebraska Area Agency on Aging
"Agency"

Witness Board Chairperson/Vice Chairperson

Attest: City of McCook, a Municipal Corporation
"Contractor"

Witness Board Chairperson/Vice Chairperson

**CITY MANAGER'S REPORT
JUNE 19, 2023 CITY COUNCIL MEETING**

ITEM: 3.F.

RECOMMENDATION:

APPROVE THE AGREEMENTS BETWEEN THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE CITY OF McCOOK FOR THE PURPOSE OF PROVIDING HOME DELIVERED MEALS, EXEMPT PUBLIC TRANSPORTATION, LOCAL MEDICAL TRANSPORTATION FOR APPOINTMENTS AND OTHER LOCAL TRANSPORTATION AND AUTHORIZE THE MAYOR TO SIGN.

BACKGROUND:

These agreements will allow the City of McCook to provide home delivered meals, exempt public transportation, local medical transportation for appointments and other local transportation as per the Nebraska Department of Health and Human Services guidelines.

**FISCAL
IMPACT:** None.

RECOMMENDATION:

APPROVE THE AGREEMENTS BETWEEN THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE CITY OF McCOOK FOR THE PURPOSE OF PROVIDING HOME DELIVERED MEALS, EXEMPT PUBLIC TRANSPORTATION, LOCAL MEDICAL TRANSPORTATION FOR APPOINTMENTS, AND OTHER LOCAL TRANSPORTATION AND AUTHORIZE THE MAYOR TO SIGN.

APPROVALS:



Beth Siegfried, Senior Services Director

June 13, 2023



Nate Schnieder, City Manager

June 13, 2023

Provider Identification

Provider Name	Date of Birth	Social Security Number	FTIN Number
Heritage Senior Center			53460457

Type of Service: (Check one or both)

Congregate Meals (SSAD only) Home-Delivered Meals

As a Provider, I certify that I am age 19 or older

Health and Safety Standards

I CERTIFY -

Food preparation and serving facilities and areas meet local, state and federal:

Fire prevention standards Zoning standards Sanitation standards Facility maintenance standards

Food preparation and serving personnel are -

- In good health and free from contagious disease Courteous, understanding, and helpful when seating or serving
- Skilled and instructed in sanitary food handling, preparation and serving practices Aware of available resources for medical emergencies and for transportation

Menu and Meal Standards

I CERTIFY -

- Meals will reflect the general dietary needs, as well as the specific dietary needs of the clients served
- Menus will be prepared one week in advance, and kept available for inspection by Resource Development staff at any time
- Meals will contain one-third of the minimum daily nutrition requirement for adults using a variety of foods from day to day

Home Delivered Meal Standards Complete this section if providing home-delivered meals

I certify home-delivered meals will be -

- Delivered on an established daily schedule
- Transported and delivered using utensils and equipment which are sanitary and maintain proper food temperatures. (Thermos-type containers and disposable or sterilizable serving dishes must be used.)
- Provided at the temperature intended for immediate consumption

Congregate Meals Standards Complete this section if providing congregated meals

I certify congregated meals facilities are -

- Accessible and free from architectural barriers
- Maintained at a comfortable temperature, properly ventilated, and have sufficient space

Comments

Signatures and Dates

I have read and understand the above standards as explained by the DHHS representative. I certify that I will meet the above standards while providing meals services(s). If I represent an agency, I certify that agency employees will meet these standards while providing meals service(s).

Beth Shepherd _____ *4-14-23*
 Provider/Agency Representative Signature Date

Yvette Hoyle _____ *4/14/23*
 Signature of Authorized Representative - Nebraska Department of Health and Human Services Date

Service Code	Service	Maximum Rate	Units
9660	Exempt Public Transport	\$3.00	Per One Way Trip
2329	Meals Congregate	\$6.25	Per Meal
9040	Meals Delivered	\$6.25	Per Meal

Par. 6 The above terms of this Agreement, Paragraphs 1 through 5 may be renegotiated upon agreement of both parties. The party requesting a change in the above terms must notify the other party at least sixty (60) days before the date the proposed change is to be implemented, except for rate changes due to minimum wage changes, rates regulated by governmental agencies, or other changes required by law.

Section IV:

General Provider Standards

By signing this agreement, the service provider agrees to:

1. Follow all applicable Department policies and procedures (Nebraska Administrative Code Titles 390, 465, 468, 473 and 474).
2. Bill only for services which are authorized and actually provided.
3. Submit billing documents after service is provided and within 90 days.
4. Accept payment as payment in full (payment from the Department plus the client's obligation) and assure that the rate negotiated or charged does not exceed the amount charged to private payers.
5. Not provide services if s/he is the legally responsible relative (i.e., spouse of client or parent of minor child who is a client).
6. Not discriminate against any employee, applicant for employment, or program participant or applicant because of race, age, color, religion, sex, handicap, or national origin, in accordance with 45 CFR Parts 80, 84, 90; and 41 CFR Part 60.
7. Retain financial and statistical records for six years from date of service provision to support and document all claims.
8. Allow federal, state, or local offices responsible for program administration or audit to review service records, in accordance with 45 CFR 74.20 - 74.24. Inspections, reviews, and audits may be conducted on site.
9. Keep current any state or local license/certification required for service provision.
10. Provide services as an independent contractor, if the provider is an individual, recognizing that s/he is not an employee of the Department or of the State.
 - Agree and assure that any false claims (including claims submitted electronically), statement, documents, or concealment of material fact may be prosecuted under applicable state or federal laws.
12. Respect every client's right to confidentiality and safeguard confidential information.
13. Understand and accept responsibility for the client's safety and property.
14. Not transfer this agreement to any other entity or person.
15. Operate a drug free workplace.
16. Not use any federal funds received to influence agency or congressional staff.
17. Not engage in or have an ongoing history of criminal activity that may be harmful or may endanger individuals for whom s/he provides services. This may include a substantiated listing as a perpetrator on the child and/or adult central registries of abuse and neglect, and/or the sex offender registries and the U.S. Department of Health & Human Services Office of Inspector General's list Of Excluded Individuals/Entities.
18. Allow Central Registry checks on himself/herself, family member if appropriate, or if an agency, agree to allow the Department staff to review agency policies regarding hiring and reporting to ensure that appropriate procedures regarding abuse, neglect, and law violations are in place.
19. Have the knowledge, experience, and/or skills necessary to perform the task(s).
20. Report changes to appropriate Department staff (eg., no longer able/willing to provide service, changes in client function).
21. Agree and assure that any suspected abuse or neglect will be reported to law enforcement and/or appropriate Department staff.

I certify that I have read and understand the standards as stated and referenced above and agree to comply with all the terms of this Agreement.

I am not currently employed with the State of Nebraska, and I understand that as a provider of this service I am ineligible for state employment, due to potential overtime liability.

I agree that I will not apply for or accept employment with the State of Nebraska unless I have first terminated this provider agreement.

Section V:

Beth Siegfried Senior Services Director 4/14/23
 Provider/Agency Representative Date

Parent or Legal Guardian Signature (If required) Date
Yvette Troyer 4/14/23
 Signature of Authorized Representative - Nebraska Department of Health and Human Services Date

**CITY MANAGER'S REPORT
JUNE 19, 2023 CITY COUNCIL MEETING**

ITEM: **3.G.**

RECOMMENDATION:

Ratify the Mayor's appointments to the:

- Library Advisory Board - reappoint Staci Blomstedt - term expires June 2027

BACKGROUND:

The appointee has been contacted and she is willing to serve another term on the board.

**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

June 15, 2023

LIBRARY ADVISORY BOARD

MARY DUELAND 345-6163 (H)
112 East "N" Street
Appointed - May 2015 (Replaced Kay Neuhaus)
Reappointed - May 2021
Term Expires - June 2025

PAM WOLFORD 345-6721 (H)
702 Airport Road
Reappointed - January 2023
Term Expires - June 2026

STACI BLOMSTEDT 345-8893 (H)
603 East "M" Street
Appointed - August 2016 Replaced Nancy Buresh
Reappointed - June 2023
Term Expires - June 2027

SHARON BOHLING 345-4679 (H)
205 West "E" Street
Appointed - September 2013 Replaced Linda Crandall
Reappointed - April 2020
Term Expires - June 2024

KEVIN COCHRAN 612-269-2202
1101 West 6th Street
Appointed - May 2017 Replaced Steve Batty
Reappointed - May 2021
Term Expires - June 2025

4 yr. terms

**CITY MANAGER'S REPORT
JUNE 19, 2023 MCCOOK CITY COUNCIL MEETING**

3.H.

ITEM NO. ___ Authorize the city manager to fill the Comprehensive Plan Steering Committee with a cross-section of community representatives.

BACKGROUND:

Following a discussion with Craig Bennett and Jason Combs of Miller & Associates, it has been recommended that we limit the steering committee to approximately 15 people who represent a broad cross-section of the McCook Community. Due to time limitations, it may be prudent for the council to appoint the city manager and staff as the responsible parties assigned to fill the committee. A preliminary list of potential committee members has been started and staff will discuss the list with Mayor Taylor prior to contacting the potential members. It is our intent to hold our kickoff meeting with Miller & Associates on June 27th.

APPROVALS:



Nathan A. Schneider, City Manager

June 15, 2023



Lea Ann Doak, City Clerk

June 15, 2023



Tera L. Koetter, Asst City Manager

June 15, 2023



P.O. BOX 1059 • 505 WEST C • McCook, NE 69001-1059 • PHONE (308) 345-2022 • FAX (308) 345-1461

Job: 23069248

APPLICATION TO OCCUPY RIGHT-OF-WAY

APPLICANT NAME: Telcom Construction for Lumen / Century Link DATE: 6/5/23
ADDRESS: PO Box 189, Clearwater, MN 55320 PHONE: (320) 365 - 0086
FAX: _____ START DATE: 06/08/23 FINISH DATE: 10/13/23

A CASH BOND IS REQUIRED FOR ALL RIGHT-OF-WAY ENCROACHMENTS

Type: (circle) Over-Cross <u>Under-Cross</u> Occupy Miscellaneous	With a: (circle) Water Line Sewer Line Gas Line <u>Telephone Line</u> <u>(Underground)</u> Aerial	Tree Trimming/Removal Grading Other Electric Line (Underground Aerial)
--	---	--

Location: Beginning 737 feet (East West North South) of Intersection Alley by 3rd st
and ending (East West North South) _____ feet of Intersection

Bore 20 feet from ped by 115 West O ST to customer's property and continue on customer's property.

Customer's address: 204 W P ST

Requirements: The applicant agrees to complete this work in accordance with the terms and conditions of the City of McCook. Any permit issued **will be cancelled** if the work specified is **not completed within the term listed on the permit** or within any **additional length of time granted**. Request for an extension of time to complete the work must be made in writing. Any extension granted will be acknowledged in writing by the City of McCook. **The Applicant may cancel the permit with written notification** at any time prior to beginning work on right-of-way.

Performance Guarantee: (Make Payable to City of McCook)

Amount: \$ _____ Check No. _____ Soc. Sec. No. Or FID No. _____

This guarantee is for the faithful compliance by the Applicant to the terms of the permit. It is understood that should the Applicant fail to perform the work as set forth in the permit, the City of McCook will have the right to keep the performance guarantee as liquidated damages for its necessary supervisory and inspection expenses and to initiate such legal proceedings as are necessary to secure either performance of the work in compliance with the terms of the permit or the restoration of the right-of-way to its previous condition prior to the activities of the Applicant.

NOTE: Please provide a location plan for over-cross or under-cross of location to occupy City of McCook right-of-way. When your project requires engineering plans, please submit four sets of plans, no larger than 18"x24". The engineering plans shall show the general features of the work to be completed and all information such as sizes, distances, dimensions, sleeves, cuts and fills, erosion control measures, etc., when applicable. City of McCook Municipal Code §94.34.

