

**AGENDA**  
**CITY OF ROELAND PARK, KANSAS**  
**CITY COUNCIL MEETING**  
**ROELAND PARK**  
**Roeland Park City Hall, 4600 W 51st Street**  
**June 3, 2024 6:00 PM**

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|--|--|--|
| <ul style="list-style-type: none"> <li>• Michael Poppa, Mayor</li> <li>• Benjamin Dickens, Council Member</li> <li>• Jan Faidley, Council Member</li> <li>• Emily Hage, Council Member</li> <li>• Jennifer Hill, Council Member</li> </ul> | <ul style="list-style-type: none"> <li>• Matthew Lero, Council Member</li> <li>• Tom Madigan, Council Member</li> <li>• Kate Raglow, Council Member</li> <li>• Jeffrey Stocks, Council Member</li> </ul> | <ul style="list-style-type: none"> <li>• Keith Moody, City Administrator</li> <li>• Jennifer Jones-Lacy, Asst. Admin.</li> <li>• Kelley Nielsen, City Clerk</li> <li>• John Morris, Police Chief</li> <li>• Donnie Scharff, Public Works Director</li> </ul> |
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<b>Admin</b>	<b>Finance</b>	<b>Safety</b>	<b>Public Works</b>
Lero	Stocks	Hage	Raglow
Faidley	Dickens	Hill	Madigan

**Pledge of Allegiance**

A. Instructions on Logging into Meeting Remotely

**Roll Call**

**Modification of Agenda**

**I. Public 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.*

**II. 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 #1044

- B. City Council Meeting Minutes May 20, 2024
- C. Approve Cereal Malt Beverage License

**III. Business From the Floor**

**A. Applications / Presentations**

- 1. Update from the County – Commissioner Fast

**IV. Mayor's Report**

- A. Pride Month Proclamation
- B. National Gun Violence Awareness Day Proclamation

**V. Workshop and Committee Reports**

**VI. Reports of City Liaisons**

- A. Planning Commission

**VII. Unfinished Business**

**VIII. New Business**

- A. Approve Construction Manager at Risk for Community Center Phase 2 Renovations (10 min)
- B. Approve Agreement with Placer AI (5 min)
- C. Approve Agreement with KDOT for the 2025 Nall Ave Road Improvements (5 min)
- D. Property Tax Rebate Program Process (5 min)

**IX. Ordinances and Resolutions:**

**X. Workshop Items:**

**XI. 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](http://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- -A.  
**Committee** 6/3/2024  
**Meeting Date:**



**City of Roeland Park**  
Action Item Summary

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**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.

**Kelley Nielsen is inviting you to a scheduled Zoom meeting.**

**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=VWNXbjNkejIVb0JBaStWMDF5WXpoZz09>

**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>**

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

**What are the implications to intersectionality?**

- Does this item benefit all racial groups?
- Does this item benefit Community for All Ages?
- Does this item exclude or disproportionately impact any social identities? If yes, what populations and why?
- What (if any) social determinants of health are impacted by this item?
- What (if any) are the unintended economic and environmental impacts of this item?
- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

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

**Additional Information**

**REVIEWERS:**

Department	Reviewer	Action	Date
Administration	Nielsen, Kelley	Approved	5/28/2024 - 11:09 AM

## **Goals/Objectives & Terms**

**Item Number:** Consent Agenda- II.-A.  
**Committee** 6/3/2024  
**Meeting Date:**



**City of Roeland Park**  
Action Item Summary

Date:  
Submitted By:  
Committee/Department:  
Title: **Appropriations Ordinance #1044**  
Item Type:

**Recommendation:**

**Details:**

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

**What are the implications to intersectionality?**

- Does this item benefit all racial groups?
- Does this item benefit Community for All Ages?
- Does this item exclude or disproportionately impact any social identities? If yes, what populations and why?
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- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

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

## Additional Information

### REVIEWERS:

Department	Reviewer	Action	Date
Administration	Nielsen, Kelley	Approved	5/30/2024 - 3:46 PM

## Goals/Objectives & Terms

### ATTACHMENTS:

Description	Type
▣ Appropriations Ordinance #1044	Cover Memo

# Appropriation Ordinance - 6/3/2024 - #1044

4600 West Fifty-First Street

Roeland Park, Kansas 66205

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

Monday, June 3, 2024

## Appropriation Ordinance - 6/3/2024 - #1044

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 June 3, 2024.

