

AGENDA
CITY OF ROELAND PARK, KANSAS
CITY COUNCIL MEETING
ROELAND PARK
Roeland Park City Hall, 4600 W 51st Street
February 6, 2023 6:00 PM

- | | | |
|---|--|--|
| <ul style="list-style-type: none">• Michael Poppa, Mayor• Trisha Brauer, Council Member• Benjamin Dickens, Council Member• Jan Faidley, Council Member• Jennifer Hill, Council Member | <ul style="list-style-type: none">• Open, Council Member• Tom Madigan, Council Member• Kate Raglow, Council Member• Michael Rebne, Council Member | <ul style="list-style-type: none">• Keith Moody, City Administrator• Erin Winn, Asst. Admin.• Kelley Nielsen, City Clerk• John Morris, Police Chief• Donnie Scharff, Public Works Director |
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Admin	Finance	Safety	Public Works
Raglow	Rebne	Poppa	Brauer
Dickens	Hill	Madigan	Faidley

Pledge of Allegiance

- 1 Instructions on Logging into Meeting Remotely

Roll Call

Modification of Agenda

II. Citizens Comments

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. Comments about items that appear on the agenda will be taken as each item is considered. Citizens Are Requested To Keep Their Comments Under 5 Minutes. If a large number of people wish to speak, this time may be shortened by the Mayor (Chair) so that the number of persons wishing to speak may be accommodated within the time available. Please turn all cellular telephones and other noise-making devices off or to "silent mode" before the meeting begins.

III. Mayor's Report

- A. Bishop Miede State Champions Proclamation
- B. Black History Month Proclamation

IV. Ordinances and Resolutions:

- A. Charter Ordinance 39 Authorizing City to Establish Storm Water Utility Policies (10 min)

- B. Ordinance 1040 Establishing a Storm Water Utility Policy (5 min)
- C. Ordinance 1041 Franchise Agreement with Google (5 min)
- D. Ordinance 1042 Changing Art Gallery Director's Title and Monthly Compensation (5 min)

V. Consent Agenda

Consent agenda items have been studied by the Governing Body and will be acted on in a single motion. If a Council member requests a separate discussion on an item, it can be removed from the consent agenda and placed on new business for further consideration.

- A. Appropriations Ordinance #1013
- B. City Council Meeting Minutes January 17, 2023
- C. Ordinance 1043 - No Parking Corrections

VI. Business From the Floor

A. Applications / Presentations

VII. Workshop and Committee Reports

VIII. Reports of City Liaisons

- A. Racial Equity Committee
- B. Sustainability Committee
- C. MARC – First Tier Suburbs (Jan Faidley)
- D. MARC – Bike & Pedestrian (Jan Faidley)

IX. Unfinished Business

X. New Business

- A. Reappoint Lisa Brunner to the Planning Commission
- B. Approve Construction Manager at Risk for Public Works Facility Renovations (10 min)
- C. Approve Lease with EPC for Existing Public Works Facility (5 min)
- D. Approve 2023 Citizen Survey Service Agreement with ETC (5 min)

XI. Workshop Items:

XII. Reports of City Officials:

Welcome to this meeting of the City Council of Roeland Park. Below are the Procedural Rules of Council

The City Council encourages citizen participation in local governance processes. To that end, and in compliance with the Kansas Open meetings Act (KSA 45-215), you are invited to participate in this meeting. The following rules have been established to facilitate the transaction of business during the meeting. Please take a moment to review these rules before the meeting begins.

- A. **Audience Decorum.** Members of the audience shall not engage in disorderly or boisterous conduct, including but not limited to; the utterance of loud, obnoxious, threatening, or abusive language; clapping; cheering; whistling; stomping; or any other acts that disrupt, impede, or otherwise render the orderly conduct of the City Council meeting unfeasible. Any member(s) of the audience engaging in such conduct shall, at the discretion of the Mayor (Chair) or a majority of the Council Members, be declared out of order and shall be subject to reprimand and/or removal from that meeting. Please turn all cellular telephones and other noise-making devices off or to "silent mode" before the meeting begins.
- B. **Public Comment Request to Speak Form.** The request form's purpose is to have a record for the City Clerk. Members of the public may address the City Council during Public Comments and/or before consideration of any agenda item; however, no person shall address the Council without first being recognized by the Mayor (Chair). Any person wishing to speak, whether during Public Comments or on an agenda item, shall first complete a Public Comment or Request to Speak form and submit this form to the City Clerk before the Mayor (Chair) calls for Public Comments or calls the particular agenda item
1. **Public Comment on Non-Agenda Items.** The Agenda shall provide for public comment about matters that are within the jurisdiction of the City but are not specifically listed on the Agenda. A member of the public who wishes to speak under Public Comments must fill out a Public Comment Request to Speak form and submit it to the City Clerk before the Mayor (Chair) calls for Public Comments.
 2. **Public Comment on Agenda Items.** Public comment will be accepted on Agenda items. A member of the public, who wishes to speak on an Agenda item, including items on the Consent Agenda, must fill out a Request to Speak form and submit it to the City Clerk before the Mayor (Chair) calls the Agenda item.
- C. **Purpose.** The purpose of addressing the City Council is to communicate formally with the Council regarding matters that relate to Council business or citizen concerns within the subject matter jurisdiction of the City Council. Persons addressing the City Council on an agenda item shall confine their remarks to the matter under consideration by the Council.
- D. **Speaker Decorum.** Each person addressing the City Council, shall do so in an orderly, respectful, dignified manner and shall not engage in conduct or language that disturbs, or otherwise impedes the orderly conduct of the Council meeting. Any person, who so disrupts the meeting

shall, at the discretion of the Mayor (Chair) or a majority of the Council Members present, be subject to removal from that meeting.

- E. **Time Limit.** In the interest of fairness to other persons wishing to speak and to other individuals or groups having business before the City Council, each speaker shall limit comments to five minutes. If a large number of people wish to speak, this time may be shortened by the Mayor (Chair) so that the number of persons wishing to speak may be accommodated within the time available.
- F. **Speak Only Once.** Second opportunities for the public to speak on the same issue will not be permitted unless mandated by state or local law. No speaker will be allowed to yield part or all of his/her time to another, and no speaker will be credited with time requested but not used by another.
- G. **Addressing the Council.** Comment and testimony are to be directed to the Mayor (Chair). Dialogue between and inquiries from citizens at the lectern and individual Council Members, members of staff, or the seated audience is not permitted. Council Members seeking to clarify testimony or gain additional information should direct their questions through the Mayor (Chair). Always speak from the microphone to ensure that all remarks are accurately and properly recorded. Only one speaker should be at the microphone at a time. Speakers are requested to state their full name, address and group affiliation, if any, before delivering any remarks.
- H. Agendas and minutes can be accessed at www.roelandpark.org or by contacting the City Clerk

The City Council welcomes your participation and appreciates your cooperation. If you would like additional information about the City Council or its proceedings, please contact the City Clerk at (913) 722.2600.

Item Number: Pledge of Allegiance- -1
Committee 2/6/2023
Meeting Date:



City of Roeland Park

Action Item Summary

Date:

Submitted By:

Committee/Department:

Title: **Instructions on Logging into Meeting Remotely**

Item Type:

Recommendation:

See instructions to log in below.

Details:

The City Council Meeting will be held remotely. Below are instructions for joining the meeting by phone, online or both.

Topic: City Council and Governing Body Workshop Meeting

Time: This is a recurring meeting Meet anytime

Join Zoom Meeting

<https://zoom.us/j/97767592270?pwd=VWNXbjNkejVb0JBaStWMDF5WXpoZz09>

Meeting ID: 977 6759 2270

Passcode: council

One tap mobile

+16699006833,,97767592270# US (San Jose)

+12532158782,,97767592270# US (Tacoma)

Dial by your location

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

Meeting ID: 977 6759 2270

Find your local number: <https://zoom.us/j/97767592270>

Financial Impact

Amount of Request:	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

Item Number: Mayor's Report- III.-A.
Committee 2/6/2023
Meeting Date:



City of Roeland Park
Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: Bishop Miede State Champions Proclamation
Item Type:

Recommendation:

Details:

Financial Impact

Amount of Request:	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Bishop Miede State Champions Proclamation	Cover Memo



Proclamation

“Bishop Miege High School State Champions Week”

WHEREAS, The Bishop Miege High School Athletic Teams for Volleyball, Girls Basketball, Girls Soccer, Boys Golf, Boys Soccer, Boys Basketball and Football won State Championships in 2022; and

WHEREAS, Coaches, along with assistant coaches, helped teach these young men and women that they are students first and athletes second. These coaches taught and continue to teach these young student athletes’ sportsmanship, self-discipline, self-confidence, and help to give them the tools to develop their Faith. They taught them what “TEAM” really means; Together Everyone Achieves More; and

WHEREAS, as a result of their successes, the Bishop Miege High School teams and coaches now serve as role models to younger members of the community to also participate in productive endeavors such as athletics and other extra-curricular activities.

NOW THEREFORE, I, Michael Poppa, Mayor of the City of Roeland Park, along with members of the City Council do hereby proclaim the week of February 5 – 11, 2023 as

“Bishop Miege High School State Champions Week”

FURTHER, I urge all residents of Roeland Park to join me in recognizing and celebrating the teams’ achievements and wish the members of the Teams, Coaching Staff, Faculty, and Student Body continued success.

In witness whereof I have hereunto set my hand and caused this seal to be affixed.

MICHAEL POPPA
Mayor

Item Number: Mayor's Report- III.-B.
Committee 2/6/2023
Meeting Date:



City of Roeland Park
Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: Black History Month Proclamation
Item Type:

Recommendation:

Details:

Financial Impact

Amount of Request:	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
Black History Month Proclamation	Cover Memo



Proclamation

Black History Month

Whereas, during National Black History Month, we celebrate the many achievements and contributions made by African Americans to our economic, cultural, spiritual and political development; and

Whereas, Black History Month began when Harvard-trained Carter G. Woodson wanted to raise awareness of African Americans' contributions to civilization and initiated and announced Negro History Week in 1926; and

Whereas, the 2023 national theme for the observance of Black History Month is "Black Resistance;" and

Whereas, the City formed the Racial Equity Ad Hoc Committee in 2020 to work toward building a better City for all citizens, particularly residents of color, and

Whereas, Black History Month brings to our attention that we and our nation must continue to address racial injustice, advocate for anti-racism in practice and policy, and fully support a society that lives up to its democratic ideals; and

Whereas, society should pursue greater knowledge and understanding of the contributions and accomplishments of African Americans to this great nation and community through involvement with the National Association for the Advancement of Colored People (NAACP), the Advocacy and Awareness Group of Johnson County, by visiting the Black Archives of Mid-America, the Negro Leagues Baseball Museum, the National Museum of African American History and Culture, and many other outstanding organizations and institutions; and

Whereas, One of the Council's stated Goals is to Prioritize Diversity, Communication and Engagement with the Community by expanding opportunities to inform and engage residents in an open and participatory manner;

Now, therefore, I, Michael Poppa, Mayor of the City of Roeland Park, Kansas, do hereby proclaim February 2023 to be

Black History Month

in Roeland Park, and urge all citizens to honor this month and commit to learning more about the contributions of African Americans to our nation and community and continue to create an inclusive world we can be proud of and celebrate.

Done this 6th day of February, 2023

MICHAEL POPPA
Mayor

Item Number: **Ordinances and Resolutions:- IV.-**
 A.
Committee **2/6/2023**
Meeting Date:



City of Roeland Park
Action Item Summary

Date: 12/1/2022
Submitted By: Keith Moody
Committee/Department: Admin.
Title: **Charter Ordinance 39 Authorizing City to Establish Storm Water Utility Policies (10 min)**
Item Type:

Recommendation:

Staff recommends adoption a charter ordinance which allows the City to then adopt a Storm Water Utility policy that will be included in the appropriate section of the City Code.

Details:

Report for 2/6/23 Council Meeting:

Council provided direction at the 1/3/23 workshop to bring forward the ordinances necessary to establish the storm water utility policies at the next council meeting with the policy becoming effective 8/1/2023 to coincide with the timeframe when the City customarily establishes the special assessment amounts for the upcoming year (2024).

Charter Ordinance 39 authorizes the City to exempt itself from state storm water regulations and create its own storm water policy (step 1). Regular Ordinance number 1041 adopts city storm water policy including the storm water utility provisions (step 2). Using this two-step ordinance method will allow the new storm water policies to be incorporated into the appropriate section of the city code vs the policy existing in the "Charter Ordinance" section of the City code. This will make it much easier for residents and staff to reference/search for the policy.

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Report for 1/3/23 Workshop:

During the 12/5/22 workshop discussion staff was asked to inquire what impact implementing the storm water fee would have on Roesland Elementary's budget. Per David Smith (SMSD Communications Officer) "there would be no impact on Roesland's budget, staffing, etc. Stormwater fees are paid from the district's Special Assessment Fund."

The estimated storm water utility fee for the Roesland properties is \$4,888 based upon 169,138 sf of impervious area consisting of playgrounds, roofs, parking, sidewalks, and drives.

Staff is looking for Council to confirm support of the \$.0289/sf storm water rate and move forward an ordinance adopting the storm water utility policy. These steps establish clear direction as well as firm fee estimates for 2024. This information will be provided to each commercial property owner with an impervious area map for their site along with the fee calculation as part of the education effort planned to occur well in advance of the 2024 storm water fee implementation. This extended lead time will provide property owners an extended period to plan for the fiscal impacts that the storm water fee may hold for them.

The attached Utility Fee by Property Owner list reflects the impervious area per lot as well as the storm water utility fee per lot. Properties with a storm water utility fee greater than \$2,000 have been highlighted in green. Some sites contain multiple lots under common ownership, a subtotal is provided for those.

A question was also raised as to why actual impervious area per single family lot is not used vs the estimation approach recommended. In short the impervious area for single family homes captured in the AIMS GIS system we are using only includes the building outline. Decks, patios, sidewalks, pools, sheds and driveways are not reflected and all of these are impervious. In order to include these elements the City would have to pay for a survey of each lot (2,850). Keeping this data up to date would also be a fiscal burden as these site elements do change regularly. The additional cost associated with gathering and maintaining imperious data per single family lot is prohibitive. In addition, the detail would not amount to a significant difference in the utility fee. For example, if a home has a 300 sf pool or 300 sf larger than average home the fee would in theory be \$8.67 more than the \$70.00 on an average lot.

Report for 12/5/22 Workshop:

Council discussed and provided direction on a 2022 Objective concerning implementing a storm water utility. Those discussions occurred as the Council was also working on the 2023 budget. Ultimately the Council's direction was to plan for implementing a stormwater utility with the 2024 budget/calendar year. Council also provided direction that a robust education campaign be implemented early to ensure ample time for property owners to plan for the new fee. The education program has begun.

Developing the policy which will govern the Storm Water Utility is the next step. The assumptions used during council discussions of the topic in 2022 have been incorporated into the attached draft code section. The City Attorney and City Engineer has developed the policy based upon the policies in place with other Johnson County cities.

Council also provided direction that all properties will be subject to the storm water utility fee. That includes government owned property, schools, churches and utilities. A storm water rate of \$.0289/sf of impervious surface was used during Council's initial discussion, this equated to a \$70 annual storm water utility fee for a single-family lot. The stormwater fee per property list attached is based upon the \$.0289/sf assumed rate. As part of the education efforts staff intends to provide each property owner with an estimate of the storm water fee that would be included on their property tax bill. Before providing that information, staff would like Council to confirm the rate will be \$.0289/sf of impervious area. Confirming the rate and establishing the stormwater utility code section are actions that should be coordinated to ensure accuracy. If the Council wants to achieve a larger reduction in the property tax mill they may elect a higher storm water utility rate. If Council

prefers a lower storm water utility rate, then the mill levy reduction will be correspondingly smaller. A reminder that the implementation of a storm water fee as discussed will provide for an equal offsetting reduction in property tax revenue through a planned series of mill levy reductions. Council's direction is to begin implementing the storm water utility in 2024 however properties subject to an existing storm drainage improvement assessment would not be subject to the storm water utility fee until their improvement assessment expires. It will take 3 years to fully implement the storm water utility fee on all properties.

The impervious area data has been updated and reviewed for accuracy by Larkin and staff. Based upon this information staff estimates a 2-mill reduction in the property tax rate would be possible for 2024 if the \$.0289/sf storm water rate is employed. 2025 is estimated to see a .10 mill reduction and 2026 would see an estimated .20 mill reduction as the storm water utility fee is implemented (for a total mill reduction of 2.30 at full implementation). Staff estimates that a 2.30 mill reduction in 2026 will result in \$65,000 less in property taxes from Commercial and Multifamily properties that are subject to property tax with the storm water fees from those properties totaling \$85,000. This results in a net increase of expense to these properties of \$20,000. Properties not subject to property tax (governmental, churches, schools, utilities) would see an increase in expense of \$30,000. Residential Properties should see a reduction in property tax of \$250,000 and an increase of storm water fee of \$200,000 for a net decrease of expense to residential properties of \$50,000.

Please review the list of estimated storm water utility fees attached for commercial, multifamily, governmental, schools, and churches, it is important that Council understand the amount to be paid by these entities.

The assumed method of applying the storm water fee is based upon impervious area (the primary element contributing to storm water run-off) which is consistent with the approach employed by the other JOCO cities with a storm water fee. For single family homes and duplexes a standard fee is calculated based on an average size lot with an average amount of impervious area. This simplifies the administrative process and addresses the limited impervious area information available for single family and two family lots via the AIMS mapping system. Maps reflecting the impervious area on commercial, multifamily, governmental, schools and churches will be sent along with the notice of estimated fee to those properties.

A storm water utility fee can be used to maintain, replace and operate the components of the storm water collection and conveyance system including, curbs, inlets, piping, open drainage ways along with staff, supplies and contractual services dedicated to storm sewer services. Street sweeping, catch basin cleaning, and brush/debris removal from drainage ways are examples of routine maintenance items that would also be eligible for funding through the storm water fee.

Financial Impact

Amount of Request: N/A	
Budgeted Item?	Budgeted Amount: Not until 2024 Budget
Line Item Code/Description:	

Additional Information

Council discussed this topic at their 1/3/22 workshop and indicated that they would like some time to consider and then continue the discussion. No additional information was requested by Council on 1/3/22. Council discussed the topic again on 3/21/22 where council requested a summary indicating how other communities with a storm water utility fee apply the fee to schools, churches, not for profits or other government agencies. Attached is that comparison; only a couple of cities provide exemption opportunities. Also attached are the documents from the 1/3/22 initial workshop discussion item.

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description		Type
▢	Charter Ordinance 39- Authorizing City to Establish Storm Water Utility Policy	Cover Memo
▢	Storm Water Fee Per Property	Cover Memo
▢	Example of Impervious Area Map	Cover Memo
▢	Storm Water Utility Options Presentation	Cover Memo
▢	Comparison of Exemptions Allowed	Cover Memo

**CITY OF ROELAND PARK, KANSAS
CHARTER ORDINANCE NO. 39**

A CHARTER ORDINANCE EXEMPTING THE CITY OF ROELAND PARK, JOHNSON COUNTY, KANSAS, FROM THE PROVISIONS OF THE WATER POLLUTION CONTROL ACT, K.S.A. 12-3101 THROUGH K.S.A. 12-3107, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS RELATING TO THE ESTABLISHMENT, OPERATION, MAINTENANCE, IMPROVEMENT, AND REGULATIONS OF SEWER SYSTEMS, INCLUDING BUT NOT LIMITED TO, STORM AND SURFACE WATER DRAINAGE SYSTEMS AND FLOOD PROTECTION WORKS, AND TO THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR THE PROPERTY AND IMPROVEMENTS NECESSARY FOR ALL ASPECTS OF THE MANAGEMENT OF THESE SYSTEMS.

WHEREAS, the City of Roeland Park, Johnson County, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, may exempt itself from the provisions of statutory enactment that is not uniformly applicable to all cities, and may adopt substitute and additional provisions thereto; and

WHEREAS, the Water Pollution Control Act, K.S.A. 12-3101, et seq., is applicable to the City, but not uniformly applicable to all cities;

WHEREAS, the City of Roeland Park, Kansas desires to exempt itself from the Water Pollution Control Act.

NOW, THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ROELAND PARK, JOHNSON COUNTY, KANSAS

SECTION 1. EXEMPTION OF KANSAS STATUTES

- A. The City of Roeland Park, Johnson County, Kansas (the "City"), by virtue of the powers vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself and make inapplicable to it Sections 12-3101, 12-3102, 12-3103, 12-3104, 12-3105, 12-3106, and 12-3107 of the Kansas Statutes Annotated, which apply to the City, acting as a city of the second class, and which are not uniformly applicable to all cities, and the City hereby provides further substitute and additional provisions as set forth herein.

SECTION 2. Chapter XV, Article 6. "Stormwater Utility" of the City of Roeland Park, Kansas Municipal Code is established pursuant to this Charter Ordinance No. 39 and City Ordinance No. 1041.

SECTION 3. This Charter Ordinance shall take effect after its publication in the official City newspaper, and shall have an effective date of August 1, 2023.

PASSED by the Governing Body, not less than two-thirds of the elected members voting in favor thereof, this ____ day of _____, 2023.

Mayor

ATTEST:

Kelley Nielsen, City Clerk

APPROVED AS TO FORM:

Steven E. Mauer, City Attorney

Stormwater Utility Fee Data Used & Methodology

Data:

- Parcel Data from JoCoAIMS – dated 10.11.2022
- 2022 Aerial Imaging from JoCoAims was used to draw in the impervious areas
- Impervious Area Data – Buildings, Recreation and Pavement Data from JoCoAIMS acquired 9-29-2022. This data was modified to capture all impervious surfaces within all Non-Residential Lots.

Methodology Notes:

- Non-Residential Lots – Lots that are not classified as Single Family, Duplex or Multifamily and public right-of-way.
- Residential Lots – Single Family, Duplex, Multifamily (regardless if structure used for renting or owning).
- Impervious Areas Updated using Construction Plans – R Park Phase 3, Community Center, Sunflower Development
- Sidewalks were not added towards the impervious area on commercial parcels with a dedicated sidewalk easement / dedicated ROW.
- Playgrounds, football fields, packed gravel driveways are considered impervious as they are designed to not grow vegetation and contribute to runoff into the storm sewer system.
- No credit provided for sites with detention basins as the collected runoff continues to use the City stormwater system to drain.

Round 2 Modifications – November 2022:

- City comments for impervious areas and non-residential lots were addressed.
- Impervious Areas were rechecked, and some modifications were made to a handful of lots due to cleaning up lines, removing islands, adding sidewalk.
- As a QC, the impervious areas were merged to ensure no overlapping sub areas existed. The Summarize Within tool was used in ArcPro to calculate the impervious areas within each non-residential lot. The merged areas were back checked against the areas calculated using the tool Summarize within to ensure accuracy.

ROELAND PARK'S STORMWATER UTILITY FEE SUMMARY

	# of Lots -or- Sq Ft	Rate	2024	2025	2026
<u>Lots Outside of Benefit District</u>					
Residential Lots Outside of the Benefit Districts (2892 SFR Lots minus RC-12 lots)	1,804	\$70 /Lot	\$126,280	\$126,280	\$126,280
Non-Residential Impervious Square Footage	4,036,996	\$0.0289 /sq ft	\$116,669	\$116,669	\$116,669
City of Roeland Park Impervious Square Footage	457,011	\$0.0289 /sq ft	\$13,208	\$13,208	\$13,208
<u>Benefit District (RC-12) Lots</u>					
RC-12-012 Breakdown (# of Lots = 427) (Expires 12/31/2024)					
Residential Lots (425 Lots)	425	\$70 /Lot		\$29,750	\$29,750
Non-Residential Impervious Square Footage in RC-12-012 (2 Lots)	28,519	\$0.0289 /sq ft		\$824	\$824
RC-12-014 Breakdown (# of Lots = 664) (Expires 12/31/2025)					
Residential Lots (663 Lots)	663	\$70 /Lot			\$46,410
Non-Residential Impervious Square Footage in RC-12-014 (1 Lot)	24,403	\$0.0289 /sq ft			\$705
RESIDENTIAL FEES			\$126,280	\$156,030	\$202,440
NON-RESIDENTIAL FEES			\$129,877	\$130,701	\$131,406
GRAND TOTAL STORMWATER UTILITY FEES			\$256,157	\$286,731	\$333,846

Notes:

Residential Assumption Used: 70'x110' with 30% impervious area, rounded up.

2922 Lots with SFR or Duplex as landuse (minus split lots etc). This number is as close as we can get without having to review each parcel having no situs address or vacant designation and comparing owner names etc.

In 2023 1 mill equals roughly \$120,000 in tax revenue to the City.

Value of 1 mill	\$	128,400	\$	136,104	\$	144,270
Estimated Mill Reduction		\$1.99		\$2.11		\$2.31



ROELAND PARK'S STORMWATER UTILITY FEE BREAKDOWN

	Situs Address (No Address for Lots without a Building					# of Lots -or- Sq Ft	Rate	Subtotal for				
	Tax Property ID	Footprint)	Owner Name	Mailing Name	Address			City State Zip	Owners with Multiple Lots	2024	2025	2026
LOTS OUTSIDE OF THE BENEFIT DISTRICT												
Residential Lots	RESIDENTIAL TOTAL					1,804	\$70 /Lot		\$126,280	\$126,280	\$126,280	
City of Roeland Park Impervious Areas	PP59000000 0002	5150 GRANADA ST	CITY OF ROELAND PARK			10,833	\$0.0289 /sq ft		\$313	\$313	\$313	
	PF251204-3014	4800 ROE PKWY	CITY OF ROELAND PARK			68,517	\$0.0289 /sq ft		\$1,980	\$1,980	\$1,980	
	PF251209-1001	5535 JUNIPER ST	CITY OF ROELAND PARK			81,852	\$0.0289 /sq ft		\$2,366	\$2,366	\$2,366	
	PF251209-1003	0 NS NT	CITY OF ROELAND PARK			1,306	\$0.0289 /sq ft		\$38	\$38	\$38	
	PP50000000 0001	4801 NALL AVE	CITY OF ROELAND PARK			40,904	\$0.0289 /sq ft		\$1,182	\$1,182	\$1,182	
	PP50000000 0002	4850 ROSEWOOD DR	CITY OF ROELAND PARK			199,331	\$0.0289 /sq ft		\$5,761	\$5,761	\$5,761	
	PP63000017 0030A	0 NS NT	CITY OF ROELAND PARK			763	\$0.0289 /sq ft		\$22	\$22	\$22	
	PP63000017 0031	4812 JOHNSON DR	CITY OF ROELAND PARK			8,219	\$0.0289 /sq ft		\$238	\$238	\$238	
	PP63000017 0032	4800 JOHNSON DR	CITY OF ROELAND PARK			9,195	\$0.0289 /sq ft		\$266	\$266	\$266	
	PP66000022 0009	0 NS NT	CITY OF ROELAND PARK			4,614	\$0.0289 /sq ft		\$133	\$133	\$133	
	PP67010000 0U01	0 NS NT	CITY OF ROELAND PARK			26,129	\$0.0289 /sq ft		\$755	\$755	\$755	
	PP67010000 0U03	0 NS NT	CITY OF ROELAND PARK			5,349	\$0.0289 /sq ft		\$155	\$155	\$155	
			CITY TOTAL			457,011	\$0.0289 /sq ft		\$13,208	\$13,208	\$13,208	
Non-Residential Impervious Areas	PP63000017 0024	5000 JOHNSON DR	5000 JOHNSON DRIVE PROPERTIES LLC		13613 S HWY 71	GRANDVIEW, MO 64030	13,793	\$0.0289 /sq ft		\$399	\$399	\$399
	PP67250000 0002	4960 ROE BLVD	AGREE LIMITED PARTNERSHIP		RYAN LLC PO BOX 460389	HOUSTON, TX 77056	322,024	\$0.0289 /sq ft		\$9,306	\$9,306	\$9,306
	PP67250000 0002A	0 NS NT	AGREE LIMITED PARTNERSHIP		RYAN LLC PO BOX 460389	HOUSTON, TX 77056	103,774	\$0.0289 /sq ft		\$2,999	\$2,999	\$2,999
									\$12,306			
	PP62000000 0004	0 NS NT	ALDI INC.		RYAN TAX COMPLIANCE SERVICES, LLC F HOUSTON, TX 77056		26,621	\$0.0289 /sq ft		\$769	\$769	\$769
	PP62000000 0005	4801 ROE BLVD	ALDI INC.	STORE #59	RYAN TAX COMPLIANCE SERVICES, LLC F HOUSTON, TX 77056		49,505	\$0.0289 /sq ft		\$1,431	\$1,431	\$1,431
									\$2,200			
	PP78000000 0003	4710 MISSION RD	ALH ENTERPRISES, LLC		4710 MISSION RD	ROELAND PARK, KS 66205	8,833	\$0.0289 /sq ft		\$255	\$255	\$255
	PF251204-1020	4700 ROE PKWY	ALLIED CONSTRUCTION, INC.		PO BOX 937	DES MOINES, IA 50304	66,834	\$0.0289 /sq ft		\$1,932	\$1,932	\$1,932
	PP63000017 0025	4926 JOHNSON DR	AMOS FAMILY, INC.		10901 JOHNSON DR	SHAWNEE, KS 66203	8,650	\$0.0289 /sq ft		\$250	\$250	\$250
	PP63000017 0029	4900 JOHNSON DR	ASSET COMBINER, LLC		4900 JOHNSON DR	ROELAND PARK, KS 66205	9,488	\$0.0289 /sq ft		\$274	\$274	\$274
	PP67250000 0001	4950 ROE BLVD	BELLA ROE LOTS 1 AND 4 07 A, LLC,		12411 VENTURA BLVD	STUDIO CITY, CA 91604	209,001	\$0.0289 /sq ft		\$6,040	\$6,040	\$6,040
	PP67250000 0004	4980 ROE BLVD	BELLA ROE LOTS 1 AND 4 07 A, LLC,		12411 VENTURA BLVD	STUDIO CITY, CA 91604	36,518	\$0.0289 /sq ft		\$1,055	\$1,055	\$1,055
	PP67250000 0004A	0 NS NT	BELLA ROE LOTS 1 AND 4 07 A, LLC,		12411 VENTURA BLVD	STUDIO CITY, CA 91604	2,224	\$0.0289 /sq ft		\$64	\$64	\$64
	PP67250000 0003	4990 ROE BLVD	BELLA ROE LOTS 2 3 AND 6 07 A LLC	ACF PROPERTY MANAGEMENT	12411 VENTURA BLVD	STUDIO CITY, CA 91604	28,278	\$0.0289 /sq ft		\$817	\$817	\$817
	PP67250000 0T0A	0 NS NT	BELLA ROE LOTS 2 3 AND 6 07 A LLC	ACF PROPERTY MANAGEMENT	12411 VENTURA BLVD	STUDIO CITY, CA 91604	41,282	\$0.0289 /sq ft		\$1,193	\$1,193	\$1,193
	PP67250000 0T0A2	0 NS NT	BELLA ROE LOTS 2 3 AND 6 07 A LLC	ACF PROPERTY MANAGEMENT	12411 VENTURA BLVD	STUDIO CITY, CA 91604	1,525	\$0.0289 /sq ft		\$44	\$44	\$44
	PP67250000 0T0A1	0 NS NT	BELLA ROE LOTS 2 3 AND 6 07 A LLC	ACF PROPERTY MANAGEMENT	12411 VENTURA BLVD	STUDIO CITY, CA 91604	7,632	\$0.0289 /sq ft		\$221	\$221	\$221
	PP67250000 0003A	0 NS NT	BELLA ROE LOTS 2 3 AND 6 19 B LLC		12411 VENTURA BLVD	STUDIO CITY, CA 91604	14,360	\$0.0289 /sq ft		\$415	\$415	\$415
	PP67250000 0003B	0 NS NT	BELLA ROE LOTS 2 3 AND 6 19 B LLC		12411 VENTURA BLVD	STUDIO CITY, CA 91604	1,854	\$0.0289 /sq ft		\$54	\$54	\$54
									\$9,903			
	PF251204-1019	4710 ROE PKWY	B-H ACQUISITION, LLC	SHROPSHIRE, D. GARRETT	4710 ROE PKWY	ROELAND PARK, KS 66205	49,679	\$0.0289 /sq ft		\$1,436	\$1,436	\$1,436
	PP81000019 0018A	5201 ROE BLVD	BINK'M COMPANY LLC		2540 KIPLING ST	LAKEWOOD, CO 80215	7,690	\$0.0289 /sq ft		\$222	\$222	\$222
	PP64000000 0000	4800 SKYLINE DR	BOULEVARD APARTMENTS, LLC	NOLAN REAL ESTATE SERVICES INC	2020 W 89TH ST # 320	LEAWOOD, KS 66206	582,699	\$0.0289 /sq ft		\$16,840	\$16,840	\$16,840
	PF251204-1005	4717 ROE PKWY	CITY OF FAIRWAY		FAIRWAY CITY HALL 5240 BELINDER RD	FAIRWAY, KS 66205	43,267	\$0.0289 /sq ft		\$1,250	\$1,250	\$1,250
	PP09150000 0002	4700 JOHNSON DR	COMMERCE BANK		8000 FORSYTH BLVD APT 1300	ST. LOUIS, MO 63105	25,056	\$0.0289 /sq ft		\$724	\$724	\$724
	PP63000017 0030	4818 JOHNSON DR	D & G BUILDING PARTNERSHIP		4818 JOHNSON DR	ROELAND PARK, KS 66205	7,898	\$0.0289 /sq ft		\$228	\$228	\$228
	PP06000000 0009	4101 W 54TH TER	G & A RENTAL PROPERTIES LLC		5420 PAWNEE LN	FAIRWAY, KS 66205	19,342	\$0.0289 /sq ft		\$559	\$559	\$559
	PP66000009 0006A	0 NS NT	HAINEN PARTNERS LLC		13501 ABERDEEN PKWY	LEAWOOD, KS 66224	483	\$0.0289 /sq ft		\$14	\$14	\$14
	PP06000000 0010A	5500 BUENA VISTA ST	HOEDL PROPERTIES LLC		PO BOX 7016	KANSAS CITY, MO 64113	4,632	\$0.0289 /sq ft		\$134	\$134	\$134



ROELAND PARK'S STORMWATER UTILITY FEE BREAKDOWN

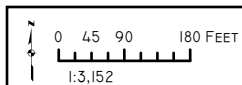
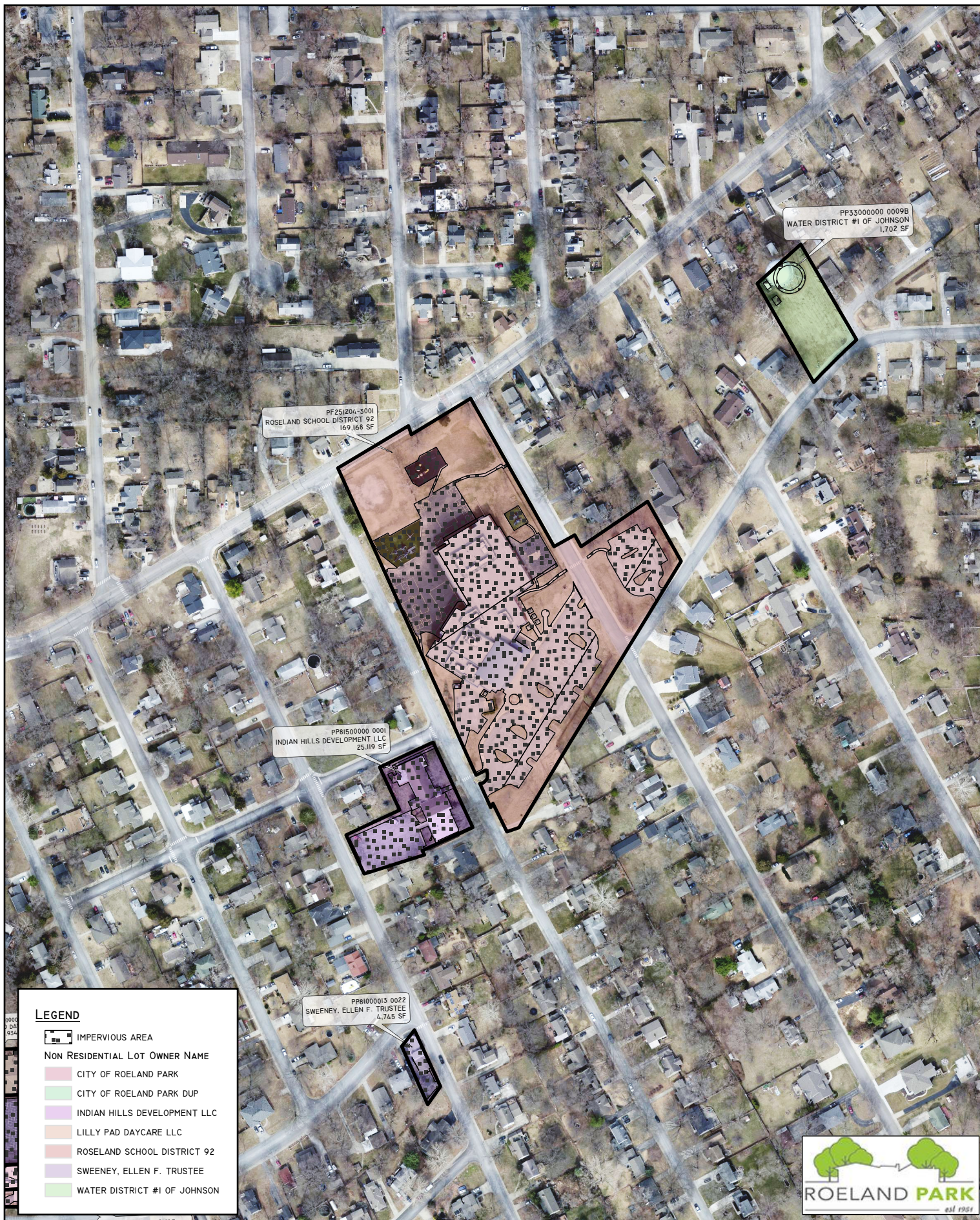
Situs Address (No Address for Lots without a Building)							# of Lots -or- Sq Ft	Rate	Subtotal for Owners with Multiple Lots		
Tax Property ID	Footprint)	Owner Name	Mailing Name	Address	City State Zip				2024	2025	2026
PP66000027 0027	5204 ROE BLVD	IMAGINE ENTERPRISES LLC		5204 ROE BLVD	ROELAND PARK, KS 66205		3,291	\$0.0289 /sq ft	\$95	\$95	\$95
PP81500000 0001	5015 BUENA VISTA ST	INDIAN HILLS DEVELOPMENT LLC		6436 ENSLEY LN	MISSION HILLS, KS 66208		25,119	\$0.0289 /sq ft	\$726	\$726	\$726
PP62000000 0003	4811 ROE BLVD	JL GROUP HOLDINGS I, LLC		3000 EXECUTIVE PKWY APT 515	SAN RAMON, CA 94583		35,313	\$0.0289 /sq ft	\$1,021	\$1,021	\$1,021
PF251204-4001	4050 SHAWNEE MISSION PKWY	JWH PROPERTIES, LLC		2651 N 231ST ST W	ANDALE, KS 67001		13,521	\$0.0289 /sq ft	\$391	\$391	\$391
PF251204-1001	4702 ROE PKWY	K C POWER & LIGHT CO.	SHANNON L. GREEN JR. TAX DEPARTMEN	PO BOX 418679	KANSAS CITY, MO 64141		123,100	\$0.0289 /sq ft	\$3,558	\$3,558	\$3,558
PP03000000 0001B	4700 FONTANA ST	K C POWER & LIGHT CO.	SHANNON L. GREEN JR. TAX DEPARTMEN	PO BOX 418679	KANSAS CITY, MO 64141		21,728	\$0.0289 /sq ft	\$628	\$628	\$628
\$4,186											
PP66000009 0014	5812 ROELAND DR	KELLERMAN, RYAN		5812 ROELAND DR	ROELAND PARK, KS 66205		8,554	\$0.0289 /sq ft	\$247	\$247	\$247
PP66000009 0015	5100 JOHNSON DR	KHETANI, INC.		211 E FLAMING RD	OLATHE, KS 66061		13,763	\$0.0289 /sq ft	\$398	\$398	\$398
PP63000017 0026	4920 JOHNSON DR	LIEMEN, MILDRED N. TRUSTEE		4107 HOMESTEAD DR	PRAIRIE VILLAGE, KS 66208		8,336	\$0.0289 /sq ft	\$241	\$241	\$241
PP63000017 0027	4914 JOHNSON DR	LIEMEN, MILDRED N. TRUSTEE		4107 HOMESTEAD DR	PRAIRIE VILLAGE, KS 66208		8,675	\$0.0289 /sq ft	\$251	\$251	\$251
PP81000009 0015	5023 GRANADA ST	LILLY PAD DAYCARE LLC		5023 GRANADA ST	ROELAND PARK, KS 66205		10,934	\$0.0289 /sq ft	\$316	\$316	\$316
PP83000000 0001	5675 ROE BLVD	LIPT ROE BOULEVARD LLC		333 W WACKER DR FL 23	CHICAGO, IL 60606		59,635	\$0.0289 /sq ft	\$1,723	\$1,723	\$1,723
PP83000000 001A	0 NS NT	LIPT ROE BOULEVARD LLC		333 W WACKER DR FL 23	CHICAGO, IL 60606		16,799	\$0.0289 /sq ft	\$485	\$485	\$485
\$2,209											
PP59000000 0001	5103 ROE BLVD	MCDONALDS CORPORATION		16332 MONROVIA ST	OVERLAND PARK, KS 66221		31,370	\$0.0289 /sq ft	\$907	\$907	\$907
PP62000000 0002	4815 ROE BLVD	MINIT MART LLC		165 FLANDERS RD	WESTBOROUGH, MA 01581		35,046	\$0.0289 /sq ft	\$1,013	\$1,013	\$1,013
PP63500000 0001	5115 ROE BLVD	MISSION BANK (THE)		5201 JOHNSON DR	MISSION, KS 66205		48,382	\$0.0289 /sq ft	\$1,398	\$1,398	\$1,398
PP09150000 0001	4720 JOHNSON DR	MPT OF ST LUKE'S ROELAND PARK LLC		1000 URBAN CENTER DR STE 501	BIRMINGHAM, AL 35242		44,166	\$0.0289 /sq ft	\$1,276	\$1,276	\$1,276
PF251204-1021	4715 ROE PKWY	NEW CASTLE ENTERPRISE LLC		9739 SUNSET CIR	LENEXA, KS 66220		40,772	\$0.0289 /sq ft	\$1,178	\$1,178	\$1,178
PP63350000 0002	4707 ROE PKWY	PI REAL ESTATE LLC		PO BOX 6821	LEAWOOD, KS 66206		10,778	\$0.0289 /sq ft	\$311	\$311	\$311
PP58000001 0T0I	0 NS NT	QUIKTRIP CORPORATION		4705 S 129TH AVE E	TULSA, OK 74134		17,137	\$0.0289 /sq ft	\$495	\$495	\$495
PP58000001 0T0II	5055 ROE BLVD	QUIKTRIP CORPORATION		4705 S 129TH AVE E	TULSA, OK 74134		12,933	\$0.0289 /sq ft	\$374	\$374	\$374
PP58000001 0T0III	0 NS NT	QUIKTRIP CORPORATION		4705 S 129TH AVE E	TULSA, OK 74134		20,924	\$0.0289 /sq ft	\$605	\$605	\$605
PP81000010 0001	5031 ROE BLVD	QUIKTRIP CORPORATION		PO BOX 3475	TULSA, OK 74101		7,009	\$0.0289 /sq ft	\$203	\$203	\$203
\$1,676											
PP63500000 0002	5125 ROE BLVD	ROE MARKETPLACE, LLC		11228 DELMAR ST	LEAWOOD, KS 66211		36,190	\$0.0289 /sq ft	\$1,046	\$1,046	\$1,046
PP78000000 0001	4702 MISSION RD	ROELAND PARK SERIES I LLC		3002 W 47TH AVE	KANSAS CITY, KS 66103		2,072	\$0.0289 /sq ft	\$60	\$60	\$60
PP78000000 0002	4706 MISSION RD	ROELAND PARK SERIES I LLC		3002 W 47TH AVE	KANSAS CITY, KS 66103		184	\$0.0289 /sq ft	\$5	\$5	\$5
\$65											
PP66000014 000A1	5110 CEDAR ST	ROELAND PARK UNITED METHODIST CHURCH		5110 CEDAR ST	ROELAND PARK, KS 66205		15,410	\$0.0289 /sq ft	\$445	\$445	\$445
PP66000014 0029	4910 W 51ST TER	ROELAND PARK UNITED METHODIST CHURCH		5110 CEDAR ST	ROELAND PARK, KS 66205		4,526	\$0.0289 /sq ft	\$131	\$131	\$131
PP66000014 000A1	5110 CEDAR ST	ROELAND PARK UNITED METHODIST CHURCH		5110 CEDAR ST	ROELAND PARK, KS 66205		3,342	\$0.0289 /sq ft	\$97	\$97	\$97
\$673											
PP82000000 0001	5041 REINHARDT DR	ROMAN CATHOLIC ARCHDIOCESE OF KANSAS CITY IN KANSAS		12615 PARALLEL PKWY	KANSAS CITY, KS 66109		730,670	\$0.0289 /sq ft	\$21,116	\$21,116	\$21,116
PP82000000 0002	3224 W 53RD ST	ROMAN CATHOLIC ARCHDIOCESE OF KANSAS CITY IN KANSAS		12615 PARALLEL PKWY	KANSAS CITY, KS 66109		1,354	\$0.0289 /sq ft	\$39	\$39	\$39
PP82000000 0003	0 NS NT	ROMAN CATHOLIC ARCHDIOCESE OF KANSAS CITY IN KANSAS		12615 PARALLEL PKWY	KANSAS CITY, KS 66109		21,265	\$0.0289 /sq ft	\$615	\$615	\$615
PP82000000 0004	4901 REINHARDT DR	ROMAN CATHOLIC ARCHDIOCESE OF KANSAS CITY IN KANSAS		12615 PARALLEL PKWY	KANSAS CITY, KS 66109-3748		93,614	\$0.0289 /sq ft	\$2,705	\$2,705	\$2,705
\$24,475											
PF251204-3001	4900 PARISH DR	ROSELAND SCHOOL DISTRICT 92	UNIFIED SCHOOL DIST #512, ROESLAND I	4900 PARISH DR	ROELAND PARK, KS 66205		169,138	\$0.0289 /sq ft	\$4,888	\$4,888	\$4,888
PP81000013 0022	4301 W 51ST ST	SWEENEY, ELLEN F. TRUSTEE		10123 PAWNEE LN	LEAWOOD, KS 66206		4,745	\$0.0289 /sq ft	\$137	\$137	\$137
PP74000000 0001	5150 ROE BLVD	TMM ROELAND PARK CENTER, LLC	KESSINGER/HUNTER & COMPANY, LC	2600 GRAND BLVD APT 700	KANSAS CITY, MO 64108		402,804	\$0.0289 /sq ft	\$11,641	\$11,641	\$11,641
PP74000000 0001A	0 NS NT	TMM ROELAND PARK CENTER, LLC	KESSINGER/HUNTER & COMPANY, LC	2600 GRAND BLVD APT 700	KANSAS CITY, MO 64108		11,932	\$0.0289 /sq ft	\$345	\$345	\$345
PP74000000 0002	4701 SYCAMORE DR	TMM ROELAND PARK CENTER, LLC	KESSINGER/HUNTER & COMPANY, LC	2600 GRAND BLVD APT 700	KANSAS CITY, MO 64108		50,943	\$0.0289 /sq ft	\$1,472	\$1,472	\$1,472
PP74000000 0003	5000 ROE BLVD	TMM ROELAND PARK CENTER, LLC	KESSINGER/HUNTER & COMPANY, LC	2600 GRAND BLVD APT 700	KANSAS CITY, MO 64108		25,153	\$0.0289 /sq ft	\$727	\$727	\$727
PP74000000 0004	5010 ROE BLVD	TMM ROELAND PARK CENTER, LLC	KESSINGER/HUNTER & COMPANY, LC	2600 GRAND BLVD APT 700	KANSAS CITY, MO 64108		25,196	\$0.0289 /sq ft	\$728	\$728	\$728
\$14,913											
PP63000017 0028	4908 JOHNSON DR	TOLLIE INVESTMENTS LLC		4908 JOHNSON DR	ROELAND PARK, KS 66205		8,760	\$0.0289 /sq ft	\$253	\$253	\$253
PP67250000 0005	4970 ROE BLVD	U S BANK NATIONAL ASSOCIATION	U S BANK CORP REAL ESTATE TAX DEPAR	RYAN PTS DEPT 908 PO BOX 460169	HOUSTON, TX 77056		16,547	\$0.0289 /sq ft	\$478	\$478	\$478
PP67250000 0005A	0 NS NT	U S BANK NATIONAL ASSOCIATION	CRE TAX DEPARTMENT	RYAN PTS DEPT 908 PO BOX 460169	HOUSTON, TX 77056		1,160	\$0.0289 /sq ft	\$34	\$34	\$34
\$512											
PP62000000 0001	4951 ROE BLVD	WG DST 1		PO BOX 1159	DEERFIELD, IL 60015		91,664	\$0.0289 /sq ft	\$2,649	\$2,649	\$2,649
PP63350000 0001	4705 ROE PKWY	XTIERRA PROPERTIES LLC		4705 ROE PKWY	ROELAND PARK, KS 66205		10,103	\$0.0289 /sq ft	\$292	\$292	\$292
NON-RESIDENTIAL TOTAL									\$116,669	\$116,669	\$116,669
Commercial Only											\$87,621
TOTAL FEE FOR ALL LOTS OUTSIDE OF BENEFIT DISTRICT AREA									\$256,157	\$256,157	\$256,157



ROELAND PARK'S STORMWATER UTILITY FEE BREAKDOWN

Situs Address (No Address for Lots without a Building)							# of Lots -or- Sq Ft	Rate	Subtotal for Owners with Multiple Lots		
Tax Property ID	Footprint	Owner Name	Mailing Name	Address	City State Zip				2024	2025	2026
RC-12-012 Breakdown (Expires 12/31/2024)											
Residential Lots (425 Lots)		RESIDENTIAL TOTAL					425	\$70 /Lot		\$29,750	\$29,750
Non-Residential Impervious Areas											
PP45000000 0068A	4740 MOHAWK DR	OAK GROVE ASSEMBLY		4740 MOHAWK DR	ROELAND PARK, KS 66205		26,816	\$0.0289 /sq ft		\$775	\$775
PP33000000 0009B	4104 W 48TH ST	WATER DISTRICT #1 OF JOHNSON	ATTN: ACCOUNTING	10747 RENNER BLVD	LENEXA, KS 66219		1,702	\$0.0289 /sq ft		\$49	\$49
BENEFIT DISTRICT RC-12-012 NON-RESIDENTIAL TOTAL							28,519	\$0.0289 /sq ft		\$824	\$824
RC-12-014 Breakdown (Expires 12/31/2025)											
Residential Lots (663 Lots)		RESIDENTIAL TOTAL					663	\$70 /Lot			\$46,410
Non-Residential Impervious Areas											
PP66000015 000A	5120 CEDAR ST	BD DIR JO CO LIBRARY		PO BOX 2933	SHAWNEE MISSION, KS 66201		24,403	\$0.0289 /sq ft			\$705
BENEFIT DISTRICT RC-12-014 NON-RESIDENTIAL TOTAL							24,403	\$0.0289 /sq ft			\$705
TOTAL FEE FOR ALL LOTS INSIDE OF BENEFIT DISTRICT AREA										\$30,574	\$77,689
TOTAL RESIDENTIAL FEES									\$126,280	\$156,030	\$202,440
TOTAL NON-RESIDENTIAL FEES									\$129,877	\$130,701	\$131,406
GRAND TOTAL OF STORMWATER UTILITY FEE FOR EACH YEAR									\$256,157	\$286,731	\$333,846





ROELAND PARK STORMWATER UTILITY FEE ASSESSMENT

**LAMP
RYNEARSON**

STORM WATER UTILITY DISCUSSION

1/5/22

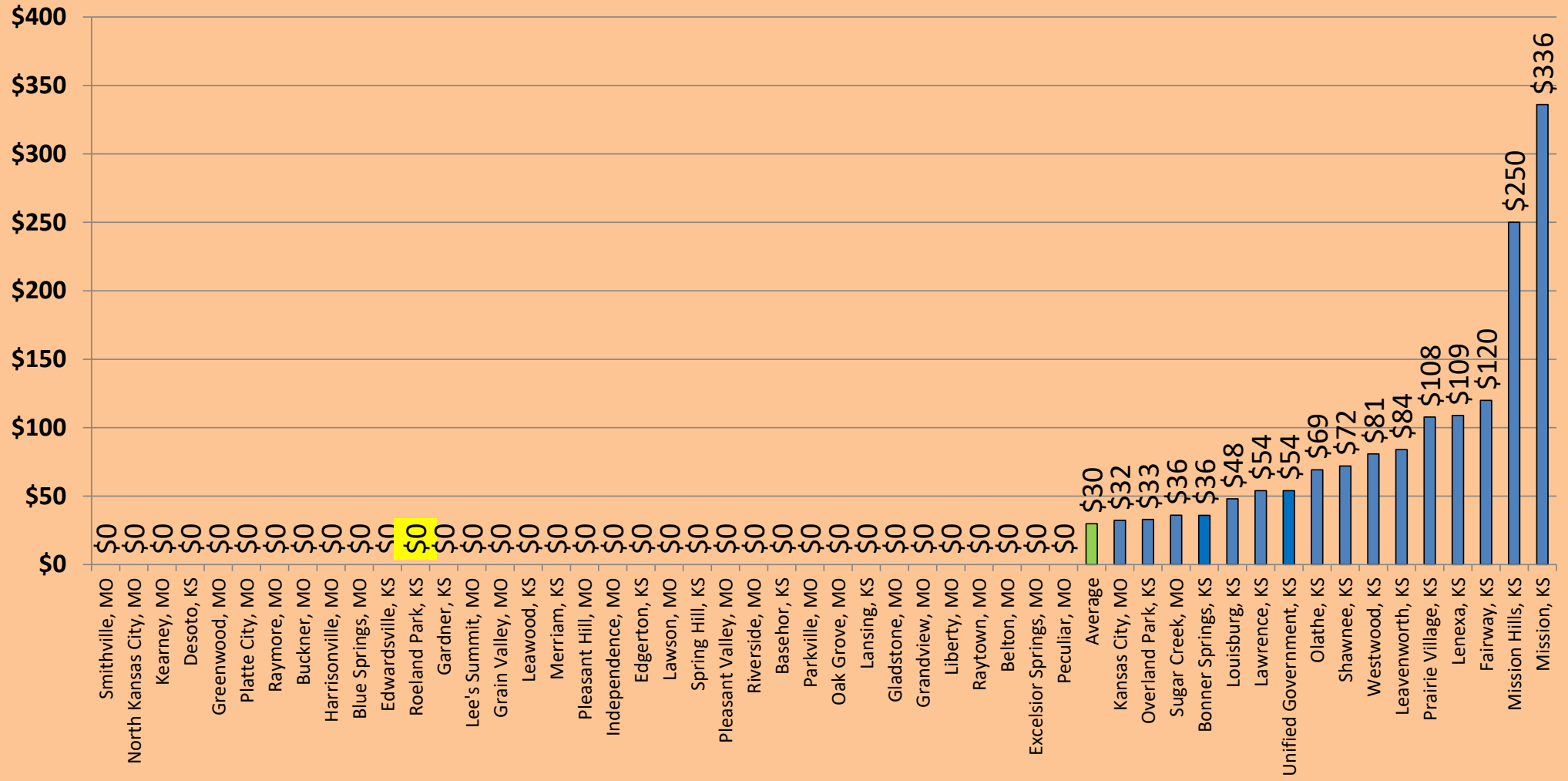
STORM WATER UTILITY ASSUMPTIONS & OVERVIEW

- Presumed fee of \$.0289/ impervious square foot.
- Presumed average \$70/yr. fee per single family lot.
- Utility fee would not be applied to lots currently subject to storm water improvement assessment. (Average Assessment for RC12= \$224, RC13= \$245, RC14= \$150; assessment lasts for 10 years, 1,339 lots currently pay an assessment, roughly half of the single family lots)
- Fee applied to all types of uses. The total fees by type of land use:
 - Single Family Lots= \$199,500
 - Multifamily/Commercial/Office/Industrial Sites= \$72,600
 - Churches and Schools= \$21,000
 - City Owned Facilities= \$12,500
- Total Estimated Annual Utility Fee Revenues Based Upon these Assumptions= \$305,600

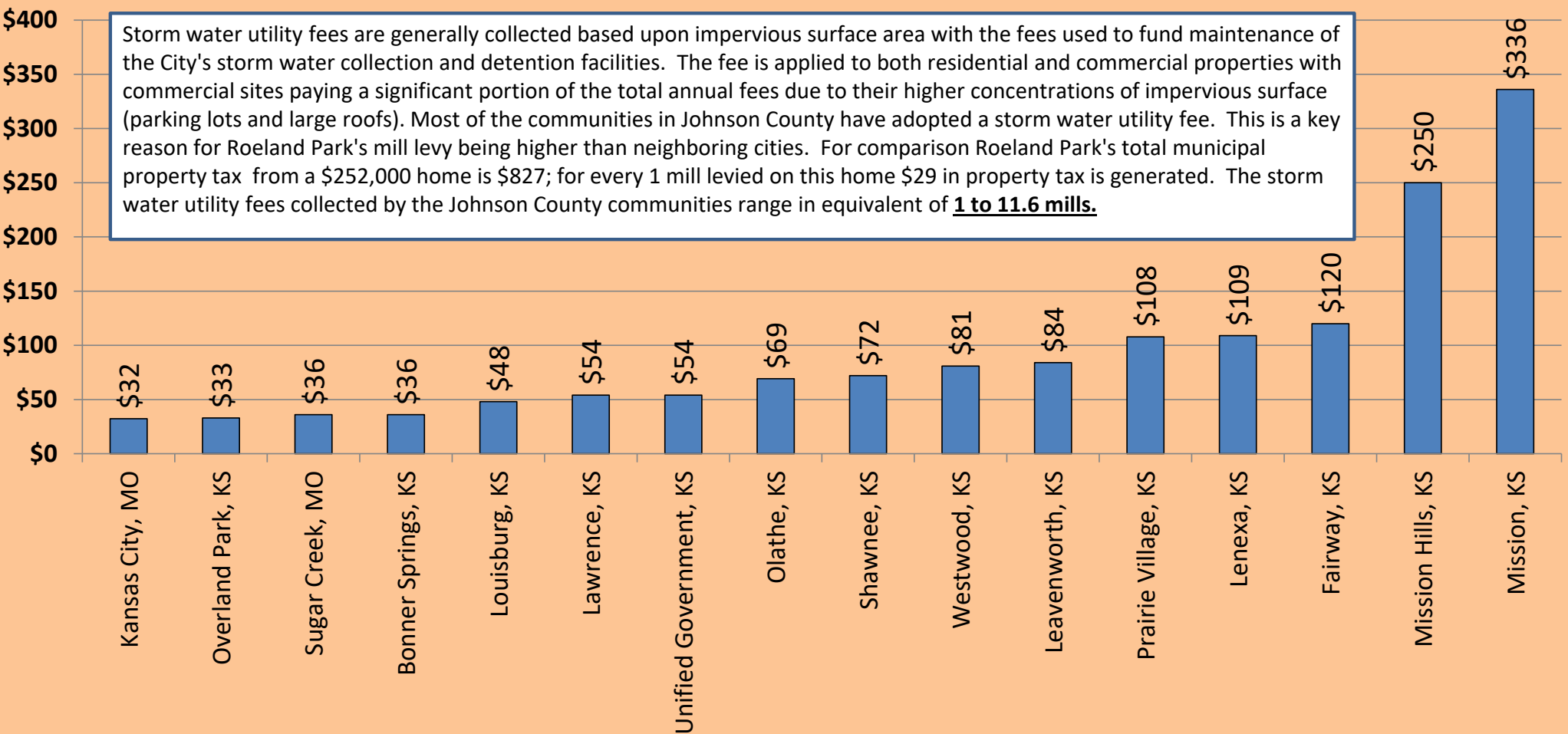
PROPERTY TAX AND STORM WATER ASSESSMENT INFORMATION

- 18% of property tax revenues come from commercial and 82% comes from residential properties.
- Each 1 mill equals \$103,000 in tax revenue, \$18.5k from commercial property and \$84.5k from residential property.
- Cities with a storm water utility in JOCO have fees that range from \$33 to \$336 per single-family lot, the average is \$131/yr./lot.
- The assumed \$70/yr./lot fee is less than half of the lowest current storm water improvement assessment in Roeland Park and 53% of the average storm water utility fee collected in JOCO per single family lot.

Storm Water Utility Cost for a Single Family- 2020



Storm Water Utility Cost for a Single Family- 2020



INITIAL IMPLEMENTATION

- Schools, churches, the City, and the Library do not pay property taxes but would generally be subject to a storm water utility fee imposed by a City.
- RC12 has 427 lots (equal to \$30k in utility fees), RC13 has 248 (equal to \$17k in utility fees) and RC 14 has 664 (equal to \$46k in utility fees) for a total of 1,339 lots currently subject to a storm water improvement assessment which would reduce the utility revenue by \$93k from the \$305,600 estimate; roughly 1/3 of the total.
- The initial implementation could generate around \$200k in storm water fees.
- Initial implementation could entail around a 2-mill reduction in the tax levy netting the budget impact to zero.

FULL IMPLEMENTATION

- Once all of the single family lots are paying the utility fee (2027) the mill could be reduced by 3 (from the current levy) and the net impact would be around a \$12 savings to an average home based upon the 2022 average home value of \$236,800.
- A 3-mill reduction would reduce property taxes paid by commercial property \$55.5k and reduce residential property taxes paid by \$253.5k.
- Commercial Property would see a net increase in taxes/fees paid of \$17,100 (\$72,600 in new storm sewer fees - \$55,500 in fewer property taxes).
- Residential Property would see a net decrease in taxes/fees paid of \$54,000 (\$199,500 in new storm sewer fees - \$253.,500 in fewer property taxes).
- Schools, Government Entities and Churches would see an increase in fees paid of \$33,500
- Net change in taxes and fees to the City of -\$3,400.

STEP IMPLEMENTATION ALTERNATIVES

- 6-year Implementation- If implementation occurred in 2022 initially excluding the lots subject to the storm improvement assessment but adding the utility fee to them as those assessments retire a six-year implementation could be planned where the mill is reduced by .5 each year from 2022 through 2027 with a total mill reduction of 3 over this period.
- 3-year Implementation- If implementation occurred in 2025 where the fee is applied to all lots and the storm improvement assessments would not be collected and instead most of the utility fees collected would be used to make the remaining three years of related debt service payments. This scenario could include a 1 mill reduction in 2025, 2026 and 2027 for a total reduction of 3 mill.
- If schools, churches and other tax-exempt entities were exempted, either the mill reduction would need to be smaller or the storm water fee larger.

ADDITIONAL CONSIDERATIONS

- If the storm water utility fee is not increased annually by the amount that property taxes would have increased on the presumed 3 mill reduction, the net decline in taxes and fees will grow from the initial -\$3,400. Future Councils will need to act on an annual basis to manage this delta.
- The Storm water utility revenue is restricted for use on maintenance and operation of the storm water system including street sweeping, curbs, inlets, piping, detention facilities, and drainage courses. For comparison, property taxes are not restricted to a specific use.
- If property taxes are reduced in an amount equal to storm water utility fees there is no change in service level provided.
- It can be argued that the cost of storm water services are accounted for with greater transparency through implementation of a storm water fee.

TAX VS FEE BURDEN COMPARISON

- Commercial properties have a higher property tax burden than residential properties. 25% of each \$1 of taxable commercial property is subject to the property tax mill, where only 11.5% of each \$1 of taxable residential property is subject to property tax. Commercial property pays 2.17 times the tax that residential property does on the same \$1 of property value.
- Land uses other than single family lots average 42% of impervious area per lot compared to single family lots which average 25% of impervious area. Based upon the averages per land use category the commercial properties would pay on average 1.68 times more storm water utility fees per square foot than single family properties.
- Based upon this comparison a property tax is a greater burden to commercial properties than a storm water fee.

PROS OF A STORM WATER FEE

- Pro- Implementing a storm water fee and reducing the mill rate will bring Roeland Park's mill rate down.
- Pro- A storm water fee would make Roeland Park comparable to other JOCO cities.
- Pro- A storm water fee diversifies the city's revenue sources.
- Pro- A storm water fee can stabilize revenues compared to property taxes (although property taxes are historically stable).
- Pro- A storm water fee arguably creates improved accuracy in accounting for the cost of the storm water system.

CONS OF A STORM WATER FEE

- Con- A storm water fee does not represent as great of a fee burden to commercial properties as the property tax it would be replacing (it is more of a burden to commercial than residential, just not as much of a burden as property tax).
- Con- If future councils choose not to increase the storm water fee to keep pace with increases in taxable value, this will result in less revenue. Consequently, the tax/fee burden will shift from commercial to residential properties.
- Con- Implementation could take years, potentially up to six years. This long runway poses a challenge because residents, newly elected officials and new staff will lack history and potentially question/debate/challenge full implementation.
- Con- A storm water fee has restrictive uses compared to property taxes.
- Con- Applying the storm water fee to uses that are currently exempt from property tax could bring objection from schools, churches, and other tax-exempt entities.

QUESTIONS AND DIRECTION

- Questions?
- Is implementing a storm water utility fee something Council would like to consider further?
- If so, would you like to consider initial implementation with only those properties currently not subject to a storm water improvement assessment?
- If so, would you want to employ an approach that results in a neutral impact upon revenues?



Stormwater Fee Program Comparisons Schools, Churches, and Other Governmental Agencies

Kansas & Missouri Communities	SWU Fee?	Exemption Policy?	Comments
Bonner Springs, KS	YES	NO	Bonner Springs currently collects \$3 for all residential property and \$5.50 for non-residential property, <u>including schools, churches, governments, and non-profits</u> . However, these fees and procedures will be reviewed during the 2022 budget session.
Fairway, KS	YES	NO	Fairway <u>collects SWUF from their only church in town</u> . In addition, they also collect SWUF for two buildings owned by the KS Board of Regents (KU research facilities).
Kansas City, MO	YES	YES	Nearly every property within the City limits is charged a Stormwater fee, which is based upon the amount of impervious surface area on the property. Stormwater fees are not applied to properties that do not have impervious surfaces. In order to receive an exemption from the fee, a customer must complete our Stormwater Utility Impervious Surface Fee Exemption form and provide a copy of the State of Missouri tax exemption letter/documentation and <u>include the use of the exemption, i.e. church school, etc.</u> The Missouri State tax exemption is one of the criteria used to determine if a customer can be exempt from paying Stormwater fees. The other criteria are- ownership of the property, use of the property for tax exemption purpose and if the customer was paying Stormwater fees. There are no taxes associated with Stormwater accounts (the Stormwater fee has been called taxes).
Lawrence, KS	YES	NO	The City of Lawrence charges SWU Fee on their utility bill, therefore anyone who has a water account pays the fee. <u>There are no exemptions for non-profits or governments</u> . The City of Lawrence pays the fee as well on the City's properties in order to help support stormwater control.
Leavenworth, KS	YES	YES	Leavenworth charges schools, churches and non-profits. They also charge county facilities; however, <u>they do not charge state or federal properties</u> .
Lenexa, KS	YES	NO	
Louisburg, KS	YES	NO	Louisburg charges every utility account a flat \$4 fee on each bill. Utility customers include their gas, water, and sewer customers. Regardless of whether the customer is served gas, water or sewer, or any combination of the three, the \$4 fee applies. <u>There are no variances or exceptions to for any organizational/property type</u> .
Mission Hills, KS	YES	NO	

Stormwater Fee Program Comparisons
Schools, Churches, and Other Governmental Agencies



Kansas & Missouri Communities	SWU Fee?	Exemption Policy?	Comments
Mission, KS	YES	NO	Revenue consists of an annual fee collected from each property in the City as an assessment on the property tax bill. The fee is set as a dollar amount per equivalent residential unit (ERU), which equals 2,600 sq. ft., the amount of impervious surface that an average single-family residential parcel is estimated to have. For FY 2022, the annual fee remains at \$28 per ERU/per month. A single-family parcel of property pays a storm water utility fee of \$336 per year. A larger parcel of property will pay a higher amount, determined by taking the total impervious surface for the parcel and dividing by 2,600 sq. ft. to determine the appropriate ERU multiplier. <u>The City collects the fee on all property – residential, commercial, non-profit, and government (including city owned property).</u>
Olathe, KS**	YES	YES	<u>Charitable, nonprofit organizations located in Olathe may qualify for a monthly discount on City non-residential stormwater service charges.</u> Any nonprofit organization located in Olathe and exempt from taxation under § 501(c)(3) of the Internal Revenue Code (IRS) are encouraged to apply. Upon receipt of needed information and approval of the discount, future monthly bills will be based on the nonprofit rate as stated in the most current Comprehensive Listing of Fees and Charges.
Overland Park, KS	YES	NO	Overland Park has a hybrid revenue structure in their Stormwater Utility Fund to address this issue. They use both a property tax component of about one mill, which tax-exempt properties are not subject to. They also have <u>a user fee component, which tax-exempt properties are subject to.</u>
Prairie Village, KS	YES	NO	Prairie Village uses a 0.100% stormwater utility fee, and <u>all properties are subject to it, including schools, churches, nonprofits, and other government organizations.</u> For residential properties, the City counts roof area and driveway area for the calculations. On commercial properties, (anything non-residential) the City counts all impervious surfaces.
Shawnee, KS	YES	YES	Shawnee charges all organizations, including internal departments, for their impervious area. <u>At times, the City has issued refunds (very few), only if the owner removes significant impervious area since the last calculation.</u>
Unified Government, KS	YES	NO	Currently, all property owners, from single -family units to schools and nonprofits, pays a flat \$6.00 monthly fee. However, the Unified Government is looking to revise their procedures. Two proposals are listed on their website .
Westwood, KS	YES	NO	

**Information obtained from City website

Item Number: **Ordinances and Resolutions:- IV.-**
 B.
Committee **2/6/2023**
Meeting Date:



City of Roeland Park
Action Item Summary

Date: 12/1/2022
Submitted By: Keith Moody
Committee/Department: Admin.
Title: **Ordinance 1040 Establishing a Storm Water Utility Policy (5 min)**
Item Type:

Recommendation:

Staff supports adopting a Storm Water Utility policy to take effect 7/1/23 in order to have this policy in place at the time when Council is establishing special assessments for the 2024 budget year.

Details:

Report for 2/6/23 Council Meeting:

Council provided direction at the 1/3/23 workshop to bring forward the ordinances necessary to establish the storm water utility policies at the next council meeting with the policy becoming effective 8/1/2023 to coincide with the timeframe when the City customarily establishes the special assessment amounts for the upcoming year (2024).

Charter Ordinance 39 authorizes the City to exempt itself from state storm water regulations and create its own storm water policy (step 1). Regular Ordinance number 1041 adopts city storm water policy including the storm water utility provisions (step 2). Using this two-step ordinance method will allow the new storm water policies to be incorporated into the appropriate section of the city code vs the policy existing in the "Charter Ordinance" section of the City code. This will make it much easier for residents and staff to reference/search for the policy.

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Report for 1/3/23 Workshop:

During the 12/5/22 workshop discussion staff was asked to inquire what impact implementing the storm water fee would have on Roesland Elementary's budget. Per David Smith (SMSD Communications Officer) "there would be no impact on Roesland's budget, staffing, etc. Stormwater fees are paid from the district's Special Assessment Fund."

The estimated storm water utility fee for the Roesland properties is \$4,888 based upon 169,138 sf of impervious area consisting of playgrounds, roofs, parking, sidewalks, and drives.

Staff is looking for Council to confirm support of the \$.0289/sf storm water rate and move forward an ordinance adopting the storm water utility policy. These steps establish clear direction as well as firm fee estimates for 2024. This information will be provided to each commercial property owner with an impervious area map for their site along with the fee calculation as part of the education effort planned to occur well in advance of the 2024 storm water fee implementation. This extended lead time will provide property owners an extended period to plan for the fiscal impacts that the storm water fee may hold for them.

The attached Utility Fee by Property Owner list reflects the impervious area per lot as well as the storm water utility fee per lot. Properties with a storm water utility fee greater than \$2,000 have been highlighted in green. Some sites contain multiple lots under common ownership, a subtotal is provided for those.