Jane Brown

Applicant's Signature

Utilities Director Approval

Mayor

Date

Director of Public Works Approval

23069248-HELD

LUMEN

Method & Procedure

Mass Markets Operational Excellence – Field Technicians

FP-MP-2020-11-006 Issue 13 Date: 05/10/2022

CMS Sketch Form: *Cust. Does not want layout on Grid.*

*ASAP
20159*

Company # _____ Exchange McCook Service Order # _____
 Work Activity Replace BSW Capital _____ Maintenance _____
 Customer Name Elden Gonsberg Phone # 208-305-11
 Address 304 W 1st One Call Ticket # _____
 Location/Directions _____
 Description of Work or Special Instructions 2015 Alley Patch

DOR/TOG: Yes ___ No ___ Permit: Yes ___ No Bore: Yes No ___ CRR #: _____
 Employee Name _____ Employee Contact # _____

Sketch (Include Line & Pedestal) Line _____ Ped # <u>537219</u> Parish/County _____ Township _____ Section _____ Range _____ GPS Reading _____	Material/Labor Units		Est	Actual	Placed by (Foreman/Crew Name)
	Description	Notes	Qty.	Qty.	
<i>W 1st 2015 Alley</i>					

Originated By _____	Date _____	Completed By _____	Date _____
Authorized By _____	Date _____	Inspected By _____	Date _____

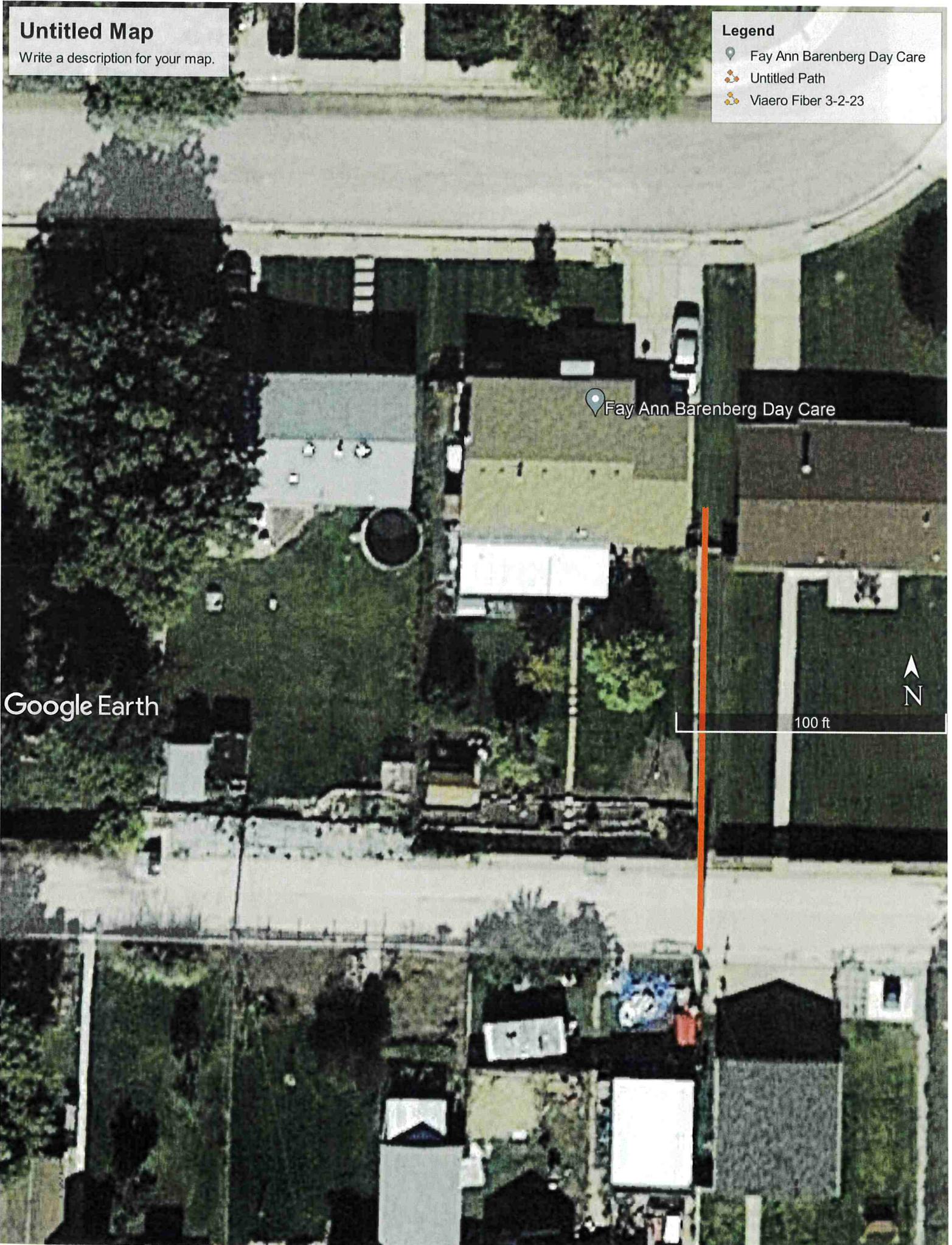
Inspection Notes _____

Untitled Map

Write a description for your map.

Legend

-  Fay Ann Barenberg Day Care
-  Untitled Path
-  Viaero Fiber 3-2-23



 Fay Ann Barenberg Day Care

Google Earth

↑
N

100 ft

**CITY MANAGER'S REPORT
JUNE 19, 2023 CITY COUNCIL MEETING**

ITEM: 3.J.

Ratify the approval of the application for a Special Designated Liquor License submitted by Donna Vlasin, Liquor License #CK-097364, for a wedding reception to be held at The Barn, 1701 US 83, on July 1, 2023 from 4:00 P.M. to 12:00 A.M.

BACKGROUND:

Ms. Vlasin will be catering this event. She is making application to allow her to serve alcohol at this temporary location. Approval of the City Council is required with all applications.

**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

June 15, 2023



Tera Koetter, Assistant City Manager

June 15, 2023



Nathan A. Schneider, City Manager

June 15, 2023

**Special Designated License
Local Recommendation (Form 200)**

Applications must be entered on the portal after local approval – no exceptions
Late applications are non-refundable and will be rejected

Donna Vlasin

Retail Liquor License Name or *Non-Profit Organization (*Must include Form #201 as Page 2)

821 Hwy 61 Imperial

Retail Liquor License Address or Non-Profit Business Address

097364

Retail License Number or Non-Profit Federal ID #

Consecutive Dates only 7/1/23

Event Date(s): _____

Event Start Time(s): 4p _____

Event End Time(s): 12p _____

Alternate Date: _____

Alternate Location Building & Address: _____

Event Building Name: The Barn

Event Street Address/City: 1701 US 83 McCook

Indoor area to be licensed in length & width: 80 x 100

Outdoor area to be licensed in length & width: _____ X _____ (Diagram Form #109 must be attached)

Type of Event: Jones Wedding Estimate # of attendees: 300

Type of alcohol to be served: Beer Wine Distilled Spirits
(If not marked, you will not be able to serve this type of alcohol)

Event Contact Name: Donna Vlasin Event Contact Phone Number: 3088833010

Event Contact Email: holidayfarmsllc@gmail.com

*Signature Authorized Representative: _____ Printed Name Donna Vlasin

I declare that I am the authorized representative of the above named license applicant and that the statements made on this application are true to the best of my knowledge and belief. I also consent to an investigation of my background including all records of every kind including police records. I agree to waive any rights or causes of action against the Nebraska Liquor Control Commission, the Nebraska State Patrol or any other individual releasing said information to the Liquor Control Commission or the Nebraska State Patrol. I further declare that the license applied for will not be used by any other person, group, organization or corporation for profit or not for profit and that the event will be supervised by persons directly responsible to the holder of this Special Designated License.

*Retail licensee – Must be signed by a member listed on permanent license
*Non-Profit Organization – Must be signed by a Corporate Officer

Local Governing Body completes below:

The local governing body for the City/Village of McCook **OR** County of _____ approves
the issuance of a Special Designated License as requested above. (Only one should be written above)

Lea Ann Dool, City Clerk
Local Governing Body Authorized Signature

6/14/23
Date

CITY MANAGER'S REPORT
JUNE 19, 2023 MCCOOK CITY COUNCIL MEETING

ITEM 4.A.

Approve for the City of McCook to receive a \$25,000 donation from the McCook Community Foundation to assist in the establishment of the Rural Workforce Housing Fund.

BACKGROUND:

Recently, the MEDC announced it was awarded \$700,000 from the State of Nebraska for its Rural Workforce Housing Fund program. In order to secure the State funds, local funds were required to match the award. McCook's LB 840 Growth Fund pledged \$145,500. Other entities stepped up to pledge matching funds, to the tune of \$205,000. The total amount available for Rural Workforce Housing is \$1,0510,000. As part of the local match, the McCook Community Foundation has pledged \$25,000 to put toward the Rural Workforce Housing Fund. The McCook Community Foundation cannot donate to the MEDC directly due to the fact the MEDC is a 501(C)(4) entity. The Foundation can donate the \$25,000 to the City of McCook as a passthrough entity. After the funds are passed to the City of McCook, the City of McCook can donate the funds to the MEDC.

The City of McCook appreciates the efforts of the State of Nebraska, MEDC, and our local partners to assist in developing residential properties in McCook.

APPROVALS:



Lea Ann Doak, City Clerk

June 14, 2023



Nate Schneider, City Manager

June 14, 2023

**CITY MANAGER'S REPORT
JUNE 19, 2023 MCCOOK CITY COUNCIL MEETING**

ITEM 4.B.

Approve the contract between the City of McCook and Carrothers Construction Company for construction management services for the new McCook Municipal Pool.

BACKGROUND:

After Carrothers Construction Company was selected to serve as the construction manager for McCook's new municipal pool project in February of 2023, the McCook Pool Committee worked hand in hand with Carrothers and Lamp Rynearson (ie. McCook's swimming pool engineering firm) to finalize McCook's new swimming pool concept. The group worked hard to ensure that the new pool met the needs of our community while staying within budget. Following months of work completing the final design, the Swimming Pool Committee is prepared to recommend its definitive pool concept to the City Council.

Attached to this report is the Construction Manager At-Risk contract for Council approval. The contract spells out the obligations for both the City of McCook and Carrothers Construction Company. The contract establishes the Guaranteed Maximum Price at \$6,399,567. The construction manager's fee is included in the Guaranteed Maximum Price. Carrothers will be required to deliver the final pool project at or below the Guaranteed Maximum Price. If the price exceeds the set Guaranteed Maximum Price, Carrothers will be responsible for the excess amounts. Carrothers warrants that the work will be free from material defects not related to the design or materials utilized for construction. The contract contains a one year promise from Carrothers to correct defective work at its own cost. Per the contract, Carrothers commits to employing the reasonable standard of care associated with construction projects of this nature. In return for Carrothers consideration, the City of McCook promises that it will exercise due diligence with respect to notifying Carrothers of pertinent issues.

With respect to the date of commencement, final drawings and specifications are in the process of completion. Once finalized, said date will be added via an amendment. Our plan is to begin construction in August. A final completion date will also be added via amendment. Based upon the commencement date, it is our plan for the project to be completed toward the end of May 2024/beginning of June 2024.

APPROVALS:

Lea Ann Doak, City Clerk

June 14, 2023



Nate Schneider, City Manager

June 14, 2023



Kyle Potthoff, Public Works Director

June 14, 2023

ConsensusDocs 500

STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER (Where the CM is At-Risk)

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ARTICLE 1 AGREEMENT

This Agreement is made this [____] day of [____] in the year [____], by and between the

OWNER, City of McCook, Nebraska, 505 W. C Street, McCook, NE 69001

and the

CONSTRUCTION MANAGER, Carrothers Construction Company, LLC, 401 West Wea St., Paola, KS
66071

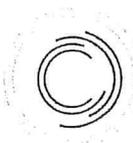
for construction and services in connection with the following

PROJECT New Municipal Pool Facility

Design Professional is Lamp Rynearson Inc., 9001 Stateline Road, Suite 200, Kansas City, MO 64114.

ARTICLE 2 GENERAL PROVISIONS

2.1 PARTIES' RELATIONSHIP Each Party agrees to act on the basis of mutual trust, good faith, and fair dealing, and perform in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.



2.1.1 Construction Manager represents that it is an independent contractor and that it is familiar with the type of Work it is undertaking.

2.1.2 Neither Construction Manager nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement unless authorized in writing by Owner's Representative.

2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest, and (b) promptly disclose to the other Part any conflicts that may arise. Each Party warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers, employees, Subcontractors, Subsubcontractors, Suppliers, or Others to secure preferential treatment.

2.3 DESIGN PROFESSIONAL Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work excluding, however, (a) design services delegated to Construction Manager in accordance with §3.17, and (b) services within the construction means, methods, techniques, sequences, and procedures employed by Construction Manager, its Subcontractors, and Subsubcontractors in connection with their construction operations.