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

\$ **386,336.42**

# Appropriation Ordinance - 6/3/2024 - #1044

Vendor	Dept	Acct #	Description	Invoice Description	Check /EFT Date	Amount	Chk #	Check Amount
						Distribution		Check
Vendor	Dept	Account	Account Description	Reference	Date	Amount	Check #	Amount
All City Management Services, Inc.	102	5214.102	Other Contracted Services	93695	05/29/24	668.20	76663	668.20
All Copy Products, Inc.	102	5214.102	Other Contracted Services	82612067	05/22/24	322.50	76641	645.00
All Copy Products, Inc.	105	5214.105	Other Contracted Services	82612067	05/22/24	322.50		
American Fidelity Assurance	101	2052.101	Supplemental Insurance Payable	D724166	05/29/24	480.16	76664	480.16
Aqua Products K.C.	220	5210.220	Maintenance & Repair Building	30997	05/22/24	127.10	76642	127.10
Balls Food Stores	101	5237.101	Community Events	83955	05/22/24	94.41	76643	94.41
Kansas City Board of Public Utilities	106	5201.106	Electric	6657 5/24/24	05/29/24	372.02	76665	833.27
Kansas City Board of Public Utilities	106	5201.106	Electric	6657 5/24/24	05/29/24	0.10		
Kansas City Board of Public Utilities	106	5201.106	Electric	6657 5/24/24	05/29/24	69.64		
Kansas City Board of Public Utilities	106	5287.106	Water	6657 5/24/24	05/29/24	213.26		
Kansas City Board of Public Utilities	106	5288.106	Waste Water	6657 5/24/24	05/29/24	47.08		
Kansas City Board of Public Utilities	106	5288.106	Waste Water	6657 5/24/24	05/29/24	131.17		
CMI, Inc.	102	5210.102	Maintenance & Repair Building	8065846	05/23/24	547.47	32928	547.47
Occupational Health Centers of the Kans	106	5207.106	Medical Expense & Drug Testing	1015544125	05/22/24	170.00	76644	170.00
Constellation Newenergy- Gas Division, I	220	5289.220	Natural Gas	6575 5/15/24	05/22/24	46.93	76645	46.93
Corporate Health - KU Midwest	220	5207.220	Medical Expense & Drug Testing	57089911	05/22/24	366.00	76646	366.00
Benjamin Dickens	101	5253.101	Public Relations	5/22/24 EXP	05/29/24	48.23	76666	48.23
Dog Waste Depot	110	5262.110	Grounds Maintenance	210681	05/29/24	237.77	76667	237.77
Edwards Chemicals	220	5326.220	Chemicals	IN150508	05/22/24	488.50	76647	488.50
ETC Institute	101	5214.101	Other Contracted Services	32022	05/22/24	749.55	76648	749.55
Hometown Lawn, LLC	106	5214.106	Other Contracted Services	3520	05/22/24	1,585.00	76649	1,585.00
Hometown Lawn, LLC	106	5214.106	Other Contracted Services	3598	05/29/24	1,895.00	76668	1,895.00
Johnson County Wastewater	101	5288.101	Waste Water	3179 5/9/24	05/22/24	43.81	76650	188.01
Johnson County Wastewater	290	5288.290	Waste Water	7943 5/9/24	05/22/24	144.20		
Kansas Gas Service	101	5289.101	Natural Gas	1745 5/9/24	05/22/24	259.21	76651	259.21
Lamp, Ryneerson & Assoc., Inc.	300	5209.300	Professional Services	323094010000003	05/22/24	5,980.50	76652	18,068.86
Lamp, Ryneerson & Assoc., Inc.	300	5209.300	Professional Services	323094010000009	05/22/24	12,088.36		
Lamp, Ryneerson & Assoc., Inc.	106	5421.106	Street Maintenance	324016010000004	05/29/24	12,258.93	76669	52,618.93
Lamp, Ryneerson & Assoc., Inc.	510	5428.510	Roe Parkway Extension & Maintenance	321001040000024	05/29/24	9,852.60		
Lamp, Ryneerson & Assoc., Inc.	270	5454.270	Sidewalk Improvements	324042010000001	05/29/24	2,016.50		
Lamp, Ryneerson & Assoc., Inc.	370	5455.370	Public Infrastructure Improvements	322001070000014	05/29/24	2,610.50		
Lamp, Ryneerson & Assoc., Inc.	270	5465.270	RSRP - Nall from 51st to 58th	323098010000007	05/29/24	17,392.30		
Lamp, Ryneerson & Assoc., Inc.	270	5209.270	Professional Services	323111010000003	05/29/24	3,727.30		
Lamp, Ryneerson & Assoc., Inc.	270	5209.270	Professional Services	324001010000004	05/29/24	4,760.80		
Lewis & Ellis, Inc.	101	5213.101	Audit Fees	34234	05/22/24	2,300.00	76653	2,300.00
Lippert Mechanical Service Corp	106	5210.106	Maintenance & Repair Building	SI2117389	05/29/24	92.12	76670	92.12
Midwest Public Risk	107	5126.107	Health/Dental/Vision Insurance	6/2024 Final Inv	05/29/24	38,620.00	76671	38,620.00
Abiathar Naaman	103	2080.103	Liability for Court Bonds	5/22/24 Bond	05/22/24	250.00	2021	250.00



Adam Peer	103	5209.103	Professional Services 5/28/24 Court	05/29/24	375.00	76672	375.00
Custodian of Petty Cash	101	4795.101	Miscellaneous 5/20/24 Man Ck	05/20/24	400.00	32925	400.00
Pitney Bowes Global Financial Services I	101	5205.101	Postage & Mailing Permits 3319096624	05/22/24	195.12	76654	195.12
Pitney Bowes Inc.	101	5205.101	Postage & Mailing Permits 1025341668	05/22/24	107.88	76655	107.88
Principal Life Insurance Co.	107	5130.107	City Paid Life/ST Disability 1 5/17/24	05/29/24	800.88	76673	800.88
T2 Holdings, LLC	102	5214.102	Other Contracted Services 1437224	05/29/24	26.77	76674	53.54
T2 Holdings, LLC	105	5214.105	Other Contracted Services 1437224	05/29/24	26.77		
SCP Distributors LLC	220	5313.220	Safety Supplies/Equipment 524635	05/22/24	355.63	76656	355.63
Rohman Photography	101	5209.101	Professional Services 1263	05/22/24	375.00	76657	375.00
Rowena's Garden	106	5263.106	Tree Maintenance 51924	05/22/24	390.00	76658	390.00
Shawnee Mission Ford, Inc.	360	5315.360	Machinery & Auto Equipment 31324	05/22/24	49,791.00	76659	49,791.00
Staples	101	5301.101	Office Supplies 7000537548	05/22/24	78.61	76660	78.61
Brenda Stolle	115	5271.115	Compost Bin Rebate Program 4/16/24 Rebate	05/22/24	40.00	76661	40.00
Robert Stone	103	5242.103	Restitution 4/5/24 Restituti	05/22/24	500.00	32926	500.00
Strawberry Hill Inkc LLC	220	5308.220	Clothing & Uniforms 51724	05/29/24	675.00	76675	675.00
US Infra Rehab Services, LLC	370	5455.370	Public Infrastructure Improvements 24PW002	05/22/24	207,172.97	76662	207,172.97
US Postal Service	101	5208.101	Newsletter 5/22/24 Postage	05/23/24	790.92	32927	790.92
Water District No 1 of Johnson County	101	5287.101	Water 7177 5/21/24	05/29/24	44.40	76676	44.40
Wholesale Batteries, Inc.	106	5260.106	Vehicle Maintenance 501628	05/29/24	132.75	76677	132.75
Miller Management Systems, LLC	101	5214.101	Other Contracted Services Recurring EFT	05/20/24	2,678.00	EFT	2,678.00

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386,336.42

**Item Number:** Consent Agenda- II.-B.  
**Committee** 6/3/2024  
**Meeting Date:**



**City of Roeland Park**  
Action Item Summary

**Date:**  
**Submitted By:**  
**Committee/Department:**  
**Title:** City Council Meeting Minutes May 20, 2024  
**Item Type:**

**Recommendation:**

**Details:**

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

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- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

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

## Additional Information

### REVIEWERS:

Department	Reviewer	Action	Date
Administration	Nielsen, Kelley	Approved	5/30/2024 - 3:47 PM