A question was also raised as to why actual impervious area per single family lot is not used vs the estimation approach recommended. In short the impervious area for single family homes captured in the AIMS GIS system we are using only includes the building outline. Decks, patios, sidewalks, pools, sheds and driveways are not reflected and all of these are impervious. In order to include these elements the City would have to pay for a survey of each lot (2,850). Keeping this data up to date would also be a fiscal burden as these site elements do change regularly. The additional cost associated with gathering and maintaining imperious data per single family lot is prohibitive. In addition, the detail would not amount to a significant difference in the utility fee. For example, if a home has a 300 sf pool or 300 sf larger than average home the fee would in theory be \$8.67 more than the \$70.00 on an average lot.

Report for 12/5/22 Workshop:

Council discussed and provided direction on a 2022 Objective concerning implementing a storm water utility. Those discussions occurred as the Council was also working on the 2023 budget. Ultimately the Council's direction was to plan for implementing a stormwater utility with the 2024 budget/calendar year. Council also provided direction that a robust education campaign be implemented early to ensure ample time for property owners to plan for the new fee. The education program has begun.

Developing the policy which will govern the Storm Water Utility is the next step. The assumptions used during council discussions of the topic in 2022 have been incorporated into the attached draft code section. The City Attorney and City Engineer has developed the policy based upon the policies in place with other Johnson County cities.

Council also provided direction that all properties will be subject to the storm water utility fee. That includes government owned property, schools, churches and utilities. A storm water rate of \$.0289/sf of impervious surface was used during Council's initial discussion, this equated to a \$70 annual storm water utility fee for a single-family lot. The stormwater fee per property list attached is based upon the \$.0289/sf assumed rate. As part of the education efforts staff intends to provide each property owner with an estimate of the storm water fee that would be included on their property tax bill. Before providing that information, staff would like Council to confirm the rate will be \$.0289/sf of impervious area. Confirming the rate and establishing the stormwater utility code section are actions that should be coordinated to ensure accuracy. If the Council wants to achieve a larger reduction in the property tax mill they may elect a higher storm water utility rate. If Council

prefers a lower storm water utility rate, then the mill levy reduction will be correspondingly smaller. A reminder that the implementation of a storm water fee as discussed will provide for an equal offsetting reduction in property tax revenue through a planned series of mill levy reductions. Council's direction is to begin implementing the storm water utility in 2024 however properties subject to an existing storm drainage improvement assessment would not be subject to the storm water utility fee until their improvement assessment expires. It will take 3 years to fully implement the storm water utility fee on all properties.

The impervious area data has been updated and reviewed for accuracy by Larkin and staff. Based upon this information staff estimates a 2-mill reduction in the property tax rate would be possible for 2024 if the \$.0289/sf storm water rate is employed. 2025 is estimated to see a .10 mill reduction and 2026 would see an estimated .20 mill reduction as the storm water utility fee is implemented (for a total mill reduction of 2.30 at full implementation). Staff estimates that a 2.30 mill reduction in 2026 will result in \$65,000 less in property taxes from Commercial and Multifamily properties that are subject to property tax with the storm water fees from those properties totaling \$85,000. This results in a net increase of expense to these properties of \$20,000. Properties not subject to property tax (governmental, churches, schools, utilities) would see an increase in expense of \$30,000. Residential Properties should see a reduction in property tax of \$250,000 and an increase of storm water fee of \$200,000 for a net decrease of expense to residential properties of \$50,000.

Please review the list of estimated storm water utility fees attached for commercial, multifamily, governmental, schools, and churches, it is important that Council understand the amount to be paid by these entities.

The assumed method of applying the storm water fee is based upon impervious area (the primary element contributing to storm water run-off) which is consistent with the approach employed by the other JOCO cities with a storm water fee. For single family homes and duplexes a standard fee is calculated based on an average size lot with an average amount of impervious area. This simplifies the administrative process and addresses the limited impervious area information available for single family and two family lots via the AIMS mapping system. Maps reflecting the impervious area on commercial, multifamily, governmental, schools and churches will be sent along with the notice of estimated fee to those properties.

A storm water utility fee can be used to maintain, replace and operate the components of the storm water collection and conveyance system including, curbs, inlets, piping, open drainage ways along with staff, supplies and contractual services dedicated to storm sewer services. Street sweeping, catch basin cleaning, and brush/debris removal from drainage ways are examples of routine maintenance items that would also be eligible for funding through the storm water fee.

Financial Impact

Amount of Request: N/A	
Budgeted Item?	Budgeted Amount: Not until 2024 Budget
Line Item Code/Description:	

Additional Information

Council discussed this topic at their 1/3/22 workshop and indicated that they would like some time to consider and then continue the discussion. No additional information was requested by Council on 1/3/22. Council discussed the topic again on 3/21/22 where council requested a summary indicating how other communities with a storm water utility fee apply the fee to schools, churches, not for profits or other government agencies. Attached is that comparison; only a couple of cities provide exemption opportunities. Also attached are the documents from the 1/3/22 initial workshop discussion item.

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
▢ Ordinance 1040 Establishing a Storm Water Utility Policy	Cover Memo
▢ Storm Water Fee Per Property	Cover Memo
▢ Example of Impervious Area Map	Cover Memo
▢ Storm Water Utility Options Presentation	Cover Memo
▢ Comparison of Exemptions Allowed	Cover Memo

**CITY OF ROELAND PARK, KANSAS
ORDINANCE NO. 1040**

AN ORDINANCE ESTABLISHING A STORMWATER UTILITY IN THE CITY OF ROELAND PARK, KANSAS AND PROVIDING ADDITIONAL PROVISIONS RELATING TO THE ESTABLISHMENT, OPERATION, MAINTENANCE, IMPROVEMENT, AND REGULATION OF SEWER SYSTEMS INCLUDING STORM AND SURFACE WATER DRAINAGE SYSTEMS AND FLOOD PROTECTION WORKS AND ALL ASPECTS OF THE MANAGEMENT OF THESE SYSTEMS.

WHEREAS, the City of Roeland Park, Kansas has exempted itself from the provisions of the Water Pollution Control Act by and through Charter Ordinance No. 39; and

WHEREAS, the City of Roeland Park, Kansas desires to establish its own rules and regulations regarding the establishment, operation, maintenance, and improvement of the City's storm water utility.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ROELAND PARK, KANSAS:

Section 1. Chapter XV, Article 6. "Stormwater Utility" of the City of Roeland Park, Kansas Municipal Code is hereby established to read as follows:

"15-601. PURPOSE AND FINDINGS.

- (a) Pursuant to K.S.A. 12-3101, et seq., as modified by City Charter Ordinance No. 39 and City Ordinance No. 1041, the City does hereby create a stormwater management program and does hereby establish a stormwater utility and declares its intention to operate the same.
- (b) A stormwater management program will provide both general and specific benefits to all property within the city and will include the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of stormwater; the reduction of hazards to property and life resulting from stormwater runoff; improvement in general health and welfare through reduction of undesirable stormwater conditions; improvement of water quality in the stormwater system and its receiving waters; the provision of a planned and orderly system for managing and mitigating the effects of new development on stormwater and appropriate balancing between development and preservation of the natural environment.
- (c) The stormwater management program will also initiate innovative and proactive approaches to stormwater management within the city to address problems in areas of the city that currently are prone to frequent major flooding, protect property in the city from stream bank erosion and the attendant loss of natural resources and the reduction of property values, conserve natural stream assets within the city, enhance water quality, and assist in complying with the mandates of the National Pollutant Discharge Elimination System as created under the Federal Clean Water Act and associated state and federal laws and their supporting regulations.

- (d) Both standard and innovative stormwater management is necessary in the interest of the public health, safety and general welfare of the residents, businesses and visitors of the city.
- (e) Implementation of the stormwater management program will require the expenditure of significant amounts of public money.
- (f) All developed property in the city will benefit from the stormwater management program.
- (g) The city desires to distribute fairly costs of the stormwater management program implementation among all developed property.
- (h) The city has determined that the establishment of a stormwater utility is an appropriate method of funding the costs of implementing the stormwater management program.
- (i) The city has adopted Charter Ordinance No. 39, which grants to the city the authority to adopt, by ordinance, rules and regulations providing for the management and operation of a stormwater utility, fixing a stormwater service fee, requiring security for the payment thereof, providing methods and rules relating to the calculation and collection of the fees and for credits against the fees, and providing for the disposition of the revenues derived therefrom.
- (j) The stormwater service fee imposed by this article, is calculated by calculating the impervious area on the property multiplied by square footage rate, and such fee is neither a tax nor a special assessment, but a charge (in the nature of tolls, fees or rents) for services rendered or available.
- (k) The city has researched collection options and hereby determines that in order to promote efficiency, eliminate duplication of services, and utilize the most economically feasible method of fee collection, the stormwater service fee should be included on City of Roeland Park ad valorem real property tax bills issued by Johnson County, in accordance with an agreement to be negotiated with the County, which will be placed on file in the office of the city clerk.

15-602. DEFINITIONS.

- (a) In addition to the words, terms and phrases elsewhere defined in this Code, the following words, terms and phrases, as used in this article, shall have the following meanings:
 - a. *Bonds* means obligations of the city, for which the principal of and the interest on is paid in whole or in part from special assessments, service fees, sales tax, general ad valorem taxes, or any available city or stormwater utility fund revenues heretofore or hereafter issued to finance the costs of capital improvements.
 - b. *Building permit* means a permit issued by the building official of the City of Roeland Park that permits structure construction.
 - c. *Certificate of occupancy* means a certificate issued by the building official of the City of Roeland Park that permits a newly constructed or a new addition to real property to be occupied.
 - d. *City* means the City of Roeland Park, Kansas.
 - e. *Costs of capital improvements* means costs incurred by the stormwater utility in providing capital improvements as part of the stormwater management program, including, without limitation, alteration, enlargement, extension, improvement,

construction, reconstruction, and development of the stormwater system, professional services and studies connected therewith; principal and interest on bonds heretofore or hereafter issued, including payment of any delinquencies; studies related to the operation of the system; costs related to water quality enhancements, costs related to complying with federal, state or local regulations; acquisition of real and personal property by purchase, lease, donation, condemnation or otherwise; and for the costs associated with purchasing equipment, computers, furniture and all other items necessary or convenient for the operations of the stormwater utility.

- f. *Debt service means* an amount equal to the sum of all issuance costs, any interest payable on bonds during any fiscal year or years, and any principal installments payable on the bonds during such fiscal year or years.
- g. *Developed property means* real property, other than undeveloped land.
- h. *Director means* the director of public works department of the City of Roeland Park or the director's designee.
- i. *Extension and replacement means* cost of extensions, additions and capital improvements in, or the renewal and replacement of capital units of, or purchasing and installing of equipment for, the stormwater management program, or land acquisition for the stormwater management program and any related costs thereto, or paying extraordinary maintenance and repairs, including the costs of capital improvements or any other expense that is not costs of operation and maintenance or debt service.
- j. *Fiscal year means* a twelve-month period commencing on the first day of January of any year.
- k. *Governing body means* the governing body of the City of Roeland Park, Kansas.
- l. *Impervious area means* the total number of square feet of hard surface on a given property that either prevents or retards the entry of water into the soil matrix, and/or causes water to run off the surface in greater quantities or at an increased rate of flow, than it would enter under conditions similar to those on undeveloped land. Impervious area includes but is not limited to, roofs, roof extensions, driveways, pavement, swimming pools, sidewalks, porches, decks, patios and athletic courts.
- m. *Non-single family residential property means* all property that is not classified as single family residential property by the Johnson County, Kansas Appraiser's Office.
- n. *Operating budget means* the annual budget established for the stormwater utility for the succeeding fiscal year.
- o. *Operations and maintenance means*, without limitation, the current expenses, paid or secured, of operation, maintenance and repair and replacement of the stormwater management program or for implementing the stormwater management program as calculated in accordance with generally accepted accounting practices, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses including professional services, equipment costs, labor costs, and the cost of materials and supplies used for current operations.
- p. *Person shall mean* any person, firm, corporation, association, partnership, political unit, or organization.

- q. *Revenues* means all rates, fees, assessments, rentals, or other charges or other income received by the stormwater utility in connection with the management and operation of the stormwater management program, including amounts received from investment or deposit of monies in any fund or account, as calculated in accordance with sound accounting practices.
- r. *Service fee rate* means the fee rate per square foot of impervious area as established in the Fee Resolution adopted and periodically updated by the governing body.
- s. *Sewer, sewer system* shall mean surface water and storm sewers that exist at the time this Charter Ordinance is adopted or that are hereafter established and all appurtenances necessary in the maintenance, operation, regulation, and improvements of the same, including, but not limited to, pumping stations; enclosed sewer systems; outfall sewers; surface drains; street, curb and alley improvements associated with storm or surface water improvements; natural and manmade wetlands; channels; ditches; rivers; streams; other Stormwater conveyances; detentions and retention facilities; and other flood control facilities and works for the collection, conveyance, pumping, treating, controlling, managing and disposing of water carried pollutants or storm or surface water.
- t. *Single family residential property* means property used primarily for one-family intended for occupancy as separate living quarters for one family, with a kitchen plus sleeping and sanitary facilities in single family detached residential unit or a two family attached residential unit located thereon within the city limits, as established by the governing body of the city.
- u. *Stormwater management program* means all aspects of work necessary to perform and provide storm and surface water services in the city, including but not limited to administration, planning, engineering, operations, maintenance, best management practices, control measures, public education, citizen participation, regulation and enforcement, protection, and capital improvements, plus such non-operating expenses as reserves and bond debt service coverage as are associated with provision of the stormwater management program.
- v. *Stormwater service fee* means a fee authorized by this article and the City's Fee Resolution, as amended, charged to owners of property served and benefited by the stormwater utility and shall be the product of multiplying the impervious area by the service fee rate.
- w. *Stormwater system* means surface water and storm sewers and all appurtenances necessary in the maintenance, operation, regulation, and improvement of the same, including, but not limited to, pumping stations; enclosed storm sewers; outfall sewers; surface drains; street, curb and alley improvements associated with storm or surface water improvements; natural and manmade wetlands; channels; ditches; rivers; streams; detention and retention of facilities; and other flood control facilities and works for the collection, conveyance, pumping, infiltration, treating, controlling, managing and disposing of water carried pollutants or storm or surface water.
- x. *Stormwater utility* means the utility created by this article for the purpose of implementing and funding the stormwater management program.

- y. *Undeveloped land* means land that has not been built upon or altered from its natural condition in a manner that disturbed or altered the topography or soils on the property to the degree that the entrance of water into the soil matrix is prevented or retarded.

15-603. ADMINISTRATION.

- (a) The public works director shall manage the stormwater utility. Public works director shall be responsible for developing and implementing stormwater management plans and solely managing facilities, stormwater systems and storm sewers. This utility shall charge a stormwater service fee based on individual contribution of runoff to the system, benefits enjoyed and service received. The stormwater utility shall be administered by Director under the direction and supervision of the City Administrator and shall have the power to undertake the following activities to implement the stormwater management program:
 - a. Advise the governing body on matters relating to the stormwater management program and to make recommendations to the governing body concerning the adoption of ordinances, resolutions, policies, guidelines and regulations in furtherance of the objectives of the stormwater management program.
 - b. Undertake studies, acquire data, prepare master plans, analyze policies or undertake such other planning and analyses as may be needed to address concerns related to stormwater with the city and to further the objectives of the stormwater management program, and to undertake activities designed to communicate, educate and involve the public and citizens in addressing these issues or in understanding and abiding by the elements of the stormwater management program.
 - c. Acquire, design, construct, operate, maintain, expand, or replace any element or elements of the stormwater system, including funding the acquisition of easements by eminent domain, and obtaining title or easements (or real property) other than by eminent domain, over any real or personal property that is part of, will become part of or will protect the stormwater system, or is necessary or convenient for the implementation of the stormwater management program.
 - d. Regulate, establish standards, review, and inspect the design, construction or operation and maintenance of any stormwater system that is under the control of private owners, whether or not such systems are required or intended for dedication to the public storm sewer system, when such systems have the potential to impact, enhance, damage, obstruct or affect the operation and maintenance of the stormwater system or the implementation of the stormwater management program.
 - e. Regulate, establish standards, review and inspect land use or property owner activities when such activities have the potential to affect the quantity, timing, velocity, erosive forces, quality, environmental value or other characteristics of stormwater which would flow into the stormwater system or in any way effect the implementation of the stormwater management program.
 - f. Undertake any activities related to stormwater management when such activities are recommended by applicable federal, state or local agencies or when such activities are required by any permit, regulation, ordinance, or statute governing stormwater or water quality concerns.

- g. Analyze the cost of services and benefits provided by the stormwater utility and the structure of fees, service charges, credits, and other revenues on an annual basis and make recommendations to the governing body regarding the same.
- h. Undertake expenditures as required to implement these activities, including all costs of capital improvements, operations and maintenance, debt service, and other costs as required.

15-604. BUDGET.

The city shall, as part of its annual budget process, adopt capital and operating budget for the stormwater utility. The operating budget shall conform to state law, city policy and generally accepted accounting practices. The initial operating budget will commence January 1, 2024.

15-605. STORMWATER SERVICE FEE.

- (a) Subject to the provisions of this article, a stormwater service fee is imposed on all real property located within the city. City owned property and city maintained property that is constructed and/or located on public right-of-way, public trails, public streets, public alleys, and public sidewalks will be exempt from the imposition of the stormwater utility fee. The governing body, upon recommendation of the director, shall, from time to time, by resolution establish the service fee rate for each square foot of impervious area consistent with the benefits to be provided.
- (b) The stormwater service fee for single family residential property shall be the product of the service fee rate multiplied by an assumed average single family lot size of 7,700 square feet with an assumed average impervious area of 30% or 2,310 square feet. The stormwater service fee for a duplex to be 150% of the single-family fee.
- (c) Stormwater service fee for non-single family residential property shall be the product of the service fee rate multiplied by the number of impervious square feet calculated by the sum of the building roofs, roof extensions, driveways, parking lots, swimming pools, athletic courts and other impervious area(s).
- (d) In the event of a newly constructed unit, the charge for the stormwater service fee attributable to that unit shall commence upon the issuance of the building permit for that unit, or additional development to property that is already developed, or if construction is at least 50 percent complete and is halted for period of three months, then that unit shall be deemed complete and the stormwater service fee shall commence at the end of the three month period.
- (e) Any increase or decrease in the impervious square feet associated with new or remodeling construction shall commence upon the issuance of the certificate of occupancy. The stormwater service fee shall be based on the status of the property on May 31 of each year.
- (f) In performing this calculation, the numerical factor for the impervious square feet shall be rounded to the nearest hundred square feet.
- (g) For common property, the director shall calculate and allocate the stormwater service fee pro-rata among the owners of record of the common property.
- (h) The director shall make initial calculations in accordance with the methods established in this section to determine the number of impervious square feet is located on all property and may

from time to time change this calculation from the information and data deemed pertinent. With respect to new construction, the director may require that the applicant for development approval submit square footage impervious area calculations.

- (i) A property subject to an existing storm drainage improvement assessment will not be subject to the stormwater utility fee until the storm drainage improvement assessment has expired.
- (j) If the owner of property, for which a stormwater service fee has been imposed, disagrees with the calculation of the stormwater service fee imposed upon such owner's property, the owner may request a recalculation of the fee to the director.
- (k) The fee for single and two family residential properties and the rate per square foot of impervious surface shall be established in the Fee Resolution adopted by Council.

15-606. APPEAL PROCEDURE.

- (a) Owners of property other than single and two family homes, for which a stormwater service fee has been imposed, who disagree with the calculation of the stormwater service fee may appeal the calculation or finding to the city administrator or his or her designee.
- (b) The appellant, who must be the property owner, must file a written notice of appeal, including the basis of the appeal, with the city clerk within 30 days following distribution of Johnson County ad valorem tax bills. The appellant shall provide information including a land survey prepared by a surveyor registered in the State of Kansas showing total property square foot area, type of surface material, and impervious square foot area. Based on the information provided, the city administrator shall make a determination as to whether the stormwater service fee should be adjusted or eliminated for the subject property. The city administrator shall notify the appellant in writing of the decision.
- (c) A person shall have the right to appeal the decision of the city administrator to the Public Works Committee. Such appeal shall be made within ten days of the date of the city administrator's written decision and shall be presented in the same manner as the original appeal. The Public Works Committee shall consider the appeal and issue a written decision on the appeal within 30 days of the receipt of the presented appeal.
- (d) The burden of proof shall be on the appellant to demonstrate, by clear and convincing evidence, that the determination of the stormwater service fee is erroneous.
- (e) The filing on a notice of appeal shall not stay the imposition, calculation or duty to pay the fee. The appellant shall pay the stormwater service fee to Johnson County as stated in the billing. If either the city administrator or the Public Works Committee determines that the appellant should pay a fee, pay a fee amount less than the amount appealed, or receive a credit, the city shall issue a check to the appealing party in the appropriate amount within ten days of the date of the applicable written decision.
- (f) The decision of the Public Works Committee shall be final, and any further appeal of this decision shall be to the Tenth Judicial Court of the State of Kansas by way of the K.S.A. 60-201 et seq.

15-607. STORMWATER SERVICE FEE COLLECTION.

- (a) The stormwater service fee shall be billed by the Johnson County Clerk and collected by the Johnson County Treasurer. The stormwater service fee shall be shown as a separate item on the county's annual ad valorem real property tax statement, in accordance with the procedures established in an agreement, pursuant to K.S.A. 12-2908, between the city and the county, as hereby authorized. The payment of stormwater service fee bills for any given property shall be the responsibility of the owner of the property.
- (b) To the extent permitted by applicable law, a stormwater service fee shall be subject to interest for late payment at a rate that is the same as the rate prescribed in K.S.A. 79-2004, as amended and K.S.A. 79-2968, as amended, shall constitute a lien on the applicable property, and shall be collected in the same manner as ad valorem real property taxes collected by the county, regardless of whether the stormwater service fee was incurred when a property owner was in possession of the property or a non-owner was in possession of the property.

15-608. STORMWATER UTILITY FUND.

Stormwater service fees, dedicated ad valorem taxes and other available revenues shall be paid into a fund that is hereby created and shall be known as the Stormwater Utility Fund. This fund shall be used for the purpose of paying the costs of capital improvements, extension and replacement, operations and maintenance, debt service and any other costs associated with the implementation and operation of the stormwater management program.

15-609. FLOODING LIABILITY.

Floods from stormwater runoff may occur which exceed the capacity of the storm drainage facilities constructed, operated, or maintained by funds made available under this chapter. This chapter shall not be construed or interpreted to mean that property subject to the fees and charges established herein will always (or at any time) be free from stormwater flooding or flood damage, or the stormwater systems capable of handling all storm events can be cost-effectively constructed, operated, or maintained. Nor shall this chapter create any liability on the part of, or cause of action against, the city, or any official or employee thereof, for any flood damage that may result from such storms or stormwater runoff. Nor does this chapter purport to reduce the need of the necessity for obtaining flood insurance by individual property owner.

15-610. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.”

SECTION 2. This Charter Ordinance shall take effect after its publication in the official City newspaper, and shall have an effective date of August 1, 2023.

PASSED by the Governing Body, a majority of the elected members voting in favor thereof, this ____ day of _____, 2023.

Mayor

ATTEST:

Kelley Nielsen, City Clerk

APPROVED AS TO FORM:

Steven E. Mauer, City Attorney

Stormwater Utility Fee Data Used & Methodology

Data:

- Parcel Data from JoCoAIMS – dated 10.11.2022
- 2022 Aerial Imaging from JoCoAims was used to draw in the impervious areas
- Impervious Area Data – Buildings, Recreation and Pavement Data from JoCoAIMS acquired 9-29-2022. This data was modified to capture all impervious surfaces within all Non-Residential Lots.

Methodology Notes:

- Non-Residential Lots – Lots that are not classified as Single Family, Duplex or Multifamily and public right-of-way.
- Residential Lots – Single Family, Duplex, Multifamily (regardless if structure used for renting or owning).
- Impervious Areas Updated using Construction Plans – R Park Phase 3, Community Center, Sunflower Development
- Sidewalks were not added towards the impervious area on commercial parcels with a dedicated sidewalk easement / dedicated ROW.
- Playgrounds, football fields, packed gravel driveways are considered impervious as they are designed to not grow vegetation and contribute to runoff into the storm sewer system.
- No credit provided for sites with detention basins as the collected runoff continues to use the City stormwater system to drain.

Round 2 Modifications – November 2022:

- City comments for impervious areas and non-residential lots were addressed.
- Impervious Areas were rechecked, and some modifications were made to a handful of lots due to cleaning up lines, removing islands, adding sidewalk.
- As a QC, the impervious areas were merged to ensure no overlapping sub areas existed. The Summarize Within tool was used in ArcPro to calculate the impervious areas within each non-residential lot. The merged areas were back checked against the areas calculated using the tool Summarize within to ensure accuracy.

ROELAND PARK'S STORMWATER UTILITY FEE SUMMARY

	# of Lots -or- Sq Ft	Rate	2024	2025	2026
<u>Lots Outside of Benefit District</u>					
Residential Lots Outside of the Benefit Districts (2892 SFR Lots minus RC-12 lots)	1,804	\$70 /Lot	\$126,280	\$126,280	\$126,280
Non-Residential Impervious Square Footage	4,036,996	\$0.0289 /sq ft	\$116,669	\$116,669	\$116,669
City of Roeland Park Impervious Square Footage	457,011	\$0.0289 /sq ft	\$13,208	\$13,208	\$13,208
<u>Benefit District (RC-12) Lots</u>					
RC-12-012 Breakdown (# of Lots = 427) (Expires 12/31/2024)					
Residential Lots (425 Lots)	425	\$70 /Lot		\$29,750	\$29,750
Non-Residential Impervious Square Footage in RC-12-012 (2 Lots)	28,519	\$0.0289 /sq ft		\$824	\$824
RC-12-014 Breakdown (# of Lots = 664) (Expires 12/31/2025)					
Residential Lots (663 Lots)	663	\$70 /Lot			\$46,410
Non-Residential Impervious Square Footage in RC-12-014 (1 Lot)	24,403	\$0.0289 /sq ft			\$705
RESIDENTIAL FEES			\$126,280	\$156,030	\$202,440
NON-RESIDENTIAL FEES			\$129,877	\$130,701	\$131,406
GRAND TOTAL STORMWATER UTILITY FEES			\$256,157	\$286,731	\$333,846

Notes:

Residential Assumption Used: 70'x110' with 30% impervious area, rounded up.

2922 Lots with SFR or Duplex as landuse (minus split lots etc). This number is as close as we can get without having to review each parcel having no situs address or vacant designation and comparing owner names etc.

In 2023 1 mill equals roughly \$120,000 in tax revenue to the City.

Value of 1 mill	\$	128,400	\$	136,104	\$	144,270
Estimated Mill Reduction		\$1.99		\$2.11		\$2.31



ROELAND PARK'S STORMWATER UTILITY FEE BREAKDOWN

	Situs Address (No Address for Lots without a Building					# of Lots -or- Sq Ft	Rate	Subtotal for				
	Tax Property ID	Footprint)	Owner Name	Mailing Name	Address			City State Zip	Owners with Multiple Lots	2024	2025	2026
LOTS OUTSIDE OF THE BENEFIT DISTRICT												
Residential Lots						RESIDENTIAL TOTAL	1,804	\$70 /Lot		\$126,280	\$126,280	\$126,280
City of Roeland Park Impervious Areas	PP59000000 0002	5150 GRANADA ST	CITY OF ROELAND PARK				10,833	\$0.0289 /sq ft		\$313	\$313	\$313
	PF251204-3014	4800 ROE PKWY	CITY OF ROELAND PARK				68,517	\$0.0289 /sq ft		\$1,980	\$1,980	\$1,980
	PF251209-1001	5535 JUNIPER ST	CITY OF ROELAND PARK				81,852	\$0.0289 /sq ft		\$2,366	\$2,366	\$2,366
	PF251209-1003	0 NS NT	CITY OF ROELAND PARK				1,306	\$0.0289 /sq ft		\$38	\$38	\$38
	PP50000000 0001	4801 NALL AVE	CITY OF ROELAND PARK				40,904	\$0.0289 /sq ft		\$1,182	\$1,182	\$1,182
	PP50000000 0002	4850 ROSEWOOD DR	CITY OF ROELAND PARK				199,331	\$0.0289 /sq ft		\$5,761	\$5,761	\$5,761
	PP63000017 0030A	0 NS NT	CITY OF ROELAND PARK				763	\$0.0289 /sq ft		\$22	\$22	\$22
	PP63000017 0031	4812 JOHNSON DR	CITY OF ROELAND PARK				8,219	\$0.0289 /sq ft		\$238	\$238	\$238
	PP63000017 0032	4800 JOHNSON DR	CITY OF ROELAND PARK				9,195	\$0.0289 /sq ft		\$266	\$266	\$266
	PP66000022 0009	0 NS NT	CITY OF ROELAND PARK				4,614	\$0.0289 /sq ft		\$133	\$133	\$133
	PP67010000 0U01	0 NS NT	CITY OF ROELAND PARK				26,129	\$0.0289 /sq ft		\$755	\$755	\$755
	PP67010000 0U03	0 NS NT	CITY OF ROELAND PARK				5,349	\$0.0289 /sq ft		\$155	\$155	\$155
						CITY TOTAL	457,011	\$0.0289 /sq ft		\$13,208	\$13,208	\$13,208
Non-Residential Impervious Areas	PP63000017 0024	5000 JOHNSON DR	5000 JOHNSON DRIVE PROPERTIES LLC		13613 S HWY 71	GRANDVIEW, MO 64030	13,793	\$0.0289 /sq ft		\$399	\$399	\$399
	PP67250000 0002	4960 ROE BLVD	AGREE LIMITED PARTNERSHIP		RYAN LLC PO BOX 460389	HOUSTON, TX 77056	322,024	\$0.0289 /sq ft		\$9,306	\$9,306	\$9,306
	PP67250000 0002A	0 NS NT	AGREE LIMITED PARTNERSHIP		RYAN LLC PO BOX 460389	HOUSTON, TX 77056	103,774	\$0.0289 /sq ft		\$2,999	\$2,999	\$2,999
									\$12,306			
	PP62000000 0004	0 NS NT	ALDI INC.		RYAN TAX COMPLIANCE SERVICES, LLC F	HOUSTON, TX 77056	26,621	\$0.0289 /sq ft		\$769	\$769	\$769
	PP62000000 0005	4801 ROE BLVD	ALDI INC.	STORE #59	RYAN TAX COMPLIANCE SERVICES, LLC F	HOUSTON, TX 77056	49,505	\$0.0289 /sq ft		\$1,431	\$1,431	\$1,431
									\$2,200			
	PP78000000 0003	4710 MISSION RD	ALH ENTERPRISES, LLC		4710 MISSION RD	ROELAND PARK, KS 66205	8,833	\$0.0289 /sq ft		\$255	\$255	\$255
	PF251204-1020	4700 ROE PKWY	ALLIED CONSTRUCTION, INC.		PO BOX 937	DES MOINES, IA 50304	66,834	\$0.0289 /sq ft		\$1,932	\$1,932	\$1,932
	PP63000017 0025	4926 JOHNSON DR	AMOS FAMILY, INC.		10901 JOHNSON DR	SHAWNEE, KS 66203	8,650	\$0.0289 /sq ft		\$250	\$250	\$250
	PP63000017 0029	4900 JOHNSON DR	ASSET COMBINER, LLC		4900 JOHNSON DR	ROELAND PARK, KS 66205	9,488	\$0.0289 /sq ft		\$274	\$274	\$274
	PP67250000 0001	4950 ROE BLVD	BELLA ROE LOTS 1 AND 4 07 A, LLC,		12411 VENTURA BLVD	STUDIO CITY, CA 91604	209,001	\$0.0289 /sq ft		\$6,040	\$6,040	\$6,040
	PP67250000 0004	4980 ROE BLVD	BELLA ROE LOTS 1 AND 4 07 A, LLC,		12411 VENTURA BLVD	STUDIO CITY, CA 91604	36,518	\$0.0289 /sq ft		\$1,055	\$1,055	\$1,055
	PP67250000 0004A	0 NS NT	BELLA ROE LOTS 1 AND 4 07 A, LLC,		12411 VENTURA BLVD	STUDIO CITY, CA 91604	2,224	\$0.0289 /sq ft		\$64	\$64	\$64
	PP67250000 0003	4990 ROE BLVD	BELLA ROE LOTS 2 3 AND 6 07 A LLC	ACF PROPERTY MANAGEMENT	12411 VENTURA BLVD	STUDIO CITY, CA 91604	28,278	\$0.0289 /sq ft		\$817	\$817	\$817
	PP67250000 0T0A	0 NS NT	BELLA ROE LOTS 2 3 AND 6 07 A LLC	ACF PROPERTY MANAGEMENT	12411 VENTURA BLVD	STUDIO CITY, CA 91604	41,282	\$0.0289 /sq ft		\$1,193	\$1,193	\$1,193
	PP67250000 0T0A2	0 NS NT	BELLA ROE LOTS 2 3 AND 6 07 A LLC	ACF PROPERTY MANAGEMENT	12411 VENTURA BLVD	STUDIO CITY, CA 91604	1,525	\$0.0289 /sq ft		\$44	\$44	\$44
	PP67250000 0T0A1	0 NS NT	BELLA ROE LOTS 2 3 AND 6 07 A LLC	ACF PROPERTY MANAGEMENT	12411 VENTURA BLVD	STUDIO CITY, CA 91604	7,632	\$0.0289 /sq ft		\$221	\$221	\$221
	PP67250000 0003A	0 NS NT	BELLA ROE LOTS 2 3 AND 6 19 B LLC		12411 VENTURA BLVD	STUDIO CITY, CA 91604	14,360	\$0.0289 /sq ft		\$415	\$415	\$415
	PP67250000 0003B	0 NS NT	BELLA ROE LOTS 2 3 AND 6 19 B LLC		12411 VENTURA BLVD	STUDIO CITY, CA 91604	1,854	\$0.0289 /sq ft		\$54	\$54	\$54
									\$9,903			
	PF251204-1019	4710 ROE PKWY	B-H ACQUISITION, LLC	SHROPSHIRE, D. GARRETT	4710 ROE PKWY	ROELAND PARK, KS 66205	49,679	\$0.0289 /sq ft		\$1,436	\$1,436	\$1,436
	PP81000019 0018A	5201 ROE BLVD	BINK'M COMPANY LLC		2540 KIPLING ST	LAKEWOOD, CO 80215	7,690	\$0.0289 /sq ft		\$222	\$222	\$222
	PP64000000 0000	4800 SKYLINE DR	BOULEVARD APARTMENTS, LLC	NOLAN REAL ESTATE SERVICES INC	2020 W 89TH ST # 320	LEAWOOD, KS 66206	582,699	\$0.0289 /sq ft		\$16,840	\$16,840	\$16,840
	PF251204-1005	4717 ROE PKWY	CITY OF FAIRWAY		FAIRWAY CITY HALL 5240 BELINDER RD	FAIRWAY, KS 66205	43,267	\$0.0289 /sq ft		\$1,250	\$1,250	\$1,250
	PP09150000 0002	4700 JOHNSON DR	COMMERCE BANK		8000 FORSYTH BLVD APT 1300	ST. LOUIS, MO 63105	25,056	\$0.0289 /sq ft		\$724	\$724	\$724
	PP63000017 0030	4818 JOHNSON DR	D & G BUILDING PARTNERSHIP		4818 JOHNSON DR	ROELAND PARK, KS 66205	7,898	\$0.0289 /sq ft		\$228	\$228	\$228
	PP06000000 0009	4101 W 54TH TER	G & A RENTAL PROPERTIES LLC		5420 PAWNEE LN	FAIRWAY, KS 66205	19,342	\$0.0289 /sq ft		\$559	\$559	\$559
	PP66000009 0006A	0 NS NT	HAINEN PARTNERS LLC		13501 ABERDEEN PKWY	LEAWOOD, KS 66224	483	\$0.0289 /sq ft		\$14	\$14	\$14
	PP06000000 0010A	5500 BUENA VISTA ST	HOEDL PROPERTIES LLC		PO BOX 7016	KANSAS CITY, MO 64113	4,632	\$0.0289 /sq ft		\$134	\$134	\$134



ROELAND PARK'S STORMWATER UTILITY FEE BREAKDOWN

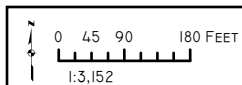
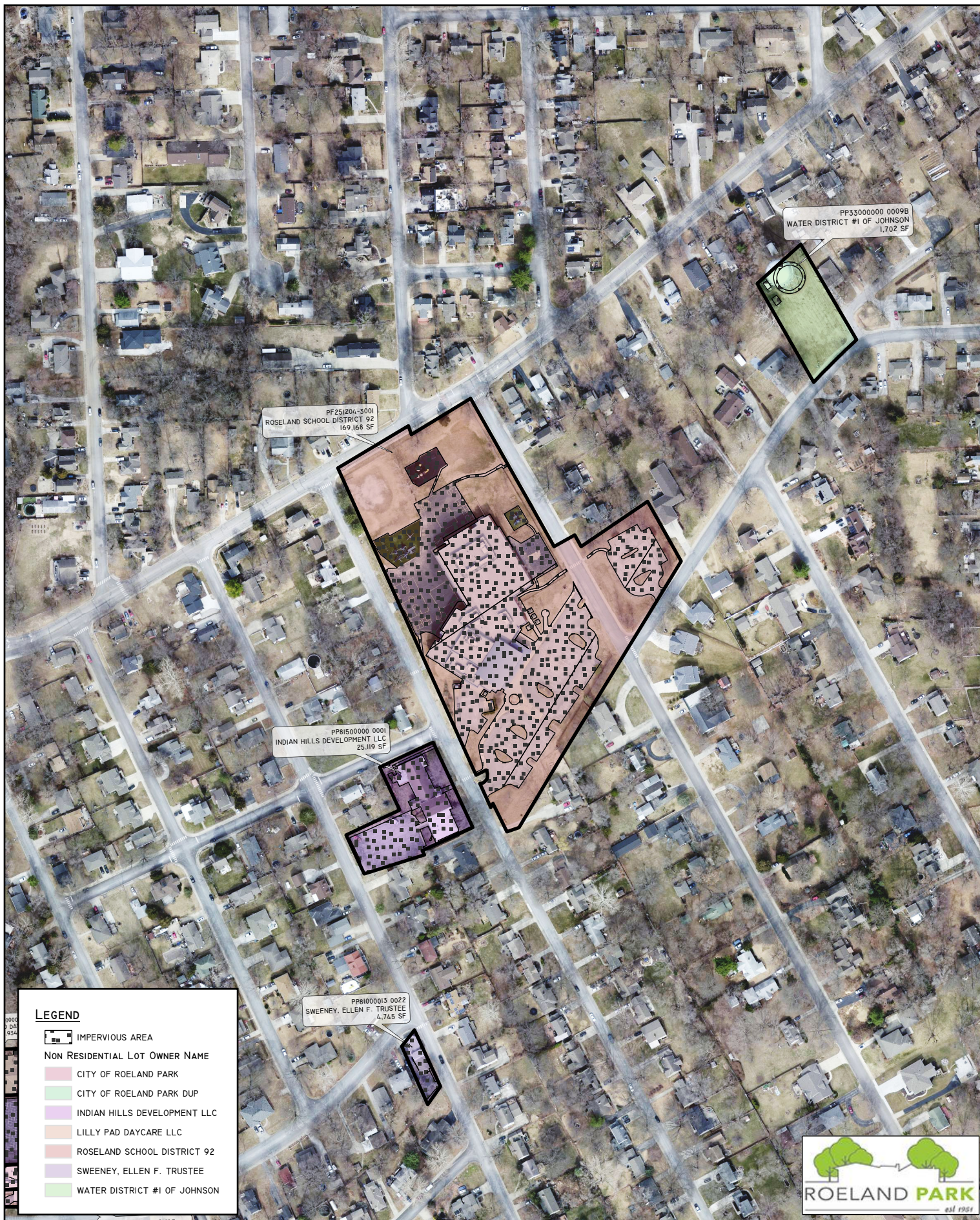
Situs Address (No Address for Lots without a Building)							# of Lots -or- Sq Ft	Rate	Subtotal for Owners with Multiple Lots		
Tax Property ID	Footprint)	Owner Name	Mailing Name	Address	City State Zip				2024	2025	2026
PP66000027 0027	5204 ROE BLVD	IMAGINE ENTERPRISES LLC		5204 ROE BLVD	ROELAND PARK, KS 66205		3,291	\$0.0289 /sq ft	\$95	\$95	\$95
PP81500000 0001	5015 BUENA VISTA ST	INDIAN HILLS DEVELOPMENT LLC		6436 ENSLEY LN	MISSION HILLS, KS 66208		25,119	\$0.0289 /sq ft	\$726	\$726	\$726
PP62000000 0003	4811 ROE BLVD	JL GROUP HOLDINGS I, LLC		3000 EXECUTIVE PKWY APT 515	SAN RAMON, CA 94583		35,313	\$0.0289 /sq ft	\$1,021	\$1,021	\$1,021
PF251204-4001	4050 SHAWNEE MISSION PKWY	JWH PROPERTIES, LLC		2651 N 231ST ST W	ANDALE, KS 67001		13,521	\$0.0289 /sq ft	\$391	\$391	\$391
PF251204-1001	4702 ROE PKWY	K C POWER & LIGHT CO.	SHANNON L. GREEN JR. TAX DEPARTMEN	PO BOX 418679	KANSAS CITY, MO 64141		123,100	\$0.0289 /sq ft	\$3,558	\$3,558	\$3,558
PP03000000 0001B	4700 FONTANA ST	K C POWER & LIGHT CO.	SHANNON L. GREEN JR. TAX DEPARTMEN	PO BOX 418679	KANSAS CITY, MO 64141		21,728	\$0.0289 /sq ft	\$628	\$628	\$628
\$4,186											
PP66000009 0014	5812 ROELAND DR	KELLERMAN, RYAN		5812 ROELAND DR	ROELAND PARK, KS 66205		8,554	\$0.0289 /sq ft	\$247	\$247	\$247
PP66000009 0015	5100 JOHNSON DR	KHETANI, INC.		211 E FLAMING RD	OLATHE, KS 66061		13,763	\$0.0289 /sq ft	\$398	\$398	\$398
PP63000017 0026	4920 JOHNSON DR	LIEMEN, MILDRED N. TRUSTEE		4107 HOMESTEAD DR	PRAIRIE VILLAGE, KS 66208		8,336	\$0.0289 /sq ft	\$241	\$241	\$241
PP63000017 0027	4914 JOHNSON DR	LIEMEN, MILDRED N. TRUSTEE		4107 HOMESTEAD DR	PRAIRIE VILLAGE, KS 66208		8,675	\$0.0289 /sq ft	\$251	\$251	\$251
PP81000009 0015	5023 GRANADA ST	LILLY PAD DAYCARE LLC		5023 GRANADA ST	ROELAND PARK, KS 66205		10,934	\$0.0289 /sq ft	\$316	\$316	\$316
PP83000000 0001	5675 ROE BLVD	LIPT ROE BOULEVARD LLC		333 W WACKER DR FL 23	CHICAGO, IL 60606		59,635	\$0.0289 /sq ft	\$1,723	\$1,723	\$1,723
PP83000000 001A	0 NS NT	LIPT ROE BOULEVARD LLC		333 W WACKER DR FL 23	CHICAGO, IL 60606		16,799	\$0.0289 /sq ft	\$485	\$485	\$485
\$2,209											
PP59000000 0001	5103 ROE BLVD	MCDONALDS CORPORATION		16332 MONROVIA ST	OVERLAND PARK, KS 66221		31,370	\$0.0289 /sq ft	\$907	\$907	\$907
PP62000000 0002	4815 ROE BLVD	MINIT MART LLC		165 FLANDERS RD	WESTBOROUGH, MA 01581		35,046	\$0.0289 /sq ft	\$1,013	\$1,013	\$1,013
PP63500000 0001	5115 ROE BLVD	MISSION BANK (THE)		5201 JOHNSON DR	MISSION, KS 66205		48,382	\$0.0289 /sq ft	\$1,398	\$1,398	\$1,398
PP09150000 0001	4720 JOHNSON DR	MPT OF ST LUKE'S ROELAND PARK LLC		1000 URBAN CENTER DR STE 501	BIRMINGHAM, AL 35242		44,166	\$0.0289 /sq ft	\$1,276	\$1,276	\$1,276
PF251204-1021	4715 ROE PKWY	NEW CASTLE ENTERPRISE LLC		9739 SUNSET CIR	LENEXA, KS 66220		40,772	\$0.0289 /sq ft	\$1,178	\$1,178	\$1,178
PP63350000 0002	4707 ROE PKWY	PI REAL ESTATE LLC		PO BOX 6821	LEAWOOD, KS 66206		10,778	\$0.0289 /sq ft	\$311	\$311	\$311
PP58000001 0T0I	0 NS NT	QUIKTRIP CORPORATION		4705 S 129TH AVE E	TULSA, OK 74134		17,137	\$0.0289 /sq ft	\$495	\$495	\$495
PP58000001 0T0II	5055 ROE BLVD	QUIKTRIP CORPORATION		4705 S 129TH AVE E	TULSA, OK 74134		12,933	\$0.0289 /sq ft	\$374	\$374	\$374
PP58000001 0T0III	0 NS NT	QUIKTRIP CORPORATION		4705 S 129TH AVE E	TULSA, OK 74134		20,924	\$0.0289 /sq ft	\$605	\$605	\$605
PP81000010 0001	5031 ROE BLVD	QUIKTRIP CORPORATION		PO BOX 3475	TULSA, OK 74101		7,009	\$0.0289 /sq ft	\$203	\$203	\$203
\$1,676											
PP63500000 0002	5125 ROE BLVD	ROE MARKETPLACE, LLC		11228 DELMAR ST	LEAWOOD, KS 66211		36,190	\$0.0289 /sq ft	\$1,046	\$1,046	\$1,046
PP78000000 0001	4702 MISSION RD	ROELAND PARK SERIES I LLC		3002 W 47TH AVE	KANSAS CITY, KS 66103		2,072	\$0.0289 /sq ft	\$60	\$60	\$60
PP78000000 0002	4706 MISSION RD	ROELAND PARK SERIES I LLC		3002 W 47TH AVE	KANSAS CITY, KS 66103		184	\$0.0289 /sq ft	\$5	\$5	\$5
\$65											
PP66000014 000A1	5110 CEDAR ST	ROELAND PARK UNITED METHODIST CHURCH		5110 CEDAR ST	ROELAND PARK, KS 66205		15,410	\$0.0289 /sq ft	\$445	\$445	\$445
PP66000014 0029	4910 W 51ST TER	ROELAND PARK UNITED METHODIST CHURCH		5110 CEDAR ST	ROELAND PARK, KS 66205		4,526	\$0.0289 /sq ft	\$131	\$131	\$131
PP66000014 000A1	5110 CEDAR ST	ROELAND PARK UNITED METHODIST CHURCH		5110 CEDAR ST	ROELAND PARK, KS 66205		3,342	\$0.0289 /sq ft	\$97	\$97	\$97
\$673											
PP82000000 0001	5041 REINHARDT DR	ROMAN CATHOLIC ARCHDIOCESE OF KANSAS CITY IN KANSAS		12615 PARALLEL PKWY	KANSAS CITY, KS 66109		730,670	\$0.0289 /sq ft	\$21,116	\$21,116	\$21,116
PP82000000 0002	3224 W 53RD ST	ROMAN CATHOLIC ARCHDIOCESE OF KANSAS CITY IN KANSAS		12615 PARALLEL PKWY	KANSAS CITY, KS 66109		1,354	\$0.0289 /sq ft	\$39	\$39	\$39
PP82000000 0003	0 NS NT	ROMAN CATHOLIC ARCHDIOCESE OF KANSAS CITY IN KANSAS		12615 PARALLEL PKWY	KANSAS CITY, KS 66109		21,265	\$0.0289 /sq ft	\$615	\$615	\$615
PP82000000 0004	4901 REINHARDT DR	ROMAN CATHOLIC ARCHDIOCESE OF KANSAS CITY IN KANSAS		12615 PARALLEL PKWY	KANSAS CITY, KS 66109-3748		93,614	\$0.0289 /sq ft	\$2,705	\$2,705	\$2,705
\$24,475											
PF251204-3001	4900 PARISH DR	ROSELAND SCHOOL DISTRICT 92	UNIFIED SCHOOL DIST #512, ROESLAND I	4900 PARISH DR	ROELAND PARK, KS 66205		169,138	\$0.0289 /sq ft	\$4,888	\$4,888	\$4,888
PP81000013 0022	4301 W 51ST ST	SWEENEY, ELLEN F. TRUSTEE		10123 PAWNEE LN	LEAWOOD, KS 66206		4,745	\$0.0289 /sq ft	\$137	\$137	\$137
PP74000000 0001	5150 ROE BLVD	TMM ROELAND PARK CENTER, LLC	KESSINGER/HUNTER & COMPANY, LC	2600 GRAND BLVD APT 700	KANSAS CITY, MO 64108		402,804	\$0.0289 /sq ft	\$11,641	\$11,641	\$11,641
PP74000000 0001A	0 NS NT	TMM ROELAND PARK CENTER, LLC	KESSINGER/HUNTER & COMPANY, LC	2600 GRAND BLVD APT 700	KANSAS CITY, MO 64108		11,932	\$0.0289 /sq ft	\$345	\$345	\$345
PP74000000 0002	4701 SYCAMORE DR	TMM ROELAND PARK CENTER, LLC	KESSINGER/HUNTER & COMPANY, LC	2600 GRAND BLVD APT 700	KANSAS CITY, MO 64108		50,943	\$0.0289 /sq ft	\$1,472	\$1,472	\$1,472
PP74000000 0003	5000 ROE BLVD	TMM ROELAND PARK CENTER, LLC	KESSINGER/HUNTER & COMPANY, LC	2600 GRAND BLVD APT 700	KANSAS CITY, MO 64108		25,153	\$0.0289 /sq ft	\$727	\$727	\$727
PP74000000 0004	5010 ROE BLVD	TMM ROELAND PARK CENTER, LLC	KESSINGER/HUNTER & COMPANY, LC	2600 GRAND BLVD APT 700	KANSAS CITY, MO 64108		25,196	\$0.0289 /sq ft	\$728	\$728	\$728
\$14,913											
PP63000017 0028	4908 JOHNSON DR	TOLLIE INVESTMENTS LLC		4908 JOHNSON DR	ROELAND PARK, KS 66205		8,760	\$0.0289 /sq ft	\$253	\$253	\$253
PP67250000 0005	4970 ROE BLVD	U S BANK NATIONAL ASSOCIATION	U S BANK CORP REAL ESTATE TAX DEPAR	RYAN PTS DEPT 908 PO BOX 460169	HOUSTON, TX 77056		16,547	\$0.0289 /sq ft	\$478	\$478	\$478
PP67250000 0005A	0 NS NT	U S BANK NATIONAL ASSOCIATION	CRE TAX DEPARTMENT	RYAN PTS DEPT 908 PO BOX 460169	HOUSTON, TX 77056		1,160	\$0.0289 /sq ft	\$34	\$34	\$34
\$512											
PP62000000 0001	4951 ROE BLVD	WG DST 1		PO BOX 1159	DEERFIELD, IL 60015		91,664	\$0.0289 /sq ft	\$2,649	\$2,649	\$2,649
PP63350000 0001	4705 ROE PKWY	XTIERRA PROPERTIES LLC		4705 ROE PKWY	ROELAND PARK, KS 66205		10,103	\$0.0289 /sq ft	\$292	\$292	\$292
NON-RESIDENTIAL TOTAL									\$116,669	\$116,669	\$116,669
Commercial Only											\$87,621
TOTAL FEE FOR ALL LOTS OUTSIDE OF BENEFIT DISTRICT AREA									\$256,157	\$256,157	\$256,157



ROELAND PARK'S STORMWATER UTILITY FEE BREAKDOWN

Situs Address (No Address for Lots without a Building)							# of Lots -or- Sq Ft	Rate	Subtotal for Owners with Multiple Lots		
Tax Property ID	Footprint	Owner Name	Mailing Name	Address	City State Zip				2024	2025	2026
RC-12-012 Breakdown (Expires 12/31/2024)											
Residential Lots (425 Lots)							425	\$70 /Lot		\$29,750	\$29,750
Non-Residential Impervious Areas											
PP45000000 0068A	4740 MOHAWK DR	OAK GROVE ASSEMBLY		4740 MOHAWK DR	ROELAND PARK, KS 66205		26,816	\$0.0289 /sq ft		\$775	\$775
PP33000000 0009B	4104 W 48TH ST	WATER DISTRICT #1 OF JOHNSON	ATTN: ACCOUNTING	10747 RENNER BLVD	LENEXA, KS 66219		1,702	\$0.0289 /sq ft		\$49	\$49
BENEFIT DISTRICT RC-12-012 NON-RESIDENTIAL TOTAL							28,519	\$0.0289 /sq ft		\$824	\$824
RC-12-014 Breakdown (Expires 12/31/2025)											
Residential Lots (663 Lots)							663	\$70 /Lot			\$46,410
Non-Residential Impervious Areas											
PP66000015 000A	5120 CEDAR ST	BD DIR JO CO LIBRARY		PO BOX 2933	SHAWNEE MISSION, KS 66201		24,403	\$0.0289 /sq ft			\$705
BENEFIT DISTRICT RC-12-014 NON-RESIDENTIAL TOTAL							24,403	\$0.0289 /sq ft			\$705
TOTAL FEE FOR ALL LOTS INSIDE OF BENEFIT DISTRICT AREA										\$30,574	\$77,689
TOTAL RESIDENTIAL FEES									\$126,280	\$156,030	\$202,440
TOTAL NON-RESIDENTIAL FEES									\$129,877	\$130,701	\$131,406
GRAND TOTAL OF STORMWATER UTILITY FEE FOR EACH YEAR									\$256,157	\$286,731	\$333,846





ROELAND PARK STORMWATER UTILITY FEE ASSESSMENT

LAMP
RYNEARSON

STORM WATER UTILITY DISCUSSION

1/5/22

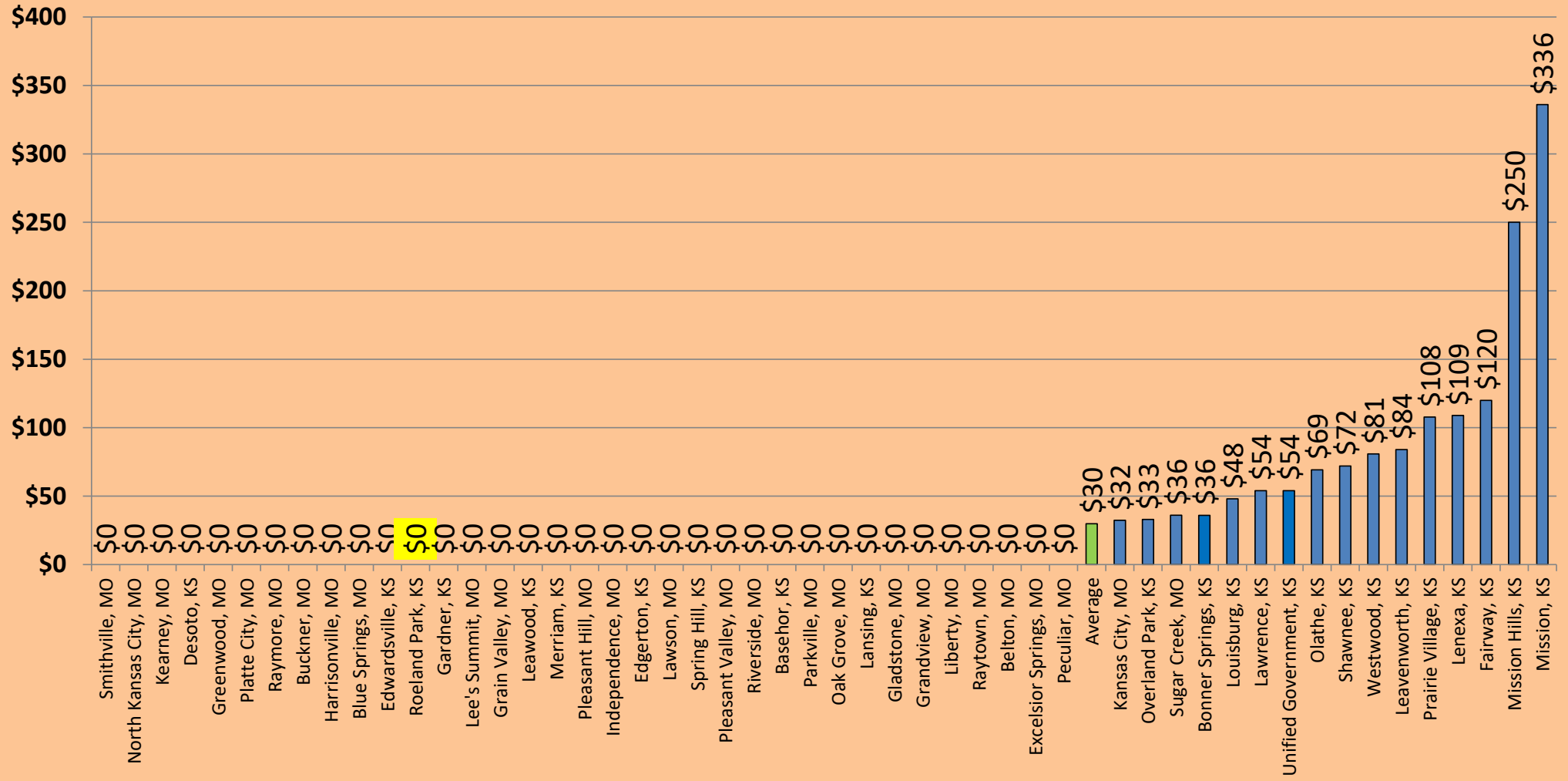
STORM WATER UTILITY ASSUMPTIONS & OVERVIEW

- Presumed fee of \$.0289/ impervious square foot.
- Presumed average \$70/yr. fee per single family lot.
- Utility fee would not be applied to lots currently subject to storm water improvement assessment. (Average Assessment for RC12= \$224, RC13= \$245, RC14= \$150; assessment lasts for 10 years, 1,339 lots currently pay an assessment, roughly half of the single family lots)
- Fee applied to all types of uses. The total fees by type of land use:
 - Single Family Lots= \$199,500
 - Multifamily/Commercial/Office/Industrial Sites= \$72,600
 - Churches and Schools= \$21,000
 - City Owned Facilities= \$12,500
- Total Estimated Annual Utility Fee Revenues Based Upon these Assumptions= \$305,600

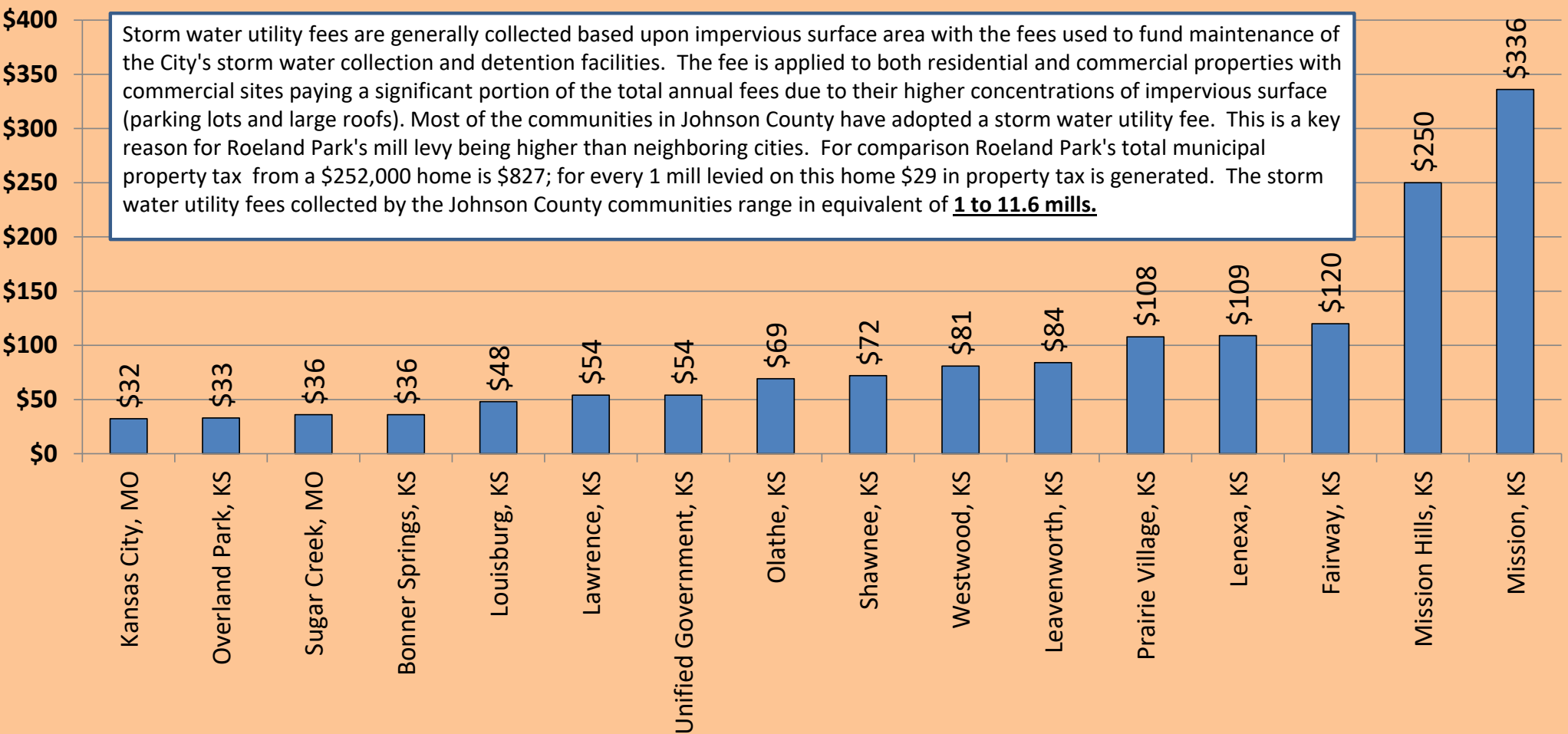
PROPERTY TAX AND STORM WATER ASSESSMENT INFORMATION

- 18% of property tax revenues come from commercial and 82% comes from residential properties.
- Each 1 mill equals \$103,000 in tax revenue, \$18.5k from commercial property and \$84.5k from residential property.
- Cities with a storm water utility in JOCO have fees that range from \$33 to \$336 per single-family lot, the average is \$131/yr./lot.
- The assumed \$70/yr./lot fee is less than half of the lowest current storm water improvement assessment in Roeland Park and 53% of the average storm water utility fee collected in JOCO per single family lot.

Storm Water Utility Cost for a Single Family- 2020



Storm Water Utility Cost for a Single Family- 2020



INITIAL IMPLEMENTATION

- Schools, churches, the City, and the Library do not pay property taxes but would generally be subject to a storm water utility fee imposed by a City.
- RC12 has 427 lots (equal to \$30k in utility fees), RC13 has 248 (equal to \$17k in utility fees) and RC 14 has 664 (equal to \$46k in utility fees) for a total of 1,339 lots currently subject to a storm water improvement assessment which would reduce the utility revenue by \$93k from the \$305,600 estimate; roughly 1/3 of the total.
- The initial implementation could generate around \$200k in storm water fees.
- Initial implementation could entail around a 2-mill reduction in the tax levy netting the budget impact to zero.

FULL IMPLEMENTATION

- Once all of the single family lots are paying the utility fee (2027) the mill could be reduced by 3 (from the current levy) and the net impact would be around a \$12 savings to an average home based upon the 2022 average home value of \$236,800.
- A 3-mill reduction would reduce property taxes paid by commercial property \$55.5k and reduce residential property taxes paid by \$253.5k.
- Commercial Property would see a net increase in taxes/fees paid of \$17,100 (\$72,600 in new storm sewer fees - \$55,500 in fewer property taxes).
- Residential Property would see a net decrease in taxes/fees paid of \$54,000 (\$199,500 in new storm sewer fees - \$253.,500 in fewer property taxes).
- Schools, Government Entities and Churches would see an increase in fees paid of \$33,500
- Net change in taxes and fees to the City of -\$3,400.

STEP IMPLEMENTATION ALTERNATIVES

- 6-year Implementation- If implementation occurred in 2022 initially excluding the lots subject to the storm improvement assessment but adding the utility fee to them as those assessments retire a six-year implementation could be planned where the mill is reduced by .5 each year from 2022 through 2027 with a total mill reduction of 3 over this period.
- 3-year Implementation- If implementation occurred in 2025 where the fee is applied to all lots and the storm improvement assessments would not be collected and instead most of the utility fees collected would be used to make the remaining three years of related debt service payments. This scenario could include a 1 mill reduction in 2025, 2026 and 2027 for a total reduction of 3 mill.
- If schools, churches and other tax-exempt entities were exempted, either the mill reduction would need to be smaller or the storm water fee larger.

ADDITIONAL CONSIDERATIONS

- If the storm water utility fee is not increased annually by the amount that property taxes would have increased on the presumed 3 mill reduction, the net decline in taxes and fees will grow from the initial -\$3,400. Future Councils will need to act on an annual basis to manage this delta.
- The Storm water utility revenue is restricted for use on maintenance and operation of the storm water system including street sweeping, curbs, inlets, piping, detention facilities, and drainage courses. For comparison, property taxes are not restricted to a specific use.
- If property taxes are reduced in an amount equal to storm water utility fees there is no change in service level provided.
- It can be argued that the cost of storm water services are accounted for with greater transparency through implementation of a storm water fee.

TAX VS FEE BURDEN COMPARISON

- Commercial properties have a higher property tax burden than residential properties. 25% of each \$1 of taxable commercial property is subject to the property tax mill, where only 11.5% of each \$1 of taxable residential property is subject to property tax. Commercial property pays 2.17 times the tax that residential property does on the same \$1 of property value.
- Land uses other than single family lots average 42% of impervious area per lot compared to single family lots which average 25% of impervious area. Based upon the averages per land use category the commercial properties would pay on average 1.68 times more storm water utility fees per square foot than single family properties.
- Based upon this comparison a property tax is a greater burden to commercial properties than a storm water fee.

PROS OF A STORM WATER FEE

- Pro- Implementing a storm water fee and reducing the mill rate will bring Roeland Park's mill rate down.
- Pro- A storm water fee would make Roeland Park comparable to other JOCO cities.
- Pro- A storm water fee diversifies the city's revenue sources.
- Pro- A storm water fee can stabilize revenues compared to property taxes (although property taxes are historically stable).
- Pro- A storm water fee arguably creates improved accuracy in accounting for the cost of the storm water system.

CONS OF A STORM WATER FEE

- Con- A storm water fee does not represent as great of a fee burden to commercial properties as the property tax it would be replacing (it is more of a burden to commercial than residential, just not as much of a burden as property tax).
- Con- If future councils choose not to increase the storm water fee to keep pace with increases in taxable value, this will result in less revenue. Consequently, the tax/fee burden will shift from commercial to residential properties.
- Con- Implementation could take years, potentially up to six years. This long runway poses a challenge because residents, newly elected officials and new staff will lack history and potentially question/debate/challenge full implementation.
- Con- A storm water fee has restrictive uses compared to property taxes.
- Con- Applying the storm water fee to uses that are currently exempt from property tax could bring objection from schools, churches, and other tax-exempt entities.

QUESTIONS AND DIRECTION

- Questions?
- Is implementing a storm water utility fee something Council would like to consider further?
- If so, would you like to consider initial implementation with only those properties currently not subject to a storm water improvement assessment?
- If so, would you want to employ an approach that results in a neutral impact upon revenues?



Stormwater Fee Program Comparisons Schools, Churches, and Other Governmental Agencies

Kansas & Missouri Communities	SWU Fee?	Exemption Policy?	Comments
Bonner Springs, KS	YES	NO	Bonner Springs currently collects \$3 for all residential property and \$5.50 for non-residential property, <u>including schools, churches, governments, and non-profits</u> . However, these fees and procedures will be reviewed during the 2022 budget session.
Fairway, KS	YES	NO	Fairway <u>collects SWUF from their only church in town</u> . In addition, they also collect SWUF for two buildings owned by the KS Board of Regents (KU research facilities).
Kansas City, MO	YES	YES	Nearly every property within the City limits is charged a Stormwater fee, which is based upon the amount of impervious surface area on the property. Stormwater fees are not applied to properties that do not have impervious surfaces. In order to receive an exemption from the fee, a customer must complete our Stormwater Utility Impervious Surface Fee Exemption form and provide a copy of the State of Missouri tax exemption letter/documentation and <u>include the use of the exemption, i.e. church school, etc.</u> The Missouri State tax exemption is one of the criteria used to determine if a customer can be exempt from paying Stormwater fees. The other criteria are- ownership of the property, use of the property for tax exemption purpose and if the customer was paying Stormwater fees. There are no taxes associated with Stormwater accounts (the Stormwater fee has been called taxes).
Lawrence, KS	YES	NO	The City of Lawrence charges SWU Fee on their utility bill, therefore anyone who has a water account pays the fee. <u>There are no exemptions for non-profits or governments</u> . The City of Lawrence pays the fee as well on the City's properties in order to help support stormwater control.
Leavenworth, KS	YES	YES	Leavenworth charges schools, churches and non-profits. They also charge county facilities; however, <u>they do not charge state or federal properties</u> .
Lenexa, KS	YES	NO	
Louisburg, KS	YES	NO	Louisburg charges every utility account a flat \$4 fee on each bill. Utility customers include their gas, water, and sewer customers. Regardless of whether the customer is served gas, water or sewer, or any combination of the three, the \$4 fee applies. <u>There are no variances or exceptions to for any organizational/property type</u> .
Mission Hills, KS	YES	NO	

Stormwater Fee Program Comparisons
Schools, Churches, and Other Governmental Agencies



Kansas & Missouri Communities	SWU Fee?	Exemption Policy?	Comments
Mission, KS	YES	NO	Revenue consists of an annual fee collected from each property in the City as an assessment on the property tax bill. The fee is set as a dollar amount per equivalent residential unit (ERU), which equals 2,600 sq. ft., the amount of impervious surface that an average single-family residential parcel is estimated to have. For FY 2022, the annual fee remains at \$28 per ERU/per month. A single-family parcel of property pays a storm water utility fee of \$336 per year. A larger parcel of property will pay a higher amount, determined by taking the total impervious surface for the parcel and dividing by 2,600 sq. ft. to determine the appropriate ERU multiplier. <u>The City collects the fee on all property – residential, commercial, non-profit, and government (including city owned property).</u>
Olathe, KS**	YES	YES	<u>Charitable, nonprofit organizations located in Olathe may qualify for a monthly discount on City non-residential stormwater service charges.</u> Any nonprofit organization located in Olathe and exempt from taxation under § 501(c)(3) of the Internal Revenue Code (IRS) are encouraged to apply. Upon receipt of needed information and approval of the discount, future monthly bills will be based on the nonprofit rate as stated in the most current Comprehensive Listing of Fees and Charges.
Overland Park, KS	YES	NO	Overland Park has a hybrid revenue structure in their Stormwater Utility Fund to address this issue. They use both a property tax component of about one mill, which tax-exempt properties are not subject to. They also have <u>a user fee component, which tax-exempt properties are subject to.</u>
Prairie Village, KS	YES	NO	Prairie Village uses a 0.100% stormwater utility fee, and <u>all properties are subject to it, including schools, churches, nonprofits, and other government organizations.</u> For residential properties, the City counts roof area and driveway area for the calculations. On commercial properties, (anything non-residential) the City counts all impervious surfaces.
Shawnee, KS	YES	YES	Shawnee charges all organizations, including internal departments, for their impervious area. <u>At times, the City has issued refunds (very few), only if the owner removes significant impervious area since the last calculation.</u>
Unified Government, KS	YES	NO	Currently, all property owners, from single -family units to schools and nonprofits, pays a flat \$6.00 monthly fee. However, the Unified Government is looking to revise their procedures. Two proposals are listed on their website .
Westwood, KS	YES	NO	

**Information obtained from City website

Item Number: **Ordinances and Resolutions:- IV.-**
 C.
Committee **2/6/2023**
Meeting Date:



City of Roeland Park
Action Item Summary

Date: 12/29/2022
Submitted By: Keith Moody
Committee/Department: Admin.
Title: **Ordinance 1041 Franchise Agreement with Google (5 min)**
Item Type: Agreement

Recommendation:

Staff recommends approving the Google Franchise Agreement reflecting removal of video services.

