



**CITY OF DARDENNE PRAIRIE
2032 HANLEY ROAD
DARDENNE PRAIRIE, MO 63368**

**BOARD OF ALDERMEN
WORK SESSION AGENDA
AUGUST 4, 2021
6:00 p.m.**

CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ITEMS FOR DISCUSSION AND CONSIDERATION

1. Discussion of Concrete Slab Removal and Replacement Projects
2. Discussion of Streets and Roadway Sales Tax

STAFF COMMUNICATIONS

1. City Attorney
2. City Engineer
3. City Administrator
4. Staff
5. Aldermen
6. Mayor

CLOSED SESSION

Roll call vote to hold closed session pursuant to RSMo 610.021 section _____
Litigation and Privileged Communications (1)
Real Estate (2)
Personnel (3)
Labor (9)
Bid Specs (11)
Audit (17)

RETURN TO REGULAR MEETING AGENDA

ADJOURNMENT

RBA FORM (OFFICE USE ONLY)

MEETING DATE: 08/04/2021

Regular (x) Work Session (x)

ATTACHMENT: YES (x) NO ()

Contract (x) Ordinance (x) Other ()

**Request for Board Action
By: Staff**

Ward 3

**Description: Concrete Slab Removal and Replacement Project – Contract Award
McCluer Village Subdivision
Project No. 971521**

• Recommendation: Staff – Approve (x) Disapprove ()

• Summary/Explanation:

The proposed work consists of the replacement of selected street slabs in the McCluer Village subdivision.

The City posted an invitation for bid for this project in the St. Louis Post-Dispatch, City website and MoDOT website. A total of two sealed bid proposals were received and opened publicly by the City on July 27, 2021. A bid tabulation is attached.

The Board of Aldermen may choose to award this contract to M&H Concrete Contractors, Inc. for a total contract amount of \$590,125.80. If notice to proceed is given on August 30, 2021, M&H Concrete Contractors is proposing to complete all work by April 29, 2022. If the Board of Aldermen chooses to wait to remove and replace these slabs in this neighborhood with a County-selected contractor next year and the County-awarded contract is near \$57 per square yard, it is expected that this same \$590,125.80 would replace an additional approximately 65 slabs.

The Board of Aldermen may choose to award this contract to Lamke Trenching & Excavating for a total contract amount of \$652,180.00. If notice to proceed is given on August 30, 2021, Lamke Trenching & Excavating is proposing to complete all work by December 28, 2021. If the Board of Aldermen chooses to wait to remove and replace these slabs in this neighborhood with a County-selected contractor next year and the County-awarded contract is near \$57 per square yard, it is expected that this same \$652,180.00 would replace an additional approximately 95 slabs.

A City-Contractor agreement is also attached for your consideration.

• Budget Impact: (revenue generated, estimated cost, CIP item, etc.)

M&H Concrete Contractors, Inc. - total contract amount of \$590,125.80.

Lamke Trenching & Excavating - total contract amount of \$652,180.00.

RBA requested by: L. R. Kehoe

Date: 07/30/2021



**CONCRETE SLAB REMOVAL AND REPLACEMENT PROJECT
IN McCLUER VILLAGE SUBDIVISION, DARDENNE PRAIRIE, MISSOURI**
Project No.: 971521 Date: 5/27/2021
Bid Tabulation

#	Bid Item	Unit	Est. Quan	Lamke Trenching & Excavating		M&H Concrete Contractors		Engr.'s Est.			
				Bid Received		Bid Received		Unit Price		Cost	
				Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost
1	7" Portland Cement Concrete Pavement - TBRR	SY	7940	\$72.00	\$571,680.00	\$67.32	\$534,520.80	\$55.00	\$436,700.00	1	
2	6" Portland Cement Concrete Pavement - TBRR	SY	50	\$75.00	\$3,750.00	\$73.70	\$3,685.00	\$56.10	\$2,805.00	2	
3	4" Portland Cement Concrete Sidewalk TBRR	SY	40	\$90.00	\$3,600.00	\$74.00	2960	\$59.20	\$2,368.00	3	
4	Over-Excavation	CY	220	\$75.00	\$16,500.00	\$38.00	\$8,360.00	\$41.80	\$9,196.00	4	
5	Type A2 Expansion Joints	LF	350	\$15.00	\$5,250.00	\$26.00	\$9,100.00	\$9.90	\$3,465.00	5	
6	Underdrain	EA	1	\$1,500.00	\$1,500.00	\$1,200.00	1200	\$726.00	\$726.00	6	
7	ADA Compliant Curb Ramp	EA	4	\$1,850.00	\$7,400.00	\$2,400.00	\$9,600.00	\$1,430.00	\$5,720.00	7	
8	7" High Early Portland Cement Concrete Pavement - TBRR	SY	50	\$100.00	\$5,000.00	\$98.00	\$4,900.00	\$68.20	\$3,410.00	8	
9	25 MPH Traffic Control	DAYS	120	\$200.00	\$24,000.00	\$40.00	\$4,800.00	\$66.00	\$7,920.00	9	
10	Protection/Restoration Areas Impacted by Work	LS	1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00	\$14,850.00	\$14,850.00	10	
11	Maturity Curve	LS	1	\$3,500.00	\$3,500.00	\$6,000.00	\$6,000.00	\$5,500.00	\$5,500.00	11	
				Lamke Trenching & Excavating		M&H Concrete Contractors		Engr.'s Est.			
				Bid As-Read	\$652,180.00	Bid As-Read	\$590,125.80			\$492,660.00	
				Complete by 12/31/21	100%	Complete by 12/31/21	10%				
				Time to Complete	120 days	Time to Complete	242 days				
				Total Bid	\$652,180.00	Total Bid	\$590,125.80	Total Cost	\$492,660.00		

**CITY - CONTRACTOR AGREEMENT
971521 Concrete Slab Removal and Replacement Project**

This CITY-CONTRACTOR AGREEMENT (this "Agreement") is made and entered into as of this _____ day of _____, 2021, by and between

_____, a
_____ having a principal office at _____ (the "Contractor"), and the City of Dardenne Prairie, a Missouri municipal corporation located in St. Charles County (the "City"). All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).

RECITALS

- A. In response to Invitation for Bid #971521 for 971521 Concrete Slab Removal and Replacement Project, the Contractor has submitted a certain bid in accordance with the Bid Documents to perform the Services.
- B. After due consideration, the City has accepted the bid of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Services in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.
- C. **Award Amount consists of:** \$ _____
Retainage: 5%
Milestone A: _____ %
Milestone B: _____ Calendar Days.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Contractor hereby agree as follows:

- 1. **Contract Documents:** This Agreement shall consist of: (i) Invitation for Bid #971521 including, without limitation:
 - 1. Invitation for Bids
 - 2. Any addendums issued by the City
 - 3. Bid Response (submitted by Contractor)
 - 4. Subcontractor Form – Exhibit A
 - 5. References – Exhibit B
 - 6. Special Requirements
 - 7. E-Verify Memorandum of Understanding with Electronic Signatures
 - 8. Affidavit of Participation in Federal Work Authorization Program Form
 - 9. Certificate of Insurance
 - 10. Performance and Payment Bonds
 - 11. City-Contractor Agreement (executed by City and Contractor)
 - 12. Terms and Conditions
 - 13. General Conditions
 - 14. Notice of Award (issued by City)
 - 15. Notice to Proceed (issued by City)

and shall also include any exhibits to the above documents, any addenda issued prior to receipt of bids, any duly-issued modifications, and all other documents contained or specified within the specifications, details or job special provisions, as such may be on file in the Office of the City Clerk of Dardenne Prairie, Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference).

2. **Coordination of Contract Documents:** The Contract Documents are intended to be complementary and to describe and provide for a complete Work. In case of conflict or inconsistency among the Contract Documents, the governing ranking will be:
- (a) Job Specific Provisions (JSPs)
 - (b) Methods of Measurement and Payment
 - (c) Plans for Construction
 - (d) City of Wentzville Standard Specifications and Construction Details (hereinafter referred to as the Project Specifications)
 - whenever the term "City of Wentzville" or "Wentzville" appears in the Project Specifications, it shall be deemed to mean the City of Dardenne Prairie, Missouri
 - (e) Bid Line Items and/or Quantities

In case of conflict or inconsistency, calculated dimensions will govern over scaled dimensions. In the instance when any provision(s) of the Contract Documents not explicitly listed above conflict, the provision(s) most advantageous to the City shall govern.

All contractors, including subcontractors, shall not take advantage of any apparent error or omission in the Contract Documents. If an error or omission is discovered, the Engineer shall be notified promptly and prior to commencement of work related to said error or omission so corrections and interpretations necessary to fulfill the intent of the Contract can be made. A failure to give notice prior to commencement of work related to said error or omission shall render the effects of any error or omission non-compensable and any delay non-excusable.

3. **Payment:** Contractor shall be paid for the quantities placed based on a percent complete per the amount quoted of each amount on the Bid Line Items and per the Methods of Measurement and Payment. The Contractor shall submit all invoices complete with necessary supporting documentation and partial lien waivers to indicate the percentage complete of each sum amount to the City. The City shall make payment within 30 days of receipt of an invoice after satisfactory performance of the delivery and receipt of the services as shown on the Bid Line Items. Final determination of percentage complete will be made by the City Representative. Invoices shall be submitted no more than once a month except for the final payment. All invoices MUST HAVE a City project number. Invoices received without a City project number listed may delay payment. Invoices should be complete with necessary support documentation and City project number. Payment Terms: net 30 days. Remit Address is City Clerk, 2032 Hanley Road, Dardenne Prairie, Missouri 63368 or cityclerk@dardennepairie.org.

4. **Prompt Payment:** All public works contracts shall provide for prompt payment by the City to the Contractor (as well as prompt payment by the Contractor to the subcontractor and material supplier) unless contrary to any federal funding requirements, per RSMo 34.057.
5. **The Work/Contract.** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract shall include all compensation to Contractor due for the Work, which shall include all such work within the Base Bid and additionally all such Work within selected Alternate Bids. Any additional Work not within the Base Bid and Alternate Bids that is hereinafter approved by the City in writing shall be incorporated into the contract pursuant to a Change Order.
6. **Time of Completion:** Contractor shall commence work under this Agreement as specified in the Notice to Proceed and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.
7. **Guaranty:** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of Final Acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.
8. **Performance Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Performance Bond in the full amount of the Contract Sum. The Performance Bond furnished shall guarantee the faithful performance of this Contract.
9. **Payment Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri,

as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri.

10. **Maintenance Bond:** Upon Final Acceptance the Contractor shall furnish a satisfactory Maintenance Bond in the amount of 10% of the final Contract Sum after any and all Change Orders and/or formal amendments. The Maintenance Bond shall be in full force for a one (1) year guarantee period from the date of Final Acceptance. The submitted Maintenance Bond shall be substantially in the form of the "Form of Maintenance Bond" included within the Bid Documents.
11. **Independent Contractor.** The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.
12. **Contractor's Liability Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City Contractor Agreement the insurance coverage's at least equal to the coverage's set forth in this paragraph 12, and as further provided in the Terms and Conditions, and General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo Insurance policies providing required coverage's shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the City:

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence \$2,940,868 aggregate
Commercial Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence
Employer's Liability	\$1,000,000 bodily injury by accident (each accident) \$1,000,000 bodily injury by disease (each employee) \$1,000,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

The Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear.

Builders Risk Required for this Project: Yes _____ No X _____

Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverage's required by this paragraph 12. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, on a primary and non-contributory basis, related to the General and Automobile Liability policies, and all insurers have waived their rights to subrogation.

The City may waive any insurance coverage's or amounts required by this paragraph 12 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

13. **Subsequent Work:** The City reserves the option to award additional work to the Contractor during the calendar year.
14. **Price Escalation:** The prices provided in the Contractor's bid may not be adjusted for the 971521 Concrete Slab Removal and Replacement Project work. If the City exercises its option to award additional work to the Contractor, the Contractor may submit a request in writing to the City Administrator for an increase. The request must be submitted at least 45 days prior to the start of the additional work. The request must clearly describe and justify increased expenses and include documentation from material suppliers of the increased expense. The City may, in its discretion, approve the request provided it is satisfied that the Contractor's request is justified. The amount of increase may not exceed two (2%) percent. The City reserves the right to not award the additional work if price adjustment cannot be agreed upon.
15. **Indemnification:** To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this 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 the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

16. **Attorney Fees' and Costs:** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.
17. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence and that absence of reasonable progress and delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **One Thousand, One Hundred Dollars (\$1,100.00)** for each calendar day of delay past the allotted calendar days to achieve Available for Use (Substantial Completion) as notified by the City. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.
18. **Termination:** The City shall have the right to terminate this Agreement at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under this Agreement an amount equal to the cost of all Services performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of this Agreement Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.
19. **Compliance with Federal, State and Local Law:** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.
20. **Prevailing Wage:** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is

included in the Bid Documents and the Contract Documents.

21. **OSHA Required Training:** Pursuant to Section 292.675 RSMo, Contractor shall require all on-site employees to complete the ten-hour training program as required under Section 292.675 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Section 292.675 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Section 292.675 RSMo and such penalties shall be forfeited to the City pursuant to such Section. Penalties for non-compliance include contractor forfeiture to the City in the amount of \$2,500, plus \$100 per contractor and subcontractor employee for each calendar day such employee is employed beyond the elapsed time period for required program completion under 292.675 RSMO. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675 RSMo.

22. **Taxes:** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.
23. **Other Representations, Warranties and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor has sufficient expertise, knowledge, information and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.
24. **Amendment: Waiver:** The City may add, delete, or amend services. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be

enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

25. **Accounting.** During the period of this Agreement, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.
26. **Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services.
27. **Governing/Choice of Law; Jurisdiction.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri.
28. **Headings:** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.
29. **Representations.** Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.
30. **Severability:** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

(Remainder of page intentionally blank; signature page follows)

31. **Counterparts:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CONTRACTOR

CITY OF DARDENNE PRAIRIE, MISSOURI

Signature

Dan Lang, City Administrator

Print Name & Title

ATTEST:

Address

City, State, Zip

City Clerk

Date

Date

CITY - CONTRACTOR AGREEMENT
971521 Concrete Slab Removal and Replacement Project

This CITY-CONTRACTOR AGREEMENT (this "Agreement") is made and entered into as of this ____ day of _____, 2021, by and between

_____, a _____, having a principal office at _____ (the "Contractor"), and the City of Dardenne Prairie, a Missouri municipal corporation located in St. Charles County (the "City"). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

- A. In response to Invitation for Bid #971521 for 971521 Concrete Slab Removal and Replacement Project, the Contractor has submitted a certain bid in accordance with the Bid Documents to perform the Services.
- B. After due consideration, the City has accepted the bid of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Services in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.
- C. **Award Amount consists of:** \$ _____
Retainage: 5%
Milestone A: _____ %
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- 1. **Contract Documents:** This Agreement shall consist of: (i) Invitation for Bid #971521 including, without limitation:
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and shall also include any exhibits to the above documents, any addenda issued prior to receipt of bids, any duly-issued modifications, and all other documents contained or specified within the specifications, details or job special provisions, as such may be on file in the Office of the City Clerk of Dardenne Prairie, Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference).

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3. **Payment:** Contractor shall be paid for the quantities placed based on a percent complete per the amount quoted of each amount on the Bid Line Items and per the Methods of Measurement and Payment. The Contractor shall submit all invoices complete with necessary supporting documentation and partial lien waivers to indicate the percentage complete of each sum amount to the City. The City shall make payment within 30 days of receipt of an invoice after satisfactory performance of the delivery and receipt of the services as shown on the Bid Line Items. Final determination of percentage complete will be made by the City Representative. Invoices shall be submitted no more than once a month except for the final payment. All invoices MUST HAVE a City project number. Invoices received without a City project number listed may delay payment. Invoices should be complete with necessary support documentation and City project number. Payment Terms: net 30 days. Remit Address is City Clerk, 2032 Hanley Road, Dardenne Prairie, Missouri 63368 or cityclerk@dardennepairie.org.

4. **Prompt Payment:** All public works contracts shall provide for prompt payment by the City to the Contractor (as well as prompt payment by the Contractor to the subcontractor and material supplier) unless contrary to any federal funding requirements, per RSMo 34.057.
5. **The Work/Contract.** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract shall include all compensation to Contractor due for the Work, which shall include all such work within the Base Bid and additionally all such Work within selected Alternate Bids. Any additional Work not within the Base Bid and Alternate Bids that is hereinafter approved by the City in writing shall be incorporated into the contract pursuant to a Change Order.
6. **Time of Completion:** Contractor shall commence work under this Agreement as specified in the Notice to Proceed and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.
7. **Guaranty:** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of Final Acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.
8. **Performance Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Performance Bond in the full amount of the Contract Sum. The Performance Bond furnished shall guarantee the faithful performance of this Contract.
9. **Payment Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri,

as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri.

10. **Maintenance Bond:** Upon Final Acceptance the Contractor shall furnish a satisfactory Maintenance Bond in the amount of 10% of the final Contract Sum after any and all Change Orders and/or formal amendments. The Maintenance Bond shall be in full force for a one (1) year guarantee period from the date of Final Acceptance. The submitted Maintenance Bond shall be substantially in the form of the "Form of Maintenance Bond" included within the Bid Documents.
11. **Independent Contractor.** The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.
12. **Contractor's Liability Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City Contractor Agreement the insurance coverage's at least equal to the coverage's set forth in this paragraph 12, and as further provided in the Terms and Conditions, and General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo Insurance policies providing required coverage's shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the City:

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence \$2,940,868 aggregate
Commercial Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence
Employer's Liability	\$1,000,000 bodily injury by accident (each accident) \$1,000,000 bodily injury by disease (each employee) \$1,000,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

The Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear.

Builders Risk Required for this Project: Yes _____ No X _____

Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverage's required by this paragraph 12. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, on a primary and non-contributory basis, related to the General and Automobile Liability policies, and all insurers have waived their rights to subrogation.

The City may waive any insurance coverage's or amounts required by this paragraph 12 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

13. **Subsequent Work:** The City reserves the option to award additional work to the Contractor during the calendar year.
14. **Price Escalation:** The prices provided in the Contractor's bid may not be adjusted for the 971521 Concrete Slab Removal and Replacement Project work. If the City exercises its option to award additional work to the Contractor, the Contractor may submit a request in writing to the City Administrator for an increase. The request must be submitted at least 45 days prior to the start of the additional work. The request must clearly describe and justify increased expenses and include documentation from material suppliers of the increased expense. The City may, in its discretion, approve the request provided it is satisfied that the Contractor's request is justified. The amount of increase may not exceed two (2%) percent. The City reserves the right to not award the additional work if price adjustment cannot be agreed upon.
15. **Indemnification:** To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this 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 the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

16. **Attorney Fees' and Costs:** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.
17. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence and that absence of reasonable progress and delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **One Thousand, One Hundred Dollars (\$1,100.00)** for each calendar day of delay past the allotted calendar days to achieve Available for Use (Substantial Completion) as notified by the City. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.
18. **Termination:** The City shall have the right to terminate this Agreement at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under this Agreement an amount equal to the cost of all Services performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of this Agreement Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.
19. **Compliance with Federal, State and Local Law:** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.
20. **Prevailing Wage:** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is

included in the Bid Documents and the Contract Documents.

21. **OSHA Required Training:** Pursuant to Section 292.675 RSMo, Contractor shall require all on-site employees to complete the ten-hour training program as required under Section 292.675 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Section 292.675 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Section 292.675 RSMo and such penalties shall be forfeited to the City pursuant to such Section. Penalties for non-compliance include contractor forfeiture to the City in the amount of \$2,500, plus \$100 per contractor and subcontractor employee for each calendar day such employee is employed beyond the elapsed time period for required program completion under 292.675 RSMO. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675 RSMo.

22. **Taxes:** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.
23. **Other Representations, Warranties and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor has sufficient expertise, knowledge, information and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.
24. **Amendment: Waiver:** The City may add, delete, or amend services. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be

enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

25. **Accounting**. During the period of this Agreement, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.
26. **Compliance with State Immigration Statutes**. As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services.
27. **Governing/Choice of Law; Jurisdiction**. This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri.
28. **Headings**: The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.
29. **Representations**. Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.
30. **Severability**: The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

(Remainder of page intentionally blank; signature page follows)

31. **Counterparts:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CONTRACTOR

CITY OF DARDENNE PRAIRIE, MISSOURI

Signature

Dan Lang, City Administrator

Print Name & Title

Address

ATTEST:

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IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CONTRACTOR

CITY OF DARDENNE PRAIRIE, MISSOURI

Signature

Dan Lang, City Administrator

Print Name & Title

ATTEST:

Address

City, State, Zip

City Clerk

Date

Date

RBA FORM (OFFICE USE ONLY)

MEETING DATE: 08/04/2021

Regular (x) Work Session (x)

ATTACHMENT: YES (x) NO ()

Contract (x) Ordinance (x) Other ()

**Request for Board Action
By: Staff**

Ward All

**Description: Concrete Slab Removal and Replacement Project – Contract Award
Cheneaux Village, Leighton Hollow, Aberdeen, The Enclave at Sunnybrooke, Tysons
Corner, Avalon, Lewis and Clark Village, Canvas Cove, Dardenne Landing, Villages
at Bainbridge, Campbell Village, and Waterford Crossing Subdivisions
Project No. 971721**

• **Recommendation:** Staff – Approve (x) Disapprove ()

• **Summary/Explanation:**

The proposed work consists of the replacement of selected street slabs in the twelve subdivision listed above.

The City posted an invitation for bid for this project in the St. Louis Post-Dispatch, City website and MoDOT website. A total of two sealed bid proposals were received and opened publicly by the City on July 27, 2021. A bid tabulation is attached.

The Board of Aldermen may choose to award this contract to M&H Concrete Contractors, Inc. for a total contract amount of \$648,527.40. If notice to proceed is given on August 30, 2021, M&H Concrete Contractors is proposing to complete all work by April 29, 2022. If the Board of Aldermen chooses to wait to remove and replace these slabs in this neighborhood with a County-selected contractor next year and the County-awarded contract is near \$57 per square yard, it is expected that this same \$648,527.40 would replace an additional approximately 90 slabs.

The Board of Aldermen may choose to award this contract to Lamke Trenching & Excavating for a total contract amount of \$728,768.00. If notice to proceed is given on August 30, 2021, Lamke Trenching & Excavating is proposing to complete all work by December 28, 2021. If the Board of Aldermen chooses to wait to remove and replace these slabs in this neighborhood with a County-selected contractor next year and the County-awarded contract is near \$57 per square yard, it is expected that this same \$728,768.00 would replace an additional approximately 140 slabs.

A City-Contractor agreement is also attached for your consideration.

• **Budget Impact:** (revenue generated, estimated cost, CIP item, etc.)

M&H Concrete Contractors, Inc. - total contract amount of \$648,527.40.

