



**Agenda
Kirkwood City Council
City Hall
Council Chambers
139 South Kirkwood Road
Kirkwood, MO 63122
Thursday, October 5, 2023, 7:00 p.m.
Posted on October 3, 2023**

- I. PLEDGE OF ALLEGIANCE**
- II. ROLL CALL**
- III. INTRODUCTIONS AND RECOGNITIONS - NONE**
- IV. PRESENTATIONS - NONE**
- V. PUBLIC HEARINGS - NONE**
- VI. PUBLIC COMMENTS – 3 MINUTE LIMIT PER PERSON**

The Public Comments portion of the meeting is an opportunity for the City Council to listen to comments from citizens. It is not a question and answer session and the City Council will not respond to comments or answer questions during this period. The Mayor may refer any matter brought up to the City Council to the Chief Administrative Officer or City Clerk if action is needed.

VII. CONSENT AGENDA

All items within the Consent Agenda will be enacted by one motion of the Council with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Agenda and placed on the Regular Agenda by request of a member of the City Council. The expenditures listed in the consent agenda are items already approved in the current city budget.

- a) Approval of the September 21, 2023 Council Meeting Minutes
- b) Resolution 104-2023, appointing Director of Electric Mark Petty to serve as the Director to the Missouri Joint Municipal Electric Utility Commission
- c) Resolution 105-2023, amending the contract with ESRI by increasing the contract amount by \$3,581.15 for a total not to exceed amount of \$24,433.15, and adding two additional 12 month terms, pending budgetary approval, for ArcGIS Desktop Support and Maintenance for the MIS Department and authorizing and directing the Mayor to enter into an amended contract
- d) Resolution 106-2023, accepting the bid of Turn-Key Mobile, Inc. in the amount of \$19,912 (pursuant to Jasper County Governmental Cooperative Contract) for the purchase of six mobile data terminals for the Police Department and authorizing and directing the Director of Procurement to issue a Purchase Order

VIII. UNFINISHED BUSINESS

- 1. Bill 11001, appropriating \$500,000 from the General Fund Fund Balance to the Building and Site Improvements Account for a real estate transaction



- IX. NEW BUSINESS**
1. Bill 11002, amending the provisions of the Municipal Code of Ordinances, Appendix D – Industrial Development Authority, regarding requirements for Directors
 2. Bill 11003, appropriating \$27,714 from the Equitable Sharing Fund Balance to the Police Department Rolling Stock Account, accepting the bid of Polaris Sales, Inc. in the amount of \$27,713.64 (pursuant to Sourcewell Cooperative Contract) for the purchase of a Polaris Ranger Crew XP 1000 for the Police Department and authorizing and directing the Director of Procurement to issue a Purchase Order
 3. Bill 11004, authorizing and directing the Mayor to enter into a Missouri Highways and Transportation Commission Transportation Enhancements Funds Program Agreement for the TAP-5502(616) Grant’s Trail Extension Phase I Project
 4. Bill 11005, authorizing the City of Kirkwood’s participation as a LAGERS employer, commencing on February 1, 2024
 5. Resolution 107-2023, authorizing and directing the Mayor to enter into a Fire Station Alerting System Transfer of Ownership Agreement between the City of Kirkwood and St. Louis County, Missouri
 6. Resolution 108-2023, accepting the proposal of American Electric Power in the amount of \$666,040 for the purchase of Wholesale Summertime Block Power for the Summer of 2024 for the Electric Department and authorizing and directing the Director of Procurement to issue a Purchase Order
 7. Resolution 109-2023, accepting the proposal of American Electric Power in the amount of \$713,011 for the purchase of Wholesale Summertime Block Power for the Summer of 2025 for the Electric Department and authorizing and directing the Director of Procurement to issue a Purchase Order
 8. Resolution 110-2023, authorizing and directing the mayor to enter into a Supplemental Agreement No. 1 to Engineering Services Contract with Crawford, Murphy and Tilly, Inc. by increasing the amount by \$242,508.04 for a total not to exceed amount of \$410,582.97 for Right-of-Way Acquisition Services and Professional Engineering and Construction Services for the STP-5502(611) North Kirkwood Road Improvement Project
 9. Resolution 111-2023, amending the Purchase Order with Viking Chives Midwest (pursuant to Sourcewell Cooperative Contract) by increasing the amount by \$3,580 for a total amount of \$116,056 for the purchase of a 2024 Ford F550 Chassis with Viking Chives Dump Body for the Street Department and authorizing and directing the Director of Procurement to issue an amended Purchase Order
 10. Resolution 112-2023, authorizing and directing the Mayor to enter into a Purchase Agreement and a Lease Agreement with Sabada Properties, LLC
- X. CONSENT AGENDA ITEMS FOR DISCUSSION (IF ANY)**
- XI. CITY COUNCIL REPORTS**
- XII. CHIEF ADMINISTRATIVE OFFICER REPORTS**
- XIII. CITY ATTORNEY REPORTS**
- XIV. CITY CLERK REPORTS**
1. Report of the Planning & Zoning Commission Meeting (if any)
 2. Upcoming Public Hearings (if any)



XV. MEETING ADJOURNMENT

The next regular meeting of the Kirkwood City Council will take place at **7:00 p.m. on October 19, 2023.**

CONTINUED ITEMS

NONE

TABLED ITEMS

NONE

Kirkwood City Council: Mayor Tim Griffin, Council Members Maggie Duwe, Liz Gibbons, Nancy Luetzow, Bob Sears, Kara Wurtz and Mark Zimmer

Contact Information: For full City Council contact information visit www.kirkwoodmo.org/council. To contact the City Clerk call 314-822-5802. To contact the Chief Administrative Officer call 314-822-5803.

Accommodation: The City of Kirkwood is interested in effective communication for all persons. Persons requiring an accommodation to attend and participate in the meeting should contact the City Clerk at 314-822-5802 at least 48 hours before the meeting. With advance notice of seven calendar days, the City of Kirkwood will provide interpreter services at public meetings for languages other than English and for the hearing impaired. Upon request, the minutes from this meeting can be made available in an alternate format, such as CD by calling 314-822-5802.

THE CONSENT AGENDA IS ATTACHED

- a) Approval of the September 21, 2023 Council Meeting Minutes
- b) Resolution 104-2023, appointing Director of Electric Mark Petty to serve as the Director to the Missouri Joint Municipal Electric Utility Commission
- c) Resolution 105-2023, amending the contract with ESRI by increasing the contract amount by \$3,581.15 for a total not to exceed amount of \$24,433.15, and adding two additional 12 month terms, pending budgetary approval, for ArcGIS Desktop Support and Maintenance for the MIS Department and authorizing and directing the Mayor to enter into an amended contract
- d) Resolution 106-2023, accepting the bid of Turn-Key Mobile, Inc. in the amount of \$19,912 (pursuant to Jasper County Governmental Cooperative Contract) for the purchase of six mobile data terminals for the Police Department and authorizing and directing the Director of Procurement to issue a Purchase Order



WHERE COMMUNITY AND SPIRIT MEET*

DRAFT

**City Council Meeting Minutes
Kirkwood City Hall
Thursday, September 21, 2023, 7:00 p.m.**

Pursuant to notice of meeting duly given by the Mayor, the City Council convened on Thursday, September 21, 2023, at 7:00 p.m. at Kirkwood City Hall, 139 South Kirkwood Road, Kirkwood, Missouri. Present were: Present were Mayor Griffin, Council Members Duwe, Gibbons, Luetzow, Sears, Wurtz, and Zimmer. Also in attendance were Chief Administrative Officer Russ Hawes, Assistant Chief Administrative Officer David Weidler, City Clerk Laurie Asche, Deputy City Clerk Bridget Waters, and City Attorney John Hessel.

INTRODUCTIONS AND RECOGNITIONS

Chief Silvernail and Battalion Chief Hayes presented Kirkwood resident David Davis with a Heroism Award for going into a house fire in the 400 block of Peak Ave and saving his neighbor's life.

PRESENTATIONS

NONE

PUBLIC HEARINGS

NONE

PUBLIC COMMENTS

1. Donald McWess; 402 West Argonne, made comments opposing the Historic district Landmarks ordinance amendment. Residents in the West Argonne Historic District recently submitted a request to the City of Kirkwood, containing 35 homeowner signatures, asking that the West Argonne Historic District be rescinded.
2. Doug Brightfield; 403 West Argonne made comments opposing the Historic district Landmarks ordinance amendment.
3. Mike Fitzgerald; 729 Cleveland made comments about street safety and distracted teenage drivers. Recommend Kirkwood join the Safe routes to school program
4. Mary Fitzgerald; 729 Cleveland made comments about street safety and vision zero.

CONSENT AGENDA

Motion was made by Council Member Zimmer and seconded by Council Member Duwe to approve the Consent Agenda. The Consent Agenda was unanimously approved.

- a) Approval of the September 7, 2023 Council Meeting Minutes



WHERE COMMUNITY AND SPIRIT MEET

DRAFT

UNFINISHED BUSINESS

Bill 10997, amending Chapter 24 "Tree Code" by deleting it in its entirety and inserting a new Chapter 24 "Tree Code" was brought before the City Council.

Roll Call:

Mayor Griffin	"Yes"
Council Member Wurtz	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"
Council Member Gibbons	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"

The bill, having received majority approval of the Council, was adopted and became Ordinance 10825.

Motion was made by Council Member Zimmer and second by Council Member Duwe to bring Substitute Bill 10998 to the floor. Motion was unanimously approved.

Substitute Bill 10998, fixing and establishing the rate of taxation to be levied upon all real estate and certain tangible personal property in the City of Kirkwood, County of St. Louis, State of Missouri, for the year 2023, for the maintenance of the Kirkwood public parks; for the Police and Firemen's Pension Fund; for general government services and for businesses in the Special Business District was brought before the City Council. Discussion took place.

Roll Call:

Mayor Griffin	"Yes"
Council Member Wurtz	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"
Council Member Gibbons	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"

The bill, having received majority approval of the Council, was adopted and became Ordinance 10826.



WHERE COMMUNITY AND SPIRIT MEET

DRAFT

Motion was made by Council Member Zimmer and second by Council Member Wurtz to bring Substitute Bill 10999 to the floor. Motion was unanimously approved.

Substitute Bill 10999, fixing and establishing the rate of taxation to be levied upon all real estate and certain tangible personal property in the City of Kirkwood, County of St. Louis, State of Missouri, for the year 2023, for the operation and maintenance of the Municipal Library District of Kirkwood was brought before the City Council. Discussion took place.

Roll Call:

Mayor Griffin	"Yes"
Council Member Wurtz	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"
Council Member Gibbons	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"

The bill, having received majority approval of the Council, was adopted and became Ordinance 10827.

Bill 11000, amending Chapter 14, Article I, Section 14-1 and Article VII, Section 14-385, and deleting Section 14-386 of the Kirkwood Code of Ordinances was brought before the City Council.

Roll Call:

Mayor Griffin	"Yes"
Council Member Wurtz	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"
Council Member Gibbons	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"

The bill, having received majority approval of the Council, was adopted and became Ordinance 10828.

NEW BUSINESS

Bill 11001, appropriating \$500,000 from the General Fund Fund Balance to the Building and Site Improvements Account for a real estate transaction was brought before the City Council. Motion was made by Council Member Duwe and seconded by Council Member Sears to accept the Bill as read.

The bill received first reading approval and was held over.



WHERE COMMUNITY AND SPIRIT MEET*

DRAFT

**CONSENT AGENDA ITEMS FOR DISCUSSION
NONE**

CITY COUNCIL REPORTS

Council Member Zimmer reported on a very successful Greentree Festival this year.

Council Member Gibbons reported on the Parade route change and that it was amazing. Council Member Gibbons also commented that the Kirkwood Library had 3700 people sign up for the summer reading program. Coming up is the One Author One Kirkwood event on October 12th at the Kirkwood Performing Arts Center at 7 p.m. Night of the Living Rez by Morgan Talty.

Council Member Sears made comments about the One Author One Kirkwood.

CHIEF ADMINISTRATIVE OFFICER REPORT

Mr. Hawes thanked City Staff on the great job at Greentree Festival over the weekend.

CITY ATTORNEY REPORT

Mr. Hessel had nothing to report.

CITY CLERK REPORT

Ms. Asche had nothing to report

ADJOURNMENT

There being no further business to come before the Council, the formal meeting was adjourned at 7:28 p.m. The next regular meeting of the Kirkwood City Council will take place at 7:00 p.m. on October 5, 2023.

Laurie Asche
City Clerk

Approved:

RESOLUTION 104-2023

A RESOLUTION APPOINTING DIRECTOR OF ELECTRIC MARK PETTY TO SERVE AS THE DIRECTOR TO THE MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION.

WHEREAS, the City of Kirkwood is a member of the Missouri Joint Municipal Electric Utility Commission (MJMEUC) and has executed contracts with this joint action agency, and

WHEREAS, the MJMEUC Joint Contract, paragraph 7(c) "Board of Directors, Appointment" provides that contracting municipalities shall appoint by Resolution one Director and one Alternate, and

WHEREAS, it is recommended that Director of Electric Mark Petty be appointed as Director to the Missouri Joint Municipal Electric Utility Commission, and

WHEREAS, due to staff retirement, the Alternate position currently remains vacant.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. Director of Electric Mark Petty is hereby appointed as Director to the Missouri Joint Municipal Electric Utility Commission.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 5TH DAY OF OCTOBER 2023.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 9/5/2023

Step #1:

Strategic Plan YES

Goal # & Title Goal 2; Objective 3 - Collaborate with community and regional p...

Background To Issue:

Kirkwood is a member of the Missouri Joint Municipal Electric Utility Commission and has executed contracts with this joint action agency. the MJMEUC joint contract , paragraph 7c provides that all contracting municipalities appoint by resolution a director and alternate. In April 2006 Kirkwood's city council passed resolution 25-2006 appointing a director and alternate. Kirkwood's alternate has retired and the resolution needs to be modified until that vacancy is filled.

Recommendations and Action Requested:

Approval of a resolution appointing Mark Petty as the Director and indicating that the alternate is vacant.

Alternatives Available:

Compliance with the MJMEUC contract is required.

Does this project have a public information component? Yes No

Cost: \$0.00

Account #: 501-20-250-252-000-531005

Project #:

If YES, Budgeted Amount: \$22,549,744.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

The Department recommends approval of the resolution.

BY: Mark Petty

Date: 9/25/2023

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 9/25/2023

Authenticated: sfo

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 9-28-23

RESOLUTION 105-2023

A RESOLUTION AMENDING THE CONTRACT WITH ESRI BY INCREASING THE CONTRACT AMOUNT BY \$3,581.15 FOR A TOTAL NOT TO EXCEED AMOUNT OF \$24,433.15, AND ADDING TWO ADDITIONAL 12 MONTH TERMS, PENDING BUDGETARY APPROVAL, FOR ARCGIS DESKTOP SUPPORT AND MAINTENANCE FOR THE MIS DEPARTMENT AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN AMENDED CONTRACT.

WHEREAS, the City Council approved Resolution 35-2023 on April 6, 2023 entering into a contract with ESRI in the amount of \$20,852 for ArcGIS Desktop Support and Maintenance for the MIS Department, and

WHEREAS, the MIS Department is seeking to add additional software licensing, and

WHEREAS, ESRI submitted a proposal in the amount of \$3,581.15 for additional software licensing, and

WHEREAS, ESRI is the single source provider of the ArcGIS Desktop Support and Maintenance, and

WHEREAS, staff recommends amending the contract with ESRI by increasing the amount by \$3,581.15 for a total not to exceed amount of \$24,433.15, and adding two additional 12 month terms, pending budgetary approval, for ArcGIS Desktop Support and Maintenance for the MIS Department, and

WHEREAS, funds are available in Account #501-20-250-252-000-523010 (Tree Trimming).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into an amended contract with ESRI by increasing the amount by \$3,581.15 for a total not to exceed amount of \$24,433.1, and adding two additional 12 month terms, pending budgetary approval, for ArcGIS Desktop Support and Maintenance for the MIS Department.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 5TH DAY OF OCTOBER 2023.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 10/5/2023

Step #1:

Strategic Plan NO Goal # & Title

Background To Issue:

ESRI software licenses and use. We renewed in April of 2023 for just over 20,000. This was approved by council. We are now seeking to add additional licenses for other departments and additional software licenses for other apps. We can sign a new agreement this year for a total of 3,581.15.

Recommendations and Action Requested:

Suggest we engage this new contract for the 3,581.15 and the new charges for year 2 will be 33,700.00 and year 3 will be 39,700.00. This new contract will be less expensive than keeping our current agreement in place and adding all of the new licenses and apps that come with the new agreement. this will be a 3 yr deal

Alternatives Available:

Does this project have a public information component? Yes No

Cost: \$3,581.15 Account #: 501-20-250-252-000-523010 Project #:

If YES, Budgeted Amount: \$4,000.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments: Budgeted: YES

BY: Kevin Campe Date: 9/22/2023 Authenticated: campekr

You can attach up to 3 files along with this request.



Q-503192 City of Kirkwood.pdf
Adobe Acrobat Document
347 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

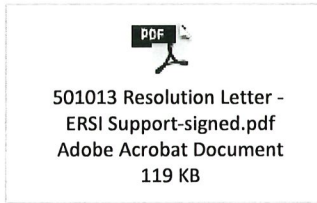
Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 9/26/2023

Authenticated: sfo

You can attach up to 3 files along with this request.



Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$3,582 in account 501-20-250-252-000-523010, Tree Trimming, to approve the above as requested.

BY: Sandra Stephens

Date: 9/26/2023

Authenticated: forgyjl

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Disapprove

Chief Administrative Officer's Comments:

BY:

Date:

9-28-23



September 20, 2023

Mr. Kevin Campe
City of Kirkwood
139 S Kirkwood Rd
Kirkwood, MO 63122-4303

Dear Kevin,

The Esri Small Municipal and County Government Enterprise Agreement (SGEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.

- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."

Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri
Attn: Customer Service SG-EA
380 New York Street
Redlands, CA 92373-8100

e-mail: service@esri.com
fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Marcus Kitchens



Environmental Systems Research Institute, Inc.
 380 New York St
 Redlands, CA 92373-8100
 Phone: (909) 793-2853
 DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Quotation # Q-503192

Date: September 21, 2023

Customer # 150480 Contract #

City of Kirkwood
 MIS Dept
 139 S Kirkwood Rd
 Kirkwood, MO 63122-4303

*To expedite your order, please attach a copy of this quotation to your purchase order.
 Quote is valid from: 8/17/2023 To: 11/15/2023*

ATTENTION: Kevin Campe
 PHONE: (314) 822-5839
 EMAIL: campekr@kirkwoodmo.org

Material	Qty	Term	Unit Price	Total
168178	1	Year 1	\$3,581.15	\$3,581.15
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				
168178	1	Year 2	\$33,700.00	\$33,700.00
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				
168178	1	Year 3	\$39,700.00	\$39,700.00
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				

Subtotal:	\$76,981.15
Sales Tax:	\$0.00
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
Total:	\$76,981.15

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact: Marcus Kitchens	Email: mkitchens@esri.com	Phone: 636-949-6620 x5581
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The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

KITCHENSM **This offer is limited to the terms and conditions incorporated and attached herein.**

Esri Use Only:
 Cust. Name _____
 Cust. # _____
 PO # _____
 Esri Agreement # _____



**SMALL ENTERPRISE AGREEMENT
 COUNTY AND MUNICIPALITY GOVERNMENT
 (E214-2)**

This Agreement is by and between the organization identified in the Quotation ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

**Table A
 List of Products**

Uncapped Quantities

Desktop Software and Extensions (Single Use)

ArcGIS Desktop Advanced
 ArcGIS Desktop Standard
 ArcGIS Desktop Basic
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Software and Extensions

ArcGIS Enterprise (Advanced and Standard)
 ArcGIS Monitor
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Additional Capability Servers

ArcGIS Image Server

Developer Tools

ArcGIS Runtime Standard
 ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS Developer
 Two (2) ArcGIS CityEngine Single Use Licenses
 100 ArcGIS Online Viewers
 100 ArcGIS Online Creators
 17,500 ArcGIS Online Service Credits
 100 ArcGIS Enterprise Creators
 3 ArcGIS Insights in ArcGIS Enterprise
 3 ArcGIS Insights in ArcGIS Online
 10 ArcGIS Location Sharing for ArcGIS Enterprise
 10 ArcGIS Location Sharing for ArcGIS Online
 3 ArcGIS Parcel Fabric User Type Extensions (Enterprise)
 3 ArcGIS Utility Network User Type Extensions (Enterprise)
 3 ArcGIS Trace Network User Type Extensions (Enterprise)

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	3
Number of Tier 1 Help Desk individuals authorized to call Esri	3
Maximum number of sets of backup media, if requested*	2
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, Postal Code: _____

E-mail: _____

Country: _____

Quotation Number (if applicable): _____

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—PRODUCT UPDATES

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other

than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.
5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download,

operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.
- c. Esri's federal ID number is 95-2775-732.
- d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.
- b. The following information will be included in each Ordering Document:
 - (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Order number
 - (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

9.1 If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.

9.2 If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.

9.3 This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

September 26, 2023

To: Russell B. Hawes, Chief Administrative Officer

For Your Consideration: ArcGIS Desktop Support and Maintenance, Sole Source - 501013

April 6, 2023, Council approved the use of ArcGIS Software License Support and Maintenance provided by ESRI as a Single Source Provider for \$20,852.00. MIS is now seeking additional software licensing for an added cost of \$3,581.15 for a total annual agreement cost of \$24,433.15.

Attached is a request from Kevin Campe, MIS Director, for a resolution authorizing an additional \$3,581.15 for ArcGIS Desktop Support and Maintenance through ESRI with the option to renew for up to two (2) additional (1) year terms pending budgetary approval.

Respectfully,

Sara Foan-Oliver

Sara Foan-Oliver
Procurement Director

RESOLUTION 106-2023

A RESOLUTION ACCEPTING THE BID OF TURN-KEY MOBILE, INC. IN THE AMOUNT OF \$19,912 (PURSUANT TO JASPER COUNTY GOVERNMENTAL COOPERATIVE CONTRACT) FOR THE PURCHASE OF SIX MOBILE DATA TERMINALS FOR THE POLICE DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE A PURCHASE ORDER.

WHEREAS, the City may purchase items and services that have been competitively bid and awarded by Jasper County Governmental Cooperative Contract, and

WHEREAS, staff recommends that the City purchase six Mobile Data Terminals for the Police Department from Turn-Key Mobile, Inc. in the amount of \$19,912 under Jasper County Governmental Cooperative Contract #JCSO 202-001, and

WHEREAS, funds are available in Account #301-02-050-000-000-620040 (Machinery and Equipment).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Director of Procurement is hereby authorized and directed to issue a Purchase Order in the amount of \$19,912 to Turn-Key Mobile, Inc. under Jasper County Governmental Cooperative Contract # JCSO 202-001 for the purchase of six Mobile Data Terminals for the Police Department.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 5TH DAY OF OCTOBER 2023.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of:

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

MDTs (in car computers) are utilized in patrol vehicles to receive calls for service, make computer inquiries to DOR, REJIS, MULES and NCIC, issue summons to traffic violators, receive FLOCK camera alerts and any other computer needs a patrol officers may need. As a result the current MDTs are five years old and are in need of an upgrade due to technological advances in MDTs. MDTs are also utilized by detectives when in the field to make DOR, REJIS, MULES and NCIC inquiries, type search warrants, access case files and any other computer need that may arise.