2.4 Owner shall obtain from Design Professional either a license for Construction Manager and Subcontractors to use the design documents prepared by Design Professional or ownership of the copyrights for such design documents, and shall indemnify and hold harmless Construction Manager against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.5 DEFINITIONS

2.5.1 "Agreement" means this ConsensusDocs 500 Standard Agreement and General Conditions Between Owner and Construction Manager, as modified, and exhibits and attachments made part of this agreement upon its execution.

2.5.1.1 The following attached exhibits are a part of this Agreement:

Exhibit A: Schedule of Work with the Final GMP included.

Exhibit B: Insurance Requirements.

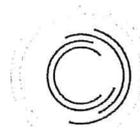
2.5.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.5.3 A "Change Order" is a written order signed by the Parties after execution of this Agreement, indicating changes in the scope of the Work, the GMP and Date of Substantial Completion or Date of Final Completion, including substitutions proposed by Construction Manager and accepted by Owner.

2.5.4 The "Contract Documents" consist of (a) this Agreement; (b) documents listed in §15.1 as existing contract documents; (c) drawings, specifications, addenda issued and acknowledged before execution of this Agreement; (d) information furnished by Owner pursuant to §3.15.4, and (e) Change Orders, Interim Directives, and amendments issued in accordance with this Agreement.

2.5.5 "Contract Time" is the period between the Date of Commencement and the total time authorized to achieve Final Completion.

2.5.6 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.



2.5.7 The "Construction Manager" is the person or entity identified in ARTICLE 1 and includes Construction Manager's Representative.

2.5.8 "Date of Commencement" is as set forth in §6.1.

2.5.9 "Day" means a calendar day.

2.5.10 "Defective Work" is any portion of the Work that that does not conform with the requirements of the Contract Documents.

2.5.11 "Design Professional" means the licensed architect or engineer, and its consultants, retained by Owner to perform design services for the Project.

2.5.12 "Final Completion" occurs on the date when Construction Manager's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Parties.

2.5.13 "Hazardous Material" is any substance or material identified now or in the future as hazardous under the Law, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup.

2.5.14 "Interim Directive" is a written order containing change to the Work directed by Owner pursuant to §9.2 and that is signed by Owner after execution of this Agreement and before Substantial Completion.

2.5.15 "Law" means federal, state, or local laws, ordinances, codes, rules, and regulations applicable to the Work with which Construction Manager must comply that are enacted as of the Agreement date.

2.5.16 "Others" means Owner's other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, subsubcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

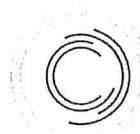
2.5.17 "Overhead" means (a) payroll costs, burden, and other compensation of Construction Manager's employees in Construction Manager's principal and branch offices; (b) general and administrative expenses of Construction Manager's principal and branch offices including charges against Construction Manager for delinquent payments, and costs related to the correction of defective work; and (c) Construction Manager's capital expenses, including interest on capital used for the Work.

2.5.18 "Owner" is the person or entity identified in ARTICLE 1.

2.5.19 The "Owner's Program" is an initial description of Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.5.20 The "Parties" are collectively Owner and Construction Manager.

2.5.21 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which Construction Manager is to perform Work under this Agreement. It may also include construction by Owner or Others.



2.5.22 The "Schedule of the Work" is the document prepared by Construction Manager that specifies the dates on which Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner.

2.5.23 "Subcontractor" is a person or entity retained by Construction Manager as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or Others.

2.5.24 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unapproved disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Construction Manager's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Parties.

2.5.25 A "Subsubcontractor" is a person or entity who has an agreement with a Subcontractor or another subsubcontractor or Supplier to perform a portion of the Subcontractor's Work or supply material or equipment.

2.5.26 A "Supplier" is a person or entity retained by Construction Manager to provide material or equipment for the Work.

2.5.27 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.5.28 "Work" means the construction and administrative and management services necessary or incidental to fulfill Construction Manager's obligations for the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.5.29 "Worksite" means the area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

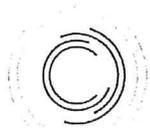
ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 Construction Manager shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents and reasonably inferable from the Contract Documents.

3.1.2 Construction Manager represents that it is an independent contractor and that it is familiar with the type of work required by this Agreement.

3.1.3 Unless the Contract Documents instruct otherwise, Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. When following construction means, methods, techniques, sequences, or procedures instructed by the Contract Documents, Construction Manager



is not liable to Owner for damages resulting from compliance with such instructions, unless (a) Construction Manager recognized and (b) failed to timely report to Owner any error, inconsistency, omission, or unsafe practice that it discovered in such requirements.

3.1.4 Construction Manager shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits.

3.2 CONSTRUCTION PERSONNEL AND SUPERVISION

3.2.1 Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, Construction Manager shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after once giving it, Construction Manager shall name a different superintendent for Owner's review.

3.2.2 Construction Manager shall be responsible to Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of Construction Manager or any of its Subcontractors.

3.2.3 Construction Manager shall permit only fit and skilled persons to perform the Work. Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Construction Manager shall immediately reassign the person on receipt of Owner's written notice to do so.

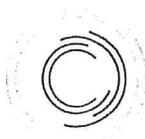
3.2.4 CONSTRUCTION MANAGER'S REPRESENTATIVE Construction Manager's authorized representative is Fritz Caspar and/or Cherie Worden. Construction Manager's Representative shall possess full authority to receive instructions from Owner and to act on those instructions. If Construction Manager changes its representative or their authority, Construction Manager shall immediately notify Owner in writing.

3.3 PRECONSTRUCTION SERVICES The Preconstruction Services under this section are included in Construction Manager's work.

3.3.1 PRELIMINARY EVALUATION Construction Manager shall provide a preliminary evaluation of Owner's Program and report such findings to Owner and Design Professional.

3.3.2 CONSULTATION Construction Manager shall schedule and attend regular meetings with Owner and Design Professional. Construction Manager shall consult with Owner and Design Professional regarding site use and improvements and the selection of materials, building systems, and equipment. Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.

3.3.3 SCHEDULE OF THE WORK When Project requirements have been sufficiently identified, Construction Manager shall prepare a preliminary Schedule of the Work for Design Professional's review and Owner's approval. Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of Owner, Construction Manager, Design Professional, and the requirements of governmental entities. As design proceeds, Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and



specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicate that milestone dates contained in prior Schedules of the Work will not be met, Construction Manager shall notify and make recommendations to Owner. If the Project is to be completed in phases, Construction Manager shall make recommendations to Owner and Design Professional regarding the phased issuance of the drawings and specifications.

3.3.4 ESTIMATES

3.3.4.1 When Owner has sufficiently identified Owner's Program and other Project requirements and Design Professional has prepared other basic design criteria, Construction Manager shall prepare, for the review of Design Professional and approval of Owner, an initial estimate for the Project, utilizing area, volume, or similar conceptual estimating techniques.

3.3.4.2 When schematic or preliminary design documents have been completed by Design Professional and approved by Owner, Construction Manager shall prepare for the review of Design Professional and approval of Owner, a more detailed budget with supporting data. During the preparation of the design development documents or documents of comparable detail, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by The Parties.

3.3.4.3 When design development documents or documents of comparable detail have been completed by Design Professional and approved by Owner, Construction Manager shall prepare a further detailed estimate with supporting data for review by Design Professional and approval by Owner. During the preparation of the drawings and specifications, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Parties.

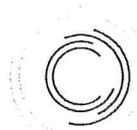
3.3.4.4 If any estimate submitted to Owner exceeds previously approved estimates, Construction Manager shall notify and make recommendations to Owner.

3.3.5 CONSTRUCTION DOCUMENT REVIEW Construction Manager shall review the drawings and specifications in an effort to identify potential constructability problems that could impact Construction Manager's ability to perform the Work in an expeditious and economical manner. Construction Manager shall issue a report to Design Professional and Owner for their review and action as appropriate. In addition, Construction Manager shall promptly report to Owner and Design Professional any errors or omissions which it discovers in the drawings and specifications.

3.3.6 TEMPORARY FACILITIES Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by Construction Manager, its Subcontractors, Subsubcontractors, and Suppliers.

3.3.7 LONG-LEAD-TIME ITEMS Construction Manager shall recommend to Owner and Design Professional a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Schedule of the Work. Construction Manager shall help expedite the delivery of long-lead-time items.

3.3.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to Owner and Design Professional a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work. Owner shall promptly reply in writing to Construction Manager if Owner or Design Professional know of any objection to a subcontractor. Owner may designate specific persons or entities from whom Construction Manager shall solicit bids.



3.3.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION Construction Manager shall consult with Owner regarding equal employment opportunity and affirmative action programs.

3.3.10 CONSULTANTS Construction Manager shall assist Owner in selecting, retaining, and coordinating the professional services of a surveyor, testing laboratories, and special consultants as needed.

3.3.11 PERMITS Construction Manager shall assist Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by Construction Manager.

3.3.12 OTHER PRECONSTRUCTION SERVICES Construction Manager shall provide such other preconstruction services as are agreed upon by the Parties and identified in an attached exhibit to this Agreement.

3.4 GUARANTEED MAXIMUM PRICE (GMP)

3.4.1 The agreed upon GMP amount is Six Million Three Hundred Ninety-Nine Thousand, Five Hundred and Sixty-Seven Dollars (\$6,399,567) and is based on the conceptual design and verbal direction. The final drawings and specifications, which are being prepared, are to match the conceptual design, verbal direction and Schedule of Work (Exhibit "A".) At such time as the Parties agree the drawings and specifications are sufficiently complete, Construction Manager shall prepare and submit to Owner in writing confirmation there are no changes to the GMP. The GMP includes the sum of the estimated cost of the Work, Construction Manager's Fee, the clarifications and assumptions upon which it is based, allowances, and reasonable contingencies, including compensation for Preconstruction Services. Construction Manager does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement.

3.4.2 BASIS OF GUARANTEED MAXIMUM PRICE Construction Manager shall include with the confirmation of the GMP amount a written statement of its basis, which shall include:

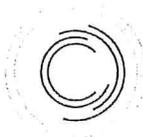
3.4.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.4.2.2 a list of allowances and a statement of their basis;

3.4.2.3 a list of the assumptions and clarifications made by Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.4.2.4 the Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

3.4.3 Construction Manager shall meet with Owner and Design Professional to review the Final GMP. If Owner or Design Professional discovers any inconsistencies, inaccuracies, or omissions in the information presented, they shall promptly notify Construction Manager, who shall make appropriate adjustments to the GMP. Owner shall then give prompt written approval of the Final GMP.



3.4.4 Owner shall cause Design Professional to revise the drawings and specifications to the extent necessary to reflect the clarifications, assumptions, and allowances on which the GMP is based. Revised drawings and specifications shall be furnished to Construction Manager in accordance with the current Schedule of the Work, unless otherwise agreed by Owner, Construction Manager, and Design Professional. Construction Manager shall promptly notify Owner and Design Professional if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.

3.4.5 If the Contract Documents are not complete at the time the GMP proposal is submitted to Owner, Construction Manager shall provide in the GMP for further development of the Contract Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Document.

3.4.6 If this Agreement is executed before establishment of the Guaranteed Maximum Price and its acceptance by Owner, then the GMP and its basis shall be set forth in Amendment 1.

3.4.7 Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Construction Manager's overhead and profit for the allowances shall be included in the GMP, but not in the allowances. The GMP shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

3.4.8 FAILURE TO ACCEPT THE GMP PROPOSAL Unless Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies Construction Manager, the GMP Proposal shall not be effective. If Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, Owner shall have the right to:

3.4.8.1 suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Construction Manager, the GMP Proposal shall be deemed accepted in accordance with §3.4.6;

3.4.8.2 direct Construction Manager to proceed on the basis of reimbursement as provided in ARTICLE 7 and ARTICLE 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

3.4.8.3 terminate the Agreement for convenience in accordance with §12.4. In the absence of a GMP the Parties may establish a Date of Substantial Completion or a Date of Final Completion.

3.4.9 PRE-GMP WORK Before Owner's acceptance of the GMP Proposal, Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as Owner may specifically authorize in writing.

3.5 WORKMANSHIP



3.5.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except as otherwise provided in the Contract Documents.

3.6 COOPERATION WITH WORK OF OWNER AND OTHERS

3.6.1 Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.6.2 If Owner elects to perform work at the Worksite directly or by Others, the Parties shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with Construction Manager and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion may be equitably adjusted in accordance with this Agreement, for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

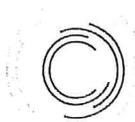
3.6.3 With regard to the work of Owner and Others, Construction Manager shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work of Owner or Others to become defective; (b) afford Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Construction Manager's Work with theirs.