## Goals/Objectives & Terms

### ATTACHMENTS:

Description	Type
▫ City Council Meeting Minutes May 20, 2024	Cover Memo

**CITY OF ROELAND PARK, KANSAS**  
**CITY COUNCIL MEETING MINUTES**  
**ROELAND PARK CITY HALL**  
**4600 WEST 51<sup>ST</sup> STREET, ROELAND PARK, KS 66205**  
**May 20, 2024, 6:00 P.M.**

- Michael Poppa, Mayor
- Benjamin Dickens, Council Member
- Jan Faidley, Council Member
- Emily Hage, Council Member
- Jennifer Hill, Council Member

- Mathew Lero, Council Member
- Tom Madigans, Council Member
- Kate Raglow, Council Member
- Jeffrey Stocks, Council Member

- Keith Moody, City Administrator
- Jennifer Jones-Lacy, Asst. City Admin.
- Kelley Nielsen, City Clerk
- John Morris, Police Chief
- Donnie Scharff, Public Works Director

**Admin**

Lero  
Faidley

**Finance**

Stocks  
Dickens

**Safety**

Hage  
Hill

**Public Works**

Raglow  
Madigan

(Roeland Park Council Meeting Called to Order at 6:01 p.m.)

**Pledge of Allegiance**

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

**Roll Call**

City Clerk Nielsen called the roll. All Governing Body members were present. Staff present were City Administrator Moody, City Attorney Felzien, Assistant City Administrator/Finance Director Jones-Lacy, Deputy Police Chief Honas, Public Works Director Scharff, and City Clerk Nielsen.

**Modification of Agenda**

Mayor Poppa recommended to add a presentation from Mary Calhoun, a representative from the Kansas Silver Haired Legislature to Business from the Floor, Item A, and move the Social Media Update to Item B and the 2023 Audit Report to become Item C.

**I. Public Comments**

**Judy Hyde** (5113 W. 58<sup>th</sup>) Ms. Hyde, former member of the Sustainability Committee, expressed her support for bike lanes added to various streets within the City as this works to the Complete Streets initiative. She asked the Council to consider the benefits of bike lanes to City streets and the number of ways they will move Roeland Park forward to being a safer, healthier, more equitable, and environmentally conscious place to live and work.

(Following Ms. Hyde’s comments, the meeting moved to the Bike Month Proclamation.)

**II. Consent Agenda**

- A. Appropriations Ordinance #1043**
- B. City Council Meeting Minutes May 6, 2024**

**MOTION:** CMBR MADIGAN MOVED AND CMBR RAGLOW SECONDED TO APPROVE THE CONSENT AGENDA AS PRESENTED. (THE MOTION CARRIED 8-0.)

### **III. Business from the Floor - Proclamations/Applications/Presentations**

#### **A. Kansas Silver Haired Legislature - Mary Calhoun**

Ms. Calhoun shared information about the Kansas Silver Haired Legislature noting there are 125 representatives from each county in Kansas who advocate for seniors and provide a voice at the state level with an emphasis on educating seniors and providing ways for seniors to become involved. Some of the issues they presented this year were to support Medicaid expansion (did not pass), establish a medical cannabis advisory board to make recommendations for legal use (did not pass), support voting rights of seniors, ensure accessibility to the polls (unsure of status), expand the Grandparents as Caregivers Act to provide financial assistance to other relatives that provide care, and to support elimination of the tax cliff and increase income thresholds to qualify for an exemption of Social Security benefits from state income tax (special session to be held first week of June). The group also works closely with the Area Agency on Aging and programs such as Meals on Wheels, CHAMPS, and transportation. Ms. Calhoun asked the Council if any seniors over 60 have any concerns that affect them or other seniors to pass along their contact information.

Mayor Poppa thanked Ms. Calhoun for her presentation and letting them know about their group. Ms. Calhoun left pamphlets for the Governing Body which contained contact information for various resources for seniors.

#### **B. Social Media Update - Katie Garcia**

Katie Garcia, the City's PIO, noted that in March they launched the Citizens Academy and have 12 participants who are very engaged. It is a 9-week program, and the Governing Body has been invited to the June 4<sup>th</sup> celebration to meet the class.

Along with Mayor Poppa and Ms. Jones-Lacy, Ms. Garcia said they have relaunched the Project Rise website and asked the Councilmembers to check it out. There will be more Project Rise updates coming out more frequently. They have also launched a Roeland Park LinkedIn page.

Ms. Garcia said the City sends an email every Wednesday and their open rates and engagement are doing well above industry averages. Most users continue to be from desktops. Their post engagements are up 20 percent.

CMBR Dickens asked if there are demographics and times on the click open rates. Ms. Garcia said they do not track that and that would be up to the individual releasing that information to Constant Contact. She did add that an almost 50 percent open rate is fantastic.

CMBR Faidley noted they only send emails to people that request to receive them. Ms. Garcia responded that people could go online and sign up to receive e-mails, and they must opt in, which is an e-mail best practice as it is a violation to send to people that do not choose to receive the e-mails.

Mayor Poppa thanked Ms. Garcia for her work on the City's social media and keeping them relevant and for her work on the citizens academy. Ms. Garcia said they will do a survey at the end of the academy and will share the feedback with the Governing Body.

### **C. 2023 Audit Report**

Mayor Poppa introduced Sean Gordon with Gordon CPA who performed the City's 2023 audit. He offered an unmodified opinion which is the highest opinion and reflects well on the City's financial and internal control management of the City. There are no recommendations in the report which is due to good management by staff. He said it was a good audit and he appreciates working with the staff during the process and their ability to get answers to his questions.

CMBR Faidley said it is amazing there were no recommendations. She noted there was an earlier time it was recommended to tighten up on credit card use and Mr. Gordon said that has been taken care of from what they could see.

Mayor Poppa gave kudos to the staff for their financial acuity and the controls they have in place as well as the transparency and the way they handle the City's money. He also thanked Mr. Gordon for conducting the audit and going over the report with them.

### **IV. Mayor's Report**

#### **A. Bike Month Proclamation**

Mayor Poppa introduced Michael Kelly, Policy Director for BikeWalkKC.

Mr. Kelly thanked Roeland Park for recognizing May as Bike Month and the importance of making the streets safer for those biking as well as pedestrians.

Mayor Poppa read the proclamation into the record. All Governing Body members signed on to the proclamation.