Recommendations and Action Requested:

The Police Department requests the Mayor and City Council approve the budgeted funds from Capital Improvement Funds - PD Machinery and Equipment to purchase 6 MDTs from Turn-Key mobile through Jasper County governmental contract #JCSO 2021-001 (Computers and Network Technology).

Alternatives Available:

Not purchase the MDTs.

Does this project have a public information component? Yes No

Cost: \$18,912.00

Account #: 301-02-050-000-000620040

Project #:

If YES, Budgeted Amount:

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: Brian Murphy

Date: 9/25/2023

Authenticated: raymondm

You can attach up to 3 files along with this request.



Turn-Key estimate.pdf
Adobe Acrobat Document
47.6 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 9/28/2023

Authenticated: SFO

You can attach up to 3 files along with this request.



 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$18,912 in account 301-02-050-000-000-620040, Machinery & Equipment, to approve the above as requested.

BY: Sandra Stephens

Date: 9/28/2023

Authenticated: forgyjl

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 9-28-23



**Turn-Key
Mobile, Inc.**

TURN-KEY MOBILE, INC.

4510 Country Club Drive
Jefferson City, Missouri 65109

Estimate

Estimate#	: EST-11345	Sales person/ISS	: Frederick Willis
Estimate Date	: 09/12/2023	Created By (ISS)	: Keris Sinnett

Bill To
Kirkwood, Mo. Police Dept.
212 South Taylor Avenue
Kirkwood MO 63122

#	Item & Description	Qty	Rate	Amount
1	FZ-55FZ-4WAM Panasonic Win11 Pro, Intel Core i5-1145G7 vPro (up to 4.4GHz), AMT, 14.0" FHD 1000 nit Gloved Multi Touch, 16GB, 512GB OPAL SSD, Intel Wi-Fi 6, Bluetooth, 4G LTE Band 14 (EM7511), Dual Pass (Ch1:WWAN-GPS/Ch2:WWAN), Infrared Webcam, USB-C, Standard Battery, TPM 2.0, Emissive Backlit Keyboard, Flat, CF-SVC512SSD3Y - 3 Year No Return of Defective Drive, CF-SVCADDPRM12B - 1 Year Absolute Resilience Panasonic Warranty Bundle SKU Only, CF-SVCLTNF3YR - 3 Year Protection Plus Warranty, CF-SVCPDEP3Y - 3 Year Premier Deployment	6.00	3,152.00	18,912.00
2	Contract-Jasper County Jasper County Sheriff's Office Contract # JCISO 2021-001 (Computers and Network Technology)	1.00	0.00	0.00

Looking forward to doing business with you.
Shipping Charges are not included unless otherwise stated.

Terms & Conditions
All PO placed orders have net 30 day Terms, no discounts.

Sub Total	18,912.00
Total	\$18,912.00
Authorized Acceptance Signature	

September 25, 2023

To: Russel B. Hawes, Chief Administrative Officer

For Your Consideration: Police Mobile Data Terminals; Cooperative Bid # 501012

The City of Kirkwood Police Department utilizes mobile data terminals in patrol vehicles to receive calls for service, make computer inquiries to DOR, REJIS, MULES and NCIC, issue summons to traffic violators, receive FLOCK camera alerts and any other computer needs a patrol officers may need. The department currently has six (6) terminals that are five (5) years old and need to be upgraded due to evolving technology.

The new units being requested are available for purchase via Jasper County governmental contract #JCSO 2021-001.

Attached is a request from Brian Murphy, Police Chief, for a resolution authorizing a purchase order to be issued to Turn-Key Mobile, INC. in the amount of \$18,912.00 for the purchase of six (6) Mobile Data Terminals.

Respectfully,

Sara Foan-Oliver

Sara Foan-Oliver
Procurement Director

BILL 11001

ORDINANCE

AN ORDINANCE APPROPRIATING \$500,000 FROM THE GENERAL FUND FUND BALANCE TO THE BUILDING AND SITE IMPROVEMENTS ACCOUNT FOR A REAL ESTATE TRANSACTION.

WHEREAS, the City is negotiating to purchase real estate, and

WHEREAS, funds are needed to proceed with the negotiation for the purchase, and

WHEREAS, funds in the amount of \$500,000 need to be appropriated from the General Fund Fund Balance to Account #101-01-015-000-000-620020 (Building & Site Improvements).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. Funds in the amount of \$500,000 are hereby appropriated from the General Fund Fund Balance to Account #101-01-015-000-000-620020 (Building & Site Improvements).

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

Mayor, City of Kirkwood

ATTEST:

City Clerk
1st Reading:
2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 9/21/2023

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

The City negotiation to purchase real estate. Funds are needed to proceed with the negotiation for the purchase.

Recommendations and Action Requested:

Appropriate funds in the amount of \$500,000 from the General Fund Fund Balance to the Building & Site Improvements Account #101-01-015-000-000-620020.

Alternatives Available:

Does this project have a public information component? Yes No

Cost: \$500,000.00

Account #: 101-01-015-000-000-620020

Project #:

If YES, Budgeted Amount: \$500,000.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: Laurie Asche

Date: 9/18/2023

Authenticated: aschelb

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Appropriation

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

General Fund fund balance is sufficient and available to appropriate \$500,000 to account 101-01-015-000-000-620020, Building and Site Improvement as requested above.

BY: Sandra Stephens

Date:

9/18/2023

Authenticated:

stepesf

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.



Approve



Disapprove

Chief Administrative Officer's Comments:

BY:



Date:

9-18-23

BILL 11002

ORDINANCE

AN ORDINANCE AMENDING THE PROVISIONS OF THE MUNICIPAL CODE OF ORDINANCES, APPENDIX D – INDUSTRIAL DEVELOPMENT AUTHORITY, REGARDING REQUIREMENTS FOR DIRECTORS.

WHEREAS, in 2023, the Industrial Development Authority conducted a review of the current ordinance establishing the board and the board’s bylaws; and

WHEREAS, the Industrial Development Authority at their meeting on August 31, 2023 voted to approve revisions to the bylaws contingent on one revision to Appendix D of the Municipal Code to reduce the length of residency required to be eligible as a director of the board from five years to one year as required by the Missouri State Statute; and

WHEREAS, the Industrial Development Authority and City staff recommend to revise Appendix D as proposed.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. That the City of Kirkwood Municipal Code of Ordinances, Appendix D – Industrial Development Authority, Section D-120 is hereby deleted in its entirety and replaced with the following:

D-120 Directors.

Pursuant to the Act, the corporation shall have five directors, who shall be duly qualified electors and taxpayers in the City of Kirkwood, Missouri. The directors shall be resident taxpayers for one year immediately prior to their appointment, and no director shall be an officer or employee of the City of Kirkwood, Missouri. All directors shall be appointed for six-year terms by the Mayor of the City of Kirkwood, Missouri, subject to confirmation by a majority of the City Council, except that the first group of directors shall serve until the expiration of the terms for which they were initially appointed.

SECTION 2. This ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS ____ day of _____, 2023.

Mayor, City of Kirkwood

ATTEST:

City Clerk
1st Reading:
2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 10/5/2023

Step #1:

Strategic Plan NO

Goal # & Title :

Background To Issue:

The Industrial Development Authority conducted a review of their bylaws in the summer of 2023. While the bylaws do not require City Council approval, one of the items in the bylaws is also listed in Appendix D of the Municipal Code. This requirement is that board members are currently required to be resident taxpayers of Kirkwood for five years immediately prior to their appointment. The Missouri State Statute and City's other boards and commissions only require one year of residency prior to appointment. For that reason, Staff and the IDA members are requesting that Appendix D be revised to require one year of residency. A redline copy of the current Appendix D is attached to this request. If approved, the bylaws would be revised to be consistent with that change among other revisions.

Recommendations and Action Requested:

Staff, on behalf of the Industrial Development Authority, is requesting consideration of revising Appendix D of the Municipal Code as outlined in the attached documents.

Alternatives Available:

The Council may choose to retain the five year residency requirement.

Does this project have a public information component? Yes No

Cost: \$0.00

Account #: 0

Project #:

If YES, Budgeted Amount: \$0.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: Jonathan Raiche

Date: 9/25/2023

Authenticated:

You can attach up to 3 files along with this request.



2023-10-5 IDA Revised
Ordinance.docx
Microsoft Word Document
19.9 KB



2023 IDA Code Amend
Redline.docx
Microsoft Word Document
13.8 KB

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

You can attach up to 3 files along with this request.

📎 File Attachment

📎 File Attachment

📎 File Attachment

Step #3: If budgetary approval is required (Must have Finance Department's approval).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Disapprove

Chief Administrative Officer's Comments:

BY:



Date:

9-28-23

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

Appendix D

Industrial Development Authority

Cross References: Buildings, construction and housing, Ch. 5; business redevelopment, Ch. 6; zoning, App. A.

§ D-100 Title.

[Ord. No. 7376, 8-1-1985]

The City Council finds and determines that it is wise, expedient, necessary and advisable to create the "Industrial Development Authority of the City of Kirkwood, Missouri," as Appendix D to the Kirkwood Code of Ordinances.

§ D-110 Authorization.

[Ord. No. 7376, 8-1-1985]

The Incorporators are hereby authorized to proceed to form the Development Authority by executing, acknowledging and filing the Articles of Incorporation with the Missouri Secretary of State as provided in the Act. The Articles of Incorporation shall not be amended unless authorized by the City Council in the manner provided in the Act.

§ D-120 Directors.

[Ord. No. 7376, 8-1-1985]

Pursuant to the Act, the corporation shall have five directors, who shall be duly qualified electors and taxpayers in the City of Kirkwood, Missouri. The directors shall be resident taxpayers for ~~five years~~ one year immediately prior to their appointment, and no director shall be an officer or employee of the City of Kirkwood, Missouri. All directors shall be appointed for six-year terms by the Mayor of the City of Kirkwood, Missouri, subject to confirmation by a majority of the City Council, except that the first group of directors shall serve until the expiration of the terms for which they were initially appointed.

§ D-130 Reporting.

[Ord. No. 7376, 8-1-1985]

The Development Authority shall file an annual report with the City Council, such annual report to include an audited financial statement.

§ D-140 Governing provisions.

[Ord. No. 7376, 8-1-1985]

The Development Authority shall be governed by Sections 349.010 to 349.105, inclusive, RSMo. (1978), in addition to those set forth in this ordinance.

BILL 11003

ORDINANCE

AN ORDINANCE APPROPRIATING \$27,714 FROM THE EQUITABLE SHARING FUND BALANCE TO THE POLICE DEPARTMENT ROLLING STOCK ACCOUNT, ACCEPTING THE BID OF POLARIS SALES, INC. IN THE AMOUNT OF \$27,713.64 (PURSUANT TO SOURCEWELL COOPERATIVE CONTRACT) FOR THE PURCHASE OF A POLARIS RANGER CREW XP 1000 FOR THE POLICE DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE A PURCHASE ORDER.

WHEREAS, the City may purchase items and services that have been competitively bid and awarded by Sourcewell Cooperative Contract, and

WHEREAS, staff recommends that the City purchase a Polaris Ranger Crew XP 1000 for the Police Department from Polaris Sales, Inc. in the amount of \$27,713.64 under Sourcewell Cooperative Contract #122220-PSI, and

WHEREAS, funds in the amount of \$27,714 need to be appropriated from the Equitable Sharing Fund Balance to Account #205-02-050-000-000-620050 (Rolling Stock).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. Funds in the amount of \$27,714 are hereby appropriated from the Equitable Sharing Fund Balance to Account #205-02-050-000-000-620050 (Rolling Stock).

SECTION 2. The Director of Procurement is hereby authorized and directed to issue a Purchase Order in the amount of \$27,713.64 to Polaris Sales, Inc. under Sourcewell Cooperative Contract #122220-PSI for the purchase of a Polaris Ranger Crew XP 1000 for the Police Department.

SECTION 3. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS ____ day of _____, 2023.

Mayor, City of Kirkwood

ATTEST:

City Clerk
1st Reading:
2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 10/5/2023

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

The Police Department would like to purchase a Utility Terrain Vehicle (UTV) to assist with police functions at City sponsored events (July 4th Festival, Green Tree Festival, etc.) where police vehicles have difficulty safely navigating through event attendees. A UTV will also assist in locating suspects and the search/rescue of individuals lost/missing or injured in areas that are hard to navigate with a police patrol vehicle, such as Quarry Park, Emmenegger Park and other terrain. In the past we have borrowed a UTV to utilize during said special events, in the near future this may no longer be an option.

Recommendations and Action Requested:

The Police Department requests the Mayor and City Council approve the appropriation of funds from the Equitable sharing fund balance for the purchase of one Polaris Ranger Crew XP 1000 with upgrades and attachments for \$27,713.64 (Quote QUO-50781-P2M3S4) through Sourcewell Cooperative purchasing agreement #122220.

Alternatives Available:

Not purchase the UTV.

Does this project have a public information component? Yes No

Cost: \$27,713.64

Account #: 205-02-050-000-000-620050

Project #:

If YES, Budgeted Amount:

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: NO

BY: Brian Murphy

Date: 9/18/2023

Authenticated: raymondm

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 9/22/2023

Authenticated: sfo

You can attach up to 3 files along with this request.



 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Appropriation

From Account # or Fund Name: Equitable sharing fund balance

To Account # or Fund Name: 205-02-050-000-000-620050

Finance Director's Comments:

Equitable Sharing fund balance is available and sufficient to appropriate \$27,714 to GL account 205-02-050-000-000-620050, Rolling Stock to approve the above as requested.

BY: Sandra Stephens

Date: 9/26/2023

Authenticated: forgyjl

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 9-28-23

September 21, 2023

To: Russell B. Hawes, Chief Administration Officer

For Your Consideration: Polaris Ranger Crew XP 1000 UTV, Bid # 500998, Cooperative Contract

The Police Department is requesting approval to purchase a Utility Terrain Vehicle (UTV) to assist with police functions at City sponsored events (July 4th Festival, Green Tree Festival, etc.), locating suspects, and search and rescue in areas where a typical police vehicle has difficulty navigating.

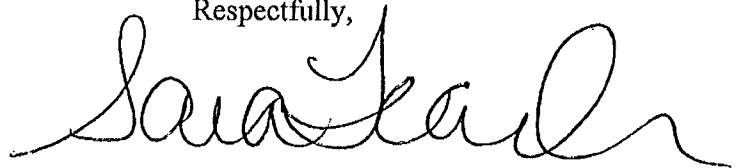
The purchase of this Polaris Ranger Crew XP 1000 is available through Sourcewell cooperative contract # 122220-PSI.

Vendor
Polaris Sales, Inc.

Price
\$27,713.64

Attached is a request from Brian Murphy, Police Chief, authorizing funds to be appropriated in the amount of \$27,713.64 from Equitable sharing to account number 205-02-050-000-00-620050 for the purchase of a **Polaris Ranger Crew XP 1000** for the Police Department.

Respectfully,

A handwritten signature in black ink, appearing to read "Sara Foan-Oliver". The signature is fluid and cursive, with a long horizontal flourish at the end.

Sara Foan-Oliver
Procurement Director

BILL 11004

ORDINANCE

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION TRANSPORTATION ENHANCEMENTS FUNDS PROGRAM AGREEMENT FOR THE TAP-5502(616) GRANT'S TRAIL EXTENSION PHASE I PROJECT.

WHEREAS, City Council authorized for the submittal of a Transportation Alternatives Program (TAP) Application under to East-West Gateway Council of Governments for federal funds for the Grant's Trail Extension Phase I Project, and

WHEREAS, the Missouri Highways and Transportation Commission has determined that the Grant's Trail Extension Phase I Project is consistent with the goals of the Transportation Alternatives Program (TAP) and has awarded grant funding for the project, and

WHEREAS, this project includes: construction of sidewalks on the Grant's Trail Extension from Argonne Drive to Leffingwell Avenue with bike lanes; raised concrete crosswalk and intersection at East Monroe and South Fillmore; reconstruction of the UPRR crossing of South Taylor Avenue; new ADA curb ramps, decorative sidewalk, traffic calming devices, stormwater bioretention, and wayfinding signage, and

WHEREAS, the Engineering Department recommends the City enter into a Missouri Highways and Transportation Commission Transportation Enhancements Funds Program Agreement for the awarded TAP-5502(616) Grant's Trail Extension Phase I Project for 80% of the project costs not to exceed \$3,130,608.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into a Missouri Highways and Transportation Commission Transportation Enhancements Funds Program Agreement for the awarded TAP-5502(616) Grant's Trail Extension Phase I Project for 80% of the project costs not to exceed \$3,130,608.

Section 2. This ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

Mayor, City of Kirkwood

ATTEST:

City Clerk
1st Reading:
2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 10/5/2023

Step #1:

Strategic Plan YES

Goal # & Title Goal 5. Invest for the future through public infrastructure

Background To Issue:

The Missouri Highway and Transportation Commission has determined that the Grant's Trail Extension, Phase I Project is consistent with the goals of the Transportation Alternatives Program and has awarded funding for the project. This project is to construct sidewalks (Two-Way Concrete trail) on Grant's Trail Extension from Argonne Drive to Leffingwell Avenue with bike lanes, raised concrete crosswalk and intersection at East Monroe and South Fillmore, reconstruction of the UPRR crossing of South Taylor Avenue, new ADA curb ramps, decorative sidewalk, traffic calming devices, stormwater bioretention, and wayfinding signage.

Recommendations and Action Requested:

The Engineering Department recommends approval of an ordinance authorizing the Mayor to enter into an agreement with the Missouri Highways and Transportation Commission for the awarded project, TAP-5502 (616) Grant's Trail Extension, Phase I Project for 80% of the projects costs not to exceed \$3,130,608.

Alternatives Available:

Does this project have a public information component? Yes No

Cost: \$0.00

Account #: 0

Project #: PW

If YES, Budgeted Amount: \$0.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: Christopher Krueger

Date: 9/26/2023

Authenticated: kruegeca

You can attach up to 3 files along with this request.



TAP-5502(616) Cover
Letter.pdf
Adobe Acrobat Document
129 KB



TAP-5502(616) Agreement.pdf
Adobe Acrobat Document
8.30 MB



FFATAForm1590SubRecipienti
nformationForm_.xlsx
Microsoft Excel Worksheet
34.5 KB

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 9/26/2023

Authenticated: sfo

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Sandra Stephens

Date: 9/26/2023

Authenticated: forgyj1

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 9-28-23

Missouri Department of Transportation

1590 Woodlake Drive
Chesterfield, Missouri 63017-5712
314.275.1500
Fax: 573.522.6475
1.888.ASK MODOT (275.6636)

June 8, 2023

Mr. Chris Krueger
City Engineer
City of Kirkwood
139 South Kirkwood Road
Kirkwood, MO 63122

RE: City of Kirkwood
Grants Trail Extension
Federal Project Number TAP-5502(616)
TIP Number: 7274-24
Draft Program Agreement, Programming Comments, Environmental Requirements

Dear Mr. Krueger:

This federal aid project is shown in the regional Transportation Improvement Program (TIP) and has been assigned a federal project number of TAP-5502(616). Please use this number on all future project correspondence. This project will be administered per the Federal Highway Administration (FHWA) direction given in the Local Public Agency (LPA) Policy Manual. The manual is located in Section 136 of MoDOT's Engineering Policy Guide (EPG) which can be found on MoDOT's website.

In order for the City to remain eligible for federal reimbursement for Design, Right of Way, or Construction activities, the City must first obtain MoDOT approval for each project stage.

Federal Aid Program Agreement

Enclosed is a draft copy of the program agreement for the above noted project. This agreement must be executed by the City and by the Missouri Highways and Transportation Commission (MHTC) prior to obligation of federal funds and authorization of reimbursable work. If this program agreement is acceptable to the City, then please process the agreement through the DocuSign process and attach one copy of the City's applicable enabling ordinance. Please note that the person authorized to sign the agreement per the enabling ordinance will be required to provide signatures on the executed program agreement. A fully executed program agreement will be returned to your office.

Form 1590 Sub-Recipient Information - FFATA

MoDOT is requesting information from project sponsors for compliance with the 2006 Federal Funding Accountability and Transparency Act (FFATA). Project sponsors should complete the attached MoDOT Form 1590 for each program agreement totaling \$25,000 or more. This form is required to be submitted for every project by LPA's participating in the fed-aid program. The required data includes information about the primary federal funding recipient (MoDOT), the federal grant (federal aid project), and sub-recipients (project sponsor). All Information regarding MoDOT sub-awards can be accessed by the public on the following site: www.usaspending.gov. This access helps to ensure transparency of federal project funding and is part of FFATA implementation.



Our mission is to provide a world-class transportation experience that delights our customers and promotes a prosperous Missouri.

www.modot.org

Preliminary Engineering by Consultant

Federal funds for Preliminary Engineering (PE) have been programmed in FY 2024 for this project and will be available to the City on October 1, 2023. If the City is seeking federal funds for consultant PE services, the City must use a Qualification Based Selection (QBS) process for the procurement of engineering services. See EPG Section 136.4 for consultant selection details.

Each consultant services Request for Qualifications (RFQ) must be reviewed by MoDOT for Disadvantage Business Enterprise (DBE) opportunities. As the City is developing the RFQ, please submit a scope of work and a cost estimate for the anticipated consultant activities that will take place during the PE phase of the project. This information will be used to determine a DBE goal for the contract which must be included in the RFQ.

After the consultant selection process is completed, please submit a PDF copy of the Engineering Services Contract (ESC) using the ESC sample cover letter (EPG Fig. 136.4.9) for review and approval. Please include the ESC Submittal Checklist (EPG Fig. 136.4.11) and ESC Review Checklist (EPG Fig. 136.4.14). The standardized ESC contract format found in EPG Fig. 136.4.1 is required unless your agency receives prior approval from MoDOT to use an alternate contract form.

If the consultant contract is estimated to be less than \$100,000, the LPA may select a firm from the LPA On-Call Consultant List for consideration without advertisement. See EPG Section 136.4.2.4.3 for further information regarding using the LPA On-Call Consultant List.

No work shall begin until the PE funds have been obligated by FHWA and MoDOT has given the City notice to proceed. Any funds spent prior to PE obligation will not be reimbursable.

Construction Engineering/Inspection

If the City is seeking federal funds for consultant Construction Engineering/Inspection (CE) services, the City may elect to include those CE services with the consultant PE contract. Otherwise selection of the CE consultant must follow a separate Qualification Based Selection (QBS) process.

If the City plans on using in-house forces to perform reimbursable CE services, then a cost estimate for the in-house work shall be submitted along with the final project plans, specifications, and estimate. See EPG Section 136.3.12 for details on fed-aid participation in Work by Local Forces.