Lamke Trenching & Excavating - total contract amount of \$728,768.00.

RBA requested by: L. R. Kehoe

Date: 07/30/2021



**CONCRETE SLAB REMOVAL AND REPLACEMENT PROJECT
IN 12 SUBDIVISIONS IN DARDENNE PRAIRIE, MISSOURI**

Project No.: 971721 Date: 5/27/2021

Bid Tabulation

#	Bid Item	Unit	Est. Quan	Lamke Trenching & Excavating		M&H Concrete Contractors		Engr.'s Est. Cost	#	
				Bid Received Unit Price	Cost	Bid Received Unit Price	Cost			
1	7" Portland Cement Concrete Pavement - TBRR	SY	8206	\$78.00	\$640,068.00	\$70.40	\$577,702.40	\$55.00	\$451,330.00	1
2	6" Portland Cement Concrete Pavement - TBRR	SY	50	\$75.00	\$3,750.00	\$78.10	\$3,905.00	\$56.10	\$2,805.00	2
3	4" Portland Cement Concrete Sidewalk TBRR	SY	40	\$90.00	\$3,600.00	\$74.00	2960	\$59.20	\$2,368.00	3
4	Over-Excavation	CY	230	\$75.00	\$17,250.00	\$40.00	\$9,200.00	\$41.80	\$9,614.00	4
5	Type A2 Expansion Joints	LF	410	\$5.00	\$2,050.00	\$26.00	\$10,660.00	\$9.90	\$4,059.00	5
6	Underdrain	EA	1	\$1,500.00	\$1,500.00	\$1,200.00	1200	\$726.00	\$726.00	6
7	ADA Compliant Curb Ramp	EA	8	\$1,850.00	\$14,800.00	\$2,400.00	\$19,200.00	\$1,430.00	\$11,440.00	7
8	7" High Early Portland Cement Concrete Pavement - TBRR	SY	50	\$95.00	\$4,750.00	\$98.00	\$4,900.00	\$68.20	\$3,410.00	8
9	25 MPH Traffic Control	DAYS	120	\$200.00	\$24,000.00	\$40.00	\$4,800.00	\$44.00	\$5,280.00	9
10	Protection/Restoration Areas Impacted by Work	LS	1	\$12,000.00	\$12,000.00	\$8,000.00	\$8,000.00	\$10,000.00	\$10,000.00	10
11	Maturity Curve	LS	1	\$5,000.00	\$5,000.00	\$6,000.00	\$6,000.00	\$5,500.00	\$5,500.00	11
				Lamke Trenching & Excavating		M&H Concrete Contractors		Engr.'s Est.		
Bid As-Read				\$728,768.00	\$728,768.00	Bid As-Read	\$648,527.40		\$506,532.00	
Complete by 12/31/21				100%	100%	Complete by 12/31/21	10%			
Time to Complete				120 days	120 days	Time to Complete	242			
Total Bid				\$728,768.00	\$728,768.00	Total Bid	\$648,527.40	Total Cost	\$506,532.00	

**CITY - CONTRACTOR AGREEMENT
971721 Concrete Slab Removal and Replacement Project**

This CITY-CONTRACTOR AGREEMENT (this "Agreement") is made and entered into as of this _____ day of _____, 2021, by and between

_____, having a principal office at _____ (the "Contractor"), and the City of Dardenne Prairie, a Missouri municipal corporation located in St. Charles County (the "City"). All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).

RECITALS

- A. In response to Invitation for Bid #971721 for 971721 Concrete Slab Removal and Replacement Project, the Contractor has submitted a certain bid in accordance with the Bid Documents to perform the Services.
- B. After due consideration, the City has accepted the bid of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Services in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.
- C. **Award Amount consists of:** \$ _____
Retainage: 5%
Milestone A: _____ %
Milestone B: _____ Calendar Days.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Contractor hereby agree as follows:

- 1. **Contract Documents:** This Agreement shall consist of: (i) Invitation for Bid #971721 including, without limitation:
 - 1. Invitation for Bids
 - 2. Any addendums issued by the City
 - 3. Bid Response (submitted by Contractor)
 - 4. Subcontractor Form – Exhibit A
 - 5. References – Exhibit B
 - 6. Special Requirements
 - 7. E-Verify Memorandum of Understanding with Electronic Signatures
 - 8. Affidavit of Participation in Federal Work Authorization Program Form
 - 9. Certificate of Insurance
 - 10. Performance and Payment Bonds
 - 11. City-Contractor Agreement (executed by City and Contractor)
 - 12. Terms and Conditions
 - 13. General Conditions
 - 14. Notice of Award (issued by City)
 - 15. Notice to Proceed (issued by City)

and shall also include any exhibits to the above documents, any addenda issued prior to receipt of bids, any duly-issued modifications, and all other documents contained or specified within the specifications, details or job special provisions, as such may be on file in the Office of the City Clerk of Dardenne Prairie, Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference).

2. **Coordination of Contract Documents:** The Contract Documents are intended to be complementary and to describe and provide for a complete Work. In case of conflict or inconsistency among the Contract Documents, the governing ranking will be:
- (a) Job Specific Provisions (JSPs)
 - (b) Methods of Measurement and Payment
 - (c) Plans for Construction
 - (d) City of Wentzville Standard Specifications and Construction Details (hereinafter referred to as the Project Specifications)
 - whenever the term "City of Wentzville" or "Wentzville" appears in the Project Specifications, it shall be deemed to mean the City of Dardenne Prairie, Missouri
 - (e) Bid Line Items and/or Quantities

In case of conflict or inconsistency, calculated dimensions will govern over scaled dimensions. In the instance when any provision(s) of the Contract Documents not explicitly listed above conflict, the provision(s) most advantageous to the City shall govern.

All contractors, including subcontractors, shall not take advantage of any apparent error or omission in the Contract Documents. If an error or omission is discovered, the Engineer shall be notified promptly and prior to commencement of work related to said error or omission so corrections and interpretations necessary to fulfill the intent of the Contract can be made. A failure to give notice prior to commencement of work related to said error or omission shall render the effects of any error or omission non-compensable and any delay non-excusable.

3. **Payment:** Contractor shall be paid for the quantities placed based on a percent complete per the amount quoted of each amount on the Bid Line Items and per the Methods of Measurement and Payment. The Contractor shall submit all invoices complete with necessary supporting documentation and partial lien waivers to indicate the percentage complete of each sum amount to the City. The City shall make payment within 30 days of receipt of an invoice after satisfactory performance of the delivery and receipt of the services as shown on the Bid Line Items. Final determination of percentage complete will be made by the City Representative. Invoices shall be submitted no more than once a month except for the final payment. All invoices MUST HAVE a City project number. Invoices received without a City project number listed may delay payment. Invoices should be complete with necessary support documentation and City project number. Payment Terms: net 30 days. Remit Address is City Clerk, 2032 Hanley Road, Dardenne Prairie, Missouri 63368 or cityclerk@dardenneprairie.org.

4. **Prompt Payment:** All public works contracts shall provide for prompt payment by the City to the Contractor (as well as prompt payment by the Contractor to the subcontractor and material supplier) unless contrary to any federal funding requirements, per RSMo 34.057.
5. **The Work/Contract:** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract shall include all compensation to Contractor due for the Work, which shall include all such work within the Base Bid and additionally all such Work within selected Alternate Bids. Any additional Work not within the Base Bid and Alternate Bids that is hereinafter approved by the City in writing shall be incorporated into the contract pursuant to a Change Order.
6. **Time of Completion:** Contractor shall commence work under this Agreement as specified in the Notice to Proceed and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.
7. **Guaranty:** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of Final Acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.
8. **Performance Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Performance Bond in the full amount of the Contract Sum. The Performance Bond furnished shall guarantee the faithful performance of this Contract.
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as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri.

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12. **Contractor's Liability Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City Contractor Agreement the insurance coverage's at least equal to the coverage's set forth in this paragraph 12, and as further provided in the Terms and Conditions, and General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo Insurance policies providing required coverage's shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the City:

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence \$2,940,868 aggregate
Commercial Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence
Employer's Liability	\$1,000,000 bodily injury by accident (each accident) \$1,000,000 bodily injury by disease (each employee) \$1,000,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

The Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear.

Builders Risk Required for this Project: Yes _____ No X _____

Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverage's required by this paragraph 12. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, on a primary and non-contributory basis, related to the General and Automobile Liability policies, and all insurers have waived their rights to subrogation.

The City may waive any insurance coverage's or amounts required by this paragraph 12 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

13. **Subsequent Work:** The City reserves the option to award additional work to the Contractor during the calendar year.
14. **Price Escalation:** The prices provided in the Contractor's bid may not be adjusted for the 971721 Concrete Slab Removal and Replacement Project work. If the City exercises its option to award additional work to the Contractor, the Contractor may submit a request in writing to the City Administrator for an increase. The request must be submitted at least 45 days prior to the start of the additional work. The request must clearly describe and justify increased expenses and include documentation from material suppliers of the increased expense. The City may, in its discretion, approve the request provided it is satisfied that the Contractor's request is justified. The amount of increase may not exceed two (2%) percent. The City reserves the right to not award the additional work if price adjustment cannot be agreed upon.
15. **Indemnification:** To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this 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 the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

16. **Attorney Fees' and Costs:** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.
17. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence and that absence of reasonable progress and delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **One Thousand, One Hundred Dollars (\$1,100.00)** for each calendar day of delay past the allotted calendar days to achieve Available for Use (Substantial Completion) as notified by the City. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.
18. **Termination:** The City shall have the right to terminate this Agreement at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under this Agreement an amount equal to the cost of all Services performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of this Agreement Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.
19. **Compliance with Federal, State and Local Law:** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.
20. **Prevailing Wage:** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is

included in the Bid Documents and the Contract Documents.

21. **OSHA Required Training:** Pursuant to Section 292.675 RSMo, Contractor shall require all on-site employees to complete the ten-hour training program as required under Section 292.675 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Section 292.675 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Section 292.675 RSMo and such penalties shall be forfeited to the City pursuant to such Section. Penalties for non-compliance include contractor forfeiture to the City in the amount of \$2,500, plus \$100 per contractor and subcontractor employee for each calendar day such employee is employed beyond the elapsed time period for required program completion under 292.675 RSMO. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675 RSMo.

22. **Taxes:** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.
23. **Other Representations, Warranties and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor has sufficient expertise, knowledge, information and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.
24. **Amendment: Waiver:** The City may add, delete, or amend services. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be

enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

25. **Accounting.** During the period of this Agreement, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.
26. **Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services.
27. **Governing/Choice of Law: Jurisdiction.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri.
28. **Headings:** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.
29. **Representations.** Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.
30. **Severability:** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

(Remainder of page intentionally blank; signature page follows)

31. **Counterparts:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CONTRACTOR

CITY OF DARDENNE PRAIRIE, MISSOURI

Signature

Dan Lang, City Administrator

Print Name & Title

Address

ATTEST:

City, State, Zip

City Clerk

Date

Date

**CITY - CONTRACTOR AGREEMENT
971521 Concrete Slab Removal and Replacement Project**

This CITY-CONTRACTOR AGREEMENT (this "Agreement") is made and entered into as of this ____ day of _____, 2021, by and between

_____, a _____, having a principal office at _____ (the "Contractor"), and the City of Dardenne Prairie, a Missouri municipal corporation located in St. Charles County (the "City"). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

- A. In response to Invitation for Bid #971721 for 971721 Concrete Slab Removal and Replacement Project, the Contractor has submitted a certain bid in accordance with the Bid Documents to perform the Services.
- B. After due consideration, the City has accepted the bid of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Services in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.
- C. **Award Amount consists of:** \$ _____
Retainage: 5%
Milestone A: _____ %
Milestone B: _____ Calendar Days.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Contractor hereby agree as follows:

- 1. **Contract Documents:** This Agreement shall consist of: (i) Invitation for Bid #971721 including, without limitation:
 - 1. Invitation for Bids
 - 2. Any addendums issued by the City
 - 3. Bid Response (submitted by Contractor)
 - 4. Subcontractor Form – Exhibit A
 - 5. References – Exhibit B
 - 6. Special Requirements
 - 7. E-Verify Memorandum of Understanding with Electronic Signatures
 - 8. Affidavit of Participation in Federal Work Authorization Program Form
 - 9. Certificate of Insurance
 - 10. Performance and Payment Bonds
 - 11. City-Contractor Agreement (executed by City and Contractor)
 - 12. Terms and Conditions
 - 13. General Conditions
 - 14. Notice of Award (issued by City)
 - 15. Notice to Proceed (issued by City)

and shall also include any exhibits to the above documents, any addenda issued prior to receipt of bids, any duly-issued modifications, and all other documents contained or specified within the specifications, details or job special provisions, as such may be on file in the Office of the City Clerk of Dardenne Prairie, Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference).

2. **Coordination of Contract Documents:** The Contract Documents are intended to be complementary and to describe and provide for a complete Work. In case of conflict or inconsistency among the Contract Documents, the governing ranking will be:
- (a) Job Specific Provisions (JSPs)
 - (b) Methods of Measurement and Payment
 - (c) Plans for Construction
 - (d) City of Wentzville Standard Specifications and Construction Details (hereinafter referred to as the Project Specifications)
 - whenever the term "City of Wentzville" or "Wentzville" appears in the Project Specifications, it shall be deemed to mean the City of Dardenne Prairie, Missouri
 - (e) Bid Line Items and/or Quantities

In case of conflict or inconsistency, calculated dimensions will govern over scaled dimensions. In the instance when any provision(s) of the Contract Documents not explicitly listed above conflict, the provision(s) most advantageous to the City shall govern.

All contractors, including subcontractors, shall not take advantage of any apparent error or omission in the Contract Documents. If an error or omission is discovered, the Engineer shall be notified promptly and prior to commencement of work related to said error or omission so corrections and interpretations necessary to fulfill the intent of the Contract can be made. A failure to give notice prior to commencement of work related to said error or omission shall render the effects of any error or omission non-compensable and any delay non-excusable.

3. **Payment:** Contractor shall be paid for the quantities placed based on a percent complete per the amount quoted of each amount on the Bid Line Items and per the Methods of Measurement and Payment. The Contractor shall submit all invoices complete with necessary supporting documentation and partial lien waivers to indicate the percentage complete of each sum amount to the City. The City shall make payment within 30 days of receipt of an invoice after satisfactory performance of the delivery and receipt of the services as shown on the Bid Line Items. Final determination of percentage complete will be made by the City Representative. Invoices shall be submitted no more than once a month except for the final payment. All invoices MUST HAVE a City project number. Invoices received without a City project number listed may delay payment. Invoices should be complete with necessary support documentation and City project number. Payment Terms: net 30 days. Remit Address is City Clerk, 2032 Hanley Road, Dardenne Prairie, Missouri 63368 or cityclerk@dardenneprairie.org.

4. **Prompt Payment:** All public works contracts shall provide for prompt payment by the City to the Contractor (as well as prompt payment by the Contractor to the subcontractor and material supplier) unless contrary to any federal funding requirements, per RSMo 34.057.
5. **The Work/Contract.** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract shall include all compensation to Contractor due for the Work, which shall include all such work within the Base Bid and additionally all such Work within selected Alternate Bids. Any additional Work not within the Base Bid and Alternate Bids that is hereinafter approved by the City in writing shall be incorporated into the contract pursuant to a Change Order.
6. **Time of Completion:** Contractor shall commence work under this Agreement as specified in the Notice to Proceed and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.
7. **Guaranty:** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of Final Acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.
8. **Performance Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Performance Bond in the full amount of the Contract Sum. The Performance Bond furnished shall guarantee the faithful performance of this Contract.
9. **Payment Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri,

as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri.

10. **Maintenance Bond:** Upon Final Acceptance the Contractor shall furnish a satisfactory Maintenance Bond in the amount of 10% of the final Contract Sum after any and all Change Orders and/or formal amendments. The Maintenance Bond shall be in full force for a one (1) year guarantee period from the date of Final Acceptance. The submitted Maintenance Bond shall be substantially in the form of the "Form of Maintenance Bond" included within the Bid Documents.
11. **Independent Contractor.** The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.
12. **Contractor's Liability Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City Contractor Agreement the insurance coverage's at least equal to the coverage's set forth in this paragraph 12, and as further provided in the Terms and Conditions, and General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo Insurance policies providing required coverage's shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the City:

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence \$2,940,868 aggregate
Commercial Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence
Employer's Liability	\$1,000,000 bodily injury by accident (each accident) \$1,000,000 bodily injury by disease (each employee) \$1,000,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

The Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear.

Builders Risk Required for this Project: Yes _____ No X _____

Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverage's required by this paragraph 12. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, on a primary and non-contributory basis, related to the General and Automobile Liability policies, and all insurers have waived their rights to subrogation.

The City may waive any insurance coverage's or amounts required by this paragraph 12 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

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15. **Indemnification:** To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this 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 the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

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17. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence and that absence of reasonable progress and delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **One Thousand, One Hundred Dollars (\$1,100.00)** for each calendar day of delay past the allotted calendar days to achieve Available for Use (Substantial Completion) as notified by the City. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.
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19. **Compliance with Federal, State and Local Law:** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.
20. **Prevailing Wage:** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is

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21. **OSHA Required Training:** Pursuant to Section 292.675 RSMo, Contractor shall require all on-site employees to complete the ten-hour training program as required under Section 292.675 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Section 292.675 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Section 292.675 RSMo and such penalties shall be forfeited to the City pursuant to such Section. Penalties for non-compliance include contractor forfeiture to the City in the amount of \$2,500, plus \$100 per contractor and subcontractor employee for each calendar day such employee is employed beyond the elapsed time period for required program completion under 292.675 RSMO. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675 RSMo.

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23. **Other Representations, Warranties and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor has sufficient expertise, knowledge, information and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.
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enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

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26. **Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services.
27. **Governing/Choice of Law; Jurisdiction.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri.
28. **Headings:** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.
29. **Representations.** Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.
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(Remainder of page intentionally blank; signature page follows)

31. **Counterparts:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CONTRACTOR

CITY OF DARDENNE PRAIRIE, MISSOURI

Signature

Dan Lang, City Administrator

Print Name & Title

ATTEST:

Address

City, State, Zip

City Clerk

Date

Date

DARDENNE



PRAIRIE

**CITY OF DARDENNE PRAIRIE
2032 HANLEY ROAD
DARDENNE PRAIRIE, MO 63368**

**BOARD OF ALDERMEN
MEETING AGENDA
AUGUST 4, 2021
7:00 p.m.**

CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

Mayor Gotway
Alderman Costlow
Alderman Koch
Alderman Reilly
Alderman Sansone
Alderman Ungerboeck
Alderman Wandling

CONSENT AGENDA

1. Board of Aldermen Minutes 07-21-21
2. Work Session Summary 07-21-21
3. Expenditures for Approval 08-04-21
4. Treasurer's Report – As of May 31, 2021
5. Treasurer's Report – As of June 30, 2021

ITEMS REMOVED FROM CONSENT AGENDA

OPEN FORUM

NEW BUSINESS

1. **BILL #21-43**

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A DEPOSIT AGREEMENT GUARANTEEING LAND DISTURBANCE IMPROVEMENTS WITH LETTER OF CREDIT BY AND BETWEEN THE CITY AND BRYAN 364 JUNCTION LLC, GUARANTEEING THE CONSTRUCTION, INSTALLATION, AND COMPLETION OF CERTAIN IMPROVEMENTS WITHIN THE PRAIRIE MIXED USE DEVELOPMENT

2. **BILL #21-44**

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, DECLARING M & H CONCRETE CONTRACTORS, INC. THE LOWEST RESPONSIBLE BIDDER FOR THE CONCRETE SLAB REMOVAL AND REPLACEMENT PROJECT (PROJECT NO. 971521); AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT BY AND BETWEEN THE CITY AND M & H CONCRETE CONTRACTORS, INC. FOR THE SAME

3. **BILL #21-45**

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, DECLARING LAMKE TRENCHING & EXCAVATING, INC. THE LOWEST RESPONSIBLE BIDDER FOR THE CONCRETE SLAB REMOVAL AND REPLACEMENT PROJECT (PROJECT NO. 971521); AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT BY AND BETWEEN THE CITY AND LAMKE TRENCHING & EXCAVATING, INC. FOR THE SAME

4. **BILL #21-46**

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, DECLARING M & H CONCRETE CONTRACTORS, INC. THE LOWEST RESPONSIBLE BIDDER FOR THE CONCRETE SLAB REMOVAL AND REPLACEMENT PROJECT (PROJECT NO. 971721); AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT BY AND BETWEEN THE CITY AND M & H CONCRETE CONTRACTORS, INC. FOR THE SAME

5. **BILL #21-47**

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, DECLARING LAMKE TRENCHING & EXCAVATING, INC. THE LOWEST RESPONSIBLE BIDDER FOR THE CONCRETE SLAB REMOVAL AND REPLACEMENT PROJECT (PROJECT NO. 971721); AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT BY AND BETWEEN THE CITY AND LAMKE TRENCHING & EXCAVATING, INC. FOR THE SAME

6. **RESOLUTION #355**

A RESOLUTION DETERMINING THE INTENT OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, TO REIMBURSE ITSELF FOR CERTAIN CAPITAL EXPENDITURES.

OLD BUSINESS

1. BILL #21-26 (Read One Time 05-19-21)

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, APPROVING THE RECORD PLAT FOR THE PRAIRIE IN THE CITY OF DARDENNE PRAIRIE, MISSOURI

STAFF COMMUNICATIONS

1. City Attorney
2. City Engineer
3. City Administrator
4. Staff
5. Aldermen
6. Mayor

CLOSED SESSION

Roll call vote to hold closed session pursuant to RSMo 610.021 section _____

- Litigation and Privileged Communications (1)
- Real Estate (2)
- Personnel (3)
- Labor (9)
- Bid Specs (11)
- Audit (17)

RETURN TO REGULAR MEETING AGENDA

ADJOURNMENT

The City of Dardenne Prairie Board of Aldermen meeting was called to order at 7:20 p.m. The meeting was held at Dardenne Prairie City Hall located at 2032 Hanley Road.

The meeting was opened with the Pledge of Allegiance followed by a moment of silence.

Present at roll call were Mayor Gotway, Aldermen Costlow, Reilly, Sansone, Wandling and Ungerboeck. Alderman Koch was absent. Also present were City Clerk Kim Clark, City Administrator Dan Lang and City Attorney David Hamilton. Staff members Amelong and DeWinters were also in attendance.

Without objection, the consent agenda was approved.