3.6.4 Before proceeding with any portion of the Work affected by the construction or operations of Owner or Others, Construction Manager shall give Owner prompt, written notification of any defects Construction Manager discovers in their work which will prevent the proper execution of the Work. Construction Manager's obligations in this subsection do not create a responsibility for the work of Owner or Others, but are for the purpose of facilitating the Work. If Construction Manager does not notify Owner of defects interfering with the performance of the Work, Construction Manager acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Construction Manager of defects, Owner shall promptly issue an Interim Directive informing Construction Manager what action, if any, Construction Manager shall take with regard to the defects.

3.7 CONTRACT DOCUMENT REVIEW AND ADMINISTRATION

3.7.1 Before commencing the Work, Construction Manager shall examine and compare the drawings and specifications with information furnished by Owner that are considered Contract Documents, relevant field measurements made by Construction Manager, and any visible conditions at the Worksite affecting the Work.

3.7.2 Should Construction Manager discover any errors, omissions, or inconsistencies in the Contract Documents, Construction Manager shall promptly report them to Owner. It is recognized, however, that Construction Manager is not acting in the capacity of a licensed design professional, and that



Construction Manager's examination is to facilitate construction and does not create an affirmative responsibility to detect defects or to ascertain compliance with a Law. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard to the defect.

3.7.3 Construction Manager shall have no liability for errors, omissions, or inconsistencies discovered under this section, unless Construction Manager knowingly fails to report a recognized problem to Owner.

3.7.4 Construction Manager may be entitled to additional costs or time because of clarifications or instructions growing out of Construction Manager's reports described in this §3.7.

3.7.5 Nothing in §3.7 shall relieve Construction Manager of responsibility for its own errors, inconsistencies, or omissions.

3.7.6 COST REPORTING Construction Manager shall maintain complete, accurate, and current records that comply with generally accepted accounting principles and calculate the proper financial management under this Agreement. Construction Manager shall maintain a complete set of all books and records prepared or used by Construction Manager with respect to the Project. Owner shall be afforded access to all of Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. Construction Manager shall preserve all such records for a period of three years after the final payment or longer where required by Law.

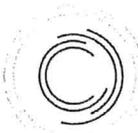
3.7.6.1 Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee their accuracy.

3.8 MATERIALS FURNISHED BY OWNER OR OTHERS

3.8.1 If the Work includes installation of materials or equipment furnished by Owner or Others, it shall be the responsibility of Construction Manager to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Construction Manager shall be the responsibility of Construction Manager and may be deducted from any amounts due or to become due Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to Owner. Following receipt of written notice from Construction Manager of defects, Owner shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard to the defects.

3.9 TESTS AND INSPECTIONS

3.9.1 Construction Manager shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. Construction Manager shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, Owner and Others may timely observe the tests at the normal place of testing. Except as provided in §3.9.3, Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise



agreed to, shall be conducted by an independent testing laboratory or entity retained by Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Construction Manager and promptly delivered to Owner.

3.9.2 If Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, Construction Manager shall arrange for the procedures and give timely notice to Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at Owner's expense except as provided in the subsection below.

3.9.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of Construction Manager, Construction Manager shall be responsible for costs of correction and retesting.

3.10 WARRANTY

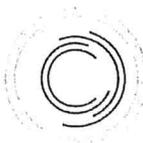
3.10.1 Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At Owner's request, Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Construction Manager's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others, or abuse. Construction Manager's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.10.2 With respect to any portion of Work first performed after Substantial Completion, Construction Manager's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.10.3 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. For such incorporated items, **ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED**

3.10.4 Construction Manager shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in the section immediately below. After that period Construction Manager shall provide reasonable assistance to Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

3.11 CORRECTION OF WORK WITHIN ONE YEAR



3.11.1 If before Substantial Completion or within one year after the date of Substantial Completion of the Work any Defective Work is found, Owner shall promptly notify Construction Manager in writing. Unless Owner provides written acceptance of the condition, Construction Manager shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Construction Manager or give Construction Manager an opportunity to test or correct Defective Work as reasonably requested by Construction Manager, Owner waives Construction Manager's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.11.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of the Work is substantially complete. Correction periods shall not be extended by corrective work performed by Construction Manager.

3.11.3 If Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Construction Manager. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, Construction Manager shall pay the difference to Owner.

3.11.4 Construction Manager's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Construction Manager and allow Construction Manager an opportunity to correct the Work if Construction Manager elects to do so. If Construction Manager elects to correct the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Construction Manager does not elect to correct the Work, Owner may have the Work corrected by itself or Others, and, if Owner intends to seek recovery of those costs from Construction Manager, Owner shall promptly provide Construction Manager with an accounting of the actual correction costs.

3.11.5 If Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, Construction Manager shall be responsible for the cost of correcting the destroyed or damaged property.

3.11.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Construction Manager's other obligations under the Contract Documents.

3.11.7 Before final payment, at Owner's option and with Construction Manager's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.



3.12 CORRECTION OF COVERED WORK

3.12.1 Upon issuance of an Interim Directive, Work that has been covered without a requirement that it be inspected before being covered may be uncovered for Owner's inspection. Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by Owner or Others. If the uncovered Work proves to be defective, Construction Manager shall pay the costs of uncovering and replacement.

3.12.2 If any Work is covered contrary to requirements in the Contract Documents, Owner may issue an Interim Directive to uncover the Work for Owner's observation and recover the Work all at Construction Manager's expense. In this circumstance the Work shall be replaced at Construction Manager's expense and with no adjustment to the Dates of Substantial or Final Completion.

3.13 SAFETY OF PERSONS AND PROPERTY

3.13.1 SAFETY PROGRAMS Construction Manager holds overall responsibility for safety programs. However, such obligation does not relieve Subcontractors of their safety responsibilities and to comply with the Law. Construction Manager shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in performing the Work; and (c) property located at the Worksite and adjacent to work areas, whether or not the property is part of the Worksite.

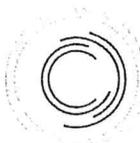
3.13.2 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE Construction Manager shall designate an individual at the Worksite in its employ as its safety representative. Unless otherwise identified by Construction Manager in writing to Owner, Construction Manager's project superintendent shall serve as its safety representative. Construction Manager shall report promptly in writing all recordable accidents and injuries occurring at the Worksite. When Construction Manager is required to file an accident report with a public authority, Construction Manager shall furnish a copy of the report to Owner.

3.13.3 Construction Manager shall provide Owner with copies of all notices required of Construction Manager by the Law. Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by negligent or intentionally wrongful acts or omissions of Construction Manager, or anyone for whose acts Construction Manager may be liable, shall be promptly remedied by Construction Manager.

3.13.4 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Construction Manager's safety program, may require by Interim Directive Construction Manager to stop performance of the Work, take corrective measures satisfactory to Owner, or both. If Construction Manager does not adopt corrective measures, Owner may perform them and deduct their cost from the GMP. Construction Manager agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on Construction Manager's compliance with Owner's reasonable request.

3.14 EMERGENCIES In an emergency affecting the safety of persons or property, Construction Manager shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an



equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined as provided for in ARTICLE 9.

3.15 HAZARDOUS MATERIALS

3.15.1 Construction Manager shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.

3.15.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, Construction Manager shall be entitled to immediately stop Work in the affected area. Construction Manager shall promptly report the condition to Owner, Design Professional, and, if required, the governmental agency with jurisdiction.

3.15.3 Construction Manager shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

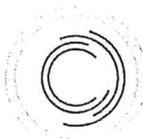
3.15.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Work.

3.15.5 If Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Construction Manager may be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion in accordance with this Agreement.

3.15.6 To the extent permitted by §6.7 and to the extent not caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify, and hold harmless Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.15.7 MATERIALS BROUGHT TO THE WORKSITE

3.15.7.1 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Construction Manager, Subcontractors, Owner or Others, shall be maintained at the Worksite by Construction Manager and made available to Owner, Subcontractors, and Others.



3.15.7.2 Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Construction Manager if such materials or substances are required by the Contract Documents.

3.15.7.3 To the extent permitted under §6.7 and to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, its agents, officers, directors, and employees, Construction Manager shall defend, indemnify, and hold harmless Owner, its agents, officers, directors, and employees, from and against claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Construction Manager

3.15.7.4 §3.15 shall survive the completion of the Work or Agreement termination.

3.16 SUBMITTALS

3.16.1 Construction Manager shall submit to Owner and Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required in accordance with §4.6.1. Construction Manager shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, Construction Manager shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of Owner and Others. Construction Manager's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval by Owner. Neither Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Construction Manager. If the Contract Documents do not contain submittal requirements pertaining to the Work, Construction Manager agrees upon request to submit in a timely fashion to Design Professional and Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Owner.

3.16.2 Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.16.3 Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 9 are followed. Approval does not relieve Construction Manager from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.



3.16.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.

3.16.5 Construction Manager shall prepare and submit to Owner

- Final marked-up as-built drawings;
- Other documentation required by the Contract Documents that specifies how various elements of the Work were actually constructed or installed.

3.17 DESIGN DELEGATION If the Contract Documents require Construction Manager to specify that Construction Manager is responsible for the design of a particular system or component to be incorporated into the Project, then Owner shall specify all required performance and design criteria. Construction Manager shall not be responsible for the adequacy of such performance and design criteria. As required by the Law, Construction Manager shall procure design services and certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of Construction Manager's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by Construction Manager's design professional.

3.18 WORKSITE CONDITIONS

3.18.1 WORKSITE VISIT Construction Manager acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.18.2 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to Owner and Design Professional. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Construction Manager is to proceed. Construction Manager shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. Any change in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the condition, including any dispute about its existence or nature shall be determined as provided in ARTICLE 9.

3.19 PERMITS AND TAXES

3.19.1 Construction Manager shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of Owner pursuant to §4.4, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Construction Manager shall



provide to Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.19.2 Construction Manager shall pay applicable taxes for the Work provided by Construction Manager.

3.19.3 If, in accordance with Owner's direction, Construction Manager claims an exemption for taxes, Owner shall indemnify and hold Construction Manager harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Construction Manager as a result of any such claim.

3.20 CUTTING, FITTING, AND PATCHING

3.20.1 Construction Manager shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

3.20.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Owner. Such approval shall not be unreasonably withheld.

3.21 CLEAN UP

3.21.1 Construction Manager shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.21.2 If Construction Manager fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due to Construction Manager in the next payment period.

3.22 ACCESS TO WORK Construction Manager shall facilitate the access of Owner, its Design Professional, and Others to Work in progress.

3.23 COMPLIANCE WITH LAWS Construction Manager shall comply with all the Law at its own cost. Construction Manager shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by Construction Manager, its employees, subcontractors, suppliers, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if prior approval by appropriate authorities and Owner is received.

3.23.1 CHANGES IN THE LAW The GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services shall be equitably adjusted in accordance with ARTICLE 9 for additional costs or time needed resulting from Laws enacted after the date of this Agreement, including taxes.



3.24 CONFIDENTIALITY Construction Manager shall treat as confidential and not disclose to third persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to Construction Manager or which Construction Manager may acquire in performing the Work. To the extent necessary to perform the Work, Construction Manager's confidentiality obligations do not apply to disclosures to Subcontractors, Subsubcontractors, and Suppliers. Owner shall Treat as Confidential information all of Construction Manager's estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Owner's responsibilities under this Article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencement of the Work and thereafter at the written request of Construction Manager, Owner shall provide Construction Manager with evidence of Project financing. Evidence of such financing shall be a condition precedent to Construction Manager's commencing or continuing the Work. Construction Manager shall be notified before any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Construction Manager the following:

4.3.1 Information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or Law;

4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and

4.3.4 any other information or services requested in writing by Construction Manager which are required for Construction Manager's performance of the Work and under Owner's control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of Construction Manager pursuant to §3.19.1, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving Construction Manager's written request, Owner shall provide Construction Manager with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's real property interests in the Worksite and the record legal title.



4.6 CONTRACT DOCUMENTS Unless otherwise specified, Owner shall provide a reasonable number of hard copies of the Contract Documents to Construction Manager without cost.

4.6.1 ELECTRONIC DOCUMENTS If Owner requires that Owner, Design Professional, and Construction Manager exchange documents and data in electronic or digital form, before any such exchange, Owner, Design Professional, and Construction Manager shall agree on and follow a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addendum, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed upon by the Parties in writing, each Party shall each bear its own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE Owner's Representative is Nate Schneider, City Manager. Owner's Representative shall be fully acquainted with the Project, and shall have authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. If Owner changes its Representative or the Representative's authority, Owner shall immediately notify Construction Manager in writing.