Environmental Requirements

In accordance with the National Environmental Policy Act (NEPA) all projects must be reviewed for environmental and cultural resource impacts. See EPG Section 136.6 for Environmental and Cultural Resources requirements.

The City will need to submit a Request for Environmental Review (RER) using MoDOT's RER database.

The City or your PE consultant must obtain NEPA approval from MoDOT's Environmental Department before the Preliminary Plans can be approved. (This means the City must obtain the Threatened & Endangered Species clearance, Section 4(f)/6(f) clearance, Noise clearance, and Section 106 clearance obtain the NEPA approval.) Please understand, the City must obtain the NEPA approval before MoDOT will review the Right-of-Way plans.) Please review EPG Section 136.6 for information on the electronic RER process.

MoDOT has updated the Section 106 review process by hiring a consultant to oversee the process. The City should submit their Request for Environmental Review (RER), MoDOT will review their RER and determine if the project is covered by a memorandum of understanding between MoDOT and the State

Historic Preservation Office (SHPO). Most LPA projects will be covered by the memorandum of understanding. If the project is not covered by the MOU, then the City will be notified to submit a Section 106 form to SHPO. (This information is included in Section 136.6.4.1.1 of the LPA Manual.)

Design Criteria

Missouri State Statute dictates that the plans, specifications, and estimates for public road work must be prepared by or under the immediate supervision of a registered professional engineer. Your agency's engineer of record is responsible for determining the appropriate design parameters for the project. If any improvements are to occur on MoDOT right of way, the project design criteria used must be approved by MoDOT's Area Team.

ADA Requirements

The Americans with Disabilities Act (ADA) requires that all pedestrian facilities impacted by the scope of the project must be designed to current accessibility standards. When plans for this project are submitted to MoDOT for review, they will need to include enough detail to show that sidewalks, curb ramps, detectable warning panels, and other impacted pedestrian facilities meet ADA requirements.

Utility Impacts

All utility companies that are affected by this project should be notified of the project scope and project schedule at this time. Since utility company comments may affect preliminary plan development, the City will need to provide a brief summary of utility impacts when submitting Preliminary Plans. A utility checklist and further information is available in EPG Section 136.7.2.6.

Public Involvement / Public Hearings

During the environmental review process, the City will need to provide information about the type of public involvement. Depending on the impacts to the public, the public involvement will vary. Examples of public involvement include adding project information to the City's website, using press releases to notify the public, contacting nearby property owners to inform them about the project, and having a public hearing.

If a public hearing is required for this project, please provide this office with a copy of the public hearing advertisement that is to be published. Please refer to EPG Section 136.7.6 for further information.

Preliminary Plan Submittal

Once preliminary plans have been completed, please submit an electronic copy of the plans with the entire plan set in one PDF file via email for review and approval.

If you have any questions, please contact your Local Programs Design Liaison.

Sincerely,



Cynthia Simmons, P.E.
District Planning Manager
MoDOT

Copy with attachment: Jason Lange – East West Gateway

CCO Form: FS25
Approved: 04/95 (MGB)
Revised: 10/22 (MWH)
Modified:

CFDA Number: 20.205
CFDA Title: Highway Planning and Construction
Award name/number: TAP-5502(616)
Award Year: 2024
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION ENHANCEMENTS FUNDS
PROGRAM AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and City of Kirkwood (hereinafter, "City").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The United States Congress has authorized, in Infrastructure Investment and Jobs Act (IIJA); 23 U.S.C. §101, §106 §133; and §208 funds to be used for transportation enhancements activities. The purpose of this Agreement is to grant the use of such transportation enhancement funds to the City.

(2) LOCATION: The transportation enhancements funds which are the subject of this Agreement are for the project at the following location: construct sidewalks on Grant's Trail Extension – Argonne Drive to Leffingwell Avenue.

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments

made to the City from future payments to the City. The City may not be eligible for future Transportation Enhancements Funds if the City does not meet the reasonable progress policy.

(4) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(5) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(6) COMMISSION REPRESENTATIVE: The Commission's St. Louis District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(7) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(8) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(9) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(11) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The

City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(13) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, City shall acquire any additional necessary right of way required for this project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act. However, upon written request by the City and written acceptance by the Commission, the Commission shall acquire right of way for the City. Upon approval of all agreements, plans and specifications by the Commission and by the FHWA, the Commission will file copies of said plans in the office of the County clerk: and proceed to acquire by negotiation and purchase or by condemnation any necessary right of way required for the construction of the improvement contemplated herein. All right of way acquired by negotiation and purchase will be acquired in the name of City, and the City will pay to grantors thereof the agreed upon purchase prices. All right of way acquired through condemnation proceedings will be acquired in the name of the State of Missouri and subsequently released to the City. The City shall pay into court all awards and final judgments in favor of any such condemnees. The City shall also reimburse the Commission for any expense incurred by the Commission in acquiring said right of way, including but not limited to the costs of surveying, appraisal, negotiation, condemnation, and relocation assistance benefits. Unless otherwise agreed to in writing the Commission shall have the final decision regarding the settlement amount in condemnation.

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalk or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalk or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalk or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City's failure to maintain the improvement. If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The

Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 80 percent not to exceed \$3,130,608. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. The City shall repay any progress payments which involve ineligible costs.

(18) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(19) PERMITS: The City shall secure any necessary approvals or permits from any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(20) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs

incurred in connection with the Transportation Enhancement Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(21) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(22) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(23) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(24) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(25) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(26) AUDIT REQUIREMENTS: If the City expend(s) seven hundred fifty thousand dollars (\$750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars (\$750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(27) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding

Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

Remainder of Page Intentionally Left Blank

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this _____ (date).

Executed by the Commission this _____ (date).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF KIRKWOOD

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title _____

Ordinance No _____

Exhibit A - Location of Project

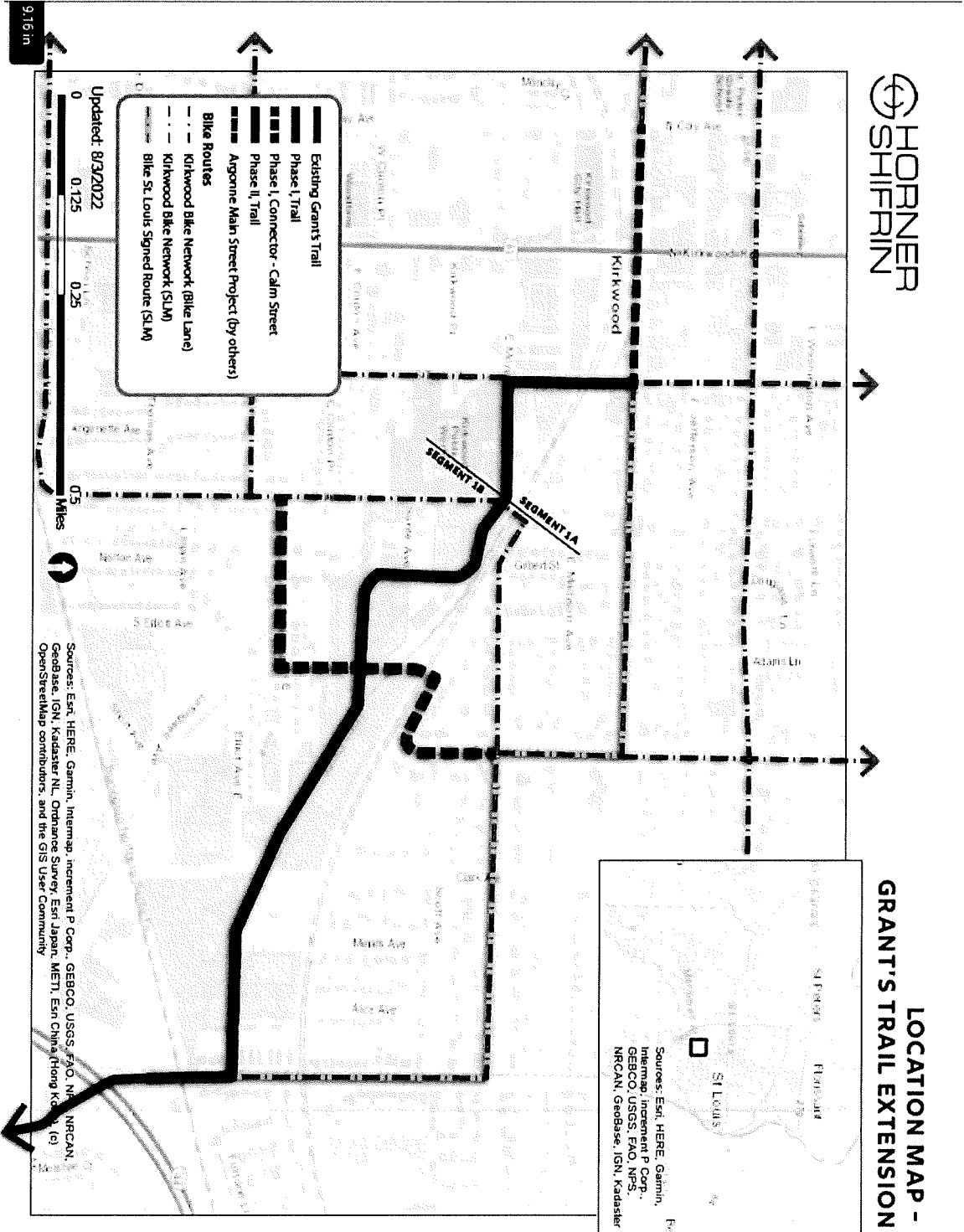


Exhibit B – Project Schedule

Project Description: TAP- 5502(616) Grant’s Trail Extension

PROJECT DEVELOPMENT SCHEDULE			
<i>Note: many stages can occur concurrently.</i>			
Activity Description	Start Date (MM/YYYY)	Finish Date (MM/YYYY)	Time Frame (Months)
Receive notification letter	10/2023	10/2023	1
Execute agreement (project sponsor and DOT)	11/2023	01/2024	3
Engineering services contract submitted and approved*	04/2024	06/2024	3
Obtain environmental clearances (106, CE2, T&E, etc.)	07/2024	02/2025	8
Public meeting/hearing	04/2025	04/2025	1
Develop and submit preliminary plans	07/2024	12/2024	5
Preliminary plans approved	01/2025	02/2025	2
Develop and submit right-of-way plans	04/2025	06/2025	3
Review and approval of right-of-way plans	06/2025	07/2025	2
Submit and receive approval for notice to proceed for right-of-way acquisition (A-Date)*	08/2025	09/2025	2
Right-of-way acquisition	05/2026	03/2027	11
Utility coordination	07/2024	12/2026	30
Develop and submit PS&E	05/2026	12/2026	8
District approval of PS&E/advertise for bids*	01/2027	03/2027	3
Submit and receive bids for review and approval	04/2027	06/2027	3
Project implementation/construction	07/2027	05/2028	11
* Finish date must match fiscal year for each milestone shown in bold text.			

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and a Supplemental Agreement is required to modify this date.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages.

The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on longstanding interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Form 1590 Sub Recipient (Project Sponsor) Information

Federal Funding Accountability and Transparency Act 2006 (FFATA)

This section to be complete by district liaison.

MoDOT District: St. Louis

Project Federal ID Number: TAP-5502(616)

Project Dollar Amount (Federal only): \$3,130,608

Sub-Recipient (Project Sponsor) Information

Name and Address

Name: City of Kirkwood
 Address: 139 South Kirkwood Road
 City: Kirkwood State: Missouri
 9-digit Zip: 00006-3122

Project Sponsor UEI Number: 020360103

SAM.gov Expiration Date: 8/16/2015

Project Sponsor Annual Gross Revenues Exceed 80% or more in Federal Awards Yes No
 Sub-Recipients Annual Gross Revenues Equal or Exceed \$25,000,000 Yes No

If either of the above questions are answered NO then project sponsor is exempt from the providing the officer compensation information in the next section.

Officer Name	Officer Compensation
Project sponsor Highly Compensated Officer	

Return form with program agreement OR mail, email or fax form to one of the following:

Missouri Department of Transportation
 Financial Services Division
 105 West Capitol Avenue PO Box 270
 Jefferson City, MO 65102-0270
 Fax Number: 1-573-522-1441
 Email: Obligate@modot.mo.gov

PREPARED BY:

Name and Title: Richard Holesinger, P.E., City Engineer
 Phone number: 314.822.5819
 Email: holesire@kirkwoodmo.org

DATE:

MoDOT Form 1590

The name and address of the sub-recipient: include the name, street address, city, state, and 9-digit zip code.

The unique entity ID (UEI) number issued by SAM.gov. The UEI is a 12 character combination of letters and numbers.

Entities are required to register at SAM.gov in order to receive federal funds. Registrations expire each year and must be renewed.

For the five most highly compensated officers of the entity: the names and total compensation of the five most highly compensated officers of the sub recipients entity if:
 (1) the recipients in the preceding fiscal year received -
 (a) 80 percent or more of its annual gross revenue in Federal awards; and
 (b) \$25,000,000 or more in annual gross revenues from Federal awards.

Indicate the person responsible for preparation of the form, include person's phone and email address. This contact is to answer questions regarding the information in the form and not for official entity representation. A signature is not necessary.

The date that the form was completed. Please include the month and year.

BILL 11005

ORDINANCE

AN ORDINANCE AUTHORIZING THE CITY OF KIRKWOOD'S PARTICIPATION AS A LAGERS EMPLOYER, COMMENCING ON FEBRUARY 1, 2024.

WHEREAS, the Council of the City of Kirkwood desires to provide retirement benefits for its eligible civilian employees under the Missouri Local Government Employees Retirement System (LAGERS), pursuant to the provisions of Sections 70.600 through 70.755, RSMo and will comply with the notice and filing requirements of Section 105.675 RSMo, and

WHEREAS, the Council of the City of Kirkwood understands that, by joining LAGERS, the City of Kirkwood is accepting the legal obligation to fully fund the elected benefits now and in the future and that it will be financially able to do so, and

WHEREAS, civilian employees of City of Kirkwood do participate in the federal Social Security program, and

WHEREAS, the City of Kirkwood agrees not to continue or commence coverage of its current or future civilian employees under another retirement plan similar in purpose to LAGERS as is prohibited by Sections 70.615 and 70.620 RSMo.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The City of Kirkwood, a "political subdivision," as defined in Section 70.600(19) RSMo, hereby elects to become a participating employer of the Missouri Local Government Employees Retirement System, as defined in Section 70.600(11), and to thereby provide retirement benefits to all its eligible General Employees under Benefit Program L-12 (1.75% life allowance), pursuant to Section 70.655.1 RSMo.

SECTION 2. All employment prior to the date City of Kirkwood becomes a participating employer is to be considered for vesting purposes for current employees and for determining the beginning date of employer contributions for employees hired and/or employed during this period but not for the calculation of credited service or final average salary; and

SECTION 3. "Membership service," as defined in Section 70.600(15), refers to any period of employment beginning or rendered on or after the date the City of Kirkwood becomes a LAGERS employer. Such service shall be considered for purposes of vesting, calculating credited service, and calculating final average salary.

SECTION 4. The Council of the City of Kirkwood hereby elects that employees eligible to become members of LAGERS are those employees employed in positions normally requiring 1,000 hours of work a year, or are otherwise excluded from membership in LAGERS by state law, pursuant to 16 CSR 20-2.010(B).

SECTION 5. The Council of the City of Kirkwood hereby elects to have the “final average salary” of its employee members determined over a 60 consecutive-month period pursuant to the provisions in Sections 70.600(12) and 70.656 RSMo.

SECTION 6. The Council of the City of Kirkwood hereby elects to require employees who become members of LAGERS to pay 4% of gross salary and wages as employee contributions to LAGERS, pursuant to Section 70.705 RSMo.

SECTION 7. The Council of the City of Kirkwood hereby elects the minimum service retirement age for all eligible employees in accordance with Sections 70.600(16) or 70.646 RSMo.

SECTION 8. The Council of the City of Kirkwood agrees to hold LAGERS harmless from any liability with respect to this transaction, apart from those obligations imposed on LAGERS by Sections 70.600 – 70.755 RSMo, provided the transaction is completed according to the terms contained herein.

SECTION 9. Upon full compliance with notice and filing requirements of Section 105.675 RSMo., the Finance Director of the City of Kirkwood is hereby authorized and directed to deduct from the wages or salaries of each employee member, the employee contributions, if any, required by Section 70.705, RSMo, and to promptly remit such contributions to LAGERS, along with the employer contributions required by Sections 70.705, 70.730, and 70.735 RSMo. It is understood there is no statutory provision for a participating political subdivision to terminate its membership under LAGERS.

SECTION 10. The Chief Administrative Officer, Assistant Chief Administrative Officer, and Finance Director of the City of Kirkwood are hereby authorized and directed to take all actions, sign all documents, and to do any and all things and take any and all actions required to place the foregoing resolutions into effect, including the revision of any relevant ordinances and resolutions of the City of Kirkwood which shall be promptly submitted the Council for approval.

SECTION 11. The City of Kirkwood participation as a LAGERS employer will commence on the first day of February, 2024.

SECTION 12. This ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

Mayor, City of Kirkwood

ATTEST:

City Clerk

1st Reading:

2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 10/5/2023

Step #1:

Strategic Plan YES

Goal # & Title 2.1.D. Pursue enhanced retirement benefit program

Background To Issue:

In order to provide a more competitive retirement benefit to civilian employees of the City of Kirkwood it is requested that a transition is made from the current defined contribution 401(a) pension plan to a defined benefit plan under the Missouri Local Government Employees Retirement System (LAGERS).

Recommendations and Action Requested:

The approval of participation for the civilian employees of the City of Kirkwood under the Missouri Local Government Employees Retirement System (LAGERS).

Alternatives Available:

Retain the current civilian pension benefit.

Does this project have a public information component? Yes No

Cost: \$0.00

Account #: Various

Project #:

If YES, Budgeted Amount:

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: David Weilder

Date: 9/28/2023

Authenticated: weidledc

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 9/28/2023

Authenticated: SFO

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Disapprove

Chief Administrative Officer's Comments:

BY:



Date:

9-28-23

RESOLUTION 107-2023

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A FIRE STATION ALERTING SYSTEM TRANSFER OF OWNERSHIP AGREEMENT BETWEEN THE CITY OF KIRKWOOD AND ST. LOUIS COUNTY, MISSOURI.

WHEREAS, St. Louis County Emergency Communications (ECC) procured a Fire Station Alerting System (FSAS) that has been implemented St. Louis Countywide, and

WHEREAS, as part of the agreement, when the system is installed the agency would receive the FSAS equipment, and

WHEREAS, any additional costs such as; extended warranty, maintenance, and cellular/Wi-Fi, would be absorbed by the agency receiving the equipment, and

WHEREAS, staff recommends that a Fire Station Alerting System Transfer of Ownership Agreement be entered into between the City of Kirkwood and St. Louis County, Missouri.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into a Fire Station Alerting System Transfer of Ownership Agreement be entered into between the City of Kirkwood and St. Louis County, Missouri.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 5TH DAY OF OCTOBER 2023.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 10/5/2023

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

St. Louis County Emergency Communications Commission (ECC) procured Fire Station Alerting System (FSAS) that has been implemented St. Louis Countywide. As part of the agreement when the system is installed the agency would receive the FSAS equipment under a Memorandum of Understanding (MOU). Any additional costs; extended warranty, maintenance, and cellular/wifi costs would be absorbed by the agency receiving the equipment.

Recommendations and Action Requested:

The Mayor and city council enter into a Memorandum of Understanding with St. Louis County Emergency Communications Commission to accept the Fire Station Alerting System equipment for the Kirkwood Police Department to communicate emergency calls for service to the Kirkwood, Des, Peres and Glendale Fire Departments.

Alternatives Available:

There are no other alternatives available as this is a St. Louis County Emergency Communications Commission requirement.

Does this project have a public information component? Yes No

Cost: \$0.00

Account #: 0000000

Project #:

If YES, Budgeted Amount: \$0.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: Brian Murphy

Date: 9/18/2023

Authenticated: raymondm

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 9/18/2023

Authenticated: sfo

You can attach up to 3 files along with this request.

📎 File Attachment

📎 File Attachment

📎 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Sandra Stephens

Date: 9/26/2023

Authenticated: forgyjl

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Disapprove

Chief Administrative Officer's Comments:

BY:



Date:

9-28-23

**FIRE STATION ALERTING SYSTEM TRANSFER OF OWNERSHIP
AGREEMENT**

THIS AGREEMENT, is made and entered into, by and between ST. LOUIS COUNTY, MISSOURI, on behalf of the St. Louis County Emergency Communications Commission, hereinafter referred to as "ECC"; and _____, hereinafter referred to as "Agency" (each individually, a "Party" and collectively, the "Parties");

WITNESSETH:

WHEREAS, ECC has procured a Fire Station Alerting System (FSAS) purchased from U.S. Digital Designs, Inc. (USDD) whereby USDD has designed, delivered and installed a county-wide fire station alerting system and associated commercial items, commercial computer software, and other equipment, subsystems and services (the "System");

WHEREAS, ECC provided for the installation of fire house hardware and software associated with the FSAS through the factory authorized installation provider; WirelessUSA, Inc.;

WHEREAS, AGENCY is authorized to enter into this agreement by _____, and Ordinance 28,737 authorizes the County to execute this Agreement;

NOW, THEREFORE, the parties agree as follows:

1. **Title and Ownership of Fire Station Alerting Hardware Components.** ECC shall transfer ownership of the USDD Fire Station Alerting Hardware as specified in **Exhibit A** (Hardware), attached and incorporated herein, to Agency to provide its ability to alert and communicate Fire and Emergency Medical Services (EMS) call informational data used by St. Louis County Fire and EMS agencies and personnel. Agency shall accept ownership of the Hardware upon receipt and shall release St. Louis County from any further expectation of responsibility for Hardware.
2. **Exhibit A** identifies, by manufacturer Model and Serial number, the hardware originally purchased by St. Louis County, and being transferred to Agency.
3. Agency shall be responsible for funding and procuring additional FSAS hardware in the event of growth of its individual programs. Agency shall fund any cost differences for additional FSAS features or substitutions that it requests.

4. Agency shall fund all maintenance contracts, repairs, and upgrades and shall take full financial responsibility for future operation and health of the FSAS following the USDD warranty period.
5. Agency shall be responsible for all connecting networking circuits and associated hardware along with any hardware required in any other interfaces such as Computer Aided Dispatch (CAD).
6. **Warranty.** Within 7 business days of the execution of this Agreement, ECC shall provide USDD notice of the execution of this Agreement and a copy of the executed Agreement. To the extent transferable, ECC transfers any remaining warranty on FSAS equipment to the Agency receiving the ownership of equipment. Agency shall work directly with USDD on warranty claims during any remaining warranty period and any future maintenance needs.
7. **Term.** This contract represents a permanent transfer of ownership and there is no process, once executed, for the ECC to take back any of the equipment described herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the later of the dated written below.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW

By: _____

Print Name: _____

Title: _____

Date: _____

I, _____, affirm that I am the [title] _____
of _____, and that I signed this Agreement on behalf of said
agency, by authority of its board of directors, and that I acknowledged this Agreement to be the
free act and deed of the said agency.