CONSENT AGENDA

1. Board of Aldermen Minutes 06-16-21 and 07-07-21
2. Work Session Summary 06-16-21 and 07-07-21
3. Strategic Planning Work Session Summary 06-19-21
4. Expenditures for Approval 7-21-21 - \$881,516.51
5. The Villages at Bainbridge – Cash Deposit (Full and Final Release) - \$10,500.00
6. Luetkenhaus Properties, Inc. – Construction Deposit - (Full and Final Release)
Arden Pointe- \$189,263.13
7. Luetkenhaus Properties, Inc. – Maintenance Deposit - (Full and Final Release)
Arden Pointe - \$35,976.58

OPEN FORUM – The following individuals were in attendance and spoke:

Laure Gittemeier
Doug Beaver
Jol King

PUBLIC HEARINGS

1. Rezoning Request and P.U.D. Request – Area Plan for the northwestern approximately 48.70 acres of the land commonly known as 1575 Bryan Road and more particularly described in the P.U.D. Request – Area Plan application received by the City on June 8, 2021, on file with the City Clerk from Applicant McKelvey Homes, LLC and Property Owner Cora Bopp Family Limited Partnership.
2. Conditional Use Permit Application for the northwestern approximately 48.70 acres of the land commonly known as 1575 Bryan Road and more particularly described in the P.U.D. Request – Area Plan application received by the City on June 8, 2021, on file with the City Clerk from Applicant McKelvey Homes, LLC and Property Owner Cora Bopp Family Limited Partnership.

A motion was made by Alderman Ungerboeck, seconded by Alderman Costlow to close the public hearings. Motion passed unanimously.

NEW BUSINESS

A motion was made by Alderman Ungerboeck, seconded by Alderman Wandling to read Bill #21-36 for the first time by title only. Motion passed unanimously.

BILL #21-36

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, PROVIDING FOR REZONING OF APPROXIMATELY 48.70 ACRES OF LAND FROM C-2, GENERAL COMMERCIAL DISTRICT, TO R-1D, SINGLE-FAMILY RESIDENTIAL DISTRICT, PLANNED UNIT DEVELOPMENT (PUD); AND APPROVING AN AREA PLAN FOR SAME

A motion was made by Alderman Wandling, seconded by Alderman Ungerboeck to read Bill #21-36 for the second time by title only. Motion passed unanimously.

A motion was made by Alderman Costlow, seconded by Alderman Wandling to put Bill #21-36 to final vote. Roll call was as follows:

Alderman Sansone – Aye	Alderman Reilly – Aye
Alderman Koch – Absent	Alderman Costlow – Aye
Alderman Ungerboeck – Aye	Alderman Wandling – Aye

Mayor Gotway declared Bill #21-36 passed and designated it to be Ordinance #2113.

A motion was made by Alderman Ungerboeck, seconded by Alderman Costlow to read Bill #21-37 for the first time by title only. Motion passed unanimously.

BILL #21-37

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, PROVIDING FOR THE APPROVAL OF A CONDITIONAL USE PERMIT FOR CERTAIN REAL PROPERTY ZONED R-1D, SINGLE-FAMILY RESIDENTIAL DISTRICT, PLANNED UNIT DEVELOPMENT (PUD), AND GENERALLY LOCATED AT 1575 BRYAN ROAD IN THE CITY

A motion was made by Alderman Ungerboeck, seconded by Alderman Sansone to read Bill #21-37 for the second time by title only. Motion passed unanimously.

A motion was made by Alderman Ungerboeck, seconded by Alderman Reilly to put Bill #21-37 to final vote. Roll call was as follows:

Alderman Reilly – Aye	Alderman Wandling – Aye
Alderman Costlow – Aye	Alderman Ungerboeck – Aye
Alderman Koch – Absent	Alderman Sansone – Aye

Mayor Gotway declared Bill #21-37 passed and designated it to be Ordinance #2114.

A motion was made by Alderman Sansone, seconded by Alderman Ungerboeck to read Bill #21-38 for the first time by title only. Motion passed unanimously.

BILL #21-38

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A STORMWATER DETENTION BASIN AGREEMENT WITH THE WENTZVILLE R-IV SCHOOL DISTRICT

A motion was made by Alderman Ungerboeck, seconded by Alderman Wandling to read Bill #21-38 for the second time by title only. Motion passed unanimously.

A motion was made by Alderman Ungerboeck, seconded by Alderman Reilly to put Bill #21-38 to final vote. Roll call was as follows:

Alderman Costlow – Aye	Alderman Koch – Absent
Alderman Ungerboeck – Aye	Alderman Wandling – Aye
Alderman Sansone – Aye	Alderman Reilly - Aye

Mayor Gotway declared Bill #21-38 passed and designated it to be Ordinance #2115.

A motion was made by Alderman Ungerboeck, seconded by Alderman Wandling to read Bill #21-39 for the first time by title only. Motion passed unanimously.

BILL #21-39

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A BUILDER REPLACEMENT DEPOSIT AGREEMENT GUARANTEEING MAINTENANCE OF IMPROVEMENTS WITH LETTER OF CREDIT BY AND BETWEEN THE CITY AND FISCHER & FRICHTEL CUSTOM HOMES LLC, GUARANTEEING THE MAINTENANCE OF CERTAIN IMPROVEMENTS IN THE ARDEN POINTE SUBDIVISION

A motion was made by Alderman Ungerboeck, seconded by Alderman Wandling to read Bill #21-39 for the second time by title only. Motion passed unanimously.

A motion was made by Alderman Wandling, seconded by Alderman Ungerboeck to put Bill #21-39 to final vote. Roll call was as follows:

Alderman Ungerboeck – Aye	Alderman Costlow – Aye
Alderman Wandling – Aye	Alderman Sansone – Aye
Alderman Reilly – Aye	Alderman Koch – Absent

Mayor Gotway declared Bill #21-39 passed and designated it to be Ordinance #2116.

A motion was made by Alderman Ungerboeck, seconded by Alderman Costlow to read Bill #21-40 for the first time by title only. Motion passed unanimously.

BILL #21-40

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A REPLACEMENT DEPOSIT AGREEMENT GUARANTEEING IMPROVEMENTS WITH LETTER OF CREDIT BY AND BETWEEN THE CITY AND LUETKENHAUS PROPERTIES, INC., GUARANTEEING THE CONSTRUCTION OF CERTAIN IMPROVEMENTS IN THE ARDEN POINTE SUBDIVISION

A motion was made by Alderman Ungerboeck, seconded by Alderman Sansone to read Bill #21-40 for the second time by title only. Motion passed unanimously.

A motion was made by Alderman Wandling, seconded by Alderman Ungerboeck to put Bill #21-40 to final vote. Roll call was as follows:

Alderman Koch – Absent	Alderman Sansone – Aye
Alderman Reilly – Aye	Alderman Wandling – Aye
Alderman Costlow – Aye	Alderman Ungerboeck – Aye

Mayor Gotway declared Bill #21-40 passed and designated it to be Ordinance #2117.

A motion was made by Alderman Ungerboeck, seconded by Alderman Sansone to read Bill #21-41 for the first time by title only. Motion passed unanimously.

BILL #21-41

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI ESTABLISHING A PROCEDURE TO DISCLOSE POTENTIAL CONFLICTS OF INTEREST FOR CERTAIN MUNICIPAL OFFICIALS

A motion was made by Alderman Ungerboeck, seconded by Alderman Reilly to read Bill #21-41 for the second time by title only. Motion passed unanimously.

A motion was made by Alderman Ungerboeck, seconded by Alderman Costlow to put Bill #21-41 to final vote. Roll call was as follows:

Alderman Wandling – Aye	Alderman Ungerboeck – Aye
Alderman Sansone – Aye	Alderman Reilly – Aye
Alderman Koch – Absent	Alderman Costlow – Aye

Mayor Gotway declared Bill #21-41 passed and designated it to be Ordinance #2118.

A motion was made by Alderman Ungerboeck, seconded by Alderman Reilly to read Bill #21-42 for the first time by title only. Motion passed unanimously.

BILL #21-42

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN ESCROW FUNDING AGREEMENT WITH BRYAN 364 JUNCTION LLC

A motion was made by Alderman Ungerboeck, seconded by Alderman Wandling to read Bill #21-42 for the second time by title only. Motion passed unanimously.

A motion was made by Alderman Ungerboeck, seconded by Alderman Wandling to put Bill #21-42 to final vote. Roll call was as follows:

Alderman Sansone – Aye	Alderman Reilly – Aye
Alderman Koch – Absent	Alderman Costlow – Aye
Alderman Ungerboeck – Aye	Alderman Wandling – Aye

Mayor Gotway declared Bill #21-42 passed and designated it to be Ordinance #2119.

OLD BUSINESS

A motion was made by Alderman Ungerboeck, seconded by Alderman Costlow to postpone Bill #21-26. Motion passed unanimously.

1. **BILL #21-26 (Read One Time 05-19-21)**

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, APPROVING THE RECORD PLAT FOR THE PRAIRIE IN THE CITY OF DARDENNE PRAIRIE, MISSOURI

STAFF COMMUNICATIONS

City Attorney David Hamilton stated if a sales tax passed in November the collections would begin April, 2022.

A motion was made by Alderman Ungerboeck, Seconded by Alderman Sansone to hold a closed session pursuant to RSMo 610.021 section (3) Personnel. Motion passed unanimously. Roll call was as follows:

Alderman Reilly – Aye
Alderman Costlow – Aye
Alderman Koch – Absent

Alderman Wandling – Aye
Alderman Ungerboeck – Aye
Alderman Sansone – Aye

CLOSED SESSION

RETURN TO REGULAR MEETING AGENDA

ADJOURNMENT

A motion was made by Alderman Ungerboeck, seconded by Alderman Costlow to adjourn the meeting at 9:05 p.m. Motion passed unanimously.

Respectfully submitted,

Kim Clark, City Clerk

WORK SESSION SUMMARY

JULY 21, 2021

The City of Dardenne Prairie Work Session was called to order at 6:05 p.m.

The meeting was held at Dardenne Prairie City Hall located at 2032 Hanley Road.

The following were in attendance: Mayor Gotway, Aldermen Costlow, Reilly, Wandling Ungerboeck and Sansone. Alderman Koch was absent. Also present were City Clerk Kim Clark, City Administrator Dan Lang and City Attorney David Hamilton. Staff members Amelong and DeWinters were also in attendance.

The meeting was opened with the Pledge of Allegiance.

ITEMS FOR DISCUSSION AND CONSIDERATION

1. John Wiemann, District 103 – End of Session Address
2. Financial Advisor – Street Financing
3. Discussion of City-County Road Maintenance and Repair Agreement – Funds for FY2022

STAFF COMMUNICATIONS

City Engineer Kehoe mentioned a recent issue with the BaratHaven spillway had been addressed.

City Administrator Lang mentioned an updated large zoning map had been received. Alderman Wandling requested the status of the pothole repairs.

ADJOURNMENT

A motion was made by Alderman Costlow, seconded by Alderman Ungerboeck to adjourn the meeting at 7:10 p.m.

Respectfully submitted,

Kim Clark, City Clerk

**EXPENDITURES FOR APPROVAL
8/4/2021**

1 AFLAC	June, 2021	418.08
2 Alderman Dan Koch	August, 2021	375.00
3 Alderman Dave Wandling	August, 2021	375.00
4 Alderman EJ Sansone	August, 2021	375.00
5 Alderman Justin Ungerboeck	August, 2021	375.00
6 Alderman Kasey Reilly	August, 2021	375.00
7 Alderman Mike Costlow	August, 2021	375.00
8 Ameren	City Hall	1,859.23
9 Ameren	Concession Stand	356.55
10 Ameren	City Park	300.90
11 Ameren	Traffic Light 2	54.15
12 Ameren	Traffic Light	10.49
13 Archimages	Athletic Complex	52.86
14 CDS Office Technologies	Copies	285.58
15 Charlies Farm & Home	String Trimmer Repair	78.87
16 Charter Communications	Service through 7-7-21	576.77
17 Cochran	Dardenne Prairie Athletic Complex	11,588.55
18 Cochran	Dardenne Prairie Athletic Complex	4,495.00
19 County Land Maintenance	Summer Applications	1,208.00
20 Cuivre River Electric	Light on Weldon Spring	35.62
21 Cuivre River Electric	Henke/Feise Rd. Traffic Signals	63.00
22 Cuivre River Electric	Light at Georgetown Park	52.22
23 Cuivre River Electric	Lights at St. Williams Apts.	28.13
24 Cuivre River Electric	Hanley Rd. Traffic Signal	67.00
25 Duckett Creek Sanitary District	Sewer	75.00
26 Evergreen Solutions, LLC	Compensation & Benefits Study	8,500.00
27 Extreme Electrical	Concession Stand Exhaust Fan Install	468.50
28 First Bank	Credit Card Charges	3,715.45
29 First Bank	Credit Card Charges	668.38
30 Green Clean Commercial	City Hall Cleaning: July	748.00
31 H. R. Green	Stump Road Project - Invoice #6	5,901.42
32 H. R. Green	Hanley Road Project - Invoice #19	624.97
33 H. R. Green	Stump Road Project	11,505.37
34 H. R. Green	Hanley Road Project	2,248.07
35 Hamilton Weber	June, 2021 Legal Fees	8,039.38
36 Hansen's Tree Service	Tree Removal	1,000.00
37 Hansen's Tree Service	Brush Removal at BaratHaven	300.00
38 Hoff Heating & AC	Service Call	465.00
39 Insurance - The Hartford	July, 2021	371.42
40 Insurance: Principal Life	Life: July, 2021	393.00
41 Insurance-Anthem	Health - July, 2021	8,685.56
42 Insurance-Humana	July, 2021	871.48
43 Jeffrey J. Sandcock	Prosecuting Attorney: July, 2021.	1,100.00
44 LPA Consultant Services	Stump Road	4,721.14
45 LPA Consultant Services	Hanley Road	499.98
46 Martin Trophy	Business Hours/Board Member Plates and Holders	205.95
47 Mayor John Gotway	August, 2021	1,000.00
48 Meyer Electric Company	Athletic Complex Lighting	27,926.00
49 Missouri Machinery & Engineering	Fountain Activation	250.00
50 MO Dept of Public Safety	Annual Elevator Inspection	25.00
51 MyGov, LLC	Building Dept Software - 3rd Quarter	2,460.00
52 Office Essentials	Office Supplies	185.74
53 Parks: Bubble Bus	Prairie Day (deposit)	100.00
54 Parks: Circus Kaput	Prairie Day (deposit)	1,115.00
55 Parks: Game Time Mobile Entertainment	Prairie Day	640.00
56 Parks: Queens Blvd	Concert in the Park 7-16-21	2,000.00
57 Parks: Techline Sports Lighting, LLC	SSR Remote Access Annual Fee	400.00
58 Parks: Various Umpires	Through 7-8-21	3,385.00
59 Parks: City of Chesterfield	Field Rental Refund	70.00
60 Parks: Martin Trophy	Trophies	263.25
61 Payne Family Homes	Voided Permit Refund	3,313.79
62 Payne Family Homes	Cordoba Escrow Release	41,750.00
63 Payroll	6/25/2021 Payroll	29,246.47
64 Payroll	7/9/2021 Payroll	25,834.94
65 PWSD No. 2	Service from 5-3-21 to 5-25-21	16.05
66 PWSD No. 2	City Hall	62.03
67 PWSD No. 2	City Hall Fountain	1,170.49
68 R & R Contracting Services	Services to 7/15/21	595.36
69 Roto-Rooter	Debris Removal	611.00
70 Spire	Athletic Complex service to 6/30/21	43.95
71 St. Charles County Public Health	Mosquito Spraying to 6/23/21	302.54
72 St. Louis Post Dispatch	Public Notice	693.95
73 St. Louis Post Dispatch	Public Hearing Notice	1,383.62
74 Superior Elevator	Annual Elevator Inspection	175.00
75 Superior Elevator	Annual Elevator Safety Inspection	175.00
76 The Hartford	Insurance	5,365.00
77 The Law Office of Dennis Chassaniol	Municipal Judge: July, 2021	500.00
78 Thoele	Gas to 5/27/21	547.84
79 Total Lock & Security, Inc.	Maintenance Shed Lock	63.00
80 UMB Bank	Bryan Road NID Series 2012	3,462.50
81 UMB Bank, NA	June, 2021 TDD Sales Tax Payment	33,414.87
82 United Construction	Dardenne Prairie Athletic Complex	92,000.00
83 Veritext Legal Solutions	Transcript 6/15/21	720.70
84 WheelHouse	Technology Services	1,429.15

367,168.23

Approved by Board of Aldermen 8-4-21

Mayor John Gotway

TREASURER'S REPORT

As of May 31, 2021

General Fund	651,886.49
Special Revenue Fund	483,857.66
Parks & Storm Water Fund	656,542.81
Parks & Storm Water Umpire Fund	10,691.47
Capital Improvement Sales Tax Fund	441,559.57
Municipal Bond Account	1,661.25
Escrow/Bond Account	298,800.55
Petty Cash	100.00
Cash Drawer	200.00
Commerce Bank Investments	1,237,000.00
Charles Schwab Investments	2,258,602.57
TOTAL	6,040,902.37
COP Series 2020	876,531.41
Athletic Complex LOC - Duckett Creek	33,053.00
Bryan Road NID Bond Fund	166,443.64
Bryan Road NID Bond Reserve Fund	122,363.10

Respectfully submitted,



Kim Clark
City Clerk/Treasurer

TREASURER'S REPORT

As of June 30, 2021

General Fund	714,314.54
Special Revenue Fund	594,375.28
Parks & Storm Water Fund	1,271,162.69
Parks & Storm Water Umpire Fund	6,255.01
Capital Improvement Sales Tax Fund	51,544.13
Municipal Bond Account	2,936.49
Escrow/Bond Account	301,552.54
Petty Cash	100.00
Cash Drawer	200.00
Commerce Bank Investments	1,237,000.00
Charles Schwab Investments	2,256,212.90
TOTAL	6,435,653.58

COP Series 2020	316,917.27
Athletic Complex LOC - Duckett Creek	33,053.00

Bryan Road NID Bond Fund	166,448.91
Bryan Road NID Bond Reserve Fund	122,333.85

Respectfully submitted,



Kim Clark
City Clerk/Treasurer

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A DEPOSIT AGREEMENT GUARANTEEING LAND DISTURBANCE IMPROVEMENTS WITH LETTER OF CREDIT BY AND BETWEEN THE CITY AND BRYAN 364 JUNCTION LLC, GUARANTEEING THE CONSTRUCTION, INSTALLATION, AND COMPLETION OF CERTAIN IMPROVEMENTS WITHIN THE PRAIRIE MIXED USE DEVELOPMENT

WHEREAS, the Board of Aldermen of the City of Dardenne Prairie, Missouri (the “City”), finds and determines that it is to the benefit of the City to enter into a Deposit Agreement Guaranteeing Land Disturbance Improvements with Letter of Credit with Bryan 364 Junction LLC, guaranteeing the construction, installation, and completion of certain improvements associated with the development of certain real property within the City known as The Prairie.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AS FOLLOWS:

SECTION 1. That the form, terms, and provisions of the Deposit Agreement Guaranteeing Land Disturbance Improvements with Letter of Credit by and between the City of Dardenne Prairie, Missouri, and Bryan 364 Junction LLC, attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and they hereby are approved and the City Administrator is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk and City Engineer are hereby authorized and directed to attest to the Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

SECTION 2. Savings Clause: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

SECTION 3. Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION 4. Effective Date: This Ordinance shall take effect and be in force from and after its passage by the Board of Aldermen and its approval by the Mayor of the City of Dardenne Prairie, Missouri.

Read two (2) times, passed, and approved this _____ day of _____, 2021.

As Presiding Officer and as Mayor

Attest:

City Clerk

Approved this _____ day of _____, 2021.

Mayor

Attest:

City Clerk

Exhibit A
[attach Agreement]

RBA FORM (OFFICE USE ONLY)

MEETING DATE: 08/04/2021

Regular () Work Session ()

ATTACHMENT: YES () NO ()

Contract () Ordinance () Other ()

Request for Board Action
By: Staff

Ward 1

**Description: Land Disturbance Deposit Agreement with Letter of Credit provided by
Bryan 364 Junction, LLC
The Prairie – Mixed Use Development
Dardenne Prairie Project No. 972130**

• **Recommendation:** Staff – Approve () Disapprove ()

• **Summary/Explanation:**

A Deposit Agreement for insuring or guaranteeing the completion of the grading, stormwater treatment facilities, and revegetation at the subject site is attached for your consideration.

• **Budget Impact:** (revenue generated, estimated cost, CIP item, etc.)

The costs of Code compliance inspections of this private project are paid for by the developer.

RBA requested by: L. R. Kehoe Date: 07/22/2021

Dardenne Prairie Project Number: 972130

**DEPOSIT AGREEMENT GUARANTEEING LAND DISTURBANCE IMPROVEMENTS
WITH LETTER OF CREDIT**

THIS DEPOSIT AGREEMENT GUARANTEEING IMPROVEMENTS WITH
LETTER OF CREDIT (the "AGREEMENT") made and entered into as of the 21st day of
July, 2021 by and among Bryan 364 Junction LLC
_____, herein called
PERMITTEE, and the CITY OF DARDENNE PRAIRIE, MISSOURI, herein called CITY.

WHEREAS, the PERMITTEE has submitted a LAND DISTURBANCE PERMIT
APPLICATION to the CITY for the development of certain real property known as _____
The Prairie

(the "SITE"), and has requested approval of the
same by the City; and

WHEREAS, the STORM WATER POLLUTION PREVENTION PLAN (the "SWPPP") has
been approved by the City Engineer and all inspection fees owed to the City have been paid; and

WHEREAS, the performance guarantee has been determined from the estimated land disturbance
acreage rounded up to the nearest tenth (0.1) of an acre times the cost per acre according to the CITY's
"Land Disturbance Acreage/Cost per Acre" schedule or the PERMITTEE has engaged a qualified,
licensed engineer to reasonably estimate and determine that the cost of all erosion and sediment
controls and other proposed construction items of the aforesaid SWPPP (the "IMPROVEMENTS") to
be the sum of Nine hundred and thirty-seven thousand seven hundred and ninety-six and 60/100
DOLLARS (\$ 937,796.60) "ENGINEER'S ESTIMATE", and the CITY Engineer has
approved the aforesaid estimated cost of erosion and sediment control and other construction costs;
and

WHEREAS, the PERMITTEE is seeking the CITY's approval of a land disturbance permit; and

WHEREAS, the CITY's Municipal Code requires that the PERMITTEE must establish a
satisfactory security to guaranty the satisfactory construction of the IMPROVEMENTS pursuant to the
SWPPP including revegetation of the SITE;

NOW, THEREFORE, in consideration of the covenants, promises and agreements herein provided;

IT IS HEREBY MUTUALLY AGREED:

1. That the PERMITTEE hereby deposits with City an irrevocable standby letter of credit in substantially the form attached hereto and marked as Exhibit No. 1, with such other terms as approved by the City Engineer, in favor of City for the sum of One million thirty one thousand Five hundred and seventy six and 26/100 DOLLARS (\$ 1,031,576²⁶), in lawful money of the United States of America, called CONSTRUCTION DEPOSIT, with the CITY, guaranteeing the construction, installation and completion of the IMPROVEMENTS of the aforesaid SWPPP together with the cost of restoration of the SITE in case of failure of the PERMITTEE to complete the IMPROVEMENTS so approved once land disturbance has commenced, all in accordance with the ordinances of the CITY regulating the same, and timely payment of CITY engineering inspections of the SITE, and a separate deposit the sum of Ninety-three thousand Seven hundred and Seventy-Nine and 60/100 DOLLARS (\$ 93,779⁶⁰), in lawful money of the United States of America, called MAINTENANCE DEPOSIT, with the CITY, as a deposit guaranteeing maintenance, repair and replacement, if necessary of all IMPROVEMENTS, together with the cost of restoration of the SITE in case of failure of the PERMITTEE to maintain the IMPROVEMENTS so approved once land disturbance has commenced, all in accordance with the ordinances of the CITY regulating the same, both deposits being for the IMPROVEMENTS shown on the approved SWPPP.