Details:

Google is no long providing video services and the new franchise agreement attached reflects eliminating video services from the list of services permitted under the franchise. The agreement is identical to the franchise agreement approved for Google with the City of Shawnee recently. Additional background information is provided by the City Attorney in the attached memo. Also attached for reference is the 2013 Franchise originally approved for Google.

Financial Impact

Amount of Request: N/A	
Budgeted Item?	Budgeted Amount: N/A
Line Item Code/Description: N/A	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description		Type
<input type="checkbox"/>	Mauer Memo Concerning Google Franchise	Cover Memo
<input type="checkbox"/>	Ordinance 1041- Google Franchise	Cover Memo
<input type="checkbox"/>	2013 Original Google Franchise	Cover Memo

Memorandum

To: Roeland Park City Council
From: Alex Felzien, Steve Mauer, and Jamie Walker
Date: 2/2/2023
Re: Google Fiber Franchise

Google has informed the City of its desire to change the terms of its Franchise Agreement with the City. Google has been operating within the City's Right-of-Way ("ROW"), which requires a Franchise Agreement. Previously, Google offered television video services through its Google Fiber product, however Google no longer provides television video services to its customers. Google still operates within the City's ROW, but only to deliver broadband internet services to its customer. As a result, Google is requesting that its Franchise Fee be amended to 2% of broadband services, from the current 5% of video services revenue.

Since Google discontinued its video services it has been amending its franchise agreements across Johnson County. Last month Shawnee, Overland Park, and Prairie Village all amended their agreements with Google. According to Google's internal data, amending the City's Franchise Agreement with Google will be a net positive for the City. Google discontinued its video services, presumably, because demand for such services waned. Demand for fiber optic internet, on the other hand, is steadily rising. The City stands to gain the same or more money from 2% of broadband services than it ever did on 5% of video services, Google claims.

Lastly, we spoke with the City Attorney for Overland Park regarding this matter. He confirmed our understanding that, under Kansas law, there is no requirement for a franchise agreement to provide broadband internet services. Google, however, wants to continue to have its hardware within the City's Right-of-Way. Thus, Google prefers to amend its Franchise Agreement, rather than enter into Pole Attachment Agreement, or ROW usage agreement. That is why negotiations with Google led to the calculation for 2% of broadband services being roughly equal to 5% of video services.

We recommend approval of the amended Franchise Agreement.

###

ORDINANCE NO. 1041

AN ORDINANCE GRANTING TO GOOGLE FIBER KANSAS, LLC, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN COMMUNICATIONS SERVICE FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF ROELAND PARK, KANSAS AND PRESCRIBING THE TERMS THEREOF.

WHEREAS, the City of Roeland Park, Kansas, a city organized and existing under the laws of the State of Kansas (the “**City**”), has jurisdiction over the use of the public rights-of-way in the City (“**Public ROW**”); and

WHEREAS, Google Fiber Kansas, LLC, a Kansas limited liability company, and its direct parent, and its direct parent’s subsidiaries, successors, or assigns (“**Franchisee**”), owns, maintains, operates, and controls a fiber optic infrastructure network in Public ROW (“**Network**”); and

WHEREAS, the Network consists of equipment and facilities that may include aerial or underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities (“**Network Facilities**”); and

WHEREAS, prior to the Effective Date (as defined herein), Franchisee operated the Network pursuant to an appropriate state video services franchise and Franchisee desires to continue to use and occupy Public ROW in order to install, operate, and maintain its Network for the purposes of offering certain communications services (“**Services**”), consisting of broadband Internet access service as defined in 47 C.F.R. § 8.1(b) (“**Broadband Internet Services**”) and Voice over Internet Protocol services (“**VOIP Services**”) to residents and businesses in the City (“**Customers**”), but excluding multichannel video programming services that would be subject to a video services franchise under K.S.A. 12-2021 et seq. and telecommunications services as defined in 47 C.F.R. § 153(53), K.S.A. 12-2001(c)(9) or K.S.A. 17-1902(a)(3); and

WHEREAS, in order to facilitate Franchisee’s desire, and pursuant to K.S.A. 12-2001 and its home rule powers, the City is adopting this ordinance granting Franchisee the right to install, operate and maintain its Network in the Public ROW for the provision of Services to its Customers (this “**Contract Franchise**”) and, upon acceptance by Franchisee, this Contract Franchise shall act as a binding agreement between the parties.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ROELAND PARK:

SECTION 1. Grant and Permission to Use and Occupy.

- 1.1. Permission to Use and Occupy Public ROW. Upon the Commencement Date, the City grants Franchisee permission to use and occupy the Public ROW for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the “**Work**”) in order to provide Services to Customers. This Contract Franchise does not authorize Franchisee to use any property other than the Public ROW as agreed herein (e.g., any City parkland or other recreational property, any governmental office property, any public safety property, or any public works facility). Franchisee’s use of any other City property, including poles and conduits, will be governed under a separate agreement regarding that use.

Franchisee shall not provide any additional services (other than the Services defined herein) for which a franchise or license is required by the City without first obtaining a separate

franchise or license or amending this Contract Franchise, and Franchisee shall not knowingly allow the use of its Network Facilities by any third party in violation of any federal, state or local law.

- 1.2. Commencement Date. This Contract Franchise will be effective upon the later of the date on which (a) (i) Franchisee has discontinued provision of facilities-based linear video services to Customers, (ii) Franchisee has taken all actions necessary under its state video services franchise to terminate such state franchise and such state franchise has terminated, and (iii) Franchisee has notified the City of (i) and (ii); or (b) the Effective Date ("**License Commencement Date**").
- 1.3. Subject to State and Local Law. This Contract Franchise is subject to the City's valid authority under state and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Contract Franchise.
- 1.4. Subject to City's Right to Use Public ROW. This Contract Franchise is subject and subordinate to the City's prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.
- 1.5. Subject to Pre-Existing Property Interests. The City's grant and permission to use and occupy the Public ROW is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Franchisee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.
- 1.6. No Grant of Property Interest. This Contract Franchise does not grant or convey any property interest, or any title, equitable or legal, in the Public ROW. Additionally, this Contract Franchise does not grant the right to use any facilities or property owned or controlled by a third-party without the consent of such third-party; and Franchisee is responsible for obtaining appropriate access or attachment agreements before locating its Network Facilities on property or facilities owned or controlled by a third-party.
- 1.7. Non-Exclusive. This Contract Franchise is not exclusive. The City expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("**Person**"), as well as the right in its own name as a city, to use Public ROW for similar or different purposes allowed Franchisee under this Contract Franchise.
- 1.8. Reservation of Right. In entering into this Contract Franchise, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas or applicable federal laws and regulations as the same may be amended, its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

SECTION 2. Franchisee's Obligations.

- 2.1. Use of Public ROW. Franchisee's use of the Public ROW shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public ROW; provided that any such exercise must be

competitively neutral and may not be unreasonable or discriminatory. Franchisee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public ROW or otherwise relating to Franchisee's Network Facilities.

- 2.2. Individual Permits Required. Franchisee will obtain the City's approval of required individual encroachment, construction, and other necessary permits before placing its Network Facilities in the Public ROW or other property of the City as authorized. Franchisee will pay all lawful processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by the City.
- 2.3. Franchisee's Sole Cost and Expense. Franchisee will perform the Work at its sole cost and expense.
- 2.4. Compliance with Laws. Franchisee will comply with all applicable laws and regulations when performing the Work. Franchisee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by the City. Franchisee shall also participate in the Kansas One Call utility location program. To the extent applicable, Franchisee shall obtain any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the FCC or the Kansas Corporation Commission (KCC).
- 2.5. Reasonable Care. Franchisee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater. Franchisee's Network Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use of such public ways by other utilities.
- 2.6. No Nuisance. Franchisee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.
- 2.7. Repair. Franchisee will promptly repair any damage to the Public ROW, City property, or private property: (i) if such damage is directly caused by Franchisee's Work (including Work by an Authorized Individual) and no other Person is responsible for the damage (e.g., where a Person other than Franchisee or its Authorized Individual fails to accurately or timely locate its underground facilities as required by applicable law); or (ii) as otherwise might be required under law. Franchisee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Franchisee's obligation under this Section 2.7 will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 2.8. As-Built Drawings and Maps. Franchisee will maintain accurate as-built drawings and maps of its Network Facilities located in the City and will provide them to the City upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections.
- 2.9. Network Design. Nothing in this Contract Franchise requires Franchisee to build to all areas of the City, and Franchisee retains the discretion to determine the scope, location, and timing of the design and construction of the Network.
- 2.10. Protection of Facilities. It shall be the responsibility of Franchisee to take adequate measures to protect and defend its Network Facilities in the Public ROW from harm or damage.

SECTION 3. City's Obligations.

- 3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of the City or its residents, the City may remove or relocate the applicable portions of the Network Facilities without prior notice to Franchisee. The City will, however, make best efforts to provide prior notice to Franchisee before making an emergency removal or relocation. In any event, the City will promptly provide to Franchisee a written description of any emergency removals or relocations of Franchisee's Network Facilities. Franchisee will reimburse the City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by the City, the direct cause of which was Franchisee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Franchisee's obligation to reimburse the City under this section will be separate from Franchisee's obligation to pay the Franchise Fee (as defined below).
- 3.2. Relocation to Accommodate Governmental Purposes. If Franchisee's then-existing Network Facilities would interfere with the City's planned use of the Public ROW or other City property for a legitimate governmental purpose, such as the construction, installation, repair, maintenance, or operation of a new water, sewer, or storm drain line, or a public road, curb, gutter, sidewalk, park, or recreational facility, Franchisee will, upon written notice from the City, relocate its Network Facilities at Franchisee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the City's governmental purpose and Franchisee's interest in maintaining the integrity and stability of its Network. Franchisee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances.
- 3.3. Relocation to Accommodate Non-Governmental Purposes. If Franchisee's then-existing Network Facilities would interfere with (a) the City's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (b) a third-party's use of the Public ROW, Franchisee will not be required to bear the cost to relocate or adjust its Network Facilities and shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment.
- 3.4. Non-Discrimination. The City will at all times treat Franchisee and provide access to the Public ROW in a non-discriminatory manner as compared to other similar non-incumbent holders of local or state franchise authority offering wired facilities-based Broadband Internet Services.
- 3.5. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Contract Franchise, Franchisee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by the City.

SECTION 4. Contractors and Subcontractors.

- 4.1. Use of Contractors and Subcontractors. Franchisee may retain contractors and subcontractors to perform the Work on Franchisee's behalf; provided, Franchisee shall be responsible for its contractors and subcontractors including responsible for their actions or failures to act, and Franchisee shall ensure its contractors and subcontractors adhere to the requirements of this Contract Franchise and any applicable laws. Accordingly, when and if

applicable, references in this Contract Franchise to “Franchisee” shall include and apply to Franchisee’s contractors and subcontractors.

- 4.2. Contractors to be Licensed. Franchisee’s contractors and subcontractors used for the Work will be properly licensed under applicable law.
- 4.3. Authorized Individuals. Franchisee’s contractors and subcontractors may submit individual permit applications to the City on Franchisee’s behalf, so long as the permit applications are signed by individuals that Franchisee has authorized to act on its behalf via a letter of authorization provided to the City in the form attached as **Exhibit A (“Authorized Individuals”)**. The City will accept permit applications under this Contract Franchise submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Franchisee under this Contract Franchise.

SECTION 5. Franchise Fee. Franchisee will pay the City a fee (“**Franchise Fee**”) to compensate the City for Franchisee’s use and occupancy of Public ROW pursuant to this Contract Franchise. Franchisee and the City acknowledge and agree that the Franchise Fee provides fair and reasonable compensation for Franchisee’s use and occupancy of Public ROW and other City property as authorized, and shall in no way be deemed a tax of any kind. The Franchise Fee will begin accruing on the License Commencement Date (as defined herein) and will be calculated as set forth in Section 5.1. Subject to any applicable statute of limitations, Franchisee’s payment obligations as of expiration or termination of Contract Franchise hereunder shall survive the expiration or termination of this Contract Franchise.

- 5.1. Franchise Fee. Franchisee will pay the City two percent (2%) (the “**Revenue Percentage**”) of Gross Revenues for a calendar quarter, remitted within forty five (45) days of the end of each calendar quarter, commencing on the License Commencement Date. The payment will be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by the City to determine the accuracy of the payment. Subject to any applicable statute of limitations, Franchisee’s payment obligations hereunder shall survive the expiration or termination of this Contract Franchise.

- 5.1.1. As used herein, “**Gross Revenues**” means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Franchisee from Customers for Broadband Internet Services that are provided to Customers through Network Facilities located at least in part in Public ROW.

- 5.1.2. Gross Revenues do not include:

- (i) any revenue not actually received, even if billed, such as bad debt;
- (ii) refunds, rebates, or discounts made to Customers, or the City;
- (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit a franchise or similar fee to the City from the purchaser’s customer;
- (iv) revenue derived from the provision of Broadband Internet Services to Customers where none of the Network Facilities used to provide such Broadband Internet Services are located in Public ROW;
- (v) any forgone revenue from Franchisee’s provision of Broadband Internet Services to Customers at no charge if required by state law;
- (vi) any revenue derived from advertising;

- (vii) any revenue derived from VOIP Services;
- (viii) any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the Broadband Internet Services;
- (ix) any revenue derived from referral or marketing agreements with third party providers of online services which Franchisee may make available to Customers;
- (x) any tax of general applicability imposed upon Franchisee or its Customers by the City or by any state, federal, or any other governmental entity, and required to be collected by Franchisee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Contract Franchise);
- (xi) any forgone revenue from Franchisee's provision, in Franchisee's discretion, of free or reduced cost Broadband Internet Services to any Person, including without limitation employees of Franchisee; provided, however, that any forgone revenue which Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and
- (xii) sales of capital assets or sales of surplus equipment.

5.2. Pass Through. To the extent allowed by either federal or state law, Franchisee may identify and collect, as a separate item on the regular bill of any Customer whose Broadband Internet Services are provided by Network Facilities located at least in part in Public ROW, that Customer's pro rata amount of the Franchise Fee.

5.3. Interest on Late Payments. Any payments that are due and payable under this Contract Franchise that are not received within thirty (30) days from the specified due date will be assessed interest at an annual rate equal to the applicable statutory interest rate in effect upon the due date.

5.4. No Accord. No acceptance by the City of any Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Franchise Fee payment be construed as a release or any claim of the City.

5.5. Audit. The City shall have the right to examine, upon 30-days written notice to Franchisee and no more often than once per calendar year, those records necessary to verify the correctness of the Franchise Fee paid by Franchisee.

5.6. Change in Franchise Fee. The parties may timely negotiate, in good faith and in conformance with applicable law, a potential change to either the Franchise Fee or the Revenue Percentage upon any of the following events:

5.6.1. A request by either party to reduce or increase the Franchise Fee.

5.6.2. A change in applicable law.

5.6.3. If during the term of this the Contract Franchise the City subsequently enters into a franchise with another comparable provider granting said provider the right to use and occupy the Public ROW for the provision of comparable wired facilities-based Broadband Internet Services for a fee more favorable than the Franchise Fee set forth in Section

5.1, then the City and Franchisee shall negotiate a lower Franchise Fee that is comparable to said other provider.

SECTION 6. Defense and Indemnity.

- 6.1. Franchisee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Franchisee, any agent, officer, director, representative, employee or subcontractor of Franchisee, while installing, repairing or maintaining Facilities in the Public ROW.
- 6.2. The indemnity provided by this Section 6 does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Franchisee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. Likewise, the indemnity provided by this Section 6 does not apply to any liability resulting from the negligence of any third party not associated with Franchisee, or for any portion of any harm caused by the same. This section is solely for the benefit of the City and Franchisee and does not create or grant any rights, contractual or otherwise, to any other person or entity.
- 6.3. Franchisee or the City shall promptly advise the other in writing of any known claim or demand against Franchisee or the City relating to or arising out of Franchisee's activities in the Public ROW.

SECTION 7. Limitation of Liability. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS CONTRACT FRANCHISE. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE LAW.

SECTION 8. Performance Bond. If Franchisee has not previously provided the City with a performance bond under any prior agreement, Franchisee will, promptly after the License Commencement Date, provide the City with a performance bond in the amount of fifty thousand dollars (\$50,000) naming the City as obligee and guaranteeing Franchisee's faithful performance of its obligations under this Contract Franchise. The performance bond will remain in full force during the Term of this Contract Franchise. The bond must be with good and sufficient sureties, issued by a surety authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. At Franchisee's election, any performance bond previously provided by Franchisee to the City and associated with its state or local video service franchise may be applied to its obligations, in whole or in part, under this paragraph.

SECTION 9. Insurance.

- 9.1. Franchisee will carry and maintain:
 - 9.1.1. Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$1,000,000 for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names the City, its employees, and officers as additional insureds.

9.1.2. Workers' Compensation insurance with policy limits not less than the Kansas Statutory requirements.

9.1.3. Business Automobile Policy covering all owned, hired and nonowned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

9.2. All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Contract Franchise will be mailed directly to the City's insurance compliance representative upon the City's written request.

SECTION 10. **Term.**

10.1. This Contract Franchise is effective on the later of (a) the date the last party to sign executes this Contract Franchise and (b) the date on which any implementing ordinance becomes effective in accordance with its terms and state law ("**Effective Date**"). The Contract Franchise will expire automatically on the twentieth anniversary of the License Commencement Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. Thereafter, the Contract Franchise will automatically renew for successive 5-year terms (each a "**Renewal Term**") unless a party provides at least six (6) months' prior written notice to the other party of its intent not to renew.

10.2. In the event the parties are actively negotiating in good faith a new contract franchise or an amendment to this Contract Franchise upon the termination date of this Contract Franchise, the parties by written mutual agreement may extend the termination date of this Contract Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract Franchise and not as a new franchise or amendment.

10.3. Upon written request of either the City or Franchisee, this Contract Franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Franchisee, including but not limited to the scope of the Contract Franchise granted to Franchisee or the compensation to be received by the City hereunder.

SECTION 11. **Termination.**

11.1. **Termination by City.** The City may terminate this Contract Franchise if Franchisee is in material breach of this Contract Franchise, provided that the City must first provide Franchisee written notice of the breach and one hundred twenty (120) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Franchisee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law.

SECTION 12. Assignment. Except as set forth below, Franchisee shall not assign or transfer its rights or obligations under this Contract Franchise, in whole or part, to a third party, without the written consent of the City. Any agreed upon assignee will take the place of the Franchisee, and the Franchisee will be released from all of its rights and obligations upon the completion of the requirements of Subsection 12.3 below; provided, however, such release shall not include any liability or obligations under the Contract Franchise, whether of indemnity or otherwise, which may constitute a breach of the Contract Franchise and have accrued prior to the date of such assignment.

12.1. Notwithstanding the foregoing, Franchisee may at any time, on written notice to the City, assign this Contract Franchise or any or all of its rights and obligations under this Contract Franchise:

12.1.1. to any Affiliate (as defined below) of Franchisee;

12.1.2. to any successor in interest of Franchisee's business operations in the City in connection with any merger, acquisition, or similar transaction if Franchisee reasonably determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Contract Franchise; or

12.1.3. to any purchaser of all or substantially all of Franchisee's Network Facilities in the City if Franchisee reasonably determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Contract Franchise.

12.2. Following any assignment of this Contract Franchise to an Affiliate, Franchisee will remain responsible for such Affiliate's performance under the terms of this Contract Franchise. For purposes of this section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Franchisee; and (b) "control" means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

12.3. Franchisee shall: furnish the City with written notice of the assignment/transfer; provide a point of contact for the assignee; and advise the City of the effective date of the assignment. Additionally, Franchisee's obligations under this Contract Franchise with regard to indemnity, bond and insurance shall continue until the assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the assignment.

SECTION 13. Notice and Emergency Contact.

13.1. Emergency Contact. Franchisee shall maintain with the City a point of contact who shall be available to act on behalf of Franchisee in the event of an emergency. Franchisee shall provide the City's ROW Coordinator and City Engineer with said contact's name, address, telephone number and e-mail address.

Emergency notice by the City to Franchisee may be made by telephone to Franchisee's Emergency Contact at (866) 954-1572 or by email to gfiber-noc-leads@google.com.

(Or to replacement Emergency Contact that is later designated by Franchisee in writing.)

Emergency notice by Franchisee to the City may be made by telephone to the City's ROW Supervisor at (913) 742-6239. If the City's ROW Supervisor, then contact the City Engineer or Public Works Director.

(Or to replacement Emergency Contact that is later designated by the City in writing.)

13.2. Notice. All other notices related to this Contract Franchise will be in writing and sent, if to Franchisee to the email addresses set forth below, and if to the City to the address set forth below. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt

when transmitted by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

Franchisee's e-mail address for notice is: googlefibernotices@google.com, with a copy to legal-notices@google.com.

(Or to replacement Notice contact that is later designated by Franchisee in writing.)

City's address for notice is:

City Administrator
City Hall
4600 W. 51st Street
Roeland Park, KS 66205

And

Keith Moody
City Administrator
4600 W 51st Street
Roeland Park, KS 66205

(Or to replacement Notice contact that is later designated by the City in writing.)

SECTION 14. General Provisions. This Contract Franchise is governed by the laws of the state where the City is located (Kansas). Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. The failure of either party to insist upon the strict performance of any one or more terms or provisions of this Contract Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. This Contract Franchise sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Contract Franchise, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Contract Franchise in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Contract Franchise agrees that Franchisee may use electronic signatures. If any clause, sentence, or section of this Contract Franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Franchisee may elect to declare the entire Contract Franchise is invalidated if the portion declared invalid is, in the judgment of the City or Franchisee, an essential part of the Contract Franchise.

SECTION 15. Acceptance of Terms and Effective Date. This Contract Franchise shall take effect and be in force from and after (i) its passage and approval by the City, (ii) written acceptance by Franchisee, and (iii) publication in the official city newspaper in accordance with Statute (the "**Effective Date**"). Franchisee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Franchisee. In accordance with Kansas Statute, Franchisee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

PASSED by the City Council this [_____], 2023.

APPROVED by the City Administrator this [_____], 2023.

CITY OF ROELAND PARK, KANSAS

Keith Moody, City Administrator

ATTEST:

APPROVED AS TO FORM:

Kelley Nielsen, City Clerk

Steve Mauer, City Attorney

GOOGLE FIBER KANSAS, LLC

Authorized Signatory



**EXHIBIT A
FORM OF LETTER OF AUTHORIZATION**

[Franchisee LETTERHEAD]

[Date]

Via Email ([Email Address])

Roeland Park

[Addressee]

[Address]

Re: [Amended] Letter of Authorization

Dear [Name],

In accordance with Section 4.3 of the Contract Franchise dated [] between **the City of Roeland Park, Kansas** and **Google Fiber Kansas, LLC** ("**Google Fiber**"), Google Fiber hereby designates the following Authorized Individuals (as that term is defined in the Contract Franchise), who may submit and sign permit applications and other submissions to the City on behalf of Google Fiber. *[If applicable: This letter amends and supersedes the Letter of Authorization dated _____.]*

[Insert name and title for each Authorized Individual, including any Authorized Individual previously named and whose authority continues. Strike through the names of any individuals who are no longer authorized, if any.]

1. [Name, Title]
2. [Name, Title]
3. [Name, Title (previously authorized, authorization continues)]
4. ~~[Name, Title (authorization withdrawn)]~~

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective 24 hours after receipt by the City.

Kind regards,

[Name]

Manager, **Google Fiber Kansas, LLC**

NETWORK COOPERATION AND SERVICES AGREEMENT

This Network Cooperation and Services Agreement (the "Agreement") is entered into this 1st day of October, 2013 (the "Effective Date") by and between the CITY OF ROELAND PARK, KANSAS, a municipal corporation duly organized in accordance with the laws of the State of Kansas ("City") and GOOGLE FIBER KANSAS, LLC, a Kansas limited liability company with its principal place of business at 1600 Amphitheater Parkway, Mountain View, CA 94043 ("Network Provider"), on behalf of itself and its subsidiaries (collectively, the "parties" and each, individually, a "party").

RECITALS

A. Network Provider has announced plans to build and operate fiber networks in one or more cities in the United States, in an effort to improve Internet access in such cities, to foster new high-speed applications, and to introduce new methods of delivering video services.

B. Based on the multiple factors considered by Network Provider, including the City's goals identified below, Network Provider has selected the City as a location to construct and deploy a fiber network.

C. Prior to Network deployment, Network Provider will be granted a state-issued video service authorization by the Kansas Corporation Commission pursuant to the Kansas Video Franchise Act, K.S.A. 12-2003 *et. seq.* (the "Act"), to which Network Provider agrees to be bound, and which gives Network Provider access to City rights of way, subject to the City's Right of Way Ordinance.

D. Network Provider will remit to the City a 5% video service provider fee on gross revenues generated in the City under the terms of its video service franchise and K.S.A. 12-2024 as amended from time to time.

E. The City has a direct interest in improving the quality of life of its citizens through improvements to essential infrastructure and services within its boundaries and recognizes that improved access to high-speed broadband and video services would provide substantial value to the City and its citizens.

F. The City regularly enters into agreements with third parties that will improve the quality of life in City.

G. Network Provider wishes to document certain understandings with the City to support Network Provider and to enable Network Provider to efficiently construct and deploy the Network.

AGREEMENT



NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be bound, hereby enter this Agreement as set forth below:

1. Design and Construction of the Network.

1.1. Network Description. Network Provider intends to design, construct and install an up to 1 Gigabit capable fiber network (the "Fiber Network") within the geographic boundaries of the City of Roeland Park, Kansas (the "Market Area"). Concurrent with or following completion of the Fiber Network, Network Provider may then design, construct and install a WiFi network (the "WiFi Network") within the Market Area. The terms "Fiber Network" and "WiFi Network" shall sometimes be collectively referred to as the "Network." In the event Network Provider is able to successfully construct the Fiber Network within the scope of its defined plans and objectives, Network Provider intends to utilize the Fiber Network for commercial purposes to sell and provide various broadband and video services to residents within Market Area (the "Services"). Subject to Network Provider's discretion to construct the WiFi Network, Network Provider may decide to deploy the WiFi Network within limited sections of the Market Area that may be used for public WiFi access and subsequently for commercial purposes.

1.2. Network Design and Construction. Network Provider will design and construct the Network in compliance with all applicable regulatory and permitting requirements and processes, including without limitation, the City's right of way ordinance located at Roeland Park's City Code Section 13-801 et. seq. and all amendments thereto (the "Right of Way Ordinance"). Network Provider intends to use various construction techniques, which may include, but are not limited to, the following: (i) traditional open trench or boring; (ii) slot cut micro-trenching or trenching and boring; (iii) fiber attached to buildings or aerial structures; and (iv) installation of fibers within existing utility infrastructure. City agrees to cooperate with Network Provider and to review these and any other reasonable construction methods proposed by Network Provider, all in accordance with the City's Right of Way Ordinance, and all applicable regulations and ordinances and the City's standard processes and practices generally made available to all third parties. Construction and other work related to the Network may be completed by independent contractors and representatives engaged by Network Provider.

1.3. Network Deployment and Fiberhoods. Network Provider intends to define separate geographical areas within the Market Area (each, a "Fiberhood") based on its Network design and construction plans. Following construction of the Network, Network Provider will identify the specific Fiberhoods where the Network may first be deployed and then schedule such deployment to residents within such Fiberhood. Deployment of the Network and Services within a Fiberhood shall enable Network Provider to offer to each resident of single family homes and units within multiple-family dwelling units the opportunity to purchase Services for standard fees established by Network Provider. The Services will be provided by Network Provider to subscribing residents pursuant to the terms of Network Provider's standard terms of service for the Service ("Terms of Service"). Although it is Network Provider's present intent to complete construction of the Network and deploy the Services throughout various Fiberhoods



within the Market Area as soon as reasonably practicable, Network Provider's plans are subject to change due to various business and market considerations and could result in delay, deferment or complete cancellation of the project in Network Provider's sole discretion.

1.4. Commitment to Provide Services to Public Facilities.

1.4.1. Scope of Public Services. In consideration for those rights granted to Network Provider under the terms of the Attachment Agreement and License Agreement (as those are defined below), Network Provider will, at such time as Network Provider installs a Fiber Network in the City, use commercially reasonable efforts to provide the following services to the City without charge for a specified term: (i) up to 1 Gigabit capable broadband Internet services through the Fiber Network to various public facilities as more particularly set forth in Section 1.4.2 below (the "City Broadband Services") and (ii) subject to Network Provider's decision to deploy the WiFi Network, public WiFi access through the WiFi Network within a limited number of areas open to the public as set forth in Section 1.4.4 below (the "City WiFi Services"). The City Broadband Services and the City WiFi Services may be referred to collectively herein as the "City Services." City agrees and acknowledges that the City Broadband Services will be the same as those broadband services to be provided to residential customers and are solely intended to supplement any broadband and similar services that are currently provided or otherwise may be required for any Public Site (as defined below). The City Broadband Services are not intended for and should not be used for any emergency or mission critical services or functions. The City understands and acknowledges that Network Provider's Network construction plans will be based on optimal deployment of the Network to serve residential users and shall generally not be changed to accommodate the City Services. Additionally, this Section 1.4.1 will in no way impact the effectiveness or meaning of Section 7.1 below.

1.4.2. City Broadband Services. Network Provider shall use commercially reasonable efforts to provide, without charge during the Service Term (as defined in Section 1.4.5 below), City Broadband Services to a limited number of public facilities to be mutually agreed upon by the City and Network Provider based on a list of proposed sites created by the City ("Public Sites"), each of which shall be subject to the conditions and requirements set forth below. The Public Sites shall primarily be public or non-profit facilities that provide access and services directly to citizens (e.g., schools, libraries and recreational centers). Each Public Site shall be subject to reasonable acceptance of Network Provider during the design and construction of the Fiber Network based on (i) the proximity of the Fiber Network to each public site within a Fiberhood; and (ii) reasonable technical requirements and cost considerations as determined by Network Provider. In the event Network Provider determines at any time that delivery of City Broadband Services to any Public Site is not feasible for any reason, Network Provider shall notify the City and the parties shall meet and attempt in good faith to identify a mutually satisfactory solution to enable Network Provider, in its sole discretion, to deliver services to any specific Public Site or an alternative Public Site. The City, or the respective end user of the Public Site, shall be responsible for any drop costs for each Public Site and other construction and upgrade costs related to each Public Site that may be required to enable a Public Site to receive the City Broadband Services.



1.4.3. WiFi Networks Inside of Public Sites. The City either currently operates or may wish to install and operate a WiFi network inside each of the Public Sites that will receive City Broadband Services. The City acknowledges that Network Provider may offer products and services required to deploy and operate WiFi networks within such Public Sites. In the event Network Provider offers such products and services the City shall meet with Network Provider and reasonably consider deploying Network Provider's WiFi network solution at such Public Sites along with other providers' services in the marketplace. Network Provider understands and agrees that (a) the City shall have no obligation to consider the Network Provider's WiFi network solutions if and to the extent that the City or the Public Site are subject to a contract with an alternative provider and (b) the selection of the provider for WiFi services at the Public Sites shall be made in the sole discretion of the City or operator of the Public Site, which are under no obligation to ultimately select Network Provider pursuant to the terms of this provision..

1.4.4. City Public WiFi Services. In the event Network Provider decides to construct a WiFi Network, Network Provider shall use commercially reasonable efforts to deploy the WiFi Network within a limited number of publicly accessible areas within the Market Area to be agreed upon by the City and Network Provider, based on a list of proposed areas created by the City ("WiFi Areas") which shall be subject to the conditions and requirements set forth below. Each WiFi Area shall be subject to reasonable acceptance of Network Provider during the design and construction of the WiFi Network based on (i) the design and proximity of the Network to each WiFi Area; (ii) market research conducted by Network Provider; and (iii) reasonable technical requirements and cost considerations as determined by Network Provider. The City shall be responsible for any construction and make ready costs related to any City or other infrastructure within the WiFi Area that may be required to enable Network Provider to install and operate the equipment for the City WiFi Services. Network Provider agrees that City WiFi Services shall be free to users within the WiFi Areas (and not just Network Provider's customers). In the event Network Provider determines that delivery of City WiFi Services to any WiFi Area is not feasible due to technical or cost considerations, Network Provider shall notify the City and the parties shall meet and attempt to identify a mutually satisfactory solution to enable Network Provider to deliver services to any specific WiFi Area. The City agrees and acknowledges that Network Provider may, in its discretion, decide to not construct the WiFi Network or begin or complete the design, construction or deployment of the WiFi Network until it has fully completed construction and deployment of the Fiber Network. Following deployment of the WiFi Network within the initial WiFi Areas, as described above, Network Provider may, in its sole discretion, deploy the WiFi Network within other WiFi Areas throughout the Market Area in accordance with the terms of the applicable Attachment Agreement (as defined in Section 2.3 of this Agreement).

1.4.5. Terms of City Services. Network Provider agrees to begin deployment of the City Broadband Services as soon as reasonably practicable following the date Network Provider completes deployment of the Services in the Fiberhood where the applicable Public Site is located. The City Services shall be provided free of charge for a maximum term of ten (10) years from the Effective Date of this Agreement or until this Agreement is terminated in



accordance with its terms (the "Service Term"). Any City Services delivered by Network Provider shall be provided in accordance with Network Provider's standard practices and shall be subject to Network Provider's then applicable Terms of Service (other than Terms of Service relating to fees and charges, which shall be governed by this Agreement), subject to any reasonable changes that may be required by applicable law or agreed upon in writing by Network Provider and the City. Following expiration of the Service Term, to the extent Network Provider continues to generally operate the Network and deliver Services in the Market Area, City may elect to continue to receive City Services from Network Provider at its then current rates for comparable commercial services, subject to a mutually acceptable written agreement of the City and Network Provider or the Network Provider may agree with the City to continue to provide such City Services to offset Annual Structure Attachment Fees and Annual Conduit Rental fees, as each are defined in the Attachment Agreement (defined below).

2. City Support and Commitments.

2.1. Permit Processing and Inspections.

2.1.1. Permit Processing. The City will provide diligent and expeditious review and determinations of all applications for permits submitted by Network Provider in connection with the Network, including requests for any approvals necessary for construction, maintenance or other work within City's public right-of-way and utility easements or related to access to City's assets or infrastructure, all in accordance with all applicable regulations and ordinances and the City's standard processes and practices generally made available to all third parties.

2.1.2. Inspections. In order to facilitate and ensure continuity and efficiency of inspections, the City will designate qualified and knowledgeable inspectors, with the authority to inspect all construction, maintenance and related work in connection with each applicable permit to be issued by the City. The City will use reasonable efforts to ensure that all such inspections are completed in an expeditious manner in accordance with applicable ordinances and the City's processes and practices made available to all third parties.

2.2. Rights of Way, Easements and Infrastructure for Construction. Subject to the City's Right-of-Way Ordinance, Network Provider shall have the legal authority to use the City's public rights of way in connection with its deployment, operation or installation of the Network. Additionally, the City agrees to provide Network Provider with limited access to particular assets and infrastructure owned by the City, including City rights of way, conduit, street lights (if applicable) and utility easements, to the extent such assets, infrastructure and/or utility easements are available, have adequate space (as reasonably determined by the City), and are determined by the parties as reasonably necessary or desirable for the Network (collectively "City's Right-of-Way Assets"), and provided that (a) any such City assets and infrastructure shall be provided in a competitively-neutral and non-discriminatory fashion, and (b) that such use does not interfere with the City or any other governmental entities' current or future use of or need for use of the same. Any use of City street lights, traffic signals and similar infrastructure will be subject to the terms of the applicable Attachment Agreement referenced in Section 2.3 below. The City will use commercially reasonable efforts to make the City's Right of Way Assets



available to Network Provider upon request. Subject to and in accordance with the City's Right of Way Ordinance, the City acknowledges that Network Provider and its contractors shall have access to and the right to perform construction and other work related to the Network within the City's public right-of-way. Network Provider will have immediate access to its facilities in the public right-of-way and in the City's Right-of-Way Assets in the event of an emergency situation.

2.3. Pole and Infrastructure Attachment Agreements. The City agrees and acknowledges that Network Provider desires certain additional rights to (i) place and maintain cables, equipment and facilities within the Market Area and install such fiber and WiFi cables, equipment, and facilities on various City-owned or controlled utility poles, street lights, traffic signals and similar infrastructure (if applicable); and (ii) place and maintain small structures to install equipment huts on certain real property sites owned by the City to be used by Network Provider for operation of the Fiber Network (each, a "Network Hut"). Network Provider's rights are subject to the use rights and related obligations related to the Fiber Network and the WiFi Network as set forth in the Structure Attachment and Conduit Occupancy Agreement, a copy of which is attached hereto as **Exhibit A** (the "Attachment Agreement"). Network Provider agrees and acknowledges that the Attachment Agreement provides Network Provider with its legal authority to use certain City-owned or controlled utility poles, street lights, traffic signals, underground conduit, and similar infrastructure (if applicable). The City and Network Provider agree that if the City, in its sole discretion, shall allow any Network Hut(s) on City-owned property, then the placement and use of each Network Hut by Network Provider shall be subject to the terms and conditions of a license agreement to be signed by both parties (the "License Agreement"), substantially in the form attached hereto as **Exhibit B**.

2.4. Map Data and Valid Address Data. The City agrees and acknowledges that Network Provider will require certain map data and address data in order to begin and complete construction and deployment of the Network. Most, if not all of this data will be provided by Johnson County, but the City agrees to cooperate with Network Provider in obtaining any such publicly available map and address information in reasonable form requested by Network Provider, and such other similar publicly available information reasonably requested by Network Provider from time to time ("Map and Address Data"), as it would for any other third-party Provider in the normal course. Network Provider shall pay directly to Johnson County any reasonable fees generally assessed to all third parties for copying or data reproduction for Map and Address Data provided to Network Provider, but only to the extent said fees are approved by Network Provider. The Map and Address Data shall not include resident names or other personally identifiable information.

2.5. Public Outreach. Network Provider intends to independently promote and market the Network within the City. In addition to assisting with efforts to inform City residents about proposed activities in the public right-of-way related to the Network build-out, the City may participate in non-marketing, non-promotional educational programs for local residents concerning the build-out and deployment of the Network and the potential resulting impacts on the community. Provided any such activity is provided (a) in a competitively-neutral and non-discriminatory fashion, and (b) in accordance with applicable law and its common practices, the



City's outreach may include, direct mailings, utility billing inserts, community meetings, and other means of communication. Use and distribution of either party's name and marks shall be subject to such party's prior written consent, which consent may be withheld in said party's sole discretion.

2.6. **Project Announcement.** The City and Network Provider will cooperate on a joint publicity and public relations initiatives related to the announcement of the Network (the "Public Announcement"). The City agrees that it shall not, prior to the Public Announcement, issue any press releases or make any public announcements related to the Network without the prior written consent of Network Provider, which consent may be withheld in Network Provider's sole discretion.

2.7. **Fees and Charges.** Except for and for so long as the Network Provider pays: (i) any applicable franchise fees under State law; (ii) any applicable right of way permit or zoning and building permit fees; (iii) street excavation fees; (iv) flood plain permit fees; (v) any attachment fees under the applicable Attachment Agreement and License Agreement; (vi) and any other fees otherwise required of any third party for comparable City services, the City agrees that it shall not, during the Service Term, impose on Network Provider any other fees charges or any in-kind services for the City's support and services described in this Section 2 above, provided that all payment of fees shall be in accordance with applicable ordinances and the City's common processes and practices made available to all third parties.

3. **Intellectual Property Rights.** Network Provider shall be the owner of and will retain all Intellectual Property Rights (as defined below) created, conceived, prepared, made, discovered or produced in connection with the Network and Services. "Intellectual Property Rights" means worldwide common law and statutory rights associated with (i) patents and patent applications; (ii) works of authorship, copyrights, copyright applications, copyright registrations and "moral" rights; (iii) the protection of trade and industrial secrets and confidential information; (iv) trademarks, service marks, slogans, logos, sound marks, motion marks, trade dress, domain names, trade names, corporate names, or indicia (v) other proprietary rights relating to intangible intellectual property (specifically excluding trademarks, trade names and service marks); (vi) analogous rights to those set forth above; and (vii) divisions, continuations, renewals, re-issuances and extensions of the foregoing (as applicable), including all foreign counterparts of the foregoing, now existing or hereafter filed, issued or acquired.

4. **Confidentiality.** Reference is hereby made to the Kansas Open Records Act (the "KORA") which is found at K.S.A. 45-215 *et. seq.*, and Network Provider hereby understands and agrees that this Agreement and the terms set forth in this Section 4 shall be limited by and subject to the KORA.

4.1. **Confidential Information.** The term "Confidential Information" shall include all written communications between the parties and all plans, documents, materials and data provided by Network Provider in connection with and related to the design, construction, deployment, operation and/or technical aspects of the Network, subject to the provisions of the KORA. Confidential Information may not be purposefully disclosed by either party to any



person other than its trustees, directors, officers, employees and attorneys of such party or agents of such party who have a need-to-know and are subject to similar confidentiality obligations. The Parties shall make a good faith effort to maintain the confidentiality of Confidential Information. These confidentiality obligations shall no longer apply to the extent Confidential Information (i) becomes publicly available other than through the receiving party; (ii) is required to be disclosed pursuant to a governmental or judicial rule, order, statute or regulation or the rule or regulation of a stock exchange; (iii) the recipient of the Confidential Information independently develops such information without access to or use of the Confidential Information; or (iv) becomes rightfully available to the receiving party without restriction from a third party.

4.2. **Legal Process.** If either party is required by law or similar regulatory process to disclose any Confidential Information, to the extent permitted, it will provide the other party with prompt prior written notice of such request or requirement so that such party may seek an appropriate protective order or waive compliance with this Section 4. The recipient of such notice must respond in writing to such request as soon as possible, but in any event no later than within three (3) business days of receipt of such notice, and either consent to such disclosure or advise of its election to seek an exception from disclosure. If a party chooses to seek an exception for disclosure, the other party will refrain from disclosing such information (unless legally compelled to do so by the KORA or otherwise) until the request for an exception from disclosure is resolved, and will then comply with the terms of any validly issued order to release the information.

4.3. **Applicable Disclosure Laws.** The parties acknowledge that this Agreement and the actions taken by the parties in furtherance of their mutual obligations under this Agreement are subject to the KORA, and a party's compliance with the KORA shall not be deemed to be a default under this Agreement.

4.4. **Treatment of Confidential Information.** The City acknowledges that Network Provider has advised the City that any and all information contained in this Agreement, or any related agreement, schedule, or other writing, relating to construction and deployment aspects or details of the Network, the number of employees required to construct the Network, Network Provider's projected capital investment in the Network, and other similar information disclosed in confidence during negotiation of this Agreement and construction and deployment of the Network shall be treated as proprietary information of Network Provider subject, however, to the KORA.

4.5. **Return of Confidential Information.** Upon request of a party following expiration or termination of this Agreement, the other party shall provide promptly all Confidential Information of the other party, subject to the KORA and any other document retention requirements required by law.

4.6. **Term of Restriction.** Subject to the KORA, each party's obligations under this Section 4 shall remain in effect during the term of this Agreement and for a period of two (2) years after its termination for any reason, except with respect to information considered or deemed to be a trade secret under applicable law for which each party's obligations of



confidentiality will remain in effect for so long as such information continues to constitute a trade secret under applicable law.

5. Term and Termination.

5.1. Initial Term and Renewal. The term of this Agreement shall begin on the Effective Date and shall expire at the end of the Service Term, unless earlier terminated in accordance with the terms of this Agreement or renewed by mutual written agreement of the parties.

5.2. Termination.

5.2.1. Termination for Convenience. Either the City or Network Provider may terminate this Agreement at any time by providing sixty (60) days prior written notice to the other.

5.2.2. Termination for Default. Either party may terminate this Agreement due to a Default (as defined below) by the other party by providing written notice to the defaulting party, provided that (i) such Default is incapable of remedy; or (ii) such Default is capable of remedy and the defaulting party fails to remedy such Default within thirty (30) days of receipt of notice from the other party. A party will be in Default under this Agreement if (i) such party materially breaches a term or provision of this Agreement; (ii) such party becomes insolvent or ceases to operate as a going concern; (iii) a petition under any of the bankruptcy laws is filed by or against such party and, if involuntary, is not dismissed within sixty (60) days after it is filed; (iv) such party makes a general assignment for the benefit of creditors; or (v) a receiver, whether temporary or permanent, is appointed for the property of such party or any part thereof.

5.2.3. Survival. The following provisions shall survive any expiration or termination of this Agreement: Sections 3, 4, 5 and 7.

6. Representations and Warranties; Limitation of Liability.

6.1 Representations. Each party represents that (i) it has the requisite right and authority to enter into this Agreement; (ii) this Agreement has been duly authorized, executed, and delivered and constitutes a valid and binding obligation enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, moratorium, and other laws of general application affecting the enforcement of creditors' rights; (iii) and that entering into or performing its obligations under this Agreement shall not breach or contravene any obligation to any third party. Network Provider and the City each agree to comply with all applicable laws and regulations. For purposes hereof, the term "applicable laws and regulations" means any applicable constitution, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by the appropriate government authorities and all amendments thereto from time to time.



6.2 **Disclaimer of Warranties.** EXCEPT AS OTHERWISE SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN RELATION TO THE NETWORK, THE CITY'S RIGHT-OF-WAY ASSETS, ANY MAP AND ADDRESS DATA PROVIDED OR THIS AGREEMENT. NETWORK PROVIDER DOES NOT WARRANT THAT IT SHALL COMPLETE CONSTRUCTION OR DEPLOYMENT OF THE NETWORK OR OPERATE THE NETWORK OR OFFER SERVICES OR CITY SERVICES FOR ANY SPECIFIED TERM. NETWORK PROVIDER MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON INFRINGEMENT RELATED TO THE NETWORK, THE SERVICES, THE CITY SERVICES OR THIS AGREEMENT.

7. **Limitations of Liability.** EXCEPT FOR ANY BREACH OF INTELLECTUAL PROPERTY OR CONFIDENTIALITY OBLIGATIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES, PARENT COMPANIES AND AFFILIATES, AND THEIR RESPECTIVE TRUSTEES, OFFICERS, DIRECTORS, ELECTED OFFICIALS, MUNICIPAL STAFF, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM. IN PARTICULAR WITH RESPECT TO CONSTRUCTION, NETWORK PROVIDER'S LIABILITY TO THE CITY FOR PROPERTY DAMAGE CAUSED BY ANY CONSTRUCTION WORK PERFORMED BY NETWORK PROVIDER WILL BE LIMITED TO THE COST OF REPAIRING PHYSICAL PROPERTY DAMAGE THAT OCCURS AT THE SITE OF CONSTRUCTION.

NOTWITHSTANDING ANYTHING SET FORTH HEREIN TO THE CONTRARY, (A) THE CITY DOES NOT WAIVE ANY IMMUNITY FROM PUNITIVE DAMAGES AVAILABLE UNDER APPLICABLE KANSAS LAW, (B) THE PARTIES AGREE THAT THE TERMS OF THIS SECTION 7, AND THE TERMS OF THIS AGREEMENT, SHALL BE SUBJECT TO AND LIMITED BY THE KANSAS CASH BASIS LAW (K.S.A. 10-1100 ET SEQ.), THE BUDGET LAW (K.S.A. 75-2935 ET SEQ.) AND THE KANSAS TORT CLAIMS ACT (K.S.A. 75-6101 ET SEQ.), AND ALL AMENDMENTS TO SUCH LAWS, RESPECTIVELY, AND (C) ANY LIABILITY OF THE CITY HEREUNDER SHALL BE SUBJECT TO THE LIABILITY LIMITATIONS SET FORTH IN K.S.A. 75-6105, AND AMENDMENTS THERETO.

7.1 **Disputes and Defaults.** In no event shall a dispute, default or alleged default under the Attachment Agreement, or any License Agreement, entered into between the City and Network Provider constitute or be deemed a default, or in any way impact the rights and obligations of the parties under this Agreement. In no event shall a dispute, default or alleged default under this Agreement constitute or be deemed a default, or in any way impact the rights and obligations of the parties under the Attachment Agreement, or any License Agreement.



Additionally, any dispute, default or alleged default under the Attachment Agreement or any License Agreement shall not constitute or be deemed a default under any other agreement. Further, any termination or expiration of the rights and obligations under the Attachment Agreement, or any License Agreement shall in no way impact the term of this Agreement or otherwise impact the rights and obligations of the parties under this Agreement and any termination or expiration of the rights and obligations under this Agreement shall in no way impact the term, rights or obligations under the Attachment Agreement, or any License Agreement. This Section 7.1 may be amended or waived by the parties hereto at any time only by execution of a written instrument referencing this Section 7.1 and signed on behalf of each of the parties hereto.

8. General Terms.

8.1. Governing Law and Jurisdiction. This Agreement and any action related to this Agreement will be governed by the laws of the State of Kansas. Any action, hearing, suit or proceeding arising out of or relating to this Agreement must be brought in the courts of the State of Kansas, Johnson County, or if it has or can acquire jurisdiction, in the United States District Court for the District of Kansas. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding and waives any objection it may now have or hereafter have to venue or to convenience of forum. The parties acknowledge and agree that this Agreement is not a grant of any license, easement, or franchise by the City to Network Provider. The parties agree that it is their mutual intent that this Agreement conforms to applicable local, state, and federal law regulating the covenants and obligations contained in this Agreement. Any term contained in this Agreement inconsistent with such law is severable and governed by and subject to the applicable local, state, or federal law.

8.2. Dispute Resolution. Except as otherwise specifically provided in this Agreement, all disputes, disagreement or controversies arising in connection with this Agreement will first be resolved through good faith negotiations in order to reach mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then either party may seek resolution by exercising any rights or remedies available to either party at law or equity.

8.3. Notices. All notices must be in writing and delivered to the addresses and persons specified below. Notice will be deemed delivered (a) when verified by written receipt if sent by personal courier, overnight courier, or mail; or (b) when verified by automated receipt or electronic logs if sent by facsimile or email.



CITY

The City of Roeland Park, Kansas
4600 W. 51st Street, Suite 200
Roeland Park, Kansas 66205

ATTN: City Administrator

With a copy to: City Attorney:

Neil Shortlidge
Stinson Morrison Hecker LLP
1201 Walnut, Suite 2600
Kansas City, Missouri 64106
Email: nshortlidge@stinson.com

NETWORK PROVIDER

Google Fiber Kansas, LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
ATTN: General Manger
Email: googlefibernotices@google.com
Fax: (650) 253-0001

With a copy to:

ATTN: Google Fiber Legal Department
Email: legal-notices@google.com
Fax: (650) 618-1806

8.4. **Assignment.** Except as set forth below, neither party may assign or transfer its rights and obligations under this Agreement, in whole or part, to a third party without the prior written consent of the other party. Network Provider may, upon written notice to City, assign this Agreement or any or all of its rights and obligations under this Agreement to (i) any Affiliate (as defined below) of Network Provider; (ii) any successor in interest to Network Provider in connection with any merger, acquisition or similar transaction; or (iii) any purchaser of all or substantially all of Network Provider's assets related to the Network. "Affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by or is under common control with Network Provider; and (ii) "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; or (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

8.5. **Force Majeure.** Neither party will be deemed in Default under this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms, earthquakes or other natural occurrences, strikes or other labor unrest of third parties, power failures, terrorist activity, nuclear or other civil or military emergencies, acts of legislative, judicial, executive or administrative authorities, or any other circumstances that are not within its reasonable control and ability to prevent (a "Force Majeure" event). In event of a Force Majeure event, the party who first becomes aware of the event must promptly give written notice to the other party of such event. When either party becomes aware of the end of the Force Majeure event, it must give notice to the other party. If the period of non-performance exceeds sixty (60) days from the receipt of notice of the Force Majeure event, the party whose ability to perform has not been affected may terminate the Agreement on written notice to the other party.

8.6. **Independent Contractors.** The parties are independent contractors. Nothing in this Agreement creates or implies, or shall be construed to create or imply, any agency, association, partnership or joint venture between the parties.



8.7. **Severability.** If any provision of this Agreement is found unenforceable or invalid, the remainder of the Agreement will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose. To the fullest extent permitted by applicable law, if any provision of this Agreement is invalid or unenforceable a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

8.8. **Waiver.** A waiver of any provision of this Agreement by a party must be in writing to be effective and will in no way be construed as a waiver of any later breach of that provision. No failure or delay by either party in exercising any option, right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

8.9. **Joint Drafting.** The Parties acknowledge that this Agreement (including the Exhibits, Appendices and Annexes hereto) has been drafted jointly by the parties and agree that this Agreement will not be construed against either party as a result of any role such party may have had in the drafting process.

8.10. **Remedies Cumulative, Specific Performance.** Except as provided otherwise in this Agreement, all rights and remedies granted to each party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies otherwise available to such party at law or in equity. The parties agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof in addition to any other remedy at law or in equity, including monetary damages, that may be available to it.

8.11. **Further Assurances.** In addition to any other obligations set forth in this Agreement, each party agrees to take such actions (including the execution, acknowledgment and delivery of documents) reasonably requested by the other party for the implementation or continuing performance of this Agreement.

8.12. **Entire Agreement; Amendment; Signatures.** The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof. This Agreement supersedes any prior agreements or understandings between the parties. This Agreement constitutes the entire Agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by both parties. This Agreement is for the exclusive benefit of their parties, their successors and permitted assigns. There are no third party beneficiaries to this Agreement. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument. Each party to this Agreement agrees to: (a) use electronic signatures; and (b) be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (ESIGN, Pub. L. 106-229, 14 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch. 96.



9. Powers of the City. Notwithstanding anything set forth herein to the contrary, no provision contained herein, or in the other documents between the parties which are referenced herein, shall in any manner diminish or usurp the inherent rights and powers of City to act in its capacity as a public body.

[BALANCE OF PAGE INTENTIONALLY BLANK.]



The parties agree to the terms of this Agreement and have caused this Agreement to be signed by their duly authorized representatives.

GOOGLE FIBER KANSAS, LLC

1600 Amphitheater Parkway
Mountain View, California 94043

(Authorized Signature)

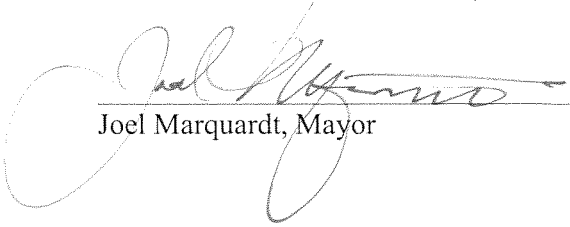
(Name)

(Title)



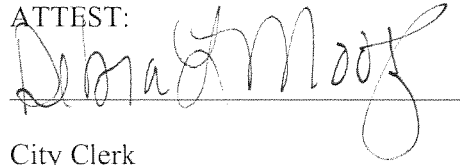
THIS AGREEMENT has been executed as of the date first hereinabove written.

CITY OF ROELAND PARK, KANSAS



Joel Marquardt, Mayor

(SEAL)

ATTEST:


City Clerk

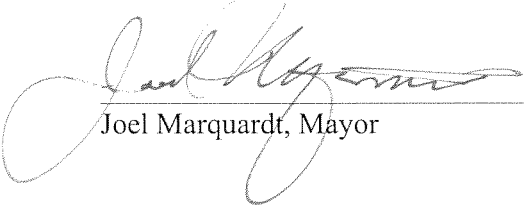
APPROVED AS TO FORM:


Todd A. LaSala, Special Counsel



THIS AGREEMENT has been executed as of the date first hereinabove written.

CITY OF ROELAND PARK, KANSAS



Joel Marquardt, Mayor

(SEAL)

ATTEST:


City Clerk

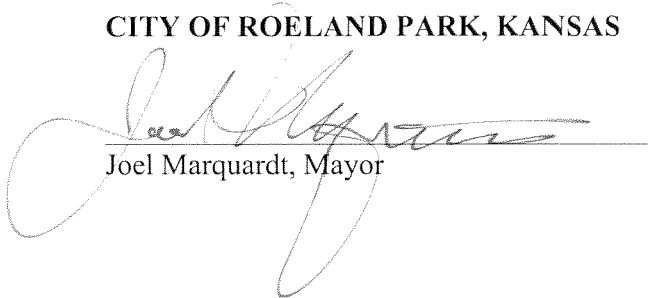
APPROVED AS TO FORM:


Todd A. LaSala, Special Counsel



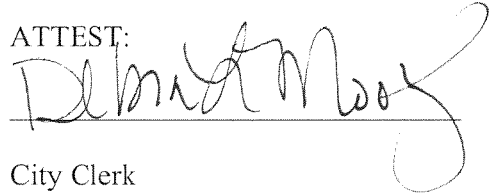
THIS AGREEMENT has been executed as of the date first hereinabove written.

CITY OF ROELAND PARK, KANSAS

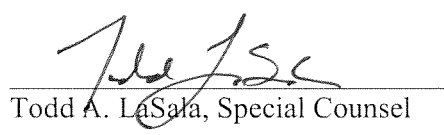

Joel Marquardt, Mayor

(SEAL)

ATTEST:


City Clerk

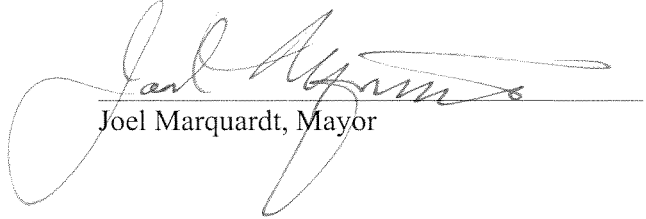
APPROVED AS TO FORM:


Todd A. LaSala, Special Counsel



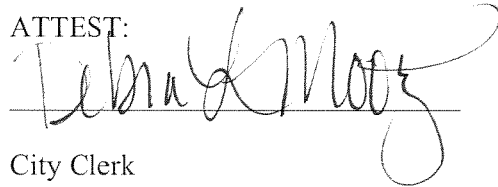
THIS AGREEMENT has been executed as of the date first hereinabove written.

CITY OF ROELAND PARK, KANSAS


Joel Marquardt, Mayor

(SEAL)

ATTEST:


City Clerk

APPROVED AS TO FORM:


Todd A. LaSala, Special Counsel



STRUCTURE ATTACHMENT AND CONDUIT OCCUPANCY AGREEMENT

This Structure Attachment and Conduit Occupancy Agreement (the "Agreement"), is made and entered into this ____ day of _____, 2013, by and between the City of Roeland Park, Kansas a municipal corporation duly organized under laws of the State of Kansas ("Licensor"), and Google Fiber Kansas, LLC, a Kansas limited liability company ("Licensee") (each a "Party" and collectively, the "Parties").

RECITALS

A. Licensor now owns, leases, or operates, or may own, lease or operate in the future, buildings, light poles and other structures and improvements on real property in Roeland Park, Kansas ("Structures"); and

B. Licensor owns, leases or operates, or may own, lease or operate in the future, a network of conduits and ducts ("Conduit"); and

C. Licensor, as the municipal government of Roeland Park, Kansas has the ownership of land or other property ("Public Property"); and

D. Licensor has the right to use Public Property to place Structures, Conduits, and other facilities and equipment, or to provide passage to access such Structures, Conduits, and other facilities and equipment (a "Right-of-Way"); and

E. Licensee proposes to furnish unique, ultra high-speed communications services in Roeland Park, Kansas, in accordance with the Network Cooperation and Services Agreement between the Parties, and desires to place and maintain antennas, cables, wires, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, transmitters, transceivers, materials, appurtenances, or apparatus of any sort necessary or desirable for Licensee to operate its businesses as such businesses may evolve, develop, or change at any time while this Agreement remains in effect ("Equipment") on Licensor's Structures and in Licensor's Conduits, and to access those Structures and Conduits on or in Public Property and the Right-of-Way of Licensor throughout Roeland Park, Kansas; and

F. In consideration for Licensee agreeing to provide City Broadband Services and City WiFi Services, as each are defined in the Network Services and Cooperation Agreement, in Roeland Park, Kansas, and Licensee paying any Rental Fees (as defined below) Licensor desires to provide Licensee with a non-exclusive license for the use of space on or in its Structures and Conduits and, for purposes of access to its Structures and Conduits, on or in Public Property and the Right-of-Way of Licensor throughout Roeland Park, Kansas; and

G. Certain third party utility service providers operate within Roeland Park, Kansas, and Licensee acknowledges that it must negotiate pole attachment agreements to govern Licensee's attachments to such third party utility service providers' poles or structures independent of this Agreement with Licensor.



In consideration of the mutual covenants, terms, and conditions herein contained, the Parties do hereby mutually covenant and agree as follows:

ARTICLE I. SCOPE OF AGREEMENT

Section 1.01 Service Area

This Agreement shall apply to Licensor Structures, Conduits, Public Property and Right-of-Way now existing or hereafter constructed or obtained throughout Roeland Park, Kansas.

Section 1.02 Authorization

Subject to the provisions of this Agreement, Licensor grants to Licensee and Licensee accepts from Licensor (i) a non-exclusive license to occupy, place, and maintain Licensee's Equipment on certain Licensor Structures, and to access and utilize electricity thereon (to be paid for by Licensee or the offset as set forth on Exhibit 1 attached hereto), whether City-owned or leased; and (ii) a non-exclusive license to occupy, place, and maintain Licensee's Equipment in certain Licensor Conduits. Placement of Licensee's Equipment on light poles and in Conduits shall be at the reasonable discretion of Licensor as set forth in Section 2.02 below, subject to Licensor's Permit requirements and state and federal law; placement of Licensee's Equipment on all other Structures and Public Property shall be at the sole discretion of Licensor so long as Licensee is treated in a competitively neutral, non-discriminatory manner as compared with other similarly situated third-parties.

Section 1.03 No Property Right

No use of Licensor's Structures or Conduits, however extended, or payment of fees or charges required under this Agreement, shall create or vest in Licensee any ownership of property rights in such Structures or Conduits.

Section 1.04 Discrimination

Licensor shall treat Licensee in a competitively neutral, non-discriminatory manner as compared with other attachers to its Structures and Conduits. Licensor shall provide Licensee with a copy of all agreements where Licensor makes access to its Structures and Conduits available to third-parties in accordance with the notice requirements herein. In the event that Licensor makes available any terms or conditions for Structures or Conduit which are, in the context of the same or similar circumstances, more favorable to one or more other attachers than to Licensee as set forth herein, Licensor shall, upon a reasonable request from Licensee, provide an amendment to this Agreement to make those same terms and conditions available to Licensee for future attachments or placements.

Section 1.05 Post-Termination Rights



Upon termination of this Agreement for any reason (other than failure to pay the Annual Structure Rental Fee), Licensee, at the request of Licensor, may maintain its Equipment on and in Licensor's Structures and Conduits, but may no longer apply to add new Equipment. Except as set forth in Section 2.15, existing Equipment will continue to be subject to the terms of this Agreement until such Equipment is removed by Licensee from Licensor's Structures and Conduits.

Section 1.06 Authorizations Required

Licensee shall secure all authorizations, franchises, licenses, permits, and consents ("Permits") required for the construction, operation, and maintenance of its Equipment. If any required Permit obtained by Licensee is subsequently revoked or denied for any reason, Licensee shall retain the right to pursue and exhaust all legal, administrative, and equitable remedies, in any available forum, before Licensor may revoke Licensee's right to attach the Equipment requiring such Permit to Licensor's Structures or revoke Licensee's right to occupy Licensor's Conduits with the Equipment requiring such Permit.

Section 1.07 Term

This Agreement shall become effective upon the date first written above (the "Effective Date") above and shall continue in effect for ten (10) years. This Agreement will automatically renew for up to three (3) successive five (5) year periods, unless Licensee is no longer operating its network within Roeland Park, Kansas.

ARTICLE II. PLACING, TRANSFERRING, OR REARRANGING ATTACHMENTS

Section 2.01 Application; Confidentiality

Before attaching any Equipment to any Licensor Structure or placing any Equipment in any Licensor Conduit (other than a new or existing service wire drop that is attached to the same Structure as an existing attachment of Licensee), Licensee shall submit a written request to Licensor for consent for such attachment or placement. All materials submitted by Licensee in connection with such written request shall be handled and reviewed only by those Licensor employees and contractors directly responsible for the coordination and administration of such requests. Licensee's plans, designs, drawings or specifications are of a confidential, proprietary, and commercially sensitive nature and shall not be disclosed by Licensor or its employees or contractors for any reason other than (a) as required by the Kansas Open Records Act at K.S.A. 45-215 *et seq.* ("KORA"), and (b) as necessary in connection with processing and administering the Licensee's application to attach Equipment to Structures or place Equipment in Conduits.

Section 2.02 Grant or Denial of Access

Except as otherwise provided by law, Licensor reserves the right to deny or modify Licensee access to any Structure or Conduit, on a competitively neutral, non-discriminatory basis, where Licensor demonstrates that Licensee's proposed attachment will, in the City's reasonable



discretion (a) materially harm the public health, safety or welfare, or (b) unreasonably limit or harm the capacity, functionality, safety, reliability or aesthetics of Licensor's facilities, or (c) place Licensor in violation of generally applicable zoning restrictions, or (d) unreasonably interfere with a reasonable governmental purpose; provided, however, that before Licensor denies access, Licensor shall explore potential accommodations in good faith and take all reasonable steps to accommodate Licensee's request for access. Licensor shall use its best efforts to either grant or deny access to a Structure or Conduit within twenty (20) days of Licensee's written request; the Licensor's grant may include a Make Ready Estimate as described in Section 2.04. If Licensor denies access, Licensor must provide notice in writing within twenty (20) days of Licensee's application with information to support its denial.

Section 2.03 Make Ready Survey

When Licensor receives an attachment or placement request from Licensee, a make-ready-survey (the "Make Ready Survey") may be necessary, at Licensee's cost, to determine the adequacy of the existing Structures or the capacity of Conduit to accommodate Licensee's Equipment without jeopardizing the safety of Licensor's facilities or placing Licensor in violation of generally applicable zoning restrictions. Licensor may perform a field inspection as part of the Make Ready Survey. Licensor shall provide reasonable advance notice of such a field inspection and a representative of Licensee has the right to be present for the inspection.

Section 2.04 Make Ready

- (a) Except where Licensor denies the application to the extent permitted by this Agreement, whenever any Structure or Conduit to which Licensee seeks attachment or occupancy requires modification or replacement to accommodate both Licensee's Equipment and Licensor's existing attachments or equipment and the attachments and equipment of other pre-existing attachers and occupants, Licensor, at Licensee's cost, will provide Licensee with a detailed, good faith estimate of make ready work (the "Make Ready Estimate") it believes to be necessary to prepare the Structure or Conduit for Licensee's Equipment (the "Make Ready Work"). All Make Ready Work will be performed at the sole cost and expense of Licensee. Licensor will use best efforts to provide Licensee with the Make Ready Estimate within twenty (20) days of Licensee's written request for attachment. The Make Ready Work may include engineering, design, planning, construction, materials, cost of removal (less any salvage value), cost of transferring Licensor's facilities and those of other users of the Structure or Conduit, and cost of expanding existing Conduit, in each case as reasonably necessary for the installation of Licensee's Equipment on a Structure or in a Conduit. The Make Ready Estimate shall include itemized estimates of the cost of each component of the Make Ready Work. Any reference to costs or expenses borne by Licensee within Section 2.03 and 2.04 are limited to third-party out of pocket expenses incurred by Licensor and do not include administrative time incurred by the Licensor or expenses that third-party attachers are obligated to bear under pre-existing agreements.



- (b) After receiving the Make Ready Estimate, if Licensee still desires to make the Structure attachment or utilize the Conduit, Licensee may within ninety (90) days of receiving the Make Ready Estimate elect by written notice to Licensor any of the following alternatives:
- (i) Offer Licensor the option to perform such Make Ready Work as called for in the Make Ready Estimate (the “Option”), and if Licensor, in its sole and absolute discretion, agrees to perform such Make Ready Work pursuant to the Option, Licensee will pay to Licensor fifty percent (50%) of the fees for Make Ready Work specified by the Make Ready Estimate (the “Down Payment”). Licensee shall pay an additional twenty-five percent (25%) of the Make Ready Estimate when Licensor has completed one-half of the Make Ready Work (the “Progress Payment”). Licensee shall pay the remaining twenty-five percent (25%) of the Make Ready Estimate upon Licensor’s completion of the Make Ready Work.
 - (ii) Licensee may retain contractors to perform all the Make Ready Work. The contractors shall be approved by Licensor to work on or in its Structures and Conduits. Approval shall be based upon reasonable and customary criteria employed by the Licensor in the selection of its own contract labor
 - (iii) Licensee may retain its own contractors to perform part of the Make Ready Work and utilize Licensor to perform part of the Make Ready Work, but only where the Licensor has, in its sole and absolute discretion, agreed to such Option described in subparagraph (i) above. The Licensee is responsible for determining what portion of the Make Ready Work it will perform through this joint-build option and to notify Licensor of its choices. In the event Licensee retains contractors to perform part of the Make Ready Work and utilizes Licensor to perform part of the Make Ready Work, Licensee shall adjust the payments described in subparagraph (i) above to include only the costs of the itemized components of the Make Ready Estimate to be performed by Licensor.
- (c) If Licensor, in its sole and absolute discretion, exercises its Option to perform any Make Ready Work as described in subparagraph (i), Licensor shall use its best efforts to make sure that necessary Make Ready Work, including the work necessary to rearrange third party attachments to Licensor’s Structures and Conduits or facilities, is completed within sixty (60) days from Licensee’s remittance of the Down Payment. If Make Ready Work is not completed by Licensor within the sixty (60) day period, any fees payable by Licensee for Make Ready Work shall be waived and any Down Payment or Progress Payment in connection with such Make Ready Work shall be refunded promptly to Licensee, and Licensee may retain its own contractors perform the Make Ready Work.
- (d) If Licensee submits an application that affects existing attachments or occupancy, Licensor will use commercially reasonable efforts to notify third-party owners and coordinate the rearrangements of such attachments. To the extent third-party equipment is affected by Licensee’s application, the Licensor will follow the procedure as described



in parts a, b and c of this section 2.04, but only to the extent such third-parties do not elect to perform the rearrangement or are not already obligated to rearrange attachments and bear the expense of such rearrangement and coordination under a pre-existing separate agreement.

Section 2.05 Deemed Granted

If access is not granted or denied by Licensor within twenty (20) days of Licensee's written request, and Licensor has not been in communication with Licensee over such twenty (20) day period, Licensee may provide written notice of the same to Licensor and if Licensor shall fail to respond within three (3) business days, then the application will be deemed granted. The Parties agree and acknowledge that the grant or denial of Licensee's request may take longer than twenty (20) days if the Parties are communicating and mutually proceeding diligently with the application in good faith. When a request is deemed granted, the Licensee may retain its own contractor to perform the Make Ready Work.

Section 2.06 Structures and Conduit – Rights of Third Parties

Licensee agrees to comply with all federal, state and local laws, rules, orders and regulations ("Requirements") that are applicable in connection with the installation and operation of equipment and facilities on Structures and in Conduit, including without limitation, such Requirements governing interference with other providers/attachers, and Licensor agrees to require any later attaching third-parties to comply with the Requirements.

The rights of any third-parties to whom Licensor confers Structure attachment or Conduit occupancy rights after the Licensee shall be subject to the rights of the Licensee as set forth herein. Further, the Licensor shall not license any Conduit or Structure occupied by Licensee, or for which an application for occupancy or attachment from Licensee has been received by Licensor and is pending, for use by any other person or entity where it is determined that such third-party use would unreasonably interfere with Licensee's Equipment pursuant to the Requirements, unless access for such other person or entity is otherwise required by applicable state or federal law. If access is granted to a third-party pursuant to state or federal law, then Licensor shall give Licensee prior written notice of any such grant of third-party access and give Licensee reasonable time to remove and relocate equipment prior to that time any third party is able to access any Conduit or Structure previously occupied by or attached to by Licensee.

In the alternative, if Licensor grants Structure attachment or Conduit occupancy rights to any third-party prior to Licensee applying for or being granted such rights, Licensee shall be subject to the rights of said third-party attacher, unless it is determined that Licensee access would not unreasonably interfere with such third-party's equipment pursuant to the Requirements or if such access is required by state or federal law. This Section 2.06 shall not be deemed to otherwise limit the Licensor from using any Conduit or Structure in connection with providing its own services or from licensing any Conduit or Structure to another person or entity if no application from Licensee is pending or such Conduit or Structure is not occupied by Licensee.