Approved as to legal form:

Agency Attorney

St. Louis County

County Executive

Date Executed by the County: _____

Attest:

Administrative Director

Chair, Emergency Communications Commission

Approved as to legal form:

County Counselor

Approved:

Accounting Officer

Legal Review: _____

CE: Review: _____

RESOLUTION 108-2023

A RESOLUTION ACCEPTING THE PROPOSAL OF AMERICAN ELECTRIC POWER IN THE AMOUNT OF \$666,040 FOR THE PURCHASE OF WHOLESAL SUMMERTIME BLOCK POWER FOR THE SUMMER OF 2024 FOR THE ELECTRIC DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE A PURCHASE ORDER.

WHEREAS, the City of Kirkwood passed and approved Resolution 26-2019 on February 7, 2019 for Power Supply Planning Services for the Electric Department, and

WHEREAS, the Electric Department recommends purchasing wholesale summertime block power for the summer of 2024, and

WHEREAS, American Electric Power submitted a proposal in the amount of \$666,040 for the purchase of wholesale summertime block power for the Summer of 2024 for the Electric Department, and

WHEREAS, funds are to be available in Account 501-20-250-252-000-531005 (Electricity), contingent upon passage of the Fiscal Year 2024/2025 budget.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The proposal of American Electric Power in the amount of \$666,040 for the purchase of wholesale summertime block power for the Summer of 2024 for the Electric Department is hereby accepted and approved.

SECTION 2. The Director of Procurement is hereby authorized and directed to issue a purchase order to American Electric Power in the amount of \$666,040 for the purchase of wholesale summertime block power for the Summer of 2024 for the Electric Department.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 5TH DAY OF OCTOBER 2023.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 9/5/2023

Step #1:

Strategic Plan YES

Goal # & Title Goal 2; Objective 3 - Maintain utility rates that keep up with mar...

Background To Issue:

Every summer Kirkwood Electric purchases summertime block power to obtain a fixed price for power during the summer months and avoid summertime price spikes. Kirkwood's Power Portfolio consultant GDS has obtained bids for summertime power for 2024.

Recommendations and Action Requested:

Approval of a resolution to authorize the Procurement Director to enter into an agreement with American Electric Power (AEP) for \$666,040 for summertime block power for 2024.

Alternatives Available:

Without a summertime block power hedge purchase power for the summer could be subject to price spikes

Does this project have a public information component? Yes No

Cost: \$666,040.00

Account #: 501-20-250-252-000-531005

Project #:

If YES, Budgeted Amount: \$22,549,744.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

The Department recommends approval of the resolution.

BY: Mark Petty

Date: 9/25/2023

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 9/25/2023

Authenticated: sfo

You can attach up to 3 files along with this request.



File Attachment

File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$666,040 in GL account 501-20-250-252-000-531005, Electricity to approve the above as requested.

BY: Sandra Stephens

Date: 9/26/2023

Authenticated: stephesf

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 9-28-23

September 25, 2023

To: Russell B. Hawes, Chief Administrative Officer

For Your Consideration: 2024 Electric Summertime Block Power - 501010

The Electric Department would like to purchase blocks of power for 2024 from American Electric Power. GDS & Associates, the City's power portfolio consultant, obtained bids for summertime power for 2024.

The recommendation comes as the peak hours for power for the summer months tend to be volatile and prices spike during the summer months.

Attached is a request from Mark Petty, Electric Director, for a resolution authorizing to enter into an agreement for a not to exceed amount of \$666,040.00 with American Electric Power for the purchase of a summertime block power for 2024.

Respectfully,

Sara Foan-Oliver

Sara Foan-Oliver
Director of Procurement

RESOLUTION 109-2023

A RESOLUTION ACCEPTING THE PROPOSAL OF AMERICAN ELECTRIC POWER IN THE AMOUNT OF \$713,011 FOR THE PURCHASE OF WHOLESAL SUMMERTIME BLOCK POWER FOR THE SUMMER OF 2025 FOR THE ELECTRIC DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE A PURCHASE ORDER.

WHEREAS, the City of Kirkwood passed and approved Resolution 26-2019 on February 7, 2019 for Power Supply Planning Services for the Electric Department, and

WHEREAS, the Electric Department recommends purchasing wholesale summertime block power for the summer of 2025, and

WHEREAS, American Electric Power submitted a proposal in the amount of \$713,011 for the purchase of wholesale summertime block power for the Summer of 2025 for the Electric Department, and

WHEREAS, funds are to be available in Account 501-20-250-252-000-531005 (Electricity), contingent upon passage of the Fiscal Year 2025/2026 budget.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The proposal of American Electric Power in the amount of \$713,011 for the purchase of wholesale summertime block power for the Summer of 2025 for the Electric Department is hereby accepted and approved.

SECTION 2. The Director of Procurement is hereby authorized and directed to issue a purchase order to American Electric Power in the amount of \$713,011 for the purchase of wholesale summertime block power for the Summer of 2025 for the Electric Department.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 5TH DAY OF OCTOBER 2023.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 9/5/2023

Step #1:

Strategic Plan YES

Goal # & Title Goal 2; Objective 3 - Maintain utility rates that keep up with mar...

Background To Issue:

Every summer Kirkwood Electric purchases summertime block power to obtain a fixed price for power during the summer months and avoid summertime price spikes. Kirkwood's Power Portfolio consultant GDS has obtained bids for summertime power for 2025.

Recommendations and Action Requested:

Approval of a resolution to authorize the Procurement Director to enter into an agreement with American Electric Power for \$713,011 for summertime block power for 2025.

Alternatives Available:

Without a summertime block power hedge purchase power for the summer could be subject to price spikes

Does this project have a public information component? Yes No

Cost: \$713,011.00

Account #: 501-20-250-252-000-531005

Project #:

If YES, Budgeted Amount: \$22,549,744.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

The Department recommends approval of the resolution.

BY: Mark Petty

Date: 9/25/2023

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 10/2/2023

Authenticated: sfo

You can attach up to 3 files along with this request.



File Attachment

File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$713,011 in GL account 501-20-250-252-000-531005, Electricity to approve the above as requested.

BY: Sandra Stephens

Date: 9/26/2023

Authenticated: stephesf

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 9-28-23

September 25, 2023

To: Russell B. Hawes, Chief Administrative Officer

For Your Consideration: 2025 Electric Summertime Block Power - 501011

The Electric Department would like to purchase blocks of power for 2025 from American Electric Power. GDS & Associates, the City's power portfolio consultant, obtained bids for summertime power for 2025.

The recommendation comes as the peak hours for power for the summer months tend to be volatile and prices spike during the summer months.

Attached is a request from Mark Petty, Electric Director, for a resolution authorizing to enter into an agreement for a not to exceed amount of \$713,011.00 with American Electric Power for the purchase of a summertime block power for 2025.

Respectfully,

Sara Foan-Oliver

Sara Foan-Oliver
Director of Procurement

RESOLUTION 110-2023

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A SUPPLEMENTAL AGREEMENT NO. 1 TO ENGINEERING SERVICES CONTRACT WITH CRAWFORD, MURPHY AND TILLY, INC. BY INCREASING THE AMOUNT BY \$242,508.04 FOR A TOTAL NOT TO EXCEED AMOUNT OF \$410,582.97 FOR RIGHT-OF-WAY ACQUISITION SERVICES AND PROFESSIONAL ENGINEERING AND CONSTRUCTION SERVICES FOR THE STP-5502(611) NORTH KIRKWOOD ROAD IMPROVEMENT PROJECT.

WHEREAS, the City Council approved Resolution 118-2021 on December 16, 2023 entering into a contract with Crawford, Murphy and Tilly, Inc. for Professional Engineering for the STP-5502(611) North Kirkwood Road Improvement Project in the amount of \$168,074.93, and

WHEREAS, Crawford, Murphy and Tilly, Inc. is requesting a supplemental agreement to for additional engineering services for proposed lane modifications, adding 31 additional parcels for easement documents, and utilize O.R. Colan to perform right-of-way acquisition services for an 51 parcels in the amount of \$242,508.04, and

WHEREAS, staff recommends that the council approve a Supplemental Agreement No. 1 to Engineering Services Contract with Crawford, Murphy and Tilly, Inc. by increasing the amount by \$242,508.04 for a total not to exceed amount of \$410,582.97 for Right-of-Way Acquisition Services and Professional Engineering and Construction Services for the STP-5502(611) North Kirkwood Road Improvement Project, and

WHEREAS, funds are available in Account #301-05-070-000-000-620070 (Street Improvements), Project #PW2409.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into a Supplemental Agreement No. 1 to Engineering Services Contract with Crawford, Murphy and Tilly, Inc. by increasing the amount by \$242,508.04 for a total not to exceed amount of \$410,582.97 for Right-of-Way Acquisition Services and Professional Engineering and Construction Services for the STP-5502(611) North Kirkwood Road Improvement Project.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 5TH DAY OF OCTOBER 2023.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 10/5/2023

Step #1:

Strategic Plan YES

Goal # & Title Goal 3. Quality of Life, Objective 1

Background To Issue:

This Supplemental Agreement is made part of an agreement dated December 16, 2021 between the City of Kirkwood and Crawford, Murphy & Tilly, Inc (CMT) for engineering design services of the North Kirkwood Improvements Project STP-5502 (611). The purpose of this Supplemental Agreement is to allow the CMT team to:

- 1) Perform right of way acquisition phase services on the project, as was the intent in the original LPA Request for Proposal. The right of way plans have been completed and will serve as the basis for projecting the scope and fee herein submitted. O.R. Colan Associates, LLC will be performing the right of way acquisition services for the project;
- 2) Add 31 additional parcels for easement documents – exhibit and description. The original ESC had 20 parcels. After right-of-way plans completion, the total number of impacted parcels was found to be 51. EDSI will be performing the easement acquisition documents; and
- 3) CMT completed out of scope work while analyzing and designing two different options for lane modifications for a road diet on the project. This resulted in expended design hours that were to be used for task PE-9 Final Plans and Bidding Phase. This supplement adds back in the previously expended hours to task PE-9 to complete the project.

Recommendations and Action Requested:

It is recommended that the City Council increase the original contract amount with CMT of \$168,074.93 to an amount not to exceed two hundred forty-two thousand, five hundred and eight dollars and four cents (\$242,508.04) without further authorization. The total engineering design services (original plus supplement #1) shall not exceed four hundred and ten thousand, five hundred and eighty-two dollars and ninety-seven cents (\$410,582.97). A detailed scope of services and fee follows and outlines the cost breakdown for this Supplemental Agreement.

Alternatives Available:

Does this project have a public information component? Yes No

Cost: \$242,508.04 Account #: 301-05-070-000-000-620070

Project #: PW2409

If YES, Budgeted Amount: \$242,508.04 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: Christopher Krueger

Date: 9/22/2023

Authenticated:

You can attach up to 3 files along with this request.



Kirkwood_North Kirkwood
Road Improvements_STP-
5502 (611)_Supplement
Agreement No. 1.pdf
Adobe Acrobat Document
284 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 9/26/2023

Authenticated: sfo

You can attach up to 3 files along with this request.



13837 Resolution Letter -
Supplemental Agreement
(Revised).pdf
Adobe Acrobat Document
120 KB

File Attachment

File Attachment

Step #3: If budgetary approval is required **(Must have Finance Department's approval).**

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$242,509 in account 301-05-070-000-000-620070, Street Improvements, Project PW2409, Kirkwood Rd to approve the above as requested.

BY: Sandra Stephens

Date: 9/26/2023

Authenticated: forgyjl

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Disapprove

Chief Administrative Officer's Comments:

BY:



Date:

9-28-23

CITY OF KIRKWOOD
STP-5502 (611)
NORTH KIRKWOOD ROAD IMPROVEMENTS

**SUPPLEMENTAL AGREEMENT NO. 1
TO
ENGINEERING SERVICES CONTRACT**

This Supplemental Agreement is made part of an agreement dated December 16, 2021 between the City of Kirkwood and Crawford, Murphy & Tilly, Inc (CMT) for engineering design services of the North Kirkwood Improvements Project STP-5502 (611). The purpose of this Supplemental Agreement is to allow the CMT team to:

- 1) Perform right of way acquisition phase services on the project, as was the intent in the original LPA Request for Proposal. The right of way plans have been completed and will serve as the basis for projecting the scope and fee herein submitted. O.R. Colan Associates, LLC will be performing the right of way acquisition services for the project.
- 2) Add 31 additional parcels for easement documents – exhibit and description. The original ESC had 20 parcels. After right-of-way plans completion, the total number of impacted parcels was found to be 51. EDSI will be performing the easement acquisition documents.
- 3) CMT completed out of scope work while analyzing and designing two different options for lane modifications for a road diet on the project. This resulted in expended design hours that were to be used for task PE-9 Final Plans and Bidding Phase. This supplement adds back in the previously expended hours to task PE-9 to complete the project.

The total additional services shall be in an amount not to exceed two hundred forty-two thousand, five hundred and eight dollars and four cents (\$242,508.04) without further authorization. The total engineering design services (original plus supplement #1) shall not exceed four hundred and ten thousand, five hundred and eighty-two dollars and ninety-seven cents (\$410,582.97). A detailed scope of services and fee follows and outlines the cost breakdown for this Supplemental Agreement.

Original Contract Ceiling	\$ 168,074.93
Supplemental Agreement No. 1	\$ 242,508.04
TOTAL	\$ 410,582.97

Supplemental Agreement No. 1 is accepted as defined herein:

OWNER: City of Kirkwood, Missouri

ENGINEER: Crawford, Murphy & Tilly, Inc.

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

ATTEST:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Executed by the City on the _____ day of _____, 2023.

Attachment A

North Kirkwood Road Improvement Project		Crawford, Murphy & Tilly, Inc. Tasks, Hours and Fee Summary											Total Hours	Labor Costs	
Task No.	Task Description	Project Engineer II	Project Engineer I	Project Environmental Specialist I	Senior Engineer I	Engineer I	Environmental Specialist I	Technician II	Technician I	Project Administrative Assistant	Administrative / Accounting Assistant				
	Hourly Salary	\$ 82.50	\$ 65.52	\$ 67.37	\$ 48.56	\$ 36.82	\$ 30.73	\$ 37.92	\$ 32.50	\$ 23.77	\$ 21.04				
PE-2	Topographic And Right-Of-Way Surveys	-	-	-	-	-	-	-	-	-	-	-	-	\$ -	
1	(See Fee Summary for EDSI Direct Costs)													0	
PE-9	Final Plans and Bidding Phase	-	79	-	123	120	-	-	31	-	-	-	-	353	\$ 16,574.86
1	Incorporate remaining right-of-way negotiation changes		2		2	2								6	
2	Incorporate remaining public comments		2		2	2								6	
3	Final Design		16		40	40								96	
4	Title sheet		1		1	1			1					4	
5	Typical sections		1		2	2			2					7	
6	Quantity sheets		2		4	12			8					26	
7	Plan sheets (20 scale)		1		8	8			2					19	
8	Profile sheets (20/5 scale)		1		1	1			2					5	
9	Reference point sheets		1		1	1			1					4	
10	Coordinate point / Geometric sheets		1		1	1			1					4	
11	Special sheets		2		4	4			4					14	
12	Traffic control plan (50 scale)		2		4	4			2					12	
13	Erosion control sheets		1		4	4			2					11	
14	Pavement marking sheets		2		4	4			2					12	
15	Signing sheets		1		4	4			2					11	
16	Traffic Signal Sheets		2		4	2								8	
17	Culvert section sheets		4		12	8								24	
18	Cross section sheets		1		4	6			2					13	
19	Draft final cost estimate		4		4	4								12	
20	Draft final job special provisions		4		4	4								12	
21	Draft final work day study		4		2	2								8	
22	Draft final project specifications boilerplate book		12		4	4								20	
23	Complete City and MoDOT LPA checklists		1											1	
24	Submit draft final PS&E		1											1	
25	Final field check meeting		2		2									4	
26	Revise PS&E based upon City/MoDOT comments		2		2									4	
27	Submit 100% sealed bid package		2		2									4	
28	Assist in answering contractor questions before letting		2		1									3	
29	Attend bid opening		2											2	
ROW-1	Right of Way Acquisition	-	-	-	-	-	-	-	-	-	-	-	-	-	\$ -
1	(See Fee Summary for O.R. Colan Direct Costs)													0	
	Total CMT Hours	-	79	-	123	120	-	-	31	-	-	-	-	353	
	Hourly Salary	\$ 82.50	\$ 65.52	\$ 67.37	\$ 48.56	\$ 36.82	\$ 30.73	\$ 37.92	\$ 32.50	\$ 23.77	\$ 21.04				
	Total CMT Labor Cost	\$ -	\$ 5,176.08	\$ -	\$ 5,972.88	\$ 4,418.40	\$ -	\$ -	\$ 1,007.50	\$ -	\$ -				\$ 16,574.86

Attachment A

ATTACHMENT A - CMT FEE SUMMARY

<u>Task</u>	<u>Labor Costs</u>	<u>Payroll Overhead</u>	<u>General & Admin Overhead</u>	<u>Fixed Fee</u>	<u>Direct Costs</u>	<u>Total Cost</u>
		54.69%	112.15%	13%		
PE-2 Topographic And Right-Of-Way Surveys	\$ -	\$ -	\$ -	\$ -	\$ 20,150.00	\$ 20,150.00
PE-9 Final Plans and Bidding Phase	\$ 16,574.86	\$ 9,064.79	\$ 18,588.71	\$ 5,749.69	\$ -	\$ 49,978.04
ROW-1 Right of Way Acquisition	\$ -	\$ -	\$ -	\$ -	\$ 172,380.00	\$ 172,380.00
TOTAL	\$ 16,574.86	\$ 9,064.79	\$ 18,588.71	\$ 5,749.69	\$ 192,530.00	\$ 242,508.04

Service by others:

PE-2 Topographic and Right-of-Way Surveys

EDSI

This is for 31 additional parcels for easement acquisition documents - exhibit and description. A total of 20 parcels were included in the original ESC.

After ROW plans completion, a total of 51 parcels are impacted on the project. 31 additional parcels X \$650/per parcel = \$20,150.

ROW-1

O.R. Colan Associates - See attached for breakdown.

Perform right of way acquisition phase services on the project.



August 7, 2023

John Keevan, PE
Project Manager
Crawford Murphy & Tilly
One Memorial Drive, Suite 500
St. Louis, MO 63102

RE: Right of Way Acquisition Services – North Kirkwood Road, STP-5502 (611)

Dear Mr. Keevan,

Per your request, the following is a Right of Way Acquisition Scope of Services, and a cost for O.R. Colan and Associates (ORC) to provide those services, for 51 parcels on the North Kirkwood Road Project in the City of Kirkwood (City) for Crawford, Murphy & Tilly (Client). The Scope of Services and Cost Proposal are based upon the provided plan sheets and parcel easement data provided.

SCOPE OF SERVICES

Project Management

O. R. Colan Associates (ORC) will staff the project with a project manager and qualified acquisition agent(s) required to complete the acquisition services. The project manager will serve as the primary contact for the client. ORC will participate in a pre-acquisition meeting prior to the start of the acquisition services. This meeting will be to discuss project timelines, milestones, document coordination and review the scope of work responsibilities. The pre-acquisition meeting should be attended by the appropriate Client and project representatives.

In addition, on a bi-weekly basis, ORC will provide a written project report which will indicate the status of each parcel, items needing City resolution and any risk management concerns. In addition to these reports, up to 24 virtual bi-weekly meetings will be held with the City and project personnel.

The PM will review all project documentation including engineering design plans, preliminary valuations, and standard forms to be familiar with the project, provide oversight to ensure offers are delivered in a timely manner and in compliance with federal and state laws and that negotiations occur without coercion, the Negotiator's Logs are kept accurately and up to date, and that Administrative Settlements are well documented and provide the necessary support. The PM will provide customer service support throughout the life of the project as deemed necessary. The PM will conduct the billing and close out activities for the project.

In addition to the daily quality control provided by the Project Manager and Agents, ORC's Document Control and Quality Control Teams will be responsible for performing tasks such as preparing and reviewing Offer Packets before they are delivered to the owner to ensure all the information is consistent, that the offer is addressed to the correct party, that all documents are included and that there are no spelling or grammar issues

Appraisal Services

On parcels where the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is less than \$25,000, the offer can be based upon a Waiver Valuation/Payment Estimate. This Waiver Valuation/Payment Estimate will be prepared by ORC staff based upon information from the local real estate market.

For this project, it appears all 51 parcels can be valued using the Waiver Valuation/Payment Estimate method. Once ORC begins work on the valuations, if it is determined that one or more properties is a complicated valuation or the valuation may exceed \$25,000, ORC will advise the City of this situation and the City will obtain appraisals and appraisal reviews. Appraisals will also be necessary for parcels recommended for eminent domain.

Negotiation Services

ORC shall negotiate all acquisitions in accordance with the MoDOT LPA Manual, the laws of the State of Missouri, and the federal regulations known as the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs; Final Rule. This may include but is not limited to the following: Describing the acquisition, referencing plats or plans, explaining right of way and construction plans, project schedule and other project details. ORC will clearly explain details related to the appraisal or value determination and how the offer was developed, as well as answering other valuation questions.

ORC shall prepare all necessary documents to be included in the offer package for the review and signature of the City. The only offer allowed to be made is that which has been approved by the City and ORC will not present to the property owner(s) any counteroffer or agree to any plan revisions without express permission of the City. All property owner concerns, counteroffers or issues will be presented to the City along with a recommendation from ORC.

At a minimum ORC will deliver to each property owner either in person or certified mail (or other means as approved by the client) each of the following: Notice of Intended Acquisition letter (60-day notice letter), acquisition brochure, copy of valuation, plans, offer letter and unsigned documents such as sales agreement or deeds. ORC will maintain a detailed written negotiator's log which will provide information on any significant communication with the property owner or their representative. These logs will contain information as to efforts to achieve an amicable settlement, responsiveness to counteroffers and suggestions for plan changes.

Within the agreed upon project time frame, ORC will either secure the necessary property rights or submit the property to the City for condemnation. ORC will ensure all documents are completed which are needed for the City to facilitate payment of settlements to property owners. Some payments, at the direction of the City, may be handled through a local title company. This will be determined on a case-by-case basis. The City will be responsible for title company closing fees such as recording fees and title company closing and recording fees.

If settlement cannot be reached on a parcel and the property needs to be acquired via condemnation, ORC will provide the City with a copy of the parcel file which will include all documents and correspondence with the property owner.

The Client will provide ORC with all ownership and title report information, necessary plans, plats and legal descriptions and other items necessary for the preparation of offer packets and the negotiations for the needed property rights. In addition, the City is responsible for payment of compensation to the property owners for the property rights as well as all condemnation related

services. All expenses such as postage, Agent mileage, hotel accommodations, per diem and other miscellaneous items are included in the per parcel cost.

Recording

All "Title Company Services" such as closing costs and title insurance, shall be paid by the City. On parcels where the closing services of a title company are not desired, the City will handle deed recording. Recording fees from the recorder's office, miscellaneous fees and ORC staff time are not included in this proposal.