4.8 OWNER'S CUTTING AND PATCHING Cutting, patching, or altering the Work by Owner or Others shall be done with the prior written approval of Construction Manager, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between Construction Manager and Others with regard to respective responsibilities for cleanup at the Worksite, Owner may implement appropriate cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of Owner or Others and not to Construction Manager, Owner may either (a) promptly remedy the damage or loss and assume affected warranty responsibilities, (b) accept the damage or loss, or (c) issue an Interim Directive or Change Order to remedy the damage or loss. If Construction Manager incurs costs or is delayed due to such loss or damage, Construction Manager may seek an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services under this Agreement.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS Subcontracts shall be issued on a lump sum basis unless Owner has given prior written approval of a different method of payment to the Subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK



5.2.1 Promptly after the execution of this Agreement, Construction Manager shall provide Owner, and, if directed, Design Professional with a written list of the proposed subcontractors and significant Suppliers. If Owner has a reasonable objection to any proposed subcontractor or material supplier, Owner shall notify Construction Manager in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If Owner has reasonably and promptly objected, Construction Manager shall not contract with the proposed Subcontractor or Supplier, and Construction Manager shall propose another acceptable Subcontractor or Supplier to Owner. An appropriate Change Order shall reflect any increase or decrease in the GMP or Dates of Substantial or Final Completion because of the substitution.

5.3 **BINDING OF SUBCONTRACTORS AND SUPPLIERS** Construction Manager agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its subcontractors and significant suppliers) to the Contract Documents as they apply to the Subcontractor's or Supplier's applicable provisions to that portion of the Work.

5.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

5.4.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by Construction Manager to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to §12.4 or §12.5; (b) Owner accepts such assignment after termination by notifying the Construction Manager and Subcontractor or Construction Manager and Supplier in writing; and (c) Owner assumes all rights and obligations of Construction Manager pursuant to each subcontract or supply agreement.

5.4.2 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

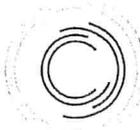
ARTICLE 6 TIME

6.1 **DATE OF COMMENCEMENT** The Date of Commencement is To Be Determined pending completion of the final drawings and specifications.

6.1.1 **SUBSTANTIAL/FINAL COMPLETION** Unless the Parties agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in Amendment 1 to this Agreement subject to adjustments as provided for in the Contract Documents. Owner and Construction Manager may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment 1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment 1. The dates for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence with regard to the obligations of the Contract Documents.

6.1.3 Unless instructed by Owner in writing, Construction Manager shall not knowingly commence the Work before the effective date of Construction Manager's required insurance.



6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting its first application for payment, Construction Manager shall submit to Owner and, if directed, Design Professional a Schedule of the Work showing the dates on which Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Owner. Except as otherwise directed by Owner, Construction Manager shall comply with the approved Schedule of the Work or Construction Manager. Unless otherwise agreed, the Schedule of the Work shall be formatted in a detailed precedence-style critical path method that (a) provides a graphic representation of all activities and events, including float values that will affect the critical path of the Work, and (b) identifies dates that are critical to ensure timely and orderly completion of the Work. Construction Manager shall update the Schedule of the Work on a monthly basis or as mutually agreed by the Parties.

6.2.2 Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. Owner may require Construction Manager to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or Others. If Construction Manager consequently incurs costs or is delayed, the GMP or the Dates of Substantial or Final Completion, or both, Construction Manager may seek equitable adjustment under ARTICLE 9.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Construction Manager, Construction Manager shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. Examples of causes beyond the control of Construction Manager include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Construction Manager; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Construction Manager shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 9.

6.3.2 In addition, if Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Construction Manager shall be entitled to an equitable adjustment in the GMP subject to §6.7.

6.3.3 NOTICE OF DELAYS If delays to the Work are encountered for any reason, Construction Manager shall provide prompt written notice to Owner of the cause of such delays after Construction Manager first recognizes the delay. The Parties each agree to take reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If Construction Manager requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in §6.3, Construction Manager shall give Owner written notice of the claim in accordance with §9.4. If Construction Manager causes delay in the completion of the Work, Owner shall be entitled to recover its



additional costs subject to §6.7. Owner shall process any such claim against Construction Manager in accordance with ARTICLE 9.

6.5 MONITORING PROGRESS AND COSTS Following acceptance by Owner of the GMP, Construction Manager shall establish a process for monitoring actual costs against the GMP and actual progress against the Schedule of Work. Construction Manager will provide written reports to Owner at intervals as agreed to by the Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

6.6 LIQUIDATED DAMAGES

6.6.1 SUBSTANTIAL COMPLETION Liquidated damages based on the Substantial Completion date shall apply.

6.6.1.1 Owner will suffer damages which are difficult to determine and accurately specify if the Substantial Completion date, which may be amended by Change Order, is not attained. Construction Manager shall pay Owner Five Hundred dollars (\$500) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Substantial Completion date. These liquidated damages are in lieu of all liability for all extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion date.

6.6.2 FINAL COMPLETION Liquidated damages based on the Final Completion date shall apply.

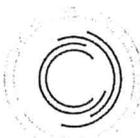
6.6.2.1 Owner will suffer damages which are difficult to determine and accurately specify if the Final Completion date, as may be amended by subsequent Change Order, is not attained. Construction Manager shall pay Owner Five Hundred dollars (\$500) as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Final Completion date. These liquidated damages are in lieu of all liability for any extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining Final Completion date.

6.6.3 Other applicable liquidated damages shall be included as Agreement exhibit.

6.7 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in §6.6 and excluding losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. Construction Manager agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination.

6.7.1 The Parties shall each require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 COMPENSATION AND GUARANTEED MAXIMUM PRICE



7.1 Owner shall compensate Construction Manager for Work performed on the following basis:

7.1.1 the Cost of the Work as allowed in ARTICLE 8; and

7.1.2 Construction Manager's Fee paid in proportion to the Work performed subject to adjustment as provided in §7.4.

7.2 The compensation to be paid shall be limited to the GMP established in Amendment 1, as the GMP may be adjusted under ARTICLE 9.

7.2.1 Payment for Work performed shall be as set forth in ARTICLE 10.

7.3 CONSTRUCTION MANAGER'S FEE Construction Manager's Fee shall be as follows, subject to adjustment as provided in §7.4: 7%.

7.4 FEE ADJUSTMENTS:

7.4.1 Changes in the Work as provided in ARTICLE 9, shall adjust Construction Manager's Fee as follows: 7%.

7.4.2 except as provided for in §6.36.3, delays in the Work not caused by Construction Manager shall adjust Construction Manager's Fee to compensate for increased expenses as provided for in ARTICLE 9; and

7.4.3 managing the replacement of an insured or uninsured loss shall increase Construction Manager's fee in the same proportion that Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

7.5 PRECONSTRUCTION SERVICES COMPENSATION Construction Manager shall be compensated for Preconstruction Services as follows: Thirty five thousand dollars, \$35,000 which is included in the GMP. In the event the project is cancelled, the compensation for Preconstruction Services is to be paid to the Construction Manager.

ARTICLE 8 COST OF THE WORK

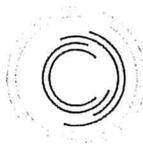
8.1 Owner agrees to pay Construction Manager for the Cost of the Work as defined in this article. This payment shall be in addition to Construction Manager's Fee stipulated in §7.3.

8.2 COST ITEMS

8.2.1 Labor wages directly employed by Construction Manager in performing of the Work.

8.2.2 Salaries of Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office as mutually agreed by the Parties in writing.

8.2.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Construction Manager's standard personnel policy,



insofar as such costs are paid to employees of Construction Manager who are included in the Cost of the Work pursuant to §8.2.1 and §8.2.2.

8.2.4 Reasonable transportation, travel, hotel, and moving expenses of Construction Manager's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling.

8.2.6 Payments made by Construction Manager to Subcontractors for work performed under this Agreement.

8.2.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of Construction Manager.

8.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Construction Manager or others, including installation, repair, and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Construction Manager or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

8.2.9 Cost of the premiums for all insurance and surety bonds which Construction Manager is required to procure or deems necessary, and approved by Owner including any additional premium incurred as a result of any increase in the GMP.

8.2.10 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Construction Manager is liable.

8.2.11 Permits, fees, licenses, tests, royalties.

8.2.12 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Construction Manager's negligence.

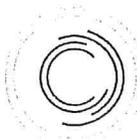
8.2.13 Costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

8.2.14 Water, power, and fuel costs necessary for the Work.

8.2.15 Cost of removal of all nonhazardous substances, debris, and waste materials.

8.2.16 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.17 Legal, mediation, and arbitration fees and costs, other than those arising from disputes between Owner and Construction Manager, reasonably and properly resulting from Construction Manager's performance of the Work.



8.2.18 Costs directly incurred in the performance of the Work or in connection with the Project, and not included in Construction Manager's Fee as set forth in ARTICLE 7, which are reasonably inferable from the Contract Documents.

8.3 DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Construction Manager, all cash discounts shall accrue to Construction Manager. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directive.

9.1 CHANGE ORDER

9.1.1 Construction Manager may request or Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this article.

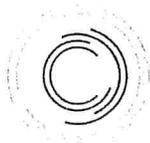
9.1.2 For changes in the Work, the Parties shall negotiate an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

9.1.3 NO OBLIGATION TO PERFORM Construction Manager shall not be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion without a Change Order or Interim Directive.

9.2 INTERIM DIRECTIVES

9.2.1 Owner may issue an Interim Directive directing a change in the Work before reaching agreement with Construction Manager on the adjustment, if any, in the GMP, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, or directing Construction Manager to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Construction Manager shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.2.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of an Interim Directive. As the directed Work is performed, Construction Manager shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directive. If there is a dispute as to the cost to Owner, Owner shall pay Construction Manager fifty percent (50%) of its actual (incurred or committed) cost to perform the Work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 13. Owner's payment does not prejudice its right to



be reimbursed should it be determined that the disputed work was within the scope of the Work. Construction Manager's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

9.2.3 When the Parties agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by an Interim Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives on which the Parties have reached agreement on GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

9.3 DETERMINATION OF COST

9.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

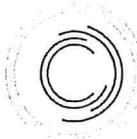
9.3.1.1 a mutually accepted, itemized lump sum

9.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to either Party, such unit prices shall be equitably adjusted.

9.3.3 If the Parties disagree as to whether work required by Owner is within the scope of the Work, Construction Manager shall furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

9.4 CHANGES NOTICE Except as provided in §6.3.2 and §6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, Construction Manager shall give Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after Construction Manager first recognizes the condition giving rise to the claim, whichever is later. Owner's failure to so respond shall be deemed a denial of Construction Manager's claim. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, Construction Manager shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. No later than fourteen (14) Days after receipt, Owner shall respond in writing denying or approving the claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.

9.5 INCIDENTAL CHANGES Owner may direct Construction Manager to perform incidental changes in the Work, upon concurrence with Construction Manager that such changes do not involve adjustments in the Contract Price or the Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing a written order to Construction Manager. Such written notice shall be carried out promptly and is binding on the Parties.



ARTICLE 10 PAYMENT

10.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of this Agreement, Construction Manager shall prepare and submit to Owner and Design Professional a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the GMP.

10.2 PROGRESS PAYMENTS

10.2.1 APPLICATIONS Construction Manager shall submit to Owner and, if directed, Design Professional a monthly application for payment no later than the Twenty Fifth (25th) Day of the calendar month for the preceding calendar month. Construction Manager's applications for payment shall be itemized and supported by Construction Manager's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directives. Owner shall pay the amount otherwise due on any payment application, as certified by Design Professional, no later than fifteen (15) Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §10.2.4.

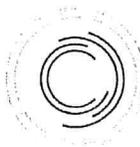
10.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by Construction Manager of bills of sale and proof of required insurance, or such other documentation satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the Worksite.

10.2.3 LIEN WAIVERS AND LIENS

10.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by Owner, as a prerequisite for payment, Construction Manager shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its Subcontractors and Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall Construction Manager be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.

10.2.3.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required by this article, Construction Manager shall, within thirty (30) Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If Construction Manager fails to take such action on a lien, Owner may cause the lien to be removed at Construction Manager's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 13 relating to the subject matter of the lien.