Section 2.07 Structure and Conduit Maintenance

The expense of maintaining the Structures and Conduits shall be borne exclusively by Licensor and Licensor shall maintain its Structures and Conduits in a safe and serviceable condition, and shall replace, reinforce, or repair such Structures and Conduits as they become defective. Licensor shall be responsible for routine and periodic tree trimming and brush cutting as appropriate or necessary, in Licensor's discretion, to avoid contact with, or jeopardizing the functionality of, Structures utilized by Licensee. Licensor shall be solely responsible for collection of costs of damages for Structures and Conduits broken or damaged by third-parties. Licensee shall be responsible for repair, maintenance and collection of costs of damages to its own Equipment. Nothing in this Agreement shall be construed to be a guaranty of the condition of any Structure or Conduit by Licensor in connection with Licensee's placement of its Equipment in or on Licensor's Structures or Conduit or impose any obligation upon Licensor to repair or replace an existing Structure or Conduit in order to accommodate a request by Licensee to install Equipment on or in an existing Structure or Conduit.

Section 2.08 Structure and Conduit Replacement

Licensor shall have the right to relocate Licensee's Equipment on Licensor's Structure or within Licensor's Conduit system provided that such relocation does not adversely affect the accessibility, reliability, or protective safety features of Licensee's Equipment and/or adversely affect Licensee's services to its customers. Licensor shall provide Licensee with thirty (30) days' advance notice of any such relocation required as a result of any major capital projects or improvements deemed necessary for public health and safety or other reasonable governmental purpose. Upon receipt of notification by Licensor to Licensee that Licensee's equipment needs to be relocated, the Parties will, within five (5) working days, mutually agree upon the length of time it will take for Licensee to accommodate such request, and upon and in accordance with the terms of such agreement, Licensee shall proceed with such relocation. Licensee shall bear the cost of any such relocation. Licensee has the right to observe any relocation of Licensee's Equipment. Licensor shall mark or tag any relocated Equipment with appropriate identification of Licensee. Licensor shall use best efforts to ensure that Licensee shall have reasonably equivalent access to and ability to maintain any relocated Equipment.

The provisions in this Section 2.08 shall be subject to and limited by the terms of the Roeland Park City Code, including the right of way ordinances as set forth therein.

Section 2.09 Installation

Licensee, at its own expense and risk and by the terms of this Agreement, shall place, transfer, and rearrange its own Equipment on Licensor's Structures or in Licensor's Conduits. Licensee at all times shall perform such work in such manner as not to interfere with the service of Licensor or any other Structure attacher or Conduit occupant.

Section 2.10 Subsequent Attachment by Third-Party Attachments



If at any time subsequent to Licensee's attachment to a Structure, a third-party requests that Licensor provide access to that same Structure, the following procedures shall apply:

- (a) If it is determined that Make Ready Work on Licensee's attachment(s) will be necessary to accommodate such third-party's equipment, the Licensee will provide the cost estimate to the attaching third-party for Licensee or its Approved Contractor to complete the Make Ready Work. In Licensee's sole discretion and upon Licensee's written instruction, Licensee or the third party attacher or its contractor shall complete the Make Ready Work on Licensee's attachment at the sole expense of the third party attacher.
- (b) Licensee will communicate with Licensor with respect to the rearrangement of Licensee's Equipment, and Licensor shall be responsible for communicating such information to and from third-parties.
- (c) Except where such rearrangement is for the benefit of Licensee and as may be required under Section 2.08 herein, Licensee shall not be responsible for paying any charges attributable to the rearrangement of its Equipment.
- (d) Licensee shall make all rearrangements of its Equipment within such period of time as is jointly deemed reasonable by the Parties based on the amount of rearrangements necessary and a desire to minimize chances for service interruption or service denial to Licensee's customers.

Section 2.11 Compliance with Safety Codes

Licensee shall place and maintain its facilities attached to Licensor Structures or in Licensor Conduits in good and safe condition and in thorough repair, and in compliance with applicable law, permits, codes and with such requirements and specifications as required by any regulatory agency or other authority having jurisdiction.

Section 2.12 Nonconforming Equipment

- (a) If any attachment is not placed and maintained in accordance with Section 2.11 above, upon notice by Licensor, Licensee shall use commercially reasonable efforts to timely perform all work reasonably necessary to correct conditions of Licensee's noncompliance. For purposes of this paragraph, compliance shall be deemed timely if performed during Licensee's regularly scheduled maintenance activities or under a plan approved by Licensor, unless such noncompliance creates an Emergency (as defined below).
- (b) In the event Licensor determines in good faith that a particular condition or situation is an Emergency, Licensor may arrange to relocate, replace, remove, renew, or disconnect Licensee's facilities and transfer them to substituted Structures or Conduits or perform any other work in connection with Licensee's Equipment that may be required during the



Emergency. Licensor shall also endeavor to provide Licensee with the best practicable notice of the situation so that Licensor and Licensee, if possible, may coordinate their responses to the Emergency. If notice is impossible during the Emergency, Licensor shall notify Licensee of any Emergency and any relocation, replacement, or removal affecting Licensee's Equipment as soon as reasonably practicable. An "Emergency" is conditions that (i) pose an immediate threat to the safety of utility workers or the public; (ii) materially and adversely interfere with the performance of Licensor's or other attachers' service obligations; or (iii) pose an immediate threat to the integrity of Licensor's or other attachers' equipment.

Section 2.13 Reasonable Precautions

Each Party shall exercise reasonable precautions to avoid damage to the facilities of the other Party.

Section 2.14 Removal of Attachments by Licensee

Licensee, at any time, may remove its Equipment from any Structure(s) or Conduit(s) of Licensor, and shall give Licensor written notice within seven (7) days of such removal. Any applicable rental fees shall cease with respect to such removed Equipment as of the date of such notice.

Section 2.15 Abandonment

Subject to Section 13-813 of the Roeland Park City Code, Licensee shall have the right to abandon Equipment located within Licensor's Conduit system or on Licensor's Structures by written notice to Licensor. Rental Fees shall cease with respect to such Equipment as of the date of such notice. In the event abandoned equipment is not removed by Licensee within a reasonable period of time not to exceed two (2) years, ownership of such equipment shall revert to Licensor.

Section 2.16 Interference.

Licensee shall not allow its Equipment or operations to impair the Licensor's ability to place, locate, operate, use or repair Licensor's Structures or Conduit, nor shall Licensee require Licensor to place, locate or operate Structures and Conduit for a primary purpose other than providing city services.

ARTICLE III. INSPECTIONS

Section 3.01 Post-Installation and Safety Inspections

Licensor reserves the right to inspect each new Licensee installation on Licensor Structures and in Licensor Conduit. Licensor also reserves the right to make periodic inspections, as conditions.



may warrant, to determine if Licensee's construction complies with the approved application and/or applicable law.

Section 3.02 Facilities Inventory

Licensor shall have the right to require a jointly conducted physical inventory of Licensee's Equipment on Licensor Structures and in Licensee Conduit upon ninety (90) days' advance written notice. In such event, Licensor may select an independent contractor for the performance of such physical inventory through a competitive bid process. Licensee shall be permitted to supplement Licensor's invitation to bid list to include contractors designated by Licensee. A jointly conducted physical inventory shall be taken no more frequently than once every three years. If the facilities of more than one joint-user are inventoried, each such joint-user shall contribute a proportionate share of the costs of such inventory.

As an alternative to performance of the jointly conducted physical inventory, the Parties may, if mutually agreed, determine the number of attachments and feet of occupancy from existing maps and/or attachment records provided that such maps or records exist and provided that each Party agrees that results with reasonable accuracy can be achieved. If the Parties agree to this method, any maps and/or records belonging to one of the Parties and utilized to count attachments and Conduit occupancy shall be made available to the other Party and the number of attachments and feet of Conduit occupancy shall be determined through a mutual and cooperative effort of both Parties. The results of attachment and occupancy counts performed in this manner shall be treated, for the purpose of determining rentals and other charges due for unauthorized attachments, as if results were achieved by an actual jointly conducted physical inventory.

Section 3.03 Inventory Disparity

- (a) In the event that the number of Structures or feet of Conduit to which Licensee has attached or placed its Equipment differs from the number shown in Licensor records, the Licensor records shall be revised and the rental obligations due shall be revised as of the date of the completion of the jointly conducted physical inventory or the attachment count based on maps and records. No back payment or refund shall be due in the event of an inventory disparity, whether the total number of Structures and Conduit feet was more or less than the Licensor's records.
- (b) Upon forty-five (45) days' notice from Licensor to Licensee of an unauthorized attachment, Licensee shall either apply for consent to such attachment or remove such attachment.

ARTICLE IV. LICENSOR ABANDONMENT OF STRUCTURES AND CONDUITS

If Licensor desires at any time to abandon any Structure or Conduit which is being used by Licensee pursuant to this Agreement, then it shall give Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such Structure or Conduit. If, at the expiration of such period, Licensee has not removed all of its Equipment from such



Structure or Conduit, Licensors may offer to sell the Structure or Conduit to Licensee. If Licensee elects to purchase the Structure or Conduit, Licensee shall pay Licensors a sum equal to the current in-place value less expired service life of such abandoned Structure(s) or Conduit(s) at time of abandonment.

ARTICLE V. ACCESS TO PROPERTY

Section 5.01 Access to Public Property

In connection with performance of this Agreement, Licensee and any of its employees or contractors shall have reasonable access to the parts of any real property, or improvements upon real property, that Licensors owns, leases, controls, or manages ("Licensors's Property"), including but not limited to stairways, elevators, hallways, pathways, ladders, lobbies, and entryways, which Licensee must use to access the location of any attachment and related Equipment on any Structure or in any Conduit. Licensors may place reasonable restrictions on Licensee's access to Licensors's Property, provided that such restrictions do not unreasonably interfere with Licensee's ability to access its attachments and related Equipment, and provided that such restrictions do not unreasonably interfere with Licensee's ability to transport Equipment to its attachment locations.

Section 5.02 Access to Right-of-Way

Licensors shall provide Licensee with access to and use of such Right-of-Way to the same extent that third parties may access or use such Right-of-Way, including but not limited to access for ingress, egress, or other access and to construct, utilize, maintain, modify, and remove Equipment for which Structure attachment, Conduit occupancy, or Right-of-Way use licenses have been issued, provided that any agreement with a third-party under which Licensors holds such rights expressly or impliedly grants Licensors the right to provide such rights to others. Where Licensors notifies Licensee that Licensors's agreement with a third-party does not expressly or impliedly grant Licensors the ability to provide such access and use rights to others, upon Licensee's request, Licensors shall use its best efforts obtain the consent of the owner or grantor and to otherwise secure such rights for Licensee.

ARTICLE VI. CONDUIT PROCEDURES

Section 6.01 Conduit and Duct Specifications

Licensee's Equipment placed in Licensors's Conduit system must meet all of the following physical design specifications:

- (i) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in Licensors's Conduit.
- (ii) The integrity of Licensors's Conduit system and overall safety of Licensors's personnel and other personnel working in Licensors's Conduit system requires that "dielectric



cable” be placed when Licensee’s cable facility utilizes an alternative duct or route that is shared in the same trench by any current-carrying facility of a power utility.

- (iii) New construction splices in Licensee’s fiber optic cables shall be located in manholes, pull boxes or handholes.
- (iv) Fiber innerduct shall be used in Conduits where new cable is deployed or where more than one cable is within the Conduit.

The following specifications apply to connections of Licensee’s Conduit to Licensor’s Conduit system:

- (i) Licensee will be permitted to connect its Conduit or duct only at a Licensor manhole.
- (ii) No attachment will be made by entering or breaking into Conduit between manholes.
- (iii) All necessary work to install Licensee Equipment will be performed by Licensee or its contractor at Licensee’s expense.
- (iv) In no event shall Licensee or its contractor “core bore” or make any other modification to Licensor manhole(s) without the prior written approval of Licensor, which approval will not be unreasonably delayed, withheld, or conditioned.

If Licensee constructs or utilizes a duct connected to Licensor’s manhole, the duct and all connections between that duct and Licensor’s manhole shall be sealed, to the extent practicable, to prevent the entry of gases or liquids into Licensor’s Conduit system. If Licensee’s duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into Licensor’s Conduit system.

Section 6.02 Opening of Manholes

The following requirements apply to the opening of Licensor’s manholes:

- (i) Licensor’s manholes shall be opened only as permitted by Licensor’s authorized employees or agents, including authorized third-party contractors, which permission shall not be unreasonably denied, delayed, or conditioned.
- (ii) Except in the event of an emergency, Licensee shall notify Licensor forty-eight (48) hours in advance of any routine work operation requiring entry into any of Licensor’s manholes.
- (iii) Licensee shall be responsible for obtaining any necessary authorization from appropriate authorities to open manholes for Conduit work operations therein.

Section 6.03 Eminent Domain



Nothing in this Agreement shall be construed to require Licensor to exercise any power of eminent domain or other police power on Licensee's behalf.

ARTICLE VII. RENTAL AND PROCEDURE FOR PAYMENTS

Section 7.01 Rental Amount – Structures

For authorized attachments to Structures covered under this Agreement, Licensee shall pay to Licensor a rental amount for Structures as set forth on Exhibit 1 (the "Annual Structure Rental Fee").

Section 7.02 Rental Amount – Conduit and Duct

For authorized attachments placed in Licensor's Conduit covered under this Agreement, Licensee shall pay to Licensor, on an annual basis, a rental amount per linear foot set forth on Exhibit 1, on a billing cycle beginning January 1 of each year. The rental amount for each year shall be based on Licensor's tabulation of Licensee's attachments situated in Licensor's Conduit and Licensor's current records.

Section 7.03 Billing and Payments

Licensor shall send invoices to Licensee via regular U.S. Mail at the address specified below, or at such other address as Licensee may designate from time to time. Invoices for rental charges will be sent annually in arrears by February 1 for the preceding calendar year. Invoices for all Make Ready Work fees, if applicable, and other obligations or amounts due under this Agreement (other than annual rental charges) will be sent at Licensor's discretion within a reasonable time, unless otherwise specified in this Agreement; provided, however, that no charges (other than annual rental charges) may be billed by Licensor more than one hundred twenty (120) days after such charges were incurred.

Except as otherwise provided in this Agreement or agreed to by the Parties, Licensee shall pay all undisputed charges within thirty (30) business days from the invoice date. Interest at the rate set forth in Section 13.06 shall be imposed on any delinquent amounts. In the event of a billing dispute, Licensee shall submit such dispute in writing within one hundred eighty (180) days of the date the bill was due. Licensor shall have sixty (60) days to resolve the dispute in writing. Upon resolution of any such billing dispute in Licensee's favor, Licensor will refund any amounts owed, with interest accruing at the rate specified in Section 13.06 from the later of the date Licensee paid the disputed portion, or the date upon which Licensee provided Licensor notice of the amount in dispute. Upon resolution of any such billing dispute in Licensor's favor, Licensee will pay any amounts owed, with interest accruing at the rate specified in Section 13.06 on any unpaid disputed amounts, dating from the bill due date. All bills shall be paid to the address designated from time to time in writing by Licensor.

Licensor's billing address:

Licensee's billing address:



CITY OF ROELAND PARK, KANSAS
 4600 W. 51st Street
 Roeland Park, Kansas 66205

Google Fiber Kansas, LLC
 1600 Amphitheater Parkway
 Mountain View, CA 94043

ATTN: FINANCE DIRECTOR

Section 7.04 Incremental Personal Property Taxes and Other Taxes

Licensee shall pay any personal, real property or other taxes on Licensee's Equipment and any personal, real property or other taxes resulting from or associated with the use of the Licensor's Structures or Conduit as set forth in this Agreement.

ARTICLE VIII. BREACH AND REMEDIES

If either Party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after written notice thereof has been provided to the defaulting Party, the Party not in default may exercise any of the remedies available to it; provided, however, in such cases where a default cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable effort, the defaulting Party shall have an additional sixty (60) days to cure the default for a total of ninety (90) days after the Party not in default provides its notice of default. Subject to this Article VIII the remedies available to each Party shall include, without limitation, termination of this Agreement and injunctive relief.

ARTICLE IX. INDEMNIFICATION

Section 9.01 Indemnification by Licensee

Licensee shall defend, solely at Licensee's expense, Licensor, its Affiliates, and each of their respective officers, employees, elected and appointed officials, directors, managers, members, personnel, permitted successors, and their permitted assigns (collectively, the "Licensor Indemnified Parties"), against all claims, lawsuits, actions, causes of action, demands, or proceedings ("Claims") and shall indemnify and hold harmless Licensor Indemnified Parties from any losses, disbursements, fines, fees, penalties, taxes, settlements, awards, damages, costs, expenses, liabilities, or obligations of any kind, ("Losses") arising out of, relating to, or otherwise in respect of any of the following:

- (i) Claims for bodily injury, death, or damage to tangible personal or real property to the extent: (a) proximately caused by the negligence or willful acts or omissions of Licensee, its personnel, or its contractors; or (b) resulting proximately from Licensee's failure to perform its obligations under this Agreement;
- (ii) Claims arising from Licensee's breach of any representation or warranty in this Agreement or from Licensee's deviation from Licensor directions or requirements;



- (iii) Claims that any Licensee personnel, contractor or agent is an employee of Licensor, including Claims arising out of Licensee's failure to promptly pay any Licensee personnel for its services, materials, facilities, equipment or labor;
- (iv) Licensee's fraud, violation of law, wrongful misconduct, or misrepresentations; and
- (v) Claims arising from any failure by Licensee, its agents or contractors to comply with all applicable safety codes and requirements, including NESC compliance, with respect to attachments of Licensor.

Section 9.02 Indemnification by Licensor

Licensor shall defend, solely at Licensor's expense, Licensee, its Affiliates, and each of their respective officers, directors, managers, members, personnel, permitted successors, and their permitted assigns (collectively, the "Licensee Indemnified Parties"), against all Claims and shall indemnify and hold harmless Licensee Indemnified Parties from Losses arising out of, relating to, or otherwise in respect of any of the following:

- (i) Claims for bodily injury, death, or damage to tangible personal or real property to the extent: (a) proximately caused by the negligence or willful acts or omissions of Licensor, its personnel, or its contractors, or (b) resulting proximately from Licensor's failure to perform its obligations under this Agreement;
- (ii) Claims arising from Licensor's breach of any representation or warranty in this Agreement;
- (iii) Claims arising from any failure by Licensor, its agents or contractors to comply with all applicable safety codes and requirements, including NESC compliance, with respect to attachments of Licensor; and
- (iv) Licensor's fraud, violation of law, wrongful misconduct or misrepresentations.

THE PARTIES HEREBY AGREE THAT THE CITY SHALL HAVE NO OBLIGATION TO INDEMNIFY GOOGLE FOR ACTS FOR WHICH THE CITY WOULD OTHERWISE BE IMMUNE PURSUANT TO THE PROVISIONS OF THE KANSAS TORT CLAIMS ACT (K.S.A. 75-6104, ET SEQ.), AND AMENDMENTS THERETO, NOR WILL THE INDEMNITY OBLIGATIONS SET FORTH HEREIN ACT AS A WAIVER OF THE CITY'S PROTECTIONS UNDER SUCH PROVISIONS, AND FURTHER THAT ANY LIABILITY OF THE CITY SHALL BE SUBJECT TO THE LIABILITY LIMITATIONS SET FORTH IN K.S.A. 75-6105, AND AMENDMENTS THERETO. ADDITIONALLY, AND NOTWITHSTANDING ANYTHING SET FORTH HEREIN TO THE CONTRARY, THE PARTIES SPECIFICALLY AGREE THAT THE TERMS OF THIS SECTION 9.02, AND THE TERMS OF THIS AGREEMENT, SHALL BE SUBJECT TO AND LIMITED BY THE KANSAS CASH BASIS LAW (K.S.A. 10-1100 ET SEQ.) AND THE BUDGET LAW (K.S.A. 75-2935 ET SEQ.), AND AMENDMENTS THERETO.



Section 9.03 Procedure

A Party who seeks indemnification pursuant to this Agreement (the “Indemnified Party”) shall give written notice thereof to the other Party (the “Indemnitor”) promptly after the Indemnified Party learns of the existence of such Claim; provided, however, that the failure to give such notice shall not affect the rights of such Indemnified Party, except and only to the extent the Indemnitor is prejudiced by such failure. The Indemnitor shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend against any such Claim. No settlement of a Claim may seek to impose any liability or obligation upon the Indemnified Party other than for money damages. If such counsel will represent both Indemnitor and the Indemnified Party, there may be no conflict with such counsel’s representation of both. The Indemnified Party will use commercially reasonable efforts to fully cooperate in any such action at its own cost, shall make available to the other Party any books or records useful for the defense of any such Claim, and shall reasonably make available its personnel with respect to defense of the Claim.

ARTICLE X. LIMITATION OF LIABILITYSection 10.01 Disclaimer of Damages

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND EXCEPT FOR (I) THIRD-PARTY CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, AND DAMAGE TO TANGIBLE PROPERTY CAUSED BY THE NEGLIGENT OR INTENTIONAL ACTS OF A PARTY OR ITS PERSONNEL; (II) WILLFUL MISCONDUCT; AND (III) BREACH OF CONFIDENTIALITY AND/OR DATA SECURITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT IN ANY WAY, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, LOSS OF USE, OR LOSS OF PROFITS EVEN IF A PARTY HAS BEEN ADVISED, KNOWS, OR SHOULD KNOW OF THE POSSIBILITY OF THE FOREGOING.

NOTWITHSTANDING ANYTHING SET FORTH HEREIN TO THE CONTRARY, (A) THE CITY DOES NOT WAIVE ANY IMMUNITY FROM PUNITIVE DAMAGES AVAILABLE UNDER APPLICABLE KANSAS LAW, (B) THE PARTIES AGREE THAT THE TERMS OF THIS SECTION 10.01, AND THE TERMS OF THIS AGREEMENT, SHALL BE SUBJECT TO AND LIMITED BY THE KANSAS CASH BASIS LAW (K.S.A. 10-1100 ET SEQ.), THE BUDGET LAW (K.S.A. 75-2935 ET SEQ.) AND THE KANSAS TORT CLAIMS ACT (K.S.A. 75-6101 ET SEQ.), AND ALL AMENDMENTS TO SUCH LAWS, RESPECTIVELY, AND (C) ANY LIABILITY OF THE CITY HEREUNDER SHALL BE SUBJECT TO THE LIABILITY LIMITATIONS SET FORTH IN K.S.A. 75-6105, AND AMENDMENTS THERETO.



ARTICLE XI. INSURANCE

Section 11.01 Worker's Compensation and Employer's Liability Acts

Licensee shall comply with all applicable worker's compensation and employer's liability acts and shall furnish proof thereof satisfactory to Licensor prior to placing Equipment on Licensor's Structures or in Licensor's Conduits.

Section 11.02 Licensee Maintenance of Insurance Coverage

Without limiting any liabilities or any other obligations of Licensee, Licensee shall, at its sole expense and prior to placing Equipment on Licensor's Structures or in Licensor's Conduits, secure and continuously carry with insurers reasonably acceptable to Licensor the following insurance coverage:

Commercial General Liability insurance with a minimum single limit of \$1,000,000.00 to protect against and from all loss by reason of injury to persons, including Licensee's employees, Licensor's employees and all other third persons, or damage to property, including Licensor's property and the property of all other third-parties, based upon or arising out of Licensee's operations hereunder, including the operations of its contractors of any tier.

Business Automobile Liability insurance with a minimum single limit of \$1,000,000.00 for bodily injury and property damage with respect to Licensee's vehicles whether owned, hired or non-owned, assigned to or used in Licensee's operations hereunder.

The policies required herein shall include (a) provisions or endorsements naming Licensor, its directors, officers, and employees as additional insured, and (b) a cross-liability and severability of interest clause.

The policies required herein shall include provisions that such insurance is primary insurance with respect to the interests of Licensor and that any other insurance maintained by Licensor is excess and not contributory insurance with the insurance required under this section and provisions that such policies shall not be cancelled or their limits of liability reduced without written notice to Licensor in accordance with the terms of such policies. A certificate in a form satisfactory to Licensor certifying the issuance of such insurance shall be furnished to Licensor by Licensee.

Section 11.03 Licensor Maintenance of Insurance Coverage

Without limiting any liabilities or any other obligations of Licensor, Licensor shall, at its sole expense, secure and continuously carry with insurers reasonably acceptable to Licensee *Commercial General Liability insurance* with a minimum single limit of \$1,000,000.00 to protect against and from all loss by reason of injury to persons, including Licensor's employees, Licensee's employees, and all other third persons, or damage to property, including Licensee's



property and the property of all other third-parties, based upon or arising out of Licensor's operations hereunder, including the operations of its contractors of any tier.

The policies required herein shall include a cross-liability and severability of interest clause.

ARTICLE XII. CONFIDENTIALITY

No Party will disclose the terms of this Agreement to any other person or entity, other than to such Party's, or such Party's Affiliates, officers, directors, attorneys, accountants, and employees involved in the performance of this Agreement, and only then on the condition that such individuals agree in writing not to disclose the information disclosed to them. Notwithstanding the foregoing, either Party may disclose the terms of this Agreement to any third-party at any time if: (i) required to do so by law or court order (but only to the extent so required); or (ii) the other Party consents in writing to such disclosure. The Licensor will make a good faith effort to insure that competitive or sensitive information relating to the business operations of Licensee obtained in connection with this Agreement are not inadvertently disclosed. Subject to the foregoing provisions, each Party expressly agrees to maintain communications from the other Party pursuant to or in connection with this Agreement in confidence.

Notwithstanding the foregoing, Licensee understands and agrees that this Agreement and all of the terms set forth in this Article XII are subject to and limited by the KORA and the Kansas Open Meetings Act - K.S.A. 75-4317 et seq. ("KOMA"). Licensor's compliance with the KORA and KOMA shall in no event be deemed to be a default under this Agreement.

ARTICLE XIII. GENERAL PROVISIONS

Section 13.01 Governing Law

This Agreement and any action related to this Agreement will be governed the laws of the State of Kansas.

Section 13.02 Dispute Resolution

Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then the parties shall be entitled to pursue any available remedies at law or equity.

Section 13.03 Force Majeure

Neither Party shall be subject to any liability or damages for inability to perform its obligations under this Agreement, except for any obligation to pay amounts when due, to the extent that such failure shall be due to causes beyond the reasonable control of either Party, including but not limited to the following: (a) the operation and effect of any rules, regulations, and orders



promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof (so long as the claimant Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) war or act of terrorism; (d) flood; (e) earthquake; (f) act of God; (g) civil disturbance; or (h) strikes or boycotts; provided, the Party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Time periods for performance obligations of Parties herein shall be extended for the period during which Force Majeure was in effect.

Section 13.04 Notice

Except as otherwise provided herein, any notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be transmitted by U.S. Mail, by regularly scheduled overnight delivery, by personal delivery, or by email:

Licensor

CITY OF ROELAND PARK, KANSAS
4600 W. 51st Street, Suite 200
Roeland Park, KS 66205

ATTN: CITY ADMINISTRATOR

With a copy to: City Attorney:

Neil Shortlidge
1201 Walnut, Suite 200
Roeland Park, Kansas 64106

Licensee

Google Fiber Kansas, LLC
600 Amphitheater Parkway
Mountain View, CA 94043
ATTN: General Manager
Email: googlefibernotices@google.com
Fax: (650) 618-1806
With a copy to:

ATTN: Google Fiber Legal Department
Email: legal-notices@google.com
Fax: (650) 618-1806

Section 13.05 Failure to Enforce Rights

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement in any instance shall not constitute a general waiver or relinquishment of any such terms or conditions. Rather, such terms and conditions shall be and remain, at all times, in full force and effect.

Section 13.06 Interest

All amounts payable under the provisions of this Agreement shall, unless otherwise specified herein or disputed in good faith, be payable within thirty (30) business days of the invoice date. An interest charge at the rate of one percent (1%) per month shall be assessed against all late



payments. Interest under this Agreement shall not exceed the interest allowable under applicable law.

Section 13.07 No Third-Party Beneficiaries

Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

Section 13.08 Assignment of Rights

Except as set forth below, neither Party may assign or transfer its rights and obligations under this Agreement, in whole or part, to a third party without the written consent of the other Party. Licensors may sell, transfer, or assign its ownership interest in the Structures and Conduits provided that the purchaser, transferee, or assignee continues to be bound by the terms of this Agreement. Licensee may, upon written notice to Licensors, assign this Agreement and/or any or all of its rights and obligations under this Agreement to (i) any Affiliate of Licensee; (ii) any successor in interest to Licensee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of the Licensee's assets used to provide communications services to residents and businesses located in Roeland Park, Kansas.

An "Affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with, a Party; and "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

Section 13.09 Survival of Liability or Obligations Upon Termination

Any termination of this Agreement shall not release either Party from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

Section 13.10 Interpretation

References to Articles and Sections are references to the relevant portion of this Agreement. Headings are for convenience and shall not affect the construction of this Agreement.

Section 13.11 Severability

In the event that any of the terms, covenants, or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants, or conditions of this Agreement and their application shall not be affected thereby,



but shall remain in full force and effect; provided, in any such case, the Parties shall negotiate in good faith to reform this Agreement in order to give effect to the original intention of the Parties.

Section 13.12 Prior Agreements; Amendments

This Agreement shall supersede all prior negotiations, agreements, and representations, whether oral or written, between the Parties relating to the installation and maintenance of Licensee's Equipment on Licensor's Structures and in Licensor's Conduits. Any Equipment of Licensee attached to Licensor's Structures or in Licensor's Conduits shall be subject to the terms and conditions and rental rates of this Agreement. This Agreement, including any Exhibits attached and referenced herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may not be amended or altered except by an amendment in writing executed by the Parties hereto.

Section 13.13 Additional Representations and Warranties

Each Party warrants and represents to the other that it possesses the necessary corporate, governmental and legal authority, right and power to enter into this Agreement and to perform each and every duty imposed hereby. Each Party also warrants and represents to the other that each of its representatives executing this Agreement, or submitting or approving an application made hereunder, is authorized to act on its behalf.

Each Party further warrants and represents that entering into and performing under this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it, or any agreement to which it is a party and that this Agreement and any application approved hereunder, constitute valid, legal, and binding obligations enforceable against such Party in accordance with their terms.

Section 13.14 Relationship of the Parties

Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

Section 13.15 Joint Drafting

The Parties acknowledge that this Agreement (including the Exhibits hereto) has been drafted jointly by the Parties and agree that this Agreement will not be construed against either Party as a result of any role such Party may have had in the drafting process.



Section 13.16 Remedies Cumulative; Specific Performance

Except as provided otherwise in this Agreement, all rights and remedies granted to each Party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies otherwise available to such Party at law or in equity. The Parties agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that a Party shall be entitled to specific performance of the terms hereof in addition to any other remedy at law or in equity, including monetary damages, that may be available to it.

Section 13.17 Default

In no event shall a dispute, default or alleged default under the License Agreement or Network Cooperation and Services Agreement constitute or be deemed a default, or in any way impact the rights and obligations of the parties under this Agreement and in no event shall a dispute, default or alleged default under this Agreement constitute or be deemed a default, or in any way impact the rights and obligations of the parties under the License Agreement or Network Cooperation and Services Agreement. Additionally, any dispute, default or alleged default under the License Agreement or Network Cooperation and Services Agreement individually shall not constitute or be deemed a default under any other agreement. Further, termination or expiration of the rights and obligations under the License Agreement or Network Cooperation and Services Agreement shall in no way impact the term of this Agreement or otherwise impact the rights and obligations of the parties under this Agreement and any termination or expiration of the rights and obligations under this Agreement shall in no way impact the term, rights or obligations under the License Agreement or Network Cooperation and Services Agreement.

Section 13.18 Further Assurances

In addition to any other obligations set forth in this Agreement, each Party agrees to take such actions (including the execution, acknowledgment, and delivery of documents) reasonably requested by the other Party for the implementation or continuing performance of this Agreement.

Section 13.19 Counterparts; Signatures

This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument. Each Party to this Agreement agrees to: (a) use electronic signatures; and (b) be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (ESIGN), Pub.L. 106-229, 14 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch.96).



THIS AGREEMENT has been executed as of the date first hereinabove written.

GOOGLE FIBER KANSAS, LLC
1600 Amphitheater Parkway
Mountain View, California 94043

(Authorized Signature)

(Name)

(Title)

CITY OF ROELAND PARK, KANSAS

4600 W. 51st Street, Suite 200
Roeland Park, Kansas 66205

Joel Marquardt, Mayor

(SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

Todd A. LaSala, Esq., City Special Counsel



**EXHIBIT 1
FEE SCHEDULE**

Annual Structure Attachment Fees - From and after the Effective Date, the parties understand and agree that Licensor may, in its sole discretion, promulgate annual structure attachment fees from time to time which fees shall be applied to Licensee's use of the Structures (the "Annual Attachment Fee") and all similarly-situated providers who have equipment and/or facilities on Structures within the City. Notwithstanding the foregoing, the parties hereby understand and agree that for purposes of this Agreement, Licensor has evaluated the City Broadband Services and/or City WiFi Services to be provided by Licensee pursuant to the terms of the Network Cooperation and Services Agreement, and Licensor has agreed that Licensee's Annual Attachment Fee shall be fully offset by the provision of free City Broadband Services and City WiFi Services to be provided by Licensee under the terms of the Network Cooperation and Services Agreement entered into by the Parties. If Licensee fails to provide such City Broadband Services to the Public Sites in the City or discontinues providing such free services, then Licensee shall pay such Annual Attachment Fee as set forth above.

Annual Conduit Rental Fees - To be mutually agreed upon by Licensor and Licensee.



STRUCTURE ATTACHMENT AND CONDUIT OCCUPANCY AGREEMENT

This Structure Attachment and Conduit Occupancy Agreement (the "Agreement"), is made and entered into this 1st day of October, 2013, by and between the City of Roeland Park, Kansas a municipal corporation duly organized under laws of the State of Kansas ("Licensor"), and Google Fiber Kansas, LLC, a Kansas limited liability company ("Licensee") (each a "Party" and collectively, the "Parties").

RECITALS

A. Licensor now owns, leases, or operates, or may own, lease or operate in the future, buildings, light poles and other structures and improvements on real property in Roeland Park, Kansas ("Structures"); and

B. Licensor owns, leases or operates, or may own, lease or operate in the future, a network of conduits and ducts ("Conduit"); and

C. Licensor, as the municipal government of Roeland Park, Kansas has the ownership of land or other property ("Public Property"); and

D. Licensor has the right to use Public Property to place Structures, Conduits, and other facilities and equipment, or to provide passage to access such Structures, Conduits, and other facilities and equipment (a "Right-of-Way"); and

E. Licensee proposes to furnish unique, ultra high-speed communications services in Roeland Park, Kansas, in accordance with the Network Cooperation and Services Agreement between the Parties, and desires to place and maintain antennas, cables, wires, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, transmitters, transceivers, materials, appurtenances, or apparatus of any sort necessary or desirable for Licensee to operate its businesses as such businesses may evolve, develop, or change at any time while this Agreement remains in effect ("Equipment") on Licensor's Structures and in Licensor's Conduits, and to access those Structures and Conduits on or in Public Property and the Right-of-Way of Licensor throughout Roeland Park, Kansas; and

F. In consideration for Licensee agreeing to provide City Broadband Services and City WiFi Services, as each are defined in the Network Services and Cooperation Agreement, in Roeland Park, Kansas, and Licensee paying any Rental Fees (as defined below) Licensor desires to provide Licensee with a non-exclusive license for the use of space on or in its Structures and Conduits and, for purposes of access to its Structures and Conduits, on or in Public Property and the Right-of-Way of Licensor throughout Roeland Park, Kansas; and

G. Certain third party utility service providers operate within Roeland Park, Kansas, and Licensee acknowledges that it must negotiate pole attachment agreements to govern Licensee's attachments to such third party utility service providers' poles or structures independent of this Agreement with Licensor.



In consideration of the mutual covenants, terms, and conditions herein contained, the Parties do hereby mutually covenant and agree as follows:

ARTICLE I. SCOPE OF AGREEMENT

Section 1.01 Service Area

This Agreement shall apply to Licenser Structures, Conduits, Public Property and Right-of-Way now existing or hereafter constructed or obtained throughout Roeland Park, Kansas.

Section 1.02 Authorization

Subject to the provisions of this Agreement, Licenser grants to Licensee and Licensee accepts from Licenser (i) a non-exclusive license to occupy, place, and maintain Licensee's Equipment on certain Licenser Structures, and to access and utilize electricity thereon (to be paid for by Licensee or the offset as set forth on Exhibit 1 attached hereto), whether City-owned or leased; and (ii) a non-exclusive license to occupy, place, and maintain Licensee's Equipment in certain Licenser Conduits. Placement of Licensee's Equipment on light poles and in Conduits shall be at the reasonable discretion of Licenser as set forth in Section 2.02 below, subject to Licenser's Permit requirements and state and federal law; placement of Licensee's Equipment on all other Structures and Public Property shall be at the sole discretion of Licenser so long as Licensee is treated in a competitively neutral, non-discriminatory manner as compared with other similarly situated third-parties.

Section 1.03 No Property Right

No use of Licenser's Structures or Conduits, however extended, or payment of fees or charges required under this Agreement, shall create or vest in Licensee any ownership of property rights in such Structures or Conduits.

Section 1.04 Discrimination

Licenser shall treat Licensee in a competitively neutral, non-discriminatory manner as compared with other attachers to its Structures and Conduits. Licenser shall provide Licensee with a copy of all agreements where Licenser makes access to its Structures and Conduits available to third-parties in accordance with the notice requirements herein. In the event that Licenser makes available any terms or conditions for Structures or Conduit which are, in the context of the same or similar circumstances, more favorable to one or more other attachers than to Licensee as set forth herein, Licenser shall, upon a reasonable request from Licensee, provide an amendment to this Agreement to make those same terms and conditions available to Licensee for future attachments or placements.

Section 1.05 Post-Termination Rights



Upon termination of this Agreement for any reason (other than failure to pay the Annual Structure Rental Fee), Licensee, at the request of Licensors, may maintain its Equipment on and in Licensors' Structures and Conduits, but may no longer apply to add new Equipment. Except as set forth in Section 2.15, existing Equipment will continue to be subject to the terms of this Agreement until such Equipment is removed by Licensee from Licensors' Structures and Conduits.

Section 1.06 Authorizations Required

Licensee shall secure all authorizations, franchises, licenses, permits, and consents ("Permits") required for the construction, operation, and maintenance of its Equipment. If any required Permit obtained by Licensee is subsequently revoked or denied for any reason, Licensee shall retain the right to pursue and exhaust all legal, administrative, and equitable remedies, in any available forum, before Licensors may revoke Licensee's right to attach the Equipment requiring such Permit to Licensors' Structures or revoke Licensee's right to occupy Licensors' Conduits with the Equipment requiring such Permit.

Section 1.07 Term

This Agreement shall become effective upon the date first written above (the "Effective Date") above and shall continue in effect for ten (10) years. This Agreement will automatically renew for up to three (3) successive five (5) year periods, unless Licensee is no longer operating its network within Roeland Park, Kansas.

ARTICLE II. PLACING, TRANSFERRING, OR REARRANGING ATTACHMENTS

Section 2.01 Application; Confidentiality

Before attaching any Equipment to any Licensors Structure or placing any Equipment in any Licensors Conduit (other than a new or existing service wire drop that is attached to the same Structure as an existing attachment of Licensee), Licensee shall submit a written request to Licensors for consent for such attachment or placement. All materials submitted by Licensee in connection with such written request shall be handled and reviewed only by those Licensors employees and contractors directly responsible for the coordination and administration of such requests. Licensee's plans, designs, drawings or specifications are of a confidential, proprietary, and commercially sensitive nature and shall not be disclosed by Licensors or its employees or contractors for any reason other than (a) as required by the Kansas Open Records Act at K.S.A. 45-215 *et seq.* ("KORA"), and (b) as necessary in connection with processing and administering the Licensee's application to attach Equipment to Structures or place Equipment in Conduits.

Section 2.02 Grant or Denial of Access

Except as otherwise provided by law, Licensors reserves the right to deny or modify Licensee access to any Structure or Conduit, on a competitively neutral, non-discriminatory basis, where Licensors demonstrates that Licensee's proposed attachment will, in the City's reasonable



discretion (a) materially harm the public health, safety or welfare, or (b) unreasonably limit or harm the capacity, functionality, safety, reliability or aesthetics of Licensor's facilities, or (c) place Licensor in violation of generally applicable zoning restrictions, or (d) unreasonably interfere with a reasonable governmental purpose; provided, however, that before Licensor denies access, Licensor shall explore potential accommodations in good faith and take all reasonable steps to accommodate Licensee's request for access. Licensor shall use its best efforts to either grant or deny access to a Structure or Conduit within twenty (20) days of Licensee's written request; the Licensor's grant may include a Make Ready Estimate as described in Section 2.04. If Licensor denies access, Licensor must provide notice in writing within twenty (20) days of Licensee's application with information to support its denial.

Section 2.03 Make Ready Survey

When Licensor receives an attachment or placement request from Licensee, a make-ready-survey (the "Make Ready Survey") may be necessary, at Licensee's cost, to determine the adequacy of the existing Structures or the capacity of Conduit to accommodate Licensee's Equipment without jeopardizing the safety of Licensor's facilities or placing Licensor in violation of generally applicable zoning restrictions. Licensor may perform a field inspection as part of the Make Ready Survey. Licensor shall provide reasonable advance notice of such a field inspection and a representative of Licensee has the right to be present for the inspection.

Section 2.04 Make Ready

- (a) Except where Licensor denies the application to the extent permitted by this Agreement, whenever any Structure or Conduit to which Licensee seeks attachment or occupancy requires modification or replacement to accommodate both Licensee's Equipment and Licensor's existing attachments or equipment and the attachments and equipment of other pre-existing attachers and occupants, Licensor, at Licensee's cost, will provide Licensee with a detailed, good faith estimate of make ready work (the "Make Ready Estimate") it believes to be necessary to prepare the Structure or Conduit for Licensee's Equipment (the "Make Ready Work"). All Make Ready Work will be performed at the sole cost and expense of Licensee. Licensor will use best efforts to provide Licensee with the Make Ready Estimate within twenty (20) days of Licensee's written request for attachment. The Make Ready Work may include engineering, design, planning, construction, materials, cost of removal (less any salvage value), cost of transferring Licensor's facilities and those of other users of the Structure or Conduit, and cost of expanding existing Conduit, in each case as reasonably necessary for the installation of Licensee's Equipment on a Structure or in a Conduit. The Make Ready Estimate shall include itemized estimates of the cost of each component of the Make Ready Work. Any reference to costs or expenses borne by Licensee within Section 2.03 and 2.04 are limited to third-party out of pocket expenses incurred by Licensor and do not include administrative time incurred by the Licensor or expenses that third-party attachers are obligated to bear under pre-existing agreements.



- (b) After receiving the Make Ready Estimate, if Licensee still desires to make the Structure attachment or utilize the Conduit, Licensee may within ninety (90) days of receiving the Make Ready Estimate elect by written notice to Licensors any of the following alternatives:
- (i) Offer Licensors the option to perform such Make Ready Work as called for in the Make Ready Estimate (the "Option"), and if Licensors, in its sole and absolute discretion, agrees to perform such Make Ready Work pursuant to the Option, Licensee will pay to Licensors fifty percent (50%) of the fees for Make Ready Work specified by the Make Ready Estimate (the "Down Payment"). Licensee shall pay an additional twenty-five percent (25%) of the Make Ready Estimate when Licensors has completed one-half of the Make Ready Work (the "Progress Payment"). Licensee shall pay the remaining twenty-five percent (25%) of the Make Ready Estimate upon Licensors's completion of the Make Ready Work.
 - (ii) Licensee may retain contractors to perform all the Make Ready Work. The contractors shall be approved by Licensors to work on or in its Structures and Conduits. Approval shall be based upon reasonable and customary criteria employed by the Licensors in the selection of its own contract labor
 - (iii) Licensee may retain its own contractors to perform part of the Make Ready Work and utilize Licensors to perform part of the Make Ready Work, but only where the Licensors has, in its sole and absolute discretion, agreed to such Option described in subparagraph (i) above. The Licensee is responsible for determining what portion of the Make Ready Work it will perform through this joint-build option and to notify Licensors of its choices. In the event Licensee retains contractors to perform part of the Make Ready Work and utilizes Licensors to perform part of the Make Ready Work, Licensee shall adjust the payments described in subparagraph (i) above to include only the costs of the itemized components of the Make Ready Estimate to be performed by Licensors.
- (c) If Licensors, in its sole and absolute discretion, exercises its Option to perform any Make Ready Work as described in subparagraph (i), Licensors shall use its best efforts to make sure that necessary Make Ready Work, including the work necessary to rearrange third party attachments to Licensors's Structures and Conduits or facilities, is completed within sixty (60) days from Licensee's remittal of the Down Payment. If Make Ready Work is not completed by Licensors within the sixty (60) day period, any fees payable by Licensee for Make Ready Work shall be waived and any Down Payment or Progress Payment in connection with such Make Ready Work shall be refunded promptly to Licensee, and Licensee may retain its own contractors perform the Make Ready Work.
- (d) If Licensee submits an application that affects existing attachments or occupancy, Licensors will use commercially reasonable efforts to notify third-party owners and coordinate the rearrangements of such attachments. To the extent third-party equipment is affected by Licensee's application, the Licensors will follow the procedure as described



in parts a, b and c of this section 2.04, but only to the extent such third-parties do not elect to perform the rearrangement or are not already obligated to rearrange attachments and bear the expense of such rearrangement and coordination under a pre-existing separate agreement.

Section 2.05 Deemed Granted

If access is not granted or denied by Licensors within twenty (20) days of Licensee's written request, and Licensors has not been in communication with Licensee over such twenty (20) day period, Licensee may provide written notice of the same to Licensors and if Licensors shall fail to respond within three (3) business days, then the application will be deemed granted. The Parties agree and acknowledge that the grant or denial of Licensee's request may take longer than twenty (20) days if the Parties are communicating and mutually proceeding diligently with the application in good faith. When a request is deemed granted, the Licensee may retain its own contractor to perform the Make Ready Work.

Section 2.06 Structures and Conduit – Rights of Third Parties

Licensee agrees to comply with all federal, state and local laws, rules, orders and regulations ("Requirements") that are applicable in connection with the installation and operation of equipment and facilities on Structures and in Conduit, including without limitation, such Requirements governing interference with other providers/attachers, and Licensors agrees to require any later attaching third-parties to comply with the Requirements.

The rights of any third-parties to whom Licensors confers Structure attachment or Conduit occupancy rights after the Licensee shall be subject to the rights of the Licensee as set forth herein. Further, the Licensors shall not license any Conduit or Structure occupied by Licensee, or for which an application for occupancy or attachment from Licensee has been received by Licensors and is pending, for use by any other person or entity where it is determined that such third-party use would unreasonably interfere with Licensee's Equipment pursuant to the Requirements, unless access for such other person or entity is otherwise required by applicable state or federal law. If access is granted to a third-party pursuant to state or federal law, then Licensors shall give Licensee prior written notice of any such grant of third-party access and give Licensee reasonable time to remove and relocate equipment prior to that time any third party is able to access any Conduit or Structure previously occupied by or attached to by Licensee.

In the alternative, if Licensors grants Structure attachment or Conduit occupancy rights to any third-party prior to Licensee applying for or being granted such rights, Licensee shall be subject to the rights of said third-party attacher, unless it is determined that Licensee access would not unreasonably interfere with such third-party's equipment pursuant to the Requirements or if such access is required by state or federal law. This Section 2.06 shall not be deemed to otherwise limit the Licensors from using any Conduit or Structure in connection with providing its own services or from licensing any Conduit or Structure to another person or entity if no application from Licensee is pending or such Conduit or Structure is not occupied by Licensee.



Section 2.07 Structure and Conduit Maintenance

The expense of maintaining the Structures and Conduits shall be borne exclusively by Licensor and Licensor shall maintain its Structures and Conduits in a safe and serviceable condition, and shall replace, reinforce, or repair such Structures and Conduits as they become defective. Licensor shall be responsible for routine and periodic tree trimming and brush cutting as appropriate or necessary, in Licensor's discretion, to avoid contact with, or jeopardizing the functionality of, Structures utilized by Licensee. Licensor shall be solely responsible for collection of costs of damages for Structures and Conduits broken or damaged by third-parties. Licensee shall be responsible for repair, maintenance and collection of costs of damages to its own Equipment. Nothing in this Agreement shall be construed to be a guaranty of the condition of any Structure or Conduit by Licensor in connection with Licensee's placement of its Equipment in or on Licensor's Structures or Conduit or impose any obligation upon Licensor to repair or replace an existing Structure or Conduit in order to accommodate a request by Licensee to install Equipment on or in an existing Structure or Conduit.

Section 2.08 Structure and Conduit Replacement

Licensor shall have the right to relocate Licensee's Equipment on Licensor's Structure or within Licensor's Conduit system provided that such relocation does not adversely affect the accessibility, reliability, or protective safety features of Licensee's Equipment and/or adversely affect Licensee's services to its customers. Licensor shall provide Licensee with thirty (30) days' advance notice of any such relocation required as a result of any major capital projects or improvements deemed necessary for public health and safety or other reasonable governmental purpose. Upon receipt of notification by Licensor to Licensee that Licensee's equipment needs to be relocated, the Parties will, within five (5) working days, mutually agree upon the length of time it will take for Licensee to accommodate such request, and upon and in accordance with the terms of such agreement, Licensee shall proceed with such relocation. Licensee shall bear the cost of any such relocation. Licensee has the right to observe any relocation of Licensee's Equipment. Licensor shall mark or tag any relocated Equipment with appropriate identification of Licensee. Licensor shall use best efforts to ensure that Licensee shall have reasonably equivalent access to and ability to maintain any relocated Equipment.

The provisions in this Section 2.08 shall be subject to and limited by the terms of the Roeland Park City Code, including the right of way ordinances as set forth therein.

Section 2.09 Installation

Licensee, at its own expense and risk and by the terms of this Agreement, shall place, transfer, and rearrange its own Equipment on Licensor's Structures or in Licensor's Conduits. Licensee at all times shall perform such work in such manner as not to interfere with the service of Licensor or any other Structure attacher or Conduit occupant.

Section 2.10 Subsequent Attachment by Third-Party Attachers



If at any time subsequent to Licensee's attachment to a Structure, a third-party requests that Licensor provide access to that same Structure, the following procedures shall apply:

- (a) If it is determined that Make Ready Work on Licensee's attachment(s) will be necessary to accommodate such third-party's equipment, the Licensee will provide the cost estimate to the attaching third-party for Licensee or its Approved Contractor to complete the Make Ready Work. In Licensee's sole discretion and upon Licensee's written instruction, Licensee or the third party attacher or its contractor shall complete the Make Ready Work on Licensee's attachment at the sole expense of the third party attacher.
- (b) Licensee will communicate with Licensor with respect to the rearrangement of Licensee's Equipment, and Licensor shall be responsible for communicating such information to and from third-parties.
- (c) Except where such rearrangement is for the benefit of Licensee and as may be required under Section 2.08 herein, Licensee shall not be responsible for paying any charges attributable to the rearrangement of its Equipment.
- (d) Licensee shall make all rearrangements of its Equipment within such period of time as is jointly deemed reasonable by the Parties based on the amount of rearrangements necessary and a desire to minimize chances for service interruption or service denial to Licensee's customers.

Section 2.11 Compliance with Safety Codes

Licensee shall place and maintain its facilities attached to Licensor Structures or in Licensor Conduits in good and safe condition and in thorough repair, and in compliance with applicable law, permits, codes and with such requirements and specifications as required by any regulatory agency or other authority having jurisdiction.

Section 2.12 Nonconforming Equipment

- (a) If any attachment is not placed and maintained in accordance with Section 2.11 above, upon notice by Licensor, Licensee shall use commercially reasonable efforts to timely perform all work reasonably necessary to correct conditions of Licensee's noncompliance. For purposes of this paragraph, compliance shall be deemed timely if performed during Licensee's regularly scheduled maintenance activities or under a plan approved by Licensor, unless such noncompliance creates an Emergency (as defined below).
- (b) In the event Licensor determines in good faith that a particular condition or situation is an Emergency, Licensor may arrange to relocate, replace, remove, renew, or disconnect Licensee's facilities and transfer them to substituted Structures or Conduits or perform any other work in connection with Licensee's Equipment that may be required during the



Emergency. Licenser shall also endeavor to provide Licensee with the best practicable notice of the situation so that Licenser and Licensee, if possible, may coordinate their responses to the Emergency. If notice is impossible during the Emergency, Licenser shall notify Licensee of any Emergency and any relocation, replacement, or removal affecting Licensee's Equipment as soon as reasonably practicable. An "Emergency" is conditions that (i) pose an immediate threat to the safety of utility workers or the public; (ii) materially and adversely interfere with the performance of Licenser's or other attachers' service obligations; or (iii) pose an immediate threat to the integrity of Licenser's or other attachers' equipment.

Section 2.13 Reasonable Precautions

Each Party shall exercise reasonable precautions to avoid damage to the facilities of the other Party.

Section 2.14 Removal of Attachments by Licensee

Licensee, at any time, may remove its Equipment from any Structure(s) or Conduit(s) of Licenser, and shall give Licenser written notice within seven (7) days of such removal. Any applicable rental fees shall cease with respect to such removed Equipment as of the date of such notice.

Section 2.15 Abandonment

Subject to Section 13-813 of the Roeland Park City Code, Licensee shall have the right to abandon Equipment located within Licenser's Conduit system or on Licenser's Structures by written notice to Licenser. Rental Fees shall cease with respect to such Equipment as of the date of such notice. In the event abandoned equipment is not removed by Licensee within a reasonable period of time not to exceed two (2) years, ownership of such equipment shall revert to Licenser.

Section 2.16 Interference.

Licensee shall not allow its Equipment or operations to impair the Licenser's ability to place, locate, operate, use or repair Licenser's Structures or Conduit, nor shall Licensee require Licenser to place, locate or operate Structures and Conduit for a primary purpose other than providing city services.

ARTICLE III. INSPECTIONS

Section 3.01 Post-Installation and Safety Inspections

Licenser reserves the right to inspect each new Licensee installation on Licenser Structures and in Licenser Conduit. Licenser also reserves the right to make periodic inspections, as conditions



may warrant, to determine if Licensee's construction complies with the approved application and/or applicable law.

Section 3.02 Facilities Inventory

Licensor shall have the right to require a jointly conducted physical inventory of Licensee's Equipment on Licensor Structures and in Licensee Conduit upon ninety (90) days' advance written notice. In such event, Licensor may select an independent contractor for the performance of such physical inventory through a competitive bid process. Licensee shall be permitted to supplement Licensor's invitation to bid list to include contractors designated by Licensee. A jointly conducted physical inventory shall be taken no more frequently than once every three years. If the facilities of more than one joint-user are inventoried, each such joint-user shall contribute a proportionate share of the costs of such inventory.

As an alternative to performance of the jointly conducted physical inventory, the Parties may, if mutually agreed, determine the number of attachments and feet of occupancy from existing maps and/or attachment records provided that such maps or records exist and provided that each Party agrees that results with reasonable accuracy can be achieved. If the Parties agree to this method, any maps and/or records belonging to one of the Parties and utilized to count attachments and Conduit occupancy shall be made available to the other Party and the number of attachments and feet of Conduit occupancy shall be determined through a mutual and cooperative effort of both Parties. The results of attachment and occupancy counts performed in this manner shall be treated, for the purpose of determining rentals and other charges due for unauthorized attachments, as if results were achieved by an actual jointly conducted physical inventory.

Section 3.03 Inventory Disparity

- (a) In the event that the number of Structures or feet of Conduit to which Licensee has attached or placed its Equipment differs from the number shown in Licensor records, the Licensor records shall be revised and the rental obligations due shall be revised as of the date of the completion of the jointly conducted physical inventory or the attachment count based on maps and records. No back payment or refund shall be due in the event of an inventory disparity, whether the total number of Structures and Conduit feet was more or less than the Licensor's records.
- (b) Upon forty-five (45) days' notice from Licensor to Licensee of an unauthorized attachment, Licensee shall either apply for consent to such attachment or remove such attachment.

ARTICLE IV. LICENSOR ABANDONMENT OF STRUCTURES AND CONDUITS

If Licensor desires at any time to abandon any Structure or Conduit which is being used by Licensee pursuant to this Agreement, then it shall give Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such Structure or Conduit. If, at the expiration of such period, Licensee has not removed all of its Equipment from such



Structure or Conduit, Licensor may offer to sell the Structure or Conduit to Licensee. If Licensee elects to purchase the Structure or Conduit, Licensee shall pay Licensor a sum equal to the current in-place value less expired service life of such abandoned Structure(s) or Conduit(s) at time of abandonment.

ARTICLE V. ACCESS TO PROPERTY

Section 5.01 Access to Public Property

In connection with performance of this Agreement, Licensee and any of its employees or contractors shall have reasonable access to the parts of any real property, or improvements upon real property, that Licensor owns, leases, controls, or manages ("Licensor's Property"), including but not limited to stairways, elevators, hallways, pathways, ladders, lobbies, and entryways, which Licensee must use to access the location of any attachment and related Equipment on any Structure or in any Conduit. Licensor may place reasonable restrictions on Licensee's access to Licensor's Property, provided that such restrictions do not unreasonably interfere with Licensee's ability to access its attachments and related Equipment, and provided that such restrictions do not unreasonably interfere with Licensee's ability to transport Equipment to its attachment locations.

Section 5.02 Access to Right-of-Way

Licensor shall provide Licensee with access to and use of such Right-of-Way to the same extent that third parties may access or use such Right-of-Way, including but not limited to access for ingress, egress, or other access and to construct, utilize, maintain, modify, and remove Equipment for which Structure attachment, Conduit occupancy, or Right-of-Way use licenses have been issued, provided that any agreement with a third-party under which Licensor holds such rights expressly or impliedly grants Licensor the right to provide such rights to others. Where Licensor notifies Licensee that Licensor's agreement with a third-party does not expressly or impliedly grant Licensor the ability to provide such access and use rights to others, upon Licensee's request, Licensor shall use its best efforts obtain the consent of the owner or grantor and to otherwise secure such rights for Licensee.

ARTICLE VI. CONDUIT PROCEDURES

Section 6.01 Conduit and Duct Specifications

Licensee's Equipment placed in Licensor's Conduit system must meet all of the following physical design specifications:

- (i) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in Licensor's Conduit.
- (ii) The integrity of Licensor's Conduit system and overall safety of Licensor's personnel and other personnel working in Licensor's Conduit system requires that "dielectric



cable” be placed when Licensee’s cable facility utilizes an alternative duct or route that is shared in the same trench by any current-carrying facility of a power utility.

- (iii) New construction splices in Licensee’s fiber optic cables shall be located in manholes, pull boxes or handholes.
- (iv) Fiber innerduct shall be used in Conduits where new cable is deployed or where more than one cable is within the Conduit.

The following specifications apply to connections of Licensee’s Conduit to Licensor’s Conduit system:

- (i) Licensee will be permitted to connect its Conduit or duct only at a Licensor manhole.
- (ii) No attachment will be made by entering or breaking into Conduit between manholes.
- (iii) All necessary work to install Licensee Equipment will be performed by Licensee or its contractor at Licensee’s expense.
- (iv) In no event shall Licensee or its contractor “core bore” or make any other modification to Licensor manhole(s) without the prior written approval of Licensor, which approval will not be unreasonably delayed, withheld, or conditioned.

If Licensee constructs or utilizes a duct connected to Licensor’s manhole, the duct and all connections between that duct and Licensor’s manhole shall be sealed, to the extent practicable, to prevent the entry of gases or liquids into Licensor’s Conduit system. If Licensee’s duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into Licensor’s Conduit system.

Section 6.02 Opening of Manholes

The following requirements apply to the opening of Licensor’s manholes:

- (i) Licensor’s manholes shall be opened only as permitted by Licensor’s authorized employees or agents, including authorized third-party contractors, which permission shall not be unreasonably denied, delayed, or conditioned.
- (ii) Except in the event of an emergency, Licensee shall notify Licensor forty-eight (48) hours in advance of any routine work operation requiring entry into any of Licensor’s manholes.
- (iii) Licensee shall be responsible for obtaining any necessary authorization from appropriate authorities to open manholes for Conduit work operations therein.

Section 6.03 Eminent Domain



Nothing in this Agreement shall be construed to require Licensor to exercise any power of eminent domain or other police power on Licensee's behalf.

ARTICLE VII. RENTAL AND PROCEDURE FOR PAYMENTS

Section 7.01 Rental Amount – Structures

For authorized attachments to Structures covered under this Agreement, Licensee shall pay to Licensor a rental amount for Structures as set forth on Exhibit 1 (the "Annual Structure Rental Fee").

Section 7.02 Rental Amount – Conduit and Duct

For authorized attachments placed in Licensor's Conduit covered under this Agreement, Licensee shall pay to Licensor, on an annual basis, a rental amount per linear foot set forth on Exhibit 1, on a billing cycle beginning January 1 of each year. The rental amount for each year shall be based on Licensor's tabulation of Licensee's attachments situated in Licensor's Conduit and Licensor's current records.

Section 7.03 Billing and Payments

Licensor shall send invoices to Licensee via regular U.S. Mail at the address specified below, or at such other address as Licensee may designate from time to time. Invoices for rental charges will be sent annually in arrears by February 1 for the preceding calendar year. Invoices for all Make Ready Work fees, if applicable, and other obligations or amounts due under this Agreement (other than annual rental charges) will be sent at Licensor's discretion within a reasonable time, unless otherwise specified in this Agreement; provided, however, that no charges (other than annual rental charges) may be billed by Licensor more than one hundred twenty (120) days after such charges were incurred.

Except as otherwise provided in this Agreement or agreed to by the Parties, Licensee shall pay all undisputed charges within thirty (30) business days from the invoice date. Interest at the rate set forth in Section 13.06 shall be imposed on any delinquent amounts. In the event of a billing dispute, Licensee shall submit such dispute in writing within one hundred eighty (180) days of the date the bill was due. Licensor shall have sixty (60) days to resolve the dispute in writing. Upon resolution of any such billing dispute in Licensee's favor, Licensor will refund any amounts owed, with interest accruing at the rate specified in Section 13.06 from the later of the date Licensee paid the disputed portion, or the date upon which Licensee provided Licensor notice of the amount in dispute. Upon resolution of any such billing dispute in Licensor's favor, Licensee will pay any amounts owed, with interest accruing at the rate specified in Section 13.06 on any unpaid disputed amounts, dating from the bill due date. All bills shall be paid to the address designated from time to time in writing by Licensor.

Licensor's billing address:

Licensee's billing address:



CITY OF ROELAND PARK, KANSAS
4600 W. 51st Street
Roeland Park, Kansas 66205

Google Fiber Kansas, LLC
1600 Amphitheater Parkway
Mountain View, CA 94043

ATTN: FINANCE DIRECTOR

Section 7.04 Incremental Personal Property Taxes and Other Taxes

Licensee shall pay any personal, real property or other taxes on Licensee's Equipment and any personal, real property or other taxes resulting from or associated with the use of the Licensor's Structures or Conduit as set forth in this Agreement.

ARTICLE VIII. BREACH AND REMEDIES

If either Party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after written notice thereof has been provided to the defaulting Party, the Party not in default may exercise any of the remedies available to it; provided, however, in such cases where a default cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable effort, the defaulting Party shall have an additional sixty (60) days to cure the default for a total of ninety (90) days after the Party not in default provides its notice of default. Subject to this Article VIII the remedies available to each Party shall include, without limitation, termination of this Agreement and injunctive relief.

ARTICLE IX. INDEMNIFICATION

Section 9.01 Indemnification by Licensee

Licensee shall defend, solely at Licensee's expense, Licensor, its Affiliates, and each of their respective officers, employees, elected and appointed officials, directors, managers, members, personnel, permitted successors, and their permitted assigns (collectively, the "Licensor Indemnified Parties"), against all claims, lawsuits, actions, causes of action, demands, or proceedings ("Claims") and shall indemnify and hold harmless Licensor Indemnified Parties from any losses, disbursements, fines, fees, penalties, taxes, settlements, awards, damages, costs, expenses, liabilities, or obligations of any kind, ("Losses") arising out of, relating to, or otherwise in respect of any of the following:

- (i) Claims for bodily injury, death, or damage to tangible personal or real property to the extent: (a) proximately caused by the negligence or willful acts or omissions of Licensee, its personnel, or its contractors; or (b) resulting proximately from Licensee's failure to perform its obligations under this Agreement;
- (ii) Claims arising from Licensee's breach of any representation or warranty in this Agreement or from Licensee's deviation from Licensor directions or requirements;



- (iii) Claims that any Licensee personnel, contractor or agent is an employee of Licensor, including Claims arising out of Licensee's failure to promptly pay any Licensee personnel for its services, materials, facilities, equipment or labor;
- (iv) Licensee's fraud, violation of law, wrongful misconduct, or misrepresentations; and
- (v) Claims arising from any failure by Licensee, its agents or contractors to comply with all applicable safety codes and requirements, including NESC compliance, with respect to attachments of Licensor.

Section 9.02 Indemnification by Licensor

Licensor shall defend, solely at Licensor's expense, Licensee, its Affiliates, and each of their respective officers, directors, managers, members, personnel, permitted successors, and their permitted assigns (collectively, the "Licensee Indemnified Parties"), against all Claims and shall indemnify and hold harmless Licensee Indemnified Parties from Losses arising out of, relating to, or otherwise in respect of any of the following:

- (i) Claims for bodily injury, death, or damage to tangible personal or real property to the extent: (a) proximately caused by the negligence or willful acts or omissions of Licensor, its personnel, or its contractors, or (b) resulting proximately from Licensor's failure to perform its obligations under this Agreement;
- (ii) Claims arising from Licensor's breach of any representation or warranty in this Agreement;
- (iii) Claims arising from any failure by Licensor, its agents or contractors to comply with all applicable safety codes and requirements, including NESC compliance, with respect to attachments of Licensor; and
- (iv) Licensor's fraud, violation of law, wrongful misconduct or misrepresentations.

THE PARTIES HEREBY AGREE THAT THE CITY SHALL HAVE NO OBLIGATION TO INDEMNIFY GOOGLE FOR ACTS FOR WHICH THE CITY WOULD OTHERWISE BE IMMUNE PURSUANT TO THE PROVISIONS OF THE KANSAS TORT CLAIMS ACT (K.S.A. 75-6104, ET SEQ.), AND AMENDMENTS THERETO, NOR WILL THE INDEMNITY OBLIGATIONS SET FORTH HEREIN ACT AS A WAIVER OF THE CITY'S PROTECTIONS UNDER SUCH PROVISIONS, AND FURTHER THAT ANY LIABILITY OF THE CITY SHALL BE SUBJECT TO THE LIABILITY LIMITATIONS SET FORTH IN K.S.A. 75-6105, AND AMENDMENTS THERETO. ADDITIONALLY, AND NOTWITHSTANDING ANYTHING SET FORTH HEREIN TO THE CONTRARY, THE PARTIES SPECIFICALLY AGREE THAT THE TERMS OF THIS SECTION 9.02, AND THE TERMS OF THIS AGREEMENT, SHALL BE SUBJECT TO AND LIMITED BY THE KANSAS CASH BASIS LAW (K.S.A. 10-1100 ET SEQ.) AND THE BUDGET LAW (K.S.A. 75-2935 ET SEQ.), AND AMENDMENTS THERETO.



Section 9.03 Procedure

A Party who seeks indemnification pursuant to this Agreement (the “Indemnified Party”) shall give written notice thereof to the other Party (the “Indemnitor”) promptly after the Indemnified Party learns of the existence of such Claim; provided, however, that the failure to give such notice shall not affect the rights of such Indemnified Party, except and only to the extent the Indemnitor is prejudiced by such failure. The Indemnitor shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend against any such Claim. No settlement of a Claim may seek to impose any liability or obligation upon the Indemnified Party other than for money damages. If such counsel will represent both Indemnitor and the Indemnified Party, there may be no conflict with such counsel’s representation of both. The Indemnified Party will use commercially reasonable efforts to fully cooperate in any such action at its own cost, shall make available to the other Party any books or records useful for the defense of any such Claim, and shall reasonably make available its personnel with respect to defense of the Claim.

ARTICLE X. LIMITATION OF LIABILITY

Section 10.01 Disclaimer of Damages

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND EXCEPT FOR (I) THIRD-PARTY CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, AND DAMAGE TO TANGIBLE PROPERTY CAUSED BY THE NEGLIGENT OR INTENTIONAL ACTS OF A PARTY OR ITS PERSONNEL; (II) WILLFUL MISCONDUCT; AND (III) BREACH OF CONFIDENTIALITY AND/OR DATA SECURITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT IN ANY WAY, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, LOSS OF USE, OR LOSS OF PROFITS EVEN IF A PARTY HAS BEEN ADVISED, KNOWS, OR SHOULD KNOW OF THE POSSIBILITY OF THE FOREGOING.

NOTWITHSTANDING ANYTHING SET FORTH HEREIN TO THE CONTRARY, (A) THE CITY DOES NOT WAIVE ANY IMMUNITY FROM PUNITIVE DAMAGES AVAILABLE UNDER APPLICABLE KANSAS LAW, (B) THE PARTIES AGREE THAT THE TERMS OF THIS SECTION 10.01, AND THE TERMS OF THIS AGREEMENT, SHALL BE SUBJECT TO AND LIMITED BY THE KANSAS CASH BASIS LAW (K.S.A. 10-1100 ET SEQ.), THE BUDGET LAW (K.S.A. 75-2935 ET SEQ.) AND THE KANSAS TORT CLAIMS ACT (K.S.A. 75-6101 ET SEQ.), AND ALL AMENDMENTS TO SUCH LAWS, RESPECTIVELY, AND (C) ANY LIABILITY OF THE CITY HEREUNDER SHALL BE SUBJECT TO THE LIABILITY LIMITATIONS SET FORTH IN K.S.A. 75-6105, AND AMENDMENTS THERETO.



ARTICLE XI. INSURANCE

Section 11.01 Worker's Compensation and Employer's Liability Acts

Licensee shall comply with all applicable worker's compensation and employer's liability acts and shall furnish proof thereof satisfactory to Licensor prior to placing Equipment on Licensor's Structures or in Licensor's Conduits.

Section 11.02 Licensee Maintenance of Insurance Coverage

Without limiting any liabilities or any other obligations of Licensee, Licensee shall, at its sole expense and prior to placing Equipment on Licensor's Structures or in Licensor's Conduits, secure and continuously carry with insurers reasonably acceptable to Licensor the following insurance coverage:

Commercial General Liability insurance with a minimum single limit of \$1,000,000.00 to protect against and from all loss by reason of injury to persons, including Licensee's employees, Licensor's employees and all other third persons, or damage to property, including Licensor's property and the property of all other third-parties, based upon or arising out of Licensee's operations hereunder, including the operations of its contractors of any tier.

Business Automobile Liability insurance with a minimum single limit of \$1,000,000.00 for bodily injury and property damage with respect to Licensee's vehicles whether owned, hired or non-owned, assigned to or used in Licensee's operations hereunder.

The policies required herein shall include (a) provisions or endorsements naming Licensor, its directors, officers, and employees as additional insured, and (b) a cross-liability and severability of interest clause.

The policies required herein shall include provisions that such insurance is primary insurance with respect to the interests of Licensor and that any other insurance maintained by Licensor is excess and not contributory insurance with the insurance required under this section and provisions that such policies shall not be cancelled or their limits of liability reduced without written notice to Licensor in accordance with the terms of such policies. A certificate in a form satisfactory to Licensor certifying the issuance of such insurance shall be furnished to Licensor by Licensee.

Section 11.03 Licensor Maintenance of Insurance Coverage

Without limiting any liabilities or any other obligations of Licensor, Licensor shall, at its sole expense, secure and continuously carry with insurers reasonably acceptable to Licensee *Commercial General Liability insurance* with a minimum single limit of \$1,000,000.00 to protect against and from all loss by reason of injury to persons, including Licensor's employees, Licensee's employees, and all other third persons, or damage to property, including Licensee's



property and the property of all other third-parties, based upon or arising out of Licensor's operations hereunder, including the operations of its contractors of any tier.

The policies required herein shall include a cross-liability and severability of interest clause.

ARTICLE XII. CONFIDENTIALITY

No Party will disclose the terms of this Agreement to any other person or entity, other than to such Party's, or such Party's Affiliates, officers, directors, attorneys, accountants, and employees involved in the performance of this Agreement, and only then on the condition that such individuals agree in writing not to disclose the information disclosed to them. Notwithstanding the foregoing, either Party may disclose the terms of this Agreement to any third-party at any time if: (i) required to do so by law or court order (but only to the extent so required); or (ii) the other Party consents in writing to such disclosure. The Licensor will make a good faith effort to insure that competitive or sensitive information relating to the business operations of Licensee obtained in connection with this Agreement are not inadvertently disclosed. Subject to the foregoing provisions, each Party expressly agrees to maintain communications from the other Party pursuant to or in connection with this Agreement in confidence.