2. That all invoices for CITY engineering inspections shall be paid by the PERMITTEE within thirty (30) days of the date of the invoice.

3. That the CONSTRUCTION DEPOSIT and the MAINTENANCE DEPOSIT will be held by the CITY in two separate interest-bearing deposit accounts, with all interest accruing to the CITY to offset administrative and other costs of maintaining the deposit accounts.

4. That the CONSTRUCTION DEPOSIT shall guarantee the timely construction, installation and completion of the IMPROVEMENTS associated with the SWPPP, and shall be in the amount of one hundred ten percent (110%) of the CITY Engineer's estimate of the cost of the construction, completion and installation of the IMPROVEMENTS, dated 7/12/21, a copy of which is attached hereto and made a part hereof as Exhibit 2, and as per the SWPPP for the SITE which has been filed with CITY and approved by the CITY Engineer on 7/14/21, all of which are also made a part hereof as though set forth herein word for word as Exhibit 3.

5. That the MAINTENANCE DEPOSIT shall guarantee the maintenance and repair, if necessary, of all IMPROVEMENTS associated with the SWPPP, and shall be in the amount of ten percent (10%) of the CITY Engineer's estimate of the cost of the construction, completion and installation of the IMPROVEMENTS, dated 6/1/21, a copy of which is attached hereto and made a part hereof as Exhibit 2. Rev. 2 7/12/21

6. That in the event the CONSTRUCTION DEPOSIT is insufficient to complete the IMPROVEMENTS and/or guarantee timely payment for CITY engineering inspections of the SITE, or the MAINTENANCE DEPOSIT is insufficient for the maintenance and repair obligations of the

PERMITTEE, the PERMITTEE will deposit with the CITY such additional sums in lawful money of the United States of America as will be required to complete the IMPROVEMENTS and guarantee timely payment of CITY engineering inspections, or to fulfill the maintenance obligations of the PERMITTEE, of the aforesaid SWPPP; said additional sums shall also be subject to the terms of this DEPOSIT AGREEMENT.

7. That, except as otherwise provided in this Section, the PERMITTEE guarantees that all required IMPROVEMENTS, which have not been installed to date, will be installed, constructed and completed within two (2) years from date of the issuance by the CITY of a land disturbance permit therefore ("COMPLETION DATE"), and the PERMITTEE shall appoint a qualified, licensed engineer to supervise the construction, installation and completion of the IMPROVEMENTS and shall furnish to the CITY upon the completion of the IMPROVEMENTS a Certificate of Completion by said appointed engineer. Certificate of Completion shall be in the form attached hereto as Exhibit 4.

8. The CITY Engineer may reduce the obligation secured under the letter of credit upon completion, inspection and approval by the CITY Engineer of all required IMPROVEMENTS within a category of IMPROVEMENTS, or as work may occur from time to time on specific IMPROVEMENTS and is completed, inspected and approved, provided however, that:

(a) If, after the COMPLETION DATE, all the IMPROVEMENTS have not been completed, the PERMITTEE may request in writing, and the CITY Engineer has the discretion to grant, an extension to the COMPLETION DATE for a period of up to two (2) years if the CITY Engineer reasonably determines that the extension is necessary to facilitate adequate and coordinated provisions for the proposed IMPROVEMENTS, facilities or requirements so long as all deposit agreements are extended and approved by the CITY Attorney. The CITY Engineer, in his/her sole discretion, may require, as a condition of the extension, execution of a new DEPOSIT AGREEMENT, recalculation of deposit amounts or satisfaction of new code requirements or other reasonable conditions as may be needed to ensure compliance with the CITY's Municipal Code.

9. The PERMITTEE hereby represents and warrants to the CITY that the letter of credit deposited is not drawn on any financial institution where the PERMITTEE or a related person, directly or indirectly, voluntarily or involuntarily, owns, operates, controls through stock ownership or otherwise, or has become employed by, advises, consults with or represents in any capacity, such financial institution; provided however, nothing contained herein shall be construed to prohibit the PERMITTEE from (i) investing in any such financial institution, so long as he does not own or control ten percent (10%) or more of such financial institution's ownership interests, or ten percent (10%) or more of any class of securities of such financial institution, provided when the PERMITTEE is a financial institution, it may issue its own letter of credit. The letter of credit shall provide that the issuing institution will pay, on demand, to the CITY such amounts as the CITY may require to fulfill the PERMITTEE's obligations herein, as the same may be reduced from time to time in writing by the CITY Engineer. The letter of credit shall be irrevocable for least one (1) year, and shall state that any balance remaining at its expiration shall automatically be deposited in cash with the Treasurer of the CITY, unless a new letter of credit is issued and agreed to by the CITY or the CITY issues to the financial institution a written release of the obligations for which the letter of credit was deposited. The PERMITTEE shall pay a non-refundable fee of two hundred dollars (\$200.00) to the CITY with submission of an initial letter of credit and one hundred dollars (\$100.00) for any amendment or extension thereto, to partially reimburse the CITY's administration and review costs in accepting and maintaining such letter of credit.

10. Due to the costs of administering this DEPOSIT AGREEMENT and compliance with State regulations relating thereto, the PERMITTEE shall pay the CITY upon execution of this DEPOSIT AGREEMENT an additional fee of five hundred dollars (\$500.00) that shall be used by the CITY to defray costs of administration, legal review, procedural changes, and other costs not otherwise reimbursed to the CITY resulting from the CITY's acceptance of this DEPOSIT AGREEMENT. The PERMITTEE shall be obligated to reimburse the CITY for any additional costs, including, but not limited to, reasonable attorneys' fees, above such deposited fee arising in any way from the CITY's acceptance of this DEPOSIT AGREEMENT.

11. That prior to a request for deposit release, the PERMITTEE shall submit a written request for inspection of the IMPROVEMENTS for which the deposit is being held. In the event CITY determines that any of the IMPROVEMENTS are deficient in any respect, CITY will issue a written notice to PERMITTEE specifying the deficiency(s) ("DEFAULT NOTICE"). If PERMITTEE has not, within fifteen (15) days after the date on which such DEFAULT NOTICE is received by PERMITTEE, begun and pursued, with all best efforts, correction of all deficiency(s) noted, then CITY may without any further notice to PERMITTEE, withdraw such amount from the appropriate Deposit Account as CITY reasonably deems necessary to correct such deficiency(s) or to protect CITY from damages resulting from such deficiency(s).

12. That the PERMITTEE shall submit a written request for approval of release of the CONSTRUCTION DEPOSIT as to all or any part of the PERMITTEE's obligation only after construction, completion and installation of some phase of work on the IMPROVEMENTS indicated on the approved SWPPP, receipt of the requisite written notification from the appropriate inspecting public authority, and approval by the CITY Engineer.

13. That after an inspection of the IMPROVEMENTS, the Board of Aldermen of the CITY may, upon a recommendation from the CITY Engineer, release up to ninety-five percent (95%) of the CONSTRUCTION DEPOSIT for the IMPROVEMENTS. Irrespective of any discretionary prior releases that may be authorized after completion of any component of the guaranteed IMPROVEMENTS (i.e., less than all of the IMPROVEMENTS in a given category), the remaining amount held for any category of IMPROVEMENTS for the entire SWPPP shall be released within thirty (30) days of completion of all of the IMPROVEMENTS in such category of IMPROVEMENTS, minus a retention of five percent (5%) which shall be released only upon completion of all IMPROVEMENTS for the SWPPP. The CITY Engineer shall establish the Improvement categories, which may consist of Improvement components or line items, to be utilized for calculation of deposit amounts, but such categories, components, and line items shall in no way modify or reduce the PERMITTEE's obligations hereunder as to all required Improvements, irrespective of any release or completion of any category, or underlying component or line item. All IMPROVEMENTS in a category shall be deemed complete only when:

- a. Each and every component and line item within a category for the entire SWPPP has been constructed and completed as required,
- b. The PERMITTEE has notified the CITY Engineer in writing of the completion of all components of the category, provided all necessary or requested documentation, and requests an inspection,

c. The PERMITTEE is not in default or in breach of any obligation to the CITY including, but not limited to, the CITY Engineer's demand for maintenance or for deposit of additional sums for execution of the SWPPP, and

d. The inspection has been completed and the results of the inspection have been approved in writing by the CITY Engineer.

14. That the PERMITTEE shall continue to be responsible for defects, deficiencies and damage to public streets and other required IMPROVEMENTS during execution of the SWPPP. No inspection approval or release of funds from the CONSTRUCTION DEPOSIT as to any component or category shall be deemed to be CITY approval of IMPROVEMENTS or otherwise release the PERMITTEE of its obligation relating to the completion of the IMPROVEMENTS until the final release on all IMPROVEMENTS and maintenance is issued declaring that all IMPROVEMENTS have in fact been constructed as required. Inspection, approval CONSTRUCTION DEPOSIT release, or any partial releases, of any or all required IMPROVEMENTS shall not constitute acceptance of the IMPROVEMENTS by the CITY.

15. That no approval of required IMPROVEMENTS shall be granted for IMPROVEMENTS that fail to meet the specifications established herein, by CITY ordinance, or otherwise adopted by the CITY Engineer.

16. That upon final inspection and approval of all IMPROVEMENTS, the remaining amount of the CONSTRUCTION DEPOSIT shall be released; provided, that no such funds shall be released on a final inspection until the execution of the SWPPP is complete as determined by the CITY Engineer.

17. That upon commencement of installation of the IMPROVEMENTS within the SITE, the PERMITTEE shall be responsible for maintenance of the IMPROVEMENTS subject to this DEPOSIT AGREEMENT. Maintenance shall include repair or replacement of all defects, deficiencies and damage to the IMPROVEMENTS that may exist or arise, abatement of nuisances caused by such IMPROVEMENTS, removal of mud and debris from construction, erosion control, grass cutting, removal of construction materials (except materials to be used for execution of the SWPPP as permitted by SWPPP). All repairs and replacement shall comply with CITY specifications and standards. Any maintenance on IMPROVEMENTS accepted by the CITY for public dedication shall be completed under the supervision of and with the prior written approval of the CITY Engineer. The maintenance obligation for required IMPROVEMENTS to existing public roads or other existing public infra-structure already maintained by a public governmental entity shall terminate on and after the date such IMPROVEMENTS have been inspected by the City Engineer and deposit released by the Governing Body.

18. That the MAINTENANCE DEPOSIT shall be retained by the CITY to guarantee maintenance and/or repair and replacement of the required IMPROVEMENTS and shall be subject to the immediate order of the CITY Engineer to defray or reimburse any cost to the CITY of maintenance or repair of IMPROVEMENTS related to the SWPPP which the PERMITTEE fails or refuses to perform. Such costs shall include off-site damage caused by deficiencies in the IMPROVEMENTS or failure of maintenance. Except in emergency circumstances or where action is otherwise required before written notice can be provided, the CITY Engineer shall provide the PERMITTEE with a written demand and opportunity to perform the maintenance before having such maintenance performed by the CITY. The CITY Engineer shall have the authority to require the

maintenance deposit to be replaced or replenished by the PERMITTEE in any form permitted for an original deposit where the amount remaining is determined to be insufficient or where the maintenance deposit was already drawn upon by the CITY for maintenance, repair or replacement.

19. The CITY Engineer may approve such further releases if it is determined in his/her discretion, after inspection of the IMPROVEMENTS, that the total maintenance amount retained is clearly in excess of the amount necessary for completion of the maintenance obligation, after all reasonable contingencies are considered.

20. That upon expiration of the maintenance obligations established herein, and after the CITY has received written request for final inspection from the PERMITTEE, the CITY Engineer shall cause a final inspection to be made of the required IMPROVEMENTS. Funds shall then be released if there are no defects or deficiencies found and all other obligations are shown to be satisfied on inspection thereof or at such time thereafter as any defects or deficiencies are cured with the permission of and within the time allowed by the CITY Engineer. This release shall in no way be construed to indemnify or release any person from any civil liability that may exist for defects or damages caused by any construction, IMPROVEMENT or development for which any deposit has been released.

21. The CITY Engineer shall inspect each category of IMPROVEMENTS within twenty (20) business days after a request for such inspection has been filed with the CITY Engineer by the PERMITTEE, and no inspection shall be required until such request is received by the CITY Engineer. For purposes of this Section, an "inspection request" shall constitute and occur only on a completed written request form that shall include:

- (a) The category of Improvement reflected in this DEPOSIT AGREEMENT that is requested to be inspected;
- (b) A certification from a professional engineer registered in the State of Missouri that the category of Improvement has been installed and is being maintained in conformance with the SWPPP and all applicable requirements thereto, and is therefore ready for inspection; and
- (c) A verified statement from a representative officer of the PERMITTEE attesting that the information in the inspection request is true and accurate.

Nothing herein shall preclude the CITY Engineer from completing additional inspections at his or her discretion or as a courtesy to the PERMITTEE.

22. That the obligation and rights of the PERMITTEE to construct, complete, install and maintain the IMPROVEMENTS indicated on the approved SWPPP shall not cease until the PERMITTEE shall be finally released by the CITY Engineer, nor shall this DEPOSIT AGREEMENT be assignable or transferable by PERMITTEE. Furthermore, in the event of a default, abandonment, or failure of the PERMITTEE to timely complete the IMPROVEMENTS, no other person, firm, entity shall acquire (whether by contract, judicial foreclosure or other means) any rights to any remaining Deposits or deposit agreements of the PERMITTEE without entering into a new, separate deposit agreement with the CITY. If, after the COMPLETION DATE or after a later period as extended pursuant to Section 8, the IMPROVEMENTS are not constructed, completed, installed, accepted and

maintained as required or if the PERMITTEE shall violate any provision of the DEPOSIT AGREEMENT, the CITY Engineer must notify the PERMITTEE to show cause within not less than ten (10) days why the PERMITTEE should not be declared in default. Unless good cause is shown, no construction or other permit shall be issued to the PERMITTEE for the SITE during any period in which the PERMITTEE is in violation of the DEPOSIT AGREEMENT or the Municipal Code. If the PERMITTEE fails to cure any default or present a compelling reason why no default should be declared, the CITY Engineer shall declare the PERMITTEE in default and may take any one (1) or more of the following acts:

- a. Deem the balance under the DEPOSIT AGREEMENT not theretofore released as forfeited to the CITY, to be then placed in an appropriate trust and agency account subject to the order of the CITY Engineer for such purposes as letting contracts to bring about the completion or maintenance of the IMPROVEMENTS indicated on the approved SWPPP or other appropriate purposes in the interest of the public safety, health and welfare; or
- b. Require the PERMITTEE, letter of credit provider or surety to pay to the CITY the balance of the surety not theretofore released; or
- c. Require the PERMITTEE to submit an additional cash sum sufficient to guarantee the completion or maintenance of the IMPROVEMENTS indicated on the approved SWPPP after recalculation in order to allow for any inflated or increased costs of constructing or maintaining the IMPROVEMENTS.

The failure of a PERMITTEE to complete the IMPROVEMENTS within the time provided by this DEPOSIT AGREEMENT (or any extension granted by the CITY), and including the payment of funds to the CITY due to such failure or an expiration of a letter of credit, shall be deemed an automatic act of default entitling the CITY to all remedies provided in Section 410.130 of the Municipal Code without further or prior notice. It shall be the sole responsibility of the PERMITTEE to timely request an extension of any DEPOSIT AGREEMENT if the IMPROVEMENTS are not completed in the original time period provided by the DEPOSIT AGREEMENT and no right to any extension shall exist or be assumed.

23. That if the PERMITTEE or letter of credit provider fails to comply with the CITY Engineer's requirements for payment as described above or fails to complete the IMPROVEMENTS or otherwise violates the DEPOSIT AGREEMENT provisions and there is a risk that construction will continue on the SITE without the timely prior completion of IMPROVEMENTS or compliance with DEPOSIT AGREEMENT provisions, the CITY Engineer may in addition or alternatively to other remedies:

- a. Suspend the right of the PERMITTEE to build or construct on the SITE. The CITY Engineer shall give the PERMITTEE ten (10) days' written notice of an order under this Subsection with copies to all letter of credit providers, as appropriate, who have outstanding obligations for any portion of the SITE and shall record an affidavit of such notice with the Recorder of Deeds. If, within the ten (10) day period after notice is given, the CITY Engineer is not convinced by compelling evidence that completion of the IMPROVEMENTS is adequately assured as provided herein, the CITY Engineer shall order construction suspended on the SITE. The order shall be served upon the PERMITTEE with a copy to the issuer of the letter of credit, as appropriate, and a copy recorded with the Recorder of Deeds. The notice

shall contain the following minimum language, which may be supplemented at the discretion of the CITY Engineer.

THIS SITE, HAS BEEN DECLARED IN DEFAULT BY THE CITY OF DARDENNE PRAIRIE CITY ENGINEER. NO DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER SHALL TAKE PLACE WITHIN THE LIMITS OF THIS SITE UNTIL SUCH TIME AS THE CITY OF DARDENNE PRAIRIE CITY ENGINEER REMOVES THIS PROHIBITION. ANY DEVELOPMENT, CONSTRUCTION, BUILDING OR DEMOLITION IN ANY MANNER WHILE THIS PROHIBITION IS IN EFFECT IS ILLEGAL AND SHALL BE ENFORCED PURSUANT TO THE MUNICIPAL CODE OF THE CITY OF DARDENNE PRAIRIE.

The City shall not thereafter authorize construction, building or demolition activity to take place on the SITE contrary to the City Engineer's order. The suspension shall be rescinded in whole or in part only when the CITY Engineer is convinced that completion of the IMPROVEMENTS is adequately assured in all or an appropriate part of the SWPPP has been provided; or

b. Suspend the rights of the PERMITTEE or any RELATED ENTITY to construct structures in any development platted after the effective date of such suspension throughout CITY of Dardenne Prairie and such incorporated areas as are under CITY's jurisdiction. The CITY Engineer shall give the PERMITTEE ten (10) days' written notice of an order under this clause with a copy to any letter of credit providers known to the CITY Engineer to have obligations outstanding on behalf of the PERMITTEE or RELATED ENTITIES and shall record an affidavit of such notice with the Recorder of Deeds. If, within the ten (10) day period after notice is given, the CITY Engineer is not convinced by compelling evidence that completion of the IMPROVEMENTS is adequately assured as provided herein, the CITY Engineer shall order construction on the SITE suspended. The order shall be served upon the PERMITTEE, with a copy to the letter of credit providers as appropriate, and a copy recorded with the Recorder of Deeds. The CITY shall not thereafter authorize construction, building or demolition activity to take place on the SITE contrary to the CITY Engineer's order. The suspension shall be rescinded only when the CITY Engineer is convinced that completion of the IMPROVEMENTS is adequately assured. A PERMITTEE is a RELATED ENTITY of another person:

1. If either has a principal or controlling interest in the other; or
2. If any person, firm, corporation, association, partnership or other entity with a controlling interest in one has a principal or controlling interest in the other.

24. That if PERMITTEE or any RELATED ENTITY is in default, as determined by the CITY Engineer, the rights of the PERMITTEE or any RELATED ENTITY to receive development approval, which approval shall include, but not be limited to, approval of any plat or DEPOSIT AGREEMENT for new or further development in the CITY, shall be suspended. The suspension shall be rescinded only when the CITY Engineer is convinced that completion and maintenance of the IMPROVEMENTS is adequately assured.

25. That if PERMITTEE, letter of credit provider or any RELATED ENTITY fails to comply with any obligation of this DEPOSIT AGREEMENT, the CITY Engineer may recommend that the CITY Attorney take appropriate legal action and may also withhold any building or occupancy permits to PERMITTEE or RELATED ENTITIES until such compliance is cured. The CITY shall also have the right to partially or wholly remedy PERMITTEE's deficiencies or breached obligations by set-off of any funds or assets otherwise held by the CITY of the PERMITTEE to the maximum extent permitted by law. Such set-off shall occur upon written notice of such event by the CITY Engineer to the PERMITTEE after the PERMITTEE has failed to timely cure the deficiencies. The PERMITTEE shall pay the CITY's costs, including reasonable attorney's fees, of enforcing this DEPOSIT AGREEMENT in the event that the PERMITTEE is judicially determined to have violated any provision of this DEPOSIT AGREEMENT.

26. In addition to all other remedies available hereunder, in the event that the PERMITTEE shall abandon the development of the SITE or fail to timely complete the IMPROVEMENTS, whichever shall occur first, the CITY may thereafter complete, or have completed, said IMPROVEMENTS and may apply the remaining Construction Deposit therefor by delivering to the Letter of Credit Bank a Draw Request in the form of Exhibit 1, accompanied by its irrevocable letter of credit, any amendments thereto, and the appropriate signed form of certificate of drawing referenced therein. PERMITTEE further agrees to indemnify and hold harmless the CITY from and of any and all costs and expenses incurred by the CITY in completing the IMPROVEMENTS, including, but not limited to, the payment of any transfer charge of the Letter of Credit Bank in the event CITY should transfer its rights under the Letter of Credit to any transferee.

27. In addition to all other remedies available hereunder, in the event that the PERMITTEE shall abandon the diligent pursuit of completing the IMPROVEMENTS of the SWPPP or fail to maintain, repair or replace the IMPROVEMENTS, the CITY may thereafter maintain, repair or replace said IMPROVEMENTS and may apply the MAINTENANCE DEPOSIT therefor by delivering to the Letter of Credit Bank a Draw Request in the form of Exhibit 1, accompanied by its irrevocable letter of credit, any amendments thereto, and the appropriate signed form of certificate of drawing referenced therein. PERMITTEE further agrees to indemnify and hold harmless the CITY from and of any and all costs and expenses incurred by the CITY in maintaining, repairing or replacing the IMPROVEMENTS, including, but not limited to, the payment of any transfer charge of the Letter of Credit Bank in the event CITY should transfer its rights under the Letter of Credit to any transferee.