10.2.4 RETAINAGE From each progress payment made before Substantial Completion, Owner may retain Ten percent (10%), of the amount otherwise due after deduction of any amounts as provided in §10.3, provided such percentage doesn't exceed the Law. If Owner chooses to use this retainage provision:



10.2.4.1 after the Work is fifty percent (50%) complete, Owner shall withhold no additional retainage and shall pay Construction Manager the full amount due on account of subsequent progress payments;

10.2.4.2 Owner may, in its sole discretion, reduce the amount to be retained at any time;

10.2.4.3 Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which Owner has accepted. In lieu of retainage, Construction Manager may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

10.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Construction Manager is responsible under this Agreement:

10.3.1 Construction Manager's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 except as accepted by the insurer providing builder's risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by Construction Manager to Owner or others to whom Owner may be liable;

10.3.3 Construction Manager's failure to properly pay Subcontractors and Suppliers following receipt of such payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to Construction Manager in accordance with this Agreement;

10.3.4 rejected or Defective Work not corrected in a timely fashion;

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion;

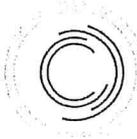
10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.3.7 uninsured third-party claims involving Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Construction Manager furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Construction Manager, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Construction Manager in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

10.5 PAYMENT DELAY If for any reason not the fault of Construction Manager Construction Manager does not receive a progress payment from Owner within seven (7) Days after the time such payment is



due, then Construction Manager, upon giving seven (7) Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Construction Manager has been received, including interest for late payment. If Construction Manager incurs costs or is delayed resulting from shutdown, delay, and start-up, Construction Manager may seek an equitable adjustment in the GMP and Dates of Substantial or Final Completion may be equitably adjusted by a Change Order in accordance with ARTICLE 9.

10.6 SUBSTANTIAL COMPLETION

10.6.1 Construction Manager shall notify Owner and, if directed, Design Professional when it considers Substantial Completion of the Work or a designated portion to have been achieved. Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by Owner without excessive interference in completing any remaining unfinished Work. If Owner determines that the Work or designated portion has not reached Substantial Completion, Owner, with the assistance of its Design Professional, shall promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use. Construction Manager shall promptly complete all items on the list.

10.6.2 When Substantial Completion of the Work or a designated portion is achieved, Construction Manager shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of each Party for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Construction Manager to Owner and, if directed, to Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

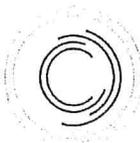
10.6.4 Upon Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to Construction Manager the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Parties as necessary to achieve Final Completion. Uncompleted items shall be completed by Construction Manager in a mutually agreed upon timeframe. Owner shall pay Construction Manager monthly the amount retained for unfinished items as each item is completed.

10.7 PARTIAL OCCUPANCY OR USE

10.7.1 Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. Construction Manager shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy.

10.8 FINAL COMPLETION AND FINAL PAYMENT

10.8.1 Upon notification from Construction Manager that the Work is complete and ready for final inspection and acceptance, Owner, with the assistance of its Design Professional shall promptly



conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

10.8.2 When the Work is complete, Construction Manager shall prepare for Owner's written acceptance a final application for payment stating that to the best of Construction Manager's knowledge, and based on Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP shall be made to Construction Manager within twenty (20) Days after Construction Manager has submitted an application for final payment, including submissions required under §10.8.4, and a Certificate of Final Completion has been executed by the Parties.

10.8.4 Final payment shall be due on Construction Manager's submission of the following to Owner:

10.8.4.1 an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;

10.8.4.2 as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

10.8.4.3 release of any liens, conditioned on final payment being received;

10.8.4.4 consent of any surety; and

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by Construction Manager or its Subcontractors at the Worksite.

10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of Construction Manager, Owner shall pay the balance due for any portion of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount before payment, Construction Manager shall submit to Owner and, if directed, Design Professional the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by this §10.8.

10.8.6 OWNER RESERVATION OF CLAIMS Owner's claims not reserved in writing with final payment are waived, except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

10.8.7 ACCEPTANCE OF FINAL PAYMENT Unless Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

10.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY



11.1.1 To the fullest extent permitted by law, Construction Manager shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees, Design Professional, and Others (the "Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, Subcontractors, Suppliers, Subsubcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Construction Manager shall be entitled to reimbursement of any defense costs paid above Construction Manager's percentage of liability for the underlying claim to the extent provided for by §11.1.2.

11.1.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Construction Manager, its officers, directors, members, consultants, agents, and employees, Subcontractors, Suppliers, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, Design Professional, or Others, but only to the extent caused by the negligent or intentionally wrongful acts or omissions by Owner, Design Professional, or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by §11.1.1.

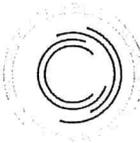
11.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Construction Manager, anyone directly or indirectly employed by Construction Manager, or anyone for whose acts Construction Manager may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Construction Manager under workers' compensation acts, disability benefit acts, or other employment benefit acts.

11.2 INSURANCE

11.2.1 Before starting the Work and as a condition precedent to payment, Construction Manager shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance ("CGL"). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Construction Manager shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Construction Manager's Employers' Liability, Business Automobile Liability and CGL policies shall be written with at least the following limits of liability: See Exhibit "B"

11.2.2 Employers' Liability, Business Automobile Liability, and CGL coverages required under §11.2.1 may be provided by a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies.

11.2.3 Construction Manager shall maintain in effect all insurance coverage required under §11.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Construction Manager, or terminate this Agreement.



11.2.4 To the extent commercially available to Construction Manager from its current insurance company, insurance policies required under §11.2.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) thirty (30) Days before coverage is nonrenewed by the insurance company and (b) within ten (10) Business Days after cancellation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Construction Manager shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Construction Manager shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise directed in writing by Owner, before starting the Work, Construction Manager shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also (a) name Construction Manager, Subcontractors, Subsubcontractors, and Design Professional as named insureds; (b) be written in such form to cover all risks of physical loss except those specifically excluded by the policy; and (c) insure at least against and not exclude:

11.3.1.1 the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Construction Manager) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse, however caused;

11.3.1.2 damage resulting from defective design, workmanship, or material;

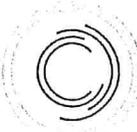
11.3.1.3 coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant or structures. Coverage shall be to the extent loss or damage arises out of Construction Manager's activities or operations at the Project;

11.3.1.4 equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

11.3.1.5 testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

11.3.1.6 physical loss resulting from Terrorism.

11.3.2 The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Owner shall provide a copy of the property policy or policies obtained in compliance with this §11.3.



11.3.3 If Owner elects to purchase the property insurance required by this Agreement, including all of the coverages and deductibles for the same durations specified in this §11.3, Owner shall give written notice to Construction Manager before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with this §11.3. Owner may then provide insurance to protect its interests and the interests of the Construction Manager, Subcontractors, Suppliers, and Subsubcontractors. The cost of this insurance shall be paid by Owner in a Change Order. If Owner gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Owner shall be responsible for costs reasonably attributed to such failure.

11.3.4 The Parties each waive all rights against each other and their respective employees, agents, contractors, subcontractors, suppliers, subsubcontractors, and design professionals for damages caused by risks covered by the property insurance provided under §11.3.1, except such rights as they may have to the proceeds of the insurance. To the extent of the limits of Construction Manager's Commercial General Liability Insurance specified in Exhibit "B" Construction Manager shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Construction Manager, Subcontractor, Supplier, Subsubcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

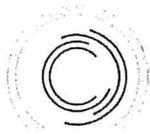
11.3.5 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss from damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to §11.3.1 until the Date of Final Completion.

11.3.6 POLLUTION LIABILITY INSURANCE Construction Manager is not required to maintain pollution liability insurance. Unless indicated affirmatively, the obligation to procure such insurance is not triggered.

11.4 ADDITIONAL GENERAL LIABILITY COVERAGE Owner shall not require Construction Manager to purchase and maintain additional liability coverage. If required, Construction Manager shall provide: As noted in Exhibit "B"

11.4.1 Additional Insured. Owner shall be named as an additional Insured on Construction Manager's CGL specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Construction Manager, or those acting on Construction Manager's behalf, in the performance of Construction Manager's work for Owner at the Worksite. The insurance of the Construction Manager and its Subcontractors (both primary and excess) shall be primary to any insurance available to the Additional Insureds. Any insurance available to the Additional Insureds shall be excess and non-contributory.

Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by Owner directly or the costs may be reimbursed by Owner to Construction Manager by increasing the Contract Price to correspond to the



actual cost required to purchase and maintain the coverage. Before commencing the Work, Construction Manager shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable.

11.4.2 ROYALTIES, PATENTS, AND COPYRIGHTS Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Construction Manager and incorporated in the Work. Construction Manager shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to defend, indemnify, and hold Construction Manager harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner or Design Professional.

11.5 BONDS Performance and Payment Bonds are required of Construction Manager. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without a reasonable cause. The penal sum of the bonds shall each be one hundred percent (100%) of the GMP. Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time.

ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

12.1 SUSPENSION BY OWNER FOR CONVENIENCE

12.1.1 OWNER SUSPENSION Should Owner order Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for the convenience of Owner and not due to any act or omission of Construction Manager or any person or entity for whose acts or omissions Construction Manager may be liable, then Construction Manager shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by Owner.

12.1.2 Any action taken by Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

12.2 NOTICE TO CURE A DEFAULT If Construction Manager persistently fails to supply enough properly qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards a Law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Construction Manager may be deemed in default.

12.2.1 After receiving Owner's written notice, if Construction Manager fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Owner shall give Construction Manager a second notice to correct the default within three (3) Business Days after receipt. The second notice to Construction Manager, and if applicable, the surety, may include, that Owner intends to terminate this Agreement for default absent appropriate corrective action.

12.2.2 If Construction Manager fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing reasonable



means; (c) withhold payment due to Construction Manager; and (d) as Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Construction Manager, the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

12.2.3 In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of such default without first giving written notice to Construction Manager, but shall give Construction Manager prompt written notice.

12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

12.3.1 Upon expiration of the second notice to cure pursuant to §12.2, and absent appropriate corrective action, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner under §12.2. Termination for default is in addition to any other remedies available to Owner under §12.2. If Owner's costs arising out of Construction Manager's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid GMP, Construction Manager shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid GMP, Owner shall pay the difference to Construction Manager. If Owner exercises its rights under this section, upon the request of Construction Manager, Owner shall furnish to Construction Manager a detailed accounting of the costs incurred by Owner.

12.3.2 If Owner or Others perform work under this section, Owner shall have the right to take and use any materials and supplies for which Owner has paid and located at the Worksite for the purpose of completing any remaining Work. Owner or Others performing work under §12.3 shall also have the right to use construction tools and equipment belonging to the Construction Manager or its subcontractors and located on the Worksite for the purpose of completing the remaining Work but only after Construction Manager's written consent which shall not be unreasonably withheld. If Owner uses Construction Manager's construction tools and equipment in accordance with this subsection, then Owner shall indemnify and hold harmless Construction Manager and applicable Subcontractors and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with Owner's use of Construction Manager's or applicable subcontractor's construction tools and equipment. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to Construction Manager in substantially the same condition as when they were taken, reasonable wear and tear excepted.

12.3.3 If Construction Manager files a petition under the Bankruptcy Code, this Agreement shall terminate if: (a) Construction Manager or Construction Manager's trustee rejects the Agreement; (b) a default occurred and Construction Manager is unable to give adequate assurance of required performance; or (c) Construction Manager is otherwise unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.3.4 Owner shall make reasonable efforts to mitigate damages arising from Construction Manager's default, and shall promptly invoice Construction Manager for all amounts due pursuant to §12.2 and §12.3.

12.4 TERMINATION BY OWNER FOR CONVENIENCE

12.4.1 Upon Construction Manager's receipt of written notice from Owner, Owner may, without cause, terminate this Agreement. Construction Manager shall immediately stop the Work, follow Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.



12.4.2 If Owner terminates this Agreement for convenience, Construction Manager shall be paid (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs incurred resulting from termination, but not including Overhead or profit on Work not performed; and (c) reasonable attorneys' fees and costs related to termination and (d) if no work has begun, Preconstruction Services.

12.4.3 If Owner terminates this Agreement, Construction Manager shall:

12.4.3.1 execute and deliver to Owner all papers and take all action required to assign, transfer, and vest in Owner the rights of Construction Manager to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents;

12.4.3.2 exert reasonable effort to reduce to a minimum Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

12.4.3.3 cancel any subcontracts, orders, and commitments as Owner directs; and

12.4.3.4 sell at prices approved by Owner any materials, supplies, and equipment as Owner directs, with all proceeds paid or credited to Owner.

12.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE

12.5.1 Seven (7) Days after Owner's receipt of written notice from Construction Manager, Construction Manager may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Construction Manager for any of the following reasons:

12.5.1.1 under court order or order of other governmental authorities having jurisdiction;

12.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Construction Manager, materials are not available; or

12.5.1.3 suspension by Owner for convenience pursuant to §12.1.