Notwithstanding the foregoing, Licensee understands and agrees that this Agreement and all of the terms set forth in this Article XII are subject to and limited by the KORA and the Kansas Open Meetings Act - K.S.A. 75-4317 et seq. ("KOMA"). Licensor's compliance with the KORA and KOMA shall in no event be deemed to be a default under this Agreement.

ARTICLE XIII. GENERAL PROVISIONS

Section 13.01 Governing Law

This Agreement and any action related to this Agreement will be governed the laws of the State of Kansas.

Section 13.02 Dispute Resolution

Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then the parties shall be entitled to pursue any available remedies at law or equity.

Section 13.03 Force Majeure

Neither Party shall be subject to any liability or damages for inability to perform its obligations under this Agreement, except for any obligation to pay amounts when due, to the extent that such failure shall be due to causes beyond the reasonable control of either Party, including but not limited to the following: (a) the operation and effect of any rules, regulations, and orders



promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof (so long as the claimant Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) war or act of terrorism; (d) flood; (e) earthquake; (f) act of God; (g) civil disturbance; or (h) strikes or boycotts; provided, the Party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Time periods for performance obligations of Parties herein shall be extended for the period during which Force Majeure was in effect.

Section 13.04 Notice

Except as otherwise provided herein, any notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder, and shall be transmitted by U.S. Mail, by regularly scheduled overnight delivery, by personal delivery, or by email:

Licensor

CITY OF ROELAND PARK, KANSAS
4600 W. 51st Street, Suite 200
Roeland Park, KS 66205

ATTN: CITY ADMINISTRATOR

With a copy to: City Attorney:

Neil Shortlidge
1201 Walnut, Suite 200
Roeland Park, Kansas 64106

Licensee

Google Fiber Kansas, LLC
600 Amphitheater Parkway
Mountain View, CA 94043
ATTN: General Manager
Email: googlefibernotices@google.com
Fax: (650) 618-1806
With a copy to:

ATTN: Google Fiber Legal Department
Email: legal-notices@google.com
Fax: (650) 618-1806

Section 13.05 Failure to Enforce Rights

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement in any instance shall not constitute a general waiver or relinquishment of any such terms or conditions. Rather, such terms and conditions shall be and remain, at all times, in full force and effect.

Section 13.06 Interest

All amounts payable under the provisions of this Agreement shall, unless otherwise specified herein or disputed in good faith, be payable within thirty (30) business days of the invoice date. An interest charge at the rate of one percent (1%) per month shall be assessed against all late



payments. Interest under this Agreement shall not exceed the interest allowable under applicable law.

Section 13.07 No Third-Party Beneficiaries

Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

Section 13.08 Assignment of Rights

Except as set forth below, neither Party may assign or transfer its rights and obligations under this Agreement, in whole or part, to a third party without the written consent of the other Party. Licensor may sell, transfer, or assign its ownership interest in the Structures and Conduits provided that the purchaser, transferee, or assignee continues to be bound by the terms of this Agreement. Licensee may, upon written notice to Licensor, assign this Agreement and/or any or all of its rights and obligations under this Agreement to (i) any Affiliate of Licensee; (ii) any successor in interest to Licensee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of the Licensee's assets used to provide communications services to residents and businesses located in Roeland Park, Kansas.

An "Affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with, a Party; and "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

Section 13.09 Survival of Liability or Obligations Upon Termination

Any termination of this Agreement shall not release either Party from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

Section 13.10 Interpretation

References to Articles and Sections are references to the relevant portion of this Agreement. Headings are for convenience and shall not affect the construction of this Agreement.

Section 13.11 Severability

In the event that any of the terms, covenants, or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants, or conditions of this Agreement and their application shall not be affected thereby,



but shall remain in full force and effect; provided, in any such case, the Parties shall negotiate in good faith to reform this Agreement in order to give effect to the original intention of the Parties.

Section 13.12 Prior Agreements; Amendments

This Agreement shall supersede all prior negotiations, agreements, and representations, whether oral or written, between the Parties relating to the installation and maintenance of Licensee's Equipment on Licensor's Structures and in Licensor's Conduits. Any Equipment of Licensee attached to Licensor's Structures or in Licensor's Conduits shall be subject to the terms and conditions and rental rates of this Agreement. This Agreement, including any Exhibits attached and referenced herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may not be amended or altered except by an amendment in writing executed by the Parties hereto.

Section 13.13 Additional Representations and Warranties

Each Party warrants and represents to the other that it possesses the necessary corporate, governmental and legal authority, right and power to enter into this Agreement and to perform each and every duty imposed hereby. Each Party also warrants and represents to the other that each of its representatives executing this Agreement, or submitting or approving an application made hereunder, is authorized to act on its behalf.

Each Party further warrants and represents that entering into and performing under this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it, or any agreement to which it is a party and that this Agreement and any application approved hereunder, constitute valid, legal, and binding obligations enforceable against such Party in accordance with their terms.

Section 13.14 Relationship of the Parties

Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

Section 13.15 Joint Drafting

The Parties acknowledge that this Agreement (including the Exhibits hereto) has been drafted jointly by the Parties and agree that this Agreement will not be construed against either Party as a result of any role such Party may have had in the drafting process.



Section 13.16 Remedies Cumulative; Specific Performance

Except as provided otherwise in this Agreement, all rights and remedies granted to each Party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies otherwise available to such Party at law or in equity. The Parties agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that a Party shall be entitled to specific performance of the terms hereof in addition to any other remedy at law or in equity, including monetary damages, that may be available to it.

Section 13.17 Default

In no event shall a dispute, default or alleged default under the License Agreement or Network Cooperation and Services Agreement constitute or be deemed a default, or in any way impact the rights and obligations of the parties under this Agreement and in no event shall a dispute, default or alleged default under this Agreement constitute or be deemed a default, or in any way impact the rights and obligations of the parties under the License Agreement or Network Cooperation and Services Agreement. Additionally, any dispute, default or alleged default under the License Agreement or Network Cooperation and Services Agreement individually shall not constitute or be deemed a default under any other agreement. Further, termination or expiration of the rights and obligations under the License Agreement or Network Cooperation and Services Agreement shall in no way impact the term of this Agreement or otherwise impact the rights and obligations of the parties under this Agreement and any termination or expiration of the rights and obligations under this Agreement shall in no way impact the term, rights or obligations under the License Agreement or Network Cooperation and Services Agreement.

Section 13.18 Further Assurances

In addition to any other obligations set forth in this Agreement, each Party agrees to take such actions (including the execution, acknowledgment, and delivery of documents) reasonably requested by the other Party for the implementation or continuing performance of this Agreement.

Section 13.19 Counterparts; Signatures

This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument. Each Party to this Agreement agrees to: (a) use electronic signatures; and (b) be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (ESIGN), Pub.L. 106-229, 14 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch.96).



THIS AGREEMENT has been executed as of the date first hereinabove written.

GOOGLE FIBER KANSAS, LLC

1600 Amphitheater Parkway
Mountain View, California 94043

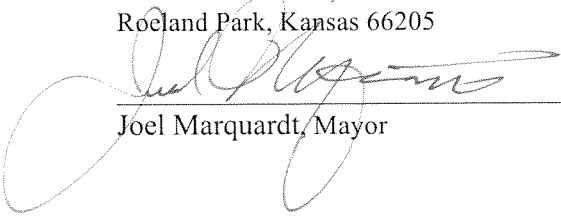
(Authorized Signature)

(Name)

(Title)

CITY OF ROELAND PARK, KANSAS

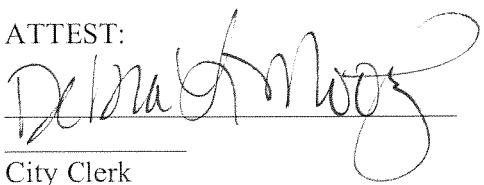
4600 W. 51st Street, Suite 200
Roeland Park, Kansas 66205



Joel Marquardt, Mayor

(SEAL)

ATTEST:



City Clerk

APPROVED AS TO FORM:



Todd A. LaSala, Esq., City Special Counsel



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GOOGLE FIBER KANSAS, LLC

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Mountain View, California 94043

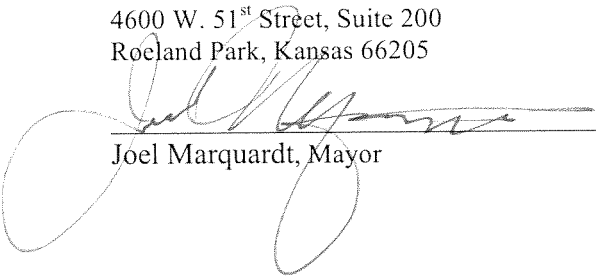
(Authorized Signature)

(Name)

(Title)

CITY OF ROELAND PARK, KANSAS

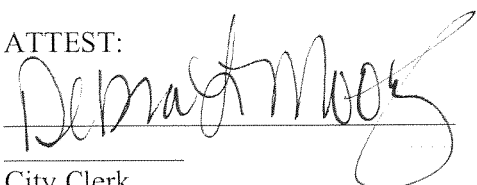
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Joel Marquardt, Mayor


(SEAL)

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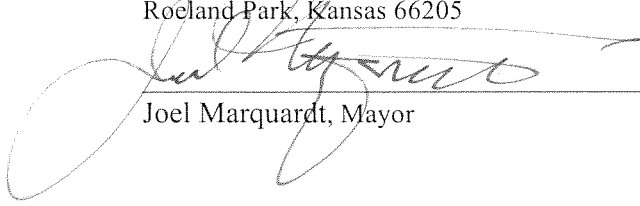
(Authorized Signature)

(Name)

(Title)

CITY OF ROELAND PARK, KANSAS

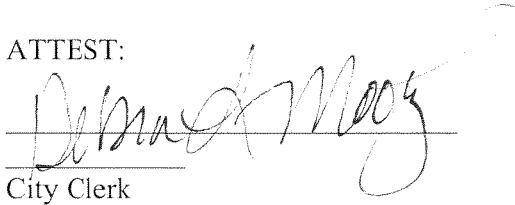
4600 W. 51st Street, Suite 200
Roeland Park, Kansas 66205



Joel Marquardt, Mayor

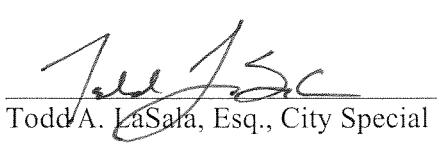
(SEAL)

ATTEST:



City Clerk

APPROVED AS TO FORM:



Todd A. LaSala, Esq., City Special Counsel



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Mountain View, California 94043

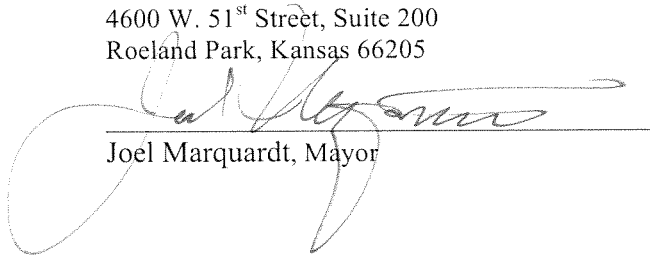
(Authorized Signature)

(Name)

(Title)

CITY OF ROELAND PARK, KANSAS

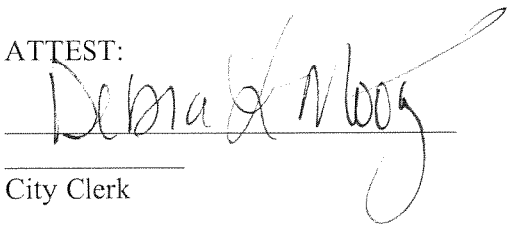
4600 W. 51st Street, Suite 200
Roeland Park, Kansas 66205



Joel Marquardt, Mayor

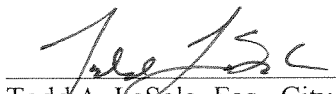
(SEAL)

ATTEST:



City Clerk

APPROVED AS TO FORM:



Todd A. LaSala, Esq., City Special Counsel



EXHIBIT 1
FEE SCHEDULE

Annual Structure Attachment Fees - From and after the Effective Date, the parties understand and agree that Licensor may, in its sole discretion, promulgate annual structure attachment fees from time to time which fees shall be applied to Licensee's use of the Structures (the "Annual Attachment Fee") and all similarly-situated providers who have equipment and/or facilities on Structures within the City. Notwithstanding the foregoing, the parties hereby understand and agree that for purposes of this Agreement, Licensor has evaluated the City Broadband Services and/or City WiFi Services to be provided by Licensee pursuant to the terms of the Network Cooperation and Services Agreement, and Licensor has agreed that Licensee's Annual Attachment Fee shall be fully offset by the provision of free City Broadband Services and City WiFi Services to be provided by Licensee under the terms of the Network Cooperation and Services Agreement entered into by the Parties. If Licensee fails to provide such City Broadband Services to the Public Sites in the City or discontinues providing such free services, then Licensee shall pay such Annual Attachment Fee as set forth above.

Annual Conduit Rental Fees - To be mutually agreed upon by Licensor and Licensee.



Item Number: Ordinances and Resolutions:- IV.-D.
Committee Meeting 2/6/2023
Date:



City of Roeland Park

Action Item Summary

Date: 1/10/2023
Submitted By: Arts Committee
Committee/Department: Admin.
Title: **Ordinance 1042 Changing Art Gallery Director's Title and Monthly Compensation (5 min)**
Item Type:

Recommendation:

Staff supports amending the city code section related to the Art Director to change the title and add duties. Staff also supports establishing the monthly allowance in concert with the annual budget adoption process vs specifying the allowance in the City Code.

Details:

For 2/6/23 Council Meeting:

Per direction provided by Council at the 1/17/23 workshop, the attached ordinance changes the section of the City code related to the Art Committee, specifically changing the title from Art Commissioner to Art Gallery Director, incorporating duties for this position and removing the monthly allowance. The "where as" introduction to the ordinance spells out that for 2023 the monthly allowance shall increase from \$100 to \$200 and that going forward the monthly allowance will be considered and set with the adoption of next year's budget.

The additional Art Gallery Director fee will be charged to the "5230-101 Art Commissioner" line item. This account currently has \$1,200 budget for 2023. During the 2024 Budget adoption process we will adjust this amount to reflect the \$100/month increase in the Gallery Director Fee reflected in the proposed ordinance.

For 1/17/23 Workshop:

The Art Committee recommends changing the title from Art Commissioner to Art Director.

The current compensation for the Art Commissioner is \$100, based upon the City Code reference Section 1-1103 was last amended in 2007. The increase would equate to a 6.25% average annual increase over the 16-year period since the rate was established.

The Art Committee has developed Art Director duties to further define the role of the Art Director:

1. Find artists to exhibit their works in the Gallery.
2. Plan and or coordinate art receptions at the Gallery.
3. Contact social media, publications, ets. about Gallery events.
4. Produce, record, create, coordinate or obtain video of current exhibitions for publicity and records purposes.
5. Provide information about the Gallery and exhibitions to the city's newsletter and other city media platforms including information about the artists, receptions and other related events

including information about the artists, receptions and other related events.

An ordinance would be necessary to change the compensation. The rate could also be removed from the City Code and be set through the budget approval process in keeping with how the fee for the Prosecutor and Judge are established.

Financial Impact

Amount of Request:	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

City Code Sections Related to Art Committee:

ARTICLE 11. - ARTS ADVISORY COMMITTEE

Sec. 1-1101. - Purpose.

The purpose of the Arts Advisory Committee is to make recommendations to the City Council concerning the public display of art on City owned property.
(Ord. No. 710, § 1; Code 2003)

Sec. 1-1102. - Creation and Establishment.

There is hereby created and established an Arts Advisory Committee for the City which shall consist of not less than three persons, including one member of the City Council and two additional individuals, of which at least one shall be a resident of the City. All of the individuals shall be nominated by the Mayor and approved by the City Council. The terms of all members shall be for one year beginning January 1st of each year. In the event a vacancy should occur during the term of any member, his or her successor shall be appointed in the same manner for the unexpired portion of the term. There shall be no limitation on the number of times an individual may be re-appointed. Any member of the Committee may be removed at any time by a majority vote of the City Council. Neither the Committee nor any individual member shall have any authority to financially obligate, commit or contract on behalf of the City.

(Ord. No. 710, § 2; Code 2003)

(Ord. No. 710, § 2, Code 2003)

Sec. 1-1103. - Compensation.

Members of the Arts Advisory Committee shall serve without compensation. Provided, however, that the Art Commissioner shall receive \$100.00 per month as an expense allowance.

(Ord No. 801, § 1)

Sec. 1-1104. - Duties and Responsibilities.

It shall be the responsibility of the Arts Advisory Committee to make recommendations for and coordinate the public display of art on City-owned property.

(Ord. No. 710, § 4; Code 2003)

Sec. 1-1105. - Advisors.

The City Council may designate or employ, with or without compensation, such advisors to the Arts Advisory Committee as the City Council shall hereafter determine to be necessary and advisable to accomplish the purposes of this article.

(Ord. No. 710, § 5; Code 2003)

Sec. 1-1106. - Meetings, Rules and Regulations.

The Arts Advisory Committee shall meet at such times and places as it shall agree upon or upon call by the City Council. The Committee shall elect a chair and vice chair at its first meeting of each calendar year. Any

bylaws or other rules and regulations relating to its meetings and proceedings must be approved by the City Council. The Committee shall keep minutes of its meetings and provide a copy thereof to the City Clerk. A majority of the members appointed to the Arts Advisory Committee shall constitute a quorum for the transaction of the business of the Committee.

(Ord. No. 710, § 6; Code 2003)

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
 Ordinance 1042- Art Gallery Director Changes	Cover Memo

**CITY OF ROELAND PARK, KANSAS
ORDINANCE NO. 1042**

**AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF ROELAND PARK,
KANSAS AMENDING SEVERAL SECTIONS IN THE ROELAND PARK MUNICIPAL
CODE CHAPTER 1, ARTICLE 11**

WHEREAS, the City of Roeland Park, Kansas desires to change the position's title from Art Commissioner to Art Gallery Director.

WHEREAS, the City of Roeland Park, Kansas desires to increase the 2023 monthly expense allowance from \$100 to \$200 for the Art Gallery Director and that going forward the monthly expense allowance will be considered and set with the adoption of next year's budget.

WHEREAS, the City of Roeland Park, Kansas desires to add additional duties of the Art Gallery Director, and make various other changes to Chapter 1, Article 11.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ROELAND PARK, KANSAS AS FOLLOWS:

SECTION 1. Section 1-1102 of the Code of the City of Roeland Park, Kansas is hereby amended to read as follows:

“Sec. 1-1102. – Creation and Establishment

There is hereby created and established an Arts Advisory Committee for the City which shall consist of not less than three persons, including one member of the City Council and two additional individuals, of which at least one shall be a resident of the City. All of the individuals shall be nominated by the Mayor and approved by the City Council. The terms of all members shall be for one year beginning January 1st of each year. In the event a vacancy should occur during the terms of any member, his or her successor shall be appointed in the same manner for the unexpired portion of the term. The Art Advisory Committee may elect a vice chair or elect to have co-chairs. There shall be no limitation on the number of times an individual may be re-appointed. Any member of the Committee may be removed at any time by a majority vote of the City Council. Neither the Committee nor any individual member shall have any authority to financially obligate, commit or contract on behalf of the City.”

SECTION 2. Section 1-1103 of the Code of the City of Roeland Park, Kansas is hereby amended to read as follows:

“Sec. 1-1103. – Compensation.

Members of the Arts Advisory Committee shall serve without compensation. Provided, however, that the Art Gallery Director shall receive a monthly expense allowance to be set annually as part of budget adoption process.”

SECTION 3. Section 1-1104 of the Code of the City of Roeland Park, Kansas is hereby amended to read as follows:

“Sec. 1-1104. – Duties and Responsibilities.

(a) It shall be the responsibility of the Arts Advisory Committee to make recommendations for and coordinate the public display of art on City-owned property.

(b) It shall be the responsibility of the Art Gallery Director to perform the following duties:

1. Find artists to exhibit their works in the Gallery.
2. Plan or coordinate art receptions at the Gallery.
3. Contact social media, publications, or other outlets regarding Gallery events.
4. Produce, record, create, coordinate, or obtain video of current exhibitions for publicity and records purposes.
5. Provide information about the Gallery and exhibitions to the City’s newsletter and other City media platforms, including information about the artists, receptions, and other related events.”

SECTION 4. This Ordinance shall become effective upon publication in the City’s newspaper.

Passed by the Governing Body of the City of Roeland Park, Kansas this 6th day of February 2023 **APPROVED** by the Mayor.

Michael Poppa, Mayor

ATTEST:

Kelley Nielsen, City Clerk

APPROVED AS TO FORM:

Steven E. Mauer, City Attorney

Item Number: Consent Agenda- V.-A.
Committee 2/6/2023
Meeting Date:



City of Roeland Park
Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **Appropriations Ordinance #1013**
Item Type:

Recommendation:

Details:

Financial Impact

Amount of Request:	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Appropriations Ordinance #1013	Cover Memo

Appropriation Ordinance - 2/6/2023 - #1013

4600 West Fifty-First Street

Roeland Park, Kansas 66205

City Hall (913) 722-2600 – Fax (913) 722-3713

Thursday, February 2, 2023

Appropriation Ordinance - 2/6/2023 - #1013

An Ordinance making Appropriation for the payment of certain claims. Be it ordained by the Governing Body of the City of Roeland Park, Kansas:

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

Section 2: This Ordinance shall take effect and be in force from and after its passage. Passed and approved this February 6, 2023.

Attest:

City Clerk

Mayor

Total Appropriation Ordinance

\$

602,793.02

Appropriation Ordinance - 2/6/2023 - #1013

Vendor	Dept	Acct #	Description	Invoice Description	Check /EFT Date	Amount	Chk #	Check Amount
Vendor	Dept	Account	Account Description	Reference	Date	Distribution Amount	Check #	Check Amount
ADP, Inc.	101	5214.101	Other Contracted Services	624105204	02/01/23	238.60	74576	238.60
All City Management Services, Inc.	102	5214.102	Other Contracted Services	82743	02/01/23	341.74	74577	341.74
Alliance For Innovation, Inc	105	5206.105	Travel Expense & Training	2022100447	02/01/23	750.00	74578	750.00
American Fidelity Assurance	101	2052.101	Supplemental Insurance Payable	D548014	02/01/23	666.98	74579	666.98
Aquila Industries	550	5442.550	Building Improvement	2	02/01/23	103,077.70	74580	103,077.70
AT&T	101	5202.101	Telephone	3241 1/21/23	02/01/23	298.61	74581	298.61
Balls Food Stores	101	5301.101	Office Supplies	46797	02/01/23	35.97	74582	35.97
Black & McDonald	101	5220.101	Street Light Repair & Maintenance	761398115	02/01/23	2,135.66	74583	3,444.66
Black & McDonald	101	5222.101	Traffic Signal Expense	761398115	02/01/23	1,309.00		
Blair Bodermann	101	5283.101	RP Community Foundation Grant Ex	1/31/23 Man Ck	01/30/23	750.00	32815	750.00
Breeden Holdings, LLC	102	5260.102		1076825	01/18/23	110.00	74546	110.00
Trisha Brauer	108	5206.108	Travel Expense & Training	1/10/23 Go Daddy	01/18/23	83.88	74547	83.88
Certified Laboratories	106	5306.106	Materials	8066156	02/01/23	227.38	74584	227.38
City Attorney's Association of Kan	101	5305.101	Dues, Subscriptions, & Books	4811	02/01/23	35.00	74585	35.00
Corporate Health - Medical Pavilio	106	5207.106	Medical Expense & Drug Testing	31628200	01/18/23	103.00	74548	103.00
Economic Lifelines	101	5305.101	Dues, Subscriptions, & Books	1315	02/01/23	250.00	74586	250.00
E. Edwards, Inc.	106	5308.106	Clothing & Uniforms	1072312052	01/18/23	215.96	74549	215.96
Every Energy Solutions, Inc.	101	5214.101	Other Contracted Services	MS006901	02/01/23	996.80	74587	2,076.67
Every Energy Solutions, Inc.	220	5214.220	Other Contracted Services	MS006901	02/01/23	456.87		
Every Energy Solutions, Inc.	290	5214.290	Other Contracted Services	MS006901	02/01/23	623.00		
Kenya Britney Garcia	103	4410.103	Fine	11/22/22	02/01/23	299.71	74588	299.71
Gather Media and Communication	101	5209.101	Professional Services	366	02/01/23	1,430.00	74589	1,430.00
Tyler Gibson	103	4410.103	Fine	1/26/23	02/01/23	600.00	74590	600.00
Frank Gilman	103	5108.103	Salaries - Judge	Recurring Check	02/01/23	1,190.00	74591	1,190.00
Gilmore & Bell, P.C.	410	5214.410	Other Contracted Services	8050461	02/01/23	700.00	74592	700.00
Hampel Oil, Inc.	106	5302.106	Motor Fuels & Lubricants	91624925	01/18/23	1,203.14	74550	1,203.14
Johnson County Environmental Di	220	5229.220	Permits	2/1/23	02/01/23	370.00	74593	370.00
Johnson County Government	102	5214.102	Other Contracted Services	204601	02/01/23	7,504.65	74594	7,504.65
Kansas City Board of Public Utiliti	101	5222.101	Traffic Signal Expense	2834 1/25/23	02/01/23	35.20	74595	35.20
Keller Fire & Safety	290	5209.290	Professional Services	309089	02/01/23	150.25	74596	573.94
Keller Fire & Safety	106	5210.106	Maintenace & Repair Building	308304	02/01/23	423.69		
Kansas Gas Service	101	5289.101	Natural Gas	1/13/23 X2	02/01/23	869.72	74597	2,857.65
Kansas Gas Service	106	5289.106	Natural Gas	1/13/23 X2	02/01/23	1,987.93		
Kansas Heavy Construction, LLC	270	5460.270	CARS 2022 - 53rd Street	1/3/23	01/18/23	132,659.78	74551	210,231.38
Kansas Heavy Construction, LLC	300	5472.300	R Park Development Plan	1/3/23 -2	01/18/23	77,571.60		
Kansas Mayors Association	108	5305.108	Dues, Subscriptions, & Books	5360	02/01/23	50.00	74598	50.00
Kansas State Treasurer	103	5228.103	Fees Due State of Kansas	73880	02/01/23	2,142.00	74599	4,177.00
Kansas State Treasurer	103	5228.103	Fees Due State of Kansas	73881	02/01/23	1,168.00		

Kansas State Treasurer	103	5228.103	Fees Due State of Kansas	73883	02/01/23	867.00		
Kansas Turnpike Authority	102	5206.102	Travel Expense & Training	3093 1/16/23	02/01/23	34.50	74600	34.50
Lamp, Rynearson & Assoc., Inc.	270	5460.270	CARS 2022 - 53rd Street	3210010600000006	02/01/23	10,319.86	74601	20,319.86
Lamp, Rynearson & Assoc., Inc.	270	5460.270	CARS 2022 - 53rd Street	3210010600000007	02/01/23	10,000.00		
Leawood Cleaners - Arrow	102	5224.102	Laundry Service	74F1FD	02/01/23	336.45	74602	336.45
The Legal Record	101	5204.101	Legal Printing	L10835	02/01/23	45.94	74603	45.94
Lynda Leonard	101	5230.101	Art Commissioner	Recurring Check	02/01/23	100.00	74604	100.00
Lexington Plumbing & Heating Co.	101	5210.101	Maintenance & Repair Building	137045	02/01/23	299.00	74605	1,720.00
Lexington Plumbing & Heating Co.	101	5210.101	Maintenance & Repair Building	137155	02/01/23	516.00		
Lexington Plumbing & Heating Co.	290	5210.290	Maintenace And Repair Building	136590	02/01/23	905.00		
Lippert Mechanical Service Corp	101	5210.101	Maintenance & Repair Building	SI2099731	02/01/23	920.00	74606	4,229.08
Lippert Mechanical Service Corp	106	5210.106	Maintenace & Repair Building	SI2099732	02/01/23	340.00		
Lippert Mechanical Service Corp	106	5210.106	Maintenace & Repair Building	SI2100016	02/01/23	848.98		
Lippert Mechanical Service Corp	220	5210.220	Maintenance & Repair Building	SI2099729	02/01/23	300.00		
Lippert Mechanical Service Corp	220	5210.220	Maintenance & Repair Building	SI2099927	02/01/23	260.05		
Lippert Mechanical Service Corp	290	5210.290	Maintenace And Repair Building	SI2099730	02/01/23	1,300.00		
Lippert Mechanical Service Corp	290	5210.290	Maintenace And Repair Building	SI2099926	02/01/23	260.05		
Lowe's Business Acct./GEMB	110	5262.110	Grounds Maintenance	1760 2/12/23	01/26/23	84.27	32813	606.00
Lowe's Business Acct./GEMB	106	5304.106	Janitorial Supplies	1760 2/12/23	01/26/23	111.97		
Lowe's Business Acct./GEMB	106	5304.106	Janitorial Supplies	1760 2/12/23	01/26/23	127.97		
Lowe's Business Acct./GEMB	106	5306.106	Materials	1760 2/12/23	01/26/23	84.96		
Lowe's Business Acct./GEMB	106	5306.106	Materials	1760 2/12/23	01/26/23	56.90		
Lowe's Business Acct./GEMB	106	5306.106	Materials	1760 2/12/23	01/26/23	21.84		
Lowe's Business Acct./GEMB	290	5306.290	Materials	1760 2/12/23	01/26/23	76.89		
Lowe's Business Acct./GEMB	290	5306.290	Materials	1760 2/12/23	01/26/23	25.65		
Lowe's Business Acct./GEMB	290	5307.290	Other Commodities	1760 2/12/23	01/26/23	15.55		
Anthony Marshall	101	5267.101	Employee Related Expenses	12/28/22 Brewlab	02/01/23	73.46	74607	73.46
Venessa Maxwell-Lopez	103	5209.103	Professional Services	1/13/23	01/18/23	150.00	74552	150.00
Midwest Public Risk	107	5126.107	Health/Dental/Vision Insurance	2/1/23	02/01/23	41,528.00	74608	41,528.00
Mid-States Organized Crime	102	5214.102	Other Contracted Services	2023706IN	02/01/23	150.00	74609	150.00
Missouri Organic	115	5235.115	Disposal Fees	50970	01/18/23	216.30	74553	1,730.40
Missouri Organic	115	5235.115	Disposal Fees	51024	01/18/23	432.60		
Missouri Organic	115	5235.115	Disposal Fees	51068	01/18/23	324.45		
Missouri Organic	115	5235.115	Disposal Fees	51110	01/18/23	108.15		
Missouri Organic	115	5235.115	Disposal Fees	51197	01/18/23	324.45		
Missouri Organic	115	5235.115	Disposal Fees	51232	01/18/23	324.45		
Moss Printing	220	5203.220	Printing & Advertising	16368	02/01/23	450.00	74610	450.00
Moss Printing	101	5301.101	Office Supplies	16382	01/18/23	70.00	74554	70.00
Northeast Johnson Cty. Chamber c	999	9999	Undistributed	42087	01/18/23	500.00	74555	500.00
Online Solutions, LLC	101	5814.101		4730 7/17/22	02/01/23	7,200.00	74611	7,200.00
Adam Peer	103	5209.103	Professional Services	1/18/23	01/18/23	150.00	74556	150.00
Phillips Paving Company, Inc.	270	5463.270	2023 CARS - Elledge b/t Roe Ln & 4	1/9/23	01/18/23	117,383.74	74557	117,383.74
Principal Life Insurance Co.	107	5130.107	City Paid Life/ST Disability	10001 1/17/23	02/01/23	764.02	74612	764.02
Purchase Power	101	5205.101	Postage & Mailing Permits	7903 1/20/23	02/01/23	402.50	74613	402.50

Wex Bank	106	5302.106	Motor Fuels & Lubricants	86417369	01/18/23	811.94	32811	844.76
Wex Bank	110	5302.110	Motor Fuels & Lubricants	86417369	01/18/23	32.82		
Megan Reavis	101	5245.101	Home Energy Audit Incentive	1/12/23 Ck Req	01/18/23	400.00	74558	400.00
Rejis Commission	102	5214.102	Other Contracted Services	500423	02/01/23	238.88	74614	276.13
Rejis Commission	102	5214.102	Other Contracted Services	500571	02/01/23	37.25		
Seton	101	5211.101	Maintenace & Repair Equipment	9352027356	01/18/23	162.38	74559	162.38
Staples	101	5301.101	Office Supplies	8068886512	02/01/23	90.24	74615	412.25
Staples	101	5301.101	Office Supplies	8068960033	02/01/23	256.29		
Staples	101	5304.101	Janitorial Supplies	8068960033	02/01/23	65.72		
Strasser True Value	106	5306.106	Materials	423499	02/01/23	34.94	74616	34.94
Terminix Processing Center	106	5214.106	Other Contracted Services	428894932	02/01/23	76.00	74617	76.00
Karen Torline	103	5108.103	Salaries - Judge	Recurring Check	02/01/23	1,445.00	74618	1,445.00
Tyler Technologies, Inc.	103	5206.103	Travel Expense & Training	4199	02/01/23	500.00	74619	10,415.76
Tyler Technologies, Inc.	105	5206.105	Travel Expense & Training	4199	02/01/23	599.00		
Tyler Technologies, Inc.	103	5266.103	Computer Software	25409797	02/01/23	6,841.76		
Tyler Technologies, Inc.	103	5266.103	Computer Software	25409798	02/01/23	2,475.00		
United Community Services of Joh	101	5232.101	United Community Services	1/20/23	02/01/23	6,060.00	74620	6,060.00
Unique Paving Materials Corp.	106	5421.106	Street Maintenance	71305	02/01/23	190.35	74621	190.35
Veterinary Allergy and Dermatolo	109	5316.109	K9 Expenses	13427	02/01/23	153.38	74622	153.38
Water District No 1 of Johnson Co	101	5287.101	Water	1/25/23 Multi	02/01/23	61.05	74623	325.53
Water District No 1 of Johnson Co	106	5287.106	Water	1/25/23 Multi	02/01/23	191.81		
Water District No 1 of Johnson Co	220	5287.220	Water	1/25/23 Multi	02/01/23	72.67		
Redacted	101	5282.101	Property Tax Rebate Program	1/25/23 Ck Req	02/01/23	572.88	74624	572.88
Evergy	101	5201.101	Electric	1/30/23 Multi	01/30/23	1,329.83	EFT	1,329.83
Evergy	106	5201.106	Electric	1/30/23 Multi	01/30/23	638.59	EFT	638.59
Evergy	220	5201.220	Electric	1/30/23 Multi	01/30/23	184.77	EFT	184.77
Evergy	101	5222.101	Traffic Signal Expense	1/30/23 Multi	01/30/23	111.20	EFT	111.20
Evergy	106	5290.106	Street Light Electric	1/17/23	01/17/23	1,724.26	EFT	1,724.26
KPERS	101	2040.101	KPERS Accrued Employee	1/5/23 PR	01/13/23	2,520.43	EFT	2,520.43
KPERS	101	2040.101	KPERS Accrued Employee	1/5/23 PR	01/13/23	3,838.55	EFT	3,838.55
KPERS	101	2040.101	KPERS Accrued Employee	1/19/23 PR	01/26/23	2,638.81	EFT	2,638.81
KPERS	101	2040.101	KPERS Accrued Employee	1/19/23 PR	01/26/23	4,024.60	EFT	4,024.60
KPERS	101	2050.101	Insurance Withholding Payable	1/5/23 PR	01/13/23	135.55	EFT	135.55
KP&F	101	2045.101	KP&F Employee Withholding Payab	1/5/23 PR	01/13/23	2,340.69	EFT	2,340.69
KP&F	101	2045.101	KP&F Employee Withholding Payab	1/5/23 PR	01/13/23	7,483.61	EFT	7,483.61
KP&F	101	2045.101	KP&F Employee Withholding Payab	1/19/23 PR	01/26/23	2,431.45	EFT	2,431.45
KP&F	101	2045.101	KP&F Employee Withholding Payab	1/19/23 PR	01/26/23	7,773.88	EFT	7,773.88
KP&F	101	2050.101	Insurance Withholding Payable	1/5/23 PR	01/13/23	41.67	EFT	41.67
Miller Management Systems, LLC	101	5214.101	Other Contracted Services	Recurring EFT	01/20/23	2,333.00	EFT	2,333.00

\$ 602,793.02

Item Number: Consent Agenda- V.-B.
Committee 2/6/2023
Meeting Date:



City of Roeland Park
Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **City Council Meeting Minutes January 17, 2023**
Item Type:

Recommendation:

Details:

Financial Impact

Amount of Request:	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
<input type="checkbox"/> City Council Meeting Minutes January 17, 2023	Cover Memo

CITY OF ROELAND PARK, KANSAS
CITY COUNCIL MEETING MINUTES
Roeland Park City Hall
4600 W 51st Street, Roeland Park, KS 66205
Tuesday, January 17, 2023, 6:00 P.M.

- Michael Poppa, Mayor
- Trisha Brauer, Council Member
- Benjamin Dickens, Council Member
- Jan Faidley, Council Member
- Jennifer Hill, Council Member

- Tom Madigan, Council Member
- Kate Raglow, Council Member
- Michael Rebne, Council Member

- Keith Moody, City Administrator
- Erin Winn, Asst. City Administrator
- Kelley Nielsen, City Clerk
- John Morris, Police Chief
- Donnie Scharff, Public Works Director

Admin
Raglow
Dickens

Finance
Rebne
Hill

Safety
Open
Madigan

Public Works
Brauer
Faidley

(Roeland Park Council Meeting Called to Order at 6:00 p.m.)

Pledge of Allegiance

Mayor Poppa called the City Council meeting to order and led everyone in the Pledge of Allegiance.

Roll Call

City Clerk Nielsen called the roll. CMBRS Brauer and Rebne were absent. All other Governing Body members were present with CMBR Raglow appearing virtually. Staff members present were City Administrator Moody, City Attorney Mauer, Asst. City Administrator Winn, Public Works Director Scharff, Police Chief Morris, and City Clerk Nielsen.

Mayor Poppa wished CMBR Faidley a happy birthday and thanked her for spending her birthday with them. This was followed by applause.

Modification of Agenda

After the Governing Body's previous discussions to establish stormwater utility policies, it was decided Items B and C under Ordinances and Resolutions would be forwarded to the February 6th Council meeting.

I. Citizen Comments

There were no public comments.

II. Consent Agenda

- A. Appropriations Ordinance #1012**
- B. Council Minutes December 19, 2022**
- C. Council Minutes January 3, 2023**
- D. Renew Operation Green Light Service Agreement 2023 through 2026**

MOTION: CMBR DICKENS MOVED AND CMBR FAIDLEY SECONDED TO APPROVE THE CONSENT AGENDA AS PRESENTED. (MOTION CARRIED 5-0.)

III. Business from the Floor - Proclamations/Applications/Presentation

A. 2022 Social Media Report - Katie Garcia

Katie Garcia, the City's PIO, presented the 2022 social media report to the Governing Body. They have seen open rates of about 47 percent on Constant Contact, which is 10 percent over the industry average. She said the Roeland Park community is very engaged. They are still seeing many people opening from laptops and desktops and not as much on their phones, which is a reason to make sure their platforms are accessible to everyone.

The most engaged with posts of 2022 were the introduction of Anthony Marshall, Ripple Glass program, COVID 19 and test kit information, as well as pool and art news. She said there was a lot of engagement when they highlight staff and Councilmembers, and it's important to continue to give people a more personal look behind the scenes.

Their audience grew by almost 14 percent. Published posts from the City were down, but when benchmarked against their surrounding competitors, they are still well above average. Their video views were up around 56 percent, and they will continue to focus on that again this year. She said they do have high engagement when compared with other cities. For more detailed information, Ms. Garcia's report is in the agenda packet.

CMBR Faidley said it looks like their numbers on Instagram exploded. Ms. Garcia said that 2022 was the first year they really started using that platform. She added that next year will provide a more accurate picture of where their audience is engaging the most between Facebook, Twitter, and Instagram.

CMBR Faidley asked if people are moving away from Facebook and Twitter. Ms. Garcia said it is important to reach people on all the channels. She noted that the Governing Body was active on Twitter. She is also unable to pull data from NextDoor.

B. Report from Chamber of Commerce on Progress on Project RISE

Mayor Poppa introduced Deb Settle, President of the Northeast Chamber of Commerce, and Rebecca Galati, Project Manager of RISE and owner of Picture It Consulting, LLC. He said that as part of their ARPA allocation, they wanted to fund the Chamber of Commerce to help Roeland Park with their efforts for retaining and recruiting businesses.

Ms. Galati provided an overview of her approach to Project RISE which stands for recruit, identity, support, and encourage. She has put together a small business retention tool kit and also met with the Small Business Development Center at Johnson County Community College and other organizations. She is looking for the ability to partner with them as they provide a free service for those starting up a small business. She also noted that the DEI focus is a main component in what they are doing. She expressed her appreciation of the time Councilmembers and community leaders have taken to express to her what the City is looking for and helps create the roadmap and next steps for the project. She said she will be reporting back on a quarterly basis to the Governing Body.

CMBR Faidley asked for clarification on work that has been done with businesses. Ms. Galati said she has had no initial contact with existing business owners. CMBR Faidley asked if part of the project they

will identify commercial sites that are available and/or vacant. She also wanted to know if it is possible to identify businesses operating in single-family homes. Ms. Galati said they will identify those commercial sites and permit-wise should be able to identify in-home businesses. She acknowledged that a lot of people are now working from home and they need to look at where those businesses fit in.

Ms. Settle thanked Mayor Poppa for agreeing to come to the State of the Cities, the Chamber's largest luncheon. She said the invitation is also open to Councilmembers.

Mayor Poppa thanked Ms. Settle and Ms. Galati for coming and looking through the diversity lens in every single area in the project and that it is much appreciated.

IV. Mayor's Report

A. Eco Squad

Mayor Poppa said this proclamation honors local heroes. He said they are six best friends from Roeland Park ranging from 2nd to 5th grade. They got together, formed a group, elected officers, and have a mission to beautify the City. They have raised money for Sweany Park and the Veterans Community Project.

Mayor Poppa read the EcoSquad proclamation into the record.

(Applause)

Mayor Poppa introduced the members of the EcoSquad who all attend Roesland Elementary.

The EcoSquad gave a combined report on their formation, activities, and fundraising.

(Applause)

(Pictures were taken)

Mayor Poppa said he was very impressed with the group and the fact that they hold meetings and have elected officers. He also thanked the parents for supporting their children in this endeavor.

MOTION: CMBR RAGLOW MOVED AND CMBR HILL SECONDED TO ACCEPT THE PROCLAMATION FOR ECOSQUAD RECOGNIZING THEM FOR THEIR SERVICE TO THE COMMUNITY. (MOTION CARRIED 5-0)

B. Shen Yun Performing Arts Proclamation

Mayor Poppa and CMBR Faidley noted that the Falun Dafa is a non-profit organization, but Shen Yun Performing Arts is for-profit.

Mayor Poppa said he appreciates their dedication to promote a higher standard of recognition for all people and culture as a whole.

MOTION: CMBR MADIGAN MOVED AND CMBR HILL SECONDED TO ACCEPT THE PROCLAMATION RECOGNIZING SHEN YUN PERFORMING ARTS FOR BRINGING CULTURAL ENRICHMENT TO THE COMMUNITY. (MOTION CARRIED 5-0)

V. Reports of City Liaisons and Committee

No reports were given.

VI. Unfinished Business

There was no Unfinished Business

VII. New Business

A. Council Appointments to Standing Committees

MOTION: CMBR DICKENS MOVED AND CMBR MADIGAN SECONDED TO APPROVE THE ANNUAL COUNCIL APPOINTMENTS:

ARTS ADVISORY COMMITTEE - JAN FAIDLEY

COMMUNITY ENGAGEMENT - BEN DICKENS, MICHAEL REBNE (ALTERNATE)

PARKS ADVISORY COMMITTEE - KATE RAGLOW, TOM MADIGAN (ALTERNATE)

SUSTAINABILITY COMMITTEE - JEN HILL

AQUATIC ADVISORY COMMITTEE - TRISHA BRAUER, TOM MADIGAN

RACIAL EQUITY COMMITTEE - KATE RAGLOW, BEN DICKENS (ALTERNATE)

AD-HOC HISTORICAL - KATE RAGLOW, TOM MADIGAN

MARC - BIKE & PEDESTRIAN - JAN FAIDLEY

MARC - FIRST TIER SUBURBS - JAN FAIDLEY (MOTION CARRIED 5-0.)

B. Approve 2023 CARS Agreement with Johnson County for 53rd Street.

Public Works Director Scharff said this is a standard CARS contract. It is a joint project with the City of Fairway and a continuation of the 53rd Street project. Curb repair, sidewalk replacement and repair are also components of the project.

CMBR Faidley asked where the city limits are for Roeland Park and Fairway on Chadwick. Public Works Director Scharff said Chadwick is split between the cities.

MOTION: CMBR HILL MOVED AND CMBR DICKENS SECONDED TO APPROVE THE CARS AGREEMENT FOR 53rd STREET FROM MISSION ROAD TO CHADWICK STREET. (MOTION CARRIED 5-0.)

C. Approve Task Order with Lamp Rynearson for 2023 Surface Treatment Program Design and Inspection

Mayor Poppa said in looking at the map it shows UBAS treatment. He said they are not stopping chip seal, but these streets that were prepped for 2023 are all UBAS streets.

MOTION: CMBR FAIDLEY MOVED AND CMBR DICKENS SECONDED TO APPROVE THE TASK ORDER FOR THE 2023 CONTRACTED SURFACE TREATMENT PROGRAM WITH LAMP RYNEARSON NOT TO EXCEED \$14,000. (MOTION CARRIED 5-0.)

D. Appoint Megan Reavis to the Sustainability Committee and Tim Ross to the Arts Committee

MOTION: CMBR HILL MOVED AND CMBR DICKENS SECONDED TO APPOINT MEGAN REAVIS TO THE SUSTAINABILITY COMMITTEE AND TIM ROSS TO THE ARTS COMMITTEE. (MOTION CARRIED 5-0.)

VIII. Ordinances and Resolutions

A. Ordinance 1039 Amending the Zoning District - Medwise Site

Mayor Poppa said the Governing Body is only being asked to approve the rezoning for the proposed project at 47th and Mission Road. City Administrator Moody said it is a small rezoning. The Planning Commission held a public hearing and made a recommendation for approval. There will be a subsequent replatting and a final plan review before a building permit can be issued for this site.

CMBR Hill asked if they have an idea of what the impact will be on the residents who live in the immediate area. City Administrator Moody said this was discussed at the Planning Commission and there is a fairly large buffer that Medwise will be maintaining along the south side. He added that it will be a small site with a large buffer. It is also a quiet land use and will not generate a significant amount of traffic. He realizes it is not the restaurant vision that they had for the site, but this is a good employer and will bring good jobs to the community. He added that it is also a nice commercial building.

CMBR Faidley said she read the hours of operation will be seven days a week from 8 a.m. to 8 p.m. She also asked about waste disposal. The information in the packet said their hours may vary depending on location but they are not a 24-hour a day facility. Also, City Administrator Moody stated the trash enclosure is on the preliminary development plan.

CMBR Dickens asked if with the rezoning Medwise does not come in, would it affect the rezoning for a potential future restaurant. City Administrator Moody said this is a planned district and whatever comes in would still have to go through the Planning Commission even for a permitted use. In this zoning district, they would still need to complete the preliminary development plan for review by the Planning Commission.

CMBR Hill asked if anything could be built that did not require rezoning. City Administrator Moody said if they want to use all three lots in the same manner, it would require a rezoning. Currently there is one single-family lot and two commercially zoned lots. The City's zoning does not allow commercial zoning in a single-family and vice versa.

MOTION: CMBR MADIGAN MOVED AND CMBR DICKENS SECONDED TO APPROVE ORDINANCE 1039, AMENDING THE ZONING DISTRICT BOUNDARIES IN THE CITY CODE TO REFLECT REZONING OF THE SITE FROM SINGLE-FAMILY RESIDENTIAL AND RETAIL BUSINESS TO CP-2, PLANNED GENERAL BUSINESS, AS RECOMMENDED BY THE PLANNING COMMISSION ON 12/20/22. (MOTION CARRIED 4-1 WITH CMBR DICKENS VOTING NO.)

B. Charter Ordinance 39 Adopting Stormwater Utility Policy

This item was forwarded to the February 6, 2023, City Council meeting.

C. Ordinance 1040 Establishing a Stormwater Utility Policy

This item was forwarded to the February 6, 2023, City Council meeting.

IX. Reports of City Officials

There were no reports given.

Adjourn:

MOTION: CMBR MADIGAN MOVED AND CMBR FAIDLEY SECONDED TO ADJOURN. (THE MOTION CARRIED 5-0.)

(Roeland Park City Council Meeting Adjourned at 6:50 p.m.)

Kelley Nielsen, City Clerk

Michael Poppa, Mayor

Item Number: Consent Agenda- V.-C.
Committee 2/6/2023
Meeting Date:



City of Roeland Park
Action Item Summary

Date: 1/26/2023
Submitted By: Keith Moody
Committee/Department: Admin.
Title: **Ordinance 1043 - No Parking Corrections**
Item Type: Ordinance

Recommendation:

Staff recommends approval.

Details:

It was discovered that no parking on the east side of El Monte, the west side of Canterbury between 47th and 48th streets, and on the east side of Buena Vista near Catalina had inadvertently been left out of prior amendments to the no parking section of the city code. This ordinance corrects the error. No parking signage is currently in place along these corridors.

Financial Impact

Amount of Request: N/A	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description

Type



Ordinance 1043- No Parking Corrections

Cover Memo

ORDINANCE NO. 1043

AN ORDINANCE RELATING TO LOCAL TRAFFIC REGULATIONS; AMENDING EXISTING SECTION 14-219 OF THE CODE OF THE CITY OF ROELAND PARK, KANSAS, CONCERNING PARKING ON CERTAIN CITY STREETS.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ROELAND PARK,
KANSAS:**

SECTION 1. Section 14-219 of the Code of the City of Roeland Park, Kansas, is hereby amended to read as follows:

14-219. PARKING PROHIBITED ON CERTAIN CITY STREETS. No person shall stop, stand or park a motor vehicle except when necessary to avoid conflict with other traffic or in compliance with direction of a police officer or traffic control device in any of the following places:

- (a) On the east side of Nall Avenue from the south City limits to 51st Street;
- (b) On the south side of 51st Street from Briar to Nall Avenue;
- (c) On the south side of 56th Street, between the intersections of Granada and Roe Boulevard;
- (d) On any portion of the north side of 51st Street from Cedar to Nall Avenue;
- (e) On the west side of Buena Vista on any portion of the street;
- (f) On any portion of Roe Lane;
- (g) On the east side of Reinhardt Street between the intersections of 48th Street and 50th Terrace; and between the intersection of Lucas Lane and 53rd Street;
- (h) On either side of 50th Street between the intersections of Reinhardt and Canterbury;
- (i) On any portion of 47th Street;
- (j) On the west side of Ash from the intersection of 51st to a point 100 feet south of that intersection;
- (k) On the west side of Neosho Lane at the intersection of Neosho Lane and 50th Street and Wells Drive, to a point 170 feet north of the crosswalk crossing Neosho at that intersection;
- (l) On any portion of Roe Boulevard;
- (m) On the west side of Parish Drive from the intersection of Elledge Drive and Parish Drive to a point 150 feet south the entrance of the Roesland Elementary School parking lot;
- (n) On the north side of 50th Street between Clark Drive and Buena Vista Drive;
- (o) On the west side of Rosewood Drive north of the intersection with 51st Street;
- (p) On the west side of Reinhardt between 50th Terrace and 52nd Place;
- (q) On the east side of Parish from 48th Street to a point 250 feet north of that intersection;
- (r) On either side of 55th Street between Linden and Roe Boulevard;
- (s) On either side of Ash from Johnson Drive to 58th Street;
- (t) On either side of 50th Terrace between Briar and Roe Boulevard;
- (u) On either side of Delmar between the intersection of 47th Street and 47th Terrace;

- (v) On the west side of Canterbury between 47th and 48th Street.
- (w) On the east side of Buena Vista near Catalina within 100' of the crosswalk.
- (x) On either side of Elledge Drive between Roe Lane and 47th Street, except the south side of Elledge Drive between Buena Vista and Parrish cars may stage in designated areas only during pick up and drop off periods for students at Roesland Elementary;
- (y) On the east side of El Monte and the 40' south of 47th Street on the west side of El Monte.

SECTION 2. This ordinance shall take effect upon its publication, or the publication of a summary thereof, in the official City newspaper.

PASSED by the City Council the 6th day of February, 2023. **APPROVED** by the Mayor.

Michael Poppa, Mayor

ATTEST:

Kelley Nielsen, City Clerk

APPROVED AS TO FORM:

Steve Mauer, City Attorney

Item Number: Reports of City Liaisons- VIII.-A.
Committee 2/6/2023
Meeting Date:



City of Roeland Park
Action Item Summary

Date: 1/31/2023
Submitted By: Haile Sims
Committee/Department: Racial Equity Committee
Title: **Racial Equity Committee**
Item Type: Report

Recommendation:

Informational only. Haile Sims to provide update.

Details:

Financial Impact

Amount of Request:	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

Item Number: Reports of City Liaisons- VIII.-B.
Committee 2/6/2023
Meeting Date:



City of Roeland Park
Action Item Summary

Date: 1/31/2023
Submitted By: Megan Reavis
Committee/Department: Sustainability Committee
Title: **Sustainability Committee**
Item Type: Report

Recommendation:

Informational only. Megan Reavis to provide update.

Details:

Financial Impact

Amount of Request:	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

Item Number: Reports of City Liaisons- VIII.-C.
Committee 2/6/2023
Meeting Date:



City of Roeland Park

Action Item Summary

Date: 1/25/2023
Submitted By: Council Member Faidley
Committee/Department: MARC – First Tier Suburbs (Jan Faidley)
Title: **MARC – First Tier Suburbs (Jan Faidley)**
Item Type: Report

Recommendation:

Informational only.

Details:

MARC's First Suburbs Coalition met virtually on Friday, January 20, 2023

Communities for All Ages Recognition

Congratulations to these cities for their achievements to become welcoming and livable communities for residents of all ages.

- Bronze Level - Bonner Springs, Kansas; Harrisonville, Missouri; and Westwood, Kansas
- Silver Level - Parkville, Missouri

Update on the Regional Housing Partnership

Andrea Generaux was introduced from LISC Greater Kansas City who will also be working on the Regional Housing Partnership. LISC just issued an RFP to start work on the production capacity element of the Regional Housing Partnership strategy that will involve for-profit developers. Action Item: Please help promote the RFP to local consultants who may be interested.

The MARC Board approved entering into a two-year agreement to expand the city of Kansas City, Missouri's housing locator tool on a regional scale. Action Item: MARC would like to have a working group to monitor roll out and promotion and ways this could be put into a larger strategy of outreach about this tool and housing programs. Please let Katie Killen know if you have interest in being part of this work: kkillen@marc.org.

Work continues on a regional Community Land Trust (CLT) or similar business model for shared equity in housing. Intensive community outreach is planned over the next two months in six areas:

1. Excelsior Springs
2. Historic Northeast with Jerusalem Farm

3. KC Habitat for Humanity in Olathe
4. Englewood Arts with Truman Heritage Habitat for Humanity in Independence
5. Existing CLT coordination
6. Wider community that may have interest in the CLT model - three sessions starting in late February through early March. More information will be shared soon.

Interest was expressed to have a larger convening, similar to the 2019 Regional Housing Summit, to dialogue about what we are learning through the housing data hub and data stories. The RHP will give this more thought to determine what would work best.

Analysis of Comprehensive Plans and Housing Plans in the Region
MARC's Transportation & Environment Department updated a 2016 scan of regional plans and local comprehensive plans to measure changes over time and understand commonalities and differences between regional planning goals and local planning goals. Findings are summarized in the attached slide deck. Action Item: MARC is building a catalog of housing plans and studies that your jurisdiction has created. Please send these via email to Taylor Cunningham tcunningham@MARC.org.

Local Infrastructure Hub
Thank you to our guest Katie Dailinger from the National League of Cities for sharing information about the Local Infrastructure Hub. This is a new resource to help smaller communities (less than 150,000 population) improve their competitiveness for federal grants.

Save the date: The next First Suburbs Coalition meeting will be on Friday, Apr. 21 from 8 – 10:00 a.m. at the View in Grandview, MO. Watch your emails for registration information.

Financial Impact

Amount of Request:	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

Item Number: Reports of City Liaisons- VIII.-D.
Committee 2/6/2023
Meeting Date:



City of Roeland Park

Action Item Summary

Date: 2/6/2023
Submitted By: Council Member Faidley
Committee/Department: Admin.
Title: **MARC – Bike & Pedestrian (Jan Faidley)**
Item Type: Report

Recommendation:

Informational only.

Details:

MARC's Bicycle Pedestrian Advisory Committee (BPAC) met virtually on Wednesday, January 11, 2023 at 1:30 PM.

Mike Scanlon gave a presentation on planning efforts in Osawatomie, KS. He recognized that many ideas were "stolen" from cities in Colorado. Their intention is to eventually connect to the Katy Trail through improvements to the trail system.

MARC employees led a discussion on the Active Transportation program seeking feedback from participants. Questions addressed included:

What does MARC do well? The Regional Bikeway Map

What could they do better? De-emphasize "sharrows" - unprotected marked bike lanes

What activities or projects would you like to see MARC start or continue? The Complete Streets Network Assessment

How can MARC better focus on pedestrian-specific issues? Sidewalk Data Inventory, focus on the "15-minute neighborhood" for walking

How can MARC better account for land use in active transportation planning? Develop a clearer definition of "Activity Centers" that connect communities

Other business included a brief review of the 2023 committee workplan, an update on the bicycle/pedestrian counter program, as well as an update of the BPAC roster of members.

In the closing Roundtable discussion Nicole Brown@jocogov.org reported on Safe Routes to School funding that is currently available. Attached is the study done at Roesland Elementary in

2017. I emailed Nicole to express an interest in possibly revisiting this work given the new addition of bike lanes on Elledge. Update to follow.

Financial Impact

Amount of Request:	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
 Appendix E - SRTS Report - Roesland Elementary - SMSD	Cover Memo



Roesland Elementary

Safe Routes to School Case Study & Checklist

January 2018





Introduction: A Coalition is Born at Roesland Elementary

2017 was a watershed year for active transportation at Roesland Elementary in Roeland Park, Kansas.

But progress didn't start that year. In fact, the partners it took to make the 2017 changes had been working in separate silos toward similar goals for years.

Roesland worked with city officials to encourage walking to school with an annual Walk to School Day initiated in 2014. The event often included the high school band, a few words from the mayor, and a police escort. When the PTA turned toward expanding active transportation with a Bike to School Day, safety concerns mounted.

Conversations between parent advocates, school officials, district leadership, city staff, and elected leaders brought additional partners with recourses to the table. County health department programming, non-profit bike educators, advocates, and volunteers joined the coalition that ultimately applied for a national grant to improve the biking and walking infrastructure around the school.

This guide tells the story of Roesland's efforts, highlighting the best practices and "lessons learned" that parents, school officials, municipal staff, and elected leaders can use to promote active transportation at schools and in neighborhoods across the Kansas City region.

How to use this guide

This guide is organized into four sections:

1. **Why Safe Routes? / The 6 E's** An introduction to safe routes projects and their benefits.
2. **A Quick-Reference Checklist** Basic steps that each safe routes project should take to deliver a successful project.
3. **Safe Routes Success: Roesland** A case study of the Roesland process with sidebars to highlight best practices used and lessons learned throughout the project.
4. **A Resource Guide** A summary of existing documents and web resources that help in planning and executing a safe routes project.

Why Safe Routes?



In 1960, half of kids walked or biked to school. Today fewer than 15% of kids walk or bike to school. Decreasing levels of physical activity are among the reasons for an increase in rates of chronic disease among younger and younger people. In fact, today's kids are the first generation of Americans with a shorter life expectancy than their parents.

“Safe Routes to School” (SRTS) refers to a national movement dedicated to getting more kids walking and biking to school. Organizing a walking school bus with neighbors, asking the city to install a crosswalk across a busy street, adding bike racks at schools, and reforming city and district policies are all steps that schools, parents, and community members can take to make it safer and easier to walk and bike to school.

Benefits of safe routes, active schools

Creating safer routes to school brings with it numerous benefits, both to students and to the wider community.

Students who walk or bike to school have been shown to be more alert and ready to learn. Overall academic performance is higher in students who travel to school via these means.

As the number of students walking to school has fallen over the past several decades, the rate of

obesity in kids has climbed. Walking or cycling is physical activity. Walking one mile in both the morning and afternoon gives kids two-thirds of their daily recommended activity. Students who walk or cycle to school build overall confidence and self-reliance as they learn to navigate their neighborhoods and to interact with traffic.

By promoting a safe walking and cycling culture, schools benefit from safer arrival and dismissal procedures, lower bus transportation costs, and more engaged students and parents.

The community as a whole wins when active transportation is promoted around schools. Infrastructure safety improvements such as new sidewalks, upgraded crosswalks, improved signage, and lower speed limits make all road users safer. In the past, safe routes campaigns have identified and addressed public safety concerns like criminal activity, dangerous dogs, and vacant structures. Resolving these issues for the sake of students' safety has also resulted in safer streets for all residents. Often, the immediate neighborhood benefits from less traffic congestion and pollution associated with parents' cars at arrival and dismissal.

The Six E's

The Safe Routes to School Partnership conducts research, publishes best practices, and has designed model programming for schools, parents, and elected officials. According to the partnership, successful Safe Routes to School projects include six stages or components, known as the “Six E’s:”



Evaluation develops an understanding of a school’s active transportation needs. School officials and parents may have a sense of the issues, but evaluation develops a clearer picture and helps build a case for improvements. This stage often involves surveys of parents or students, and school arrival/dismissal observations, which gauge rates of walking and biking and perceptions of safety issues.



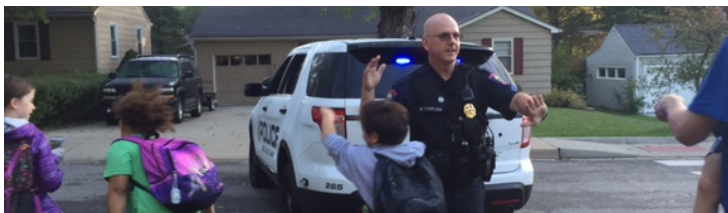
The **Engineering** phase focuses on the built environment. Barriers to bicycling and walking often exist in the way streets or sidewalks are built, or in the lack of elements like safe crossings or signage. This stage involves an assessment of the physical conditions of the neighborhood around a school. Working with city officials, specific design improvements can then be identified.



Education seeks to alter behavior. Many schools offer classes to teach students how to walk or bicycle safely. Younger elementary school students are often taught the basics of interacting with traffic and crossing the street while walking, while older students are taught bicycle handling and maintenance. Education gives children the ability and confidence to be safer on the road.



Encouragement aims to inspire students and parents to travel to school by bike or on foot. Many schools organize Walk to School or Bike to School days when all students are encouraged to travel to school via active transportation. Encouragement can also engage teachers and school and elected officials to promote active transportation.



Enforcement involves working with law enforcement to make sure traffic laws are being followed where students might be traveling. Crossing guards and student safety patrols can help improve the safety and flow of arrival/dismissal.



The **Equity** focus ensures that programs to boost walking and cycling address barriers and support equitable outcomes, particularly in low-income neighborhoods or communities of color.

The Six E's in Detail

Engineering	Education	Enforcement
<ul style="list-style-type: none"> Identify and develop safe routes, where safety improvements should be directed Plot safe routes with the city, parents, community members Identify short-term fixes, including signs and crosswalks Bike racks: Provide safe storage for bikes at schools 	<ul style="list-style-type: none"> Offer Bicycle Lesson and Safety Training (BLAST) through PE classes Develop Earn-A-Bike after-school club Convene a Community Forum to share opportunities, lessons learned Host a teacher in-service day on how to support biking and walking Share information at ice cream socials, back to school events, and kindergarten roundup 	<ul style="list-style-type: none"> Work with local law enforcement and codes administrators to ensure traffic enforcement, maintenance of property, clearing of sidewalks during the winter Post crossing guards at key crossings Coordinate parent volunteers or student safety patrol to manage crossings, direct arrival/dismissal
Encouragement	Equity	Evaluation
<ul style="list-style-type: none"> Plan bike and walk-to-school days Promote Bike Month for school and district employees Institute recognitions and awards for biking or walking Distribute free helmets and bike locks to students 	<ul style="list-style-type: none"> Ensure that efforts to engage parents reach parents of students in need (These parents may not be connected via the PTA, for instance) Offer Earn-A-Bike course and free helmets and locks to students Where needed, develop printed materials and social media in non-English languages Partner with local organizations that work with populations in need 	<ul style="list-style-type: none"> Collect pre- and post-event information (e.g. conduct same survey with parents and students before and after the project) Count the number of students walking and biking before and after the project Measure participation year-over-year; get older students involved to help collect data and create charts

Safe Routes to School Checklist, page 1

Every school and every community is different, but a successful project to grow walking and biking to school will likely include these steps:

☐ **Identify early champions/partners**

Because safe routes projects seek to effect change in the community as well as in students, attracting partners from the community is an important first step for a successful, impactful project. School administration, school district officials, and PTA members, are essential to any project. Community groups, health and active living advocates, and local elected officials can be valuable resources for technical assistance, funding, and other support.

☐ **Align with existing efforts**

Safe routes efforts never occur in a vacuum. Local government and other schools and organizations in the area have probably taken on similar projects before. Organizations like the Mid-America Regional Council and BikeWalkKC are familiar with efforts occurring across the Kansas City region. Reaching out to them or your existing partners early on will reveal opportunities for collaboration and funding.

☐ **Get organized**

Getting organized helps a working group produce results more quickly rather than getting hung up on process. The Roesland coalition agreed on regular monthly meetings. Outside of meetings, good, frequent communication was maintained through email.

☐ **Gather data - Build an understanding of the challenges**

At some point during a safe routes project, data will be important. Data may be used to build understanding of a problem or to make a case for support to potential funders or partners. This data will often include demographic data, police crash data, school attendance areas, student residences, and school bus stops.

Safe Routes to School Checklist, page 2

☐ **Make a map**

Visuals will get you everywhere. A map of the area under discussion will provide citizens an opportunity to share local knowledge of areas of concern. Maps will also help those partners who do not live in the neighborhood have an “on the ground” understanding.

☐ **Work with local officials**

Ideally, a local official or two will be key champions in your safe routes project. Engaging local officials will be important to delivering a project and ensuring lasting progress on active transportation. Officials will often need to review and approve infrastructure projects.

☐ **Record, Evaluate & Share**

Because safe routes work will likely continue at a school, understanding the successes and setbacks of your project can only help future efforts.

Depending on your project, before and after surveys of parents and students, community forums, and wrap-up meetings may all be helpful for understanding strengths and weaknesses of an effort, and ensure someone takes pictures at walk-to-school day or similar events, in order to easily promote the event in the future or to share with future partners or other schools.

☐ **Host an event**

Events, especially walk- or bike-to-school days, are an excellent opportunity to engage many of the Six E's mentioned in the previous section. While being an obvious way to develop Encouragement, the planning and outreach involved can easily mix in Education, Evaluation, Engineering, Enforcement, and Equity.

☐ **Identify solutions (and funding)**

Once an understanding of the challenges is developed, solutions should be identified. These solutions might relate to any of the Six E's. Each school may require vastly different solutions, amounts of work, and funding to put into action.

Safe Routes Success: Roesland Elementary

In just one year, an idea for improved bike-to-school outreach at Roesland Elementary became a reality – and produced wider results than originally anticipated. What contributed to the success of the project?

Roesland benefited from existing relationships between a range of partners and stakeholders. This allowed the initial idea for safe routes work to be turned into action quickly and effectively.

The project was also helped by an alignment of efforts, in several senses. The desired outcome of the project fit the goals of the partners who helped the project, meaning these partners could easily devote resources to it. For instance, the project's active transportation goals could easily be supported by partners aiming to improve community health outcomes, while the infrastructure issues at play were also of concern to the municipal government. The school also found itself in a unique situation geographically, with its attendance boundary nearly matching the city limits of Roeland Park, further simplifying collaboration between the school and city officials.

Shared Challenges

Roesland's location highlights one of several challenges students face in being able to walk or bike to school. Almost all of Roesland's students live in the city of Roeland Park -- the active transportation challenges faced by Roesland students are experienced by city residents as well.

The challenge at Roesland is its specific location. Roesland Elementary is located a few blocks east of Roe Boulevard, a major north-south artery that divides the city roughly in half (see map on opposite page). The street is busy throughout the day, carrying commuters to a nearby interstate and serving the busy Roeland Park Shopping Center. With the street's wide roadway and fast-moving traffic, safe crossings for pedestrians and cyclists are limited – one city councilmember characterizes the street as the “River of Roe.”

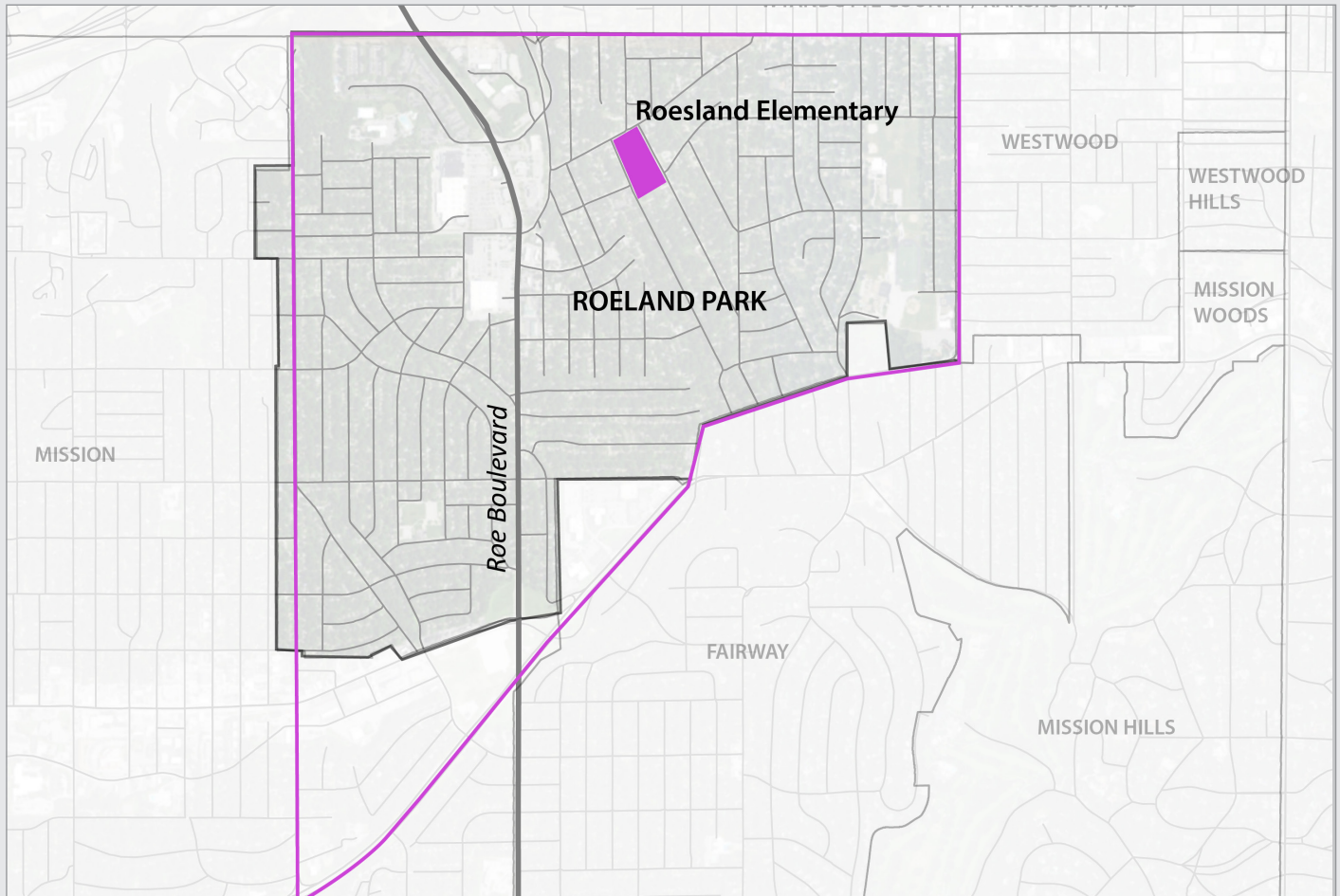
The school's location to the east of Roe is significant because half of students live to the west of the boulevard. These students face a major barrier walking to school. The Roe Boulevard challenge may be the most visible and obvious, but parents and school staff also noticed a number of additional challenges in the built environment for students, including intersections without crosswalks, fast-moving traffic, and confusion during morning arrival and afternoon dismissal.