28. That the CITY hereby accepts this DEPOSIT AGREEMENT as a satisfactory DEPOSIT AGREEMENT under the provisions and any requirements of the CITY's Municipal Code.

29. In the event the IMPROVEMENTS are not completed prior to the expiration of the Letter of Credit, and the Letter of Credit has not been renewed, then the CITY shall make a Draw Request in the form of Exhibit B to Exhibit No. 1 attached hereto.

IN WITNESS WHEREOF, THE PARTIES hereunto have set their hands and seals.

[remainder of this page intentionally left blank]

Bryan 364 Junction LLC
PERMITEE

[Signature]
Authorized Signature

Tom Kaima MANAGER
Printed Name Title

tomkaima@gmail.com
Email Address

7 Baxter Lane
Street Address

Chesterfield MO 63017
City State Zip Code

314 280 5872
Telephone Facsimile

STATE OF MISSOURI)
) SS
COUNTY OF ST. CHARLES)

On this 21 day of July, 2021, before me personally appeared Tom Kaima, to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid the day and year first above written.

[Signature]
Notary Public

My Commission Expires:



APPROVED BY:

City Engineer (printed)

Signature

Date

Mayor (printed)

Signature

Date

Attest:

City Clerk (printed)

Signature

Date



Your Business. Your Family. Your Bank. FORM OF LETTER OF CREDIT

TRIAD BANK
10375 Clayton Rd., Frontenac, MO 63131

July 22, 2021

IRREVOCABLE LETTER OF CREDIT NO. 20525-0010

City of Dardenne Prairie, Missouri
City Hall
2032 Hanley Road
Dardenne Prairie, Missouri 63368
Attn: City Administrator

Dear Sir:

We hereby establish in your favor, (upon the application of and) for the account of Bryan 364 Junction LLC, 7 Baxter Lane, Chesterfield, MO (the "Account Party") our transferable irrevocable standby letter of credit (the "Letter of Credit") in the amount of \$1,031,570.26 (the "Maximum Available Credit"), subject to reduction as hereinafter set forth.

For information only: This letter of credit is issued with respect to a site in Dardenne Prairie, Missouri, known and numbered as The Prairie (the "Site").

Subject to all of the terms and conditions of this Letter of Credit, the Maximum Available Credit shall be made available to you by your draft(s) at sight drawn on us, accompanied by this letter of credit and any amendments thereto for presentation, and by the following documents:

1. Your signed certificate, in the form attached hereto as Exhibit A, dated not more than ten days prior to its presentation to us; or
2. Your signed certificate, in the form attached hereto as Exhibit B, dated not more than ten days prior to its presentation to us.

No draft will be paid if the amount thereof is in excess of the Maximum Available Credit hereunder as of the date such draft is to be paid.

Multiple drawings may be presented under this Letter of Credit, which, in the aggregate and subject to the limitations set forth herein, shall not exceed the Maximum Available Credit then in

effect and each such drawing honored by us hereunder shall reduce the Maximum Available Credit by the amount of such drawing. The draft(s) drawn under this Letter of Credit must be drawn and presented to our offices at 10375 Clayton Rd., Frontenac, MO 63131, Attention: Matthew Kiehne (or such other officer, department or address designated in writing by us to you at your address shown above or at such other address as you shall advise us of in writing) by hand delivery or by delivery by courier between 9:00 a.m. and 4:30 p.m. (St. Louis, Missouri time) on a Business Day. As used in this Letter of Credit, "Business Day" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the State of Missouri are authorized or required by law to close.

We hereby agree that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored by us upon delivery of any of the certificate(s) specified above and if presented at our aforesaid offices on or before the Expiration Date (as defined below).

If demand for payment is made hereunder in strict conformity with the terms and conditions of this Letter of Credit before 11:00 a.m. (St. Louis, Missouri time) on any Business Day, payment of the amount demanded shall be made in immediately available funds not later than 1:00 p.m. (St. Louis, Missouri time) on the third succeeding Business Day.

Payment under this Letter of Credit to you shall be made by wire transfer of immediately available funds per your instructions.

Only you or a transferee may make drawings under this Letter of Credit. Upon payment as provided above of the amount specified in a sight draft drawn hereunder, the Maximum Available Credit of the Letter of Credit shall be reduced by the amount of the payment.

If demand for payment does not conform to the terms and conditions of this Letter of Credit, we will promptly notify you thereof and of the reasons therefor, such notice to be promptly confirmed in writing to you, and we shall hold all documents at your disposal or return the same to you, if directed by you.

This Letter of Credit is effective immediately and expires on (the "Expiration Date") the earliest of (i) 4:00 p.m. (St. Louis, Missouri time) on July 22, 2022, as such date may be extended as hereinafter provided, (ii) when you have drawn and we have paid to you the Maximum Available Credit of this Letter of Credit, or (iii) the day on which this Letter of Credit is surrendered to us for cancellation; provided, however, notwithstanding the termination by expiration of this Letter of Credit our payment obligation shall survive such expiration with respect to any sight drafts accompanied by a certificate in the form of Exhibit A or Exhibit B, as the case may be, presented to us for payment prior to the expiration of this Letter of Credit. It is a condition of this Letter of Credit that it shall be deemed automatically extended, without amendment for one year from the present or any future Expiry Date hereof and may not be surrendered to us for cancellation at any time, unless at least 60 days prior to any such date, we shall send you, in the form attached hereto as Exhibit C, notice that this Letter of Credit shall expire on the effective date contained in such notice.

Upon our receipt, from time to time, from you of a written reduction certificate in the form

attached as Exhibit D, we are authorized to reduce the Maximum Available Credit hereunder by the amount stated in such certificate, any such reduction to be effective only at our close of business on the date on which we receive such written reduction certificate.

This Letter of Credit shall be governed by the internal laws of the State of Missouri, but subject, however, to the Uniform Custom and Practices for Documentary Credits, 1993 Revision, International Chamber of Commerce Commission Publication No. 500, but excluding the provisions of Article 41 thereof.

Any communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at 10375 Clayton Rd., Frontenac, MO 63131 Attention: Matthew Kiehne, specifically referring thereon to Irrevocable Letter of Credit No. 20525-0010.

You may transfer your rights under this Letter of Credit in their entirety (but not in part) to any transferee. Transfer of your rights under this Letter of Credit to any such transferee shall be effected only upon the presentation to us of this Letter of Credit accompanied by a transfer letter in the form attached hereto as Exhibit E, and we consent to such transfer without charges or fees of any kind. Upon such transfer, the transferee shall have no further rights to transfer this Letter of Credit.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. Exhibits A through E hereto are incorporated herein by reference as an integral part of this Letter of Credit.

Very truly yours,

Triad Bank

By 
Matthew R. Kiehne, Sr. Vice President

EXHIBIT A
TO LETTER OF CREDIT
FORM OF CERTIFICATE FOR "A" DRAWING

_____, 20____

Name of Issuing Bank

Bank Address

Attention:

Re: Your Letter of Credit No. _____ in Favor of the City of Dardenne
Prairie, Missouri for _____ (the "Site")

Gentlemen:

The undersigned, a duly authorized official of the City of Dardenne Prairie, Missouri (the "Beneficiary"), hereby certifies to ***Name of Issuing Bank*** (the "Bank"), with reference to Irrevocable Letter of Credit No. _____ (the "Letter of Credit"; any capitalized terms used herein and not defined shall have their respective meanings as set forth in the said Letter of Credit) issued by the Bank in favor of the Beneficiary, that:

1. The Account Party has failed to complete all Site Improvements by _____.
2. The draft in the sum of \$ _____
accompanying this Certificate is not in excess of the Maximum Available Credit of the Letter of Credit and shall result in a reduction of the Maximum Available Credit of the Letter of Credit.

Transfer the funds as stated above to the credit of the City of Dardenne Prairie to: ***Name of City Depository*** for the account of ABA _____
, Attention _____, Reference _____.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate this _____ day of _____, _____.

CITY OF DARDENNE PRAIRIE, MISSOURI

By _____
City Engineer

EXHIBIT B
TO LETTER OF CREDIT
FORM OF CERTIFICATE FOR "B" DRAWING

Name of Issuing Bank _____, 20__

Bank Address

Attention:

Re: Your Letter of Credit No. _____ in
Favor of the City of Dardenne Prairie, Missouri for _____
(the "Site")

Gentlemen:

The undersigned, a duly authorized official of the City of Dardenne Prairie, Missouri (the "Beneficiary"), hereby certifies to ***Name of Issuing Bank*** (the "Bank"), with reference to Irrevocable Letter of Credit No. _____ (the "Letter of Credit"; any capitalized terms used herein and not defined shall have their respective meanings as set forth in the said Letter of Credit) issued by the Bank in favor of the Beneficiary, that:

1. The Expiration Date of the Letter of Credit is _____, and

EITHER

2. The Beneficiary has not received written notification of any amendment to the Letter of Credit which extends the Expiration Date,

OR

2. The Beneficiary has received written notification that the Letter of Credit will not be renewed.

3. The draft in the sum of \$ _____ accompanying this Certificate is not in excess of the Maximum Available Credit of the Letter of Credit, and shall result in a reduction of the Maximum Available Credit of the Letter of Credit.

Transfer the funds as stated above to the credit of the City of Dardenne Prairie to: ***Name of City Depository*** for the account of ABA _____, Attention _____, Reference _____.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate this _____ day of _____.

CITY OF DARDENNE PRAIRIE, MISSOURI

By _____

City Engineer

EXHIBIT C
TO LETTER OF CREDIT
FORM OF NOTICE OF EXPIRATION

_____, _____
City of Dardenne Prairie, Missouri
City Hall
2032 Hanley Road
Dardenne Prairie, Missouri 63368
Attention: City Engineer

Re: Our Letter of Credit No. _____ in Favor of the City of
Dardenne Prairie, Missouri
Amount:
Expiration Date:
For _____ (the "Site")

Gentlemen:

Please consider this letter as our notification that the above-referenced letter of credit will expire in full and finally on the above-mentioned date.

Very truly yours,

NAME OF ISSUING BANK

By _____
Authorized Officer

cc: *** Account Party***
*** Account Party Address***

EXHIBIT D
TO LETTER OF CREDIT
FORM OF REDUCTION CERTIFICATE

_____, 20__

Name of Issuing Bank

Bank Address

Attention:

LETTER OF CREDIT NUMBER: _____

IN ORIGINAL AMOUNT OF: \$ _____

For _____ (the "Site")

Gentlemen,

This certificate authorizes reduction in the amount of \$ _____
of the above Letter of Credit. The remaining maximum available credit for this Letter of Credit is
\$ _____.

CITY OF DARDENNE PRAIRIE, MISSOURI

By _____
City Engineer

EXHIBIT E
TO LETTER OF CREDIT
FORM FOR FULL TRANSFER OF LETTER OF CREDIT

_____, _____
Name of Issuing Bank

Bank Address

Attention:

Re: Your Letter of Credit No. _____ in Favor of the
City of Dardenne Prairie, Missouri for _____
_____ (the "Site")

Gentlemen:

The undersigned, City of Dardenne Prairie, Missouri ("Transferor") has transferred and assigned (and hereby confirms said transfer and assignment) all of its rights in and under the above-referenced Letter of Credit to (name and address of Transferee) ("Transferee"). Transferor confirms that it no longer has any rights under or interest in said Letter of Credit, and that you shall have no further responsibility to make payment under said Letter of Credit to Transferor.

Transferor hereby surrenders said Letter of Credit to you and requests that you note the transfer of said Letter of Credit and deliver the Letter of Credit, amended or endorsed to reflect said transfer, to Transferee.

CITY OF DARDENNE PRAIRIE, MISSOURI (NAME OF TRANSFEREE)

By _____
Name and Title of
Authorized Official of
Transferor

By: _____
Name and Title of
Authorized Officer of
Transferee



Your Business. Your Family. Your Bank. FORM OF LETTER OF CREDIT

TRIAD BANK
10375 Clayton Rd., Frontenac, MO 63131

July 22, 2021

IRREVOCABLE LETTER OF CREDIT NO. 20525-0015

City of Dardenne Prairie, Missouri
City Hall
2032 Hanley Road
Dardenne Prairie, Missouri 63368
Attn: City Administrator

Dear Sir:

We hereby establish in your favor, (upon the application of and) for the account of Bryan 364 Junction LLC, 7 Baxter Lane, Chesterfield, MO (the "Account Party") our transferable irrevocable standby letter of credit (the "Letter of Credit") in the amount of \$93,779.66 (the "Maximum Available Credit"), subject to reduction as hereinafter set forth.

For information only: This letter of credit is issued with respect to a site in Dardenne Prairie, Missouri, known and numbered as The Prairie (the "Site").

Subject to all of the terms and conditions of this Letter of Credit, the Maximum Available Credit shall be made available to you by your draft(s) at sight drawn on us, accompanied by this letter of credit and any amendments thereto for presentation, and by the following documents:

1. Your signed certificate, in the form attached hereto as Exhibit A, dated not more than ten days prior to its presentation to us; or
2. Your signed certificate, in the form attached hereto as Exhibit B, dated not more than ten days prior to its presentation to us.

No draft will be paid if the amount thereof is in excess of the Maximum Available Credit hereunder as of the date such draft is to be paid.

Multiple drawings may be presented under this Letter of Credit, which, in the aggregate and subject to the limitations set forth herein, shall not exceed the Maximum Available Credit then in

effect and each such drawing honored by us hereunder shall reduce the Maximum Available Credit by the amount of such drawing. The draft(s) drawn under this Letter of Credit must be drawn and presented to our offices at 10375 Clayton Rd., Frontenac, MO 63131, Attention: Matthew Kiehne (or such other officer, department or address designated in writing by us to you at your address shown above or at such other address as you shall advise us of in writing) by hand delivery or by delivery by courier between 9:00 a.m. and 4:30 p.m. (St. Louis, Missouri time) on a Business Day. As used in this Letter of Credit, "Business Day" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the State of Missouri are authorized or required by law to close.

We hereby agree that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored by us upon delivery of any of the certificate(s) specified above and if presented at our aforesaid offices on or before the Expiration Date (as defined below).

If demand for payment is made hereunder in strict conformity with the terms and conditions of this Letter of Credit before 11:00 a.m. (St. Louis, Missouri time) on any Business Day, payment of the amount demanded shall be made in immediately available funds not later than 1:00 p.m. (St. Louis, Missouri time) on the third succeeding Business Day.

Payment under this Letter of Credit to you shall be made by wire transfer of immediately available funds per your instructions.

Only you or a transferee may make drawings under this Letter of Credit. Upon payment as provided above of the amount specified in a sight draft drawn hereunder, the Maximum Available Credit of the Letter of Credit shall be reduced by the amount of the payment.

If demand for payment does not conform to the terms and conditions of this Letter of Credit, we will promptly notify you thereof and of the reasons therefor, such notice to be promptly confirmed in writing to you, and we shall hold all documents at your disposal or return the same to you, if directed by you.

This Letter of Credit is effective immediately and expires on (the "Expiration Date") the earliest of (i) 4:00 p.m. (St. Louis, Missouri time) on July 22, 2022, as such date may be extended as hereinafter provided, (ii) when you have drawn and we have paid to you the Maximum Available Credit of this Letter of Credit, or (iii) the day on which this Letter of Credit is surrendered to us for cancellation; provided, however, notwithstanding the termination by expiration of this Letter of Credit our payment obligation shall survive such expiration with respect to any sight drafts accompanied by a certificate in the form of Exhibit A or Exhibit B, as the case may be, presented to us for payment prior to the expiration of this Letter of Credit. It is a condition of this Letter of Credit that it shall be deemed automatically extended, without amendment for one year from the present or any future Expiry Date hereof and may not be surrendered to us for cancellation at any time, unless at least 60 days prior to any such date, we shall send you, in the form attached hereto as Exhibit C, notice that this Letter of Credit shall expire on the effective date contained in such notice.

Upon our receipt, from time to time, from you of a written reduction certificate in the form

attached as Exhibit D, we are authorized to reduce the Maximum Available Credit hereunder by the amount stated in such certificate, any such reduction to be effective only at our close of business on the date on which we receive such written reduction certificate.

This Letter of Credit shall be governed by the internal laws of the State of Missouri, but subject, however, to the Uniform Custom and Practices for Documentary Credits, 1993 Revision, International Chamber of Commerce Commission Publication No. 500, but excluding the provisions of Article 41 thereof.

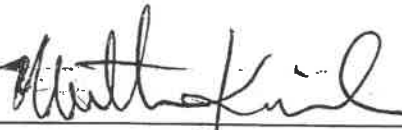
Any communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at 10375 Clayton Rd., Frontenac, MO 63131 Attention: Matthew Kiehne, specifically referring thereon to Irrevocable Letter of Credit No. 20525-0015.

You may transfer your rights under this Letter of Credit in their entirety (but not in part) to any transferee. Transfer of your rights under this Letter of Credit to any such transferee shall be effected only upon the presentation to us of this Letter of Credit accompanied by a transfer letter in the form attached hereto as Exhibit E, and we consent to such transfer without charges or fees of any kind. Upon such transfer, the transferee shall have no further rights to transfer this Letter of Credit.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. Exhibits A through E hereto are incorporated herein by reference as an integral part of this Letter of Credit.

Very truly yours,

Triad Bank

By 

Matthew R. Kiehne, Sr. Vice President

EXHIBIT A
TO LETTER OF CREDIT
FORM OF CERTIFICATE FOR "A" DRAWING

_____, 20____

Name of Issuing Bank

Bank Address

Attention:

Re: Your Letter of Credit No. _____ in Favor of the City of Dardenne
Prairie, Missouri for _____ (the "Site")

Gentlemen:

The undersigned, a duly authorized official of the City of Dardenne Prairie, Missouri (the "Beneficiary"), hereby certifies to ***Name of Issuing Bank*** (the "Bank"), with reference to Irrevocable Letter of Credit No. _____ (the "Letter of Credit"; any capitalized terms used herein and not defined shall have their respective meanings as set forth in the said Letter of Credit) issued by the Bank in favor of the Beneficiary, that:

1. The Account Party has failed to complete all Site Improvements by _____.
2. The draft in the sum of \$ _____
accompanying this Certificate is not in excess of the Maximum Available Credit of the Letter of Credit and shall result in a reduction of the Maximum Available Credit of the Letter of Credit.

Transfer the funds as stated above to the credit of the City of Dardenne Prairie to: ***Name of City Depository*** for the account of ABA _____
, Attention _____, Reference _____.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate this _____ day of _____.

CITY OF DARDENNE PRAIRIE, MISSOURI

By _____
City Engineer

EXHIBIT B
TO LETTER OF CREDIT
FORM OF CERTIFICATE FOR "B" DRAWING

_____, 20__

Name of Issuing Bank
Bank Address
Attention:

Re: Your Letter of Credit No. _____ in
Favor of the City of Dardenne Prairie, Missouri for _____
(the "Site")

Gentlemen:

The undersigned, a duly authorized official of the City of Dardenne Prairie, Missouri (the "Beneficiary"), hereby certifies to ***Name of Issuing Bank*** (the "Bank"), with reference to Irrevocable Letter of Credit No. _____ (the "Letter of Credit"; any capitalized terms used herein and not defined shall have their respective meanings as set forth in the said Letter of Credit) issued by the Bank in favor of the Beneficiary, that:

1. The Expiration Date of the Letter of Credit is _____, and

EITHER

2. The Beneficiary has not received written notification of any amendment to the Letter of Credit which extends the Expiration Date,

OR

2. The Beneficiary has received written notification that the Letter of Credit will not be renewed.

3. The draft in the sum of \$ _____ accompanying this Certificate is not in excess of the Maximum Available Credit of the Letter of Credit, and shall result in a reduction of the Maximum Available Credit of the Letter of Credit.

Transfer the funds as stated above to the credit of the City of Dardenne Prairie to: ***Name of City Depository*** for the account of ABA _____, Attention _____, Reference _____.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate this _____ day of _____, _____.

CITY OF DARDENNE PRAIRIE, MISSOURI

By _____

City Engineer

EXHIBIT C
TO LETTER OF CREDIT
FORM OF NOTICE OF EXPIRATION

_____, _____
City of Dardenne Prairie, Missouri
City Hall
2032 Hanley Road
Dardenne Prairie, Missouri 63368
Attention: City Engineer

Re: Our Letter of Credit No. _____ in Favor of the City of
Dardenne Prairie, Missouri
Amount:
Expiration Date:
For _____ (the "Site")

Gentlemen:

Please consider this letter as our notification that the above-referenced letter of credit will expire in full and finally on the above-mentioned date.

Very truly yours,

NAME OF ISSUING BANK

By _____
Authorized Officer

cc: ***Account Party***
Account Party Address

EXHIBIT D
TO LETTER OF CREDIT
FORM OF REDUCTION CERTIFICATE

_____, 20__

Name of Issuing Bank

Bank Address

Attention:

LETTER OF CREDIT NUMBER: _____

IN ORIGINAL AMOUNT OF: \$ _____

For _____ (the "Site")

Gentlemen,

This certificate authorizes reduction in the amount of \$ _____
of the above Letter of Credit. The remaining maximum available credit for this Letter of Credit is
\$ _____.

CITY OF DARDENNE PRAIRIE, MISSOURI

By _____
City Engineer

EXHIBIT E
TO LETTER OF CREDIT
FORM FOR FULL TRANSFER OF LETTER OF CREDIT

_____, _____
Name of Issuing Bank

Bank Address

Attention:

Re: Your Letter of Credit No. _____ in Favor of the
City of Dardenne Prairie, Missouri for _____
_____ (the "Site")

Gentlemen:

The undersigned, City of Dardenne Prairie, Missouri ("Transferor") has transferred and assigned (and hereby confirms said transfer and assignment) all of its rights in and under the above-referenced Letter of Credit to (name and address of Transferee) ("Transferee"). Transferor confirms that it no longer has any rights under or interest in said Letter of Credit, and that you shall have no further responsibility to make payment under said Letter of Credit to Transferor.

Transferor hereby surrenders said Letter of Credit to you and requests that you note the transfer of said Letter of Credit and deliver the Letter of Credit, amended or endorsed to reflect said transfer, to Transferee.