(Photos were taken)

(The meeting then returned to the Consent Agenda.)

### **V. Reports of City Liaisons and Committees**

#### **A. Arts Committee Update**

Marek Gliniecki, Co-Chair of the Arts Advisory Committee, reported on the activities of the Arts Committee. He said the artwork of "Sunflower" was a prize winner at an international exhibition and is on a tour through China. Also, Lynda Leonard has some sculptures on exhibition. Mr. Gliniecki thanked Councilmembers Hill and Faidley as well as Mayor Poppa for attending the ribbon cutting celebration as they dedicated the new sculpture, "Origin" on Roe. He also thanked the Public Works Department for their support and technical expertise that helped to get the job done. He also expressed his thanks for support of the staff and residents of Roeland Park.

Mr. Gliniecki said the committee is working on a master plan for next year and there will be no new art additions until they are finished. They will bring the report to the Governing Body for their review during various stages, and it will provide a clear view where the City is going in terms of art.

It was noted that “Eucalyptus” was damaged and has been in storage. They have selected a site in the traffic island near Johnson Drive and 57<sup>th</sup> Street. It will be on a higher base and should be in a more secure position than it was at Nall Park.

Also, the 47<sup>th</sup> Street mural has been damaged over the last year or so. They are trying to find someone to repair it, and it is expected to be \$2,000-3,000 for repairs. It is damaged from several incidents of cars veering into it.

The “Speed Limit 34” sign will be replaced back into R Park and has been made a sturdier structure.

The committee has applied for a community garden grant from AARP, but they have not heard back from them. Mr. Gliniecki said he will be contacting them for an update.

He also thanked Katie Garcia for allowing the Arts Committee to present to the citizens of the community. The committee will continue to update the Governing Body on their progress.

Mayor Poppa said he noted that someone had attached flowers to “Hedgehog” on the north end of Roe. Ms. Leonard had said she found there was tagging on it. Mr. Gliniecki said they feel like the piece is deteriorating and they will be having that discussion. It was meant to be a temporary piece with the intent that when there is peace in Ukraine, it will be taken back and melted into a symbol of peace and will be returned to the City.

CMBR Faidley asked the Council if there were any objections to the location for the placement of “Eucalyptus.” Mayor Poppa said the committee believes this is the best option for placement and there were no objections.

## **VI. Unfinished Business**

### **A. Approve Agreement with Dimensional Innovations to Complete Mighty Bike**

City Manager Moody stated he has worked through the cost proposal with Dimensional Innovations, which does not reflect the bonds. He has met with the City Attorney and the agreement does necessitate a performance bond which has been added to the proposal price. There is still a question whether they would need a structural engineer, which the City anticipated they would hire a consultant to do. They need to confirm whether it will be covered by Dimensional Innovations. For completion of the structure, the City will need to add an additional \$15,000-20,000. Currently they have committed \$90,000 and they were anticipating a \$60,000 fundraising match and fundraising has exceeded the City’s match. The project has become more expensive than anticipated.

Mayor Poppa clarified that \$255,228 is the not to exceed. The total for the project currently is \$275,000 and includes soft costs for the City.

CMBR Faidley asked if they still have a safety consultant and whether the initial concept artist is still included in the process. Mayor Poppa said the original artist has received some compensation and nothing further is anticipated.

CMBR Madigan asked whether this latest version is ADA accessible. City Manager Moody said it has never been an accessible feature as it is a climbing based apparatus. He said that some but not all elements are accessible in the park. CMBR Madigan asked if there are still parts of the Mighty Bike



that are accessible. CMBR Raglow said that some of the lower sections of the bike are for those that cannot climb so they too can be engaged with the structure.

CMBR Hage asked about the surface underneath. City Manager Moody said it has been designed with a fall protection material, an artificial turf with crumbled rubber.

CMBR Madigan wanted to clarify that only \$20,000 more is what is required from the City. City Manager Moody said that is correct.

Mayor Poppa restated the motion would be to increase the City's portion by \$20,000 in addition to approving the attached agreement. City Manager Moody said they do have the resources available in the Special Infrastructure Fund, and this will not prevent them from doing the projects they have planned.

CMBR Hill asked for clarification that to get the same surface it would cause them to increase the price and she wanted to know by how much. City Manager Moody said he did not have those figures, but it is part of the value engineering.

CMBR Dickens said he too would like to see how much it will increase. He asked with the extra \$20,000 they are approving tonight, that it is not necessarily what could be spent, but could come in lower. City Manager Moody said that it could very well be lower.

CMBR Raglow said this has been a long time in the making and gave kudos to staff to help this get almost across the finish line. She thanked everyone for the amount of time and hours spent on this and really appreciates it.

**MOTION:** CMBR HILL MOVED AND CMBR LERO SECONDED TO INCREASE THE CITY'S PORTION OF THE MIGHTY BIKE PROJECT NOT TO EXCEED 20,000 ADDITIONAL FOR A TOTAL OF \$110,000. (THE MOTION CARRIED 7-1 WITH CMBR FAIDLEY VOTING NO.)

**MOTION:** CMBR LERO MOVED AND CMBR HAGE SECONDED TO APPROVE THE AGREEMENT WITH DIMENSIONAL INNOVATIONS TO SERVE AS THE GENERAL CONTRACTOR ON THE MIGHTY BIKE PROJECT AT A COST NOT TO EXCEED 260,233. (THE MOTION CARRIED 8-0.)

## **VII. New Business**

### **A. Approve SFS Additional Services for Phase 1 of Community Center Renovation Project**

City Manager Moody said this item is related to the project not being completed on time by the original contractor. Mr. Moody has kept track of additional time related to the project as well as the effort over and above. SFS requests consideration of paying them for these additional services and believes their request is supported and justified. They have been a very patient and dependable partner through a challenging project.

**MOTION:** CMBR FAIDLEY MOVED AND CMBR DICKENS SECONDED TO APPROVE ADDITIONAL SERVICES PROVIDED BY SFS DURING PHASE 1 RENOVATIONS AT THE COMMUNITY CENTER NOT TO EXCEED \$52,900. (THE MOTION CARRIED 7-0. *CMBR MADIGAN WAS NOT PRESENT FOR THE VOTE.*)

CMBR Faidley said she had a conversation with Jennifer from JCPRD who would like to do a virtual walk-through which cannot be done until they get rid of the blue tape on Phase 1. She asked if there was any completion date in mind. City Manager Moody said that Universal Construction will complete the punch list items and that they are coming out tomorrow to meet with Parks & Rec Superintendent Marshall. He anticipates it will be complete within four weeks and the items to be finished are not that complicated.