Addressing these challenges provides students an important transportation alternative to riding the bus or riding in cars. The availability of active transportation is often especially important to students who receive free and reduced lunch or are English Language Learners.



A wide roadway with limited crossings makes Roe Boulevard a major hazard for students hoping to walk or bike to school at Roesland Elementary

A Unique Fit



Roesland Elementary is a public elementary school located in the city of Roeland Park, Kansas, and part of the Shawnee Mission School District, which serves northeastern Johnson County, Kansas.

The school serves 394 students, kindergarten through sixth grade. The school reflects the increasing diversity across the district and county. About half of students receive free or reduced lunch. Students are 55% white, 29% Hispanic, 7% African American, 5% multi-racial, 3% Asian/Pacific and 1% American Indian. Twelve percent are English Language Learners.

Roesland's attendance area largely matches the city limits of Roeland Park, with some of the atten-

dance area including Mission, Kansas. Almost all Roesland students live in Roeland Park. This makes the Roesland safe routes project a good case study for coordination between a school and the local government.

Roeland Park, meanwhile, is a suburban city of 6,800 residents and an area of 2.25 square miles. The city's size and residential scale make parts of it walkable and bikeable. An inconsistent street network, sidewalk gaps, and several busy streets leave room for improvement, however. Many key destinations, such as the grocery store or school, are not easily accessible without a car for many residents. Addressing active transportation challenges for the school provides the city an opportunity to tackle these wider issues.

Planning: Laying the Groundwork

Roeland Park has been working for years to address the city's current active transportation challenges. As far back as 2010, the city's comprehensive plan called for a "walkable community." The following year, the city council passed a complete streets resolution, calling for future roadways to be designed with all transportation modes in mind. Meanwhile, in 2015 Roeland Park received Communities for All Ages "Bronze" status for its commitment to become an age-friendly city. As part of this effort, the city pledged to assess how the city's built environment could be improved to support an active lifestyle.

The following spring, a Pedestrian and Bicycle Safety Ad-Hoc Committee, made up of residents and other stakeholders, released a report highlighting challenges for getting around the city by bicycle and on foot. The report noted the issues presented by Roe Boulevard and recommended key improvements, including installation of safer crossings across that street. In 2017, the city undertook an update of its Sidewalk Master Plan, recently adopting a new plan that prioritized sidewalks and crossings near the city's major destinations, including schools.

Meanwhile, planning had begun on a redesign of Roe Boulevard. Scheduled for construction in 2020, the new design will likely include improved pedestrian crossings and a shared-use path.

Roesland Elementary's work on Safe Routes was a seed planted in fertile ground. The parent group's desires dovetailed with the city's plans. The school group was able to capitalize on the conversation that had begun at the city. City leaders - including City Councilmember Teresa Kelly - were involved from the beginning and connected the citizen efforts with the city's plans. When the opportunity arose for funding, the group had easy access to existing data about the active transportation issues within the city and committee recommendations for the reports about potential solutions.

By taking advantage of the work that was already done, the group saved time and money; the city was immediately supportive of these efforts too, because the school group was able to localize the citywide conversation that was already taking place.



The Roeland Park Pedestrian and Bicycle Safety committee is among several recent efforts in the city to improve active transportation there

+ Identify early champions/partners

Because safe routes projects seek to effect change in the community as well as in students, attracting partners from the community is an important first step for a successful, impactful project. School administration, school district officials, and PTA members are essential to any project. Community groups, health and active living advocates, and local elected officials can be valuable resources for technical assistance, funding, and other support. Finding committed partners is also important to ensuring effective delivery of a project.

+ Align with existing efforts

Safe routes efforts never occur in a vacuum. Local government and other schools and organizations in the area have probably taken on similar projects before. Organizations like the Mid-America Regional Council and BikeWalkKC are familiar with efforts occurring across the Kansas City region. Reaching out to them or your city partners early on may reveal previous lessons learned, as well as opportunities for collaboration and funding.



Taking the Next Step

The Roesland bike-walk coalition started by accident, during an unrelated meeting. In the spring of 2016, Caring for Kids convened their regular quarterly meeting about bringing community resources to students at Roesland. In attendance, among others, were the PTA president, the school district's sustainability coordinator, and City Councilmember Teresa Kelly – all of whom would later be important in making the Roesland project happen. It was the PTA president who pitched the idea of a bike-to-school day event to complement the school's walk-to-school day event. The others agreed to move forward with the idea.

In June, a large group of potential stakeholders met to brainstorm. Not all of those who attended this early meeting would go on to be actively involved in the project, but the large group was useful for sharing ideas and identifying longer term partners. This group included BikeWalk-KC, which had begun working with Roesland on bicycle education, and representatives from the county health department, which had active living and wellness resources.

The initial bike-to-school idea was expanded to something more inclusive, which encompassed not just bicycling but walking and active transportation for mobility-impaired students and those too young to safely bike to school. The possibility of organizing further bicycle education courses in conjunction with this event was discussed at this meeting, too.

Lesson learned

Having partners that were able to dedicate time to tasks like meeting coordination, grant writing, and administration was crucial for the Roesland project.

Lesson learned

Like the best ideas, safe routes projects can develop from organic, informal discussions. The Roesland safe routes project developed from an idea shared at an unrelated meeting. What eventually made it a success was the ability to move from idea to implementation effectively.

+ Get organized

Getting organized - establishing a timeline, goals, and roles for the workgroup members - helps produce results more quickly rather than getting hung up on process. The Roesland coalition agreed on regular monthly meetings and established workgroups to tackle different aspects of the project. Outside of meetings, good, frequent communication was maintained through email. Staff from the school district and county managed meetings and logistics, helping the project planning process move ahead smoothly. Establishing regular meetings and key roles was important to delivering a successful project.

Ideally, one organization or volunteer needs to “own” the process and be responsible for agendas, scheduling, follow up, etc. Developing work groups that focus on completing different tasks can mean each person at the table feels like they are responsible for some piece of the overall outcomes. Essentially, develop an efficient process so that members do not feel like they are wasting time when they attend meetings.

Fall 2016: Taking Advantage of an Opportunity

The Johnson County liaison to Safe Kids Worldwide was part of the coalition. Safe Kids, an international organization focused on preventing accidental injury in children, offered a Safe School Zone grant and technical assistance to schools interested in improving the safety of the infrastructure around their buildings. The liaison brought the grant opportunity to the group's attention and the rest, as they say, is history.

In November, Safe Kids invited the coalition to submit a full application for the Safe Zone grant. The full application required a more significant dedication of time and resources; this turning point marks the moment when the coalition moved from coordination to true collaboration and benefited from the participation of specific partners. The data used in the application came from multiple coalition partners, who either held the information themselves or had the relationships to access it quickly.

Partner expertise contributed to the group's ability to find and overlay police crash data, maps of students' homes, and school bus hubs. Findings from the sustainability committee report were also included to help describe the infrastructure issues students face. Coalition representatives from the Johnson County Department of Health and Environment and the Shawnee Mission School District lent their technical knowledge and time to actually write and submit the application. These partners were able to dedicate attention to the project because the coalition's goals fit into already-established priorities for public health improvement and sustainability identified by their respective agencies.

In January 2017, the coalition learned that its application had been approved and the coalition received a grant for \$25,000 to support infrastructure safety improvements, including improved sidewalks and signage, around Roesland Elementary.

+ Gather data

At some point during a safe routes project, data will be important. Data may be used to build understanding of a problem, or to make a case for support to potential funders or partners. This data will often include demographic data, police crash data, school attendance areas, student residences, and school bus stops. Some of this data, such as census demographic data, is readily available online.

Other data, such as student addresses, is available from the school or district. Your partners will likely be a valuable resource for acquiring the information you need. Consider that you may need multiple data points from various sources. Do your best to develop a single list of needed data and make a single, reasonable request of community groups and partners.

+ Make a map

Visuals will get you everywhere. A map of the area under discussion will provide citizens an opportunity to share local knowledge of areas of concern. Maps will also help those partners who do not live in the neighborhood have an "on the ground" understanding. The tools you develop here will be useful later: a final Safe Routes map might be posted in schools; copies can be distributed before a Walk to School Day event, or in packets sent home for kindergarteners and new students.

Results: Focus on the Six E's

Part of the Safe Kids grant award was a two-day technical assistance workshop for the coalition. The action plan developed from the workshop addressed the Six E's.

In April 2017, Roesland Elementary hosted Peter Lagerwey, a national expert bicycle-pedestrian planner. Members of the coalition attended the workshop, along with stakeholders and planners from the neighboring city of Mission, Kansas, and the regional planning organization.

Attendees spent the first day building a shared language and deeper understanding of common pedestrian safety issues and solutions that are considered best practices. One of the most valuable portions was applying what they had learned to key sites during field visits throughout the city; almost none of the coalition members have a city planning background, but this experience allowed them to address the environmental issues acting as barriers to walking and biking.

From Walking to Biking: Roesland's Foundation

Roesland's PTA organized a Walk to School Day event annually for the past three years. Parents were encouraged to bring their students to City Hall, just a few blocks from the school. School officials requested the buses also drop students off at City Hall, ensuring all students could participate. Students then walked together to the school, often with the fanfare and fun of a band, comments from the mayor, and a police escort. These events helped attract attention to the cause; city council members and the police chief attended Walk to School Day and saw first-hand the safety challenges for students.

In October 2016, Roesland partnered with BikeWalkKC to offer Bike Lesson and Safety Training (BLAST) at the school, which teaches fifth and sixth graders how to operate a bicycle safely and skillfully. Some children learned how to ride a bike for the first time. In the spring, an after-school Earn-a-Bike club offered students and some parents a chance to earn a bike by completing the classes. Beyond equipping families with new skills, they now have the tools to bike for transportation and recreation.

Lesson learned

Although the workshop proved to be a great learning opportunity, a community does not need a workshop to make progress on a bike-walk plan. Shared learning opportunities may come in the form of a conference, webinar, or a short educational session provided by an active living advocacy organization or city planner in your area. Look for or create opportunities for coalition members to attend. Take a group walking tour of the areas you are trying to address; standing on the street corner and processing the environment as a group also leads to stronger, more realistic action steps.

Result: Focus on the 6 E's: Cont'd

The coalition then prioritized the sites they had seen on the tour that most needed addressing for children to have safe routes around the school. This activity identified the infrastructure improvements that grant dollars could address.

In tandem with workshop planning, the group addressed *Encouragement* and *Education* components of the Six E's. In the weeks leading up to the Walk, Roll and Stroll day, a second group of students completed BLAST and Earn-A-Bike programs. The 5th and 6th graders who participated shared what they learned about bicycle safety, helmet fitting, hand signaling and bicycle safety checks at an all-school safety assembly. Bike-WalkKC and Safe Kids Johnson County provided helmets for all students in need to address *Equity* issues around biking to school.

Walk, Roll, and Stroll Day

Planning also moved ahead for the Walk, Roll and Stroll Day event. The group engaged the police department and community volunteers to help establish crossing points where students could cross the street safely on the day of the event. Specific recommended routes were also identified and sent to parents.

+ Work with local officials

Ideally, a local official or two will be key champions in your safe routes project. If not, remember that engaging this group eventually will be important to delivering a project and ensuring lasting progress on active transportation. Officials will often need to review and approve infrastructure projects. Local government can be an important source of funding for initiative, and will be a necessary partner in any projects involving state or federal Safe Routes to School funding.

A couple of notes for working with this group: even if local elected are not directly involved, keep them in the loop on your activities. They may have competing issues for their attention, but it may be useful for both parties if they are updated as you achieve milestones or encounter roadblocks. When the cameras are rolling and you are celebrating your achievements, invite them to share the glory. Be generous with credit; they may not have been involved with your particular project, but perhaps they helped create an environment where it could move forward. You may find you are building a champion as the process moves along.

+ Record, evaluate & share

Because safe routes work will likely continue at a school, understanding the successes and setbacks of your project can only help future efforts. Depending on your project, before and after surveys of parents and students, community forums, and wrap-up meetings may all be helpful for understanding strengths and weaknesses of an effort. Ensure someone takes pictures at walk-to-school day or similar event, in order to easily promote the event in future or to share with future partners or other schools. Invite district communications staff to develop and share stories from the project. See the video created for the Roesland Walk, Roll and Stroll Day at <https://www.youtube.com/watch?v=e9QEGW37bNE>.

The news media might also be interested, especially if the effort is part of a district-wide project. Lean on your community partners to help with press releases, contacts and interview techniques. Finally, share the wealth! You will likely learn a lot in this process, so be willing to help the next school along on their Safe Routes to School journey.

Lesson learned

City officials can benefit greatly from a safe routes project, as the process often helps them identify funding priorities for infrastructure.

The tour during the workshop led the coalition to observe a hazardous crossing at a nearby private school within Roeland Park. In an effort to share what they had learned and resources, the Roesland group offered to use some of the Safe Kids funding to upgrade the crosswalk in front of this school to best practice standards.

Continuing work

The coalition's work continues. The group is working closely with the city to determine exactly how the Safe Kids funds will be spent. Building on the work of the SafeKids workshop, several key intersections have been identified and the city has begun researching the cost of improved signage and pavement markings that would calm traffic.

The coalition's will serve as a foundation as the school encourages similar events at other sites across the district.

Next steps

The coalition has accomplished much of what it set out to do. Today, the bike rack outside of the front door to Roesland Elementary is often full of students' bikes. Soon, safer crossings will be installed at four intersections near the school.

All the same, there is other work to do, particularly concerning infrastructure. The coalition has signaled it would like to see a hazardous mid-block crossing located next to the school removed. Meanwhile, the Roe 2020 project will likely bring a major safety improvement for students to the west of Roe Boulevard. The extent to which the coalition can or will be involved in these projects is unclear. However, the expertise and relationships it developed over the past year and a half put it in a good position to be an agent for further change for Roesland and the surrounding community.

+ Host an event

Events, especially walk- or bike-to-school days, are an excellent opportunity to engage many of the Six E's mentioned in the previous section. While an obvious way to develop *Encouragement*, the planning and outreach involved can easily mix in *Education*, *Evaluation*, *Engineering*, *Enforcement*, and *Equity*. Many schools organize walk-to-school events and invite local officials and community members to be involved. Events like this "put a face" on your project and help promote your school's active transportation efforts.

+ Identify solutions (and funding)

Once an understanding of the challenges is developed, the same group should identify potential solutions. These solutions might relate to any of the Six E's and may require vastly different amounts of work and funding to put into action.

Do not let the funding or challenge of the potential solutions stop you. Record the proposed actions so if the opportunity arises for funding or inclusion in a city plan, they are ready to go.

Making these solutions happen will require funding, some more than others. An individual school may be able to sponsor a bike education class or a bike rack, while infrastructure improvements to the school site or surrounding streets will require district or municipal funding.

Larger-scale safe routes education or infrastructure efforts (such as district-wide) can be supported by federal transportation funding, though pursuing that level of support usually requires a multiyear process, which is usually led by a local government. Your partners will be a valuable resource for re-searching and connecting funding to your school's project.

Coalition partners

A project will on be as impactful as its partners and stakeholders are committed. The Roesland project benefited from a group of dedicated and active partners.



Roesland Elementary Roesland PTA

Roesland's previous work around active transportation provided an easy jumping-off point for new initiatives. The PTA president and members advocated for the latest safe routes projects.



SHAWNEE MISSION SCHOOL DISTRICT

The school district serves northeastern Johnson County, Kansas. The district's sustainability programming includes a focus on active transportation. The district's Sustainability Coordinator was able to devote substantial time to coordinating the coalition.



The county government's Department of Health and Environment supported the coalition's efforts. The safe routes to school focus fit well within the department's LiveWell initiative, dedicated to wellness through active living and healthy eating. The county's liaison for SafeKids was among the department's staff. She and a program manager provided significant support to the coalition.



This local nonprofit focuses on promoting cycling and walking as viable recreation and transportation options in the Kansas City region. It has extensive experience guiding safe routes projects at area schools. The organization worked with Roesland on Walk to School Day events and Earn-A-Bike workshops.



City of Roeland Park, Kansas

City Councilmember Teresa Kelly helped generate the initial interest in the Roesland safe routes project. Down the line, the public works and police departments were important partners in delivering the Walk, Roll, and Stroll and Safe Zone projects.



The nonprofit describes itself as "a neutral convener to engage the community – churches, businesses and civic groups – around a neighborhood school." Caring for Kids had assembled the group where the initial idea for a bike-to-school day event at Roesland was discussed.

Resource Guide

The Safe Routes Guide

The Pedestrian Bicycle Information Center (PBIC) produces an extensive guide to delivering safe routes projects. Each section contains a detailed guide for each of the six E's.

http://guide.saferoutesinfo.org/pdf/SRTS-Guide_full.pdf

Local Organizations

Shawnee Mission School District

Joan Leavens
Coordinator, Sustainability and
Community Engagement
913-993-8722
JoanLeavens@smsd.org

BikeWalkKC

Laura Steele
Education and Outreach Coordinator
816-205-7056, ext. 13
laura.steele@bikewalkkc.org

Mid-America Regional Council

Aaron Bartlett
Senior Transportation Planner
816-701-8238
abartlett@marc.org

Johnson County, KS Department of Health and Environment

Barbara Mitchell
LiveWell Johnson County
913-477-8364
Barbara.Mitchell@jocogov.org

Katie Schatte
Coordinator, Safe Kids Coalition, Johnson County
913-477-8312
katie.schatte@jocogov.org

Johnson County KS AIMS mapping

913-715-1600
mapper@jocogov.org

Caring for Kids

Terry Geenens
Partnership Director
816-875-0252
terry@caringforkidskc.org

Other resources

New Jersey Engineering Solutions for Designing Your Safe Routes

New Jersey Department of Transportation

A concise guide to some of the infrastructure improvements that can improve routes to school

<http://www.nj.gov/transportation/community/srts/pdf/engsolutions.pdf>

At the Intersection of Transportation and Equity

Safe Routes to School National Partnership

A comprehensive guide to the challenges and approaches to creating a safe routes project that reaches students in need.

https://www.apha.org/~media/files/pdf/topics/environment/srts_activetranspequity_report_2015.ashx

Tools for Evaluation

National Safe Routes to School Walkability Checklist

Federal Highway Administration

A one-page survey on the walkability of a neighborhood

<http://archive.saferoutesinfo.org/sites/default/files/walkabilitychecklist.pdf>

Sample Safe Routes Parent Survey

National Center for Safe Routes to School

English: http://saferoutesdata.org/downloads/Parent_Survey_English.pdf

Spanish: http://saferoutesdata.org/downloads/Parent_Survey_Spanish.pdf

Pedestrian Environment Quality Index

Center for Occupational & Environmental Health, UCLA

A more detailed survey for analyzing the pedestrian environment, including infrastructure and other factors, along particular streets and intersections

<http://stpp.ucla.edu/node/496>

Arrival and Dismissal Observation Field Exercise Guide

Safe Routes to School Virginia

A guide for performing observations during morning arrival and afternoon dismissal, which help understand how students travel and the challenges they may face walking and biking

http://www.virginiadot.org/programs/resources/safeRouteResources/5es/VDOT_LDL_Observing_Dismissal_Field_Guide.pdf

BikeWalkKC conducts more detailed arrival/dismissal observations for local schools. Contact BikeWalkKC for more information

Data

Demographic data

For the surrounding community

- US Census Bureau
<https://factfinder.census.gov>

Transportation data

Traffic counts, road maps, recreational trails

- Mid-America Regional Council (MARC), the metropolitan planning organization
<http://www.marc.org/Data-Economy/Maps-and-GIS/GIS-Data/GIS-Datasets>
- Johnson County AIMS, the county government's mapping division
<http://maps.jocogov.org/ims/>

Traffic safety data

Including pedestrian- or bicycle-involved incidents

- Med-Act (Johnson County EMS)
- Local police department/sheriff
- Kansas Highway Patrol

School/Student data

- Enrollment, district boundaries, students bussed and free and reduced lunch are freely available via the Kansas Dept of Education
<http://datacentral.ksde.org/>
- Other data may be requested from the school district administration



BikeWalkKC

3269 Gillham Road, Suite C
Kansas City, MO 64109
816-205-7056
info@bikewalkkc.org



Item Number: New Business- X.-A.
Committee 2/6/2023
Meeting Date:



City of Roeland Park
Action Item Summary

Date: 2/2/2023
Submitted By: Mayor Poppa
Committee/Department: Planning Commission
Title: **Reappoint Lisa Brunner to the Planning Commission**
Item Type:

Recommendation:

To reappoint Lisa Brunner to the planning commission.

Details:

Financial Impact

Amount of Request:	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Lisa Brunner	Cover Memo

Online Form Submittal: Committee Volunteer Form

noreply@civicplus.com <noreply@civicplus.com>

Thu 7/16/2020 4:25 PM

To: Nielsen, Kelley <knielsen@roelandpark.org>; Jones-Lacy, Jennifer <jjoneslacy@roelandpark.org>

Committee Volunteer Form

Date	7/16/2020
First Name	Lisa
Last Name	Brunner
Address	5311 W 49th St
City	Roeland Park
State	KS
Zip	66205
Email	
Phone	
Place of Employment	Brunner Mediation & Conflict Solutions
How long have you been a resident of Roeland Park?	Since October 2, 2019, but I also lived here as a child in the 70s.
How much time do you have to devote per month?	2-3 hours
Board & Committee Interest	<p>I'm interested in being a part of the use of force review board. I am a conflict resolution specialist, which is why I am particularly interested in de-escalation training and the use of social workers and addiction specialists as part of response teams. My job as a mediator and attorney regularly puts me in the middle of conflict situations, and it is my job to find creative ways to break impasse, manage personalities, and manage emotion. I'd like to put this knowledge to use in my community.</p> <p>I also have several years of experience as a volunteer attorney for the local ACLU, which means I can bring to the table my Constitutional law experience. The legal panel often dealt with "driving/walking while black" matters. While I didn't personally handle these cases, I was an advisor by virtue of being on the panel. I also co-chaired the ACLU LGBTQ task force. And I, along with the national ACLU, sued the state of Missouri so that LGBTQ folks could be foster parents. We won. I also have a good understanding of First Amendment issues.</p>

I also feel strongly that we need people of color on the review board, and a good balance of people with law enforcement experience and people with addiction/mental health experience. The best solutions come from a 360 degree view of the problem!

Select a Board or Committee Other

Are you a high school student between the ages of 14 and 18? No

Additional Comments Please let me know if there is any other additional information you would like from me. Thanks! Lisa Brunner

Resume [Lisa Brunner Resume 2020.pdf](#)

Email not displaying correctly? [View it in your browser.](#)

Item Number: New Business- X.-B.
Committee 2/6/2023
Meeting Date:



City of Roeland Park

Action Item Summary

Date: 2/2/2023
Submitted By: Keith Moody
Committee/Department: Admin.
Title: **Approve Construction Manager at Risk for Public Works Facility Renovations (10 min)**
Item Type: Agreement

Recommendation:

Staff recommends entering into a Construction Manager at Risk Agreement with Universal Construction for renovations to the recently acquired Public Works facility.

Details:

SFS administered an RFP process for construction manager at risk services. 6 firms responded to the RFP. A committee consisting of Kelly Stindt and Aaron Schaefer of SFS, Donnie Scharff, Dan Miller and I reviewed the submittals and selected 3 firms to interview. This same committee conducted the 3 interviews. Although all 3 firms interviewed are capable and did an excellent job with their presentations Universal received the highest score from each committee member and had the highest composite score (composite score summary attached).

Each of the 3 firms interviewed were able to tour the facility and review the draft site/building plans we have developed to date. They were also able to review the Public Works needs assessment completed by SFS last year. Each was also asked to provide their fee proposal as part of the interview process. Their fee proposal was not reviewed by the interview panel until after scoring was complete. As it happens Universal's proposed fees is the lowest of the 3 firms interviewed. Universal is located in Kansas City, KS 3.4 miles due north of the project location. They have significant experience working on public works facilities and serving in the CMAR capacity. Their response to the RFP is also attached for reference.

Selecting the CMAR will complete the team for this time constrained project. With the CMAR onboard we will finalize the prioritized list of project components and present a phased plan (if the budget so dictates) to the Council. We have identified a total of \$2.3 million of resources available at this time for the facility renovations (to cover construction costs, CMAR fees, inspections, architect fees and engineering fees). Inspections/Architect (\$225K) and Engineering (\$75k) fees

will consume about \$300k of that amount leaving roughly \$2 million for construction and CMAR costs. CMAR costs will be roughly \$210k. The CMAR fee will consist of 3 components: Pre-Construction Phase Services with a lump sum fee of \$20,000, a fixed fee of \$130,000 which covers General construction phase services and a final component that is based upon 3% of actual construction costs.

The CMAR will be a member of our construction team, employing their relationships and experience with contractors and suppliers to secure competitive pricing for the different elements of our project. They will also be our representative on the site, scheduling the work sequence in an appropriate order, coordinating work among the different trades and contractors and ensuring the work is completed according to code and plans.

Financial Impact

Amount of Request: Current estimate is \$210,000; a 3% fee on actual construction costs is applicable.	
Budgeted Item?	Budgeted Amount: \$3 million in Building and Equipment Replacement Fund
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
<input type="checkbox"/> CMAR Agreement with Universal Construction	Cover Memo
<input type="checkbox"/> Universal Construction RFP Submittal for CMAR	Cover Memo
<input type="checkbox"/> SFS Memo and Composite Scores	Cover Memo

**CITY OF ROELAND PARK, KANSAS CONTRACT BETWEEN
CITY OF ROELAND PARK, KANSAS AND CONSTRUCTION MANAGER**

**Roeland Park Public Works Facility Renovation
1800 Merriam Lane, Kansas City, KS**

City of Roeland Park, Kansas
4600 W 51st St, #200
Roeland Park, KS 66205

Construction Manager:

Universal Construction
1615 Argentine Blvd
Kansas City, KS 66105

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CITY OF ROELAND PARK, KANSAS

**AGREEMENT BETWEEN
CITY OF ROELAND PARK, KANSAS
AND CONSTRUCTION MANAGER**

Roeland Park Public Works Facility Renovation

THIS AGREEMENT is made and entered into this _____ day of _____, 2023, by and between the **City of Roeland Park, Kansas**, (the "City"), and Universal Construction (the "Construction Manager").

WITNESSETH:

WHEREAS, the City has caused to be prepared, in accordance with the law, this Agreement, General Conditions, Project Special Provisions, and other Contract Documents, as defined in the General Conditions, for the Work herein described, and has approved and adopted these said Contract Documents and has considered proposals for preconstruction and construction services, furnishing construction materials, labor, tools, equipment and transportation necessary for, and in connection with, the construction of public improvements in accordance with the terms of this Agreement; and

WHEREAS, the Construction Manager, in response to the Request for Proposals, has submitted to the City, in the manner and at the time specified, a Proposal in accordance with the terms of this Agreement; and

WHEREAS, the City, in the manner prescribed by law, has evaluated proposals received, and as a result of this process has, in accordance with the law, determined and declared the Construction Manager to be the best offeror for the construction of the public improvements, and has duly awarded to the Construction Manager a contract therefor upon the terms and conditions set forth in this Agreement and for the consideration named in this Agreement.

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

ARTICLE I. The Construction Manager will furnish at its own cost and expense all labor, tools, equipment, materials and transportation required to construct and complete the work as designated, described and required by the Contract Documents, to wit: **Roeland Park Public Works Facility Renovation**; all in accordance with the Contract Documents, on file with the City Clerk of Roeland Park, Kansas, all of which Contract Documents together with this Agreement form the Contract, and are as fully a part hereof as if repeated verbatim herein; all work to be done in a good, substantial and workmanlike manner to the entire satisfaction of the City, and in accordance with the laws of the City, the State of Kansas and the United States of America. All terms used herein shall have the meanings ascribed to them in the General Conditions unless otherwise specified.

ARTICLE II. The City shall compensate and make payments to the Construction Manager: as follows:

1. For the Preconstruction Phase Services described in Section 2.1 of the General Conditions, the Construction Manager's compensation shall be calculated as follows:

- 1.1 Lump sum of Twenty Thousand **Dollars (\$)** payable upon execution of GMP Change Order No. 1.

Reference **Exhibit C**, attached hereto and incorporated by reference herein, Preconstruction Scope & Fee, for further clarification.

2. For the Construction Manager's performance of the Work as described in Article 2 of the General Conditions, excluding Section 2.1 of the General Conditions which is addressed above, the City shall pay the Construction Manager in current funds the amount stated in the Agreement.

- 2.1 Construction Manager's Fee shall be 3.0% of the total Cost of Work and will be included within the GMP. Construction Manager's Fee shall not be reduced on account of savings returned to the City.

- 2.2 Construction Manager's Fee of 3.0% shall apply to any increases in the GMP mutually agreed to by the Parties.

3. **Savings**. All savings shall be for the total benefit of the City.

ARTICLE III. The Construction Manager shall commence work upon the date stated in the Notice to Proceed and will complete all work covered by this Contract within the time set forth in the GMP Change Order No. 1. Time is of the essence. Accordingly, liquidated damages shall be assessed against Construction Manager, as stipulated liquidated damages and not as a penalty, in the amount of \$1,000.00, for each and every calendar day the work remains incomplete over the specified completion time(s) stated above. If the City elects to accept any part of the Work as Substantially Complete in advance of the remainder of the Work, this daily rate shall be equitably adjusted by the City.

ARTICLE IV. This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the **State of Kansas**.

ARTICLE V. The following documents are made part of this Agreement by reference:

Exhibit A	The City's Program Requirements
Exhibit B	General Conditions of the Contract
Exhibit C	Construction Manager's Preconstruction and Construction Fee Proposal
Exhibit D	Form of Affidavit of Partial Payment and Release of Claims/Affidavit of Partial Payment and Waiver of Liens and Release of Claims
Exhibit E	Form of Bill of Sale
Exhibit F	Form of Bailment Agreement
Exhibit G	Form of Affidavit of Partial Payment and Release of Claims/Affidavit of Final Payment and Waiver of Liens and Release of Claims
Exhibit H	Insurance Requirements
Exhibit I	Form of Performance Bond
Exhibit J	Form of Statutory Payment Bond

IN WITNESS WHEREOF, the City has caused this Agreement to be executed on its behalf, thereunto duly authorized, and the said Construction Manager has executed _____ counterparts of this Agreement in the prescribed form and manner, the day and year first above written.

CITY:

CITY OF ROELAND PARK, KANSAS

By: _____

Mayor

ATTEST:

By: _____

Kelley Nielsen
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____

Steven E. Mauer
City Attorney

CONSTRUCTION MANAGER:

UNIVERSAL CONSTRUCTION

By:  _____

Name: Archie Smith

Title: President

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

*[Add appropriate **Acknowledgment** form here.]*

EXHIBIT A

PROGRAM REQUIREMENTS

The project consists of the renovation of the existing building at 1800 Merriam Lane, Kansas City, KS. The renovated facility will house: offices, conference space, work space, crew space, shop space, garage areas and support space.

The project will also create new access into the building, pavement replacement, fencing/security gate installation, and new screened outdoor material storage areas.

EXHIBIT B

GENERAL CONDITIONS TO CONSTRUCTION MANAGER AGREEMENT

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EXHIBIT B

GENERAL CONDITIONS TO CONSTRUCTION MANAGER AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

- 1.1 Definitions.** Whenever any word or expression defined herein, or pronoun used in its stead, occurs in these Contract Documents, it shall have and is mutually understood to have the meaning herein given. Work described in words when so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.
- 1.1.1** "Acceptance" means agreement by the City to put the Work into use, but no acceptance by the City shall, at any time, constitute approval or acceptance of Work that is not in accordance with the terms of this Agreement or the Contract Documents, unless such acceptance is specifically described in writing as applying to Work that is not in accordance with this Agreement or the Contract Documents.
- 1.1.2** "Applicable Laws" means all laws, statutes, ordinances, codes, regulations, rules, orders, and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the services or the Work.
- 1.1.3** "Application for Payment" means a written request for compensation for Work performed submitted per City-approved form.
- 1.1.4** "Approve" shall mean review by the City, which may be given solely for the benefit of the City but no approval by the City shall, at any time, constitute approval or acceptance of Work that is not in accordance with the terms of this Agreement or the Contract Documents.
- 1.1.5** "Certificate of Substantial Completion" means written certification from the Designer which establishes the date of Substantial Completion, responsibilities of the City and Construction Manager for security, maintenance, heat, utilities, damage to the Work and insurance, and fixes the time within which the Construction Manager shall finish all items on the list accompanying the Certificate.
- 1.1.6** "Change Order" means a written order issued after the Agreement is executed by which the City, Designer, and the Construction Manager agree to construct additional items of Work, to modify the contract time, or to change the character and scope of Work shown in the Drawings and Specifications. Change Orders must be signed by the City and Construction Manager to be binding.
- 1.1.7** "Construction Contingency" means the sum established by the Construction Manager for use at the Construction Manager's discretion to cover costs which are properly reimbursed as a Cost of Work but are not the basis of a Change Order.
- 1.1.8** "Construction Documents" means documents prepared by the Designer or other design professionals working under the supervision of Designer for construction of the Work, including but not limited to the Plans and Specifications.

- 1.1.9** "Construction Phase" means the phase of the Project commencing upon completion of the Preconstruction Phase, or upon award of the first subcontract related to construction of the Project, whichever occurs first, and ending upon final completion. The parties acknowledge that the design phase and the Construction Phase may overlap.
- 1.1.10** "Consultant" or "Designer" or "Design Consultant" shall mean such persons or firms retained or employed by the City who shall be appropriately licensed and responsible for performance of professional design services in connection with the Project.
- 1.1.11** "Contract Documents" shall consist of the Agreement between the City and Construction Manager (sometimes referred to herein as the "Agreement"), including all addenda issued prior to execution of the Agreement; Design and Construction Documents as such time as they are incorporated into the Agreement; Changes to the Work effected by proper Change Orders including changes to the Work proposed by the City, or changes proposed by the Construction Manager and accepted by the City, if any; Drawings and data which may be furnished by the Construction Manager and approved by the City, if any; additional Drawings which may be furnished by the Designer necessary to make clear the intent of the Contract Documents (and in particular, the Specifications); if any; and any other documents attached to this Agreement.
- 1.1.12** "Cost of Work" means reimbursable costs, as defined in Section 6.1, necessarily incurred by the Construction Manager in the proper performance of the Work.
- 1.1.13** "Defective Work" means Work not conforming to the Contract Documents and substitutions not properly approved and authorized.
- 1.1.14** "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.15** "Final Certificate for Payment" means written certification from the Designer stating that to the best of the Designer's knowledge, information and belief, and on the basis of the Designer's on-site visits and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Construction Manager and noted in the Final Certificate is due and payable.
- 1.1.16** "Guaranteed Maximum Price" or "GMP" means the Guaranteed Maximum Price for the Project, as defined and subsequently established in the GMP Change Order and any subsequent Change Orders and shall include the Construction Manager's Fee outlined in Section 5.1 and the Cost of Work as defined in Article 6 and shall be the sum of the estimated cost of the Work, Construction Contingency and the Construction Manager's Fee.
- 1.1.17** "Life Cycle Costs" means the sum of all costs of the Project over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance and salvage/resale value.

- 1.1.18 "Normal Weather Conditions" shall mean the average of weather conditions for the month for which delay is claimed over the past five years, based on data from the closest NOAA weather recording facility.
- 1.1.19 "Preconstruction Phase" shall mean the phase during which Construction Manager shall perform Value Engineering and constructability services in working with the Designer and the City. Preliminary scheduling and cost estimate activities shall also take place during this Phase.
- 1.1.20 "Program" shall mean the City's criteria on which the design is based, of which the Project and the Work are a part. The City's Program shall be described on **Exhibit "A"** hereto.
- 1.1.21 "Project" shall mean the overall construction program of the City, which may include work by contractors other than Construction Manager.
- 1.1.22 "Schedule of Values" means a document accurately and in good faith allocating all of the budgeted Cost of the Work and Contingency among the various portions of the Work, using Construction Manager's best efforts to avoid disproportionate allocation of funds to early completing items.
- 1.1.23 "Shop Drawings" are drawings, diagrams, schedules, and other data specially prepared for the Work by the Construction Manager or a Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- 1.1.24 "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services.
- 1.1.25 "Subcontractor" means an individual, firm, or corporation having a direct contract with the Construction Manager or with another subcontractor for the performance or supply of any part of the Work required by the Contract Documents or the supply of any materials, services, equipment, or installation services required by the Contract Documents.
- 1.1.26 "Substantial Completion" or "Substantially Complete" means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work for its intended use and a temporary certificate of occupancy and any other permits and orders necessary for occupancy have been issued by the proper governmental authority. Warranties called for by this Agreement or by the Contract Documents shall commence on the Substantial Completion date.
- 1.1.27 "Underground Facilities" shall mean all pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities or utilities which have been installed underground to furnish services or materials including, but not limited to, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.1.28 "Value Engineering" means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Project at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality, and safety. Value Engineering is to be performed during the Preconstruction Phase as a part of the services required to reach a GMP acceptable to all parties.

1.1.29 "Warranties" means warranties obtained from the Construction Manager, Subcontractors, and all other sub-subcontractors and vendors pursuant to this Agreement covering the Work performed or materials furnished to the Project or any portion thereof by the Construction Manager.

1.1.30 "Work" means the work to be done necessary to complete the construction required of the Construction Manager by the Contract Documents, and includes all construction, labor, materials, tools, equipment, services, and transportation necessary to produce such construction to the City's full satisfaction and in accordance with the Contract Documents to fulfill the Construction Manager's obligations.

1.1.31 "Work Directive" is a written direction from the Designer issued under the terms of this Agreement, directing the Construction Manager to perform Work in the manner specified therein. Issuance of a Work Directive is an acknowledgement that the Construction Manager and the City are not in agreement as to whether the Work has been changed, or the appropriate adjustment to the Guaranteed Maximum Price or Contract Time, if any, associated with the Work Directive.

1.2 **Relationship of Parties.** The Construction Manager accepts the relationship of trust and confidence established with the City by this Agreement, and covenants with the City to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Designer in furthering the interests of the City. The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between Construction Manager's Subcontractors and the City, or (b) between any persons or entities other than the City and the Construction Manager, including but not limited to the Designer and any other consultant retained by the City to prepare or review the Work, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay to or to see to the payment of any sums due any Subcontractor or supplier. It is understood that the Work shall be carried out and the Work shall be constructed fully in accordance with the Contract Documents.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the Work in accordance with the Contract Documents to the City's full satisfaction. Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Designer in the Designer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Construction Manager. The Construction Manager shall be as fully responsible to the City for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as Construction Manager is for the acts and omissions of persons directly employed by it. Construction Manager shall act as consultant to the City in the Preconstruction Phase and as the equivalent of a general contractor during the Construction Phase. Construction Manager shall act as the City's interest and shall manage and control construction costs so as not to exceed the GMP. If the City and Construction Manager

agree, after consultation with the Designer, the Construction Phase may commence before the Preconstruction Phase is completed, in which case the City will issue a Notice to Proceed with the Construction Phase, and both parties will proceed concurrently.

2.1 Preconstruction Phase Services.

2.1.1 Preliminary Evaluation. The Construction Manager shall provide a preliminary evaluation of the City's Program and Project budget requirements, each in terms of the other.

2.1.2 Consultation. The Construction Manager with the Designer shall jointly schedule and attend regular meetings with the City. The Construction Manager shall consult with the City and Designer regarding site use and improvements and the selection of materials, building systems, and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule. When the Project requirements described in Section 3.1.1 have been identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Designer's review and the City's approval. The Construction Manager shall obtain the Designer's approval of the portion of the preliminary Project schedule relating to the performance of the Designers' services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the City, Designer, and Construction Manager. The preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of Shop Drawings and samples, delivery of materials or equipment requiring long lead time procurement, the City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the City and Designer.

2.1.4 Phased Construction. The Construction Manager shall make recommendations to the City and Designer regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 Preliminary Cost Estimates.

2.1.5.1 When the City has sufficiently identified the Project requirements and the Designer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Designer and approval of the City, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

- 2.1.5.2** When schematic design documents have been prepared by the Designer and approved by the City, the Construction Manager shall prepare, for the review of the Designer and approval of the City a more detailed estimate with supporting data. During the preparation of the design development documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the City, Designer, and Construction Manager.
- 2.1.5.3** When design development documents have been prepared by the Designer and approved by the City, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Designer and approval by the City. During the preparation of the Construction Documents the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the City, Designer, and Construction Manager.
- 2.1.5.4** If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the Construction Manager shall make appropriate recommendations to the City and Designer.
- 2.1.6** Long Lead Time Items. The Construction Manager shall recommend to the City and Designer a schedule for procurement of long lead time items which will constitute part of the Work as required, to meet the Project schedule. If such long lead time items are procured by the City, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the City's acceptance of the Construction Manager's GMP proposal, all contracts for such items shall be assigned by the City to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long lead items.
- 2.1.7** Extent of Responsibility. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. Unless a portion of the Work is identified in the Construction Documents as being Design-Build, and that design responsibility for that portion is specifically delegated to Construction Manager and/or its Subcontractor(s), the City acknowledges that the Construction Manager is in no way providing professional services which constitute the practice of architecture or engineering. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with Applicable Laws. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Designer and the City in writing.

2.2 Guaranteed Maximum Price Proposal and Contract Time.

- 2.2.1** At a time to be mutually agreed upon by City and Construction Manager, but within thirty (30) days after the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a GMP, which shall be the sum of the estimated Cost of Work, Construction Manager's Fee, and Construction Contingency.
- 2.2.2** As the Drawings and Specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall provide in the GMP for further development of the Drawings and Specifications by the Designer that is consistent with

the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3 The estimated Cost of Work shall include the Construction Contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2, above and other costs which are properly reimbursable as Cost of Work but not the basis for a Change Order. The Construction Manager shall notify the City as to the items of Work and cost thereof prior to any and each use of the contingency and shall maintain a statement of the contingency costs.

2.2.4 At the time of the GMP amendment to the Agreement, a Substantial Completion date and Final Completion date shall be agreed upon. Liquidated damages for Construction shall be as set forth in the Agreement

2.3 Basis of GMP.

2.3.1 The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

2.3.1.1 A list of the Drawings and Specifications, including all addenda thereto and the conditions of the contract, which were used in the preparation of the GMP proposal.

2.3.1.2 A list of allowances and a statement of their basis.

2.3.1.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications.

2.3.1.4 The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the GMP.

2.3.1.5 The date of Substantial Completion upon which the proposed GMP is based on and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

2.3.1.6 Detailed construction schedule.

2.3.2 The Construction Manager shall meet with the City and Designer to review the GMP proposal and the written statement of its basis. In the event that the City or Designer discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal.

2.3.3 Unless the City accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the GMP proposal shall not be effective without written acceptance by the Construction Manager.

- 2.3.4** Prior to the City's acceptance of the Construction Manager's GMP proposal and issuance of a notice to proceed with the Construction Phase of the Work, the Construction Manager shall not incur any costs to be reimbursed as part of the cost of the Work, except as the City may specifically authorize in writing.
- 2.3.5** Upon acceptance by the City of the GMP proposal, the GMP and its basis shall be set forth in the GMP Change Order. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.
- 2.3.6** The City shall authorize and cause the Designer to revise the Drawings and Specifications to the extent necessary to reflect agreed upon assumptions and clarifications contained in the GMP Change Order. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the City, Designer, and Construction Manager. The Construction Manager shall promptly notify the Designer and the City if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.

2.4 Construction Phase.

- 2.4.1** General. The Construction Phase shall commence on the City's acceptance of the Construction Manager's GMP proposal and issuance of a notice to proceed.
- 2.4.2** Utility location. Prior to commencement of any Work in the Construction Phase, Construction Manager shall make all reasonable efforts to specifically locate Underground Facilities which may be affected by the Construction Work, including identification of any utilities which the Construction Manager knows or has reason to know may be affected, whether or not information about such utilities is reported through third-party notification services.
- 2.4.3** Administration. Those portions of the Work the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the City and Designer. The City will then review these bids with the Construction Manager, and Construction Manager shall identify the bids which it proposes to accept and state the reasons for its decisions. The City shall have the right, but not the obligation, to direct the Construction Manager to reject a specific bidder. If the City's action to direct the Construction Manager to reject a specific bidder causes the Cost of the Work to be increased, or causes the Contract Time to be extended, the Construction Manager shall be entitled to an increase in the GMP or Contract Time, or both. All subcontracts and purchase orders for major equipment shall contain a provision assigning the rights of Construction Manager to the City in the event of termination of this Agreement by the City.

- 2.4.3.1** Unless otherwise agreed to in writing by the City, all Work packages and material/equipment items estimated in the Cost of Work at or above specified amounts will require that the Construction Manager obtain competitive bids in writing as follows:
- a. At or above \$25,000 – at least two (2) competitive bids;
 - b. At or above \$50,000 – at least three (3) competitive bids.
- 2.4.3.2** A list of approved/prequalified bidders will be established between the City and Construction Manager prior to commencement of bidding.
- 2.4.3.3** With prior consent of the City, mechanical, plumbing, and electrical Subcontractors may be selected during the Preconstruction Phase based upon a qualification-based selection process administered by Construction Manager. The selection process will evaluate experience with similar types of projects/systems and an evaluation of proposed fee structures. Such subcontracts would be subject to the same restrictions on allowable costs and the same right of audit as applies to Construction Manager in this Contract.
- 2.4.3.4** If the GMP has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the City and Designer (a) is recommended to the City by the Construction Manager; (b) is qualified to perform that portion of the Work; and (c) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Construction Manager may request that a change in the Work be issued to adjust the contract time and the GMP by the difference between the bid of the person or entity recommended to the City by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.
- 2.4.3.5** The Construction Manager shall schedule and conduct meetings at which the City, Designer, Construction Manager, and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.
- 2.4.3.6** Promptly after the City's execution of the GMP Change Order, the Construction Manager shall prepare a schedule in accordance with Section 2.4.4, including the City's occupancy requirements.
- 2.4.3.7** The Construction Manager shall provide monthly written reports to the City and Designer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City and Designer.
- 2.4.3.8** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and

estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the City and Designer at regular intervals.

2.4.4 Construction Schedules. The Construction Manager shall, within ten (10) days after execution of GMP Change Order No. 1, shall furnish the City with a detailed Critical Path Method (CPM) schedule as set forth below, giving the dates on which it expects to start and to complete separate portions of the Construction Work. No Construction Work shall begin until said schedule is approved by the City. The City reserves the right to adjust the Construction Manager's schedule to coordinate with any other projects in the same area. Once approved, the Construction Schedule shall be strictly adhered to unless agreed to in writing by all parties or modified by an extension or extensions of time as hereinafter provided. Approval of any schedule by the City shall not constitute an opinion that the schedule is reasonable for the Construction Manager to rely on. The Construction Schedule shall be value-loaded to serve as a Schedule of Values by which to evaluate payment applications from Construction Manager and its subcontractors. The Schedule of Values shall not be front-end loaded so as to disproportionately shift payment for later-performed Work to earlier periods of time.

2.4.4.1 General Requirements. A computerized network diagram shall be included in the CPM schedule and shall serve as the 'Master Construction Schedule' for the Project, giving mathematical analysis (printout) of that network, which verifies and validates logic and planning and defines critical path. The approved schedule shall be kept on site with the superintendent and reviewed with Subcontractors each week. The CPM schedule shall be utilized for planning, organizing, and directing the Work, for reporting progress, and requesting payment for Work completed. The schedule shall be reviewed each week as part of the progress meeting. Abbreviations used in CPM schedules shall be clearly explained in a legend of symbols, either separate or attached. Scheduling software shall be compatible with Microsoft Project 2007.

2.4.4.2 Schedule Requirements.

2.4.4.2.1 The CPM schedule shall clearly show sequential interdependencies, with activity duration and float clearly represented. Sequence(s) of activities with no float shall be clearly identified as critical path(s). The scheduling system shall be capable of baseline comparison analysis. Upon development and approval of the schedule, the Contractor shall 'freeze' the initial schedule as the baseline schedule. As Work progresses, Construction Manager shall provide graphics displaying actual progress bars versus baseline or target bars. Activity durations shall be in calendar days.

2.4.4.2.2 The CPM schedule shall include pre-construction tasks, construction tasks (bid items), Shop Drawing submittal and approval process, material and equipment ordering and delivery, submittal of as-built drawings, clean up and punch list, inspection coordination activities, utility relocation, final inspection and certificate of completion, and final payment. Submittal activities shall be scheduled to allow sufficient time for materials and equipment to be procured and installed, even if the submittal is unacceptable and resubmittal is

required. The CPM schedule shall reflect anticipated delays, such as weather delays.

2.4.4.2.3 Construction Manager shall submit the initial schedule, complete revisions, and periodic reports in three hard copies, one reproducible and two prints or plots, and one copy digitally on CD or DVD. This schedule shall include the completed network program consisting of GANTT chart and mathematical analysis within ten (10) days of the executed Agreement. Allow five (5) days for the City to review. Construction Manager shall submit the schedule of submittal activities extracted from the master schedule within ten (10) days after receipt of Notice to Proceed. During the preparation period, Construction Manager shall review this information with the City.

2.4.4.2.4 Submittals to the City of initial and monthly CPM schedule charts shall include three (3) sets of all reports as outlined below. Plots shall be color, blue line, printed or photocopied prints and, if segmentally generated, fully assembled. Highlight the critical path when the critical path is not clearly defined.

2.4.4.2.5 The Construction Manager will participate in the City's review and evaluation of submitted network diagrams and mathematical analysis of diagrams. Resubmit revisions necessary due to review within five (5) days after the review. Construction Manager and major Subcontractors shall review the network CPM schedule before final submittal.

2.4.4.3 Report Formats. Standard set of reports submitted each month including initial submittals shall consist of a GANTT chart of entire Project. Progress bar chart shall include target or baseline comparison bars. Bar positions shall be early start/early finish with float clearly defined. GANTT charts shall include a tabulation of each activity. For each activity on the GANTT charts furnish the following:

2.4.4.3.1 Initial/submittal schedule shall include a list of responsible contractors and suppliers, task description, duration, start date, end date, latest start date, latest end date, total slack or float time in calendar days and current schedule bar in Gantt view.

2.4.4.3.2 Progress schedule updates shall include a list of responsible contractors and suppliers, task description, duration, actual start date, actual finish date, percentage completion, remaining duration in calendar days and current schedule bar in Gantt view.

Graphics outlined above shall comply with the following criteria unless noted otherwise:

2.4.4.3.3 Sheet size of diagram shall be 11 by 17 inches minimum and time scaled in month as the major timescale and weeks as the minor timescale unless approved otherwise.

2.4.4.3.4 On each page include a title block containing at a minimum the following information:

- a. Project Title;
- b. Project Number;
- c. Construction Manager's Business Name;
- d. Date of Submittal and Revision (the date shown must clearly show the current preparation date and separately the revision date of the current schedule - this is a hard date entered and not an auto or status date);
- e. Submit a separate Legend Page of Symbols and Abbreviations as applicable.

2.4.4.3.5 Prepare and submit to the City upon request additional charts, reports, and current copy on disk of Project program.

2.4.5 CPM Schedule Implementation and Monitoring. Monthly CPM schedule charts and reports shall accompany the Construction Manager's pay request for Work completed. Where the Construction Manager is shown to be behind schedule, provide accompanying written summary, cause, and explanation of planned remedial action. CPM schedules shall reflect those instances, modifications or other alterations to the schedule, which have an impact on the final completion or interim target dates within the schedule. Payments or portions of payments may be withheld by the City Engineer, upon failure to maintain scheduled progress of the Work as shown on the approved CPM schedule. Failure to prepare, submit and maintain a CPM schedule as specified shall be cause for rejection of other schedules submitted and for possible delay of payment. Float time belongs to the Project, not to the Construction Manager or to the City Engineer, and may be utilized by both parties.

2.4.6 Schedule Changes and Updates.

2.4.6.1 At a minimum the Construction Manager shall update and submit the CPM Schedule for review weekly. A weekly update is required unless agreed upon by the City. Monthly submittal of the CPM schedule and approval by the City is required prior to payment for Work completed. Activities added to the CPM schedule shall be submitted by the Construction Manager on schedule charts. It is the City's intent that the Project be managed and operated according to the CPM schedule. Payment requests may be held up until the CPM schedule is brought back into compliance with the Contract Documents.

2.4.6.2 Once the CPM schedule is submitted and approved, the City shall identify any modifications to activity durations, logic, values, or descriptions required to resubmit for approval. Such adjustments shall not impact the contracted completion date. Requests for time extensions are addressed in Article 5 Compensation for Construction Phase Services Section 5.5 Change Orders.

ARTICLE 3 CITY'S RESPONSIBILITIES

3.1 Information and Services.

- 3.1.1** The City shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the City's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.
- 3.1.2** The City shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Designer, which shall include costs which are the responsibility of the City.
- 3.1.3** The City shall endeavor to promote harmony and cooperation among the City, the Construction Manager, and other persons or entities employed by the City for the Project.
- 3.2** **Structural and Environmental Tests, Surveys, and Reports.** In the Preconstruction Phase, the City shall furnish the following with reasonable promptness and at the City's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, Drawings, and tests described in Sections 3.2.1 through 3.2.6 but shall exercise customary precautions relating to the performance of the Work.
 - 3.2.1** Reports, surveys, Drawings, and tests concerning the conditions of the site which are required by law.
 - 3.2.2** Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.
 - 3.2.3** The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.
 - 3.2.4** Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.
 - 3.2.5** The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager and agreed to by the City.
 - 3.2.6** As-built drawings of existing facilities, as available.

- 3.3 City's Designated Representative.** The City shall designate in writing a representative who shall have express authority to bind the City with respect to all matters requiring the City's approval or authorization. This representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Designer does not have such authority.
- 3.4 Designer.** The City shall retain a Designer to provide basic services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The City shall authorize and cause the Designer to provide those additional services described in this Agreement, requested by the Construction Manager which must necessarily be provided by the Designer for the Preconstruction and Construction Phase of the Work. Such services shall be provided in accordance with time schedules agreed to by the City, Designer, and Construction Manager. Upon request of the Construction Manager, the City shall furnish to the Construction Manager a copy of the City's Agreement with the Designer.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

- 4.1 Payments.** If compensation is based on a multiple of direct personnel expense, direct personnel expense is defined as the direct salaries of the Construction Manager's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.
- 4.1.1** Payments shall be made monthly following presentation of Construction Manager's Application for Payment and, where applicable, shall be in proportion to services performed.
- 4.1.2** Payments are due and payable thirty (30) days from the City's receipt of the Construction Manager's undisputed Application for Payment.
- 4.2 City's Right to Withhold Payment.** In the event the City becomes credibly informed that any representations of Construction Manager provided in its monthly pay requests, are wholly or partially inaccurate, the City may withhold payment of disputed sums then or in the future otherwise due to Construction Manager until the inaccuracy and the cause thereof, is corrected to the City's reasonable satisfaction. In the event the City questions some element of a pay request, that fact shall be made known to the Construction Manager immediately. Construction Manager will help effect resolution and transmit an Application for Payment, if necessary. Amounts not questioned by the City shall be paid to Construction Manager in accordance with the contract payment procedures.
- 4.3 Completion Date.** The Construction Manager shall complete Preconstruction Phase Services including submittal of the GMP within thirty (30) days of construction plans being advanced to a sufficient stage for calculation of a GMP with appropriate allowances.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

City shall compensate the Construction Manager for Construction Phase Services as follows:

5.1 Compensation.

5.1.1 For the Construction Manager's performance of the Work as described in Article 2 herein, the City shall pay the Construction Manager in current funds the amount stated in the Agreement.

5.2 GMP. Construction Manager agrees that its compensation for its Work shall not exceed the amount provided in the GMP Change Order, subject to additions and deductions by changes in the Work as provided in the Contract Documents and approved in writing by the City. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the GMP. Costs which would cause the GMP to be exceeded shall be paid by Construction Manager without reimbursement by the City.

5.3 Savings. If at the time of final payment to Construction Manager, the sum of the actual cost of the Work and Construction Manager's Fees are less than the GMP, as such GMP may have been adjusted over the course of the Project for approved scope Changes, the difference ("Savings") shall be shared as stated in the Agreement.

5.4 Liquidated Damages. The Construction Manager accepts the daily rate of Liquidated Damages set forth in the Agreement, if any.

5.5 Change Orders. The City, without invalidating the Contract, may, by Change Order, direct changes in the Work which may result in an addition to or deduction from the GMP and/or changes in the schedule. All Change Orders shall be executed under the provisions of the original Contract Documents. If the Change Order consists of a modification to the GMP, the value of such change shall be determined as per Section 5.5.3, below.

5.5.1 Except for Work done as a result of an emergency endangering life or property, no activity resulting in an increase in the GMP or extension of the Construction Schedule shall be performed unless pursuant to the provisions of a Change Order, or a written Work Directive pursuant to Section 5.5.2 below.

5.5.2 Work Directives. From time to time the Designer may also issue written orders to Construction Manager for needed clarifications, modifications or corrections. When the Designer issues such an order, if the Construction Manager believes compliance will impact the time or cost of performing the Work the Construction Manager may request that the Designer issue a Work Directive. Issuance of a Work Directive by the Designer is not an admission that the City, or the Designer, believes that the cost or time to perform Work in question has been changed. Work Directives can also be used where the parties agree that there has been a change, but are not in agreement as to the appropriate adjustment in the Guaranteed Maximum Price or Time, if any. The Construction Manager shall submit its proposed adjustment for the Work described in the Work Directive, with sufficient back-up and detail to permit a full evaluation, within five (5) working days of receipt of the Work Directive and shall not commence the Work described in the Work Directive until ordered in writing by the Designer to do so. If so stated in the Work Directive, the Construction Manager shall keep records of the cost and time of performing the Work Directive, and the parties shall attempt in good faith to resolve any disagreements over the Work Directive as soon as possible. In any

case, the parties reserve their rights to resolve Work Directive disagreements through the Disputes Resolution provisions of this Agreement.

5.5.3 The value of any change in the Work which results in an addition/deletion to the GMP shall be determined in one or more of the following ways, at the option of the City:

5.5.3.1 By agreed lump sum.

5.5.3.2 By agreed upon unit prices.

5.5.3.3 By actual field cost (time and material) plus Construction Manager's Fee (which includes overhead and profit) stated in the Agreement and shall include a "Not to Exceed" figure.

5.5.4 In order to arrive at the value for any change, Construction Manager shall credit the City with its projected cost(s) for any Work which was previously included but which has been excluded by any such change.

5.5.5 No change in the Work shall entail additional time unless both parties determine that additional time is required and specifically so provides in the Change Order.

5.5.6 Where extra Work is performed under this Section, the term "actual field cost" as referenced in Section 5.5.3, above, of such extra Work is hereby defined to be and shall include:

5.5.6.1 The cost of all workers, such as foremen, timekeepers, mechanics, and laborers, for the time actually employed in the performance of the extra Work;

5.5.6.2 All materials and supplies;

5.5.6.3 Trucks and rentals on machinery and equipment for the time actually employed or used in the performance of said extra Work;

5.5.6.4 Any transportation charges necessarily incurred in connection with said equipment authorized by the City for use on said Work and similar operating expenses;

5.5.6.5 All incidental expenses incurred as a direct result of such extra Work, including payroll taxes and a ratable proportion of premiums on construction bonds and, where the premiums therefore are based on payroll costs, public liability and property damage, worker's compensation, and other insurance required by the Contract Documents; provided, however, Construction Manager must enumerate and justify to the City's satisfaction any such claimed incidental expenses; and provided, further, that without in any way limiting the City's right to challenge any individual costs claimed by Construction Manager, incidental costs shall not include:

5.5.6.5.1 Payroll costs and other compensation of Construction Manager's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors,

timekeepers, clerks and other personnel employed by Construction Manager whether at the site or in Construction Manager's principal or a branch office for general administration of the Work unless specifically agreed to by the City all of which are to be considered administrative costs covered by the Construction Manager's overhead and profit.

5.5.6.5.2 Expenses of Construction Manager's principal and branch offices other than Construction Manager's office at the site.

5.5.6.5.3 Any part of Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work and charges against Construction Manager for delinquent payments.

5.5.6.5.4 Costs due to the negligence of Construction Manager, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

5.5.6.5.5 Other overhead of general expense costs of any kind and the costs of any item not specifically and expressly agreed to by the City.

5.5.7 Both parties shall agree to the form in which accounts of the Actual Field Cost shall be kept and may also specify in writing, before the Work commences, the method of doing the Work and the type and kind of machinery and equipment, if required, which shall be used in the performance of extra Work under this Section. In the event that machinery and heavy construction equipment shall be required for such extra Work, the authorization and basis of payment for the use thereof shall be stipulated in the Change Order at the rates set forth in Section 6.1.4.2 below.

5.5.8 No claim for extra Work of any kind will be allowed except as provided herein. If extra Work orders are given in accordance with the provisions of this Agreement, such Work shall be considered a part hereof and subject to each and all of the terms and requirements of this Agreement.

5.5.9 Construction Manager shall be responsible for notifying its surety(ies) of any modifications to the GMP or schedule and said surety(ies) shall not seek discharge as a result of any failure on Construction Manager's part to notify surety(ies).

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 Cost of Work Items. Cost of Work items shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the City. The Cost of Work shall include only the items set forth in this Article.

6.1.1 Labor Costs.

6.1.1.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the City's agreement, at off-site workshops.

- 6.1.1.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site or at the Construction Manager's principal office pursuant to the hourly rate schedule approved by the City as part of the GMP Proposal. The scope of work performed at the Construction Manager's principal office shall be pre-approved by the City.
- 6.1.1.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops, or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- 6.1.1.4** Costs paid or incurred by the Construction Manager for payroll taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided that such costs are based on wages and salaries included in the Cost of Work under Sections 6.1.1.1 through 6.1.1.3.
- 6.1.2** Subcontract Costs. Payments made by the Construction Manager to Subcontractor in accordance with the requirements of the subcontracts.
- 6.1.3** Costs of Materials and Equipment Incorporated in the Completed Construction.
- 6.1.3.1** Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- 6.1.3.2** Cost of the materials described in Section 6.1.3.1 in excess of those actually installed but required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the Work or, at the City's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of Work.
- 6.1.4** Costs of Other Materials and Equipment, Temporary Facilities and Related Items.
- 6.1.4.1** Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.
- 6.1.4.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval. Rates and quantities of equipment furnished by Construction Manager or any

subcontractor shall be limited to no more than 85% of the prevailing local rental rate, and in no case shall exceed the purchase price of the item rented.

6.1.4.3 Cost of removal of debris from site.

6.1.4.4 Reproduction costs, postage and express delivery charges, telephones at the site and reasonable petty cash expenses of the site office, to the extent actually used.

6.1.4.5 That portion of the reasonable travel and subsistence expense of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work shall be subject to the City's prior approval.

6.1.5 Miscellaneous Costs.

6.1.5.1 Premiums for that portion of insurance, deductibles and bonds and deductibles incurred required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amount of the coverages required by the Contract Documents, with the City's prior approval. Insurance and Bonds provided by the Construction Manager shall be included in the GMP at the following values: General Liability Insurance Rate = 0.95%, Builder's Risk Rate = 0.35% and Payment and Performance Bond Rate = actual cost as invoiced by bonding company. Construction Manager shall certify in writing to the City that all of the costs were paid to a third party and that no part of the premium was received or retained by Construction Manager.

6.1.5.2 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work.

6.1.5.3 Data processing costs related to the Work.

6.1.5.4 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement.

6.1.5.5 Legal costs, other than those arising from disputes between the City and the Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the City's written permission, which permission shall not be unreasonably withheld.

6.1.6 Other Costs. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

6.1.7 Emergencies and Repairs to Damaged or Nonconforming Work. The Cost of Work shall also include costs which are incurred by the Construction Manager:

6.1.7.1 In taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property.

6.1.7.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused

by the negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement of the Construction Manager or the Construction Manager's personnel to supervise adequately the Work of the Subcontractor or suppliers, and only to the extent that the cost of the repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

6.2 Costs Not to Be Reimbursed.

6.2.1 The Cost of Work shall not include:

- 6.2.1.1** Salaries, expenses, and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project site office, except as specifically provided for in Section 6.1.1.2 and 6.1.1.3.
- 6.2.1.2** Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.
- 6.2.1.3** Overhead and general expenses, except as may be expressly included in Section 6.1.
- 6.2.1.4** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- 6.2.1.5** Rental costs of machinery and equipment, except as specifically provided in Section 6.1.4.2.
- 6.2.1.6** Costs due to negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the City set forth in this Agreement.
- 6.2.1.7** Costs incurred in the performance of Preconstruction Phase Services.
- 6.2.1.8** Any costs not specifically and expressly described in Section 6.1.
- 6.2.1.9** Costs which would cause the GMP to be exceeded.

6.3 Discounts, Rebates, and Refunds.

- 6.3.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the City, if before making payment, the Construction Manager included them in an Application for Payment and received payment therefore from the City; otherwise cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Construction Manager shall make provisions, so they can be secured.
- 6.3.2** Amounts which accrue to the City shall be credited to the City as a deduction from the Cost of Work.

6.4 Accounting Records. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under

this Agreement; the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, invoices, vouchers, memoranda, and other data relating to this Project, and the Construction Manager shall preserve these for a period of five (5) years after final payment, or for such longer period as may be required by law, and shall be subject to audit by the City and the Kansas Department of Revenue.

ARTICLE 7 PAYMENT APPLICATIONS FOR CONSTRUCTION PHASE SERVICES

7.1 Payments.

- 7.1.1** Based upon Applications for Payment submitted to the Designer by the Construction Manager and certificates for payment issued by the Designer, the City shall make payments on account of the Agreement sum to the Construction Manager as provided below and elsewhere in the Contract Documents. With each Application for Payment, Construction Manager shall submit documentation of its payment of subcontractors and suppliers, and its release of claims and (where applicable) lien rights for itself and its Designer and Subcontractors on the forms attached hereto as **Exhibit D**.
- 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by the City and Construction Manager.
- 7.1.3** Before the first Application for Payment, the Construction Manager shall submit to the Designer and the City a Schedule of Values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Designer and the City may require. This schedule, unless objected to by the Designer or the City, shall be used only as a basis for the Construction Manager's Applications for Payment and does not constitute approval by the Designer or the City of the method or performance by the Construction Manager.
- 7.1.4** Payment will be made to Construction Manager monthly from funds available on the basis of a duly certified estimate of the value of all labor and materials delivered on the site and accepted by the Designer and the City during the preceding month, calculated in proportion to the GMP, but to ensure the proper performance of the Agreement, ten percent (10%) of the amount of each estimate, (including undisputed portions of Work Directives and un-finalized changes) will be retained until Substantial Completion and acceptance of Work covered by this Agreement, except for projects which are governed by K.S.A. §16-1904, in which case retainage shall be set at five percent (5%) unless the factors enumerated in that statute justify the withholding of greater sums.
 - 7.1.4.1** Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to these same payment provisions and shall not be awarded on the basis of cost plus a fee without the prior consent of the City.
- 7.1.5** Each payment made to the Construction Manager shall be on account of the total amount payable to the Construction Manager by or for the City, and all materials and Work covered by the partial payments made shall therefore become the sole property of the City. This provision shall not be construed as relieving the Construction Manager

from the responsibility imposed by the Contract Documents for the care and protection of materials and Work upon which payments have been made, for the restoration of any damaged Work, or as a waiver of the right of the City to require the fulfillment of all the terms of the Agreement. Progress payments in respect to materials will be made only for materials delivered on the site and accepted by the Designer or the City, all calculated in proportion to the GMP.

- 7.1.6** In general, no allowance will be made in estimates for materials on site, or stored at a facility approved by the City, if site is unable to take delivery, and not incorporated in the Work except in case of those items considered by the City to be major items of considerable magnitude, which will be allowed in estimates on the basis of ninety-five percent (95%) of invoices (except for projects which are governed by K.S.A. §16-1904, in which case retainage shall be set at five percent (5%) unless the factors enumerated in that statute justify the withholding of greater sums), the value calculated in proportion to the GMP. If the City should elect to pay for materials or equipment prior to their delivery to the Project site and/or incorporation into the Project, Construction Manager shall deliver to the City prior to payment a fully executed Bill of Sale, attesting to the City's ownership of such materials or equipment, and a Bailment Agreement, attesting to the proper storage and insurance of such materials and equipment until such time as they are delivered to the site, on the forms attached hereto as **Exhibit E** and **Exhibit F**.
- 7.1.7** The retained percentages herein provided for are to be retained and held for the sole protection and benefit of the City, and no other person, firm or corporation shall have or assert any lien, claim, right or priority therein, thereon or thereto, or be entitled to receive any part thereof, except as herein expressly provided.
- 7.1.8** The City shall require at intervals as it shall determine and at any time before final payment is made for the Work specified herein that the Construction Manager furnish the City with documentation of its payment of subcontractors, subconsultants and suppliers, and its release of claims and (where applicable) lien rights and payment by all Subcontractors and vendors who have done Work or labor on, or who have furnished materials for, this Project that they have been fully paid by the Construction Manager for such Work or labor done or materials furnished by them for which payment has been made to Construction Manager by the City on the form attached hereto as **Exhibit D**. Construction Manager's failure to furnish said list or to include all such Subcontractors and vendors shall not relieve Construction Manager or its surety of any obligation assumed under this Agreement, nor shall the City's request for such list create any obligation on the City's part to verify accuracy.
- 7.1.9** The Construction Manager shall be responsible for the return and/or exchange of surplus materials, and all credits for returned or exchanged materials shall be first submitted to the Designer and the City for approval. Applications for Payment shall reflect any such credits, and the GMP shall be adjusted as necessary to reflect such credits. Unreturnable excess materials shall be turned over to the City, or, at its option, be removed from the Project site at Construction Manager's expense.
- 7.1.10** The acceptance by the Construction Manager of final payment shall be and shall operate as a release to the City of all claims and all liability to the Construction Manager other than written claims in stated amounts as may be specifically excepted by the Construction Manager for all things done or furnished in connection with this Agreement

and for every act and neglect of the City and others relating to or arising out of this Agreement. Any payment, however, final or otherwise, shall not release the Construction Manager or its sureties from any obligations under the Contract Documents, the bonds, or insurance coverage's.

7.2 Payments Withheld. The City may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any Application for Payment to the extent necessary to protect the City from loss on account of:

7.2.1 Incomplete Work or Defective Work not remedied;

7.2.2 A reasonable doubt that the Work can be completed for the balance of the Agreement price then unpaid;

7.2.3 Damage to the City; or

7.2.4 A breach of this Agreement.

7.3 Substantial Completion.

7.3.1 When Construction Manager considers the Work, or a portion thereof which the City agrees to accept separately, that Substantially Complete, the Construction Manager shall prepare and submit to the Designer and the City a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents.

7.3.2 Upon receipt of the Construction Manager's list, the Designer and the City will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Designer and the City's inspection discloses any item, whether or not included on the Construction Manager's list, which is not sufficiently complete in accordance with the Contract Documents so the City can occupy or utilize the Work or designated portion thereof for its intended use, the Construction Manager shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Designer and the City. In such case, the Construction Manager shall then submit a request for another inspection by the Designer and the City to determine Substantial Completion.

7.3.3 When the Work or designated portion thereof is Substantially Complete, the Designer will prepare a Certificate of Substantial Completion for signature by the City. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

7.3.4 The Certificate of Substantial Completion shall be submitted to the City and Construction Manager for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and Consent of Surety Company to Final Payment, the City shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

- 7.3.5** Retainage will be released to Construction Manager within thirty (30) days of Substantial Completion, less 150% of the reasonable value of any Work which is incomplete or not performed in compliance with the Contract Documents.

7.4 Final Completion and Final Payment.

- 7.4.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City with the assistance of the Designer will promptly make such inspection. Upon receipt from the Designer of the Final Certificate for Payment, the City will process the final payment. The Designer's Final Certificate for Payment will constitute a further representation that conditions listed in Section 7.4.2, below, as precedent to the Construction Manager's being entitled to final payment have been fulfilled.