CITY OF DARDENNE PRAIRIE, MISSOURI (NAME OF TRANSFEEE)

By _____
Name and Title of
Authorized Official of
Transferor

By: _____
Name and Title of
Authorized Officer of
Transferee

Exhibit 2



Cost Estimate for Site Improvements

Unit Description	Unit Price	Unit	Add. Cost	No. of Units	Total
Parking Lot/Streets					
Temporary Baricades	\$246.00	each			\$0.00
Asphaltic Concrete & Bituminous Concrete Curb - 3" High Rolled	\$6.15	lin ft			\$0.00
Asphaltic Concrete & Bituminous Concrete Curb - 6" High Vertical	\$10.35	lin ft			\$0.00
Concrete Curb - 3" High Integral Rolled	\$6.50	lin ft			\$0.00
Concrete Curb - 6" High Integral Vertical (cul-de-sac)	\$10.35	lin ft			\$0.00
Concrete Curb & Gutter - 3" High Rolled	\$16.60	lin ft			\$0.00
Concrete Curb & Gutter - 6" High Vertical	\$20.70	lin ft			\$0.00
Guard Rail (Steel)	\$57.40	lin ft			\$0.00
Bituminous Concrete Pavement - 2" Type C Wearing Surface.	\$12.30	sq yd			\$0.00
Bituminous Concrete Pavement - 9" (7" Type X & 2" Type C) (CRS)	\$56.40	sq yd			\$0.00
Bituminous Concrete Pavement - 10.5" (8.5" Type X & 2" Type C) (CRS)	\$87.70	sq yd			\$0.00
Tack Coat	\$1.50	gal			\$0.00
Prime Coat	\$2.50	gal			\$0.00
Concrete Base - 6"	\$45.50	cu yd			\$0.00
Concrete Base - 7"	\$48.30	sq yd			\$0.00
Concrete Pavement - 6" PCC (Non-Reinforced) (CRS)	\$35.00	sq yd			\$0.00
Concrete Pavement - 7" PCC (Non-Reinforced) (CRS)	\$36.50	sq yd			\$0.00
Concrete Pavement - 8" PCC (Non-Reinforced) (ARS)	\$38.50	sq yd			\$0.00
Rock Excavation	\$24.40	cu yd			\$0.00
Subgrade Excavation	\$2.80	cu yd			\$0.00
Saw Cutting	\$5.75	lin ft			\$0.00
Type 5 Aggregate Base - 4"	\$6.40	sq yd			\$0.00
Removal of Asphaltic Concrete & Bituminous Concrete Pavement	\$20.50	sq yd			\$0.00
Removal of Asphaltic Concrete & Bituminous Concrete Curb	\$15.30	lin ft			\$0.00
Removal of Asphaltic Concrete & Bituminous Concrete Driveway	\$17.50	sq yd			\$0.00
Removal of Concrete Curb & Gutter	\$18.50	lin ft			\$0.00
Removal of Concrete Driveway	\$26.50	sq yd			\$0.00
Removal of Concrete Pavement	\$28.70	sq yd			\$0.00
Removal of Concrete Walk	\$2.60	sq ft			\$0.00
R & R of Asphaltic Concrete & Bituminous Concrete Pavement	\$58.40	sq yd			\$0.00
R & R of Asphaltic Concrete & Bituminous Concrete Curb	\$30.80	lin ft			\$0.00
R & R of Asphaltic Concrete & Bituminous Concrete Driveway	\$43.00	sq yd			\$0.00
Removal & Replacement of Concrete Curb & Gutter	\$39.00	lin ft			\$0.00
Removal & Replacement of Concrete Driveway	\$49.20	sq yd			\$0.00
Removal & Replacement of Concrete Pavement	\$54.30	sq yd			\$0.00
Removal & Replacement of Concrete Walk	\$7.30	sq ft			\$0.00
Non-Residential - 55' R, 7" Portland Cement Concrete (No Center Island) - TA	\$26,950.00	each			\$0.00
Non-Residential - 55' R, Bituminous Concrete (8.5" Type X & 2" Type C) - TA	\$26,950.00	each			\$0.00
Residential - 42' R, 6" Portland Cement Concrete - TA	\$15,250.00	each			\$0.00
Residential - 42' R, Bituminous Concrete (7" Type X & 2" Type C) - TA	\$15,250.00	each			\$0.00
Residential - 55' R, 6" Portland Cement Concrete - TA	\$21,450.00	each			\$0.00
Residential - 55' R, Bituminous Concrete (7" Type X & 2" Type C) - TA	\$21,450.00	each			\$0.00
Temp Turnaround - Residential, Bituminous Concrete (7" Type X & 2" Type C)	\$6,400.00	each			\$0.00
A-Joint Installation	\$500.00	each			\$0.00
Traffic Signal Replace and Intersection Improvements	\$500,000.00	each			\$0.00
Traffic Control for Signal, Lanes and Storm Sewer Extension	\$35,000.00				\$0.00

Streets	\$0.00
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Storm Sewers					
12" Concrete Collar	\$207.00	each			\$0.00
15" Concrete Collar	\$259.00	each			\$0.00
18" Concrete Collar	\$310.00	each			\$0.00
24" Concrete Collar	\$388.00	each			\$0.00
27" Concrete Collar	\$414.00	each			\$0.00
30" Concrete Collar	\$440.00	each			\$0.00
36" Concrete Collar	\$544.00	each			\$0.00
42" Concrete Collar	\$621.00	each			\$0.00
48" Concrete Collar	\$724.00	each			\$0.00
12" Flared End Section	\$517.00	each			\$0.00
15" Flared End Section	\$589.00	each			\$0.00
18" Flared End Section	\$621.00	each			\$0.00
21" Flared End Section	\$673.00	each			\$0.00
24" Flared End Section	\$724.00	each		2	\$1,448.00
27" Flared End Section.	\$828.00	each			\$0.00
30" Flared End Section	\$931.00	each			\$0.00



Cost Estimate for Site Improvements

7/12/2021
Page 2 of 5

Unit Description	Unit Price	Unit	Add. Cost	No. of Units	Total
33" Flared End Section	\$1,294.00	each			\$0.00
36" Flared End Section	\$1,347.00	each			\$0.00
42" Flared End Section	\$1,552.00	each			\$0.00
48" Flared End Section	\$1,763.00	each			\$0.00
54" Flared End Section	\$1,665.00	each		2	\$3,730.00
60" Flared End Section	\$2,383.00	each			\$0.00
66" Flared End Section	\$2,798.00	each			\$0.00
72" Flared End Section	\$3,418.00	each			\$0.00
Toe Wall	\$220.00	cu yd			\$0.00
Rip-Rap and Filter Fabric at Flared Ends	\$50.00	sq yd		250	\$12,500.00
12" Headwall	\$1,219.00	each			\$0.00
15" Headwall	\$1,245.00	each			\$0.00
18" Headwall	\$1,255.00	each			\$0.00
21" Headwall	\$1,300.00	each			\$0.00
24" Headwall	\$1,347.00	each			\$0.00
27" Headwall	\$1,435.00	each			\$0.00
30" Headwall	\$1,809.00	each			\$0.00
33" Headwall	\$1,747.00	each			\$0.00
36" Headwall	\$1,947.00	each			\$0.00
42" Headwall	\$2,070.00	each			\$0.00
48" Headwall	\$2,280.00	each			\$0.00
54" Headwall	\$2,434.00	each			\$0.00
60" Headwall	\$2,665.00	each			\$0.00
66" Headwall	\$2,952.00	each			\$0.00
72" Headwall	\$3,157.00	each			\$0.00
12" RCP	\$34.00	lin ft			\$0.00
15" RCP	\$38.00	lin ft		2325	\$88,350.00
18" RCP	\$40.00	lin ft		889	\$35,560.00
21" RCP	\$44.00	lin ft			\$0.00
24" RCP	\$50.00	lin ft		250	\$12,500.00
27" RCP	\$52.00	lin ft			\$0.00
30" RCP	\$55.00	lin ft		220	\$12,100.00
33" RCP	\$59.00	lin ft			\$0.00
36" RCP	\$62.00	lin ft		313	\$19,406.00
42" RCP	\$75.00	lin ft			\$0.00
48" RCP	\$87.00	lin ft			\$0.00
54" RCP	\$111.00	lin ft			\$0.00
60" RCP	\$133.00	lin ft			\$0.00
66" RCP	\$168.00	lin ft			\$0.00
72" RCP	\$230.00	lin ft			\$0.00
78" RCP	\$256.00	lin ft			\$0.00
84" RCP	\$316.00	lin ft			\$0.00
90" RCP	\$343.00	lin ft			\$0.00
96" RCP	\$404.00	lin ft			\$0.00
102" RCP	\$425.00	lin ft			\$0.00
108" RCP	\$492.00	lin ft			\$0.00
12" HDPE Pipe with Bedding and Backfill	\$38.00	lin ft			\$0.00
15" HDPE Pipe with Bedding and Backfill	\$45.00	lin ft			\$0.00
18" HDPE Pipe with Bedding and Backfill	\$50.00	lin ft			\$0.00
21" HDPE Pipe with Bedding and Backfill		lin ft			\$0.00
24" HDPE Pipe with Bedding and Backfill		lin ft			\$0.00
27" HDPE Pipe with Bedding and Backfill		lin ft			\$0.00
Area Inlet, Single	\$2,070.00	each		23	\$47,610.00
Area Inlet, Double	\$2,485.00	each			\$0.00
Area Inlet, Triple	\$3,105.00	each			\$0.00
Asphaltic Concrete Swale - 5" thick	\$5.45	sq ft			\$0.00
Box Culvert	\$727.00	cu yd			\$0.00
Concrete Encasement/ Cradle	\$220.00	cu yd			\$0.00
Corrugated Metal Pipe	\$2.70	lin ft			\$0.00
Corrugated Metal Pipe, Aluminum	\$3.00	lin ft			\$0.00
End Pipe	\$724.00	each			\$0.00
Energy Dissipater	\$3,625.00	each			\$0.00
Granular Fill per Cubic Yard (crossing and bedding)	\$3.70	cu yd		15000	\$55,500.00
Granular Fill per Lot	\$205.00	per lot			\$0.00
Grated Inlet	\$2,588.00	each		4	\$10,352.00
Grated Inlet with Sidetake Unit	\$2,500.00	each		11	\$27,500.00
Grated Trough (Cast-Iron)	\$10,350.00	each			\$0.00
Junction Chamber	\$13,250.00	each			\$0.00



Cost Estimate for Site Improvements

Unit Description	Unit Price	Unit	Add. Cost	No. of Units	Total
Overflow Structure	\$6,210.00	each	\$20,000		\$20,000.00
Riprap - Heavy Stone	\$57.00	sq yd			\$0.00
Riprap / Revetment - Gabion Basket	\$210.00	cu yd			\$0.00
Riprap / Revetment - Heavy Stone (12-24")	\$47.00	sq yd		250	\$11,750.00
Riprap / Revetment - Light Stone (9-12")	\$47.00	sq yd			\$0.00
Storm Sewer Manhole	\$1,350.00	each		3	\$4,050.00
Street Curb Inlet, Single	\$1,350.00	each		10	\$13,500.00
Street Curb Inlet, Double	\$2,575.00	each			\$0.00
Street Curb Inlet, Triple	\$2,700.00	each			\$0.00
Jetting	\$1.50	lin ft		4000	\$6,000.00
Raingarden or Bio-swale	\$10.00	sq ft			\$0.00
NPDES filter unit - site specific	\$20,000.00	each			\$0.00
Under-drain System	\$2,000.00	each			\$0.00
Spring Treatment	\$18,450.00	each			\$0.00
Detention/Retention Basin - Apartments / Condominiums	\$62.00	# of Units	\$9,330		\$0.00
Detention/Retention Basin - Industrial / Commercial	\$1,236.00	# of Acres	\$15,500		\$0.00
Detention/Retention Basin - Residential	\$250.00	# of Lots	\$7,750		\$0.00
6" PVC	\$12.00	lin ft			\$0.00
Temporary Inlet Filter Bags	\$750.00	each			\$0.00
Cleanout	\$250.00	each			\$0.00

Storm Sewers	\$381,856.00
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Sanitary Sewers

42" Manhole - precast	\$1,000.00	each			\$0.00
48" Manhole - precast	\$1,200.00	each			\$0.00
60" Manhole - precast	\$1,500.00	each			\$0.00
Manhole - cast-in-place (dog-house)	\$2,000.00	each			\$0.00
8" PVC pipe	\$12.00	lin ft			\$0.00
10" PVC pipe	\$13.00	lin ft			\$0.00
8" DIP	\$40.00	lin ft			\$0.00
10" DIP	\$45.00	lin ft			\$0.00
8"x4" wyes	\$30.00	each			\$0.00
8"x6" wyes	\$30.00	each			\$0.00
Granular Fill (crossings and bedding)	\$8.00	Ton			\$0.00
Jetting	\$1.50	lin ft			\$0.00
Concrete Encasement/Cradle	\$200.00	cu yd			\$0.00
Connect to Existing Main	\$500.00	each			\$0.00
Connect to Existing Structure	\$500.00	each			\$0.00
Force Main - 2" PVC	\$6.00	lin ft			\$0.00
Force Main - 6" PVC	\$8.00	lin ft			\$0.00
Force Main - Lift Station (& associated construction)	\$250,000.00	lump sum			\$0.00
Force Main - Air Release Valves	\$600.00	each			\$0.00
Force Main - Off-Site Location Markers	\$40.00	each			\$0.00
Force Main - Pressure Test	\$50.00	pipe run	\$500		\$0.00
Pressure and Vacuum Test	\$20.00	pipe run	\$500		\$0.00
Mandrel Pull	\$10.00	pipe run	\$500		\$0.00
Horz Boring - Mobilization	\$5,000.00	each			\$0.00
Horz Boring - Bore Pit (Excavation and Backfilling)	\$50.00	cu yd			\$0.00
Horz Boring - Casing Pipe	\$25.00	lin ft			\$0.00
Horz Boring - Restoration (vegetation)	\$8.30	sq yd			\$0.00
Grease Interceptor	\$4,000.00	each			\$0.00
Off-Site Location Markers	\$50.00	each			\$0.00
Cleanout	\$250.00	each			\$0.00
6" PVC	\$12.00	each			\$0.00

Sanitary Sewers	\$0.00
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Water

Connect to Existing Main	\$500.00	each			\$0.00
2" PVC	\$7.50	lin ft			\$0.00
6" PVC	\$8.00	lin ft			\$0.00
8" PVC	\$9.00	lin ft			\$0.00
6" 3-Way Fire Hydrant	\$1,700.00	each			\$0.00
8" 3-Way Fire Hydrant	\$1,900.00	each			\$0.00
6" Bend	\$200.00	each			\$0.00
8" Bend	\$225.00	each			\$0.00
6" Blow-off Valve	\$400.00	each			\$0.00
2" Blow-off Valve	\$400.00	each			\$0.00



Cost Estimate for Site Improvements

7/12/2021
Page 4 of 5

Unit Description	Unit Price	Unit	Add. Cost	No. of Units	Total
6"x2" Reducer	\$150.00	each			\$0.00
8"x6" Reducer	\$175.00	each			\$0.00
6" Valve Box	\$500.00	each			\$0.00
8" Valve Box	\$700.00	each			\$0.00
Tee	\$250.00	each			\$0.00
Tracer Wire	\$1.00	lin ft			\$0.00
Tracer Tape	\$0.75	lin ft			\$0.00
Straddle Block	\$100.00	each			\$0.00
Concrete Collar (at surface)	\$50.00	each			\$0.00
Backing/Thrust Block	\$150.00	each			\$0.00
Granular Fill (crossings and bedding)	\$8.00	ton			\$0.00
Jetting	\$1.50	lin ft			\$0.00
Bacteria Test	\$500.00	each	\$500		\$0.00
Pressure Test	\$2,000.00	each	\$500		\$0.00
Off-Site Location Markers	\$50.00	each			\$0.00
Horz Boring - Mobilization	\$5,000.00	each			\$0.00
Horz Boring - Bore Pit (Excavation and Backfilling)	\$50.00	cu yd			\$0.00
Horz Boring - Casing Pipe	\$25.00	lin ft			\$0.00
Horz Boring - Restoration (vegetation)	\$8.30	sq yd			\$0.00
Backflow Preventor	\$3,000.00	each			\$0.00
					\$0.00

Water	\$0.00
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Grading

Erosion Control - Apartments / Condominiums (vegetation)	\$311.00	# of Units	\$2,480		\$0.00
Erosion Control - Industrial / Commercial (vegetation)	\$1,880.00	# of Acres	\$1,550		\$0.00
Erosion Control - Residential (vegetation)	\$372.00	# of Lots	\$1,240		\$0.00
Grading - Apartments / Condominiums	\$189.00	# of Units	\$4,635		\$0.00
Grading - Industrial / Commercial	\$1,558.00	# of Acres	\$3,720		\$0.00
Grading - Residential	\$317.00	# of Lots	\$3,110		\$0.00
Siltation Control - Apartments / Condominiums (silt fence, silt basins, check dams, etc.)	\$66.00	# of Units	\$2,480		\$0.00
Siltation Control - Industrial / Commercial (silt fence, silt basins, check dams, etc.)	\$774.00	# of Acres	\$3,110		\$0.00
Siltation Control - Residential (silt fence, silt basins, check dams, etc.)	\$158.00	# of Lots	\$2,480		\$0.00
Temporary Silt Basin - Outfall Structure	\$5,000.00	each		3	\$15,000.00
Temporary Silt basin - Riser Pipe	\$8.00	lin ft		15	\$120.00
Clearing	\$3,000.00	# of Acres		19.5	\$58,500.00
Construction Entrance / Wash Down Pad / Parking	\$25.00	sq yd		265	\$6,625.00
Reinforced Turf Mat	\$15.00	sq yd		10279	\$154,185.00
Sinkhole Treatment - Venting	\$3,880.00	each			\$0.00
Sink Hole Treatment	\$28,315.00	each			\$0.00
Retaining Wall - Concrete	\$912.00	cu yd			\$0.00
Retaining Wall - Large Panel Wall System	\$81.50	sq ft			\$0.00
Retaining Wall - Precast Concrete Block Wall (Versa-Lok)	\$20.50	sq ft			\$0.00
Inlet Filter	\$300.00	each		42	\$12,600.00
Silt Fence	\$10.00	lin ft		10150	\$101,500.00
Aggregate Base - 4" Parking Area	\$8.40	sq yd		1945	\$12,448.00
Ditch Checks	\$550.00	each		55	\$30,250.00

Grading	\$391,228.00
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Common Ground/Other Improvements

Stop Signs	\$200.00	each			\$0.00
Yield Signs	\$200.00	each			\$0.00
No Parking Signs	\$125.00	each			\$0.00
Speed Limit Sign	\$175.00	each			\$0.00
End of Road Markers	\$300.00	each			\$0.00
Other Signs	\$200.00	each			\$0.00
Construction Traffic Signs	\$50.00	each			\$0.00
Street Name Sign	\$246.00	each			\$0.00
Street Lights - Typical	\$750.00	each			\$0.00
Street Lights - Special Order	\$1,500.00	each			\$0.00
Common Ground Concrete Walkway - 4" Thick	\$4.70	sq ft			\$0.00
Concrete Handicap Curb Ramp with Truncated Domes	\$1,035.00	each			\$0.00
Concrete Sidewalk - 4" thick - 4' wide	\$4.70	sq ft			\$0.00
Concrete Sidewalk - 4" thick - 5' wide	\$4.70	sq ft			\$0.00
Concrete Sidewalk - 4" thick - 6' wide	\$4.70	sq ft			\$0.00
Concrete Sidewalk - 6" thick (Residential Entrances)	\$4.90	sq ft			\$0.00
Concrete Sidewalk - 7" thick (Commercial Entrances)	\$5.10	sq ft			\$0.00
Bituminous Concrete Trail - 6" wide - 3" thick over 4" Aggregate Base	\$22.00	sq yd			\$0.00



Cost Estimate for Site Improvements

7/12/2021
Page 5 of 5

Unit Description	Unit Price	Unit	Add. Cost	No. of Units	Total
Bituminous Concrete Trail - 8' wide - 3" thick over 4" Aggregate Base	\$22.00	sq yd			\$0.00
Bituminous Concrete Trail - 10' wide - 3" thick over 4" Aggregate Base	\$22.00	sq yd			\$0.00
Silt Removal and Restoration (Retention/Detention Basins)	\$25,000.00	# of Acres	\$10,000		\$0.00
Trees - 1.5" diameter	\$140.00	each			\$0.00
Trees - 3.0" diameter	\$220.00	each			\$0.00
Trees, Conifer - 4' minimum	\$88.00	each			\$0.00
Trees, Conifer - 6' minimum	\$145.00	each			\$0.00
Landscaping	\$10.00	sq ft			\$0.00
Mail Kiosk	\$2,000.00	each			\$0.00
Parking Lot (Concrete or Asphalt)	\$22.00	sq yd			\$0.00
Striping	\$3.00	per stall			\$0.00
Concrete Sidewalk - 4" thick - 4' wide	\$4.70	sq ft			\$0.00
Concrete Sidewalk - 4" thick - 5' wide	\$4.70	sq ft			\$0.00
Concrete Curb - Type "S"	\$12.00	lin ft			\$0.00
Tot Lot	\$5,000.00	each			\$0.00
Sports Court	\$15,000.00	each			\$0.00
Pedestrian Trail - Asphalt	\$3.00	sq ft			\$0.00
Trash enclosures	\$1,500.00	each			\$0.00
Bike Rack	\$1,000.00	each			\$0.00
Seeding - common ground	\$0.62	sq yd			\$0.00
Sodding - common ground	\$8.30	sq yd			\$0.00
Swales	\$8.30	sq yd			\$0.00
Fence, Chain Link - 4' high	\$14.60	lin ft			\$0.00
Fence, Chain Link - 5' high	\$18.85	lin ft			\$0.00
Fence, Chain Link - 6' high	\$19.75	lin ft			\$0.00
Fence, Slight Proof, PVC - 6' high	\$38.95	lin ft			\$0.00
Fence, Slight Proof, Wood - 6' high	\$36.90	lin ft			\$0.00
Fence, Vinyl or Metal - 4' high	\$40.00	lin ft			\$0.00
Fence, Vinyl or Metal - 5' high	\$45.00	lin ft			\$0.00
Fence, Vinyl or Metal - 6' high	\$50.00	lin ft			\$0.00
Survey Monuments - first 4 monuments	\$910.00	each			\$0.00
Survey Monuments - monuments after first 4	\$215.00	each			\$0.00
As-Builts - Storm Sewers - Residential	\$10.00	# of Lots	\$1,000		\$0.00
As-Builts - Sanitary Sewers - Residential	\$10.00	# of Lots	\$1,000		\$0.00
As-Builts - Water - Residential	\$5.00	# of Lots	\$1,000		\$0.00
As-Builts - Storm Sewers - Commercial/Industrial/Apts	\$150.00	# of Acres	\$500		\$0.00
As-Builts - Sanitary Sewers - Commercial/Industrial/Apts	\$150.00	# of Acres	\$500		\$0.00
As-Builts - Water - Commercial/Industrial/Apts	\$100.00	# of Acres	\$500		\$0.00
Off-Site Restoration Costs	\$2.00	sq yd			\$0.00
Removal of Temporary Turnaround	\$4,600.00	each			\$0.00
Commercial Estimate - Parking Lot	\$22.00	sq yd			\$0.00
Commercial Estimate - Bike Rack	\$1,000.00	each			\$0.00
Commercial Estimate - Trash Enclosure	\$1,500.00	each			\$0.00
Commercial Estimate - Striping	\$3.00	per stall			\$0.00
Commercial Estimate - Concrete Curb Type "S"	\$12.00	lin ft			\$0.00
Commercial Estimate - Wheel Stops	\$200.00	each			\$0.00
Commercial Estimate - Handicap Ramp	\$1,000.00	each			\$0.00
Commercial Estimate - Handicap Sign & Pole	\$750.00	each			\$0.00
Commercial Estimate - Light Standard	\$1,500.00	each			\$0.00
					\$0.00

Common Ground/Other Improvements	\$0.00
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Streets/Parking Lot	\$0.00
Storm Sewers	\$381,856.00
Sanitary Sewers	\$0.00
Water	\$0.00
Grading	\$391,228.00
Common Ground/Other Improvements	\$0.00

Sub-Total	\$773,084.00
15% Contingency	\$115,962.60

Grand Total	\$889,046.60
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EXHIBIT NO. 3

[ATTACH OR REFERENCE SWPPP FOR SITE]

Title of SWPPP: Grading Plans for The Prairie

Prepared by: Premier Design Group

Dated: 6/1/21

With the Latest Revision Date: 7/12/21

EXHIBIT NO. 4

CERTIFICATE OF COMPLETION

Project Name/Site Location: _____

City of Dardenne Prairie Project Number: _____

I certify that all engineering designs and construction work on the above-listed development have been completed in accordance with City of Dardenne Prairie, Missouri, codes and the storm water pollution prevention plan approved by the City Engineer.