**B. Approve Task Order with SFS for Phase 2 Renovations at the Community Center**

City Manager Moody said they have developed a plan for improvements in Phase 2 with SFS who is familiar with the building. The designs have been well received and the project is scheduled to begin in 2025. They will also begin scheduling on when to work in the different areas of the facility.

Universal Construction will be the Construction Manager at Risk and they will have them on board as they begin design process, and they will be involved in the value engineering from the start. That agreement will be forthcoming to the Governing Body.

CMBR Faidley asked about the kitchen and HVAC. City Manager Moody said the intent is to have a food warmer that does not require venting. It will be a full operable kitchen with an electric range versus gas.

CMBR Hage asked if there are plans to make a shower available as part of the fitness center. City Manager Moody said there will be no showers and the intent is to remove the wet areas that remain in the workout area.

**MOTION:** CMBR RAGLOW MOVED AND CMBR DICKENS SECONDED TO APPROVE THE SERVICE AGREEMENT WITH SFS FOR DESIGN AND PROJECT ADMINISTRATION SERVICES FOR PHASE 2 RENOVATION AT THE COMMUNITY CENTER AT A COST NOT TO EXCEED \$121,000. (THE MOTION CARRIED 8-0.)

**VIII. Ordinances and Resolutions**

*No ordinances or resolutions were present.*

**IX. Reports of City Officials**

**A. City Manager Report**

City Manager Moody said the City sustained no major storm damage with most being to the south and west of Roeland Park.

Ms. Jones-Lacy reminded everyone of a joint meeting with the Governing Body and the Planning Commission at 6:00 on May 21<sup>st</sup>. She said there is also the opportunity to attend online.

**Adjourn:**

**MOTION:** CMBR MADIGAN MOVED AND CMBR RAGLOW SECONDED TO ADJOURN. (THE MOTION CARRIED 8-0.)

(Roeland Park City Council Meeting Adjourned at 7:08 p.m.)

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Kelley Nielsen, City Clerk

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Michael Poppa, Mayor

**Item Number:** Consent Agenda- II.-C.  
**Committee** 6/3/2024  
**Meeting Date:**



**City of Roeland Park**  
Action Item Summary

**Date:** 5/30/2024  
**Submitted By:** Kelley Nielsen  
**Committee/Department:** Admin.  
**Title:** **Approve Cereal Malt Beverage License**  
**Item Type:**

**Recommendation:**  
**To approve Price Chopper CMB.**

**Details:**

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

**What are the implications to intersectionality?**

- Does this item benefit all racial groups?
- Does this item benefit Community for All Ages?
- Does this item exclude or disproportionately impact any social identities? If yes, what populations and why?
- What (if any) social determinants of health are impacted by this item?
- What (if any) are the unintended economic and environmental impacts of this item?
- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

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

## Additional Information

### REVIEWERS:

Department	Reviewer	Action	Date
Administration	Nielsen, Kelley	Approved	5/30/2024 - 5:03 PM

## Goals/Objectives & Terms

### ATTACHMENTS:

Description	Type
▣ CMB Price Chopper	Cover Memo

**KEEP THIS LICENSE POSTED CONSPICUOUSLY AT ALL TIMES**

Fee: \$75.00

No. \_\_\_\_\_

## **DEALER'S RETAIL LICENSE**

From: 06/04/2024

To: 12/31/2024

### ***To All Whom it May Concern:***

*License is hereby granted to **Price Chopper** to sell at retail*

## **CEREAL MALT BEVERAGES**

***For sale in original and unopened containers and NOT for consumption on premises***

**4950 ROE Boulevard B**

*in the City of Roeland Park in Johnson County, Kansas,*

*Application therefor, on file in the office of the City Clerk of said City, having been approved by the governing body of such City as provided by the Laws of Kansas and the rules, regulations and ordinances pertaining thereto.*

*This License will expire on 12/31/2024, unless sooner revoked, is not transferable, nor will any refund of the fee be allowed thereon.*

*Given under our hands and the corporate seal of said City, on this date: 06/03/2024*

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**Item Number:** Applications/Presentations- A.-1.  
**Committee** 6/3/2024  
**Meeting Date:**



**City of Roeland Park**  
Action Item Summary

**Date:** 5/30/2024  
**Submitted By:** Keith Moody  
**Committee/Department:**  
**Title:** Update from the County – Commissioner Fast  
**Item Type:**

**Recommendation:**  
Informational, no action anticipated.

**Details:**

Commissioner Fast will provide a County update.

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

**What are the implications to intersectionality?**

- Does this item benefit all racial groups?
- Does this item benefit Community for All Ages?
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- What (if any) social determinants of health are impacted by this item?
- What (if any) are the unintended economic and environmental impacts of this item?
- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

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



## Additional Information

### REVIEWERS:

Department	Reviewer	Action	Date
Administration	Moody, Keith	Approved	5/28/2024 - 5:15 PM