ADDITIONAL SERVICES

Appropriate ORC Agent(s) will appear in any court proceedings as requested by the City of Kirkwood's counsel to give testimony as to its negotiations at a rate not to exceed \$160 per hour for the time consumed in such appearances. ORC staff will also be available for consultation with the City of Kirkwood's counsel in trial preparation to be paid at a rate not to exceed \$160 per hour for appearing.

COST PROPOSAL

Waiver Valuations: 51 parcels @ \$400 each = \$20,400

Project Management Negotiations: 51 parcels @ \$2,980 each = \$151,980

Total Cost Proposal: \$172,380

Thank you for the opportunity to provide this proposal and please let me know if you have any questions.

Sincerely,

Janelle L Lemon

Janelle Lemon, Project Manager

September 26, 2023

To: Russell B. Hawes, Chief Administrative Officer

For Your Consideration: ROW Acquisition Services for Federal Project STP-5502(611) North Kirkwood Road Resurfacing Project, 13837.

The city is currently under contract for Professional Engineering and Construction Services for Federal Project STP-5502(611) North Kirkwood Road Improvement Project with CMT (Crawford, Murphy and Tiller, Inc.) which the Council approved on December 16, 2021. CMT would like a supplemental agreement for an additional \$242,508.04 to use O.R. Colan and Associates for the right-of-way acquisition services for 51 parcels (an additional 31 parcels to the original 20 parcels). The amount would be eligible for federal funding, if available, from MoDOT.

Chris Krueger is requesting a supplemental agreement for \$242,508.04.00 be added to the \$168,074.93 contract with CMT for a total amount of \$410,582.97 for ROW Acquisition Services and Professional Engineering and Construction Services for Federal Project STP-5502(611) North Kirkwood Road Improvement Project.

Respectfully,

Sara Foan-Oliver

Sara Foan-Oliver
Procurement Director

RESOLUTION 111-2023

A RESOLUTION AMENDING THE PURCHASE ORDER WITH VIKING CHIVES MIDWEST (PURSUANT TO SOURCEWELL COOPERATIVE CONTRACT) BY INCREASING THE AMOUNT BY \$3,580 FOR A TOTAL AMOUNT OF \$116,056 FOR THE PURCHASE OF A 2024 FORD F550 CHASSIS WITH VIKING CHIVES DUMP BODY FOR THE STREET DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE AN AMENDED PURCHASE ORDER.

WHEREAS, the City Council approved Ordinance 10815 on July 6, 2023 appropriating funds and authorizing the purchase of a 2023 Ford F550 Chassis with Viking Chives Dump Body for the Street Department in the amount of \$112,476 under Sourcewell Cooperative Contract #062222-VCM, and

WHEREAS, upon obtaining a purchase order and sending it to Viking Chives Midwest, the City of Kirkwood was informed that the 2023 F550 Cab and Chassis with Viking Chives Dump Body was no longer available, and

WHEREAS, staff recommends amending the Purchase Order with Viking Chives Midwest by increasing the Purchase Order by \$3,580 for a total amount of \$116,056 the purchase of a 2024 Ford F550 Chassis with Viking Chives Dump Body for the Street Department under Sourcewell Cooperative Contract #062222-VCM, and

WHEREAS, funds are available in Account #301-05-070-000-000-620050 (Rolling Stock), Project #ST2401.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Director of Procurement is hereby authorized and directed to issue an amended Purchase Order to Viking Chives Midwest by increasing the Purchase Order by \$3,580 for a total amount of \$116,056 the purchase of a 2024 Ford F550 Chassis with Viking Chives Dump Body for the Street Department under Sourcewell Cooperative Contract #062222-VCM.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 5TH DAY OF OCTOBER 2023.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 10/5/2023

Step #1:

Strategic Plan YES

Goal # & Title Quality of Life: Goal 3

Background To Issue:

At the July 6, City Council meeting, a 2023 Ford F550 for the Street Department was approved at a cost of \$112,476 to Viking Chives Midwest. The order was not received in time before the orders closed for this vehicle. New pricing has been received resulting in an increase of \$3,580, or new cost of \$116,056. This truck is used on a daily basis to fix streets and plow snow. In the FY24 budget, funds have been allocated for the replacement of truck 6142, a 2009 Ford F450 dump truck that has exceeded the replacement criteria of 15 with a current score of 23.19.

Recommendations and Action Requested:

It is recommended that City council approve the increase in cost in the amount not to exceed \$3,580 for a total purchase order amount of \$116,056.

Alternatives Available:

Does this project have a public information component? Yes No

Cost: \$116,056.00

Account #: 301-05-070-000-000-620050

Project #: ST2401

If YES, Budgeted Amount: \$116,056.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: Christopher Krueger

Date: 9/26/2023

Authenticated: Ckrueger

You can attach up to 3 files along with this request.



VIKINGQUOTE_Quote170009R
EV2.pdf
Adobe Acrobat Document
65.4 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

Approve

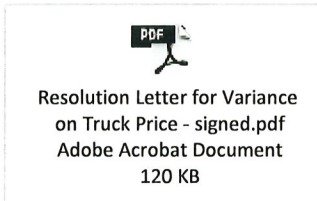
Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 9/26/2023

Authenticated: sfo

You can attach up to 3 files along with this request.



File Attachment

File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$116,056 in account 301-05-070-000-000-620050, Rolling Stock, Project ST2401, Street Dump Truck to approve the above as requested.

BY: Sandra Stephens

Date: 9/27/2023

Authenticated: forgyjl

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 9-28-23



22956 Hwy 61
 PO Box 295
 Morley, MO 63767
 Phone: 573-262-3545
 Fax: 573-262-3369

Quote

Quote #	Date
170009	05/19/23

Customer			
CITY OF KIRKWOOD			
***EMAIL INVOICES**			
212 S TAYLOR AVE			
KIRKWOOD	MO	63122	

Ship To			
CITY OF KIRKWOOD			
212 S TAYLOR AVE			
KIRKWOOD	MO	63122	

Customer PO	Terms	Sales Rep	Lead Time	Ship Via	FOB	VIN
	NET 30	SCOTT	05/19/23			

Item	Description	Ordered	UOM	Price Per	Total Price
SOURCEWELL	Sourcewell Contract # 062222-VCM Customer member # (44746) Item sold (SW-TK0560, SW-TK0554, SW-TK0556, NJ2400, NJ2500)	1.00	EA	55,706.00	55,706.00
SALES	9' HD plow - 9' Contractor Grade steel blade, which includes: <ul style="list-style-type: none"> - 76901, 9' Pro Plus Blade - 31270, Mount 17+ Ford - 75710-3, Bog Box Assy Pro Plus - Central - 29070-1, 3-Port Module - 74973-1, 20+ Ford Halogen Harness kit - 29047, Adapter - 72530, Haolgen Light Kit - 9' rubber snow deflector 8" wide 	1.00	EA	0.00	0.00
SALES	Viking 10' Corten Western Style Platform with drop sides and AR450 floor - less hoist, load cover, LED warning lights and installation <ul style="list-style-type: none"> - Corten construction - Crossmember-less design cuts down extra, unwanted weight - Fully-welded trapezoid long sill with drainage - AR450 Hardox floor - Spring-loaded lock pins to easily drop sides, no internal mechanism 	1.00	EA	0.00	0.00
SALES	Rugby SR4016 less hydraulics hoist package with subframe	1.00	EA	0.00	0.00
MSRP2370	Window shade style pullout tarp for single axle body	1.00	EA	0.00	0.00
MSRP3010	Hydraulic system for the City of Kirkwood, which includes: <ul style="list-style-type: none"> - Force America hydraulic system - PTO and pump combo kit (elec/hyd) for F250-F600 	1.00	EA	0.00	0.00



22956 Hwy 61
 PO Box 295
 Morley, MO 63767
 Phone: 573-262-3545
 Fax: 573-262-3369

Quote

Quote #	Date
170009	05/19/23

Customer			
CITY OF KIRKWOOD			
***EMAIL INVOICES**			
212 S TAYLOR AVE			
KIRKWOOD	MO	63122	

Ship To			
CITY OF KIRKWOOD			
212 S TAYLOR AVE			
KIRKWOOD	MO	63122	

Customer PO	Terms	Sales Rep	Lead Time	Ship Via	FOB	VIN
	NET 30	SCOTT	05/19/23			

Item	Description	Ordered	UOM	Price Per	Total Price
	- Force One system with single-acting plow raise				
MSRP3190	Snow and ice hydraulic install kit (includes hoses, fittings and hardware)	1.00	EA	0.00	0.00
SALES	SoundOff Signal grill lights (4x2 Amber/White) with mounting hardware	1.00	EA	0.00	0.00
MSRP5410	Additional rear-facing warning lights mounted in cab shield	1.00	EA	0.00	0.00
MSRP6175	Class V trailer package which includes 2" receiver and 1/2" pintle plate	1.00	EA	0.00	0.00
MSRP9100	Single axle install kit (includes miscellaneous electrical components and hardware)	1.00	EA	0.00	0.00
MSRP9140	Mud flap kit (includes front anti-sails and rear removable pin brackets)	1.00	EA	0.00	0.00
SALES	2024 Ford F550 chassis (see chassis spec)	1.00	EA	60,350.00	60,350.00

Prepared By: sboyer@vikingcivesmidwest.com
 Memo: SOURCEWELL

Sub-Total	116,056.00
Shipping	0.000
Discount	0.00
Taxes	0.00
Total	116,056.00

Customer must fill out the information below before the order can be processed.

Accepted by: _____ Date: _____ P.O.#: _____

*Quoted price does not include any applicable taxes.
 *Terms are Due Upon Receipt unless prior credit
 *Terms for established accounts. NET 30 days
 *Please note if chassis is furnished. it is as a convenience and terms are Net Due on Receipt of Chassis

September 26, 2023

To: Russell B. Hawes, Chief Administrative Officer

For Your Consideration: 2023 Ford F550 Cab and Chassis with Viking Chives Dump Body - 500914

On July 6, 2023, Ordinance 10815 was passed for the Street Department to obtain a much-needed dump truck to be able to serve the Kirkwood community better. The City of Kirkwood may use cooperative contracts that are competitively bid. Sourcewell competitively bid this equipment and Viking Chives Midwest was the lowest responsible and responsive bid at \$112,476. The Sourcewell contract number is 062222-VCM.

Upon obtaining a purchase order and sending it to Viking Chives Midwest we were informed that the 2023 Ford F550 Cab and Chassis with Viking Chives Dump Body was no longer available as we are nearing 2024. The vendor stated we would need to purchase the 2024 model dump truck and that it is an additional \$3,580.

Attached is a request from Chris Krueger, Director of Public Services, to use FY24 budget funds that have been allocated for a replacement truck, for a resolution authorizing an additional \$3,580 for a total purchase order in the amount of \$116,056 to be issued to Viking Chives Midwest for the purchase of a 2024 Ford F550 Chassis with Viking Chives Dump Body for the Street Department.

Respectfully,

Sara Foan-Oliver

Sara Foan-Oliver
Procurement Director

RESOLUTION 112-2023

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A PURCHASE AGREEMENT AND A LEASE AGREEMENT WITH SABADA PROPERTIES, LLC.

WHEREAS, the Mayor, Chief Administrative Officer and City Attorney have been negotiating on behalf of the City Council for the purchase of the property located at 545-547 Leffingwell Ave./516 South Elliott Ave., for the purpose of relocating the Public Works facility and other City services, and

WHEREAS, the purchase of this property will allow the City to sell the existing Public Works facility site at 345 South Fillmore Ave. so this site can be developed in a way that complements the Kirkwood Performing Arts Center, and brings economic vitality to the surrounding area.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into a Lease Agreement and Purchase Agreement with Sabada Properties, LLC.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 5TH DAY OF OCTOBER 2023.

Mayor, City of Kirkwood

ATTEST:

City Clerk

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is made as of October 6, 2023 ("Effective Date"), by and between SABADA PROPERTIES, LLC, a Missouri limited liability company ("Seller"), and CITY OF KIRKWOOD, Missouri, ("Purchaser").

RECITALS:

A. Seller is the owner of a parcel of real property, having an area of approximately 9.00 acres and located at: 516 S Elliot Ave. and 545-547 Leffingwell Ave., St. Louis, Missouri, 63122 and described on Exhibit A attached hereto and made a part hereof, together with all improvements thereon including a building containing approximately 84,000 square feet, and all easements, rights, privileges, servitudes and appurtenances thereunto belonging or appertaining, including all right, title and interest of Seller, if any, in and to the streets, alleys, and rights-of-way adjacent thereto (collectively, the "Property").

B. Seller has agreed to sell to Purchaser, and Purchaser has agreed to purchase from Seller, the Property, upon and subject to all the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration paid by Purchaser to Seller, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Agreement to Sell and Purchase. Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, the Property, subject to all the terms and conditions set forth herein.

2. Purchase Price. The purchase price for the Property ("Purchase Price") is Twelve Million Five Hundred Thousand and 00/100 Dollars (\$12,500,000.00). The Purchase Price shall be paid at Closing (defined herein), subject to adjustments and prorations as described herein, and subject to the credit for the Earnest Money to be paid by Purchaser as described below. The Purchase Price shall be paid by wire transfer of immediately available funds.

Within five (5) business days following the Effective Date, the parties shall establish an escrow at St. Louis Title, LLC, 7701 Forsyth, Suite 200, St. Louis, MO 63105, Attn: Kelly Cochran (the "Escrow Agent" and "Title Company"), and Purchaser shall deposit in such escrow Five Hundred Thousand and 00/100 Dollars (\$500,000.00). The amount so deposited together with interest thereon less any investment fees related thereto are hereinafter collectively referred to as the "Earnest Money" all or a portion of which shall, at Purchaser's election, be credited against the Purchase Price at Closing, or returned to Purchaser at Closing or otherwise disbursed as provided in this Agreement.

3. Inspections by Purchaser. From and after the Effective Date, but no later than the expiration of the Contingency Period (defined below), Purchaser, Purchaser's agents, and lenders (collectively, the "Purchaser Parties") shall have the right, following at least 24 hours advance written notice to Seller (containing who will be appearing at the Property and what they will be doing while on the Property), to enter upon the Property or any portion thereof and make such engineering, land use, physical, market or soil tests, investigations and studies concerning the Property (collectively, the "Tests") that they may elect to perform, including, without limitation, a Phase I Environmental Site Assessment, other environmental surveys, soil borings, and other similar invasive testing at the Property. Purchaser agrees to indemnify and hold harmless Seller from any loss, cost or expense (including reasonable attorneys' fees) for death, bodily injury or damage to the Property to the extent caused by such entry, except to the extent attributable to Seller's negligence or to any preexisting conditions, including the presence of any hazardous substances. Prior to any Purchaser Party entering the Property to conduct the Tests, Purchaser shall obtain and maintain, at Purchaser's sole cost and expense, and shall deliver to Seller a certificate of insurance evidencing the following insurance coverage, or shall cause each of its agents and contractors to obtain and maintain, and, upon request of Seller, shall deliver to Seller a certificate of insurance evidencing the following insurance coverage: commercial liability insurance, from an insurer reasonably acceptable to Seller, in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit for personal injury and property damage per occurrence and Three Million and no/100 Dollars (\$3,000,000.00), in the aggregate, such policy to name Seller as an additional insured party, which insurance shall provide coverage against any claim for personal liability or property damage

caused by Purchaser or its agents, employees or contractors in connection with any Tests. While conducting such Tests, the Purchaser Parties (including contractors or any other person acting on behalf of any Purchaser Party) shall not materially interfere with normal business operations at the Property.

Within five (5) business days after the Effective Date and thereafter at any time Seller obtains Inspection Materials (defined herein), Seller shall provide to Purchaser copies of all Tests and non-confidential feasibility studies, soil reports, environmental audits and other appraisals, surveys, inspections, tests, reports (including title commitments or policies), studies or information in the possession or reasonable control of Seller with respect to the Property (the "Inspection Materials").

4. Conditions Precedent. Purchaser's obligation to consummate the transaction contemplated by this Agreement is subject to satisfaction of all of the conditions precedent, set forth in this Section 4 within the time periods prescribed herein. Purchaser may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. No such waiver shall constitute a waiver by Purchaser of any of its rights or remedies nor release Seller from any of its liabilities under this Agreement. Satisfaction of such conditions shall not waive any representation or warranty made by Seller.

a. Between the Effective Date and 6:00 p.m. central time on the date which is ninety (90) days after October 6, 2023 (such 90 day period being the "Contingency Period"), Purchaser shall, subject to Section 3, conduct any Tests it deems necessary. Purchaser may terminate this Agreement at any time on or before the expiration of the Contingency Period if (i) Seller Defaults hereunder, or (ii) Purchaser is unable to obtain financing on commercially reasonable terms, or (iii) Purchaser is unable obtain a Title Commitment or Title Policy reasonably acceptable to Purchaser or due to Seller's failure to satisfy the other conditions required by Section 4(b), or (iv) Purchaser identifies any environmental issues which Seller declines to cure after notice and demand for same, by delivering written notice to Seller (the "Termination Notice") on or before the expiration of the Contingency Period in which event this Agreement shall terminate automatically, and the Earnest Money will be immediately returned to the Purchaser and the Parties shall have no further obligations to each other. If Purchaser fails to deliver a Termination Notice on or before expiration of the Contingency Period, then Purchaser shall have no further right to terminate this Agreement pursuant to this Section 4(a).

b. As of the Closing Date (as herein defined):

(i) Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement.

(ii) All representations and warranties made by Seller under this Agreement shall be true and correct in all material respects as of Closing as if remade as of such date.

(iii) The Title Company shall be prepared to issue an Owner's Title Insurance Policy (ALTA Form 2006) ("Title Policy") in the amount of the Purchase Price, at Purchaser's expense, insuring title to the Property to be good and marketable and free from exceptions other than the Permitted Exceptions (as defined herein) and insuring any appurtenant easements.

(iv) No matter affecting title to the Property shall have arisen or be discovered that is not shown in the last version of the Commitment obtained during to the Contingency Period, excluding matters caused by Purchaser and matters expressly contemplated by this Agreement.

(v) No "Material Event" shall have occurred. For purposes hereof, the term "Material Event" shall mean and include any of the following that has occurred after the expiration of the Contingency Period: (y) except as set forth in Section 9 hereof, any material change in the condition of the Property including, without limitation, the environmental condition thereof, or (z) the issuance by any applicable federal or state governmental authority having jurisdiction of any notice of any violation of law, or institution of any litigation, suit or proceeding against the Property, any part thereof, or Seller which materially affects the Property or Purchaser's proposed use of the Property.

In the event that any of the foregoing conditions set forth in this Section 4(b) are not satisfied by Closing and Purchaser does not elect to proceed with acquiring the Property notwithstanding the failure of such conditions, then the Earnest Money shall be promptly delivered to Purchaser and, upon receipt thereof by Purchaser, neither party shall have any further claim against the other by reason of this Agreement, except as otherwise specifically provided herein (provided, however, if such failure is due to a breach of Seller's obligations hereunder then the terms of Section 13 shall apply).

5. Title/ Survey. Purchaser, at its sole cost and expense, shall within 10 business days following the Effective Date obtain (a) a title insurance commitment (the "**Commitment**") issued by the Title Company in the amount of the Purchase Price, with copies of all documents referred to therein which constitute encumbrances on title, which shall commit the Title Company to issue the Title Policy in form and substance as described in Section 4(b)(iii), (b) customary searches (collectively, the "**Searches**") for bankruptcies, judgment liens, tax liens, and special assessments, showing all levied, pending and deferred special assessments and real estate taxes, and (c) an ALTA/ACSM urban class survey (the "**Survey**") prepared in accordance with Purchaser's specifications.

If the Commitment, the Searches, or the Survey discloses defects or exceptions that are objectionable to Purchaser, then Purchaser shall notify Seller (the "**Title Notice**"), in writing, on or before the date which is fifteen (15) days after the Purchaser's initial receipt of the Commitment, Searches and Survey. If Purchaser so notifies Seller of such objections, then Seller shall be allowed a period of ten (10) business days from the date Purchaser delivers the Title Notice to provide Purchaser with assurances reasonably satisfactory to Purchaser that any such objectionable matters will be removed on or before Closing, and if Seller provides such assurances, Seller shall thereafter be obligated to remove such objectionable matter prior to Closing. Matters disclosed by the Commitment, the Searches, and the Survey which are not objected to by Purchaser, or which are objected to but which are waived by Purchaser shall constitute "**Permitted Exceptions**". Failure by Purchaser to deliver the Title Notice within the time period described above shall constitute an election by Purchaser to take title to the Property subject to all such matters as are disclosed by the Commitment, the Searches, and the Survey. If after delivery of a Title Notice, Seller shall not within the ten (10) business day period prescribed above deliver assurances satisfactory to Purchaser that any such objectionable matters will be so removed, then Purchaser may elect by delivering notice to Seller within ten (10) business days following expiration of the ten (10) business day period prescribed above (Closing will be extended, if necessary, to accommodate such time period): (i) to waive Purchaser's objections to such matters in which event such matters shall be deemed Permitted Exceptions, or (ii) to terminate this Agreement and receive a return of the Earnest Money. Purchaser's failure to deliver notice within such ten (10) business day period shall be deemed Purchaser's election to waive Purchaser's objections pursuant to (i) above. If the objectionable matter is a matter which was intentionally caused by Seller or if Seller refuses to cure an objectionable matter or elects to cure an objectionable matter and fails to complete such cure by Closing, then this Agreement shall terminate automatically, and the Earnest Money will be immediately returned to the Purchaser and the Parties shall have no further obligations to each other. Notwithstanding anything contained herein to the contrary and without the need for any notice or objection from Purchaser, prior to or at Closing, Seller shall cause the Property to be released or otherwise discharged from (i) any mortgage or other security interest, or lien including, without limitation, mechanic's and materialmen's liens, judgments and other encumbrances which may be satisfied by the payment of money and (ii) any matters created by or at the direction of Seller after the Effective Date.

6. Representations and Warranties.

a. Seller represents and warrants to and covenants with Purchaser that, as of the Effective Date and as of Closing:

(i) Seller has the power to enter into this Agreement and to execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder, and neither the execution or delivery of this Agreement, nor the consummation of the purchase and sale contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions or provisions of any agreement or instrument to which Seller, or any partner or related entity or affiliate of Seller, is a party or by which Seller, or any partner or related entity or affiliate of Seller, or any of Seller's assets is bound.

(ii) There are no legal or administrative actions or proceedings pending or to Seller's actual knowledge, threatened with respect to the ownership or operation of the Property.

(iii) There are no sale contracts, options to lease or purchase or rights of first refusal made or granted by Seller granting to any other person or entity the right to acquire all or any portion of the Property.

(iv) Seller has no knowledge of and has not received notice:

(1) from any federal, state, or county authority alleging any violation of fire, safety, building or zoning law in respect of the Property or any part thereof which has not otherwise been remedied;

(2) from any federal, state or county authority concerning the possible or anticipated condemnation of any part of the Property, or the widening, change of grade or limitation on use of streets abutting the same; or

(3) from any insurance company or bonding company of any defects or inadequacies in the Property or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges therefor or of any termination or threatened termination of any policy of insurance or bond.