- 7.4.2** Final payment shall not be due until all of the following have been received by the City:

- (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied;
- (b) receipt by the City of all close-out documents required by the Contract Documents, including but not limited to a Project Completion Certificate, O&M manuals, manufacturer's warranties and final as-built drawings;
- (c) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City;
- (d) a written agreement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- (e) Consent of Surety Company to Final Payment; and
- (f) if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, releases of claims and lien rights (where applicable), security interests or encumbrances arising out of the Agreement, to the extent and in such form as is attached to this Agreement as **Exhibit G**. If a Subcontractor refuses to furnish a release or waiver required by the City, the Construction Manager may furnish a bond and shall furnish a letter from its payment bond surety affirming its obligation on such bond notwithstanding refusal of a subcontractor to furnish a waiver or release as a condition precedent to payment of such disputed amount to Construction Manager.

- 7.4.3** If after Substantial Completion of the Work, final completion is materially delayed through no fault of the Construction Manager or by issuance of Change Orders affecting final completion, and the Designer and the City so confirms, the City shall, upon application by the Construction Manager and certification by the Designer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents,

and if bonds have been furnished, the written Consent of Surety Company to Final Payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Construction Manager to the Designer and the City prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the City except those arising from:

- (a) claims, lien rights (where applicable), security interests or encumbrances arising out of the Agreement and unsettled;
- (b) failure of the Work to comply with the requirements of the Contract Documents; or
- (c) warranties required by the Contract Documents.

7.4.4 Acceptance of final payment by the Construction Manager, a Subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final acceptance for payment.

ARTICLE 8 GENERAL CONDITIONS

8.1 **Extent of Contract.** This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated Agreement between the City and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

8.2 **Assignment.** The City and Construction Manager respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

8.3 **Appointment of Service Agent.** KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Any contractor domiciled outside of the State of Kansas must comply with these statutory requirements; (form attached) to be submitted with the GMP Change Order.

8.4 **Non-Discrimination, Affirmative Action, and Sexual Harassment.**

8.4.1 The Construction Manager agrees that:

8.4.1.1 The Construction Manager shall observe the provisions of the Kansas Act Against Discrimination, Section 5-1201 *et seq.* of the Code of the City of Roeland Park, Kansas, and shall not discriminate against any person in the

performance of work under the present Agreement because of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, or age, disability, marital status, familial status or military status;

8.4.1.2 In all solicitations or advertisements for employees, the Construction Manager shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

8.4.1.3 If the Construction Manager fails to comply with the manner in which the Construction Manager reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Construction Manager shall be deemed to have breached the present Agreement and it may be cancelled, terminated or suspended, in whole or in part, by the City;

8.4.1.4 If the Construction Manager is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, or if the Construction Manager is found guilty of a violation of Section 5-1201 *et seq.* of the Code of the City of Roeland Park, Kansas, the Construction Manager shall be deemed to have breached the present Agreement and it may be cancelled, terminated or suspended, in whole or in part, by the City; and

8.4.1.5 The Construction Manager shall include the provisions of Subsections 8.4.1.1 through 8.4.1.4 in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.

8.4.2 The Construction Manager further agrees that they shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other Applicable Laws and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

8.5 Insurance.

8.5.1 Construction Manager shall provide insurance as set forth on **Exhibit H – INSURANCE REQUIREMENTS**. **Construction Manager shall not be permitted to commence any work on site until satisfactory copies of the Certificates evidencing insurance written on a form acceptable to the City; Notice of Cancellation Endorsement; and Additional Insured Endorsement, have all been received and approved by City.**

8.5.2 Failure by the Construction Manager to furnish the required insurance within the time specified in the Agreement by the City may, at the City's option, be the basis for the City's exercising its right to terminate the Agreement.

8.6 Bonds and Other Performance Security. Construction Manager shall provide a Performance Bond, and a Statutory Bond (forms attached hereto as **Exhibit I** and **Exhibit J**) to be submitted with the GMP Change Order, in the amount of one hundred percent (100%) of the Agreement price to cover the entire scope of Work including planning, Value Engineering, procurement, construction, and completion of the Project, and any other specific performance security that may be indicated in this Agreement. With each bond there

shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

8.7 Indemnity.

- 8.7.1 Indemnification.** To the fullest extent permitted by applicable Kansas law, the Construction Manager shall defend, indemnify and save the City and Engineer/Architect harmless from and against all liability for damages, costs and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of and to the extent of the negligent acts or omissions of the Construction Manager, his or her sub-contractors, agents or employees in the performance of this contract.
- 8.7.2 General Limitation.** Nothing in this Section shall be deemed to impose liability on the Construction Manager to indemnify the City for Loss due to the City's sole negligence or other actionable fault solely attributable to the City is the cause of Loss.
- 8.7.3 Waiver of Statutory Defenses.** With respect to the City's rights as set forth herein, the Construction Manager expressly waives all statutory defenses, including, but not limited to, those under workers compensation or similar statutes to the extent said defenses are inconsistent with or would defeat the purposes of this Section.

8.8 Contract Documents/Agreement for Construction.

- 8.8.1** The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the Contract Documents is to include all construction, labor, materials, tools, equipment, and transportation necessary for the workmanlike construction of the Project in accordance with the Contract Documents.
- 8.8.2** If there is any conflict or discrepancy between the Contract between the City and the Construction Manager and any other of the Contract Documents, the Agreement between the City and Construction Manager shall prevail. The Contract Documents supersede all previous agreements and understandings between the parties, which previous agreements and understandings are of no further force and effect.
- 8.8.3** The Contract Documents as enumerated herein, or as added through the GMP Change Order, form the Contract for construction. The Contract may not be amended or modified except by a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.
- 8.8.4** All time limits stated in the Contract Documents are of the essence.
- 8.9 Defects in the Contract Documents.** If Construction Manager has reasonable cause such that it should, in the exercise of ordinary care of someone in its position, know that any errors, omissions, discrepancies or inconsistencies (hereinafter "Defects") appear in the Contract Documents, including, but not limited to, the plans, Specifications and other documents or the Work, Construction Manager shall notify the Designer in writing of such Defects. The Contract Documents shall be appended to all agreements between the Construction Manager and any Subcontractor or any more remote tier Subcontractor, and

such Subcontractors and remote tier Subcontractors shall, likewise, notify the Construction Manager in writing of any Defects therein. The Construction Manager will not be permitted to take advantage of any such Defect.

8.10 Copies of the Agreement. Unless otherwise provided in the Contract Documents, the Construction Manager shall be furnished, a maximum of five (5) copies of the Contract Documents, Drawings and Specifications as are reasonably necessary for execution of the Work. Construction Manager shall keep at the Project site and make available to the City and Designer, one copy of all Contract Documents for the Work, in good order and legibly marked to reflect actual construction. Construction Manager shall also maintain at the site all approved samples and a print of all approved Shop Drawings. Such documents, samples, and Shop Drawings, shall be turned over to the City at the completion of the Work if requested by the City. Contract Documents are the property of the City, and none of the Contract Documents are to be used on other work by Construction Manager. At the City's request, all Contract Documents shall be returned to the City with the exceptions of one record set for Construction Manager. All models and calculations are the property of the City.

8.11 Scope, Nature and Intent of Drawings and Specifications.

8.11.1 The Drawings and Specifications are intended to complement, but not necessarily duplicate each other. Together they shall constitute one complete set of the Drawings and Specifications, and any Work exhibited in one but not the other shall be executed just as if it had been set forth in both in order that the Work shall be completed according to the complete design or designs as decided and determined by the Designer and/or the City.

8.11.2 Should anything be omitted from the Drawings and Specifications which is necessary to a clear understanding of the Work, or should it appear that various instructions are in conflict, or in the event the Drawings and Specifications are silent as to any detail then it shall be the duty of the Construction Manager to secure in written instructions from the Designer and the City before proceeding with the construction affected by such omissions, discrepancies or silence. Construction Manager's failure to bring any such matter to the attention of the Designer and the City shall be at the Construction Manager's peril, and there shall be no compensation for extra work necessitated thereby.

8.11.3 It is recognized that the Construction Manager's review is made in the Construction Managers capacity as a contractor and not as a licensed design professional. The Construction Manager is not required to ascertain that the Contract Documents are in accordance with Applicable Laws, but any nonconformity discovered by or made known to the Construction Manager shall be reported promptly to the Designer and the City. If Construction Manager believes that additional cost or time is involved because of clarifications or instructions issued by the Designer and the City in response to the Construction Manager's notice or requests for information the Construction Manager may request a Change Order. The Construction Manager shall not be liable to the City or Designer for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Construction Manager recognized such error, inconsistency, omissions, or differences and knowingly failed to report it to the Designer and the City.

- 8.11.4** Dimensions and elevations shown on the Drawings shall be accurately followed, even though they may differ from scaled measurements. No Work shown on the Drawings, the dimensions of which are not indicated, shall be executed until the required dimensions have been obtained from the Designer and the City. Construction Manager shall be responsible for verification of all locations, dimensions, and elevations in the field (including, but not limited to verification of location of underground facilities and utilities) and shall verify all field dimensions shown on the Contract Documents.
- 8.11.5** All Work performed under this Contract shall be done to the lines, grades, and elevations shown on the Drawings. The Construction Manager shall keep the Designer and the City informed, a reasonable time in advance of the times and places at which it wishes to do Work, in order that lines and grades may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience and delay to the Designer, the City, and Construction Manager. Any Work done without being properly located and established by base lines, offset stakes, bench marks, or other basic reference points may be ordered removed and replaced at the Construction Manager's cost and expense.
- 8.11.6** Construction Manager, together with its Subcontractors, shall carefully examine the Drawings and Specifications for any interference with the Work and clearances that may be required. Construction Manager shall be responsible for the proper fitting of materials and equipment without substantial alterations. Construction Manager shall be responsible for eliminating interferences without additional cost to the City. If departures from the Drawings and Specifications, or other Contract Documents, are deemed necessary by Construction Manager, details of such discrepancies and reasons therefore shall be submitted to Designer and the City, with Drawings (if Designer and the City determine that Drawings are necessary), for approval as soon as practical. No such departure shall be made except at the peril of the Construction Manager without the prior written approval of the Designer and the City.
- 8.12 Shop Drawings.** Within thirty (30) days of execution of the GMP Amendment, Construction Manager shall prepare and submit to the City a submittal schedule, identifying the time when all Shop Drawings shall be submitted, which Schedule shall allow sufficient time (minimum ten working days unless otherwise agreed) for review and comment by the City. Construction Manager shall review, and submit, with such promptness as to cause no delay in its own Work or in that of any Subcontractor or other contractor, three (3) copies of all shop, fabrication, assembly, foundation and other drawings and schedules required by the Specifications, including, but not limited to: (1) drawings of equipment and devices offered by the Construction Manager for approval of the Designer and the City in sufficient detail to adequately show the construction and operation thereof; (2) drawings showing essential details of any change in design of construction proposed, for consideration by the Designer and the City by the Construction Manager in lieu of the design or arrangement required by the Contract Documents, or any item of extra Work there under; (3) all required wiring and piping layouts; and (4) structural and reinforcing fabrication drawings. All submittals, regardless of origin, shall be stamped by the Construction Manager and identified with the name and number of this Contract; Construction Manager's name and references to applicable Drawings and Specification paragraphs. Each submittal shall indicate the intended use of the item in the Work. Construction Manager's stamp is representation to the Designer and the City, that the Construction Manager accepts full responsibility for determining and verifying all quantities, dimensions, field construction criteria, materials, and similar data, and that they have reviewed or coordinated each

submittal with the requirements of the Work and the Contract Documents. All deviations from the Contract Documents shall be identified on each submittal and shall be tabulated in The City shall timely respond, advising Construction Manager of any comments or concerns it has with the submittals. Neither comments from the City nor the City's failure to comment shall in any way relieve Construction Manager of any responsibility for the design or construction under this Agreement.

8.12.1 The Construction Manager's letter of transmittal. Such submittals shall, as pertinent to the deviation, indicate essential details of all changes proposed by Construction Manager (including modifications to other facilities that may be a result of each deviation).

8.12.2 The Designer and the City shall review the Shop Drawings for conformance with the design concept of the Work and information as given in the Contract Documents. The Construction Manager is not relieved of responsibility for any deviation from the requirements of the Contract Documents by the Designer's and the City's approval of the Shop Drawings, product data, or samples. The Construction Manager is not relieved from responsibility for errors or omissions in Shop Drawings by the Designer's and the City's review thereof. The Designer and the City shall respond to, accept or reject such submissions within a reasonable time after receipt thereof. Construction Manager shall make such revisions as deemed necessary. Prior to and as a condition of final acceptance, the Designer and the City shall be furnished with a total of five (5) copies of each Drawing as finally approved, such number to include any copies of preliminary or revised Drawings which are approved as submitted. No Work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any Drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by the Construction Manager or its Subcontractors be purchased, until the Drawing or Drawings therefore have been approved as stipulated, except at the Construction Manager's own risk and responsibility.

8.13 **Construction Manager's Responsibilities as to Ambiguities.** If there is any ambiguity in the Designer's Drawings or instruction, Construction Manager shall ask the Designer for clarification. Upon written request of Construction Manager, the Designer shall furnish, with reasonable promptness, additional instructions by means of Drawings, Specifications, or other information necessary for the proper execution of the Work. The Work shall be executed in conformity therewith, and, in accordance with Section 8.9, Construction Manager shall do no Work without proper instructions except at its peril. Nothing herein to the contrary shall affect Construction Manager's responsibilities with regard to defects as set forth in Section 8.9.

8.14 **Concealed Conditions.** Construction Manager warrants that it has examined the site and conducted such tests and examinations as it deems necessary. That being the case, should concealed conditions encountered in the performance of the Work below the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered, there will be no equitable adjustment in the contract sum or time, or both, for any extra Work necessitated thereby unless the condition either:

- (a) varies materially from what was specifically represented to Construction Manager in the Construction Documents; or
- (b) varies materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents.

In either such, the Construction Manager shall promptly provide notice to the City and the Designer before conditions are disturbed and in no event later than three working days after first observance of the conditions. The Designer will promptly investigate such conditions and, if the Designer determines that they differ materially and cause an increase or decrease in the Construction Manager's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the GMP or Contract Time, or both. If either party disputes the Designer's determination or recommendation, that party may proceed to make a claim.

8.15 Permits, Fees, and Notices.

- 8.15.1** Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required when bids are received, or negotiations concluded.
- 8.15.2** If Construction Manager performs Work contrary to Applicable Laws without such notice to the Designer and the City, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.
- 8.15.3** Construction Manager shall give all notices required by, and all Work shall be done in accordance with, all Applicable Laws bearing on the conduct of the Work.
- 8.15.4** Construction Manager shall notify all affected utilities of the Work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the owner/operator of any affected underground facility. Any Project delay, damages or increases in construction costs due to utility relocation delays shall be at the Construction Manager's risk.
- 8.15.5** Construction Manager shall give reasonable notice to all owners or occupants of property which is potentially susceptible to damage through the performance of the Work and shall make all necessary arrangements with such owners or occupants relative to the removal and replacement or protection of such property or utilities.

8.16 General Administration of the Contract. The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention.

- 8.16.1** Unless otherwise stipulated, Construction Manager shall provide and pay for all Work (including labor, transportation, tools, equipment, machinery, plant, and appliances) necessary in producing the results called for by the Contract Documents.

- 8.16.2** The Construction Manager shall be solely responsible for and have complete control and charge of construction means, methods, techniques, sequences, and procedures, and for safety precautions and programs in connection with the Work. The City shall not be responsible for nor have control or charge over the acts or omissions of the Construction Manager, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.
- 8.16.3** The Construction Manager shall, in addition to the schedule required by Section 2.4.4, give to the Designer full information in advance as to its plans for carrying on any part of the Work. If at any time before the beginning or during the progress of the Work, any part of the Construction Manager's plant or equipment or any of its methods of executing the Work, appear to the Designer to be unsafe, inefficient or inadequate to ensure the required quality or rate of progress of Work, the Designer may order the Construction Manager to increase or improve its facilities or methods, and the Construction Manager shall promptly comply with such orders; but neither compliance with such orders nor failure of the Designer to issue such orders shall relieve the Construction Manager from its obligation to secure the degree of safety, the quality of Work and the rate of progress required by the Agreement.
- 8.16.4** The approval by the Designer of any plan, schedule, or method of Work proposed by the Construction Manager shall not relieve the Construction Manager of any responsibility therefore, and such approval shall not be considered as an assumption by the City, or any officer, agent or employee thereof, of any risk or liability, and the Construction Manager shall have no claim under this Agreement on account of the failure or inefficiency of any plan or method so approved. Such approval shall be considered and shall mean that the Designer has no objection to the Construction Manager's use or adoption at the Construction Manager's own risk and responsibility, of the plan or method so proposed by the Construction Manager.
- 8.16.5** Any plan or method of Work suggested by the Designer or the City, to the Construction Manager, but not specified or required, if adopted or followed by the Construction Manager in whole or in part, shall be used at the risk and responsibility of the Construction Manager, and the Designer and the City will assume no responsibility therefore.
- 8.16.6** The Construction Manager shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- 8.16.7** Construction Manager shall be responsible to the City for acts and omissions of the Construction Manager's employees, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors.

8.17 Construction Manager's Employees.

- 8.17.1** Construction Manager shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the Work assigned to them.

- 8.17.2** Construction Manager shall be responsible for compliance with all Applicable Laws including those pertaining to wages, hours and benefits for workers employed to carry out the Work.
- 8.18** **Samples.** Construction Manager shall furnish, for approval, samples if directed by the Designer or the Contract Documents. The Work shall be in accordance with approved samples.
- 8.19** **Protection of Work and City Property.** Construction Manager shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials, and equipment on the Project site not yet incorporated in the Work, the City's property. Construction Manager shall assume full responsibility for the Work and shall bear any loss and repair any damage at its own cost occasioned by neglect, accident, vandalism, or natural cause, whether foreseen or unforeseen, during the progress of the Work and until the Work is completed and accepted by the City. The Construction Manager shall establish, maintain and enforce all the safety requirements of this Agreement and Applicable Law.
- 8.20** **Protection of Property/Liability.** Construction Manager shall be solely liable for all damages to the City or the property of the City, to other contractors or other employees of the City, to neighboring premises, or to any private or personal property, due to improper, illegal or negligent conduct of the Construction Manager, its Subcontractors, employees or agents in and about said Work, or in the execution of the Work. The Construction Manager shall be liable to the City for any damages, whether property damage or personal injury, occasioned by Construction Manager's use of any scaffolding, shoring, apparatus, ways, works, machinery, plant or any other process or thing that is required for the Work. Underground Facilities and utilities, damaged by the Construction Manager within or outside the right-of-way shall be restored at the Construction Manager's expense and at no cost to the City. The Construction Manager shall make every effort to locate these lines and protect them.
- 8.21** **Tests and Inspections.**
- 8.21.1** Designer and the City shall at all times have access to the Work for the observation and inspection thereof wherever it is in preparation or progress, and Construction Manager shall provide proper facilities for such inspection. The Construction Manager shall furnish all reasonable aid and assistance required for any such inspection.
- 8.21.2** All Work must be inspected, tested or approved and the Construction Manager shall give the Designer and the City timely notice of its readiness for such inspection, testing or approval and the date fixed for such inspection, testing or approval, if the inspection, testing or approval is by an authority other than Designer and the City.
- 8.21.3** Designer and the City reserve the right to inspect any and all Work before it is covered up; and, accordingly, Construction Manager must notify Designer and the City before covering any Work. Designer and the City shall be given a reasonable time to make its inspection. Construction Manager shall not cover any Work prior to Designer and the City having a reasonable time to inspect. If Work to be covered does not conform to the Contract Documents, Designer and the City can withhold its consent to covering up Work until such Work is made to conform at Construction Manager's expense.

- 8.21.4** If any Work should be covered up which is required by the above to be inspected, tested or approved and which, by virtue of being so covered up, is not susceptible to being properly inspected, tested or approved, Construction Manager shall, if requested by Designer or the City, uncover such work and at Construction Manager's expense bear the cost of uncovering such Work and redoing same after inspection, testing or approval and redoing such other Work damaged as a result of having to uncover and redo same. The City reserves the right to inspect any and all Work before it is covered up; and, accordingly, Construction Manager must notify the City before covering any Work. The City shall be given a reasonable time to make its inspection. Construction Manager shall not cover any Work prior to the City having a reasonable time to inspect. If Work to be covered does not conform to the Contract Documents, the City can withhold its consent to covering up Work until such Work is made to conform at the Construction Manager's expense.
- 8.21.5** If any labor, supplies, materials or equipment are found not to be in accordance with the Contract Documents, Construction Manager shall at its own expense bear the cost of uncovering such labor, supplies, materials or equipment, the cost of removing same, as well as the cost of undoing and redoing the work and other work damaged by such nonconforming labor, supplies, materials or equipment.
- 8.21.6** The City, the Designer and all designated inspectors shall be free at all times to perform their duties, including the observation and inspection of the Work, and intimidation or attempted intimidation of any one of them by the Construction Manager or by any of its employees shall be sufficient reason, if the City so desires, to terminate the Agreement.
- 8.21.7** Any inspection, by whosoever conducted, shall not relieve the Construction Manager from any obligation to perform the Work strictly in accordance with the Drawings and Specifications, and any of the Work not so constructed shall be removed and made good by the Construction Manager at its own expense.

8.22 Superintendence and Supervision.

- 8.22.1** Construction Manager shall provide all necessary supervision to the Work using its best skill, care, judgment, and attention and shall keep on the Work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Designer and the City. The superintendent shall not be changed except with the consent of the Designer and the City unless the superintendent proves to be unsatisfactory to the Construction Manager and/or ceases to be in its employ; provided however, that the Designer and the City retain the right to require that the Construction Manager replace the superintendent at any time, such right not to be arbitrarily exercised.
- 8.22.2** The superintendent shall be fully authorized to act for the Construction Manager and receive whatever orders as may be given for the proper prosecution of the Work or notices in connection therewith. The superintendent shall be available to communicate with the City at all reasonable times, and Construction Manager shall give the City the phone number, pager number, and email address. The superintendent shall speak such languages as are necessary to be able to effectively communicate with all of Construction Manager's employees and subcontractors.

8.22.3 Use of Subcontractors on portions of the Work shall not relieve the Construction Manager of its obligation to have a competent superintendent directly employed by the Construction Manager on the Work at all times.

8.23 **Construction Manager's Office at Site of Work.** During the performance of this Agreement, the Construction Manager shall maintain a suitable office at or near the site of the Work which shall be the headquarters of the superintendent authorized to receive Drawings, instruction, or other communications or articles from the Designer, and any such communication given to said superintendent or delivered at the Construction Manager's office at the site of Work in his/her absence shall be deemed to have been given to the Construction Manager.

8.24 **Work Stoppages.** Construction Manager further agrees that in the event of any strike, picket, sympathy strike, Work stoppage or other form of labor dispute or picket in connection with the Work of the Construction Manager, other contractors, Subcontractors, the City, or any other person, the Construction Manager will, contingent upon the City providing a picket-free entrance, continue to perform the Work required herein without interruption or delay. Anything in this Agreement to the contrary notwithstanding, in the event the Construction Manager fails to continue performance of the Work included herein without interruption or delay, because of such picket or other form of labor dispute, the City may terminate the services of said Construction Manager after giving two (2) working days written notice to Construction Manager and its sureties of its intent to do so, or the City may invoke any of the rights set forth elsewhere in the Contract Documents.

8.25 **Patent Liability Clause.**

8.25.1 Construction Manager agrees to defend any claim, action or suit that may be brought against the City, its Governing Body, officers, agents or employees for infringement of any Letters Patent of the United States arising out of the performance of this Agreement or out of the use or disposal by or for the account of the City of supplies furnished or construction Work performed hereunder, and also to indemnify and hold harmless the City, its Governing Body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them or sustained by it or them on account of any such actual or alleged infringement.

8.25.2 It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment used in or furnished for the Work shall be included in the GMP price. Final payment to the Construction Manager by the City shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled.

8.26 **Independent Contractor.** The right of general supervision of the City and/or the Designer shall not make the Construction Manager an agent of the City, and the liability of the Construction Manager for all damages to persons, firms, and corporations arising from the Construction Manager's execution of the Work shall not be lessened because of such general supervision, but as all such persons, firms, and corporations, and the damages, if any, to them or their property, the Construction Manager herein is an independent contractor in respect to the Work.

8.27 **Separate Contracts.**

- 8.27.1** The City reserves the right to perform by itself, or let other contracts, in connection with Work. Construction Manager shall afford reasonable opportunity for the introduction and storage of materials and the execution of Work by the City or others and shall properly connect and coordinate its Work with the Work of the City or others.
- 8.27.2** If any part of Construction Manager's Work depends upon the Work of the City or others, Construction Manager shall inspect and promptly report to the City any defects in any such work that render it unsuitable for proper execution or results. Its failure to so inspect and report shall constitute an acceptance by it of such other work as fit and proper for the reception of its Work.

8.28 Relations with Other Contractors.

- 8.28.1** The Construction Manager shall cooperate with all other contractors or workers who may be performing work on behalf of the City or any other entity on any work in the vicinity of the Work to be done under this Agreement, and it shall so conduct its operations as to interfere to the least possible extent with the work of such contractors or workers. Construction Manager shall be responsible for any injury or damages that may be sustained by other contractors, workers or their work because of any fault or negligence on Construction Manager's part and shall at its own expense repair or pay for such injury or damage. Any difference or conflict which may arise between the Construction Manager and other contractors, or between the Construction Manager and the workers of the City or any other entity, in regard to their work, shall be adjusted and determined by the Designer and the City. If the Work of the Construction Manager is delayed or damaged because of any acts or omissions of any other contractor or contractors, over which the Construction Manager has no control and which is not a result of the Construction Manager's acts or the acts of any of its employees, Subcontractor or suppliers, negligent or otherwise the City may, in its discretion, grant an extension of time.
- 8.28.2** When two or more contracts are being executed at one time in such manner that Work on one contract may interfere with that on another, the Designer and the City shall decide which contractor or Construction Manager shall cease Work and which shall continue, whether the Work on both contracts shall progress at the same time, and in what manner the Work is to proceed.
- 8.28.3** When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men/women, materials or appliances required for the execution of another contract, such privileges of access or any other responsible privilege may be granted by Designer and the City to the contractor or Construction Manager so desiring to the extent which may be reasonably necessary.
- 8.28.4** In the event that Construction Manager is performing Work at a site or on a project involving the City and one or more other private or governmental entities, which have their own contractors on site as well, Construction Manager shall advise Designer and the City when it anticipates there may be interference with the Construction Manager's Work or with the Work of any other contractor. Designer and the City shall, to the best of its ability, with input from Construction Manager as to coordination of the Work, seek to schedule Work of the various contractors so as to avoid as much inconvenience and delay as possible; provided, however, that in the event Construction Manager experiences a delay or damage to Construction Manager's Work as a result of the

presence of other such contractors, the City may, in its discretion, grant an extension of time and/or an adjustment in the GMP as may be appropriate for the circumstances.

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

8.30 Assignment and Subletting of Contract.

8.30.1 In case the Construction Manager assigns all, or any part, of the monies due or to become due under this Agreement, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Construction Manager shall be subject to all prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Agreement and that no money shall be paid assignee on behalf of the Construction Manager by the City until such time as the Construction Manager has discharged its obligations to the City under the Agreement. It is expressly understood and agreed that no assignment shall be effective as against the City unless it complies with the foregoing.

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

8.30.3 The Construction Manager shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Construction Manager by the terms of the Contract Documents insofar as applicable to the Work of the Subcontractor and to give the Construction Manager the same power to terminate any subcontract as the City has to terminate the Construction Manager under any provisions of the Contract Documents.

8.30.4 Prior to the City's approval of the GMP the Construction Manager shall submit to the City for acceptance a list of the names of all Subcontractors proposed for portions of the Work and shall designate which work each is to perform. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject Defective

Work, material or equipment not in conformance with the requirements of the Contract Documents.

- 8.30.5** The Construction Manager shall not make any substitution for any Subcontractor who has been accepted by the City unless the City determines that there is a good cause for doing so. The City's disapproval of any Subcontractor shall not, under any circumstance, be the basis for an increase in the GMP or a claim for delay damages.

8.31 Authority and Duty of the Designer. Unless the City acts as its own Designer, the Designer is an independent contractor. It is mutually agreed between the parties to the Agreement that the Designer shall observe and inspect all Work included herein (provided, however, that any such observations and inspections shall not alter the rights, responsibilities and obligations of the parties). Anything in the Contract Documents to the contrary notwithstanding, in order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties of this Agreement that the Designer shall in all cases determine the amount and quantities of the several kinds of Work which are to be paid for under this Agreement; that Designer shall determine all questions relating to the plans and Specifications for the Project; that Designer shall issue promptly any written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) which Designer may determine are necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents; that Designer's decisions and findings shall be a condition precedent to the right of the Construction Manager to submit any disputed matter and to any rights of the Construction Manager to receive any money under this Agreement; provided, however, that should the Designer render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Agreement, either party may file with the other, within twenty (20) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question so raised as herein provided. It is the intent of the Agreement that there shall be no delay in the execution of the Work, and the decisions or directions of the Designer as rendered shall be promptly carried out.

8.32 Liquidated Damages.

8.32.1 It is mutually understood and agreed by and between the parties to this Agreement that time is of the essence of this Agreement, and that in the event that the Construction Manager shall fail in the performance of the Work specified and required to be performed within the period of time stipulated therefore in the Agreement, after due allowance for any extension or extensions of time which may be granted under the Agreement, the said Construction Manager shall pay to the City, as stipulated liquidated damages and not as a penalty, the sum stipulated herein for each and every day that the Construction Manager shall be in default.

8.32.2 In the case of joint responsibility for any delay in the final completion of the Work covered by this Agreement, where two or more separate contracts are in force at the same time and cover Work on the same project and at the same site, the total amount of liquidated damages assessed against all contractors under such agreements, for any one day of delay in the final completion of the Work will not be greater than the approximate total of the damages sustained by the City by reason of such delay in completion of the Work as stipulated in the Agreement and the amount assessed against any one contractor for such one day of delay will be based upon the individual

responsibility of such contractor for the aforesaid delays as determined by, and in the judgment of, the City.

- 8.32.3** Construction Manager acknowledges that its failure to achieve Substantial Completion by the date stipulated in GMP Change Order No. 1 shall require the City to incur substantial additional costs and damages which may be difficult to calculate with specificity. Accordingly, the parties agree that they hereby agree to liquidate the City's damage for late completion to the amount stated in the Agreement, for each 24-hour calendar day, including weekends and holidays, the Work remains incomplete over the specified completion time, or such lesser amount as the City may agree to in the event that the City accepts partial occupancy of the Work.

8.33 Partial Occupancy or Use.

- 8.33.1** The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the City and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, security, maintenance, heat utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of Warranties required by the Contract Documents. When the Construction Manager considers a portion Substantially Complete, and the City desires to accept the use of that portion of the Work, the Construction Manager shall prepare and submit a list to the Designer and the City, per Section 7.3.1. Consent of the Construction Manager to partial occupancy or use shall not be unreasonably withheld, and the rate of liquidated damages for remaining Work shall be set. The stage of the progress of the Work shall be determined by written agreement between the City and Construction Manager or, if no such agreement is reached, through the disputes procedures of this Agreement.
- 8.33.2** Immediately prior to such partial occupancy or use, the City, Construction Manager, and Designer shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.
- 8.33.3** Unless otherwise agreed upon, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

8.34 Correction of Work.

- 8.34.1** Upon Designer and/or the City's request, Construction Manager shall, at Construction Manager's expense, promptly remove from the job site all labor, supplies, materials, equipment and/or other facilities condemned by Designer and the City as not in accordance with the Contract Documents, whether incorporated or not; and the Construction Manager shall, at Construction Manager's expense, promptly replace and re execute all labor, supplies, materials, equipment and/or other facilities in accordance therewith and, at Construction Manager's expense, restore all work of other contractors and Subcontractors destroyed or damaged as a result of such removal, replacement and re execution.

8.34.2 In addition to Construction Manager's obligations under Section 8.64 below, if, within two years after the date of Substantial Completion or other date established for commencement of warranties, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given Construction Manager a written acceptance of such condition. The City shall give such notice promptly after discovery of the condition. During the two-year period for correction of Work, if the City fails to notify Construction Manager and give Construction Manager a reasonable opportunity to make the correction(s), the City waives the right to require correction by Construction Manager and to make a claim against Construction Manager for breach of warranty. If Construction Manager fails to correct non-conforming Work within a reasonable time after receipt of notice, the City may correct it and Construction Manager shall be responsible for payment of the City's expenses.

8.34.3 The Construction Manager's obligation to correct Work under this Section of these General Conditions is not the limit of the Construction Manager's liability and shall not constitute a waiver of the City's rights under Section 8.64 nor elsewhere in the Contract nor as otherwise provided by law. Nothing herein shall limit the Construction Manager's liability under any applicable statute of limitations or any longer warranties required by the Contract.

8.34.4 Acceptance of Nonconforming Work. If the City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

8.35 Dispute Resolution.

8.35.1 The City and Construction Manager agree that disputes relative to the Work shall first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Construction Manager shall proceed with the Work as per the Contract Documents as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

8.35.2 Should the Construction Manager believe that it is entitled to any relief due to errors, omissions or defects in the Design Documents, or as a result of any act or omission of the Designer(s) in connection with the Project, the City shall cooperate with Construction Manager by permitting Construction Manager to pursue legal action against the Designer(s) in the name of the City at Construction Manager's sole risk and expense. The City shall pay to Construction Manager such sums as may be recovered from the Designer(s) on behalf of Construction Manager. Other than this duty of cooperation and remittance, the City shall have no liability or obligation to Construction Manager for any act, omission, negligence or breach of duty by the Designers.

8.36 Delays and Extensions of Time.

- 8.36.1** If Construction Manager shall be delayed at any time in the progress of the Work by events over which Construction Manager has no control, including the weather conditions which: (a) fall outside the parameters of Normal Weather Conditions; (b) adversely impact the critical path of the Work; and (c) cannot be reasonably avoided or mitigated through ordinary construction planning and operations, and which delay is not a result of Construction Manager's acts or the acts of any of its employees, Subcontractors or suppliers, negligent or otherwise, then the time of Substantial Completion shall be extended and/or adjusted for such reasonable time and the Designer and the City shall decide. Additionally, if Work on the Critical Path is delayed due to acts or omissions of the City or any separate contractor employed by the City, an equitable adjustment in compensation shall be made to the Agreement as the City may reasonably decide. No charge shall be made by Construction Manager for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Agreement, except as provided in this Section.
- 8.36.2** No such extension shall be made for delay unless Construction Manager provides written notice to Designer and the City of such delay, the reasons therefore, and the expected length of delay within two (2) working days of the commencement of such delay, to enable the City to take immediate action with respect to the cause of delay, if the City should decide to do so. In the case of a continuing cause of delay, only one claim is necessary.
- 8.36.3** In executing the Agreement, Construction Manager expressly covenants and agrees that, in undertaking to complete the Work within the time agreed in the GMP Change Order, it has taken into consideration and made allowances for all hindrances and delays incident to such Work, whether growing out of delays in securing materials, workers, and Normal Weather Conditions or otherwise. Additional time shall not be permitted for weather conditions that do not impact the Critical Path of the Work or for weather conditions impacting less than a full day of work.
- 8.36.4** The Construction Manager shall delay or suspend the progress of the Work or any part thereof, whenever it shall be so required by written order of the Designer or the City, and for such periods of time as the Designer or the City shall require; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the Work, or any part thereof, the time for completion of Work so suspended or of Work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the Designer or the City shall not otherwise modify or invalidate in any way, any of the provisions of this Agreement. In the event that the Work shall be stopped by order of the Designer or the City, through no fault of the Construction Manager, its employees, Subcontractors or suppliers, any expenses which, in the opinion and judgment of the Designer and the City, are caused thereby shall be paid by the City to the Construction Manager.

8.37 Remedies for Default by Construction Manager.

- 8.37.1** If Construction Manager fails or refuses to comply with any material term of this Agreement, then the City may, upon five days' written notice to Construction Manager and its surety, take such action as the City deems appropriate to either correct the defective Work, terminate this Agreement, or, in the City's sole discretion, permit Construction

Manager to demonstrate its ability to successfully complete the Work and continue performance.

8.37.2 If the City should elect to not terminate at the time, but, after notice to Construction Manager's surety, to take other action such as to delete items of Work from Construction Manager's scope of work, or arrange to complete or repair defective or incomplete Work with other forces, Construction Manager and its surety shall be liable to the City for all costs and damages incurred.

8.37.3 In the event that a petition in bankruptcy is either filed by Construction Manager or by creditors of Construction Manager, Construction Manager shall immediately upon written notice from the City provide documented evidence of its ability to continue performance under the terms of this Agreement. If Construction Manager is unable or unwilling to provide such evidence, Construction Manager shall immediately petition the Bankruptcy Court for an order rejecting the Agreement as an executory contract of the Debtor, and lifting the Automatic Stay imposed pursuant to 11 U.S.C. §362(a) to enable the City to terminate this Agreement and proceed to complete the Work.

8.37.4 In the event that the City should elect to terminate this Agreement due to default by Construction Manager, the City may, subject to any prior rights of Construction Manager's surety:

8.37.4.1 take possession of the site and all materials, equipment, tools and construction equipment and machinery thereon owned by Construction Manager;

8.37.4.2 accept assignment of subcontracts with Construction Manager's Subcontractors and suppliers as provided in Article 2, above; and

8.37.4.3 finish the Work by whatever reasonable method the City may deem expedient.

In the event that this Agreement shall be terminated under the terms of this Section, the insurance, indemnification, warranty and other obligations that continue after termination shall continue to apply.

8.37.5 In the event that the City terminates this Agreement for default by Construction Manager, no further payment shall be made to Construction Manager until the Work is completed, and an accounting can be made of all of the City's damages. If any funds remain due and owing to Construction Manager at that time, the City shall remit them to Construction Manager. If, however, the costs and expenses of the City exceed any remaining contract balance, Construction Manager or its surety shall pay the difference to the City within ten days of receipt of invoice.

8.37.6 Any termination of the Agreement for alleged default by Construction Manager that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

8.38 Termination of the Agreement for the Convenience of the City.

8.38.1 The City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of Construction Manager, and without waiving any other right or remedy of the City, to terminate this Agreement in whole or in part by providing

written notice of such termination to Construction Manager. Upon receipt of such notice from the City, Construction Manager shall: (a) immediately cease all Work; or (b) meet with the City and, subject to the City's approval, determine what Work shall be required of Construction Manager in order to bring the Work to a reasonable termination in accordance with the request of the City.

8.38.2 If the City shall terminate this Agreement for its convenience, in whole or in part, as herein provided, the City shall: (a) compensate Construction Manager for all purchased materials and actual Cost of Work satisfactorily completed to date of termination, and Construction Manager's fee, all as a percentage of the GMP equivalent to the percentage of completion of the Scope of Work as of the date of Notice of Termination, and documented unavoidable expenses of termination such as re-stocking charges; (b) take possession of any uninstalled equipment or materials; (c) have the right to assume Construction Manager's rights in any subcontracts or purchase orders; and (d) release and indemnify the City against any liability Construction Manager may have to any third parties as the result of any contracts, commitments, purchase orders or any other such liabilities Construction Manager may have incurred as a result of its obligations under the provisions of this Agreement which occur after the date of termination. The Construction Manager agrees that it shall minimize such potential liabilities by, where practical, informing third parties of the City's right to terminate and attempting to obtain from such third parties a waiver of any liability in the event of such termination.

8.38.3 In the event that this Agreement shall be terminated under the terms of this Section, the insurance, indemnification, warranty and other obligations that continue after termination shall continue to apply.

8.38.4 Any termination of the Agreement for alleged default by Construction Manager that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

8.39 Waiver of Consequential Damages and Anticipatory Profit. Construction Manager hereby waives any claim against the City for consequential damages arising out of or relating to this Agreement or the Work, or profit on Work not performed for any reason. This waiver includes damages incurred for principal office expenses including compensation of personnel stationed there, loss of financing, business and reputation, and loss of profit.

8.40 Ownership and Use of Design and Design Documents. The design and design documents, and all statutory, common law and other rights, including copyright, in the intellectual property of that design are governed by agreements between the City and its design professionals, and Construction Manager shall assert no claim or interest in them.

8.41 Use of Premises.

8.41.1 Construction Manager shall confine its operations to limits indicated by Applicable Laws of the City and directions of Designer or the City and shall not unreasonably encumber the premises and/or site.

- 8.41.2** Construction Manager shall not load or permit any part of any structure, streets or highways to be loaded with a weight that exceeds load limits that will endanger their safety.
- 8.41.3** Construction Manager shall comply with Applicable Laws, as well as any specific instructions regarding signs, advertisements, fires, and smoking from Designer and the City.
- 8.41.4** A laydown area or staging area will be provided at the site and shall be chosen by Designer and the City. Construction Manager shall furnish its own weather protection if required.
- 8.41.5** No City equipment will be taken out of service or put into service without approval of the City.
- 8.43** **Allowances.** Construction Manager agrees that the GMP includes all allowances required by the Contract Documents. Construction Manager agrees that the GMP includes all other sums for expenses and overhead and fee on account of allowances as it deems proper. No demand for expenses or overhead and fee other than those included in the GMP shall be allowed.
- 8.44** **Cutting, Patching, and Digging.** Construction Manager shall do all cutting, fitting, or patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by Work of others shown upon or reasonably implied by the Contract Documents. Construction Manager shall not endanger any property of the City or any other individual or entity, or the Work by cutting, digging, or otherwise and shall not cut or alter the Work of others except with the written consent of the City. Construction Manager shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by the Work under this Contract. Construction Manager shall comply with all Applicable Laws dealing with cutting, patching, and digging and shall obtain all necessary permits.
- 8.45** **Cleaning Up.** Construction Manager shall at all times keep the premises/site free from accumulations of waste material or rubbish caused by its employees or Work; and at the completion of the daily Work it shall remove all its rubbish from and about the premises/site and all its tools, scaffolding, and surplus materials, and shall leave its Work "broom clean" or its equivalent unless more exactly specified. In case of dispute, the City may remove the rubbish and charge the cost to Construction Manager.
- 8.46** **Temporary Facilities.**
- 8.46.1** Except where special permission has been granted by the City to use existing toilet facilities belonging to the City, Construction Manager shall provide and maintain sanitary temporary toilet facilities located where directed by Designer for accommodation of all persons engaged on the Work. Temporary toilets shall be enclosed and weatherproof and kept in sanitary and approved condition at all times. After use for same has ceased, Construction Manager shall remove the temporary toilet facilities from the City's premises and disinfect and fill any vaults. All temporary toilet facilities shall comply with this Section.

- 8.46.2** Construction Manager shall provide and maintain any necessary temporary offices, storerooms, roadways, etc., as may be required for the Work. Same shall be located and constructed in an approved manner acceptable to Designer. Upon completion of Work or when requested by Designer, Construction Manager shall remove same from the City's premises and leave the area in a clean and orderly condition.
- 8.46.3** Construction Manager shall provide and maintain temporary heat as required to protect all Work and material against injury from dampness and/or cold to the satisfaction of Designer.
- 8.46.4** Unless otherwise specified in the Contract Documents, Construction Manager shall provide, at its cost and expense, temporary power, wiring and lights from the City's provided source as may be required for its operations.
- 8.47 Sanitary Regulations and Water.** The operations of the Construction Manager shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Construction Manager shall supply safe and sufficient drinking water to all of its employees. The Construction Manager shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious diseases and the spread of same. All water used in the course of the Work shall be hauled in or purchased from the local water company's distribution system at the Construction Manager's own cost and expense.
- 8.48 Unfavorable Construction Conditions.** During unfavorable weather, or other unfavorable conditions for construction operations, the Construction Manager shall pursue only such portions of the Work as will not be damaged thereby. No portions of the Work, the satisfactory quality or efficiency of which will be affected by any unfavorable conditions, shall be constructed while these conditions exist, unless, by special means or precautions approved by the Designer, the Construction Manager shall be able to perform the Work in a proper and satisfactory manner. Construction Manager shall notify the City immediately in such events, to give the City the maximum opportunity to authorize extra expenditures for steps that might avoid delay, but the City shall have absolutely no obligation to incur such obligations.
- 8.49 Safety Precautions and Programs.** The Construction Manager shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Agreement. This shall include full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith.
- 8.50 Safety of Persons and Property.**
- 8.50.1** The Construction Manager shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:
- 8.50.1.1** employees on the Work and other persons who may be affected thereby;

- 8.50.1.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Construction Manager or the Construction Manager's Subcontractors or sub-subcontractors; and
- 8.50.1.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.
- 8.50.2** Construction Manager shall comply with any and all instructions from the Designer regarding prevention of accidents, fires, or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other later revisions) "Standard for Safeguarding Building Construction and Demolition Operations".
- 8.50.3** The Construction Manager shall give notices and comply with Applicable Laws and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 8.50.4** The Construction Manager shall give reasonable notice to the affected owner or owners when any such property is liable to injury or damage through the performance of the Work and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property and/or utilities.
- 8.50.5** The Construction Manager shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and Construction Manager will be held responsible for all accidents to persons or property resulting from the acts of Construction Manager or its employees
- 8.50.6** Construction Manager shall satisfactorily shore, support, and protect any and all structures and all pipes, sewers, drains, conduits, and other facilities and shall be responsible for any damages resulting thereto. Construction Manager shall not be entitled to any additional time on account of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work, whether they are shown on the Plans or not, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- 8.50.7** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

- 8.50.8** The Construction Manager shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or part by the Construction Manager, a Subcontractor, a sub- subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable for and for which the Construction Manager is responsible, except damage or loss attributable to acts or omissions of the City or Designer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to the Construction Manager's obligations of indemnification.
- 8.50.9** The Construction Manager shall designate a responsible member of the Construction Manager's organization at the site whose duty shall be the prevention of accidents. This person shall be the Construction Manager's superintendent unless otherwise designated by the Construction Manager in writing to the City and Designer.
- 8.50.10** The Construction Manager shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

8.51 Safety Program.

- 8.51.1** Construction Manager is expected to establish and enforce a comprehensive safety program on this Project for the protection of its personnel, its Subcontractors' personnel, the City's employees and all other persons exposed to hazards resulting from Construction Manager's operations. As a minimum requirement, Construction Manager shall review and discuss the details of its program with Designer and the City at the first project meeting. The items to be covered shall include, but not necessarily be limited to:
- a. Personal protective equipment;
 - b. First aid personnel and facilities;
 - c. Arrangements for medical attention;
 - d. Sanitary facilities;
 - e. Fire protection;
 - f. Signs, signals and barricades;
 - g. Security regulations;
 - h. Safety inspections;
 - i. Designation of persons responsible for the program;
 - j. Reporting forms and procedures;
 - k. Material handling and storage;
 - l. Lines of communication;
 - m. Determination of potential hazards;
 - n. Personnel safety meetings and education;
 - o. Access to work areas;
 - p. Subcontractors involvement in the program;
 - q. Inspections and corrective action.

- 8.51.2** Construction Manager is fully responsible for the safety program and any and all methods and procedures provided for therein whether or not the City or Designer shall have reviewed and/or accepted such program.

8.52 Handling of Emergencies, Emergency Plan.

- 8.52.2** In an emergency affecting the safety of life, the Work, the City's property or of adjoining property, Construction Manager, without special instruction or authorization from the City, is hereby permitted to act, at its discretion, to prevent such threatened injury or loss. Any compensation claimed by Construction Manager on account of emergency Work shall be determined by mutual agreement of the City and Construction Manager.
- 8.52.3** Construction Manager shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc., which shall be in compliance with all Applicable Laws. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed Work, buildings, equipment, and the position of cranes. Construction Manager shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not the City shall have reviewed said plan.

8.53 Weekends, Holiday, and Night Work.

- 8.53.2** No Work shall be done between the hours of 6:00 p.m. and 8:00 a.m., or on weekends or the City designated holidays, without the written approval or permission of the City, forty-eight (48) hours in advance in each case, except such Work as may be necessary for the proper care, maintenance and protection of Work already done or of equipment, or in the case of an emergency.
- 8.53.3** Night Work may be established by the Construction Manager, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City.

8.54 Approval of Equals.

- 8.54.1** Approved equals, where permitted by the Contract Documents or otherwise made feasible by market conditions, shall be approved as follows:
- 8.54.2.1** Construction Manager shall notify the City in writing if it elects to use an approved equal specifically named in the Contract Documents.
- 8.54.2.2** If Construction Manager desires to use an "equal" not specifically named in the Contract Documents, it must first inform the City and receive written approval for such substitutions. The City has no obligation to approve such request and is not responsible for any delay or cost incurred caused by Construction Manager's making such request.
- 8.54.3** The Construction Manager shall be solely responsible for design risks, delays and other claims arising out of any approved alternates.

8.55 Test of Materials Offered by Construction Manager. All specified and required tests for approval of material shall be made at the expense of the Construction Manager by a properly equipped laboratory of established reputation, whose work and testing facilities shall be approved by the Designer and the City. Approval of materials based on acceptable tests will apply only while such materials as furnished equal or exceed the tested samples or test specimens in quality and minimum requirements. Any change in origin, method of preparation or manufacture of such materials will require new tests and approval thereof. Reports of all tests shall be furnished to the Designer and the City in as many certified counterparts as may be required by the Designer or the City.

8.56 Testing of Completed Work. Before final acceptance, all installed and constructed equipment, devices and other Work which is to be tested under the Contract Documents shall be tested and each part shall be in good condition and working order or shall be placed in such condition and order at the expense of the Construction Manager. All tests of such completed Work required under this Agreement shall be made under the direction of the Designer and the City.

8.57 Borrow and Waste Areas.

8.57.1 All borrow materials shall be obtained by the Construction Manager at its own cost and expense. The borrow area and materials shall be approved by the Designer and shall be friable material suitable for compaction.

8.57.2 All waste areas shall be located off the site and arrangements and payment for use of such areas shall be the sole responsibility of the Construction Manager. All waste disposal shall be in compliance with Applicable Laws. Unless specifically stated in the Contract Documents, the City makes no representation as to the availability, feasibility, cost or restrictions on locations for borrow or disposal of materials.

8.58 Street Signs and Traffic Aids. The Construction Manager shall be responsible for all preexisting traffic control devices at the Project site, including installation, maintenance, removal, and storage of such devices. All temporary and permanent traffic control devices supplied by the Construction Manager shall comply with and be installed in accordance with the Manual and Uniform Traffic Control Devices, current edition as revised, and the Traffic Control Devices Handbook.

8.59 Federal Lobbying Activities.

8.59.1 31 USCS Section 1352 (the "Code") requires all subgrantees, contractors, subcontractors, and consultants/designers who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.

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

8.59.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the Construction Manager to

obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

- 8.60 Titles, Subheads, and Capitalization.** Titles and subheadings as used herein and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provisions of the Contract Documents. Some terms are capitalized throughout the Contract Documents, but the use of or failure to use capitals shall have no legal bearing on the interpretation of such items.
- 8.61 Severability.** If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to Applicable Laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, except a provision going to the basic consideration to the City for entering the Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.
- 8.62 Taxes.** It is the intent of the City to supply Construction Manager with a Project Exemption Certificate for use in purchasing materials and supplies used on the Contract. Construction Manager shall, in preparing its GMP Proposal, omit from its computed costs all sales and compensation taxes. Upon issuance of a Kansas tax exemption number, two (2) copies of the Project Exemption Certificate (Form PR-74a) will be forwarded to Construction Manager. Upon completion of the Project, the City will provide the State of Kansas with the Contract completion date and the State will issue a Project Completion Certification (Form DO-77). This will be forwarded to Construction Manager who must sign and return it to the City. All invoices must be retained by Construction Manager for a period of five (5) years and are subject to audit by the Kansas Department of Revenue. Final payment will not be made to the Construction Manager until the City has received the Project Completion Certification from the Contractor along with a Consent of Surety Company to Final Payment.
- 8.63 Governing Law.** It is the intent of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be constructed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted. The Construction Manager agrees to abide by all Applicable Laws and to furnish any certification required by any federal, state, or local government agency in connection with same.
- 8.64 Venue.** Venue of any litigation arising in connection with this Agreement shall be the District Court of Johnson County, Kansas.
- 8.65 Warranty.**
- 8.65.1** The Construction Manager shall provide a two (2) year correction period (unless failure is due to normal wear and tear or misuse by owner); this correction period shall not limit any warranties (including manufacturer warranties) as required by the

Contract Documents or limit the City's Owner's legal rights or remedies under this Contract or State Law.

- 8.65.2** Construction Manager shall assign to the City all manufacturers' and vendors' and subcontractors' warranties that may be called for by the Contract Documents.

- 8.66** **Access to Work.** Construction Manager shall provide the City and Designer access to the Work in preparation and progress wherever located.

- 8.67** **Professional Services.** The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager needs to provide such services in order to carry out the Construction Manager's responsibilities for construction means, methods, techniques, sequences, and procedures. The Construction Manager shall not be required to provide professional services in violation of Applicable Law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Construction Manager by the Contract Documents, the City and the Designer will specify all performance and design criteria that such services must satisfy. The Construction Manager shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all Drawings, calculations, Specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professionals written approval when submitted to the Designer. The City and the Designer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications or approvals performed by such design professionals, provided the City and Designer have specified to the Construction Manager all performance and design criteria that such services must satisfy. The Designer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

8.68 **Environmental Matters.**

- 8.68.1** **Environmental Definitions.** As used in this Agreement, the terms defined in the General Provisions hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

8.68.1.1 **"Environmental Claim"** means any investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement (hereinafter defined), against the City, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material (hereinafter defined) or any Environmental Requirement.

8.68.1.2 **"Environmental Law"** means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing,

which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks), and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

8.68.1.3 "Environmental Requirement" means any Environmental Law (hereinafter defined), agreement or restriction (including but not limited to any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks.

8.68.1.4 "Hazardous Material" means any substance, whether solid, liquid or gaseous: which is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or which is or contains asbestos, lead-based paint, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; in each of the foregoing cases such that the substance is present at a concentration or quantity above applicable standards pursuant to Environmental Law.

8.68.2 Environmental Compliance. The Construction Manager is responsible to ensure that the design developed and the construction performed by the Construction Manager or by subcontractors or agents of Construction Manager are in accordance with applicable Environmental Laws and Environmental Requirements. The Construction Manager will document compliance with applicable Environmental Laws and Environmental Requirements and provide such documentation to the City. This obligation includes identifying all Environmental Laws and Environmental Requirements and the presence of Hazardous Materials. This includes but is not limited to conducting appropriate inquiries, including environmental assessments and surveys to identify Hazardous Materials that may be encountered or disturbed or encountered as a part of conducting the Work.

8.68.3 Notice to the City/Stop Work.

8.68.3.1 If, despite best efforts to comply with 8.67.2, those efforts will be inadequate to prevent foreseeable bodily injury to persons as a result of the presence of Hazardous Materials or an imminent threat or actual release of Hazardous Material(s) as a part of the Work, the Construction Manager shall upon recognizing the condition immediately stop work in the affected area and report the condition to the City.

8.68.3.2 If (a) the condition was attributable to the presence of Hazardous Material(s) which Construction Manager did not cause to be introduced or rendered dangerous in the course of its design or construction, or (b) the Construction Manager could not have anticipated through reasonable due diligence, then the City shall obtain the services of a licensed laboratory to verify the presence or

absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

8.68.3.3 If the condition meets either criterion of Section 8.67.3.2, and unless otherwise required by the Contract Documents, the City shall furnish in writing to the Construction Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such Hazardous Materials(s) or who are to perform the task of removal or safe containment of same. The Construction Manager will promptly reply to the City in writing stating whether or not either has reasonable objection to the persons or entities proposed by the City. If the Construction Manager has an objection to a person or entity proposed by the City, the City shall propose another to whom the Construction Manager has no reasonable objection. When the Hazardous Materials(s) has been rendered harmless, Work in the affected area shall resume upon written agreement of the City and the Construction Manager. The contract time shall be extended appropriately and the GMP shall be increased in the amount of the Construction Manager's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Section 5.5, herein.

8.68.3.4 If the condition described in the 8.67.3.1 does not meet either criteria described in 8.67.3.2, then Construction Manager shall undertake and pay for all of the steps described in 8.67.3.3, and the City shall have the rights of Construction Manager set forth in 8.67.3.3.

8.68.4 Environmental Indemnity. The Construction Manager will release, indemnify, defend, and hold harmless the City, and its directors, officers, employees, agents and other representatives from and against any and all actions, Environmental Claims, causes of action, costs, demands, damages, expenses, fines, penalties, liabilities, losses, obligations (Losses) arising out of the Construction Manager 's (including their employees, contractors and agents) breach of Sections 8.67.1-3 or arising out of any negligent act or omission of Construction Manager (including their employees, contractors and agents) that causes any threatened or actual release of Hazardous Materials resulting in contamination of or adverse effects on, the environment.

8.68.5 Conflict. If there is a conflict between this provision and other provisions of this Agreement, the provisions herein shall govern.

8.69 Order of Precedence. If any conflict exists between the provisions of these General Conditions and any other provision of this Agreement, the provision setting the highest standard shall govern.

8.70 Cash Basis. The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City's current budget year. In the event the City does not so budget and appropriate the funds, the parties acknowledge and agree that they shall be relieved from all obligations, without penalty, under this Agreement.

- 8.71 **Kansas Open Records Act.** Design-Builder acknowledges that the City is subject to K.S.A 45-215, *et seq*, the Kansas Open Records Act (KORA), and that any duty of confidentiality or disclosure shall be subject to the City's obligations under KORA or any other provision of law.

Construction Manager at Risk Services

Roeland Park Public Works Renovation | 1800 Merriam Lane, Kansas City, KS

Exhibit B

Construction Manager's Fee Proposal

Agreement Between City of Roeland Park, Kansas and Construction Manager Article II.1

For the **Preconstruction Phase Services** described in Section 2.1 of the General Conditions, the Construction Manager's compensation shall be calculated as follows:

Lump sum of Twenty Thousand Dollars (\$) payable upon execution of GMP Change Order No. 1.

Agreement Between City of Roeland Park, Kansas and Construction Manager Article II.2

For the Construction Manager's performance of the Work as described in Article 2 of the General Conditions, excluding Section 2.1 of the General Conditions which is addressed above, the City shall pay the Construction Manager in current funds the amount stated in the Agreement.

Construction Manager's Fee shall be 3.0 % of the total Cost of Work and will be included within the GMP. Construction Manager's Fee shall not be reduced on account of savings returned to the City

Construction Manager's Fee of 3.0 % shall apply to any increases in the GMP mutually agreed to by the Parties.

General Conditions

A fixed amount of One Hundred Thirty Thousand dollars (\$ 130,000*)



Signature

Archie Smith V / President

Printed Name / Title

01/30/2023

Date

* A General Conditions allowance shall be included within the GMP for \$ 8100 for potential additional GC and/or Preconstruction costs incurred for the project.

EXHIBIT D

**AFFIDAVIT OF PARTIAL PAYMENT AND
CONDITIONAL RELEASE AND WAIVER OF CLAIMS**

To: The City of Roeland Park, Kansas, the owner of the real estate (the "Property") identified below and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property": _____

Description of the "Project": _____

The undersigned hereby applies for payment, certifies and waives and releases all claims of entitlement to compensation for work performed through the last date covered by the accompanying request for payment, except as noted below.

Payment Request Amount: \$ _____

Date of last work covered by payment request: _____

Certificate

The undersigned, contingent upon the issuance, final clearance and payment of a valuable consideration of the sum stated above, and being familiar with the penalties for false certification, does hereby certify to the Beneficiaries that:

1. The amount requested for labor performed and equipment and material supplied on this Project or in connection with the Property reference above, represent the actual value of work accomplished under the terms of the undersigned's agreement and all authorized changes thereto concerning work to be performed on the Property (hereinafter the "Contract").

2. No labor, equipment or materials have been supplied by the undersigned to the Project which have not been included in the applications for payment submitted to date, under any agreement, verbal or written, or any arrangements of any type whatsoever, except as specifically noted here:

3. Payment in full, less retainage and other claims documented as required by the Contract (if any), has been made by the undersigned through the period covered by all prior payments (a) to all of the undersigned's subcontractors, equipment providers, materialmen and laborers, and (b) for all materials and labor used or furnished by the undersigned in connection with the performance of the Contract. The undersigned represents and warrants that it owes no monies or other things of value to any subcontractor, materialman, person or entity for work performed or material supplied through the date of the most recent payment by the City, except as identified below:

4. The undersigned has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Fringe Benefits owed pursuant to collective bargaining agreements, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the contract. Specifically, the undersigned has paid, or out of the proceeds of this payment will promptly pay, all sales or use tax due and owing.

5. The undersigned acknowledges and agrees that it is receiving the funds paid in consideration of this Application as a trustee, and said funds will be: held in trust for the benefit of all subcontractors, materialmen, suppliers and laborers who supplied work for which the Beneficiaries or their property might be liable, and that the undersigned shall have no interest in such funds until all these obligations have been satisfied in full.

Partial Release of Claims

NOW, THEREFORE, contingent upon the issuance, final clearance and payment of \$_____, the undersigned irrevocably and unconditionally releases and waives any and all right to claim against the City, except as pertains to unpaid retainage, identified pending change orders and claims, documented as required by the Contract, through the date of last work covered by the payment application stated above. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with the materials, labor, and everything else in connection with this Contract for which payment has been made.

Dated _____, 20__.

CONTRACTOR:

By: _____
Name: _____
Title: _____

State of _____)
County of _____)

On this ____ day of _____, 20__, before me, the undersigned, personally appeared _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public in and for said County and State

Commission Expires

EXHIBIT E
BILL OF SALE

SELLER: _____

In consideration of payments made by the City of Roeland Park, Kansas (the "City"), referenced in the agreement dated _____, 20____, receipt of which is hereby acknowledged, Seller declares and certifies that it now possesses, and does hereby grant, sell, transfer and deliver to the City all right, title and interest in the following goods:

The City shall have all right and title to the goods in itself and successors and assigns forever and Seller, on behalf of itself, its successors and assigns, will warrant and defend the title to said goods and chattels hereby sold unto the City, its successors and assigns, forever, against the lawful claims and demands of all persons. It is expressly understood and agreed that the acceptance of the goods described herein is not a waiver of any right of action that the City may have for breach of warranty or any other cause under the agreement referenced above or at law.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale the ____ day of _____, 20____.

SELLER:

By: _____
Name: _____
Title: _____

Subscribed and sworn to before me this __ day of _____, 20____.

Notary Public in and for said County and State

My commission expires:

EXHIBIT F

BAILMENT AGREEMENT

BAILOR: _____

BAILEE:
Contractor/Subcontractor/Supplier

LOCATION OF STORAGE:

The goods and materials described below are held and stored at the above referenced location pursuant to the Contract by and between Bailee, as Contractor/Subcontractor/Supplier, and the City of Roeland Park, Kansas, for Work to be performed at

In consideration of payment made to the undersigned Bailee, the receipt and sufficiency of which are admitted, the Bailee agrees:

1. To keep said goods and materials at the above-mentioned address, separate and apart from all other goods and identified as subject to this bailment,
2. To keep said goods and materials fully insured against all risk of physical loss or damage,
3. To keep said goods protected from the weather, commingling, vandalism and/or diversion from said Project, and
4. To deliver said goods and materials to the Project site in conjunction with the performance of Bailee's Contract referenced above or upon the direction of Bailor and no other. The Bailee acknowledges that it has no ownership rights or title in, nor shall claim any lien upon, said goods and materials.

QUANTITY	DESCRIPTION OF ITEMS
----------	----------------------

Received and Acknowledged:

BAILEE:

By: _____

Name: _____

Title: _____

EXHIBIT G

**AFFIDAVIT OF FINAL PAYMENT AND
CONDITIONAL WAIVER AND RELEASE OF CLAIMS**

To: The City of Roeland Park, Kansas, the Owner of the real estate (the "Property") identified below, any Lender(s) having any loans secured by the Property, and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property": _____

Description of the "Project": _____

The undersigned hereby applies for payment, certifies and waives and releases all claims of entitlement to compensation for work performed, except as noted below.

Payment Request Amount: \$ _____

Certificate

The undersigned, contingent upon the issuance, final clearance and payment of a valuable consideration of the amount stated above, and being familiar with the penalties for false certification, does hereby certify to the Beneficiaries that:

1. The amount requested for labor performed and equipment and material supplied on this Project or in connection with the Property reference above, represent the actual value of work accomplished under the terms of the undersigned's agreement and all authorized changes thereto concerning work to be performed on the Property (hereinafter the "Contract").

2. No labor, equipment or materials have been supplied by the undersigned to the Project which have not been included in the applications for payment submitted to date, under any agreement, verbal or written, or any arrangements of any type whatsoever, except as specifically noted here:

3. Payment in full has been made, or with the funds requested hereby will be made, by the undersigned (a) to all of the undersigned's subcontractors, equipment providers, materialmen and laborers, and (b) for all materials and labor used or furnished by the undersigned in connection with the performance of the Contract. The undersigned represents and warrants that it owes no monies or other things of value to any subcontractor, materialman, person or entity for work performed or material supplied through the date of the most recent payment by Owner, and that the payments that have been or will be made out of this final payment to such persons or firms will fully and completely compensate them for all work in connection with the Project.

4. The undersigned has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Fringe Benefits owed pursuant to collective bargaining agreements, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the contract.

5. The undersigned acknowledges and agrees that it is receiving the funds paid in consideration of this Application as a trustee, and said funds will be held in trust for the benefit of all subcontractors, materialmen, suppliers and laborers who supplied work for which the Beneficiaries or their property might be liable, and that the undersigned shall have no interest in such funds until all these obligations have been satisfied in full.

Final Waiver and Release of Claims

NOW, THEREFORE, the undersigned, contingent upon the issuance, final clearance and payment of \$_____, which the undersigned irrevocably and unconditionally releases and waives any and all claims against the City, or any other claims of any kind whatsoever in connection with this Contract and with the Property. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with the materials, labor, and everything else in connection with this Contract.

Dated _____, 20__.

CONTRACTOR:

By: _____
Name: _____
Title: _____

State of _____)
County of _____)

On this ____ day of _____, 20__, before me, the undersigned, personally appeared _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public in and for said County and State

Commission Expires

EXHIBIT H
INSURANCE REQUIREMENTS

INSURANCE:

a. **General –**

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

Bidders are referred to paragraph GC-36. of the General Conditions for additional insurance information.

b. **Notice of Claim Reduction of Policy Limits –**

The Contractor, upon receipt of notice if any claim in connection with the Contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Contractor shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) in excess of \$10,000.00, whether or not such impairment came about as a result of this Contract.

In the event the City shall determine the Contractor's aggregate limits of protection shall have been impaired or reduced to such an extent that the City shall determine such limits inadequate for the balance of the project, the Contractor shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

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MINIMUM REQUIREMENTS

COMMERCIAL GENERAL LIABILITY POLICY

Limits –

General Aggregate: \$1,000, 000

Products/ Completed Operations Aggregate: \$1,000, 000

Personal & Advertising Injury: \$1,000, 000

Each Occurrence: \$1,000, 000

Policy MUST include the following conditions:

- a) Explosion, Collapse & Underground
- b) Independent Contractors
- c) Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- d) Name City of Roeland Park and Engineer/Architect “Additional Insured”**

AND

UMBRELLA/EXCESS LIABILITY

Limits –

Each occurrence:..... \$1,000, 000

General Aggregate: \$1,000, 000

The Umbrella/Excess Liability must be at least as broad as the underlying policy.

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c) Automobile Liability –

Policy shall protect the Contractor against claims of bodily injury and/or property damage arising from the ownership or any use of any owned, hired and and/or non-owned vehicle and must include protection for either:

Any Auto

or

All Owned Autos
Hired Autos; and
Non-Owned Autos

Limits –

Combined Single Limits

Bodily Injury and Property Damage – Each Accident

Same as General Liability

NAME CITY OF ROELAND PARK AND ENGINEER/ARCHITECT AS “ADDITIONAL INSURED”

e) Worker’s Compensation –

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

Workers’ Compensation: Statutory

Employer’s Liability:

Bodily Injury by Accident \$100, 000 each accident
Bodily Injury by Disease \$500, 000 policy limit
Bodily Injury by Disease \$100, 000 each employee

f) Owner’s Protective Liability –

The Contractor shall take out, pay for and deliver to the City, an Owner’s Protective Liability insurance policy written on an occurrence basis and naming the City and Larkin Lamp Rynearson as named insured. The policy shall be maintained during the life of this Contract. Limits of protection shall be at least \$1,000,000 Combined Single Limits, Bodily Injury and Property Damage, and shall contain no exclusion relative to any function performed by the City or its employees and agents in connection with the Project.

g) Industry Ratings –

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

- 1) Is licensed to do business in the State of Kansas;
- 2) Carries a Best's policy holder rating of A or better; and
- 3) Carries at least a Class X financial rating.
- 4) Is a company mutually agreed upon by the City and the Contractor.

h) Subcontractors' Insurance –

If a part of the Contract is to be sublet, the Contractor shall cover all subcontractors in its insurance policy to the fullest extent permitted by applicable Kansas law. Contractor shall indemnify and hold harmless the City and Larkin Lamp Rynearson as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors, to the fullest extent permitted by applicable Kansas law.

i) Approval of Insurance –

The Contractor may not begin work of any nature until all insurance requirements are met and approved by the City Attorney. The City Attorney will require one of the following statements to appear in the Special Provisions box of the Certificate of Insurance before the insurance is approved:

"To the fullest extent permitted by applicable Kansas law, the general liability policy specifically insures the contractual liability assumed by the Contractor under paragraph GC-31."

OR

"To the fullest extent permitted by applicable Kansas law, the general liability policy has been endorsed to specifically insure the contractual liability assumed by the Contractor under paragraph GC-31."

The City Attorney will also require evidence that the policies provide, or have been endorsed to provide, that should any of the described policies be cancelled or materially changed before the expiration date thereof, the issuing insurer will mail 30-days advance written notice to the City.

Builder's Risk Property Insurance. (submitted with GMP Change Order No. 1)

- a) Unless otherwise provided in the Contract Documents, Construction Manager shall procure and maintain property insurance from insurance companies authorized to do business in the State of Kansas upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Construction Manager shall include the City as a "loss payee" and the Construction Manager, Design Consultants, Subcontractors and sub-subcontractors as additional

insureds, and shall insure against the risk of direct physical loss including but not limited to fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Construction Manager's Application for Payment and approved by the City. All deductibles are the responsibility of the Construction Manager.

- b) Unless the Contract Documents provide otherwise, Construction Manager shall procure and maintain boiler and machinery insurance that will include the interests of the City, Construction Manager, Design Consultants, Subcontractors and sub-subcontractors.
- c) Any loss covered under Construction Manager's property insurance shall be adjusted with the City and Construction Manager and made payable to both of them as trustees for the insured's as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with the Disputes Resolution Section of the Agreement.
- d) Minimum Requirements. The insurance specified herein is the minimum requirement. In the event Construction Manager or any subcontractor has or obtains insurance coverage in amounts in excess of those required herein, such additional insurance coverage shall also inure to the benefit of the City.

Construction Manager shall not be permitted to commence any work on site until satisfactory copies of the Certificates evidencing insurance written on a form acceptable to the City; Notice of Cancellation Endorsement; and Additional Insured Endorsement, have all been received and approved by City. Delay in commencement due to failure to provide such documentation shall constitute an unexcused delay.

EXHIBIT I

CITY OF ROELAND PARK, KANSAS

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____, of _____
_____ as principal, hereinafter referred to as the "Contractor," and _____
_____, a corporation organized under the laws of the
State of _____ and authorized to transact business in the State of Kansas, as surety, are
held and firmly bound unto the City of Roeland Park, Kansas, hereinafter referred to as "City," in the penal
sum of _____ Dollars
(\$ _____), lawful money of the United States of America, for the payment of which sum
well and truly to be made we bind ourselves, and our heirs, executors, administrators, successors and
assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor, has on the ____ day of _____, 20_____, executed
a written Agreement with the aforesaid City for furnishing in a good, substantial and workmanlike manner
all construction, labor, materials, equipment, tools, transportation, superintendence and other facilities
and accessories for **ROELAND PARK PUBLIC WORKS FACILITY**, designated, defined and described in the
Agreement and in accordance with the Contract Documents to include the General Conditions, Special
Conditions, Specifications, Plans and other Contract Documents therefor; a copy of the Agreement being
attached hereto and made a part hereof.