## Goals/Objectives & Terms

### ATTACHMENTS:

Description	Type
▫ Update from Commissioner Fast	Cover Memo

# Johnson County Government

## Becky Fast

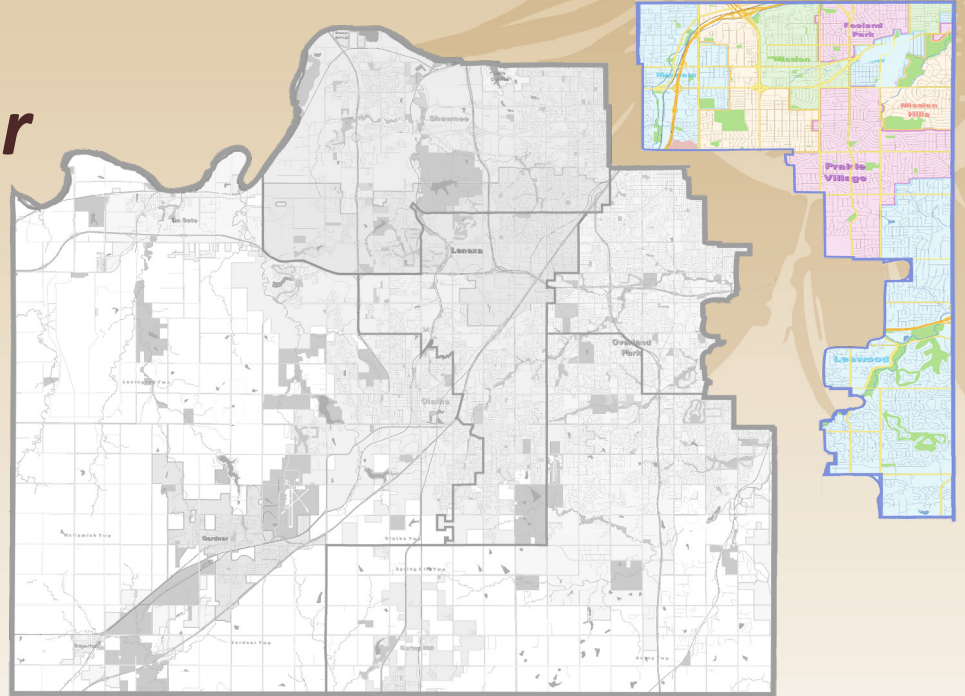
### *District 1 Commissioner*

#### Contact Me

[jocogov.org/beckyfast](http://jocogov.org/beckyfast)

913-715-0725

[Becky.Fast@jocogov.org](mailto:Becky.Fast@jocogov.org)



# NELSON WASTEWATER TREATMENT FACILITY

## COUNTY'S LARGEST-EVER CAPITAL PROJECT

**Constructed in phases from 1947 to 1972**

- Project Drivers
  - Aging Infrastructure and Water Quality
- More than \$210 million in savings
  - Funding from EPA and Kansas

### Timeline

- Began Construction: January 2024
- Substantial Completion: June 2029
- <sup>2</sup> Final Completion: December 2029



Updates at  
[JCWNelson.com](http://JCWNelson.com)





# JoCo Wastewater Backup Prevention Program

## Protect your home from heavy rain!

This program is voluntary and provides funding to eligible homeowners so they may install a backup prevention device or make plumbing modifications.

### JoCo Inflow Program: New Pilot Program

See if YOUR property qualifies

*Properties within the Johnson County*

*Wastewater service area*



JOCO  
Inflow

[jocogov.org/joco-inflow](http://jocogov.org/joco-inflow)

JOHNSON COUNTY  
KANSAS  
Wastewater



# JOHNSON COUNTY LIBRARY PROJECT



## **New Merriam Plaza Library**

- Opened in March
- Oldest branch in operation for 60 years

## **Planning for a new Corinth Library Branch**

- Library Board prioritized Corinth as the next replacement project
- Evaluating alternatives to replace or relocate the Corinth Branch.
- Project timeframe estimated for 2026-2028

# County Assistance Road System (CARS) Program

## 2024 Funding Sources

Funding Source	Amount
“Gas Tax” (SCCHF)	\$13,114,000
County Support (0.343 mills)	\$5,032,000
CARS Reserve	\$1,862,000
<b>Total</b>	<b>\$20,008,000</b>

	Roeland Park
2018	\$738,000
2019	\$104,000
2020	\$1,619,000
2021	\$283,000
2022	\$928,000
2023	\$112,000
<b>Total</b>	<b>\$3,784,000</b>

County pays 50% of the project’s construction.

Each city is guaranteed project funding for its top priority.





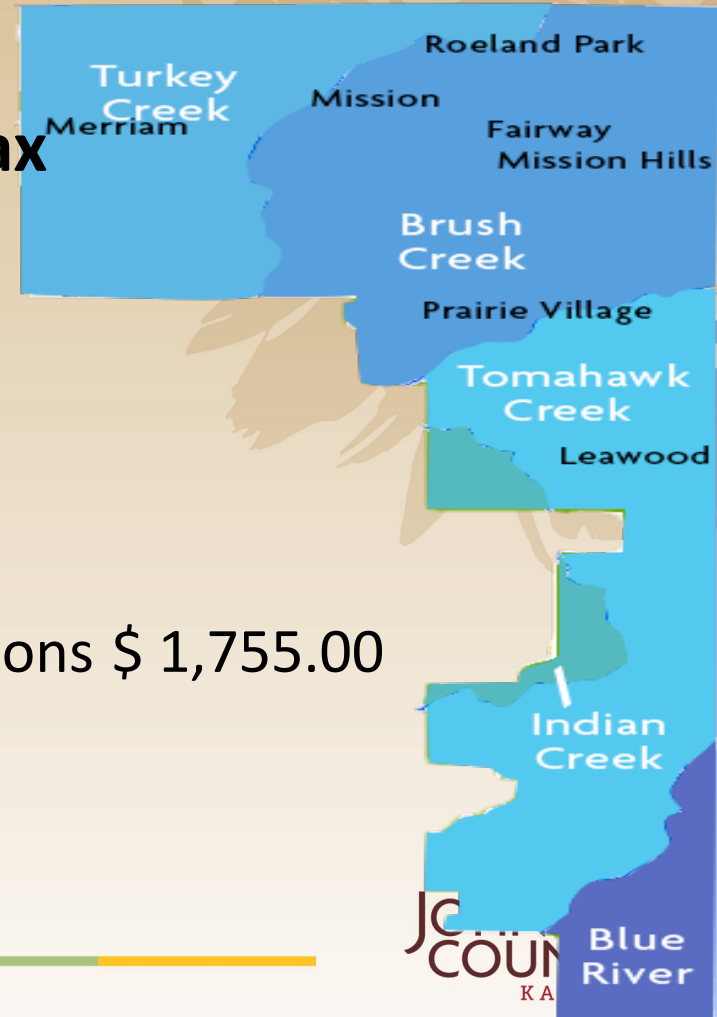
# JoCo Stormwater Management Funded with a 1/10 of 1% sales tax

2024 Program expenditure: \$20,125,000

## Roeland Park 2023 Funded Projects

55th & Nall and 51st & Mission Rd Inspections \$ 1,755.00

48th and Roe Blvd \$436,335.00



# As Landfill Nears Capacity “Alarm Bells are Ringing”

19 to 37 years of landfill capacity

Currently 7 active landfills (3 Kansas and 4 MO)