(v) There are no leases or other agreements in effect that would provide any tenant or other third party with any possessory rights in the Property and the Property shall be conveyed to Purchaser at Closing free and clear of any and all leases or other such possessory rights except for the Post Closing Lease Agreements (defined herein).

(vi) There are no agreements or understandings (whether written or oral) entered into by Seller relating to the Property that are the obligation of the owner of the Property that shall survive the Closing, except for the Permitted Exceptions.

(vii) To Seller's knowledge, other than as disclosed in this Section 6(g) or on Schedule 6(g): (i) there are no hazardous substances stored, generated, used, processed or disposed of or released or discharged from (including ground water contamination) the Property, and (ii) no above or underground storage tanks exist on, or have been removed from, the Property. Seller has not received written notice regarding and Seller has no knowledge of any violation of environmental laws related to the Property or the presence or release of hazardous materials on, from or bordering the Property. Notwithstanding anything herein to the contrary, Purchaser acknowledges that there was previously an underground fuel storage tank on the Property which was removed from the Property in accordance with applicable laws. In connection with such removal, Seller obtained a "No Further Action" letter for the Property from the Missouri Department of Natural Resources, a copy of which has been provided to Purchaser.

(viii) Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, (v) admitted in writing its inability to pay its debts as they come due, (vi) made an offer of settlement, extension or composition to its creditors generally and (vii) to Seller's actual knowledge, none of the foregoing are pending or threatened.

b. Purchaser represents and warrants to and covenants with Seller that, as of the Effective Date and as of Closing:

(i) Purchaser is a municipal subdivision of the State of Missouri and has duly authorized the execution and performance of this Agreement, and such execution and performance will not violate any material term of its constituent documents or any law.

(ii) The party executing this Agreement on behalf of Purchaser has the full power and authority to enter into and perform this Agreement on behalf of Purchaser and the person executing this Agreement has been duly authorized to do so on behalf of Purchaser.

If, prior to the Closing Date, Seller obtains knowledge of a fact or circumstance the existence of which would constitute a breach by Seller of its representations and warranties hereunder or would render any such representations and warranties untrue or incorrect, Seller shall promptly notify Purchaser in writing of the same.

All representations and warranties made herein shall be deemed remade as of Closing and shall be true and correct in all material respects as of the Closing Date, and shall survive Closing and execution and delivery of the Deed (as herein defined) for a period of 12 months, except that the same shall not expire as to any matter as to which Purchaser has given written notice to Seller prior to expiration of said 12-month period.

7. Closing. The conveyance of the Property to Purchaser, or Purchaser's nominee, and the payment of the Purchase Price to Seller ("Closing") shall occur in escrow through the offices of the Title Company fifteen not later than (15) days after the expiration of the Contingency Period or such earlier date as approved in writing by both Seller and Purchaser ("Closing Date"). In the event that Purchaser, or Purchaser's nominee, fails to buy the Property from Seller pursuant to this Agreement on or prior to the Closing Date for any reason other than (i) a Seller Default hereunder, or (ii) a termination of this Agreement by Purchaser due to Purchaser being unable to obtain financing on commercially reasonable terms, or (iii) a termination of this Agreement by Purchaser due to Purchaser being unable to obtain a Title Commitment or Title Policy reasonably acceptable to Purchaser or the Seller's failure to satisfy the other conditions precedent to Closing as required by Section 4(b), or (iv) a termination of this Agreement by Purchaser due to environmental issues which Seller fails to cure after notice and demand for same by Purchaser, then such failure shall be deemed a Purchaser Default hereunder and, pursuant to Section 13(a), Seller shall be entitled, as its sole and exclusive remedy, to terminate this Agreement and retain the Earnest Money paid by Purchaser as liquidated damages, and neither party shall have any further rights or obligations hereunder. In the event of a termination by Purchaser due to any of items (i), (ii), (iii) or (iv) in the preceding sentence, the Earnest Money shall be refunded to Purchaser.

At Closing, the Property shall be conveyed to Purchaser, or Purchaser's nominee, by special warranty deed (the "Deed"), conveying good and marketable, fee simple title subject to no exceptions to title other than the Permitted Exceptions.

At Closing, Seller shall execute and deliver or cause to be executed and delivered such documents, closing statements, affidavits, searches, evidence of authority, declarations, lien waivers, certificates, or deposits as shall be customary, necessary or appropriate to complete the transaction and cause the issuance of the Title Policy with mechanic's lien coverage, certification of no parties in possession, and deletion of standard exceptions. At Closing, Seller shall deliver sole, exclusive physical possession of the Property free and clear of any possession or tenancy (subject to paragraph 20) to Purchaser in substantially the same condition as exists on the date of execution of this Agreement. At Closing, Seller shall also execute and deliver or cause to be executed and/or delivered:

a. Certification with respect to Seller's non-foreign status sufficient to comply with the requirements of Section 1445 of the Internal Revenue Code of the United States of America and all regulations applicable thereto.

b. Certification to Purchaser, or its nominee, that the representations and warranties contained in this Agreement shall be true, correct and complete in all material respects as of the Closing Date.

At Closing, Seller and Purchaser shall enter into the Post Closing Lease Agreements (defined herein).

8. Apportionments and Expenses. At and as of the Closing, Seller and Purchaser shall adjust for and apportion all expenses with respect to the Property including, without limitation, adjustments and apportionments with respect to real estate taxes; provided, however, that pursuant to the Post Closing Lease Agreements, all such taxes

after the Closing shall be paid by Seller during such term. All expenses accrued prior to and on the Closing Date shall be paid by Seller (including any real estate taxes applicable to any period prior to Closing, regardless of when assessed or levied, and including all special assessments affecting the Property, including installments thereof due after Closing), and all expenses with respect to the Property accruing after the Closing Date shall be paid by Purchaser. Notwithstanding the foregoing, if the Property is subject to any special assessments, Purchaser may elect to take title to the Property subject to the unpaid balance of any such special assessments and receive a credit against the Purchase Price in respect thereof. Real estate taxes for which Seller is responsible and special assessments which are not paid prior to Closing shall be paid by means of a credit to Purchaser against the Purchase Price. If the amount of any real estate taxes to be adjusted is not ascertainable at the time of Closing, the adjustment thereof shall be based on the most recent ascertainable real estate taxes. If any real estate tax bill relating to the Property also relates to other property, the portion thereof applicable to the Property shall be determined by comparing the acreage and improvements of the portion of the Property covered by such bill with the total acreage and improvements covered by such bill.

Seller shall pay for (i) all expenses in connection with the payment of any encumbrances and recording costs to release any encumbrances which Seller elects or is obligated to release or satisfy hereunder, (ii) any and all transfer tax and/or documentary stamp tax on the transfer of the Property, (iii) costs to record the deed; (iv) Seller's attorneys' fees, and (v) one-half of any escrow and closing fees charged by the Title Company. Purchaser shall be responsible to pay for (i) the premium for the Title Policy insuring Purchaser in the amount of the Purchase Price, (ii) costs of recording any loan documents related to financing arranged by Purchaser, (iii) the cost of Purchaser's survey, (iv) Purchaser's attorneys' fees, (v) one-half of any escrow and closing fees charged by the Title Company, and (vi) Purchaser's expenses for tests and inspections. Any other costs and expenses not specifically provided herein, if any, shall be paid in accordance with local custom.

9. Eminent Domain/Casualty. At all times prior to the Closing, the entire risk of loss or damage to the Property by fire or other casualty is and shall be borne and assumed by Seller. If prior to the Closing all or any part of the Property is damaged as the result of fire or other casualty or becomes subject to condemnation or eminent domain from an entity having condemnation powers (but excluding Purchaser), either Party shall have the right to elect to terminate this Agreement immediately by delivering written notice to the other party within 10 days of the date of the event of casualty or proposed condemnation; and upon such termination, all of the insurance proceeds and condemnation award shall be and remain the property of the Seller, and neither party shall have any further liability to the other, except that Purchaser shall receive a full refund of the Earnest Money. Should both Purchaser and Seller fail to terminate this Agreement, then (i) the Parties shall proceed to Closing, and (ii) Seller shall pay to Purchaser, as applicable, all condemnation proceeds and all insurance proceeds and pay to Purchaser Seller's deductible applicable to the Property, and Seller shall assign to Purchaser all such insurance proceeds and condemnation awards. During the existence of this Agreement, Seller shall not settle any fire or casualty loss claims without obtaining Purchaser's prior consent in each case. Seller shall notify Purchaser immediately in writing of the occurrence of any casualty or any condemnation proceedings.

10. Covenants of Seller. Prior to the Closing Date, Seller shall (a) maintain the Property in accordance with its ordinary and usual business practices and the requirements of applicable laws; (b) maintain fire and extended coverage insurance on the Property which is at least equivalent in all material respects to the insurance policies covering the Property as of the Effective Date; (c) not create any mortgage, lien, pledge, easement, restriction or other encumbrance in any way affecting the Property, nor otherwise lease or convey any interest in the Property; (d) not commit any waste or nuisance upon the Property; and (e) not enter into any contracts or agreements pertaining to the Property. Seller and Purchaser shall advise one another in writing of any written notices received concerning the Property, including, without limitation, notices from any appraisal districts, taxing authorities, or any governmental agency having jurisdiction over the Property, and of litigation, arbitration, or administrative hearings (whether actual or threatened) concerning the Property. In addition, Seller shall promptly provide Purchaser with copies of any updates to information regarding the Property previously provided by Seller, received by Seller or to which Seller has knowledge. Seller shall notify Purchaser during the Contingency Period of all service contracts with respect to the Property, if any, which extend beyond the Closing Date and which are not terminable by Purchaser on no more than thirty (30) days' notice, without any liability to Purchaser.

11. Confidentiality. Prior to Closing, Purchaser and Seller agree that all of the terms, conditions and provisions of this Agreement shall be held in strict confidence; provided, however, Purchaser and Seller shall each have the right to disclose such information (i) as required by law, (ii) to Purchaser's or Seller's officers, lenders,

attorneys, consultants and agents which have been engaged by Purchaser (or a prospective assignee of Purchaser) or Seller to assist with the evaluations of the financing, terms, conditions and provisions contemplated under this Agreement, (iii) as may be necessary to obtain any Approvals pursuant to Section 12 hereof, (iv) to any prospective assignees, (v) as mutually agreed by the parties; and (vi) in connection with the Concurrent Transaction to the extent required or desired to fulfill such Concurrent Transaction. The provisions of this Section shall survive the termination of this Agreement but shall not survive Closing. Further, Seller and Purchaser agree that no party will make a public announcement of the transaction contemplated hereby or the terms hereof without the prior written consent of the other party (except as required with respect to the Closing or any legal requirements).

12. Approvals. At all times during the Contingency Period, Purchaser shall have the right to seek and obtain all approvals necessary for any proposed use and development of the Property, including without limitation, commitments for financing as desired by Purchaser, final, non-appealable governmental approvals, and entitlements for Purchaser's or any prospective assignee's proposed development of the Property as Purchaser determines are necessary and appropriate (collectively, the "Approvals"). Approvals include, without limitation, governmental and quasi-governmental approvals for changes to zoning (including special use permits, variances, etc.); site plan approvals; approvals by architectural review boards; wetlands mitigation permits; establishment of special taxing and/or financing districts; planned development approvals; subdivision approvals; waivers or approvals of parties pursuant to applicable protective covenants; and/ or approvals with respect to requirements of local, state or federal governments, or any agency thereof, or any public utility or transportation authority, all at Purchaser's sole cost and expense. Seller agrees to reasonably cooperate in connection with Purchaser's efforts to obtain the Approvals (including, without limitation, joining in the execution of applications and related materials) provided that the Approvals and any applications for the same result in no material cost to Seller and do not bind or in any way obligate Seller should the Closing contemplated herein not occur.

13. Default.

a. If Purchaser defaults with respect to Purchaser's obligations hereunder and Purchaser fails to cure such default within ten (10) days after written notice from Seller to Purchaser (except a failure to complete Closing as required hereunder in which event no cure period will apply) (each, a "Purchaser Default"), then Seller shall be entitled, as its sole and exclusive remedy, to terminate this Agreement and retain the Earnest Money paid by Purchaser as liquidated damages, and neither party shall have any further rights or obligations hereunder.

b. If Seller defaults with respect to Seller's obligations hereunder and Seller fails to cure such default within ten (10) days after written notice from Purchaser to Seller (except for a failure to complete Closing as required hereunder in which event no cure period shall apply) (each, a "Seller Default"), then Purchaser shall be entitled as Purchaser's sole remedy to terminate this Agreement in which event Purchaser shall receive an immediate refund of the Earnest Money.

c. The terms of Section 13(a) and 13(b) shall not apply to any indemnity obligation of either party hereunder, terms hereunder which survive Closing, or terms hereunder which survive termination of this Agreement and the parties hereto retain all rights and remedies available at law or equity relating to breach of such provisions.

d. Notwithstanding anything contained herein to the contrary, if either party shall bring suit against the other to enforce the terms of this Agreement, the losing party shall pay to the prevailing party the prevailing party's costs and expenses, including reasonable attorneys' fees. The terms of this Section 13(d) shall survive termination of this Agreement or Closing.

14. Notices. All notices and demands herein required shall be in writing and shall be sent by United States Certified Mail return receipt requested, personal delivery, overnight courier (guaranteeing next day delivery), or email:

a. To Seller:

Sabada Properties, LLC
c/o David Sabada

545 Leffingwell Ave
Kirkwood MO 63122
Email: d_sabada@a-mrazek.com

Copy to: Jason Kinser
Affinity Law Group, LLC
1610 Des Peres Rd, Suite 100
St Louis, MO 63131
Email: jkinser@affinitylawgrp.com

b. To Purchaser:

City of Kirkwood
39 S. Kirkwood Road
Kirkwood, MO 63122
Attn: Russell Hawes
Email: Hawesrb@kirkwood.org

Copy to:
John Hessel, Esq.
Lewis Rice LLC
600 Washington Avenue, Suite 2500
St. Louis, MO 63101
Email: jhessel@lewisrice.com

All notices shall be deemed given two (2) business days following deposit in the United States mail with respect to a certified or registered letter, one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery or on the same day if sent by personal delivery or email. Attorneys for each party may give notices for such party. Any party may change its address for the service of notice by giving written notice of such change to the other party, in the manner above specified.

15. Brokers. Purchaser and Seller each represents and warrants to the other that it has not dealt with any person or entity entitled to a brokerage commission, finder's fee or other compensation with respect to the transaction contemplated. Purchaser hereby agrees to indemnify, defend, and hold Seller harmless from and against any losses, damages, costs and expenses (including, but not limited to, attorneys' fees and costs) incurred by Seller by reason of any breach or inaccuracy of the Purchaser's (or its nominee's) representations and warranties contained in this Section 15. Seller hereby agrees to indemnify, defend, and hold Purchaser harmless from and against any losses, damages, costs and expenses (including, but not limited to, attorneys' fees and costs) incurred by Purchaser by reason of any breach or inaccuracy of Seller's representations and warranties contained in this Section 15. The covenants and agreements set forth in this Section 15 shall survive termination of this Agreement or Closing.

16. As-Is. Purchaser acknowledges that except as expressly set forth in this Agreement and in any documents executed by Seller in connection with this Agreement, Purchaser is acquiring the Property in its "as is" condition. Except for the warranties and representations expressly set forth in this Agreement and in any documents executed by Seller in connection with this Agreement and conveyance of the Property, such sale and purchase shall be without any representation or warranty of any kind, express or implied, and Seller disclaims any other representation or warranty. Nothing herein contained shall diminish any representation, warranty, covenant, undertaking, indemnity or other agreement of Seller in this Agreement or in any documents executed by Seller in connection with this Agreement.

17. Assignment. Purchaser shall have the right, without Seller's consent, to assign its entire right, title and interest in and to this Agreement, expressly including the Earnest Money; provided that prior to Closing, Seller receives an executed assignment and assumption agreement, in commercially reasonable form, which expressly assigns the Earnest Money and in which such assignee expressly assumes performance of this Agreement. No such assignment or designation shall relieve or release Purchaser from any obligations under this Agreement.

18. Tax Deferred Exchange. Either party, through the use of a qualified intermediary, may transfer or acquire the Property through a tax free exchange, deferred exchange or reverse exchange of real property pursuant to Section 1031 of the Internal Revenue Code; provided, however (i) in no event shall any such exchange, or the exchanging party's inability to complete any such exchange, impair or otherwise affect the Closing Date, (ii) the non-exchanging party shall have no obligation or liability to the exchanging party or any other person or entity in any respect for any matters in connection with any such exchange other than payment of the Purchase Price in exchange for the conveyance to Purchaser of fee simple title to the Property by deed subject only to those matters permitted under this Agreement, and (iii) the exchanging party shall indemnify and hold the non-exchanging party harmless from and against any claims, actions, liability and expense in connection with each such exchange.

19. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Time is of the essence of this Agreement. If the time for performance of any obligations or satisfaction of any condition hereunder falls on a Saturday, Sunday or a day which is a Missouri state or federal holiday, the time for performance of such obligations or satisfaction of such condition shall be extended to the next day which is not a Saturday, Sunday or Missouri state or federal holiday. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. The respective parties hereto shall and hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, or for the enforcement of any remedy under any statute, emergency or otherwise. The parties each agree to do, execute, acknowledge and deliver any and all other documents and instruments and to take all such further action before or after the Closing as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transaction contemplated hereby. This Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signatures to counterparts may be delivered by facsimile or other electronic transmission, and such signatures shall have the same force and effect as originals.

20. Post-Closing Possession. At Seller's election, Seller may remain in possession of the Property after Closing for a period not to exceed Seven Hundred Thirty (730) days. Such post-closing possession shall be subject to that certain Post-Closing Lease in form attached hereto as Exhibit B (the "Post Closing Lease Agreement"), which will be executed by Seller and Purchaser if Seller does not provide full possession of the Property to Purchaser at Closing.

[Signatures on Next Page]

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement as of the Effective Date.


PURCHASER:

City of Kirkwood

By: _____

SELLER:

Sabada Properties, LLC

By: 
Name: David Sabada
Title: President

This Agreement Includes the Following Exhibits:

- Exhibit A - Description
- Exhibit B - Post Closing Lease
- Schedule 6(g)

ESCROW AGENT JOINDER

Escrow Agent hereby executes this Agreement for the sole purpose of acknowledging receipt of the Earnest Money and its responsibilities hereunder and to evidence its consent to serve as Escrow Agent in accordance with the terms of this Agreement.

ESCROW AGENT:

St. Louis Title, LLC

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

EXHIBIT A

Legal Description

EXHIBIT A

Legal Description

Lot A of the Consolidation Plat of part of Lots 66 and 67 of East Kirkwood, according to the plat thereof recorded in Plat Book 348 page 616 of St. Louis County Records.

Address: 545-47 Leffingwell Avenue
 516 S Elliott Avenue

Locator Number: 24M 240 172
 24M 240 161

The above description is subject to confirmation by the title commitment and survey.

EXHIBIT B

Post-Closing Lease

Attached

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "*Lease*") is made as of the ___ day of _____, 202__ (the "*Commencement Date*") by and between the City of Kirkwood ("*Landlord*") and SABADA PROPERTIES, LLC, a Missouri limited liability company ("*Tenant*").

RECITALS

WHEREAS, on the Commencement Date, *Landlord* has purchased from *Tenant*, and *Landlord* is the current owner of, the Property (as subsequently defined herein) located at 516 S Elliot Ave. and 545-547 Leffingwell Ave., St. Louis, Missouri, 63122, and

WHEREAS, pursuant to that certain Purchase Agreement between *Landlord* and *Tenant* dated as of _____, 2023 (the "*Purchase Agreement*"), *Landlord* has agreed to lease the Property to *Tenant* on the terms and conditions set forth herein (the "*Lease*").

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. RECITALS.** The parties agree that the Recitals to this Lease are true and correct and hereby incorporate them by reference into this Lease.
- 2. DEMISED PREMISES.** Pursuant to the terms and provisions in this Lease, *Landlord* hereby leases to *Tenant*, and *Tenant* hereby leases from *Landlord*, that certain real property consisting of approximately 9.00 acres and located at: **516 S Elliot Ave. and 545-547 Leffingwell Ave., St. Louis, Missouri, 63122** and described on Exhibit A attached hereto and made a part hereof, together with all improvements thereon including a building containing approximately 83,570 square feet (the "*Building*"), and all improvements, easements, rights, privileges, servitudes and appurtenances thereunto belonging or appertaining, including all right, title and interest of *Landlord*, if any, in and to the streets, alleys, and rights-of-way adjacent thereto (collectively, the "*Property*").
- 3. PERMITTED USES; COMPLIANCE WITH LAWS.** *Tenant* shall be permitted to use the Property for the limited purposes of conducting normal business operations in a manner consistent with *Tenant's* past practices (that is, operations as a storage and moving facility), and removing its personal property and trade fixtures therefrom (the "*Permitted Uses*"). *Tenant* shall not use the Property for any activity that violates any applicable laws, ordinances, requirements, orders, directives, codes, rules and regulations of the Federal, State, County and City governments and of all other governmental authorities affecting the Property (collectively, the "*Laws*" and individually, a "*Law*") or for any purpose other than the Permitted Uses. *Tenant* shall maintain all required governmental licenses and permits to use and operate the Property. During the Term, *Tenant*, at its expense, shall comply with all Laws applicable to *Tenant's* operations at and its use and occupancy of the Property; provided, however, that notwithstanding anything in this Lease to the contrary, *Tenant* shall have no duty to make any improvements or otherwise to perform any work or incur any cost related in whole or in part to any applicable building code or similar code deficiencies (including but not limited to any requirements imposed by the Americans with Disabilities Act or any similar state statutes and/or regulations dealing with persons with disabilities) which existed prior to the Commencement Date or which are due to any changes made in or to any applicable building code or similar code after the Commencement Date.
- 4. TERM.** The term of this Lease shall commence on the Commencement Date and, unless terminated earlier pursuant to the terms hereof, shall expire as of 11:59 p.m. on the first anniversary of such Commencement Date (the "*Initial Lease Term*"). Provided *Tenant* is then in compliance with the

provisions of this Lease, Tenant shall have the option to extend the Term hereof for an additional three hundred sixty-five (365) days from and after expiration of the Initial Lease Term (the "*Renewal Lease Term*") by delivering notice of such extension to Landlord on or before the date which is sixty (60) days prior to expiration of the Initial Lease Term. The Renewal Lease Term, if exercised, shall be subject to the same terms and conditions as are applicable to the Initial Lease Term as set forth herein and all references herein to the "*Term*" shall be deemed to refer to the Initial Lease Term and the Renewal Lease Term, except (i) the Base Rent will increase as provided in Section 5 herein, and (ii) there shall be no further rights to extend the Lease Term. At any time during the Term, Tenant may terminate this Lease upon not less than thirty (30) days' prior written notice to Landlord. Landlord shall deliver possession of the Property to Tenant on the Commencement Date in an "AS IS" "WHERE IS" and "WITH ALL FAULTS" condition, without any representation or warranty, express or implied, whatsoever, including any warranty of fitness for a particular purpose or habitability, it being understood and agreed that Landlord hereby disclaims, and Tenant hereby waives, any and all such warranties. Except for Tenant's obligations set forth herein and except for Landlord's obligations as set forth in the Lease, neither Landlord nor Tenant shall have any obligation to perform any work at the Property. Upon termination by Tenant, Tenant shall deliver possession of the Property to Landlord broom clean in an "AS IS" "WHERE IS" and "WITH ALL FAULTS" condition, without any representation or warranty, express or implied, whatsoever, including any warranty of fitness for a particular purpose or habitability.