NOW, THEREFORE, if said Contractor shall in all particulars promptly and faithfully perform each and every
covenant, condition, and part of the Agreement, and the General Conditions, Special Conditions,
Specifications, Plans and other Contract Documents thereto attached or by reference made a part thereof,
according to the true intent and meaning in each case, upon written acceptance by the City of the
improvement herein described in substantial compliance with the Contract Documents and upon the
effective date of the Maintenance Bond for the improvement then this obligation shall be and become null
and void.

PROVIDED, that said Surety, for value received, hereby stipulates and agrees that no change, extension of
time, alteration or addition to the terms of the Agreement or the Work to be performed thereunder or the
General Conditions, Special Conditions, Specifications, Plans and other Contract Documents accompanying
same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change,
extension of time, alteration or addition to the terms of the Agreement or to the Work or to the
Specifications, Plans and other Contract Documents.

PROVIDED, FURTHER, that it is expressly agreed that the bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Agreement not increasing the contract price more than 50 percent, so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement so amended. The term "amendment," wherever used in this bond, and whether referring to this bond or the Agreement, shall include any alteration, addition, extension, or modification of any character whatsoever.

Whenever Contractor is declared by City to be in default under the Contract Documents, the Surety may promptly remedy the default or shall within fourteen (14) days from the date of notice from the City:

1. Commence completing the Work of the Agreement in accordance with its terms and conditions. However, Surety may not use the defaulting Contractor, or any legal reformation of the defaulting Contractor, to complete the Work and the Surety may not use any of the subcontractors of the defaulting Contractor to complete the Work without the written consent of the City; or
2. Commence the process of obtaining a bid or bids for completing the Work of the Agreement in accordance with its terms and conditions, and upon determination by the City and the surety jointly of the lowest and best responsive, responsible bidder, arrange for an Agreement between such bidder and the City, and make available as work progresses sufficient funds to pay the cost of completion less the balance of the Contract Price, including other costs and damages for which the surety may be liable hereunder, which sum shall not exceed the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by City to Contractor under the Agreement and any amendments thereto, less the amount properly paid by City to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the City or successors of the City.

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IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at _____, _____ on this, the _____ day of _____, 20____.

Contractor/Principal

ATTEST:

By _____(SEAL)

Secretary

Title

Surety Company

By _____(SEAL)
Attorney-in-Fact

NOTE:

1. Date of bond must not be prior to date of contract.
2. If Contractor is partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
4. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.

EXHIBIT J

CITY OF ROELAND PARK, KANSAS

STATUTORY BOND

ROELAND PARK PUBLIC WORKS FACILITY

KNOW ALL MEN BY THESE PRESENTS, that we _____ as Contractor and principal, and _____ a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, as surety, are held and firmly bound unto the State of Kansas, in the penal sum of _____ Dollars (\$ _____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the said Contractor has on the _____ day of _____, 20____, entered into an Agreement with the City of Roeland Park, Kansas, a copy of which is attached hereto and incorporated herein for furnishing all tools, equipment, materials, transportation and supplies, performing all labor, and constructing public improvements described in the Agreement and the Contract Documents, all in accordance with Provisions, Specifications, Plans and other Contract Documents on file in the office of the City Clerk of the City of Roeland Park, Kansas.

NOW, THEREFORE, if the Contractor or the subcontractors of the Contractor shall pay all indebtedness incurred for supplies, materials, transportation or labor furnished, or equipment used or consumed in connection with or in or about the construction or making of the improvements described in the above-mentioned Contract Documents, then this obligation shall be void; otherwise, it shall remain in full force and effect.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement and the Contract Documents to the work to be performed thereunder, or the Provisions, Plans and Specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time alteration or addition to the terms of the Agreement, Contract Documents or to the Plans and Specifications.

PROVIDED, that it is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Agreement not increasing the contract price more than 50 percent, so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement as so amended. The term "amendment," wherever used in this bond and whether referring to this bond or the Agreement shall include any alteration, addition, extension or modification of any character whatsoever.

The said Surety further agrees that any person to whom there is due any sum for labor furnished, transportation, materials, equipment or supplies used or consumed in connection with or in or about the construction of said public improvement, as hereinbefore stated or said person's assigns, may bring action on this bond for the recovery of said indebtedness within six (6) months from the completion of said public improvement.

IN TESTIMONY WHEREOF, the said Contractor has hereunto set his/her hand, and the said surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its attorney-in-fact duly authorized thereunto so to do, at _____ on this, the _____ day of _____, 20__.

Contractor/Principal

ATTEST:

Secretary

By _____ (SEAL)

Title

Surety Company

By _____ (SEAL)

Attorney-in-Fact

NOTE:

1. A Statutory Bond is required only in connection with a Contract exceeding one hundred thousand dollars (\$100,000.00) in accordance with K.S.A. 60-1111 as amended.
2. Contractor shall be responsible for seeing to it that this Statutory Bond is filed with the Clerk of the District Court for Johnson County, Kansas.
3. Date on bond must not be prior to date of contract.
4. If Contractor is partnership, all partners should execute bond.
5. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
6. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.

Universal Construction
Request for Qualifications
Construction Management at-Risk



January 10, 2023



**ROELAND PARK
PUBLIC WORKS**

BUILDING A BETTER COMMUNITY.

Kelly Stindt
SFS Architecture
2100 Central St.
Kansas City, MO 64108

UNIVERSAL
CONSTRUCTION

Dear Kelly Stindt and the City of Roeland Park,

We are beyond thrilled to share with you our qualifications for the newly acquired public works building. A few of the many reasons we'd be excited to work on this project is the fact that it's located in our neighborhood and is only a few minutes from our office. Additionally I have been looking for an opportunity to partner with SFS Architecture after we really enjoyed our previous experience with that group. Finally, we've completed several maintenance buildings recently including a transportation and service center buildings located in Kansas City, MO. We have also been a part of the team that just built the new Urban Outfitters Distribution Center in Kansas City, KS.



We want this to be the most collaborative construction project you've ever been a part of. Our mission at Universal is "to provide the tools to elevate the construction experience." We accomplish this by embracing a team atmosphere, keeping owners informed with transparent communication, and bringing excitement and dedication to each of our projects.

We enjoy the owners we work with and encourage you to reach out to any of them to hear it for yourself. We believe our past performance along with our established culture of continuous improvement is the best indicator of how we will perform for you on your projects. We believe that we are the right firm to give your staff members the upgrades to excel. It would be a great honor to be your guide and partner for this project.

Sincerely,

Joel S. Smith, Chief Operations Officer
Universal Construction Company



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RELEVANT EXPERIENCE

A



RELEVANT EXPERIENCE

Park Hill Transportation & Support Services Center



Highlights

LOCATION: Kansas City, Missouri

COMPLETION DATE: 2020

CONTRACT AMOUNT: \$21,351,800

Contact: Jim Rich

Director of Facilities

(816) 359-4100

richj@parkhill.k12.mo.us

KANSAS CITY, MO- This PEMB transportation building is the storage yard and service center for all the school buses of the district. The building includes 6 service bays, a wash bay and office space.

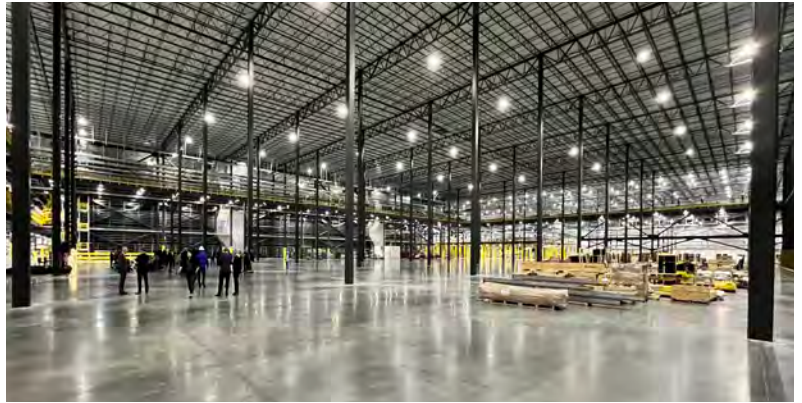
Outside, outdoor fenced-in parking stalls accommodate 168 buses as well as a fueling station. Outside of the gated area is a parking lot with an additional 220 spots.

KANSAS CITY, MO- The PEMB Service Center is a 70,000 SF service center with 366 parking spaces, a warehouse, storage space, 4 maintenance bays, 5 drive up docks, and 2 cold/refrigeration coolers.

In addition to the warehouse space, there are also offices, a computer lab, and meeting rooms.

RELEVANT EXPERIENCE

Urban Outfitters Distribution Center



Highlights

LOCATION: Kansas City, KS

ARCHITECT: NewStudio Architecture

COMPLETION DATE: 2022

CONTRACT AMOUNT: \$350,000,000

Contact: Dennis Vance

Blue Rock Construction

(215) 688-8385

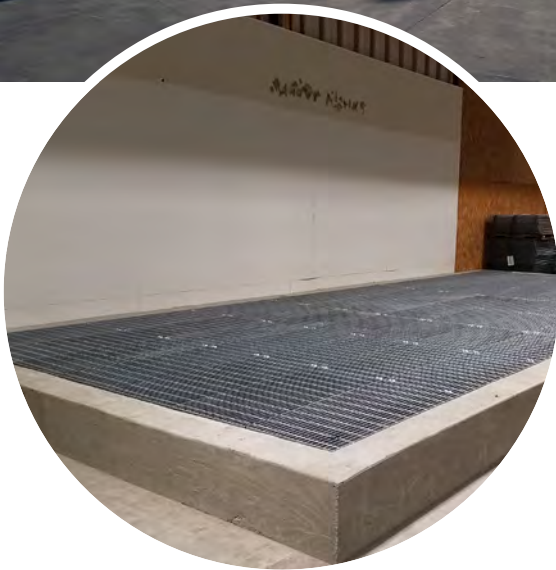
dvance@blrck.com

KANSAS CITY, KS— This is a new distribution center for the URBN brand that's located near Kansas Speedway. We have partnered with Blue Rock Construction of Pennsylvania to bring Construction Management at-Risk Services to this project. We provided project managers and project engineers to the project. Our workforce was out there 24 hours a day, six days a week to finish the project much quicker than a standard build. This new distribution center will bring nearly 2,000 jobs to Wyandotte County. The building construction is complete but they are still getting equipment set up before they are fully operational.

RELEVANT EXPERIENCE

Enel Green Power

Rock Creek Operations and Maintenance Building



Highlights

LOCATION: Tarkio, MO

ARCHITECT: Goldberg Group Projects

COMPLETION DATE: 2018

CONTRACT AMOUNT: \$1,180,000

Contact: Georg Becker-Birck

Project Execution Manager

(978) 935-8325

georg.becker-birck@enel.com

TARKIO, MISSOURI– We converted an old Shopko building into an O&M facility for Enel.

The building is a Pre-Engineered Steel Building (Varco Pruden).

We site cleared/gutted portions of the interior walls, all floor coverings, all ceilings, plumbing, mechanical, and electrical. The exterior siding was repaired and an old drive-up window and drive were removed. New windows and doors were cut into the existing exterior walls.

We constructed in the front portion of the building offices, restrooms, a kitchen, a FEMA safe room, IT Room, and hallways. The electrical was upgraded to include a standby generator and LED lighting throughout. Internet access for IT operations was also brought in. Plumbing and mechanical were added and reconfigured for various areas.

RELEVANT EXPERIENCE

Gardner-Edgerton

Advanced Technical Center



Highlights

COST: \$7,200,000

COMPLETION DATE: 2017

ARCHITECT: HTK Architects

CONTRACT TYPE: CM at Risk

Contact: Bruce Krael

Former Director of Operations

(913) 856-2006

brucekracl@gmail.com

GARDNER, KANSAS – The Gardner Advanced Technical Center is a new facility constructed adjacent to the high school campus. The facility is approximately 29,579 SF and houses the following programs: computer-aided drafting, construction trades, welding, automotive collision repair, and automotive repair.

The building is a single story, steel framed, masonry structure with varying roof heights consisting of modified bitumen and standing seam metal roof areas. Construction includes development of additional parking (approximately 21 new parking stalls); a masonry enclosed open storage courtyard area; new utility services including water, gas, and electric plus sanitary and storm sewer connections. This project was delivered as a Construction Management at-Risk method.

ORGANIZATIONAL CHART

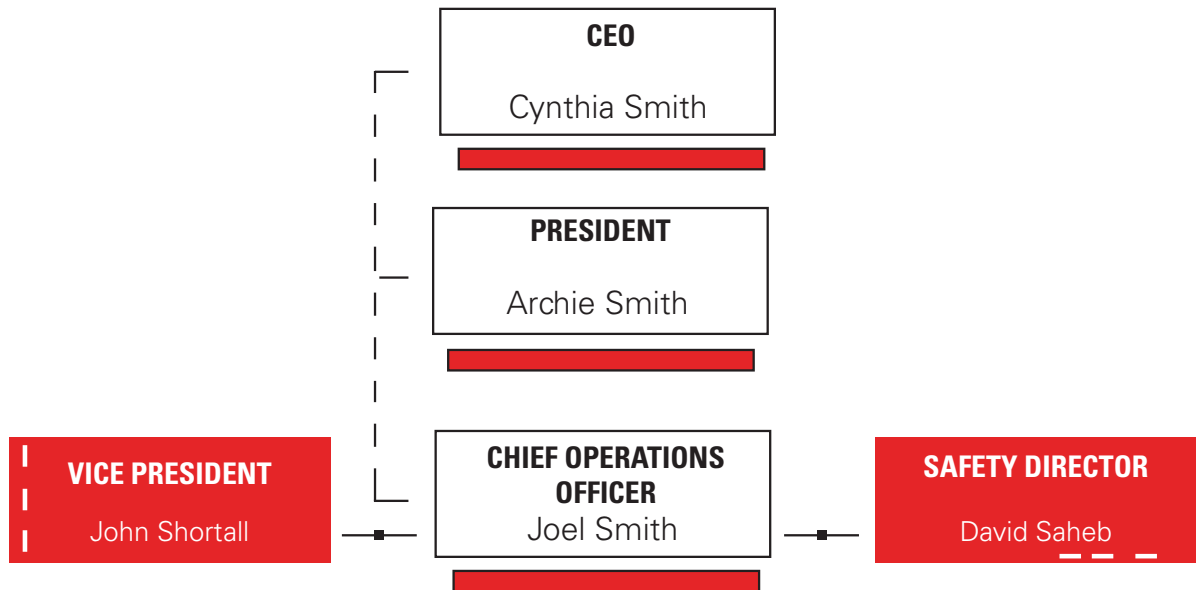


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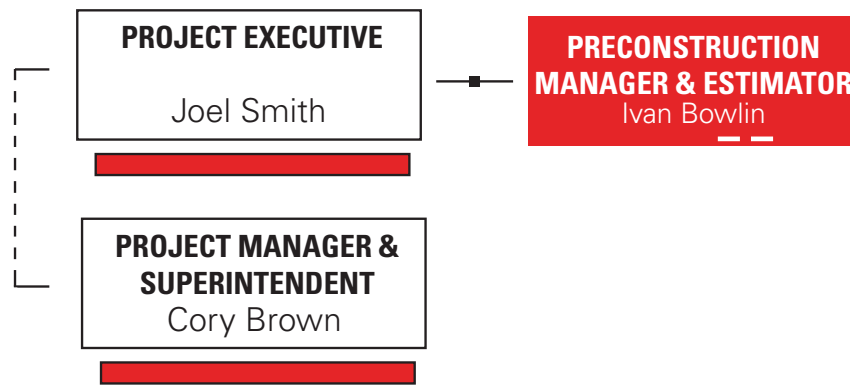


ORGANIZATIONAL CHART

Company Organization



Project Organization



KEY PERSONNEL



C

KEY PERSONNEL

Joel Smith

PROJECT EXECUTIVE |



Joel takes pride in being part of the 5th generation of Smiths to work for UCC along with his brothers Cameron and Zak, plus his cousins Archie and Gary. This pride transfers to his projects and the relationships he builds with his clients. Joel spent over ten years in the field as a Superintendent and seven as Chief Operations Officer.

JOEL'S HIGHLIGHTS

17-years in the construction industry

17-years with UCC

Oklahoma Baptist University

Continuing Education

Supervisory Training

Hickman Mills School District Advisory Board

United Brotherhood of Carpenters of America Apprenticeship Program Graduate 2010-2012

First Aid/CPR

OSHA 30-Hour

RELEVANT PROJECT EXPERIENCE

Christ Community Church - Olathe Campus

- + Classroom and Office Renovations (SFS Architecture)
- + Parking lot improvements

Christ Community Church - Shawnee Campus

- + Renovate/Convert Planet Fitness into New Church

Shawnee Mission School District | Overland Park, KS

- + Shawnee Mission Northwest additions and renovations
- + Shawnee Mission West additions and renovations
- + Shawnee Mission North additions and renovations
- + Shawnee Mission South additions and renovations

Hickman Mills C-1 School District | Kansas City, MO

- + Ruskin High School Renovations
- + Warford Elementary Renovations
- + Dobbs Elementary Renovations
- + Burke Elementary Renovations
- + Ervin Elementary Renovations
- + Ingels Elementary Renovations
- + Compass Elementary Renovations

The Kearney School District | Kearney, MO

- + New Bulldog Football Stadium

Park Hill School District | Kansas City, MO

- + Tiffany Ridge Elementary (new construction LEED Gold Certified)
- + Park Hill High School updates
- + Congress Middle School updates
- + Park Hill South High School updates
- + Union Chapel Elementary updates
- + Lakeview Middle School updates

Olathe School District | Olathe, KS

- + Additions, Renovations, and multiple new schools

KEY PERSONNEL

IvanBowlin

PRE-CONSTRUCTION MANAGER & ESTIMATOR |



Ivan has 15 years of construction experience and provides preconstruction and LEED accreditation. LEED Certifications is a detailed process which Ivan has completed on multiple occasions. Some of his responsibilities will include schedule compliance, value engineering, constructability reports, and contractual compliance by subcontractors and suppliers.

IVAN'S HIGHLIGHTS

16-years in the construction industry

8-years Project Manager

13 years with UCC

B.S. Technology Management in Construction

Kansas State University, 2008

US Army Veteran

OSHA 30-Hour

RELEVANT PROJECT EXPERIENCE

Gardner Edgerton Advanced Tech Center | Gardner, KS

- + New Tech Center for vehicle and woodworking spaces

Liberty Public Schools | Liberty, MO

- + Shoal Creek Addition
- + Lewis & Clark Addition
- + 3rd floor District Office Renovation

Olathe USD 233 \$34M | Olathe, KS

- + New Olathe Technical Education Center
- + New Elementary #34 (Forest View) – LEED SILVER
- + Northwest High School Additions and Renovations
- + East High School Additions and Renovations
- + Olathe Turf Fields

Park Hill School District | Kansas City, MO

- + New Elementary School #10 – LEED GOLD
- + Plaza Middle School – Cafeteria Renovations
- + PH South High School – Cloth Lab Renovations

North Platte County R-1 School District \$6M | Dearborn, MO

- + New Intermediate School

Shawnee Mission USD 512 \$19M | Shawnee Mission, KS

- + West High School Additions and Renovations
- + West High School Turf and Tennis

Girard Public Schools | Girard, KS

- + MS/HS Renovations
- + Haderline Elementary Additions and Renovations
- + Girard Activity Center Renovation

Lee's Summit School District | Lee's Summit, MO

- + Convert old building to new early childhood center

KEY PERSONNEL

Cory Brown

SUPERINTENDENT & PROJECT MANAGER |



Cory will serve as your on-site Superintendent and Project Manager for your public works improvements. He has spent more than 20-years in the construction industry and is focused on developing excellent relationships with owners, architects and contractors.

CORY'S HIGHLIGHTS

22-years in the
construction industry

5-years with UCC

Kansas State University,
BS, Construction
Science and
Management

OSHA 30-Hour

CPR/First Aid

Scaffolding, Excavating
and Trenching
Certification

Asbestos/Lead Paint
Certification

RELEVANT PROJECT EXPERIENCE

Park Hill Schools | Kansas City, MO

- + New Service and Transportation Building
- + Renovations to Gerner Family Earth Childhood
- + Renovations to Park Hill High School
- + Renovations to Prairie Point Elementary
- + Renovations Lead Innovation Center Phase II

Liberty Public Schools | Liberty, MO

- + Major 2-story classroom addition at Liberty North High School
- + Liberty North parking lot renovation
- + Liberty High School baseball field renovations
- + Site improvements at Liberty High and Liberty North High

Hickman Mills School District | Kansas City, MO

- + Ruskin High School Renovations
- + Warford Elementary Renovations
- + Dobbs Elementary Renovations
- + Burke Elementary Renovations
- + Ervin Elementary Renovations
- + Ingels Elementary Renovations
- + Compass Elementary Renovations

Field House USA | Council Bluffs, IA (not ucc)

- + New 5 way field house

Briarwood Mall - Site/Restaurant | Ann Arbor, MI (not ucc)

- + Tenant finish

PRECONSTRUCTION SERVICES



PRECONSTRUCTION

ESTIMATES & BUDGET

We believe one of our first jobs is to meet with the city to ensure that we are all on the same page with your budget. This meeting would include a more detailed examination of your desires and the cost options to achieve those desires. We want to make sure that the project plan is cost effective and that it meets all of your current needs.

As SFS progresses with the project design, UCC will typically complete three formal estimates.

We use these estimates to ensure the design work is staying within the budget as we move from preliminary drawings to fully developed construction documents.

Our goal is that the city will have zero surprises when presenting the Guaranteed Maximum Price (GMP).

Achieving a project that is within budget on bid day is only the first hurdle in ensuring your project budget is maintained. During the design phase, UCC spends hours reviewing the drawings for completeness and potential complications. We will share our findings with Roeland Park and SFS Architecture prior to bid day so that potential sources of change are minimized. Our bid packages are more than just a boiler-plate document that are used from project to project. Each of the bid packages we develop are specific to the

project being bid. Each contains further scope clarification to the bidders which remove “gray” areas in the drawings which can also be the root of potential change orders.

For the “gray” areas and other risk factors that cannot be eliminated, UCC will create exposure holds and provide estimates for items that are unbought. UCC makes this risk evaluation when preparing the final GMP amount to be presented to the

owner for approval. These items will be individual line items that are contained within the GMP. UCC uses this approach versus using a percentage to create contingency for the risk factors in order to provide the client a more accurate GMP amount.

Universal uses this process on all of our Construction Management projects and we have found it to

be a very successful method of predicting the project cost. **Over the past 20-years, our final cost at completion (including changes) comes in at approximately 0.92% under the original project budget.**

We believe this shows not only our ability to help direct the design toward a successful GMP, but it also shows our ability to manage the subcontractors and the bid documents with minimal or no increases in the GMP. Our ultimate goal is to provide a GMP to complete the project within budget and with no change orders to increase the GMP amount.

0.92%
UNDER OUR
PROJECT
ESTIMATES

PRECONSTRUCTION



VALUE ENGINEERING

At Universal, Value Engineering is a proactive effort that takes place throughout the design process. As your CM, we do more than just estimates at each design milestone. We also complete value engineering studies.

During these studies we are looking for project options that we feel may help the city gain better value for the project and/or save you money. There are thousands of options available for consideration on your project and it is our job to make sure that you are aware of the options that could be a good fit for you and your project.

We believe it is our job to educate you about your options and advise you as to what we believe are the pros and cons of each option. By arming you with the information that you need, you can make the right choices for your project.

We formalize our Value Engineering efforts in a project log with each estimate to track your choices and how they impact the project budget. The following is an example of a value engineering workbook that mirrors the work we will provide for Roeland Park:

		Accepted	Pending (Goals)	Alternate	Rejected
Potential VE Options		\$ (2,443,192)	\$ (329,096)	\$ (131,154)	\$ (1,035,848)
Convert 25% of CMU to abuse resistant Gyp	\$ (222,578)		\$ (222,578)		
Reduce exterior glazing to 12,111 SF (25% reduction)	\$ (56,518)		\$ (56,518)		
Use Taraflex in ES and MS Gyms	\$ (30,848)	\$ (12,000)			\$ (18,848)
Use Variable Refrigerant System (design assist)	\$ (527,592)	\$ (527,592)			
No sinks at Elementary Classrooms	\$ (42,000)	\$ (42,000)			
Use 50% VCT & 50% Carpet Tile in lieu of 90% Carpet Tile	\$ (89,154)			\$ (89,154)	
Build 2 gyms in lieu of 3 (provide plan for later or bid as alternate)	\$ (900,000)				\$ (900,000)
Squeeze SF out of overall building & Move Industrial Tech to adjacent Bus Barn	\$ (755,250)	\$ (1,633,600)			
Only provide 1 Elevator	\$ (94,000)	\$ (94,000)			
Use Sandblast finish in lieu of brick inset	\$ (134,000)	\$ (134,000)			
Use TPO roof in lieu of Mod Bit	\$ (117,000)				\$ (117,000)
Provide 160 LF of casework at Science Labs	\$ (47,000)				
Eliminate 3 Gym Curtains	\$ (42,000)			\$ (42,000)	
Design budget allowance for Kitchen Equipment (\$400k)	\$ (50,000)		\$ (50,000)		
Current budget less accepted VE		\$ 21,923,929			
Less 50% of additional potential VE			(\$164,548)		
Recommended Value for New Facility			\$21,759,381		

PRECONSTRUCTION

Planning | Design | Construction

CONSTRUCTABILITY REVIEWS

At Universal, we believe it is our job to partner with the SFS Architecture to help deliver a set of documents to the bidding community that clearly illustrates the design intent. We understand that the better the contractors understand the documents, the less likely we are to see project delays or change order requests.

We know SFS will produce a great set of documents for your projects, but we can help make them even better. We will look at the documents from a contractor point of view and look for complex details and offer suggestions on ways to simplify them without sacrificing design intent. Anytime we can simplify a detail, it helps save the city both time and money.

We also review the drawings and look for any potential “gray” areas that we believe could be confusing to contractors. We will identify any such areas in the documents and work with SFS Architecture to clarify these for the contractor prior to going out for bid. By doing this, we reduce contractor guessing at bid time which allows our team to get more accurate bids. This effort also reduces potential change requests and delay claims from trades during construction.

DESIGN COLLABORATION

Construction Management at-Risk is our favorite project delivery and one of the major reasons is because it allows collaboration with the architect. We have worked with SFS previously and look forward to another successful project with them as a partner.

We provide you full transparency throughout our processes and stay in constant contact with SFS throughout the project. We understand that a major schedule hurdle to overcome is not only completion of

construction documents but completion of those documents that fit within the city’s budget. We will secure feedback from SFS Architecture that identifies how much time they need to finalize modifications to the design for your approval. In addition to budgeting time for this design work, we would also recommend that we include some schedule allowance to permit SFS time to react to our construction estimates and any Value Engineering (VE) studies. We will discuss strategies with the city to incorporate design modifications via narratives or alternates if a redraw will jeopardize the overall project schedule. We also include time for shop drawing review and approval in the overall project schedule that works with both the architect and the overall project’s needs. This allows for better accuracy on bid day.

**We don’t take
a backseat during design.
We are an active participant
in the process.**

SCHEDULING - SEE TAB H: SCHEDULE CONTROL

SELF-PERFORMED WORK



SELF-PERFORMED WORK

We have the resources to bid on multiple scopes of work if that is not viewed as a conflict of interest to the city. Additionally, if the bid package is awarded to another subcontractor we can step in and complete all labor and carpentry work if they are not performing as contracted. With this building having a previous purpose with a previous owner, we anticipate at least bidding the demolition. If the city has any diversity goals for the project, we are a certified WBE and any work we perform can be used towards that goal. Below is a list of our self-performing capabilities.



- **Demolition**
- **PEMB**
- **General Conditions**
- **Daily Cleanup**
- **Rough carpentry**
- **Doors, frames, and hardware**
- **Casework and Finish Carpentry Install**
- **Toilet Partitions and Toilet Accessories**
- **Wall Protection Systems and Corner Guards**
- **Fire Extinguishers and Cabinets**
- **Projection Screens, Visual Display Boards and Tack Wall**
- **Site Specialties**
- **Temporary Construction and Enclosures**
- **Final Clean**



SUBCONTRACTOR SOLICITATION



SUBCONTRACTOR SOLICITATION

| Bid Procurement

For Roeland Park to receive good value at bid time, we must get you good bid coverage. In order to do this, we will implement the following process to maximize qualified bidder participation for your project:



Start Early.

We will make sure that we get the word out to prospective bidders so that they are ready for the project when bid day arrives.



Cast a Wide Net.

Being one of the region's longest standing builders, we know who the competitive bidding contractors are and who upholds exceptional quality. By casting a wide net from our contractor database, we can increase the number of qualified vendors who will bid on your project.



Personalize the Invites.

We do not solely rely on ads and mass emails to secure bidders for your project. Instead, we reach out directly with phone calls to potential bidders to make sure they know we are interested in their bids.



Follow Up.

It's a busy time in the construction industry and we know we are competing with other projects for bids. We will follow up with subcontractors as required, up through bid day.

| Bid Analysis

Prior to making our recommendation to the city, we will scrutinize and review all of the bids submitted on time for your project.

This will ensure all bids being considered have met the specifications as set forth by SFS Architecture. We will check that the subcontractors have included the material you want and that they have the qualifications to install them properly.

We will also make sure that the subcontractors have followed the scope of work we have requested. We will provide specific direction to all bidders to ensure the bids received on bid day are complete and that we are actually comparing "apples to apples" bids. We do not allow exclusions from bids on our projects.

In addition to cost, we will look at project durations quoted for each subcontractors bid. If the bid of subcontractor "A" is \$100 more than subcontractor "B", but subcontractor "A" can complete his work a week earlier, then subcontractor "A" would be your better bid. The faster we can complete your project without paying overtime, the more savings you will receive on project overhead. On this project, all savings return to the City of Roeland Park. We will save you money whenever and wherever we can.

Lastly, we will check references to ensure that any trades working on your project have the track record to help us deliver the quality project your community deserves. We recognize these projects are 50+ year solutions and we will make sure they are built properly so that they will stand the test of time.

COST CONTROL SYSTEM

G



COST CONTROL SYSTEM

We will provide three or four estimates during the preconstruction phase to ensure that your project design is trending to be within your construction budget. During construction, we will *at a minimum* update the project team on the current budget every two weeks (typically at our regular construction update meeting).

In addition to this, we will report to Roeland Park for budget updates in whatever format and/or regularity you deem appropriate. We are comfortable with generating customized written reports or completing oral presentations on budget at any city council meeting as needed.

These updates will show the original budgeted amounts and how much of those amounts have been committed. In addition, the report will show a forecast/estimate to complete based upon risk factors and items that are not purchased yet. Once an identified risk factor is no longer a risk those monies will either be reallocated within the budget for a new risk factor that has been identified, or it will be moved to the uncommitted cost category. Uncommitted costs are potential savings that have been identified which will be returned back to the owner upon the successful completion of the project. If there are any "nice-to-have" items the owner has identified but have not yet been incorporated into the project we will look to reallocate these monies towards those items at that time.

UCC has an open book policy, we share exactly what is being billed with Roeland Park. The amount associated with each item is provided as back up with every



pay application UCC submits. Prior to formally submitting the pay application to your architect, UCC will provide a draft copy of the pay application with all of the backup during the Owner, Architect, and Contractor's (OAC) meeting so it can be reviewed during the meeting and to answer any questions that may arise.

SCHEDULE CONTROL



H



SCHEDULE CONTROL

We have the team and resources available now to complete the work for an owner move in by September 2023. The biggest hurdle is going to be securing the materials needed to complete the work. For this project we would recommend the following bid strategy for material procurement:

- 1) Once selected as your CM, confirm any/all long lead items with SFS.
- 2) If SFS has enough information on these items that we can bid them out prior to the completion of the documents, then we will recommend doing that.
- 3) Whether we bid long lead items early or not, we would still bid the work requesting both their cost and a committed lead time for their materials. This will provide us with the actual information that we need to determine the best bid(s) for Roeland Park and it will also help us actually confirm any problem materials that may exist. Once we have this information we will work with the city to determine the most cost effective options to deal with any material procurement issues that surface.

Prior to schedules being built we will get specific dates from Roeland Park as to what day you need to have the owner move

in. We will utilize one of our greatest resources for creating a construction schedule by utilizing our historical data. We will recognize key dates for owner input/approval and we will identify those to keep the project on schedule. We understand that project reporting is important to keep stakeholders apprised of job progress.

We utilize Procore as our project management software. We will provide you with customized written reports at each project team meeting. Typically these written reports include updated information about the schedule, budget, executed changes, pending changes, schedule progress, open project information requests, and updates on status of material procurement. We have standard forms that we can recommend for use of these reports, but if these reports do not provide you with the information that you need, we will customize the information to meet your needs. Procore gives you the ability to track the overall progress of a project, as well as a magnified look at what work is being done week to week.



PAYMENT + PERFORMANCE BONDS



PAYMENT AND PERFORMANCE BOND



THOMAS MCGEE
GROUP

February 15, 2022

On Behalf Of: Universal Construction Company, Inc.
With Respect To: Bond Capacity

To Whom It May Concern:

We understand that you are considering the services of Universal Construction Company, Inc. and have requested information regarding their surety bond program. We are pleased to respond in this regard.

The surety for Universal Construction is Hartford Fire Insurance Company. A.M. Best – an insurance industry rating organization – rates Hartford Fire Insurance Company with a financial strength rating of "A+" (Superior), Class Size XV. Hartford is also listed as acceptable surety on federal projects with an underwriting limitation of \$1.1 billion, as provided for in the current Treasury Department Circular 570.

Universal Construction's surety program contemplates individual projects up to \$40 million within an aggregate program of \$80 million. Universal remains an account in good standing. They are well-financed, professionally managed, and technically superior in their field of work. The company enjoys an excellent reputation as a contractor that performs exceptional work within agreed upon budgets and schedules.

This letter is not to be construed as a guarantee to provide surety bonds for any particular project, but rather is offered as an indication of our past experience and confidence in this company. Any request for bonds is a matter between Universal Construction Company and the surety, and it will be underwritten based on its own merits. The surety assumes no liability to any party if for any reason they do not execute said bonds.

Based on our experience, we strongly recommend Universal Construction Company.

Sincerely,

A handwritten signature in black ink, appearing to read "Dalton Joyce".

Dalton Joyce
Surety Account Executive
Thomas McGee Group – A Division of Risk Strategies

P.O. Box 419013 • Kansas City, MO 64141-6013 • thomasmcgee.com

INSURANCE



INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/4/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Thomas McGee, L.C. P.O. Box 419013 Kansas City MO 64105		CONTACT NAME: Jen Pellegrino PHONE (A/C, No, Ext): 816-843-4632 FAX (A/C, No): 816-472-5018 E-MAIL ADDRESS: jpellegrino@thomasmcgee.com	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A : Midwest Builders Casualty Mutual Co. *	13126
		INSURER B : Continental Casualty Company	20443
		INSURER C : Continental Insurance Co	35289
		INSURER D : Cincinnati Casualty Company	28665
		INSURER E :	
		INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 1118893146 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR VWD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			C2083168860	3/31/2021	3/31/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			C2083168874	3/31/2021	3/31/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUE4030444427	3/31/2021	3/31/2022	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC100-0000642-2021A	3/31/2021	3/31/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
D	Excess Liability			EXS0607921	3/31/2021	3/31/2022	Limit 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)

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SAFETY PROGRAM / HISTORY



SAFETY RECORD

Jobsite Safety | Processes & Record

TRAINING

We continuously train our employees on OSHA 10-HR and 30-HR courses, First Aid/CPR Training, and a variety of task-specific training. The majority of our team is OSHA 10-HR & OSHA 30-HR trained. Anyone who isn't OSHA 30-HR is scheduled for the training within the next year.

IMPLEMENTATION

We require the completion of a job hazard analysis (JHA) for every task that is performed on our jobsites. This analysis helps employees recognize potential hazards and ensures the necessary precautions are in place to prevent accidents while working safely. Knowing how to work safely does not create a safe jobsite; implementing safe work practices creates a safe work environment. Universal Construction is committed to its employees and subcontractors to implement our Health and Safety Program and put safe work practices into action.

INSPECTION & ENFORCEMENT

As the controlling contractor on our job sites, we have a responsibility to inspect work activities for safety compliance and require that our Health and Safety Plan and OSHA Standards are followed. Superintendents and our safety director inspect each project weekly & bi-weekly. Weekly Safety Inspection Forms are filled out and kept on-site for the duration of the project. We require inspections by the onsite person for scaffold, excavations, trenches, equipment, and more. During these inspections, deficiencies are noted and then followed-up on until corrected. We demand safe work practices

on our job sites and use our disciplinary policy of verbal warnings, written warnings, and removing people from job sites as necessary to ensure standards are followed.

0 LOST DAYS
12 YEARS

DOCUMENTATION

There are two main objectives for Safety Documentation:

- To plan ahead for hazards created by work activities and create safe work plans to mitigate these hazards.
- To document all efforts and attempts to run safe projects as a means of showing OSHA we are controlling our job sites and making every possible effort to make them safe.

Our site-specific Safety Books are where we keep a record of project-specific safety documentation. Our safety director also maintains a record of ongoing safety training and other safety items that are not project-specific.

We have a zero-incident culture. Even more than the procedures that are in place, our people truly care about the well-being of the men and women on our job sites and are passionate about making sure they have a safe working environment.

EMR 2022
0.74

QUALITY PROGRAM



QUALITY PROGRAM

| Engineering Phase

UCC establishes a 4 phase process for quality control which is the foundation for the quality control program. The 4 phases are engineering, work/phase start up, initial inspection, and daily inspection.

During the engineering phase, UCC Project Engineers / Superintendents will supervise and ensure that the following activities occur:

- Build the project on paper prior to work beginning in the field. BIM will be used to help aid this process. This phase is complete upon successful completion of a work/phase start up meeting.
- Review, approve, and submit to the approving authority when required on all submittals. Any shop drawings that state “by others” will be crossed out and those “others” will be written in. Product data should be reviewed thoroughly in order to ensure that the product being submitted meets the requirements of the contract specifications.
- Ensure that all submittals required for the work/phase start up have been approved and released for fabrication. Project Engineers will continue to track all materials that have been released from fabrication until they have been successfully delivered to site.
- If any off-site testing or inspections are required during fabrication, ensure that the required inspections and testing is complete prior to material arriving on site.
- Ensure that the subcontractors that are getting ready to start to work on site have the following items:
 - An executed contract.
 - Required insurance in place.
 - All of the subcontractor’s safety requirements have been met.

| Work/Phase Start Up

The work/phase start up meeting is an official meeting that will be conducted prior to any work being completed on site. The purpose and intent of this meeting is to review the drawings and specifications with the subcontractor, review safety, and cover any kind of required testing or inspections that are going to be completed. During the meeting, the following items should occur:

- Attendance is taken and required for the subcontractor’s working foremen, safety personnel, and our superintendent / quality control personnel. (Note: multiple subcontractors may be required if work to be discussed overlaps numerous trades.)
- A formal meeting agenda is prepared.
- The drawings that the subcontractor is going to be building off of is reviewed. This ensures that all parties are working off of the correct drawings.
- Specifications are covered in order to make sure that all parties are on the same page.
- Any applicable ASTMs/tolerances/ workmanship standards are covered.
- Copies of the approved submittals are distributed at the meeting and reviewed.
- Safety requirements are covered and reviewed.
- Roles and responsibilities of required testing and inspections are covered.
- Procedures for the construction of the work are discussed.
- Preliminary work is examined to ensure it has been completed and is in compliance with the contract documents.

At the closing of this meeting a date and time for the initial inspection will be established. Meeting minutes will be published and the daily report should document that the meeting was held. Upon

QUALITY PROGRAM

successful completion of this meeting, work may begin in the field. Supplemental meetings may be required if changes occur that result in new information that was not covered in the initial meeting.

Initial Inspection

Following the completion of successful work/phase start up meeting, an initial inspection is scheduled. The purpose/intent of the initial inspection is to verify that the subcontractor is installing materials as discussed in the work/phase start up meeting, quality of workmanship is established, and that the quality of work being produced meets the contract requirements. During this inspection, the following items will occur:

- For this inspection, attendance is required by the subcontractor working foreman/foremen, superintendent/QC personnel.
- Review the approved submittals/product data to ensure that the product that was being approved is actually the one being installed in the field.
- Review the quality of the work in place to ensure that it meets contract requirements and to establish workmanship standards (ie drywall finish or concrete finish – that the finish that is required is what is being installed in the field).
- Resolve any conflicts.
- Ensure that required testing is being performed.
- The initial phase will be repeated for each new crew to work on site or if the appropriate quality standards are not being met.
- After successful completion of the initial inspection, this work should be left as

benchmark for all follow on/additional work for this scope of work and should be left as a bench mark for the quality standards and requirements that are expected and required throughout the project.

- The initial inspection will be recorded in the daily construction reports.



Daily Inspections

Follow-up daily inspections will be performed to ensure that the subcontractor is continuing to comply with the contract requirements and maintain the level of workmanship as established in the initial inspection. The daily inspections should also ensure that the required testing is being conducted. If during a daily inspection, a work to complete/ deficiency item is found, then it should be documented in the work to complete / deficiency log and tracked until it is successfully completed. No work shall ever be built over or cover up a work to complete / deficient item until that item has been corrected.

The ultimate end result of this program is to ensure that you get the quality you deserve. Our goal is to have no punchlist / deficiency work upon completing the project.



MEMORANDUM

TO **Keith Moody, City Administrator**
City of Roeland Park, Kansas
4600 W. 51st Street
Roeland Park, KS 66205
913-722-2600

FROM **Kelly C. Stindt**

DATE **February 6, 2023**

PROJECT **Roeland Park Public Works – 1800 Merriam Ln**
SFS #: 191022-11

Keith,

See the attached matrix for the score results of the Construction Manager at Risk Interview evaluation. The scores suggest that Universal construction is the preferred company. Based on their response and interview content, they are well qualified for the project, have extensive CM experience and came prepared with schedule and cost ideas for this specific project. In addition, their CM fee and preconstruction services fee were the lowest of the three companies interviewed.

As the matrix indicates, it is the consensus of the group to recommend Universal Construction as the CM at Risk for the Public Works project. As an added measure, SFS is in the process of checking references for Universal Construction, but does not yet have the final information to share. SFS has recently had direct experience working with Universal Construction. They were very professional, and we found their conduct and workmanship to be more than adequate.

Sincerely,

Kelly C. Stindt
Principal



Public Works Facility Renovation - 1800 Merriam Lane

Construction Manager Selection - Interview Evaluation

January 20, 2023

	Sands Construction	Universal Construction	Harmon Construction
Keith Moody, RP City Administrator	80	100	90
Donnie Scharff, RP Public Works Dir.	61	74	73
Dan Miller, Lamp Rynearson	62	84	81
Aaron Schafer, SFS Architecture	61	87	76
Kelly Stindt, SFS Architecture	82	95	93
Total Points	346	440	413
Average	69.2	88	82.6

Item Number: New Business- X.-C.
Committee 2/6/2023
Meeting Date:



City of Roeland Park
Action Item Summary

Date: 1/26/2023
Submitted By: Keith Moody
Committee/Department: Admin.
Title: **Approve Lease with EPC for Existing Public Works Facility (5 min)**
Item Type: Agreement

Recommendation:

Staff recommends approval of the lease agreement with EPC for the current public works facility.

Details:

The land sale agreement reflects sale of The Rocks land to EPC no later than June of 2023 which includes the building/land occupied by Public Works. That agreement reflects the City being allowed to continue to use the public works site through October 1, 2023. EPC has requested that the City enter into a formal lease agreement that covers the period when they would be the owner and the City would be a tenant (6/1/23 to 10/1/23 anticipated). The attached lease addresses this situation. The City will NOT pay any rent to EPC for the lease period. The document spells out each party's responsibilities during the lease period. The City Attorney has approved the lease as to its form.

Financial Impact

Amount of Request: \$0	
Budgeted Item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
 Lease with EPC for Public Works Site	Cover Memo

COMMERCIAL AND INDUSTRIAL LEASE AGREEMENT

THIS LEASE is made as of this ____ day of _____, 2023 by and between [____], a Kansas limited liability company (“Landlord”) and the CITY OF ROELAND PARK, KANSAS, a Kansas municipal corporation (“Tenant”), who agrees as follows:

1. PREMISES — Subject to the covenants and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the premises commonly known and numbered as 4800 Roe Parkway, Roeland Park, Johnson County, Kansas, and depicted on the site plan attached as Exhibit A and made apart hereof, together with all other improvements thereon (collectively, the “Premises”).

2. USE OF PREMISES — The Premises will continue to be used for its present use, which is for office, warehousing, and all other uses permitted by law in connection with Tenant’s Public Works Department operations. The Parties acknowledge that Tenant is the previous owner of the Premises and is currently in possession of said Premises.

3. TERM — The term of this Lease (the “Term”) shall commence on the date Landlord takes fee simple title to the Premises, whichever may occur first (the “Commencement Date”) and ends on October 1, 2023, unless sooner terminated pursuant to the terms hereof.

4. RENT PAYMENTS — Within five (5) days of the Commencement Date, Tenant shall pay to Landlord the amount of \$1.00 as total rent for the Term, which shall be due and payable in advance without notice or demand at Landlord’s address listed below, or at any other place Landlord designates in writing. Interest at the per annum rate of 12% will be charged for rent not timely paid as required under this Section 4.

5. POSSESSION AT BEGINNING OF TERM — Possession shall be delivered to the Tenant as of the Commencement Date in “as is, where is” condition.

6. PROPERTY INSURANCE — Tenant shall comply with all insurance regulations so that: (i) the lowest property damage insurance and liability insurance rates possible for the Tenant’s use pursuant to Section 2 of this Lease may be obtained; and, (ii) nothing shall be done or kept in or on the Premises by Tenant which will: (a) cause an increase in the premium for any such insurance on the Premises or for any building of which the Premises are a part for any contents located therein, over the rate usually obtained for the proper use of the Premises permitted by this Lease; or, (b) cause cancellation or make void any such insurance.

Tenant shall maintain, at all times during the Term, adequate insurance on its personal property and equipment used, stored, or kept in the Premises.

7. INDEMNITY AND LIABILITY INSURANCE — Tenant shall at all times indemnify, defend, and hold Landlord and its members, managers and agents (collectively, the “Indemnified Parties”) harmless from all loss, liability, costs, damages and expenses that may occur or be claimed with respect to any person or persons or property on or about the Premises or to the Premises arising during the Term. Tenant shall maintain its current comprehensive general liability insurance throughout the Term.

8. ASSIGNMENT AND SUBLETTING — Tenant shall not assign, transfer, or encumber this Lease and shall not sublease the Premises or any part thereof or allow any other person to be in possession thereof without the prior written consent of Landlord, in each and every instance. For the purpose of this provision, any transfer by operation of law shall be deemed an assignment of this Lease. Notwithstanding any permitted assignment or subletting, Tenant shall at all times remain directly, primarily and fully responsible for the payment of the rent herein specified and for compliance with all of its obligations under the terms and provisions of this Lease. Landlord may assign or transfer this Lease without the consent of Tenant.

9. SIGNS AND ADVERTISEMENTS — Except for any existing signage located on the Premises prior to the Commencement Date, Tenant shall not place nor permit to be placed upon any part of the Premises, any signs, billboards, or advertisements whatever, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

10. CONDITION OF PREMISES AT BEGINNING AND END OF TERM — Tenant acknowledges Tenant has inspected the Premises and accepts the Premises in its present condition. At the end of the Term, Tenant, at Tenant's expense, will (i) have removed all of Tenant's property from the Premises; and (ii) leave the Premises free of trash and debris. The Parties acknowledge that Landlord intends to demolish the Premises upon expiration of the Term.

11. MAINTENANCE AND REPAIR BY TENANT — During the Term and at Tenant's sole cost and expense, Tenant will keep the driveways, approaches, sidewalks, parking areas and adjacent alleys that are a part of the Premises clean, orderly, sightly, unobstructed and free from ice and snow. Tenant will regularly water, mow, trim, fertilize and otherwise maintain the lawn, shrubs, plants, trees and other landscaping of the Premises and will prevent water pipes in the Premises from freezing. Tenant acknowledges that Landlord will have no obligation to maintain any part of the Premises during the Term.

12. LANDLORD'S RIGHT OF ENTRY — Landlord or Landlord's agent may enter the Premises at reasonable hours and with reasonable notice to examine the same, to show the same to prospective lenders and purchasers, and to do anything Landlord may be required to do hereunder or which Landlord may deem necessary for the good of or future development of the Premises or any building of which they are a part.

13. PARKING LOT MAINTENANCE — Tenant shall be responsible for snow removal for the parking areas, driveways, sidewalks, and approaches. Tenant understands and agrees that no personal property shall be stored in the parking area or anyplace outside of the building without prior written the consent of Landlord.

14. DAMAGE BY CASUALTY — In the event the Premises or any portion thereof is destroyed or shall be damaged by fire or other casualty, Tenant shall immediately notify Landlord and in such event, at the option of Landlord or Tenant, the Term shall cease and this Lease shall become null and void from the date of such damage or destruction. Said option shall be exercised by either Party providing notice in writing delivered to the other Party within five (5) days after Tenant provides notice to Landlord of the casualty event. In case the Parties shall

not so elect to terminate this Lease, the Lease shall continue in full force and effect and Landlord shall, to the extent of available insurance proceeds, repair the Premises with all reasonable promptitude, and in any event complete the same within sixty (60) days of commencement, placing the same in as good a condition as they were at the time of the damage or destruction and for that purpose may enter said Premises and rent shall abate in proportion to the extent and duration of untenability. In either event, Tenant shall remove all of Tenant's rubbish, debris, merchandise, furniture, equipment and other of Tenant's Property, within ten (10) days after the request of Landlord. Except as provide herein, no compensation of claim shall be made by or allowed to Tenant by reason of any inconvenience or annoyance arising from the necessity of repairing any portion of the building or the Premises, however the necessity may occur.

15. PERSONAL PROPERTY — Landlord shall not be liable for loss or damage to any equipment, inventory, goods, fixtures, improvements or personal property of Tenant in or about the Premises, regardless of the cause of such loss or damage.

16. ALTERATIONS — Tenant shall not make any alterations or additions in or to the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.

17. UTILITIES AND SERVICES — Tenant shall furnish and pay for all electricity, gas, water, fuel, trash removal and any services or utilities used in or assessed against the Premises.

18. LEGAL REQUIREMENTS — Tenant shall comply with all laws, orders, ordinances, and other public requirements now or hereafter affecting the Premises or the use thereof, including without limitations ADA, OSHA, and like requirements, and indemnify, defend and hold Landlord harmless from expense and damage resulting from failure to do so.

19. FIXTURES — The Parties agree that Tenant retains the right to remove all personal property and/or fixtures from the Premises. Any personal property and/or fixtures remaining on the Premises upon expiration of termination of this Lease will belong to Landlord, and Landlord may dispose of such personal property and/or fixtures at Tenant's sole cost and expense.

20. TAXES AND SPECIAL ASSESSMENTS — Landlord shall pay all taxes, assessments and governmental charges (collectively referred to as "Taxes") that either (a) accrue against the Premises during the Term if such Taxes are payable in advance, or (b) are assessed against the Premises during the Term if such Taxes are payable in arrears.

21. EMINENT DOMAIN — If the Premises or any substantial part thereof shall be taken under the power of eminent domain or be acquired for any public or quasi-public use or purpose, the Term shall cease and the Lease shall terminate upon the date when the possession of said Premises or the part thereof so taken shall be required for such use or purpose and without apportionment of the award, and Tenant shall have no claim against Landlord for the value of any unexpired Term.

22. WAIVER OF SUBROGATION — As part of the consideration for this Lease, each of the parties hereby releases the other party hereto from all liability for damage due to any act or neglect of the other party (except as hereinafter provided) occasioned to property owned by said parties which is or might be incident to or the result of a fire or any other casualty against loss for which either parties is now carrying or hereafter may carry insurance or is required to carry insurance pursuant to this Lease, provided, however, that the releases herein contained shall not apply to any loss or damage occasioned by intentional acts of either of the parties hereto, and the parties hereto further covenant that any insurance they obtain on their respective properties shall contain an appropriate provision whereby the insurance company, or companies, consent to the mutual release of liability..

23. DEFAULT REMEDIES — In the event: (i) Tenant fails to comply with any term, provision, condition or covenant of this Lease; (ii) any petition is filed by or against Tenant under any section or chapter of the Federal Bankruptcy Act, as amended, or under any similar law or statute of the United States or any state thereof; (iii) Tenant becomes insolvent, or makes a transfer in fraud of creditors; (iv) Tenant makes an assignment for benefit of creditors; or, (v) a receiver is appointed for Tenant or any of the assets of Tenant, then in any of such events, Tenant shall be in default and Landlord shall have the option to do any one or more of the following: upon ten (10) days prior written notice, in addition to and not in limitation of any remedy permitted by law, to enter upon the Premises either with or without process of law, and to expel, remove and put out Tenant or any other persons who might be thereon, together with all personal property found therein; and, Landlord may terminate this Lease or it may from time to time without terminating this Lease, rent said Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such rental or rentals and upon such terms and conditions as Landlord in its sole direction may deem advisable, with the right to repair, renovate, remodel, redecorate, alter and changes said Premises. No such re-entry or taking possession of said Premises shall be construed as an election of Landlord's part of terminate this Lease unless a written notice of such intention is given to Tenant. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach and default. Landlord shall have the right and remedy to seek redress in the courts at any time to correct or remedy any default of Tenant by injunction or otherwise, without such resulting or being deemed a termination of this Lease, and Landlord, whether this Lease has been or is terminated or not, shall have the absolute right by court action or otherwise to collect any and all amounts of unpaid rent or are unpaid at the date of termination. In case it should be necessary for Landlord to bring any action under this Lease, to consult or place said lease or any amount payable by Tenant hereunder with an attorney concerning or for the enforcement of any of Landlord's rights hereunder, then Tenant agrees in each and any such case to pay to Landlord, Landlord's reasonable attorney's fees.

24. WAIVER — The rights and remedies of Landlord under the Lease, as well as those provided or accorded by law, shall be cumulative, and none shall be exclusive of any other rights or remedies hereunder or allowed by law. A waiver by Landlord of any breach or breaches, default or defaults of Tenant hereunder shall not be deemed or construed to be a continuing waiver of such breach or default nor as a waiver of or permission, expressed or implied, for any subsequent breach or default, and it is agreed that the acceptance by Landlord of

any installment of rent subsequently to the date the same should have been paid hereunder, shall in no manner alter or affect the covenant and obligation of Tenant to pay subsequent installments of rent promptly upon the due date thereof. No receipt of money by Landlord after the termination of this Lease shall in any way reinstate, continue or extend the Term above demised.

25. TOXIC OR HAZARDOUS MATERIALS — Tenant shall not store, use or dispose of any toxic or hazardous materials in, on or about the Premises without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. Tenant, at its sole cost, will comply with all laws relating to Tenant's storage, use and disposal of hazardous or toxic materials. Tenant shall be solely responsible for, and will defend, indemnify and hold Landlord, its agents and employees, harmless from and against all claims, costs and liabilities, including attorneys' fees and costs, arising out of or in connection with the removal, clean-up and restoration work and materials necessary to return the Premises, and any other property of whatever nature located on the Premises, to their condition existing prior to the appearance of toxic or hazardous materials which were placed or used or caused to be placed or used by the Tenant, its agents, employees, suppliers, guests, assigns or any person in its name or on its behalf, on the Premises. Tenant's obligations under this Section 25 shall survive the termination or expiration of this Lease.

26. REAL ESTATE COMMISSION — Neither party has dealt with any broker, finder or any other person to whom a leasing commission is due.

27. SUBORDINATION — This Lease shall be subject and subordinate in law and equity to any existing or future mortgages or deeds of trust placed by Landlord upon the Premises or the property of which the Premises form a part, provided, however, that the holder of any such existing or future Mortgage or Deed of Trust shall not disturb Tenant's tenancy pursuant to this Lease so long as Tenant is not in default pursuant to the terms of this Lease. Tenant shall attorn to any successor to Landlord upon request and shall execute any documents reasonably required or appropriate to effectuate such an attornment, or the subordination aforesaid, upon written notice thereof, and if Tenant fails to execute within ten (10) days of receipt of Landlord's request for the same, Tenant shall be in immediate default of this Lease.

28. SUCCESSORS — The provisions, covenants and conditions of this Lease shall bind and inure to the benefit of the legal representatives, heirs, successors and assigns of each of the parties hereto, except that no assignment or subletting by Tenant without the written consent of Landlord shall vest any rights in the assignee or subtenant of Tenant.

29. QUIET POSSESSION — Landlord agrees, so long as Tenant fully complies with all of the terms, covenants and conditions herein contained on Tenant's part to be kept and performed, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the Term aforesaid, it being expressly understood and agreed that the aforesaid covenant of quiet enjoyment shall be binding upon Landlord, its heirs, successors or assigns, but only during such party's ownership of Premises. Landlord and Tenant further covenant and represent that each has full right, title, power and authority to make, execute and deliver this Lease.

30. ESTOPPEL CERTIFICATES — Tenant shall at any time upon not less than ten (10) days prior written notice from Landlord, execute, acknowledge, and deliver to Landlord or to any existing or prospective lender of or purchaser from Landlord a statement in writing verifying that this Lease is unmodified and in full force and effect (or if modified stating the nature of such modification) and the date to which the rent and other charges are paid in advance, if any, and acknowledging that there are not, to Tenant's knowledge, and uncured defaults on the part of Landlord or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any such lender or purchaser.

31. HOLDING OVER — If Tenant remains in possession of the Premises after the expiration of the Term of this Lease, without the execution of a new Lease, then, at Landlord's option, Tenant shall be deemed to be occupying the Premises as a month to month tenant, subject to all the provisions of this Lease insofar as they are applicable to a month to month tenancy, but at a daily rental of \$1,000.00. In addition thereto, Tenant shall pay Landlord for all damages, consequential as well as direct, sustained by reason of Tenant's retention of possession. In the event of Court action, the prevailing party shall be entitled to its attorney's fees.

32. ENTIRE AGREEMENT — This Lease constitutes the complete and entire agreement of Landlord and Tenant with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may not be amended except by an instrument in writing signed by both parties hereto.

33. SEVERABILITY — If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

34. NOTICES — All notices required or permitted to be given under this Lease shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable national overnight courier service, postage prepaid, or by hand delivery and, if to Tenant, addressed to Tenant at c/o City Administrator Keith Moody, 4600 W 51st Street, Roeland Park, Kansas 66205, and if to Landlord, addressed to Landlord at c/o EPC Real Estate Group, LLC, 8001 Metcalf Avenue, Suite 300, Overland Park, Kansas 66204, Attention: Mr. Austin Bradley, and a copy to Dentons US LLP, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111, Attention: Julia A. Taylor. Either party may by notice given aforesaid change its address for all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon delivery.

35. LIMITATION OF LIABILITY — Tenant agrees that any obligation or liability whatsoever of Landlord which may arise at any time under this Lease, or any obligation or

liability which may be incurred by Landlord pursuant to any other instrument, transaction, or undertaking contemplated hereby, shall not be personally binding upon, nor shall resort for the enforcement thereof be had to the property of the constituent partners of Landlord or any of their respective directors, officers, representatives, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise. Any liability of Landlord under this Lease or arising out of the relationship between Landlord and Tenant shall be limited solely to Landlord's interest in the Premises.

[signatures on the next page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

Landlord:

[_____] , a Kansas limited liability company

By: _____

Name: _____

Title: _____

Date Signed: _____

Tenant:

CITY OF ROELAND PARK, KANSAS, a Kansas municipal corporation

By: _____

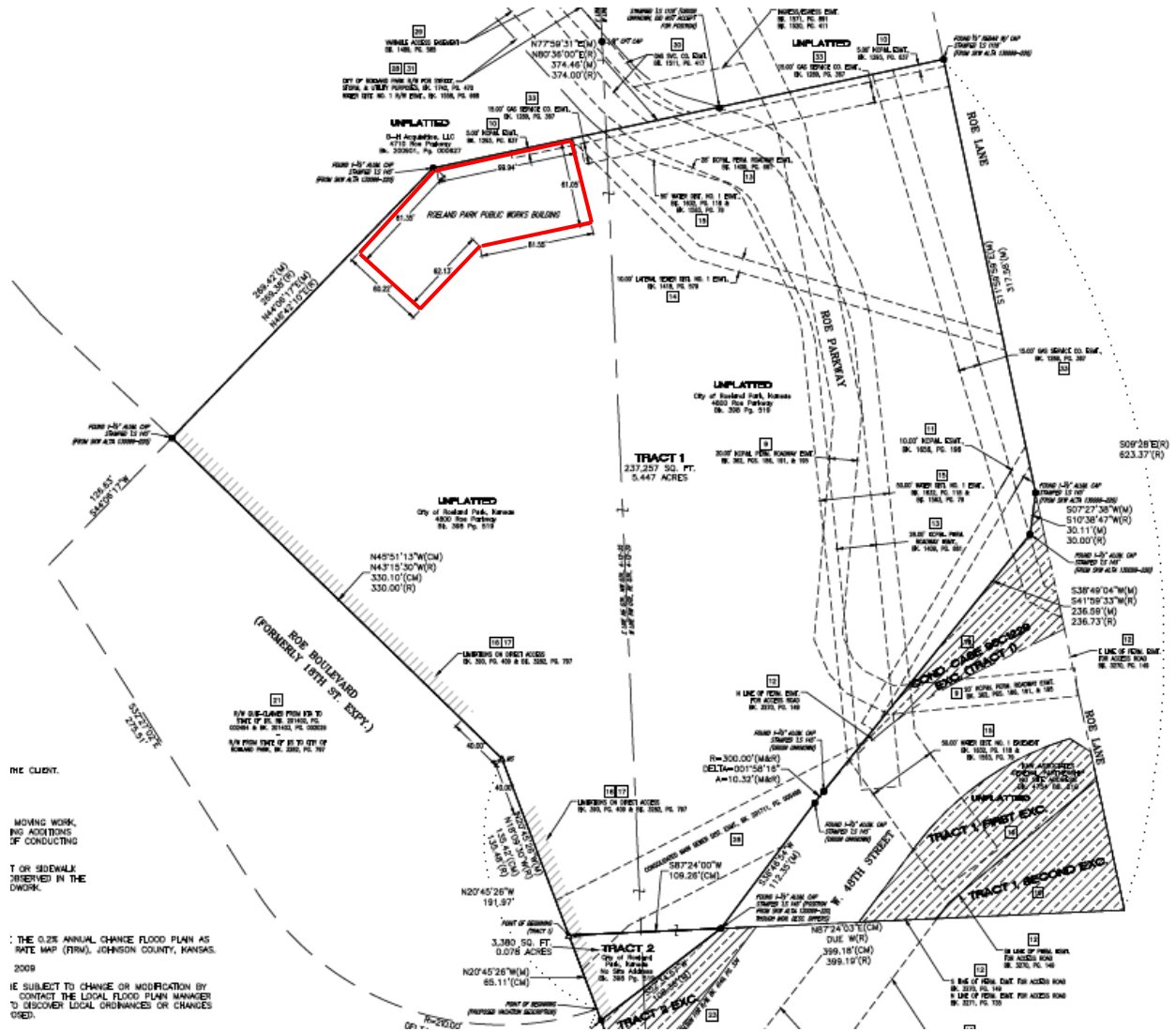
Name: _____

Title: _____

Date Signed: _____

Exhibit A

Premises



- Premises

Item Number: New Business- X.-D.
Committee 2/6/2023
Meeting Date:



City of Roeland Park

Action Item Summary

Date: 2/2/2023
Submitted By: Keith Moody
Committee/Department: Admin.
Title: **Approve 2023 Citizen Survey Service Agreement with ETC (5 min)**
Item Type: Agreement

Recommendation:

Staff recommends approval of the citizen survey service agreement with ETC for the 2023 survey with a 24-month payment plan.

Details:

The attached letter from ETC spells out the services, process, methodology, level of confidence, deliverables, and fee for the citizen survey. The 2023 survey total cost is \$17,965 (24 monthly payments from January 2023 to December 2024 of \$748.55). The services provided are the same as in 2019 and 2021 (including the Interactive Data Dashboard).

The dashboard enables citizens, staff and elected officials the ability to complete self-directed queries and generate custom comparisons, this makes the data more accessible and useful to all users. This is a significant reporting/communications enhancement particularly for a small community such as Roeland Park which does not have dedicated staff or software for dashboard performance type reporting.

ETC offers a 24-month payment option. There is no finance charge. Paying the fee over a two-year period spread the cost over the entire time between surveys.

Council and the standing committees have been asked to provide ideas for special questions for the 2023 survey.

Financial Impact

Amount of Request: In 2023= \$8,982.60; In 2024= \$8,982.60 for a total over two years of \$17,965
--

Budgeted Item?	Budgeted Amount: \$10,425 in 2023 Budget
Line Item Code/Description: 5213-101 Other Contractual Services Account in the General Overhead Department	

Additional Information


How does item relate to Strategic Plan?

The surveys gather information that affords the City to see how changes being implemented are influencing citizen satisfaction and the information gathered allows Council to continue making changes in a strategic manner.

How does item benefit Community for all Ages?

Numerous questions gather insight on efforts/ideas that are directly related to enhancing attraction of our community to all ages.

ATTACHMENTS:

Description	Type
 2023 Citizen Survey Service Agreement with ETC	Cover Memo



January 18, 2023

Keith Moody

City Administrator

City of Roeland Park

4600 W 51st Street

Roeland Park, KS 66205

913-722-2600

Subject: Proposal to Conduct a Community Survey for Roeland Park, Kansas

Mr. Moody,

ETC Institute is pleased to submit a quote to conduct a statistically valid DirectionFinder survey for the City of Roeland Park, Kansas. It is our understanding the City will use the survey to (1) assess resident satisfaction with City services, and (2) to ask unique and pertinent questions that are developed in coordination with the City's boards and commissions and are unique to each survey exercise. The scope of services described below are similar to the services provided by ETC Institute for the City's previous survey which was conducted in 2021.

Task 1: Design the Survey and Prepare the Sampling Plan. Task 1 will include the following services:

- Working with City staff to develop the content of the survey. ETC Institute will meet by phone/video conference with the City to discuss the goals and objectives for the project. To facilitate the survey design process, ETC Institute will provide sample surveys created for similar projects. It is anticipated that 3-4 drafts of the survey will be prepared before the survey is approved by the City. The survey will be up to 6 pages in length and will include standard questions from previous surveys as well as unique questions aimed at pertinent issues in the community.
- Participating in meetings by phone/video conference to develop the survey.
- Conducting a pilot test of the survey to ensure the questions are understood. Based on the results of the pilot test, ETC Institute will recommend changes (if needed) to the survey.
- Selecting a sample of households to be contacted for the survey. The sample will be address-based. ETC Institute will request the City provide their list of residential addresses and ETC Institute will append that list with a list of purchased addresses from the largest

list brokerage firm in the country. All residential addresses in the City of Roeland Park will be included in the sample.

- ETC Institute will request the GIS shapefiles (.shp or .JSON) that show the full boundaries for the City of Roeland Park to ensure that the sample only includes residential addresses found within the City's limits.

Deliverable Task 1. ETC Institute will provide a copy of approved survey instrument. As a part of Task 1, a Project Manager may make one (1) on-site visit to present the final draft to Council as part of a public meeting.

Task 2: Administer the Survey. Task 2 will include the following services:

- ETC Institute will administer the survey by a combination of mail and online.
- ETC Institute will mail the survey and a cover letter (on City letterhead) to all households in the City – if any residential addresses are not included residents can call or email ETC Institute to request a paper survey be sent to them with a postage-paid return-reply envelope. Residents can also call ETC Institute to have the survey administered over the phone in English or Spanish. Only one survey per household will be sent. Postage-paid envelopes will be provided by ETC Institute for each respondent. The City will provide a cover letter for the mailed survey and the cover letter can be translated into Spanish and will include a toll-free number Spanish-speaking residents can call to complete the survey over the phone in Spanish. The cover letter will contain a link to an online version of the survey. Residents who receive the survey will have the option of returning the printed survey by mail, completing it on-line, or by calling a toll-free number to have the survey administered over the phone.
- ETC Institute will follow-up with residents who receive the mailed survey by sending texts, postcards, and a second mailing (if needed) to maximize participation in the survey. ETC Institute will do everything possible to maximize participation in the survey. ETC Institute will set a minimum goal of 400 completed surveys. The results for a sample of 400 completed surveys will provide results that have a precision of at least +/-5% at the 95% level of confidence. If more than 400 surveys are returned, ETC Institute will process the data from all completed surveys at no additional charge to the City.
- ETC Institute will promote awareness of the survey using social media ads on Facebook and Instagram to encourage participation.
- All respondents who complete the survey online will be required to provide their home address when they finish the survey. ETC Institute will match addresses from respondents who complete the survey online to the addresses that were selected for the sample to ensure the participant is part of the sample. If a respondent does not provide an address or the address is not part of the sample, it will not be included. Only one survey from each address will be accepted.

- ETC Institute will monitor the distribution of the sample to ensure that the sample reasonably reflects the demographic composition of the City with regard to geographic dispersion, age, gender, race/ethnicity and other factors. ETC Institute will weight the data as needed if one or more demographic groups is over/underrepresented relative to recent Census estimates for the City's population.
- ETC Institute, with the City's permission, will include a \$500 Visa Gift Card as an incentive for completing the survey. This would include a question on the survey that asks respondents to opt-in if they would like to be considered to receive the incentive. Only one residential address will be selected to receive the incentive and ETC Institute will randomly select the address from the list of completed surveys.

Deliverable Task 2. ETC Institute will provide a copy of the overall results for each question on the survey.

Task 3: Analysis and Final Report. ETC Institute will submit a final report to the City. At a minimum, this report will include the following items:

- Formal report that includes an executive summary of the survey methodology and a description of major findings.
- Charts and graphs that show the overall results of each question on the survey, including any trends from previous surveys.
- Benchmarking analysis showing how the City compares to other communities.
- Importance-Satisfaction analysis that will identify City services that should receive the most attention in order to boost overall satisfaction with the delivery of City services.
- GIS maps that show geocoded survey results for selected questions on the survey
- Tabular data that shows the results for each question on the survey, including open ended questions.
- A copy of the survey instrument

Deliverable Task 3: ETC Institute will submit the survey findings report in an electronic format. ETC Institute will also provide the raw data in an Excel database, or other format as requested by the City. As a part of Task 3, a Project Manager from ETC Institute will make one (1) on-site or webinar presentation at a mutually decided upon date and time. The presentation will be based on a PowerPoint presentation developed by ETC Institute and delivered to the City no less than one week before the scheduled presentation. ETC Institute will also update and manage the City's panel survey database.

Project Schedule

Listed below is ETC Institute's typical timeline for administering a community survey. ETC Institute is available to start at a date most convenient for the City.

- **Month 1**
Design survey instrument
Finalize sampling plan
- **Months 2-3**
Administer the survey
- **Month 4**
Draft Report Submitted for review
Prepare and Deliver the Final Report

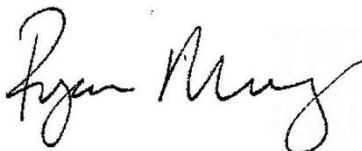
Fee

The table below shows a breakdown of the fees for the services described in this proposal for the 2023 survey. ETC Institute has provided overall costs for the survey project which includes one (1) on-site or webinar presentation of the final results.

2023 Survey Pricing for the City of Roeland Park	
Survey Costs by Task	
Task 1: Design Survey and Prepare Sampling Plan	\$ 2,755.00
Task 2: Administer the Survey	\$ 12,260.00
Task 3: Analysis and Final Reports	\$ 1,700.00
Task 4: Update Interactive Data Dashboard	\$ 1,250.00
TOTAL	\$ 17,965.00
Amount Billed Monthly over 24 Months (January 2023 - December 2024)	\$ 748.55
Optional Tasks	
Crosstabulations by key demographic areas	\$ 500.00
Translate online survey into other languages	\$ 500.00
Additional Webinar Presentations	\$ 550.00
Additional On-Site Presentations	\$ 750.00
Panel Surveys (price per occurrence – no more than 4 per year)	\$ 550.00

CLOSING: We appreciate your consideration of this proposal and look forward to your decision. If you have any questions, please do not hesitate to call me at (913) 254-4598.

Sincerely,



Ryan Murray

Assistant Director of Community Research
ETC Institute
725 W. Frontier Circle
Olathe, KS 66061
(913) 254-4598
ryan.murray@etcinstitute.com

Greg Emas, CFO
ETC Institute
913-829-1215

Keith Moody
City Administrator
City of Roeland Park, Kansas
913-722-2600

Date: _____