# NEW HOUSEHOLD HAZARDOUS WASTE FACILITY – OPENED 2023



Relocated and remodeled in Overland Park off of College Boulevard

Recycled Paint Store and household chemicals for purchase

Appointment for drop off at [jocogov.org/hhw](http://jocogov.org/hhw) or 913-715-6907



# INNOVATIONS AT JOCO MENTAL HEALTH CENTER

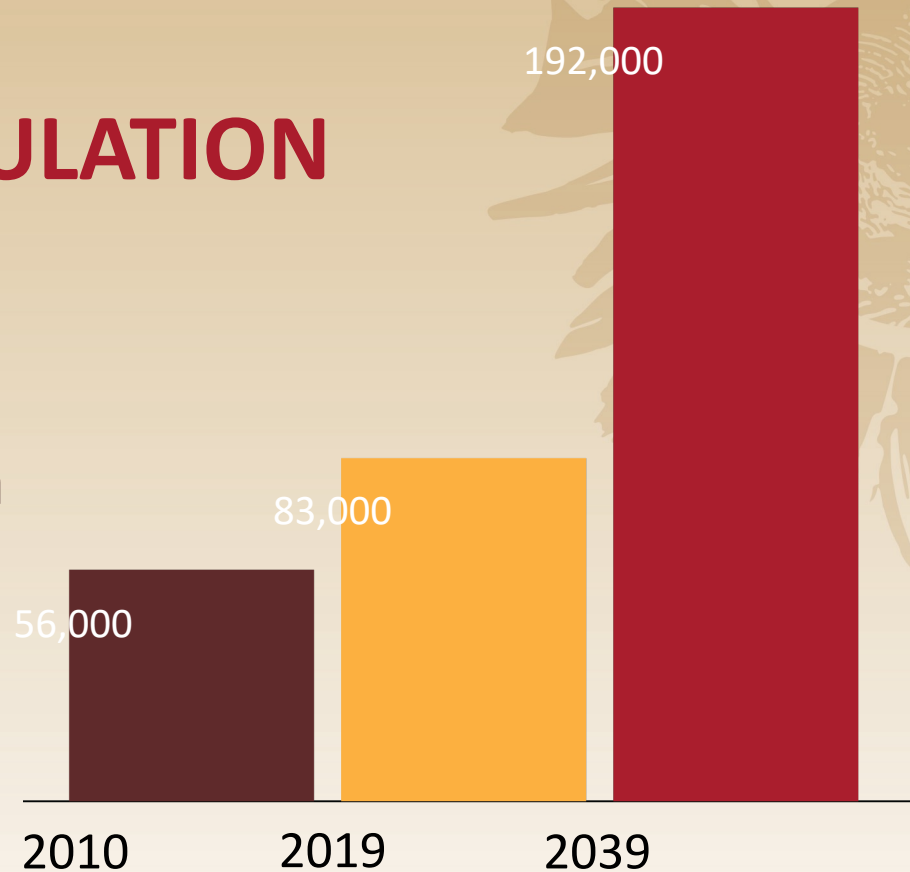
- Youth Crisis Residential Program (12 beds)
- New crisis stabilization center through converting a current mental health building
- Integration of 988 mental health within the 911 dispatch center.  
988 team - 41,000 calls in 2022



# 65+ AGING POPULATION

## Key County Programs:

- Meals on Wheels
- Senior Dining Program (CHAMPSS)
- Senior Health Insurance Counseling
- In-Home Services



Source: Wichita State University

# WHAT IS HAPPENING WITH PUBLIC TRANSIT?



- New 87 Street bus route connecting Lenexa, OP., PV., and Mission.
- Demand for Micro Transit continues to increase
- Strategic plan – city input and direction needed.

# ADDRESSING HOUSING INSTABILITY

MOVING FORWARD  
ON THE NEXT STEPS  
TO ADDRESSING  
HOUSING  
CHALLENGES IN  
JOHNSON COUNTY



*What do you think  
should be the top  
priorities?*

- Preserving housing through a new home repair program.
- A new eviction mediation pilot program to prevent homelessness.
- Increase need for utility assistance
- Homeless Service Center
  - Entered a real estate sales contract with the owner of the Lenexa La Quinta



# Local Property Tax Relief Programs

Qualifications	Shawnee	Merriam	Mission	Prairie Village	Roeland Park	Olathe	De Soto	Johnson County
Resident of city/county	yes	yes	yes	yes	yes	yes	yes	yes
Live & own home	yes	yes	yes	yes	yes	yes	yes	yes
Current on property taxes	yes	yes	yes	yes	yes	yes	yes	yes
No code violations	-	yes	-	-	-	yes	-	-
HUD's Very Low (50%) Income Limits	yes	-	-	-	yes	-	-	yes
HUD's Low (80%) Income Limits	-	yes	-	-	-	yes	yes	-
City-defined (65%) Income Limits	-	-	yes	yes	-	-	-	-
Maximum rebate amount	\$500	up to 100% of city tax	up to 100% of city tax	up to 100% of city tax	up to 100% of city tax	\$750	\$500.00	\$200
Maximum appraised value	-	-	-	\$426,865 (or previous year's average value)	-	-	\$341,334 (previous year's median value)	\$384,600
Age/Disability	-	-	-	-	-	-	Phase 1: 65+ or Disabled Veteran Phase 2: No Age or disability requirement	65+ or Disabled Veteran



# Local Property Tax Relief Programs - Results 2023

Qualifications	Shawnee	Merriam	Mission	Prairie Village	Roeland Park
Amount Funded	\$100,000	\$50,000	\$20,000	\$35,000	\$20,000
2022 - # Eligible	97	23	30	33	25
2022 - Total Relief/Rebate \$	\$43,000.00	\$12,669.00	\$10,604.00	\$14,015.94	\$15,708.50
2023 - # Eligible	90	56	19	53	30
2023 - Total Relief/Rebate \$	\$38,910.07	\$42,402.29	\$10,738.00	\$29,201.53	\$19,167.02

Kill Creek park (Means  
Observation Tower)