5. BASE RENT. During the Term, Tenant agrees to pay Landlord monthly base rent for the Property ("*Base Rent*") in the amount of Twenty-Six Thousand and 00/100 Dollars (\$26,000.00) during the Initial Lease Term and Fifty Thousand and 00/100 Dollars (\$50,000.00) per month during the Renewal Lease Term; provided, however, the foregoing Base Rent is subject to change as more fully described in Section 15 herein. Base Rent shall be payable by Tenant to Landlord in advance on the first (1st) day of each and every calendar month during the Term without notice or demand. Payments for any partial month shall be pro-rated on the basis of the number of days in such month.

6. TAXES; UTILITIES. As additional rent, Tenant shall be responsible for all costs and expenses for or related to real estate taxes (only if Landlord is subject to such taxes) and assessments, insurance (except as set forth herein), utilities and regular maintenance and repairs of the Property during the Term in accordance with the terms set forth herein. Tenant shall pay directly for all insurance (other than as set forth in Section 9 hereof), utilities, regular maintenance and repair expenses, and taxes assessed against Tenant's personal property. All amounts payable by Tenant under this Lease, whether directly to Landlord or to a third party, are defined as "*Additional Rent*" and "*Rent*" is the aggregate of Base Rent and Additional Rent. All taxes for which Tenant is liable under this Lease shall be paid to the applicable taxing authority at least ten (10) days before delinquency, and copies of receipted paid tax bills shall be delivered to Landlord before delinquency.

7. MAINTENANCE. Landlord shall not have any obligation whatsoever to maintain, repair or replace all or any portion of the Property or provide any services related thereto during the Term. In the event Tenant or any of Tenant's sublessees, employees, agents, invitees or contractors causes any material damage (beyond normal wear and tear) to the Property, or any part thereof, Tenant shall cause such damage to be repaired. Tenant may, in its sole and absolute discretion, but shall not be obligated to, make any replacements of the roof or structural elements of the buildings located on the Property and may, in its sole and absolute discretion, but shall not be obligated to, maintain, repair or replace any portion of the Property, including any of the buildings or building systems (other than repairs necessitated solely by Tenant's occupancy, or damage intentionally caused by Tenant or its employees, agents, invitees or contractors, all of which are Tenant's obligation). For avoidance of doubt, neither Landlord nor Tenant are required to maintain, repair, clean, alter, or improve the Property, or to provide any services to the Property and, if any system or item needs repair to keep it operating or in substantially the same condition as when the Term commenced, Tenant shall make the determination whether it is necessary to make all such repairs. If Tenant

elects to make a repair, then it shall be at its sole cost. If Landlord elects to make the repair, then it shall be at Landlord's sole cost.

8. ALTERATIONS; LIENS. Unless otherwise provided in this Lease, Tenant shall make no structural alterations or material improvements to the Property without giving prior written notice to Landlord. Tenant shall pay when due all sums of money that become due for any labor, services, materials, supplies or equipment furnished to or for Tenant at Tenant's request, or upon its account, in, upon, or about the Property and which may be secured by any mechanic's, materialmen's or other lien against the Property and/or Landlord or Landlord's interest therein or any claim against Landlord. Tenant will cause any such lien to be fully discharged and released within twenty (20) days after the filing thereof or will post a bond or other security acceptable to Landlord to secure the discharge of the same. Tenant's obligations under this Section 8 will survive the expiration or earlier termination of this Lease.

9. INSURANCE. At no cost to Landlord, Tenant shall maintain at all times during the Term: (i) property and casualty insurance on the building covering risks and peril and commercial property insurance covering the full replacement cost of the building as well as Tenant's personal property, equipment, fixtures and any of Tenant's other property located at the Property, including but not limited to all furniture, business and trade fixtures; vehicles, inventory, stored property, and equipment in such amounts as Tenant carried on the property prior to Closing; (ii) commercial general liability insurance, including contractual liability, the amount of which policy shall not be less than One Million Dollars (\$1,000,000.00) per single occurrence, and Two Million Dollars (\$2,000,000) general aggregate; (iii) worker's compensation insurance as required by applicable law; and (iv) commercial automobile liability insurance including coverage for owned, non-owned and hired vehicles with minimum limits of liability of not less than \$1,000,000 combined single limit for bodily injury and property damage claims. All such insurance shall be issued by an insurance company or companies authorized to do business in Missouri and reasonably acceptable to Landlord; and shall be primary and non-contributing with any insurance coverage carried by Landlord. Tenant's policies shall list Landlord and such other parties as Landlord may designate as additional insureds (excluding the worker's compensation policy, if any). Tenant shall deliver to Landlord certificates of or, upon request, copies of the insurance policies required to be maintained by Tenant hereunder, on or before the Commencement Date and annually thereafter. Landlord and Tenant shall be additional insureds on such policy of property insurance. All insurance policies of Tenant shall have deductibles or self-insurance retention acceptable to Landlord. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to maintain any coverage in addition to – or any coverage with limits higher than – the coverage and limits carried by Tenant on the Property prior to the Commencement Date.

10. INDEMNIFICATION AND RELEASE. Tenant shall defend, indemnify and hold harmless Landlord, its officers, employees, representatives, and agents (collectively, the "*Landlord Affiliates*") for, from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation) (collectively, "*Claims*"), of any kind of any person or entity, to the extent arising out of, caused by, or resulting from (1) Tenant's use or occupancy of the Property during the Term, (2) any breach or default in the performance of any of Tenant's obligations under this Lease, (3) any act, omission, negligence or willful misconduct of Tenant's or any of its agents, contractors, employees, invitees or licensees during the Term (including acts, omissions, negligence or willful misconduct which causes a breach of the Lease by Landlord), and (4) any damage to Landlord's or Landlord's property or to the property of Landlord or Landlord's agents, employees, contractors, business invitees or licensees located in or about the Property sustained during the Term, except to the extent caused by the gross negligence or willful misconduct of Landlord affiliates. Tenant agrees that Landlord shall not be liable for, and Tenant hereby releases Landlord and the Landlord Affiliates, from any and all Claims and injury, loss or damage suffered by Tenant during the Term or to any person or property occurring or incurred in or about the Property from any cause whatsoever during the Term (except to the extent caused, in whole

or in part, by the negligence or willful misconduct of Landlord or the Landlord Affiliates), including, without limitation, for (i) loss of or damage to any property by theft or any other wrongful or illegal act, or (ii) any injury or damage to persons or property resulting from fire, explosion, flood, earthquake, falling plaster, steam, gas, electricity, wind, water or rain which may leak from any part of the building or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness, or (iii) any defect in or at the Property. This Section 10 shall survive the expiration or earlier termination of this Lease. Landlord hereby agrees to indemnify, protect, defend, and hold harmless Tenant and any of Tenant's officers, partners, employees, representatives, agents, and affiliates, for, from and against (a) all Claims brought by or on behalf of any person or persons for damage, loss or expense due to, but not limited to, bodily injury or property damage sustained by such person or persons to the extent arising out of, or occasioned by, the gross negligent or willful acts or omissions of Landlord or the Landlord Affiliates; and (b) any liabilities or obligations incurred by or imposed on Tenant by Landlord which are not explicitly addressed in this Lease. Tenant shall have no obligations or liabilities with respect to the Property except as explicitly set forth or incorporated in this Lease. This Section 10 shall survive the expiration or earlier termination of this Lease.

11. HAZARDOUS SUBSTANCES. Tenant covenants and agrees that it shall not cause or permit any hazardous substances to be generated, used, treated, stored, released or disposed of in, on, at, or under the Property during the Term, except those used in connection with the Permitted Uses of the Property (which are only the following substances: _____ and then only in strict compliance with all applicable Laws. Tenant further covenants and agrees to indemnify Landlord for any Claim (including without limitation, attorneys' fees), as well as environmental impairment damages, to the extent arising from any hazardous substances caused or permitted by Tenant to be generated, used, treated, stored, released or disposed of in, at, or under the Property during the Term (except to the extent any such hazardous substances were present upon the Property prior to the Commencement Date), this indemnification to survive the expiration or other termination of this Lease. For purposes of this Section 11, "hazardous substances" means and refers to all those substances, elements, materials, compounds, or wastes defined or classified as hazardous or toxic or restricted under any Law of any federal, state or local governmental entity, agency or department, whether now or later enacted, including, without limitation, petroleum products, waste oils, asbestos, and PCBs.

12. DAMAGE AND DESTRUCTION. If, during the first eighteen (18) months following the Commencement Date of this Lease, the Property and/or the Building is damaged by fire or other casualty (any of which is a "Casualty") and the Property and/or the Building (or any material portion thereof) cannot be used by Tenant for the Permitted Uses, then Tenant shall have the right to either (a) terminate this Lease on not less than thirty (30) days' written notice to the Landlord, in which case, all insurance proceeds for such Casualty shall be assigned or paid to Landlord and Tenant shall pay Landlord the deductible for such insurance, or (b) elect, at Tenant's sole and absolute discretion, to repair the damage to substantially the same condition as existed prior to the Casualty using the proceeds of any and all insurance policies on the Property and/or the Building in force at such time or which would be available if Tenant had complied with its obligations in Section 9. If, during the final six (6) months of the Renewal Lease Term, the Property and/or the Building is damaged by any Casualty and the Property and/or the Building (or any material portion thereof) cannot be used by Tenant for the Permitted Uses, then either party may terminate this Lease on not less than thirty (30) days' written notice to the other party, in which case, all insurance proceeds for such Casualty shall be assigned or paid to Landlord, and Tenant shall pay Landlord the deductible for such insurance. In any event, Tenant shall be entitled to receive the entire insurance proceeds payable as a result of any damage to Tenant's personal property, furniture, fixtures or equipment located on or about the Property.

13. CONDEMNATION. If all or part of the Property shall be taken or condemned by a competent authority (other than Landlord) for a public or quasi-public use or purpose or if there is a negotiated purchase by such authority under threat of a taking (collectively, a "Taking"), this Lease shall terminate as

to the portion of the Property so taken. In the event of any Taking, Landlord (but subject to the requirements of the Lease) shall be entitled to the entire condemnation award, regardless of whether this Lease is terminated in accordance with this Section 13, except that Tenant shall be entitled to any separate award allocated by the condemning authority to Tenant's trade fixtures, personalty and moving expenses, provided such award does not diminish Landlord's award. Notwithstanding anything herein to the contrary, the parties acknowledge that (so long as this Lease is in full force and effect) the Lease prohibits Landlord from initiating any Taking against the Property and, in the event a third party initiates a Taking, Landlord is required to defend against said Taking in the ordinary course of Landlord's business and at Landlord's sole cost and expense.

14. DEFAULT. If any of the following events shall occur (each, a "*Default*"): (i) Tenant fails to pay any amount due as Rent or Additional Rent hereunder and such failure continues for ten (10) days after the delivery of written notice from Landlord; or (ii) Tenant fails to perform any other obligation under this Lease or the Lease and the failure continues for thirty (30) days after written notice from Landlord (or, if such failure cannot reasonably be cured within such thirty (30) day period, such additional time as is reasonably required to correct any such failure, provided Tenant has commenced such cure within thirty (30) days of written notice and is diligently pursuing same to completion), or (iii) Tenant shall vacate the Property or a substantial portion thereof, then Tenant shall be in Default hereunder and Landlord may exercise any rights or remedies available hereunder or at law or in equity, including, without limitation, if the Default is pursuant to Section 14(i) hereof, termination of the Term of this Lease, re-entry and termination of Tenant's right to possession of the Property, and filing a claim seeking damages, and if the Default is pursuant to any section other than Section 14(i) hereof, filing a claim seeking damages, it being the intent of the parties that Landlord shall only have the right to terminate this Lease, re-enter, and terminate Tenant's right to possession if Tenant's Default is the uncured failure to pay Landlord Rent or Additional Rent as and when due.

If Tenant Defaults under Section 14(i), above, Landlord may, without terminating this Lease, re-enter the Property and obtain possession of the Property. Tenant shall pay to Landlord until the end of the Term of this Lease the equivalent of the amount of all monthly installments of Rent and other charges required to be paid by Tenant under the terms of this Lease. Landlord need not wait until the termination of this Lease to recover the same by legal action or otherwise. No such re-entry by Landlord shall constitute an election to terminate this Lease unless and until Landlord thereafter gives Tenant notice of Landlord's election to terminate.

If Tenant shall be in Default of any payment or performing any act required to be made or performed by Tenant under this Lease, Landlord, without waiving or releasing any obligation or Default, may (but shall be under no obligation to), at any time, make the payment or perform the act for the account and at the expense of Tenant, and may enter upon the Property for that purpose and take all actions as may be necessary to correct Tenant's Default. Upon any such expiration or termination of Tenant's rights under this Lease pursuant to Section 14(i), Tenant shall quit and peacefully surrender the Property to Landlord, and Landlord, upon or at any time after such expiration or termination, may without further notice enter upon and re-enter the Property and possess and repossess itself thereof, by summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Property and may have, hold and enjoy the Property and the right to receive all income of and from the same. No such entry shall be deemed an eviction of Tenant. In the event of any termination of the Lease by Landlord pursuant to Section 14(i), this Lease shall automatically terminate, and Tenant shall immediately vacate the Property, provided, however, that if the termination of the Lease results from a Default by Tenant, Tenant shall remain liable for all damages incurred by Landlord arising from Tenant's default and the termination of the Lease. All provisions in this Section 14 shall survive the termination of the Lease.

15. ASSIGNMENT AND SUBLETTING. Tenant shall not be permitted to assign this Lease or enter into a sub-lease of the Property without Landlord's prior written consent, in each case, in Landlord's sole

discretion; provided, however, that if Tenant sells its moving and storage business to a third party (the "Buyer") during the Term, Tenant may, with at least thirty days' prior notice to Landlord, assign this Lease to such Buyer, on the conditions that (i) Tenant shall have fully complied with all its obligations under this Lease through the date of such assignment to Buyer, and (ii) such Buyer assumes in writing all obligations of Tenant under this Lease, including the Permitted Use. Base Rent payable by an assignee of Tenant's shall be the Base Rent in effect at the time of the assignment. Tenant shall provide written notice to Landlord representing all of items (i), (ii) and (iii) have been satisfied for the assignment to Buyer to be effective.

16. BINDING EFFECT. This Lease shall bind and inure to the benefit of the respective successors and permitted assigns of Landlord and Tenant.

17. SURRENDER; HOLDING OVER. Upon the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord the Property broom clean and otherwise in the same condition as delivered to Tenant on the Commencement Date, and the condition required to be maintained by Tenant herein, except for ordinary wear and tear and repair work Tenant is not so obligated to commence hereunder, and shall remove all of its trade fixtures, equipment and other personal property from the Property. Any damage caused by the removal of Tenant's trade fixtures, equipment or other personal property shall be repaired by Tenant at its expense. Tenant's failure to remove any improvements or personal property following the expiration or earlier termination of the Lease shall not constitute holding over. All personal property remaining at the Property at the expiration or earlier termination of this Lease shall be deemed abandoned by Tenant and may be disposed of by Landlord in its sole discretion, but at Tenant's cost and expense, and Tenant shall reimburse Landlord for such costs on demand. Tenant's obligations under this Section 17 shall survive the expiration or earlier termination of this Lease. If Tenant retains possession of the Property after the termination of the Term, such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease shall be applicable during such holdover period and Tenant shall be liable for (i) Rent equal to twice the Rent as of the last day of the Term, and (ii) in addition, all actual damages incurred by Landlord as a result of such holding over.

18. NOTICES. All notices, consents, demands and other communications required or permitted herein shall be in writing and shall be sent to the addresses listed below, or such other addresses as a party may from time to time direct to the other party in writing. A party may change its address for notices and consents by giving notice to the other party. Notices and consents may be delivered by email, personal delivery, a nationally recognized overnight delivery service, or U.S. Mail sent certified with return receipt requested, and are effective on the earlier of the date of delivery or the date of first attempt to deliver.

If to Landlord:

The City of Kirkwood
139 S. Kirkwood Road
Kirkwood, MO 63122
Attn: Russell Hawes
Email: Hawesrb@kirkwood.org

With copy to:

John Hessel, Esq.
Lewis Rice LLC
600 Washington Avenue, Suite 2500
St. Louis, MO 63101
Email jhessel@lewisrice.com

If to Tenant

Sabada Properties, LLC
545 Leffingwell Ave
Kirkwood, MO 63122
Attn: David Sabada
Email: d_sabada@a-mrazek.com

With copy to:

Jason Kinser, Esq.
Affinity Law Group, LLC
1610 Des Peres Rd, Suite 100
St. Louis, MO 63131
Email jkinser@affinitylawgrp.com

19. RIGHT OF ENTRY. Landlord and/or Landlord may, during Tenant's business hours, upon no less than forty-eight (48) hours' notice to Tenant, and accompanied by a representative of Tenant, bona fide emergencies excepted, enter the Property to examine its condition, to make any repairs Landlord deems necessary for the safety, preservation or improvement of the Property, or for any other commercially reasonable purpose, including taking measurements of the Property, provided that such activities do not interfere with Tenant's use and occupancy of the Property.

20. SIGNS. Any and all signs located at the Property as of the Commencement Date or during the Term hereof shall be maintained by Tenant in compliance with all applicable Laws. At the expiration or earlier termination of this Lease, Tenant shall remove or, if approved by Landlord, paint over (using a color acceptable to Landlord) all of its signs and shall repair any damages incidental to any such removal (including patching and filling of holes).

21. GOVERNING LAW; VENUE. This Lease shall be construed under the laws of the state of Missouri. The parties hereby agree and consent to submit any and all suits, actions or proceedings arising out of or relating to this Lease solely to the jurisdiction of the Circuit Court for St. Louis County, Missouri or the United States District Court for the Eastern District of Missouri. In addition to all other remedies, Landlord and Tenant are entitled to the restraint by injunction of all violations, actual, attempted or threatened of any covenant, condition or provision of this Lease.

22. ATTORNEY'S FEES. If an action or proceeding is commenced to enforce or interpret any provision hereof, the prevailing party as determined by a final court judgment shall be entitled to recover from the other party its reasonable attorney's fees and expenses. This Section 22 shall survive expiration or earlier termination of this Lease.

23. NONWAIVER. No waiver of any condition or covenant of this Lease by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant. No delay in enforcing any right or remedy accorded to a party, either by the terms hereof or by law, shall diminish or otherwise affect such right or remedy.

24. LIMITATION ON LANDLORD'S LIABILITY. As between Landlord and Tenant, Landlord's officers, agents and employees and the successors or assigns of any of them will have no personal liability as to any of the obligations of Landlord under this Lease. Anything in this Lease to the contrary notwithstanding, Tenant agrees that Tenant shall look solely to the estate of Landlord in the Property for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be observed or performed by Landlord, and that no other assets of Landlord are subject to levy, execution or other judicial process for the satisfaction of Tenant's claim.

25. COVENANT OF QUIET ENJOYMENT. Tenant, subject to the terms and provisions of this Lease, on payment of Rent and upon observing, keeping and performing all of the terms and provisions of this Lease on its part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold and enjoy the Property during the term hereof without hindrance or ejection by any persons lawfully claiming under Landlord. During the Term of this Lease, Landlord shall not have the right to occupy or otherwise use any part of the Building or Property.

26. MISCELLANEOUS. This Lease, and any exhibits hereto set forth the entire agreement between Landlord and Tenant concerning Tenant's occupation and use of the Property during the Term, and there are no other agreements, either oral or written, between them regarding same. No amendment or modification to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and executed by both parties. This Lease is the joint product of the parties and, in the event of any ambiguity herein, no inference shall be drawn against a party by reason of document preparation. Landlord and Tenant shall not, by virtue of this Lease, in any way or for any purpose, be deemed to be a partner of each other in the conduct of Tenant's business upon, within or from the Property or otherwise, or a joint venturer or a member of a joint enterprise with each other. The captions and headings appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, or construe the scope or intent of such section or articles of this Lease. If any date hereunder falls on a Saturday, Sunday or legal holiday, such date shall automatically be extended until the next following business day. Time is of the essence of this Lease and of each and every one of the provisions hereof.

27. COUNTERPARTS. This Lease may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy of this Lease. For purposes of this Lease, a document (or signature page thereto) signed and transmitted by e-mail or other means of electronic transmission are to be treated as an original document. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the day and year shown opposite their respective signatures below.

LANDLORD:

City of Kirkwood

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

Sabada Properties, LLC,
a Missouri limited liability company

By: 

Name: David Sabada

Title: President

Date: 10/2/23

SCHEDULE 6(g)

None

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "*Lease*") is made as of the ____ day of _____, 202__ (the "*Commencement Date*") by and between the City of Kirkwood ("*Landlord*") and SABADA PROPERTIES, LLC, a Missouri limited liability company ("*Tenant*").

RECITALS

WHEREAS, on the Commencement Date, *Landlord* has purchased from *Tenant*, and *Landlord* is the current owner of, the Property (as subsequently defined herein) located at 516 S Elliot Ave. and 545-547 Leffingwell Ave., St. Louis, Missouri, 63122, and

WHEREAS, pursuant to that certain Purchase Agreement between *Landlord* and *Tenant* dated as of _____, 2023 (the "*Purchase Agreement*"), *Landlord* has agreed to lease the Property to *Tenant* on the terms and conditions set forth herein (the "*Lease*").