12.5.2 In addition, upon seven (7) Days' written notice to Owner and an opportunity to cure within three (3) Days, Construction Manager may terminate this Agreement if Owner:

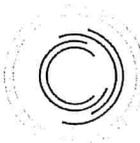
12.5.2.1 fails to furnish reasonable evidence pursuant to §4.2 that sufficient funds are available and committed for Project financing, or

12.5.2.2 assigns this Agreement over Construction Manager's reasonable objection, or

12.5.2.3 fails to pay Construction Manager in accordance with this Agreement and Construction Manager has stopped Work in compliance with §10.5, or

12.5.2.4 otherwise materially breaches this Agreement.

12.5.3 Upon termination by Construction Manager in accordance with this section, Construction Manager shall be entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable Overhead and profit on Work not performed.



12.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Construction Manager shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If Construction Manager continues to perform, Owner shall continue to make payments in accordance with this Agreement.

13.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

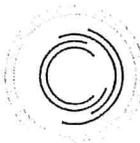
13.3 MITIGATION If the Parties select one of the dispute mitigation procedures provided in this section, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in §13.5. The Parties agree that the dispute mitigation procedure shall be:

Project Neutral ("Neutral")

13.3.1 MITIGATION PROCEDURES As soon as practicable after the execution of this Agreement, the Neutral shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of responsibilities, including requirements for nonbinding findings. Costs and expenses of the Neutral shall be shared equally by the Parties. A Neutral shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral to address matters in dispute between the Parties promptly and knowledgeably.

13.3.2 If the matter remains unresolved following the issuance of the nonbinding findings or such findings are not made within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in §13.5.

13.4 MEDIATION If direct discussions pursuant to §13.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under §13.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be



convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

13.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Arbitration using:

the current Construction Industry Arbitration Rules of the AAA and administered by the AAA;

Unless the Parties mutually agree otherwise in writing, if arbitration is selected as the binding dispute resolution procedure and this Agreement does not specify the arbitration rules to be utilized, then the arbitration shall be conducted using the current Construction Industry Arbitration Rules of the AAA and the arbitration shall be administered by the AAA.

13.6 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

13.7 VENUE To the extent permitted by Law, the venue of any binding dispute resolution procedure shall be the location of the Project.

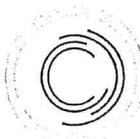
13.8 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

13.9 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Construction Manager which Construction Manager may have under lien laws.

ARTICLE 14 MISCELLANEOUS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party.

14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign their interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Construction Manager or to an Institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Construction Manager than this Agreement. If such assignment occurs, Construction Manager shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If



either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW The law in effect at the location of the Project shall govern this Agreement.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.5 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

14.6 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any of its rights, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

14.7 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.8 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

ARTICLE 15 CONTRACT DOCUMENTS

15.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

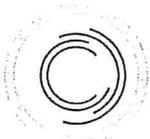
- (a) Drawings: TBD
- (b) Specifications: TBD
- (c) Addenda: TBD
- (d) Owner Provided Information: TBD
- (e) Other: Construction Manager Scope of Work and GMP (Exhibit "A") and Insurance Requirements (Exhibit "B").

15.2 INTERPRETATION OF CONTRACT DOCUMENTS

15.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, Construction Manager shall perform the Work as though fully described on both.

15.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, Construction Manager shall immediately submit the matter to Owner for clarification. Subject to an equitable adjustment in the GMP, Dates of Substantial or Final Completion pursuant to ARTICLE 9 or a dispute mitigation and resolution, Owner's clarifications are final and binding.

15.2.3 Where figures are given, they shall be preferred to scaled dimensions.



15.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

15.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to §15.2.2 the drawings, specifications, and addenda issued before the execution of this Agreement; (d) approved submittals; (e) information furnished by Owner pursuant to §3.15.4 or designated as a Contract Document in §15.1; (f) other Contract Documents listed in this Agreement.

OWNER: City of McCook, Nebraska

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

CONSTRUCT MANAGER: Carrothers Construction Co., LLC

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

END OF DOCUMENT.

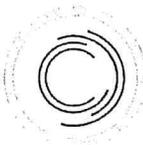


EXHIBIT “A”

Schedule of Work and GMP

McCook Nebraska Swimming Pool

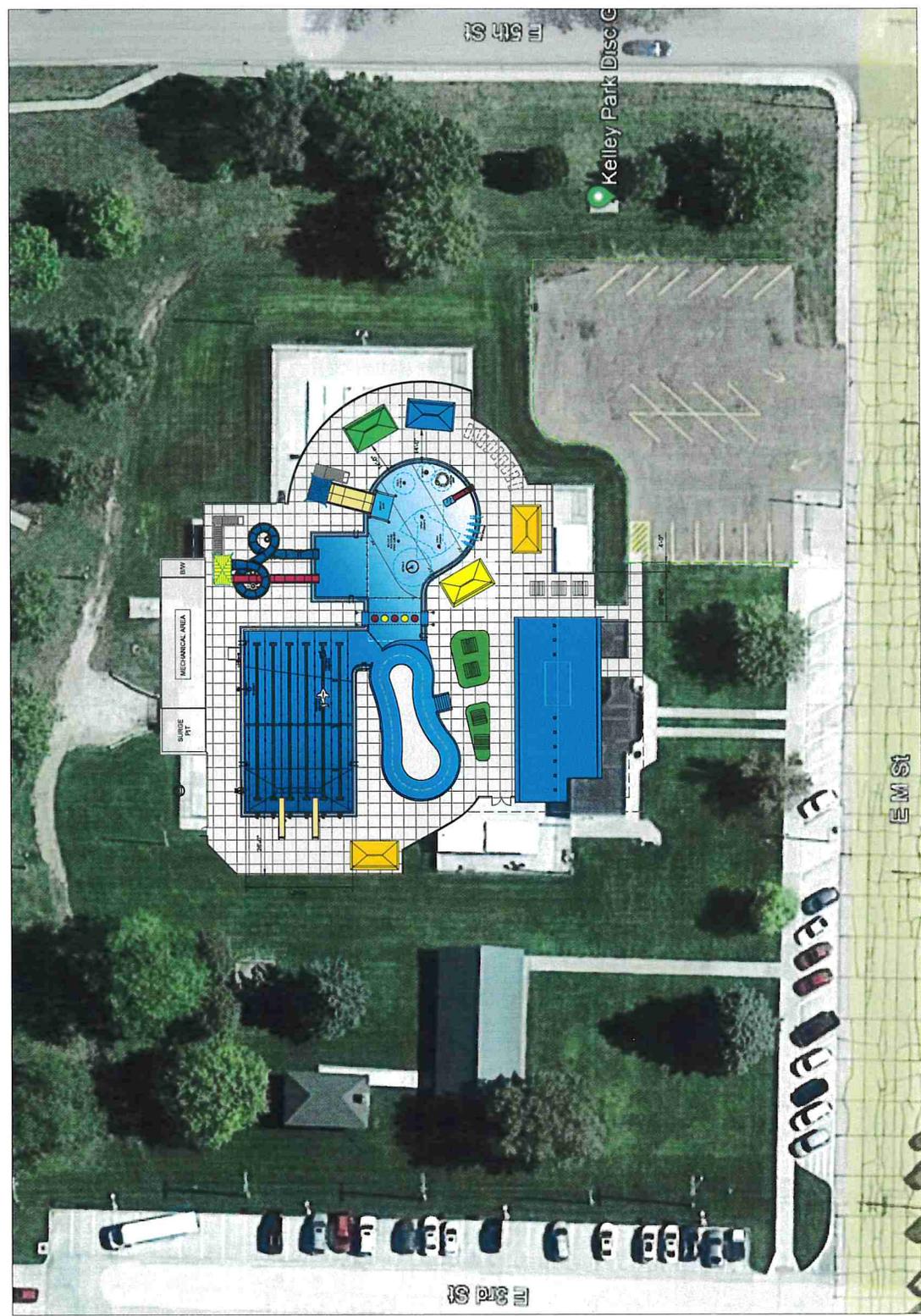
- The GMP as agreed to on May 31st, 2023, of \$6,399,567 for work as discussed, as conceptualized by Lamp Rynearson and as shown in the rendering LAYOUT “VE-3”, final plans and specifications pending and to be incorporated into Amendment 1.

- The GMP includes the following verbal description of the work:
 - Demolition of existing facility
 - Pool construction consisting of:
 - Six lane lap area
 - 139 foot by eight foot lazy river
 - Zero entry area with sprays
 - Slide plunge area
 - Water walk area
 - Slide complex consisting of
 - Open flume water slide
 - Speed slide
 - Family slide
 - Tot slide
 - Water basketball goal
 - Five shade structures
 - Bathhouse/Concessions building
 - Pool equipment building
 - Pool water quality equipment
 - Pool heater
 - Deck and walks
 - Allowances including:
 - Testing \$ 35,000
 - Owner Contingency \$ 20,000
 - Cabinetry/Furniture \$ 15,000
 - Sound System \$ 30,000
 - Infrastructure for future overhead lighting
 - Parking lot improvements are to be by Owner
 - Seeding is to be by Owner
 - GMP is based upon workable soils as Geotechnical Report is pending. Excessive earthwork, rock excavation, high ground water, soils requiring treatments are not included in the GMP.

- The Date of Substantial Completion is TBD and will be stated in Contract Amendment 1

- The Date of Final Completion is TBD and will be stated in Contract Amendment 1

EXHIBIT "A"



1. McCook, NE - POOL SITE LAYOUT - VE-3' (WITH WATERWALK & PLAY FEATURES)
 1" = 20'-0"
 WATER SURFACE = 7100 SF

LAMP RYNEARSON
 500 S PINE RD, STE. 200
 KANSAS CITY, MO 64114
 816.234.1100
 Lamp@rynearson.com

McCOOK, NEBRASKA SWIMMING POOL
 500 E. M STREET, McCOOK, NE 69001

ANDREW E. SMITH
 PROFESSIONAL ENGINEER

McCOOK, NEBRASKA SWIMMING POOL
 500 E. M STREET, McCOOK, NE 69001

AQUATICS SITE PLAN - LAYOUT 'VE-3'

REVISIONS
 NO. DATE DESCRIPTION

DESIGNER/DRAWER
 JAM
 DATE
 06.07.2023

PROJECT NUMBER
 2023000001

TITLE AND PAGE
 LAYOUT VE-3'

SHEET
 LAYOUT VE-3'

**CITY MANAGER'S REPORT
JUNE 19, 2023 MCCOOK CITY COUNCIL MEETING**

4C. ITEM NO. Approve on third and final reading, Ordinance No. 2023-3067 approving a zoning change from Residential Medium Density District (RM) to Business Commercial District (BC) for the following described property: Replatted Lot Three, Block Six, Second High School Addition to the City of McCook, Red Willow County, Nebraska.

BACKGROUND:

Please refer to the attached City Manager's Report for background to this agenda item. Staff has received no feedback from the public regarding this agenda item following the June 5, 2023 McCook City Council meeting.

APPROVALS:



Nathan A. Schneider, City Manager

June 14, 2023



Lea Ann Doak, City Clerk

June 14, 2023



Tera Koetter, Assistant City Manager

June 14, 2023

**CITY MANAGER'S REPORT
MAY 15, 2023 MCCOOK CITY COUNCIL MEETING**

ITEM NO. 2.A. Public Hearing - Consider a request from Southwest Nebraska Public Health Department to rezone the following described property from Residential Medium Density District (RM) to Business Commercial District (BC): Replatted Lot Three, Block Six, Second High School Addition to the City of McCook, Red Willow County, Nebraska.

ITEM NO. 2.B. Approve on first reading, Ordinance No. 2023-3067 permitting a zoning change from Residential Medium Density District (RM) to Business Commercial District (BC) for the following described property: Replatted Lot Three, Block Six, Second High School Addition to the City of McCook, Red Willow County, Nebraska.

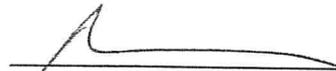
BACKGROUND:

An application for a zone change has been filed by the Southwest Nebraska Public Health Department for property it owns located at 404 West 10th Street. The legal description of the property is included in the heading above. Southwest Nebraska Public Health Department has requested that the lot be rezoned from Residential Medium Density District (RM) to Business Commercial (BC). Southwest Nebraska Public Health Department is requesting the zoning change to assure that the use of the existing structure complies with the City of McCook's zoning ordinance. Specifically, the Southwest Nebraska Public Health Department is operating a professional office in a residential district. Southwest Nebraska Public Health Department's use is nonconforming pursuant to Article 22 of the McCook zoning ordinance.