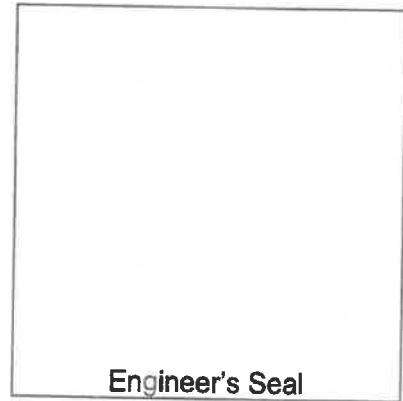
I further certify that the construction of improvements has been completed to acceptable tolerances, and any variations from the originally approved plans are noted in the "as-built" plans that have been provided to the City of Dardenne Prairie, Missouri, for above-listed project/site.

Project Engineer (printed)

Street Address

City Sate Zip Code

Telephone Facsimile



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, DECLARING M & H CONCRETE CONTRACTORS, INC. THE LOWEST RESPONSIBLE BIDDER FOR THE CONCRETE SLAB REMOVAL AND REPLACEMENT PROJECT (PROJECT NO. 971521); AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT BY AND BETWEEN THE CITY AND M & H CONCRETE CONTRACTORS, INC. FOR THE SAME

WHEREAS, the City of Dardenne Prairie, Missouri (the “City”), has undertaken the concrete slab removal and replacement in McCluer Village Subdivision (Project No. 971521) (the “Project”); and

WHEREAS, the City solicited bids for the Project; and

WHEREAS, a total of two (2) sealed bids for the Project were received and opened publicly by the City on July 27, 2021; and

WHEREAS, the Board of Aldermen of the City (the “Board of Aldermen”) hereby finds and determines that M&H Concrete Contractors, Inc. submitted the apparent lowest responsible bid for the Project; and

WHEREAS, the Board of Aldermen hereby further finds and determines that it is to the benefit of the residents of the City to enter into a Contract with M & H Concrete Contractors, Inc. for the Project;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AS FOLLOWS:

SECTION 1. That the bid submitted by M & H Concrete Contractors, Inc. for the Project, a copy of which is on file in the Office of the City Clerk and incorporated by reference herein, be and is hereby accepted by the Board of Alderman of the City of Dardenne Prairie, Missouri, as the lowest responsible bid for the Project.

SECTION 2. That the form, terms, and provisions of the City-Contractor Agreement by and between the City of Dardenne Prairie, Missouri, and M & H Concrete Contractors, Inc., attached hereto marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and they hereby are approved and the City Administrator is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto.

SECTION 3. Savings Clause: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the

City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

SECTION 4. Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION 5. Effective Date: This Ordinance shall take effect and be in force from and after its passage by the Board of Aldermen and its approval by the Mayor of the City of Dardenne Prairie, Missouri.

Read two (2) times, passed, and approved this _____ day of _____, 2021.

As Presiding Officer and as Mayor

Attest:

City Clerk

Approved this _____ day of _____, 2021.

Mayor

Attest:

City Clerk

Exhibit A

Contract #971521

**CITY - CONTRACTOR AGREEMENT
971521 Concrete Slab Removal and Replacement Project**

This CITY-CONTRACTOR AGREEMENT (this "Agreement") is made and entered into as of this _____ day of _____, 2021, by and between

_____, a
_____ having a principal office at _____ (the "Contractor"), and the City of Dardenne Prairie, a Missouri municipal corporation located in St. Charles County (the "City"). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

- A. In response to Invitation for Bid #971521 for 971521 Concrete Slab Removal and Replacement Project, the Contractor has submitted a certain bid in accordance with the Bid Documents to perform the Services.
- B. After due consideration, the City has accepted the bid of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Services in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.
- C. **Award Amount consists of:** \$ _____
Retainage: 5%
Milestone A: _____ %
Milestone B: _____ Calendar Days.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Contractor hereby agree as follows:

1. **Contract Documents:** This Agreement shall consist of: (i) Invitation for Bid #971521 including, without limitation:
1. Invitation for Bids
 2. Any addendums issued by the City
 3. Bid Response (submitted by Contractor)
 4. Subcontractor Form – Exhibit A
 5. References – Exhibit B
 6. Special Requirements
 7. E-Verify Memorandum of Understanding with Electronic Signatures
 8. Affidavit of Participation in Federal Work Authorization Program Form
 9. Certificate of Insurance
 10. Performance and Payment Bonds
 11. City-Contractor Agreement (executed by City and Contractor)
 12. Terms and Conditions
 13. General Conditions
 14. Notice of Award (issued by City)
 15. Notice to Proceed (issued by City)

and shall also include any exhibits to the above documents, any addenda issued prior to receipt of bids, any duly-issued modifications, and all other documents contained or specified within the specifications, details or job special provisions, as such may be on file in the Office of the City Clerk of Dardenne Prairie, Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference).

2. **Coordination of Contract Documents:** The Contract Documents are intended to be complementary and to describe and provide for a complete Work. In case of conflict or inconsistency among the Contract Documents, the governing ranking will be:
- (a) Job Specific Provisions (JSPs)
 - (b) Methods of Measurement and Payment
 - (c) Plans for Construction
 - (d) City of Wentzville Standard Specifications and Construction Details (hereinafter referred to as the Project Specifications)
 - whenever the term "City of Wentzville" or "Wentzville" appears in the Project Specifications, it shall be deemed to mean the City of Dardenne Prairie, Missouri
 - (e) Bid Line Items and/or Quantities

In case of conflict or inconsistency, calculated dimensions will govern over scaled dimensions. In the instance when any provision(s) of the Contract Documents not explicitly listed above conflict, the provision(s) most advantageous to the City shall govern.

All contractors, including subcontractors, shall not take advantage of any apparent error or omission in the Contract Documents. If an error or omission is discovered, the Engineer shall be notified promptly and prior to commencement of work related to said error or omission so corrections and interpretations necessary to fulfill the intent of the Contract can be made. A failure to give notice prior to commencement of work related to said error or omission shall render the effects of any error or omission non-compensable and any delay non-excusable.

3. **Payment:** Contractor shall be paid for the quantities placed based on a percent complete per the amount quoted of each amount on the Bid Line Items and per the Methods of Measurement and Payment. The Contractor shall submit all invoices complete with necessary supporting documentation and partial lien waivers to indicate the percentage complete of each sum amount to the City. The City shall make payment within 30 days of receipt of an invoice after satisfactory performance of the delivery and receipt of the services as shown on the Bid Line Items. Final determination of percentage complete will be made by the City Representative. Invoices shall be submitted no more than once a month except for the final payment. All invoices MUST HAVE a City project number. Invoices received without a City project number listed may delay payment. Invoices should be complete with necessary support documentation and City project number. Payment Terms: net 30 days. Remit Address is City Clerk, 2032 Hanley Road, Dardenne Prairie, Missouri 63368 or cityclerk@dardenneprairie.org.

4. **Prompt Payment:** All public works contracts shall provide for prompt payment by the City to the Contractor (as well as prompt payment by the Contractor to the subcontractor and material supplier) unless contrary to any federal funding requirements, per RSMo 34.057.
5. **The Work/Contract.** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract shall include all compensation to Contractor due for the Work, which shall include all such work within the Base Bid and additionally all such Work within selected Alternate Bids. Any additional Work not within the Base Bid and Alternate Bids that is hereinafter approved by the City in writing shall be incorporated into the contract pursuant to a Change Order.
6. **Time of Completion:** Contractor shall commence work under this Agreement as specified in the Notice to Proceed and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.
7. **Guaranty:** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of Final Acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.
8. **Performance Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Performance Bond in the full amount of the Contract Sum. The Performance Bond furnished shall guarantee the faithful performance of this Contract.
9. **Payment Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri,

as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri.

10. **Maintenance Bond:** Upon Final Acceptance the Contractor shall furnish a satisfactory Maintenance Bond in the amount of 10% of the final Contract Sum after any and all Change Orders and/or formal amendments. The Maintenance Bond shall be in full force for a one (1) year guarantee period from the date of Final Acceptance. The submitted Maintenance Bond shall be substantially in the form of the "Form of Maintenance Bond" included within the Bid Documents.

11. **Independent Contractor.** The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.

12. **Contractor's Liability Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City Contractor Agreement the insurance coverage's at least equal to the coverage's set forth in this paragraph 12, and as further provided in the Terms and Conditions, and General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo Insurance policies providing required coverage's shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the City:

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence \$2,940,868 aggregate
Commercial Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence
Employer's Liability	\$1,000,000 bodily injury by accident (each accident) \$1,000,000 bodily injury by disease (each employee) \$1,000,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

The Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear.

Builders Risk Required for this Project: Yes _____ No X _____

Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverage's required by this paragraph 12. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, on a primary and non-contributory basis, related to the General and Automobile Liability policies, and all insurers have waived their rights to subrogation.

The City may waive any insurance coverage's or amounts required by this paragraph 12 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

13. **Subsequent Work:** The City reserves the option to award additional work to the Contractor during the calendar year.
14. **Price Escalation:** The prices provided in the Contractor's bid may not be adjusted for the 971521 Concrete Slab Removal and Replacement Project work. If the City exercises its option to award additional work to the Contractor, the Contractor may submit a request in writing to the City Administrator for an increase. The request must be submitted at least 45 days prior to the start of the additional work. The request must clearly describe and justify increased expenses and include documentation from material suppliers of the increased expense. The City may, in its discretion, approve the request provided it is satisfied that the Contractor's request is justified. The amount of increase may not exceed two (2%) percent. The City reserves the right to not award the additional work if price adjustment cannot be agreed upon.
15. **Indemnification:** To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this 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 the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

16. **Attorney Fees' and Costs:** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.
17. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence and that absence of reasonable progress and delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **One Thousand, One Hundred Dollars (\$1,100.00)** for each calendar day of delay past the allotted calendar days to achieve Available for Use (Substantial Completion) as notified by the City. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.
18. **Termination:** The City shall have the right to terminate this Agreement at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under this Agreement an amount equal to the cost of all Services performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of this Agreement Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.
19. **Compliance with Federal, State and Local Law:** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.
20. **Prevailing Wage:** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is

included in the Bid Documents and the Contract Documents.

21. **OSHA Required Training:** Pursuant to Section 292.675 RSMo, Contractor shall require all on-site employees to complete the ten-hour training program as required under Section 292.675 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Section 292.675 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Section 292.675 RSMo and such penalties shall be forfeited to the City pursuant to such Section. Penalties for non-compliance include contractor forfeiture to the City in the amount of \$2,500, plus \$100 per contractor and subcontractor employee for each calendar day such employee is employed beyond the elapsed time period for required program completion under 292.675 RSMO. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675 RSMo.

22. **Taxes:** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.
23. **Other Representations, Warranties and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor has sufficient expertise, knowledge, information and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.
24. **Amendment: Waiver:** The City may add, delete, or amend services. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be

enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

25. **Accounting.** During the period of this Agreement, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.
26. **Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services.
27. **Governing/Choice of Law: Jurisdiction.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri.
28. **Headings:** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.
29. **Representations.** Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.
30. **Severability:** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

(Remainder of page intentionally blank; signature page follows)

31. **Counterparts:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CONTRACTOR

CITY OF DARDENNE PRAIRIE, MISSOURI

Signature

Dan Lang, City Administrator

Print Name & Title

ATTEST:

Address

City, State, Zip

City Clerk

Date

Date

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, DECLARING LAMKE TRENCHING & EXCAVATING, INC. THE LOWEST RESPONSIBLE BIDDER FOR THE CONCRETE SLAB REMOVAL AND REPLACEMENT PROJECT (PROJECT NO. 971521); AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT BY AND BETWEEN THE CITY AND LAMKE TRENCHING & EXCAVATING, INC. FOR THE SAME

WHEREAS, the City of Dardenne Prairie, Missouri (the “City”), has undertaken the concrete slab removal and replacement in McCluer Village Subdivision (Project No. 971521) (the “Project”); and

WHEREAS, the City solicited bids for the Project; and

WHEREAS, a total of two (2) sealed bids for the Project were received and opened publicly by the City on July 27, 2021; and

WHEREAS, the Board of Aldermen of the City (the “Board of Aldermen”) hereby finds and determines that M&H Concrete Contractors, Inc. submitted the apparent lowest responsible bid for the Project; and

WHEREAS, the Board of Aldermen hereby further finds and determines that it is to the benefit of the residents of the City to enter into a Contract with Lamke Trenching & Excavating, Inc. for the Project;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AS FOLLOWS:

SECTION 1. That the bid submitted by Lamke Trenching & Excavating, Inc. for the Project, a copy of which is on file in the Office of the City Clerk and incorporated by reference herein, be and is hereby accepted by the Board of Alderman of the City of Dardenne Prairie, Missouri, as the lowest responsible bid for the Project.

SECTION 2. That the form, terms, and provisions of the City-Contractor Agreement by and between the City of Dardenne Prairie, Missouri, and Lamke Trenching & Excavating, Inc., attached hereto marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and they hereby are approved and the City Administrator is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto.

SECTION 3. Savings Clause: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the

City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

SECTION 4. Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION 5. Effective Date: This Ordinance shall take effect and be in force from and after its passage by the Board of Aldermen and its approval by the Mayor of the City of Dardenne Prairie, Missouri.

Read two (2) times, passed, and approved this _____ day of _____, 2021.

As Presiding Officer and as Mayor

Attest:

City Clerk

Approved this _____ day of _____, 2021.

Mayor

Attest:

City Clerk

Exhibit A

Contract #971521

**CITY - CONTRACTOR AGREEMENT
971521 Concrete Slab Removal and Replacement Project**

This CITY-CONTRACTOR AGREEMENT (this "Agreement") is made and entered into as of this ____ day of _____, 2021, by and between

_____, a
_____ having a principal office at _____ (the
"Contractor"), and the City of Dardenne Prairie, a Missouri municipal corporation located in St. Charles County (the "City"). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

- A. In response to Invitation for Bid #971521 for 971521 Concrete Slab Removal and Replacement Project, the Contractor has submitted a certain bid in accordance with the Bid Documents to perform the Services.
- B. After due consideration, the City has accepted the bid of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Services in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.
- C. **Award Amount consists of:** \$ _____
Retainage: 5%
Milestone A: _____ %
Milestone B: _____ Calendar Days.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Contractor hereby agree as follows:

1. **Contract Documents:** This Agreement shall consist of: (i) Invitation for Bid #971521 including, without limitation:
1. Invitation for Bids
 2. Any addendums issued by the City
 3. Bid Response (submitted by Contractor)
 4. Subcontractor Form – Exhibit A
 5. References – Exhibit B
 6. Special Requirements
 7. E-Verify Memorandum of Understanding with Electronic Signatures
 8. Affidavit of Participation in Federal Work Authorization Program Form
 9. Certificate of Insurance
 10. Performance and Payment Bonds
 11. City-Contractor Agreement (executed by City and Contractor)
 12. Terms and Conditions
 13. General Conditions
 14. Notice of Award (issued by City)
 15. Notice to Proceed (issued by City)

and shall also include any exhibits to the above documents, any addenda issued prior to receipt of bids, any duly-issued modifications, and all other documents contained or specified within the specifications, details or job special provisions, as such may be on file in the Office of the City Clerk of Dardenne Prairie, Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference).

2. **Coordination of Contract Documents:** The Contract Documents are intended to be complementary and to describe and provide for a complete Work. In case of conflict or inconsistency among the Contract Documents, the governing ranking will be:
- (a) Job Specific Provisions (JSPs)
 - (b) Methods of Measurement and Payment
 - (c) Plans for Construction
 - (d) City of Wentzville Standard Specifications and Construction Details (hereinafter referred to as the Project Specifications)
 - whenever the term "City of Wentzville" or "Wentzville" appears in the Project Specifications, it shall be deemed to mean the City of Dardenne Prairie, Missouri
 - (e) Bid Line Items and/or Quantities

In case of conflict or inconsistency, calculated dimensions will govern over scaled dimensions. In the instance when any provision(s) of the Contract Documents not explicitly listed above conflict, the provision(s) most advantageous to the City shall govern.

All contractors, including subcontractors, shall not take advantage of any apparent error or omission in the Contract Documents. If an error or omission is discovered, the Engineer shall be notified promptly and prior to commencement of work related to said error or omission so corrections and interpretations necessary to fulfill the intent of the Contract can be made. A failure to give notice prior to commencement of work related to said error or omission shall render the effects of any error or omission non-compensable and any delay non-excusable.

3. **Payment:** Contractor shall be paid for the quantities placed based on a percent complete per the amount quoted of each amount on the Bid Line Items and per the Methods of Measurement and Payment. The Contractor shall submit all invoices complete with necessary supporting documentation and partial lien waivers to indicate the percentage complete of each sum amount to the City. The City shall make payment within 30 days of receipt of an invoice after satisfactory performance of the delivery and receipt of the services as shown on the Bid Line Items. Final determination of percentage complete will be made by the City Representative. Invoices shall be submitted no more than once a month except for the final payment. All invoices **MUST HAVE** a City project number. Invoices received without a City project number listed may delay payment. Invoices should be complete with necessary support documentation and City project number. Payment Terms: net 30 days. Remit Address is City Clerk, 2032 Hanley Road, Dardenne Prairie, Missouri 63368 or cityclerk@dardennepairie.org.

4. **Prompt Payment:** All public works contracts shall provide for prompt payment by the City to the Contractor (as well as prompt payment by the Contractor to the subcontractor and material supplier) unless contrary to any federal funding requirements, per RSMo 34.057.
5. **The Work/Contract.** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract shall include all compensation to Contractor due for the Work, which shall include all such work within the Base Bid and additionally all such Work within selected Alternate Bids. Any additional Work not within the Base Bid and Alternate Bids that is hereinafter approved by the City in writing shall be incorporated into the contract pursuant to a Change Order.
6. **Time of Completion:** Contractor shall commence work under this Agreement as specified in the Notice to Proceed and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.
7. **Guaranty:** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of Final Acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.
8. **Performance Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Performance Bond in the full amount of the Contract Sum. The Performance Bond furnished shall guarantee the faithful performance of this Contract.
9. **Payment Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri,

as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri.

10. **Maintenance Bond:** Upon Final Acceptance the Contractor shall furnish a satisfactory Maintenance Bond in the amount of 10% of the final Contract Sum after any and all Change Orders and/or formal amendments. The Maintenance Bond shall be in full force for a one (1) year guarantee period from the date of Final Acceptance. The submitted Maintenance Bond shall be substantially in the form of the "Form of Maintenance Bond" included within the Bid Documents.

11. **Independent Contractor.** The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.

12. **Contractor's Liability Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City Contractor Agreement the insurance coverage's at least equal to the coverage's set forth in this paragraph 12, and as further provided in the Terms and Conditions, and General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo Insurance policies providing required coverage's shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the City:

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence \$2,940,868 aggregate
Commercial Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence
Employer's Liability	\$1,000,000 bodily injury by accident (each accident) \$1,000,000 bodily injury by disease (each employee) \$1,000,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

The Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear.

Builders Risk Required for this Project: Yes _____ No X _____

Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverage's required by this paragraph 12. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, on a primary and non-contributory basis, related to the General and Automobile Liability policies, and all insurers have waived their rights to subrogation.

The City may waive any insurance coverage's or amounts required by this paragraph 12 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

13. **Subsequent Work:** The City reserves the option to award additional work to the Contractor during the calendar year.
14. **Price Escalation:** The prices provided in the Contractor's bid may not be adjusted for the 971521 Concrete Slab Removal and Replacement Project work. If the City exercises its option to award additional work to the Contractor, the Contractor may submit a request in writing to the City Administrator for an increase. The request must be submitted at least 45 days prior to the start of the additional work. The request must clearly describe and justify increased expenses and include documentation from material suppliers of the increased expense. The City may, in its discretion, approve the request provided it is satisfied that the Contractor's request is justified. The amount of increase may not exceed two (2%) percent. The City reserves the right to not award the additional work if price adjustment cannot be agreed upon.
15. **Indemnification:** To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this 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 the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

16. **Attorney Fees' and Costs:** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.
17. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence and that absence of reasonable progress and delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **One Thousand, One Hundred Dollars (\$1,100.00)** for each calendar day of delay past the allotted calendar days to achieve Available for Use (Substantial Completion) as notified by the City. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.
18. **Termination:** The City shall have the right to terminate this Agreement at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under this Agreement an amount equal to the cost of all Services performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of this Agreement Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.
19. **Compliance with Federal, State and Local Law:** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.
20. **Prevailing Wage:** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is

included in the Bid Documents and the Contract Documents.

21. **OSHA Required Training:** Pursuant to Section 292.675 RSMo, Contractor shall require all on-site employees to complete the ten-hour training program as required under Section 292.675 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Section 292.675 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Section 292.675 RSMo and such penalties shall be forfeited to the City pursuant to such Section. Penalties for non-compliance include contractor forfeiture to the City in the amount of \$2,500, plus \$100 per contractor and subcontractor employee for each calendar day such employee is employed beyond the elapsed time period for required program completion under 292.675 RSMO. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675 RSMo.