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. RECITALS.** The parties agree that the Recitals to this Lease are true and correct and hereby incorporate them by reference into this Lease.
- 2. DEMISED PREMISES.** Pursuant to the terms and provisions in this Lease, *Landlord* hereby leases to *Tenant*, and *Tenant* hereby leases from *Landlord*, that certain real property consisting of approximately 9.00 acres and located at: 516 S Elliot Ave. and 545-547 Leffingwell Ave., St. Louis, Missouri, 63122 and described on Exhibit A attached hereto and made a part hereof, together with all improvements thereon including a building containing approximately 83,570 square feet (the "*Building*"), and all improvements, easements, rights, privileges, servitudes and appurtenances thereunto belonging or appertaining, including all right, title and interest of *Landlord*, if any, in and to the streets, alleys, and rights-of-way adjacent thereto (collectively, the "*Property*").
- 3. PERMITTED USES; COMPLIANCE WITH LAWS.** *Tenant* shall be permitted to use the Property for the limited purposes of conducting normal business operations in a manner consistent with *Tenant*'s past practices (that is, operations as a storage and moving facility), and removing its personal property and trade fixtures therefrom (the "*Permitted Uses*"). *Tenant* shall not use the Property for any activity that violates any applicable laws, ordinances, requirements, orders, directives, codes, rules and regulations of the Federal, State, County and City governments and of all other governmental authorities affecting the Property (collectively, the "*Laws*" and individually, a "*Law*") or for any purpose other than the Permitted Uses. *Tenant* shall maintain all required governmental licenses and permits to use and operate the Property. During the Term, *Tenant*, at its expense, shall comply with all Laws applicable to *Tenant*'s operations at and its use and occupancy of the Property; provided, however, that notwithstanding anything in this Lease to the contrary, *Tenant* shall have no duty to make any improvements or otherwise to perform any work or incur any cost related in whole or in part to any applicable building code or similar code deficiencies (including but not limited to any requirements imposed by the Americans with Disabilities Act or any similar state statutes and/or regulations dealing with persons with disabilities) which existed prior to the Commencement Date or which are due to any changes made in or to any applicable building code or similar code after the Commencement Date.
- 4. TERM.** The term of this Lease shall commence on the Commencement Date and, unless terminated earlier pursuant to the terms hereof, shall expire as of 11:59 p.m. on the first anniversary of such Commencement Date (the "*Initial Lease Term*"). Provided *Tenant* is then in compliance with the

provisions of this Lease, Tenant shall have the option to extend the Term hereof for an additional three hundred sixty-five (365) days from and after expiration of the Initial Lease Term (the "**Renewal Lease Term**") by delivering notice of such extension to Landlord on or before the date which is sixty (60) days prior to expiration of the Initial Lease Term. The Renewal Lease Term, if exercised, shall be subject to the same terms and conditions as are applicable to the Initial Lease Term as set forth herein and all references herein to the "**Term**" shall be deemed to refer to the Initial Lease Term and the Renewal Lease Term, except (i) the Base Rent will increase as provided in Section 5 herein, and (ii) there shall be no further rights to extend the Lease Term. At any time during the Term, Tenant may terminate this Lease upon not less than thirty (30) days' prior written notice to Landlord. Landlord shall deliver possession of the Property to Tenant on the Commencement Date in an "AS IS" "WHERE IS" and "WITH ALL FAULTS" condition, without any representation or warranty, express or implied, whatsoever, including any warranty of fitness for a particular purpose or habitability, it being understood and agreed that Landlord hereby disclaims, and Tenant hereby waives, any and all such warranties. Except for Tenant's obligations set forth herein and except for Landlord's obligations as set forth in the Lease, neither Landlord nor Tenant shall have any obligation to perform any work at the Property. Upon termination by Tenant, Tenant shall deliver possession of the Property to Landlord broom clean in an "AS IS" "WHERE IS" and "WITH ALL FAULTS" condition, without any representation or warranty, express or implied, whatsoever, including any warranty of fitness for a particular purpose or habitability.

5. BASE RENT. During the Term, Tenant agrees to pay Landlord monthly base rent for the Property ("**Base Rent**") in the amount of Twenty-Six Thousand and 00/100 Dollars (\$26,000.00) during the Initial Lease Term and Fifty Thousand and 00/100 Dollars (\$50,000.00) per month during the Renewal Lease Term; provided, however, the foregoing Base Rent is subject to change as more fully described in Section 15 herein. Base Rent shall be payable by Tenant to Landlord in advance on the first (1st) day of each and every calendar month during the Term without notice or demand. Payments for any partial month shall be pro-rated on the basis of the number of days in such month.

6. TAXES; UTILITIES. As additional rent, Tenant shall be responsible for all costs and expenses for or related to real estate taxes (only if Landlord is subject to such taxes) and assessments, insurance (except as set forth herein), utilities and regular maintenance and repairs of the Property during the Term in accordance with the terms set forth herein. Tenant shall pay directly for all insurance (other than as set forth in Section 9 hereof), utilities, regular maintenance and repair expenses, and taxes assessed against Tenant's personal property. All amounts payable by Tenant under this Lease, whether directly to Landlord or to a third party, are defined as "**Additional Rent**" and "**Rent**" is the aggregate of Base Rent and Additional Rent. All taxes for which Tenant is liable under this Lease shall be paid to the applicable taxing authority at least ten (10) days before delinquency, and copies of receipted paid tax bills shall be delivered to Landlord before delinquency.

7. MAINTENANCE. Landlord shall not have any obligation whatsoever to maintain, repair or replace all or any portion of the Property or provide any services related thereto during the Term. In the event Tenant or any of Tenant's sublessees, employees, agents, invitees or contractors causes any material damage (beyond normal wear and tear) to the Property, or any part thereof, Tenant shall cause such damage to be repaired. Tenant may, in its sole and absolute discretion, but shall not be obligated to, make any replacements of the roof or structural elements of the buildings located on the Property and may, in its sole and absolute discretion, but shall not be obligated to, maintain, repair or replace any portion of the Property, including any of the buildings or building systems (other than repairs necessitated solely by Tenant's occupancy, or damage intentionally caused by Tenant or its employees, agents, invitees or contractors, all of which are Tenant's obligation). For avoidance of doubt, neither Landlord nor Tenant are required to maintain, repair, clean, alter, or improve the Property, or to provide any services to the Property and, if any system or item needs repair to keep it operating or in substantially the same condition as when the Term commenced, Tenant shall make the determination whether it is necessary to make all such repairs. If Tenant

elects to make a repair, then it shall be at its sole cost. If Landlord elects to make the repair, then it shall be at Landlord's sole cost.

8. ALTERATIONS; LIENS. Unless otherwise provided in this Lease, Tenant shall make no structural alterations or material improvements to the Property without giving prior written notice to Landlord. Tenant shall pay when due all sums of money that become due for any labor, services, materials, supplies or equipment furnished to or for Tenant at Tenant's request, or upon its account, in, upon, or about the Property and which may be secured by any mechanic's, materialmen's or other lien against the Property and/or Landlord or Landlord's interest therein or any claim against Landlord. Tenant will cause any such lien to be fully discharged and released within twenty (20) days after the filing thereof or will post a bond or other security acceptable to Landlord to secure the discharge of the same. Tenant's obligations under this Section 8 will survive the expiration or earlier termination of this Lease.

9. INSURANCE. At no cost to Landlord, Tenant shall maintain at all times during the Term: (i) property and casualty insurance on the building covering risks and peril and commercial property insurance covering the full replacement cost of the building as well as Tenant's personal property, equipment, fixtures and any of Tenant's other property located at the Property, including but not limited to all furniture, business and trade fixtures; vehicles, inventory, stored property, and equipment in such amounts as Tenant carried on the property prior to Closing; (ii) commercial general liability insurance, including contractual liability, the amount of which policy shall not be less than One Million Dollars (\$1,000,000.00) per single occurrence, and Two Million Dollars (\$2,000,000) general aggregate; (iii) worker's compensation insurance as required by applicable law; and (iv) commercial automobile liability insurance including coverage for owned, non-owned and hired vehicles with minimum limits of liability of not less than \$1,000,000 combined single limit for bodily injury and property damage claims. All such insurance shall be issued by an insurance company or companies authorized to do business in Missouri and reasonably acceptable to Landlord; and shall be primary and non-contributing with any insurance coverage carried by Landlord. Tenant's policies shall list Landlord and such other parties as Landlord may designate as additional insureds (excluding the worker's compensation policy, if any). Tenant shall deliver to Landlord certificates of or, upon request, copies of the insurance policies required to be maintained by Tenant hereunder, on or before the Commencement Date and annually thereafter. Landlord and Tenant shall be additional insureds on such policy of property insurance. All insurance policies of Tenant shall have deductibles or self-insurance retention acceptable to Landlord. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to maintain any coverage in addition to – or any coverage with limits higher than – the coverage and limits carried by Tenant on the Property prior to the Commencement Date.

10. INDEMNIFICATION AND RELEASE. Tenant shall defend, indemnify and hold harmless Landlord, its officers, employees, representatives, and agents (collectively, the "*Landlord Affiliates*") for, from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation) (collectively, "*Claims*"), of any kind of any person or entity, to the extent arising out of, caused by, or resulting from (1) Tenant's use or occupancy of the Property during the Term, (2) any breach or default in the performance of any of Tenant's obligations under this Lease, (3) any act, omission, negligence or willful misconduct of Tenant's or any of its agents, contractors, employees, invitees or licensees during the Term (including acts, omissions, negligence or willful misconduct which causes a breach of the Lease by Landlord), and (4) any damage to Landlord's or Landlord's property or to the property of Landlord's agents, employees, contractors, business invitees or licensees located in or about the Property sustained during the Term, except to the extent caused by the gross negligence or willful misconduct of Landlord affiliates. Tenant agrees that Landlord shall not be liable for, and Tenant hereby releases Landlord and the Landlord Affiliates, from any and all Claims and injury, loss or damage suffered by Tenant during the Term or to any person or property occurring or incurred in or about the Property from any cause whatsoever during the Term (except to the extent caused, in whole

or in part, by the negligence or willful misconduct of Landlord or the Landlord Affiliates), including, without limitation, for (i) loss of or damage to any property by theft or any other wrongful or illegal act, or (ii) any injury or damage to persons or property resulting from fire, explosion, flood, earthquake, falling plaster, steam, gas, electricity, wind, water or rain which may leak from any part of the building or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness, or (iii) any defect in or at the Property. This Section 10 shall survive the expiration or earlier termination of this Lease. Landlord hereby agrees to indemnify, protect, defend, and hold harmless Tenant and any of Tenant's officers, partners, employees, representatives, agents, and affiliates, for, from and against (a) all Claims brought by or on behalf of any person or persons for damage, loss or expense due to, but not limited to, bodily injury or property damage sustained by such person or persons to the extent arising out of, or occasioned by, the gross negligent or willful acts or omissions of Landlord or the Landlord Affiliates; and (b) any liabilities or obligations incurred by or imposed on Tenant by Landlord which are not explicitly addressed in this Lease. Tenant shall have no obligations or liabilities with respect to the Property except as explicitly set forth or incorporated in this Lease. This Section 10 shall survive the expiration or earlier termination of this Lease.

11. HAZARDOUS SUBSTANCES. Tenant covenants and agrees that it shall not cause or permit any hazardous substances to be generated, used, treated, stored, released or disposed of in, on, at, or under the Property during the Term, except those used in connection with the Permitted Uses of the Property (which are only the following substances: _____ and then only in strict compliance with all applicable Laws. Tenant further covenants and agrees to indemnify Landlord for any Claim (including without limitation, attorneys' fees), as well as environmental impairment damages, to the extent arising from any hazardous substances caused or permitted by Tenant to be generated, used, treated, stored, released or disposed of in, at, or under the Property during the Term (except to the extent any such hazardous substances were present upon the Property prior to the Commencement Date), this indemnification to survive the expiration or other termination of this Lease. For purposes of this Section 11, "hazardous substances" means and refers to all those substances, elements, materials, compounds, or wastes defined or classified as hazardous or toxic or restricted under any Law of any federal, state or local governmental entity, agency or department, whether now or later enacted, including, without limitation, petroleum products, waste oils, asbestos, and PCBs.

12. DAMAGE AND DESTRUCTION. If, during the first eighteen (18) months following the Commencement Date of this Lease, the Property and/or the Building is damaged by fire or other casualty (any of which is a "Casualty") and the Property and/or the Building (or any material portion thereof) cannot be used by Tenant for the Permitted Uses, then Tenant shall have the right to either (a) terminate this Lease on not less than thirty (30) days' written notice to the Landlord, in which case, all insurance proceeds for such Casualty shall be assigned or paid to Landlord and Tenant shall pay Landlord the deductible for such insurance, or (b) elect, at Tenant's sole and absolute discretion, to repair the damage to substantially the same condition as existed prior to the Casualty using the proceeds of any and all insurance policies on the Property and/or the Building in force at such time or which would be available if Tenant had complied with its obligations in Section 9. If, during the final six (6) months of the Renewal Lease Term, the Property and/or the Building is damaged by any Casualty and the Property and/or the Building (or any material portion thereof) cannot be used by Tenant for the Permitted Uses, then either party may terminate this Lease on not less than thirty (30) days' written notice to the other party, in which case, all insurance proceeds for such Casualty shall be assigned or paid to Landlord, and Tenant shall pay Landlord the deductible for such insurance. In any event, Tenant shall be entitled to receive the entire insurance proceeds payable as a result of any damage to Tenant's personal property, furniture, fixtures or equipment located on or about the Property.

13. CONDEMNATION. If all or part of the Property shall be taken or condemned by a competent authority (other than Landlord) for a public or quasi-public use or purpose or if there is a negotiated purchase by such authority under threat of a taking (collectively, a "Taking"), this Lease shall terminate as

to the portion of the Property so taken. In the event of any Taking, Landlord (but subject to the requirements of the Lease) shall be entitled to the entire condemnation award, regardless of whether this Lease is terminated in accordance with this Section 13, except that Tenant shall be entitled to any separate award allocated by the condemning authority to Tenant's trade fixtures, personalty and moving expenses, provided such award does not diminish Landlord's award. Notwithstanding anything herein to the contrary, the parties acknowledge that (so long as this Lease is in full force and effect) the Lease prohibits Landlord from initiating any Taking against the Property and, in the event a third party initiates a Taking, Landlord is required to defend against said Taking in the ordinary course of Landlord's business and at Landlord's sole cost and expense.

14. DEFAULT. If any of the following events shall occur (each, a "*Default*"): (i) Tenant fails to pay any amount due as Rent or Additional Rent hereunder and such failure continues for ten (10) days after the delivery of written notice from Landlord; or (ii) Tenant fails to perform any other obligation under this Lease or the Lease and the failure continues for thirty (30) days after written notice from Landlord (or, if such failure cannot reasonably be cured within such thirty (30) day period, such additional time as is reasonably required to correct any such failure, provided Tenant has commenced such cure within thirty (30) days of written notice and is diligently pursuing same to completion), or (iii) Tenant shall vacate the Property or a substantial portion thereof, then Tenant shall be in Default hereunder and Landlord may exercise any rights or remedies available hereunder or at law or in equity, including, without limitation, if the Default is pursuant to Section 14(i) hereof, termination of the Term of this Lease, re-entry and termination of Tenant's right to possession of the Property, and filing a claim seeking damages, and if the Default is pursuant to any section other than Section 14(i) hereof, filing a claim seeking damages, it being the intent of the parties that Landlord shall only have the right to terminate this Lease, re-enter, and terminate Tenant's right to possession if Tenant's Default is the uncured failure to pay Landlord Rent or Additional Rent as and when due.

If Tenant Defaults under Section 14(i), above, Landlord may, without terminating this Lease, re-enter the Property and obtain possession of the Property. Tenant shall pay to Landlord until the end of the Term of this Lease the equivalent of the amount of all monthly installments of Rent and other charges required to be paid by Tenant under the terms of this Lease. Landlord need not wait until the termination of this Lease to recover the same by legal action or otherwise. No such re-entry by Landlord shall constitute an election to terminate this Lease unless and until Landlord thereafter gives Tenant notice of Landlord's election to terminate.

If Tenant shall be in Default of any payment or performing any act required to be made or performed by Tenant under this Lease, Landlord, without waiving or releasing any obligation or Default, may (but shall be under no obligation to), at any time, make the payment or perform the act for the account and at the expense of Tenant, and may enter upon the Property for that purpose and take all actions as may be necessary to correct Tenant's Default. Upon any such expiration or termination of Tenant's rights under this Lease pursuant to Section 14(i), Tenant shall quit and peacefully surrender the Property to Landlord, and Landlord, upon or at any time after such expiration or termination, may without further notice enter upon and re-enter the Property and possess and repossess itself thereof, by summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Property and may have, hold and enjoy the Property and the right to receive all income of and from the same. No such entry shall be deemed an eviction of Tenant. In the event of any termination of the Lease by Landlord pursuant to Section 14(i), this Lease shall automatically terminate, and Tenant shall immediately vacate the Property, provided, however, that if the termination of the Lease results from a Default by Tenant, Tenant shall remain liable for all damages incurred by Landlord arising from Tenant's default and the termination of the Lease. All provisions in this Section 14 shall survive the termination of the Lease.

15. ASSIGNMENT AND SUBLETTING. Tenant shall not be permitted to assign this Lease or enter into a sub-lease of the Property without Landlord's prior written consent, in each case, in Landlord's sole

discretion; provided, however, that if Tenant sells its moving and storage business to a third party (the "Buyer") during the Term, Tenant may, with at least thirty days' prior notice to Landlord, assign this Lease to such Buyer, on the conditions that (i) Tenant shall have fully complied with all its obligations under this Lease through the date of such assignment to Buyer, and (ii) such Buyer assumes in writing all obligations of Tenant under this Lease, including the Permitted Use. Base Rent payable by an assignee of Tenant's shall be the Base Rent in effect at the time of the assignment. Tenant shall provide written notice to Landlord representing all of items (i), (ii) and (iii) have been satisfied for the assignment to Buyer to be effective.

16. BINDING EFFECT. This Lease shall bind and inure to the benefit of the respective successors and permitted assigns of Landlord and Tenant.

17. SURRENDER; HOLDING OVER. Upon the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord the Property broom clean and otherwise in the same condition as delivered to Tenant on the Commencement Date, and the condition required to be maintained by Tenant herein, except for ordinary wear and tear and repair work Tenant is not so obligated to commence hereunder, and shall remove all of its trade fixtures, equipment and other personal property from the Property. Any damage caused by the removal of Tenant's trade fixtures, equipment or other personal property shall be repaired by Tenant at its expense. Tenant's failure to remove any improvements or personal property following the expiration or earlier termination of the Lease shall not constitute holding over. All personal property remaining at the Property at the expiration or earlier termination of this Lease shall be deemed abandoned by Tenant and may be disposed of by Landlord in its sole discretion, but at Tenant's cost and expense, and Tenant shall reimburse Landlord for such costs on demand. Tenant's obligations under this Section 17 shall survive the expiration or earlier termination of this Lease. If Tenant retains possession of the Property after the termination of the Term, such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease shall be applicable during such holdover period and Tenant shall be liable for (i) Rent equal to twice the Rent as of the last day of the Term, and (ii) in addition, all actual damages incurred by Landlord as a result of such holding over.

18. NOTICES. All notices, consents, demands and other communications required or permitted herein shall be in writing and shall be sent to the addresses listed below, or such other addresses as a party may from time to time direct to the other party in writing. A party may change its address for notices and consents by giving notice to the other party. Notices and consents may be delivered by email, personal delivery, a nationally recognized overnight delivery service, or U.S. Mail sent certified with return receipt requested, and are effective on the earlier of the date of delivery or the date of first attempt to deliver.

If to Landlord:

The City of Kirkwood
139 S. Kirkwood Road
Kirkwood, MO 63122
Attn: Russell Hawes
Email: Hawesrb@kirkwood.org

With copy to:

John Hessel, Esq.
Lewis Rice LLC
600 Washington Avenue, Suite 2500
St. Louis, MO 63101
Email jhessel@lewisrice.com

If to Tenant

Sabada Properties, LLC
545 Leffingwell Ave
Kirkwood, MO 63122
Attn: David Sabada
Email: d_sabada@a-mrazek.com

With copy to:

Jason Kinser, Esq.
Affinity Law Group, LLC
1610 Des Peres Rd, Suite 100
St. Louis, MO 63131
Email jkinser@affinitylawgrp.com

19. RIGHT OF ENTRY. Landlord and/or Landlord may, during Tenant's business hours, upon no less than forty-eight (48) hours' notice to Tenant, and accompanied by a representative of Tenant, bona fide emergencies excepted, enter the Property to examine its condition, to make any repairs Landlord deems necessary for the safety, preservation or improvement of the Property, or for any other commercially reasonable purpose, including taking measurements of the Property, provided that such activities do not interfere with Tenant's use and occupancy of the Property.

20. SIGNS. Any and all signs located at the Property as of the Commencement Date or during the Term hereof shall be maintained by Tenant in compliance with all applicable Laws. At the expiration or earlier termination of this Lease, Tenant shall remove or, if approved by Landlord, paint over (using a color acceptable to Landlord) all of its signs and shall repair any damages incidental to any such removal (including patching and filling of holes).

21. GOVERNING LAW; VENUE. This Lease shall be construed under the laws of the state of Missouri. The parties hereby agree and consent to submit any and all suits, actions or proceedings arising out of or relating to this Lease solely to the jurisdiction of the Circuit Court for St. Louis County, Missouri or the United States District Court for the Eastern District of Missouri. In addition to all other remedies, Landlord and Tenant are entitled to the restraint by injunction of all violations, actual, attempted or threatened of any covenant, condition or provision of this Lease.

22. ATTORNEY'S FEES. If an action or proceeding is commenced to enforce or interpret any provision hereof, the prevailing party as determined by a final court judgment shall be entitled to recover from the other party its reasonable attorney's fees and expenses. This Section 22 shall survive expiration or earlier termination of this Lease.

23. NONWAIVER. No waiver of any condition or covenant of this Lease by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant. No delay in enforcing any right or remedy accorded to a party, either by the terms hereof or by law, shall diminish or otherwise affect such right or remedy.

24. LIMITATION ON LANDLORD'S LIABILITY. As between Landlord and Tenant, Landlord's officers, agents and employees and the successors or assigns of any of them will have no personal liability as to any of the obligations of Landlord under this Lease. Anything in this Lease to the contrary notwithstanding, Tenant agrees that Tenant shall look solely to the estate of Landlord in the Property for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be observed or performed by Landlord, and that no other assets of Landlord are subject to levy, execution or other judicial process for the satisfaction of Tenant's claim.

25. COVENANT OF QUIET ENJOYMENT. Tenant, subject to the terms and provisions of this Lease, on payment of Rent and upon observing, keeping and performing all of the terms and provisions of this Lease on its part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold and enjoy the Property during the term hereof without hindrance or ejection by any persons lawfully claiming under Landlord. During the Term of this Lease, Landlord shall not have the right to occupy or otherwise use any part of the Building or Property.

26. MISCELLANEOUS. This Lease, and any exhibits hereto set forth the entire agreement between Landlord and Tenant concerning Tenant's occupation and use of the Property during the Term, and there are no other agreements, either oral or written, between them regarding same. No amendment or modification to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and executed by both parties. This Lease is the joint product of the parties and, in the event of any ambiguity herein, no inference shall be drawn against a party by reason of document preparation. Landlord and Tenant shall not, by virtue of this Lease, in any way or for any purpose, be deemed to be a partner of each other in the conduct of Tenant's business upon, within or from the Property or otherwise, or a joint venturer or a member of a joint enterprise with each other. The captions and headings appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, or construe the scope or intent of such section or articles of this Lease. If any date hereunder falls on a Saturday, Sunday or legal holiday, such date shall automatically be extended until the next following business day. Time is of the essence of this Lease and of each and every one of the provisions hereof.

27. COUNTERPARTS. This Lease may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy of this Lease. For purposes of this Lease, a document (or signature page thereto) signed and transmitted by e-mail or other means of electronic transmission are to be treated as an original document. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the day and year shown opposite their respective signatures below.

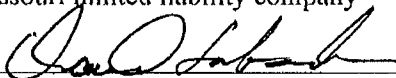
LANDLORD:

City of Kirkwood

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

TENANT:

Sabada Properties, LLC,
a Missouri limited liability company

By: 
Name: David Sabada
Title: President
Date: 10/2/23