Staff discussed this matter with Southwest Nebraska Public Health Department's administration. It was determined that the best option to achieve compliance is to rezone the property from RM to BC. A rezoning of the property makes sense due to the fact that the properties to the south are zoned Business Commercial. The businesses in this area include: The Scoop Ice Cream, Midwest Liberty, Edward Jones, and Golden Plains Realty. An extension of the BC District to the north of West C Street will not cause a spot zoning issue.

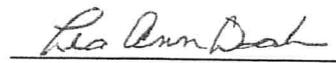
At the May 8, 2023 McCook Planning Commission meeting, the Planning Commission voted to recommend the approval of the rezone request to the McCook City Council. There were questions about two lots that contained single family dwellings directly south of the Southwest Nebraska Public Health Department building. Both lots are zoned BC, with said zoning designation allowable due to the fact that the properties are grandfathered.

APPROVALS:



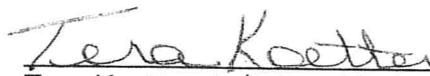
Nathan A. Schneider, City Manager

May 10, 2023



Lea Ann Doak, City Clerk

May 10, 2023



Tera Koetter, Assistant City Manager

May 10, 2023

EXHIBIT #1

ORDINANCE NO. 2023-3067

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA AMENDING MCCOOK ZONING ORDINANCE NO. 2016-2929 CHANGING THE ZONING CLASSIFICATION OF BLOCK 6, REPLATTED LOT 3, SECOND HIGH SCHOOL ADDITION TO THE CITY OF MCCOOK, RED WILLOW COUNTY, NEBRASKA, FROM RESIDENTIAL MEDIUM DENSITY (RM) DISTRICT TO BUSINESS COMMERCIAL (BC) DISTRICT; PROVIDE FOR THE REPEAL OF ANY OTHER CONFLICTING ORDINANCES; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MCCOOK, NEBRASKA:

SECTION 1. In accordance with Article 27 of Zoning Ordinance No. 2016-2929 of the City of McCook, Red Willow County, Nebraska, the zoning classification of the following described property shall be and is hereby changed from Residential Medium Density (RM) District to Business Commercial (BC) District, to wit:

Block 6, Related Lot 3, Second Addition to the City of McCook, Red Willow County, Nebraska.

SECTION 2. The City Clerk of the City of McCook, Nebraska is hereby directed to change the official zoning map of the City of McCook, Nebraska to show the above-described property to have a zoning classification of Business Commercial (BC) District.

SECTION 3. The provisions of Zoning Ordinance 2016-2929 are hereby amended as provided herein.

SECTION 4. This ordinance shall be in full force and take effect from and after its passage, approval and publication as required by law.

PASSED AND APPROVED THIS _____ day of _____, 2023.

Linda Taylor, Ex-Officio Mayor
and President of the Council

ATTEST:

Lea Ann Doak, City Clerk-Treasurer

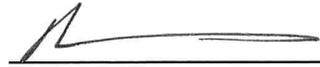
**CITY MANAGER'S REPORT
JUNE 19, 2023 MCCOOK CITY COUNCIL MEETING**

ITEM NO. 4.D Approve on third and final reading, Ordinance No. 2023- 3068, allowing for the zoning change from Agricultural District (AG) to Industrial Heavy District (IH) for the following property: a tract of land located in the SW 1/4 of Section 28, Township 3 North, Range 29, West of the 6th P.M. in Red Willow County, Nebraska.

BACKGROUND:

Please refer to the attached City Manager's Report for Background to this agenda item. Staff has received no feedback from the public regarding this agenda item following the June 5, 2023 McCook City Council meeting.

APPROVALS:



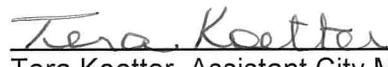
Nathan A. Schneider, City Manager

June 14, 2023



Lea Ann Doak, City Clerk

June 14, 2023



Tera Koetter, Assistant City Manager

June 14, 2023

**CITY MANAGER'S REPORT
MAY 15, 2023 MCCOOK CITY COUNCIL MEETING**

ITEM NO. 2.E Public Hearing - Consider a request from Perry and Vicky Case, by and through their project sponsor McCook Economic Development Corporation, to rezone the following described property from Agricultural District (AG) to Industrial Heavy District (IH): a tract of land located in the SW 1/4 of Section 28, Township 3 North, Range 29, West of the 6th P.M. in Red Willow County, Nebraska, said property located at the proposed McCook Business Park - Phase II.

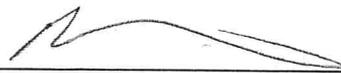
ITEM NO. 2F Approve on first reading, Ordinance No. 2023- 3068, allowing for the zoning change from Agricultural District (AG) to Industrial Heavy District (IH) for the following property: a tract of land located in the SW 1/4 of Section 28, Township 3 North, Range 29, West of the 6th P.M. in Red Willow County, Nebraska.

BACKGROUND:

An application for a zone change has been filed by Perry and Vicky Case, by and through their project sponsor McCook Economic Development Corporation, for property they own located in the SW 1/4 of Section 28, Township 3 North, Range 29, West of the 6th P.M. in Red Willow County, Nebraska. The full legal description of the property is included in the attached Final Plat. The applicants request that the aforementioned lot be rezoned from Agricultural District (AG) to Industrial Heavy (IH). The applicants are making this request in an effort to expand the existing McCook Business Park. This agenda item directly relates to the accompanying Preliminary Plat/Final Plat agenda item for McCook Business Park - Phase II, as well as the voluntary annexation agenda item requested by the MEDC on behalf of the Case family. As shown in the aforementioned agenda items, the area identified for industrial expansion is directly east of the existing business park. The existing McCook Business Park is zoned IH. The property at issue is adjacent to the McCook Business Park and the requested zoning change is in conformity with current land use. Per the City of McCook's Comprehensive Plan, Perry and Vicky Case's property is anticipated to be used for industrial purposes, which use conforms with the City of McCook's future land use map. The property at issue is south of the BNSF railroad and close in proximity to Hwy. 83 and Hwy. 6 and 34. As such, the property is one of the few lots that the City of McCook has identified as an appropriate site for industrial expansion.

At the May 8, 2023 McCook Planning Commission meeting, the Planning Commission voted to recommend approval of the rezone request to the McCook City Council.

APPROVALS:



Nathan A. Schneider, City Manager

May 10, 2023



Lea Ann Doak, City Clerk

May 10, 2023



Tera Koetter, Assistant City Manager

May 10, 2023

EXHIBIT #1

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ORDINANCE NO. 2023-3068

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA AMENDING MCCOOK ZONING ORDINANCE NO. 2016-2929 CHANGING THE ZONING CLASSIFICATION OF LAND LOCATED IN THE SW 1/4 OF SECTION 28, TOWNSHIP 3 NORTH, RANGE 29 WEST OF THE 6TH P.M., IN RED WILLOW COUNTY, NEBRASKA, SAID PROPERTY LOCATED IN PROPOSED MCCOOK BUSINESS PARK - PHASE II ADDITION TO THE CITY OF MCCOOK, RED WILLOW COUNTY, NEBRASKA, FROM AGRICULTURAL (AG) DISTRICT TO INDUSTRIAL HEAVY (IH) DISTRICT; PROVIDE FOR THE REPEAL OF ANY OTHER CONFLICTING ORDINANCES; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MCCOOK, NEBRASKA:

SECTION 1. In accordance with Article 27 of Zoning Ordinance No. 2016-2929 of the City of McCook, Red Willow County, Nebraska, the zoning classification of the following described property shall be and is hereby changed from Agricultural (AG) District to Industrial Heavy (IH) District, to wit:

A tract of land located in the SW 1/4 of Section 28, Township 3 North, Range 29 West of the 6th P.M., in Red Willow County, Nebraska, said property located in proposed McCook Business Park - Phase II Addition to the City of McCook, Red Willow County, Nebraska.

SECTION 2. The City Clerk of the City of McCook, Nebraska is hereby directed to change the official zoning map of the City of McCook, Nebraska to show the above-described property to have a zoning classification of Industrial Heavy (IH) District.

SECTION 3. The provisions of Zoning Ordinance 2016-2929 are hereby amended as provided herein.

SECTION 4. This ordinance shall be in full force and take effect from and after its passage, approval and publication as required by law.

PASSED AND APPROVED THIS _____ day of _____, 2023.

Linda Taylor, Ex-Officio Mayor
and President of the Council

ATTEST:

Lea Ann Doak, City Clerk-Treasurer

**CITY MANAGER'S REPORT
JUNE 19, 2023 2022 CITY COUNCIL MEETING**

ITEM: 4.E.

Discuss and approve the 2023-2024 budget schedule.

BACKGROUND:

The 2023-2024 budget season is fast approaching. Historically, the council has discussed and approved the budget schedule prior to commencement. Included with this report is a proposed budget schedule.

**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

June 15, 2023



Tera Koetter, Assistant City Manager

June 15, 2023



Nathan A. Schneider, City Manager

June 15, 2023

**CITY OF McCOOK
BUDGET PREPARATION CALENDAR
Fiscal Year 2023 - 2024**

<u>Date</u>	<u>Action</u>	<u>By Whom?</u>
June 19, 2023	Approve Budget Calendar	City Council
June 21, 2023	Initial Staff meeting to distribute forms and information to begin budget preparation	City Clerk Assistant City Manager
June 2023	Calculate cost of living percentage change for past 12 months and give to City Clerk.	City Manager Assistant City Manager City Clerk
July 3, 2023	City Council budget requests	City Council
July 5, 2023	Distribute Council Member's budget item requests to appropriate department heads for pricing and comments	City Clerk
June 26 - July	Complete revenue estimates and review with City Manager	City Clerk Assistant City Manager
June & July 2023	Review budget requests with appropriate Boards and Commissions.	City Manager Department Heads
July 1, 2023	Begin review of Water and Sewer rates (possibly Solid Waste) with Public Financial Management (PFM)	Utilities Director City Clerk Assistant City Manager City Manager
July 5, 2023	Submit Capital Outlay/Equipment requests to City Manager	Department Heads
July 5, 2023	Submit budget proposals and proposed increases, both expenditures and revenue estimates to City Clerk. Prioritize new Capital Improvement Projects and capital requests.	City Manager Assistant City Manager City Clerk Department Heads
July 10 - 21, 2023	Review operating budget requests with individual departments	City Manager Assistant City Manager City Clerk Department Heads
July, 2023	Complete review of entire budget and achieve balance between revenues and expenditures.	Department Heads City Manager Assistant City Manager City Clerk
August 7, 2023	City Manager annual evaluation	City Council City Manager
August 7 - 8, 2023	Begin printing of Preliminary Budget Document	City Clerk Assistant City Manager

August 15, 2023 TUESDAY-Special Meeting	Deliver copies of Preliminary Budget to City Council Members and Media.	City Clerk Assistant City Manager City Manager
August 15, 2023 TUESDAY-Special Meeting	Hold a public review meeting.	City Council and City Staff
August & September	Public Financial Management (PFM) presentation Water & Sewer Rates	City Manager Assistant City Manager City Clerk Utilities Director
August 21, 2023	Introduce Budget Ordinance, conduct first reading.	City Manager Assistant City Manager City Clerk City Council
August 20, 2023	County Assessor certifies assessed value on all taxable property	
August 30 or 31, 2023	Publish notice of budget public hearing and summary of Budget Statement and Public Hearing to change tax request from prior year.	City Clerk Assistant City Manager
September 5, 2023 Tuesday Meeting	Hold Public Hearing on budget, conduct second reading of Budget Ordinance, adjust the restrictive funds limit for the unused restricted funds authority, if necessary, and hold Public Hearing to change tax request from prior year, if necessary.	City Council
September 18, 2023	Conduct third reading and adopt Budget Ordinance.	City Council
September 17-28, 2023 Date set by County	Joint Public Hearings held	City Representative
September 30, 2023	File Budget with County and State Auditor File Interlocal Agreement report with State Auditor	City Clerk Assistant City Manager
October 2, 2023	Approve Resolution setting tax request	City Clerk Assistant City Manager
October 15, 2023	File Resolution setting tax request with the County Clerk.	City Clerk Assistant City Manager
September & October	Begin review of Water and Sewer rates (possibly Solid Waste) with Public Financial Management (PFM)	City Manager Assistant City Manager City Clerk
November	Public Financial Management (PFM) presentation Water & Sewer Rates	Utilities Director