22. **Taxes:** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.
23. **Other Representations, Warranties and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor has sufficient expertise, knowledge, information and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.
24. **Amendment: Waiver:** The City may add, delete, or amend services. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be

enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

25. **Accounting**. During the period of this Agreement, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.
26. **Compliance with State Immigration Statutes**. As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services.
27. **Governing/Choice of Law; Jurisdiction**. This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri.
28. **Headings**: The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.
29. **Representations**. Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.
30. **Severability**: The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

(Remainder of page intentionally blank; signature page follows)

31. **Counterparts:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CONTRACTOR

CITY OF DARDENNE PRAIRIE, MISSOURI

Signature

Dan Lang, City Administrator

Print Name & Title

ATTEST:

Address

City, State, Zip

City Clerk

Date

Date

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, DECLARING M & H CONCRETE CONTRACTORS, INC. THE LOWEST RESPONSIBLE BIDDER FOR THE CONCRETE SLAB REMOVAL AND REPLACEMENT PROJECT (PROJECT NO. 971721); AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT BY AND BETWEEN THE CITY AND M & H CONCRETE CONTRACTORS, INC. FOR THE SAME

WHEREAS, the City of Dardenne Prairie, Missouri (the “City”), has undertaken the concrete slab removal and replacement in Cheneaux Village, Leighton Hollow, Aberdeen, The Enclave at Sunnybrooke, Tysons Corner, Avalon, Lewis and Clark Village, Canvas Cove, Dardenne Landing, Villages at Bainbridge, Campbell Village, and Waterford Crossing Subdivisions (Project No. 971721) (the “Project”); and

WHEREAS, the City solicited bids for the Project; and

WHEREAS, a total of two (2) sealed bids for the Project were received and opened publicly by the City on July 27, 2021; and

WHEREAS, the Board of Aldermen of the City (the “Board of Aldermen”) hereby finds and determines that M&H Concrete Contractors, Inc. submitted the apparent lowest responsible bid for the Project; and

WHEREAS, the Board of Aldermen hereby further finds and determines that it is to the benefit of the residents of the City to enter into a Contract with M & H Concrete Contractors, Inc. for the Project;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AS FOLLOWS:

SECTION 1. That the bid submitted by M & H Concrete Contractors, Inc. for the Project, a copy of which is on file in the Office of the City Clerk and incorporated by reference herein, be and is hereby accepted by the Board of Alderman of the City of Dardenne Prairie, Missouri, as the lowest responsible bid for the Project.

SECTION 2. That the form, terms, and provisions of the City-Contractor Agreement by and between the City of Dardenne Prairie, Missouri, and M & H Concrete Contractors, Inc., attached hereto marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and they hereby are approved and the City Administrator is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto.

SECTION 3. Savings Clause: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

SECTION 4. Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION 5. Effective Date: This Ordinance shall take effect and be in force from and after its passage by the Board of Aldermen and its approval by the Mayor of the City of Dardenne Prairie, Missouri.

Read two (2) times, passed, and approved this _____ day of _____, 2021.

As Presiding Officer and as Mayor

Attest:

City Clerk

Approved this _____ day of _____, 2021.

Mayor

Attest:

City Clerk

Exhibit A

Contract #971721

**CITY - CONTRACTOR AGREEMENT
971721 Concrete Slab Removal and Replacement Project**

This CITY-CONTRACTOR AGREEMENT (this "Agreement") is made and entered into as of this ____ day of _____, 2021, by and between

_____, a
_____ having a principal office at _____ (the
"Contractor"), and the City of Dardenne Prairie, a Missouri municipal corporation located in St. Charles County (the "City"). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

- A. In response to Invitation for Bid #971721 for 971721 Concrete Slab Removal and Replacement Project, the Contractor has submitted a certain bid in accordance with the Bid Documents to perform the Services.
- B. After due consideration, the City has accepted the bid of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Services in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.
- C. **Award Amount consists of:** \$ _____
Retainage: 5%
Milestone A: _____ %
Milestone B: _____ Calendar Days.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Contractor hereby agree as follows:

1. **Contract Documents:** This Agreement shall consist of: (i) Invitation for Bid #971721 including, without limitation:
1. Invitation for Bids
 2. Any addendums issued by the City
 3. Bid Response (submitted by Contractor)
 4. Subcontractor Form – Exhibit A
 5. References – Exhibit B
 6. Special Requirements
 7. E-Verify Memorandum of Understanding with Electronic Signatures
 8. Affidavit of Participation in Federal Work Authorization Program Form
 9. Certificate of Insurance
 10. Performance and Payment Bonds
 11. City-Contractor Agreement (executed by City and Contractor)
 12. Terms and Conditions
 13. General Conditions
 14. Notice of Award (issued by City)
 15. Notice to Proceed (issued by City)

and shall also include any exhibits to the above documents, any addenda issued prior to receipt of bids, any duly-issued modifications, and all other documents contained or specified within the specifications, details or job special provisions, as such may be on file in the Office of the City Clerk of Dardenne Prairie, Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference).

2. **Coordination of Contract Documents:** The Contract Documents are intended to be complementary and to describe and provide for a complete Work. In case of conflict or inconsistency among the Contract Documents, the governing ranking will be:
- (a) Job Specific Provisions (JSPs)
 - (b) Methods of Measurement and Payment
 - (c) Plans for Construction
 - (d) City of Wentzville Standard Specifications and Construction Details (hereinafter referred to as the Project Specifications)
 - whenever the term "City of Wentzville" or "Wentzville" appears in the Project Specifications, it shall be deemed to mean the City of Dardenne Prairie, Missouri
 - (e) Bid Line Items and/or Quantities

In case of conflict or inconsistency, calculated dimensions will govern over scaled dimensions. In the instance when any provision(s) of the Contract Documents not explicitly listed above conflict, the provision(s) most advantageous to the City shall govern.

All contractors, including subcontractors, shall not take advantage of any apparent error or omission in the Contract Documents. If an error or omission is discovered, the Engineer shall be notified promptly and prior to commencement of work related to said error or omission so corrections and interpretations necessary to fulfill the intent of the Contract can be made. A failure to give notice prior to commencement of work related to said error or omission shall render the effects of any error or omission non-compensable and any delay non-excusable.

3. **Payment:** Contractor shall be paid for the quantities placed based on a percent complete per the amount quoted of each amount on the Bid Line Items and per the Methods of Measurement and Payment. The Contractor shall submit all invoices complete with necessary supporting documentation and partial lien waivers to indicate the percentage complete of each sum amount to the City. The City shall make payment within 30 days of receipt of an invoice after satisfactory performance of the delivery and receipt of the services as shown on the Bid Line Items. Final determination of percentage complete will be made by the City Representative. Invoices shall be submitted no more than once a month except for the final payment. All invoices MUST HAVE a City project number. Invoices received without a City project number listed may delay payment. Invoices should be complete with necessary support documentation and City project number. Payment Terms: net 30 days. Remit Address is City Clerk, 2032 Hanley Road, Dardenne Prairie, Missouri 63368 or cityclerk@dardennepairie.org.

4. **Prompt Payment:** All public works contracts shall provide for prompt payment by the City to the Contractor (as well as prompt payment by the Contractor to the subcontractor and material supplier) unless contrary to any federal funding requirements, per RSMo 34.057.
5. **The Work/Contract.** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract shall include all compensation to Contractor due for the Work, which shall include all such work within the Base Bid and additionally all such Work within selected Alternate Bids. Any additional Work not within the Base Bid and Alternate Bids that is hereinafter approved by the City in writing shall be incorporated into the contract pursuant to a Change Order.
6. **Time of Completion:** Contractor shall commence work under this Agreement as specified in the Notice to Proceed and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.
7. **Guaranty:** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of Final Acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.
8. **Performance Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Performance Bond in the full amount of the Contract Sum. The Performance Bond furnished shall guarantee the faithful performance of this Contract.
9. **Payment Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri,

as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri.

10. **Maintenance Bond:** Upon Final Acceptance the Contractor shall furnish a satisfactory Maintenance Bond in the amount of 10% of the final Contract Sum after any and all Change Orders and/or formal amendments. The Maintenance Bond shall be in full force for a one (1) year guarantee period from the date of Final Acceptance. The submitted Maintenance Bond shall be substantially in the form of the "Form of Maintenance Bond" included within the Bid Documents.

11. **Independent Contractor.** The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.

12. **Contractor's Liability Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City Contractor Agreement the insurance coverage's at least equal to the coverage's set forth in this paragraph 12, and as further provided in the Terms and Conditions, and General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo Insurance policies providing required coverage's shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the City:

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence \$2,940,868 aggregate
Commercial Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence
Employer's Liability	\$1,000,000 bodily injury by accident (each accident) \$1,000,000 bodily injury by disease (each employee) \$1,000,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

The Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear.

Builders Risk Required for this Project: Yes _____ No X_____

Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverage's required by this paragraph 12. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, on a primary and non-contributory basis, related to the General and Automobile Liability policies, and all insurers have waived their rights to subrogation.

The City may waive any insurance coverage's or amounts required by this paragraph 12 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

13. **Subsequent Work:** The City reserves the option to award additional work to the Contractor during the calendar year.
14. **Price Escalation:** The prices provided in the Contractor's bid may not be adjusted for the 971721 Concrete Slab Removal and Replacement Project work. If the City exercises its option to award additional work to the Contractor, the Contractor may submit a request in writing to the City Administrator for an increase. The request must be submitted at least 45 days prior to the start of the additional work. The request must clearly describe and justify increased expenses and include documentation from material suppliers of the increased expense. The City may, in its discretion, approve the request provided it is satisfied that the Contractor's request is justified. The amount of increase may not exceed two (2%) percent. The City reserves the right to not award the additional work if price adjustment cannot be agreed upon.
15. **Indemnification:** To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this 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 the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

16. **Attorney Fees' and Costs:** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.
17. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence and that absence of reasonable progress and delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **One Thousand, One Hundred Dollars (\$1,100.00)** for each calendar day of delay past the allotted calendar days to achieve Available for Use (Substantial Completion) as notified by the City. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.
18. **Termination:** The City shall have the right to terminate this Agreement at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under this Agreement an amount equal to the cost of all Services performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of this Agreement Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.
19. **Compliance with Federal, State and Local Law:** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.
20. **Prevailing Wage:** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is

included in the Bid Documents and the Contract Documents.

21. **OSHA Required Training:** Pursuant to Section 292.675 RSMo, Contractor shall require all on-site employees to complete the ten-hour training program as required under Section 292.675 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Section 292.675 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Section 292.675 RSMo and such penalties shall be forfeited to the City pursuant to such Section. Penalties for non-compliance include contractor forfeiture to the City in the amount of \$2,500, plus \$100 per contractor and subcontractor employee for each calendar day such employee is employed beyond the elapsed time period for required program completion under 292.675 RSMO. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675 RSMo.

22. **Taxes:** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.
23. **Other Representations, Warranties and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor has sufficient expertise, knowledge, information and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.
24. **Amendment: Waiver:** The City may add, delete, or amend services. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be

enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

25. **Accounting.** During the period of this Agreement, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.
26. **Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services.
27. **Governing/Choice of Law; Jurisdiction.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri.
28. **Headings:** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.
29. **Representations.** Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.
30. **Severability:** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

(Remainder of page intentionally blank; signature page follows)

31. **Counterparts:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CONTRACTOR

CITY OF DARDENNE PRAIRIE, MISSOURI

Signature

Dan Lang, City Administrator

Print Name & Title

Address

ATTEST:

City, State, Zip

City Clerk

Date

Date

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, DECLARING LAMKE TRENCHING & EXCAVATING, INC. THE LOWEST RESPONSIBLE BIDDER FOR THE CONCRETE SLAB REMOVAL AND REPLACEMENT PROJECT (PROJECT NO. 971721); AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT BY AND BETWEEN THE CITY AND LAMKE TRENCHING & EXCAVATING, INC. FOR THE SAME

WHEREAS, the City of Dardenne Prairie, Missouri (the “City”), has undertaken the concrete slab removal and replacement in Cheneaux Village, Leighton Hollow, Aberdeen, The Enclave at Sunnybrooke, Tysons Corner, Avalon, Lewis and Clark Village, Canvas Cove, Dardenne Landing, Villages at Bainbridge, Campbell Village, and Waterford Crossing Subdivisions (Project No. 971721) (the “Project”); and

WHEREAS, the City solicited bids for the Project; and

WHEREAS, a total of two (2) sealed bids for the Project were received and opened publicly by the City on July 27, 2021; and

WHEREAS, the Board of Aldermen of the City (the “Board of Aldermen”) hereby finds and determines that M&H Concrete Contractors, Inc. submitted the apparent lowest responsible bid for the Project; and

WHEREAS, the Board of Aldermen hereby further finds and determines that it is to the benefit of the residents of the City to enter into a Contract with Lamke Trenching & Excavating, Inc. for the Project;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AS FOLLOWS:

SECTION 1. That the bid submitted by Lamke Trenching & Excavating, Inc. for the Project, a copy of which is on file in the Office of the City Clerk and incorporated by reference herein, be and is hereby accepted by the Board of Alderman of the City of Dardenne Prairie, Missouri, as the lowest responsible bid for the Project.

SECTION 2. That the form, terms, and provisions of the City-Contractor Agreement by and between the City of Dardenne Prairie, Missouri, and Lamke Trenching & Excavating, Inc., attached hereto marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and they hereby are approved and the City Administrator is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto.

SECTION 3. Savings Clause: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

SECTION 4. Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION 5. Effective Date: This Ordinance shall take effect and be in force from and after its passage by the Board of Aldermen and its approval by the Mayor of the City of Dardenne Prairie, Missouri.

Read two (2) times, passed, and approved this _____ day of _____, 2021.

As Presiding Officer and as Mayor

Attest:

City Clerk

Approved this _____ day of _____, 2021.

Mayor

Attest:

City Clerk

Exhibit A

Contract #971721

**CITY - CONTRACTOR AGREEMENT
971721 Concrete Slab Removal and Replacement Project**

This CITY-CONTRACTOR AGREEMENT (this "Agreement") is made and entered into as of this ____ day of _____, 2021, by and between

_____, a
_____ having a principal office at _____ (the "Contractor"), and the City of Dardenne Prairie, a Missouri municipal corporation located in St. Charles County (the "City"). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

- A. In response to Invitation for Bid #971721 for 971721 Concrete Slab Removal and Replacement Project, the Contractor has submitted a certain bid in accordance with the Bid Documents to perform the Services.
- B. After due consideration, the City has accepted the bid of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Services in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.
- C. **Award Amount consists of:** \$ _____
Retainage: 5%
Milestone A: _____ %
Milestone B: _____ Calendar Days.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Contractor hereby agree as follows:

1. **Contract Documents:** This Agreement shall consist of: (i) Invitation for Bid #971721 including, without limitation:
1. Invitation for Bids
 2. Any addendums issued by the City
 3. Bid Response (submitted by Contractor)
 4. Subcontractor Form – Exhibit A
 5. References – Exhibit B
 6. Special Requirements
 7. E-Verify Memorandum of Understanding with Electronic Signatures
 8. Affidavit of Participation in Federal Work Authorization Program Form
 9. Certificate of Insurance
 10. Performance and Payment Bonds
 11. City-Contractor Agreement (executed by City and Contractor)
 12. Terms and Conditions
 13. General Conditions
 14. Notice of Award (issued by City)
 15. Notice to Proceed (issued by City)

and shall also include any exhibits to the above documents, any addenda issued prior to receipt of bids, any duly-issued modifications, and all other documents contained or specified within the specifications, details or job special provisions, as such may be on file in the Office of the City Clerk of Dardenne Prairie, Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference).

2. **Coordination of Contract Documents:** The Contract Documents are intended to be complementary and to describe and provide for a complete Work. In case of conflict or inconsistency among the Contract Documents, the governing ranking will be:
- (a) Job Specific Provisions (JSPs)
 - (b) Methods of Measurement and Payment
 - (c) Plans for Construction
 - (d) City of Wentzville Standard Specifications and Construction Details (hereinafter referred to as the Project Specifications)
 - whenever the term "City of Wentzville" or "Wentzville" appears in the Project Specifications, it shall be deemed to mean the City of Dardenne Prairie, Missouri
 - (e) Bid Line Items and/or Quantities

In case of conflict or inconsistency, calculated dimensions will govern over scaled dimensions. In the instance when any provision(s) of the Contract Documents not explicitly listed above conflict, the provision(s) most advantageous to the City shall govern.

All contractors, including subcontractors, shall not take advantage of any apparent error or omission in the Contract Documents. If an error or omission is discovered, the Engineer shall be notified promptly and prior to commencement of work related to said error or omission so corrections and interpretations necessary to fulfill the intent of the Contract can be made. A failure to give notice prior to commencement of work related to said error or omission shall render the effects of any error or omission non-compensable and any delay non-excusable.

3. **Payment:** Contractor shall be paid for the quantities placed based on a percent complete per the amount quoted of each amount on the Bid Line Items and per the Methods of Measurement and Payment. The Contractor shall submit all invoices complete with necessary supporting documentation and partial lien waivers to indicate the percentage complete of each sum amount to the City. The City shall make payment within 30 days of receipt of an invoice after satisfactory performance of the delivery and receipt of the services as shown on the Bid Line Items. Final determination of percentage complete will be made by the City Representative. Invoices shall be submitted no more than once a month except for the final payment. All invoices MUST HAVE a City project number. Invoices received without a City project number listed may delay payment. Invoices should be complete with necessary support documentation and City project number. Payment Terms: net 30 days. Remit Address is City Clerk, 2032 Hanley Road, Dardenne Prairie, Missouri 63368 or cityclerk@dardenneprairie.org.

4. **Prompt Payment:** All public works contracts shall provide for prompt payment by the City to the Contractor (as well as prompt payment by the Contractor to the subcontractor and material supplier) unless contrary to any federal funding requirements, per RSMo 34.057.
5. **The Work/Contract.** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract shall include all compensation to Contractor due for the Work, which shall include all such work within the Base Bid and additionally all such Work within selected Alternate Bids. Any additional Work not within the Base Bid and Alternate Bids that is hereinafter approved by the City in writing shall be incorporated into the contract pursuant to a Change Order.
6. **Time of Completion:** Contractor shall commence work under this Agreement as specified in the Notice to Proceed and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.
7. **Guaranty:** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of Final Acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.
8. **Performance Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Performance Bond in the full amount of the Contract Sum. The Performance Bond furnished shall guarantee the faithful performance of this Contract.
9. **Payment Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri,

as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri.

10. **Maintenance Bond:** Upon Final Acceptance the Contractor shall furnish a satisfactory Maintenance Bond in the amount of 10% of the final Contract Sum after any and all Change Orders and/or formal amendments. The Maintenance Bond shall be in full force for a one (1) year guarantee period from the date of Final Acceptance. The submitted Maintenance Bond shall be substantially in the form of the "Form of Maintenance Bond" included within the Bid Documents.
11. **Independent Contractor.** The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.
12. **Contractor's Liability Insurance.** The Contractor shall obtain and maintain during the term of the Project and the City Contractor Agreement the insurance coverage's at least equal to the coverage's set forth in this paragraph 12, and as further provided in the Terms and Conditions, and General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo Insurance policies providing required coverage's shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the Bid Amount and no additional payment will be made therefor by the City:

Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence \$2,940,868 aggregate
Commercial Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence
Employer's Liability	\$1,000,000 bodily injury by accident (each accident) \$1,000,000 bodily injury by disease (each employee) \$1,000,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

The Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear.

Builders Risk Required for this Project: Yes _____ No X _____

Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverage's required by this paragraph 12. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, on a primary and non-contributory basis, related to the General and Automobile Liability policies, and all insurers have waived their rights to subrogation.

The City may waive any insurance coverage's or amounts required by this paragraph 12 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

13. **Subsequent Work:** The City reserves the option to award additional work to the Contractor during the calendar year.
14. **Price Escalation:** The prices provided in the Contractor's bid may not be adjusted for the 971721 Concrete Slab Removal and Replacement Project work. If the City exercises its option to award additional work to the Contractor, the Contractor may submit a request in writing to the City Administrator for an increase. The request must be submitted at least 45 days prior to the start of the additional work. The request must clearly describe and justify increased expenses and include documentation from material suppliers of the increased expense. The City may, in its discretion, approve the request provided it is satisfied that the Contractor's request is justified. The amount of increase may not exceed two (2%) percent. The City reserves the right to not award the additional work if price adjustment cannot be agreed upon.
15. **Indemnification:** To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this 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 the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

16. **Attorney Fees' and Costs:** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.
17. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence and that absence of reasonable progress and delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **One Thousand, One Hundred Dollars (\$1,100.00)** for each calendar day of delay past the allotted calendar days to achieve Available for Use (Substantial Completion) as notified by the City. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.
18. **Termination:** The City shall have the right to terminate this Agreement at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under this Agreement an amount equal to the cost of all Services performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of this Agreement Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.
19. **Compliance with Federal, State and Local Law:** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.
20. **Prevailing Wage:** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is

included in the Bid Documents and the Contract Documents.

21. **OSHA Required Training:** Pursuant to Section 292.675 RSMo, Contractor shall require all on-site employees to complete the ten-hour training program as required under Section 292.675 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Section 292.675 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Section 292.675 RSMo and such penalties shall be forfeited to the City pursuant to such Section. Penalties for non-compliance include contractor forfeiture to the City in the amount of \$2,500, plus \$100 per contractor and subcontractor employee for each calendar day such employee is employed beyond the elapsed time period for required program completion under 292.675 RSMO. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675 RSMo.

22. **Taxes:** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.
23. **Other Representations, Warranties and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor has sufficient expertise, knowledge, information and data, and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.
24. **Amendment; Waiver:** The City may add, delete, or amend services. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be

enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

25. **Accounting.** During the period of this Agreement, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.
26. **Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an Affidavit of Participation in Federal Work Authorization Program affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services.
27. **Governing/Choice of Law: Jurisdiction.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri.
28. **Headings:** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.
29. **Representations.** Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.
30. **Severability:** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

(Remainder of page intentionally blank; signature page follows)

31. **Counterparts:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

CONTRACTOR

CITY OF DARDENNE PRAIRIE, MISSOURI

Signature

Dan Lang, City Administrator

Print Name & Title

ATTEST:

Address

City, State, Zip

City Clerk

Date

Date

RESOLUTION NO. 355

A RESOLUTION DETERMINING THE INTENT OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, TO REIMBURSE ITSELF FOR CERTAIN CAPITAL EXPENDITURES.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AS FOLLOWS:

Section 1. The City of Dardenne Prairie, Missouri (the "City") has made or intends to make capital expenditures and expects to make capital expenditures on and after the date hereof in connection with the construction, extension, reconstruction and resurfacing of various streets and roadways in the city (collectively, the "Project"). The City intends to reimburse itself for such capital expenditures in connection with the Project from the proceeds of the City's certificates of participation, bonds or other obligations to be issued at a future date (the "Obligations"). The maximum principal amount of Obligations expected to be issued for the Project is \$6,000,000.

Section 2. Effective Date. This Resolution shall be in full force and effect immediately upon its adoption.

Passed this ____ day of _____, 2021.

(SEAL)

Mayor

Attest:

City Clerk