Meadowbrook Park



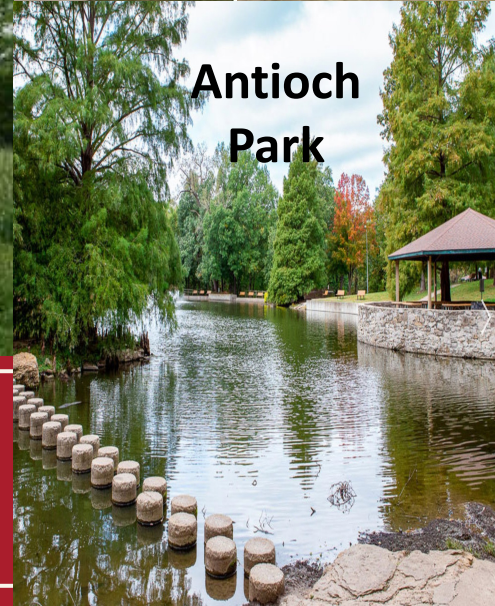
Cedar Niles Park



Camp Branch



Antioch  
Park



Lake Lexington  
Park



**Explore Johnson County  
Parks in 2024**

***We want to work  
together with you to  
make our community  
a great place to live!!***



**Item Number:** Mayor's Report- IV.-A.  
**Committee** 6/3/2024  
**Meeting Date:**



**City of Roeland Park**  
Action Item Summary

Date:  
Submitted By:  
Committee/Department:  
Title: **Pride Month Proclamation**  
Item Type:

<b>Recommendation:</b>
------------------------

**Details:**

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

**What are the implications to intersectionality?**

- Does this item benefit all racial groups?
- Does this item benefit Community for All Ages?
- Does this item exclude or disproportionately impact any social identities? If yes, what populations and why?
- What (if any) social determinants of health are impacted by this item?
- What (if any) are the unintended economic and environmental impacts of this item?
- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

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

## Additional Information

### REVIEWERS:

Department	Reviewer	Action	Date
Administration	Nielsen, Kelley	Approved	5/29/2024 - 8:43 AM

## Goals/Objectives & Terms

### ATTACHMENTS:

Description	Type
▫ Pride Month Proclamation	Cover Memo





# Proclamation

## PRIDE MONTH IN ROELAND PARK KANSAS

WHEREAS, our nation was founded on the principle of equal rights for all people, but the fulfillment of this promise has been long in coming for many Americans; and

WHEREAS, some of the most inspiring moments in our history have arisen from the various civil rights movements that have brought one group after another from the margins to the mainstream of American society; and

WHEREAS, in the movement toward equal rights for lesbian, gay, bisexual and transgender (LGBTQ) people, a historic turning point occurred on June 28, 1969, in New York City, with the onset of the Stonewall Riots. During these riots, LGBTQ citizens rose up and fought against the discriminatory criminal laws that have since been declared unconstitutional; and

WHEREAS, LGBTQ pride celebrations have taken place around the country every June to commemorate the beginning of the Stonewall Riots; and

WHEREAS, June is celebrated as LGBTQ Pride Month nationwide; and

WHEREAS, Roeland Park has a diverse LGBTQ community that includes people of all ethnicities, religions and professions; and

WHEREAS, we recognize the resilience and determination of the many individuals who are fighting to live freely and authentically, and in doing so, are opening hearts and minds, and laying the foundation for a more just and equitable America; and

WHEREAS, we affirm our obligation to uphold the dignity of all people, and dedicate ourselves to protecting the most vulnerable among us; and

WHEREAS, everyone should be able to live without fear of prejudice, discrimination, violence and hatred based on sexual orientation or gender identity/expression.

WHEREAS, August 4, 2024, will mark the 10th Anniversary of the City of Roeland Park leading the region by passing the first municipal nondiscrimination ordinance in Johnson County, and providing legal protections from discrimination based on sexual orientation or gender identity/expression for all residents, employees, and visitors.

NOW THEREFORE BE IT RESOLVED, that I, Michael Poppa, Mayor of the City of Roeland Park Kansas, do hereby proclaim June 2024 as Pride Month in the City of Roeland Park and invite all community members to respect and celebrate our diversity and continue to build a culture of inclusiveness and acceptance.

---

MICHAEL POPPA  
Mayor

**Item Number:** Mayor's Report- IV.-B.  
**Committee** 6/3/2024  
**Meeting Date:**



**City of Roeland Park**  
Action Item Summary

**Date:**  
**Submitted By:**  
**Committee/Department:**  
**Title:** National Gun Violence Awareness Day Proclamation  
**Item Type:**

**Recommendation:**

**Details:**

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

**What are the implications to intersectionality?**

- Does this item benefit all racial groups?
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- What (if any) are the unintended economic and environmental impacts of this item?
- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

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



## Additional Information

### REVIEWERS:

Department	Reviewer	Action	Date
Administration	Nielsen, Kelley	Approved	5/29/2024 - 8:44 AM

## Goals/Objectives & Terms

### ATTACHMENTS:

Description	Type
▫ National Gun Violence Awareness Day Proclamation	Cover Memo



# Proclamation

## 2024 CITY PROCLAMATION DECLARING THE FIRST FRIDAY IN JUNE TO BE NATIONAL GUN VIOLENCE AWARENESS DAY

This proclamation declares the first Friday in June to be National Gun Violence Awareness Day in the City of Roeland Park to honor and remember all victims and survivors of gun violence and to declare that we as a country must do more to end this public health crisis.

**WHEREAS**, every day, 120 Americans are killed by gun violence and more than 200 are shot and wounded, with an average of nearly 18,000 gun homicides every year; and

**WHEREAS**, Americans are 26 times more likely to die by gun homicide than people in other high-income countries; and

**WHEREAS**, in Kansas has 456 gun deaths every year, with a rate of 15.7 deaths per 100,000 people, a crisis that costs the state \$5.7 billion each year, of which \$95.1 million is paid by taxpayers. Kansas has the 21<sup>st</sup> highest rate of gun deaths in the US; and

**WHEREAS**, gun homicides and assaults are concentrated in cities, with more than half of all firearm related gun deaths in the nation occurring in 127 cities; and

**WHEREAS**, cities across the nation, including in Roeland Park are working to end the senseless violence with evidence-based solutions; and

**WHEREAS**, protecting public safety in the communities they serve is mayors' highest responsibility; and

**WHEREAS**, support for the Second Amendment rights of law-abiding citizens goes hand-in-hand with keeping guns away from people with dangerous histories; and

**WHEREAS**, mayors and law enforcement officers—in partnership with local violence intervention activists and resources—know their communities best, are the most familiar with local criminal activity and how to address it, and are best positioned to understand how to keep their citizens safe; and

**WHEREAS**, gun violence prevention is more important than ever as we see an increase in firearm homicides, and nonfatal shootings across the country, increased calls to domestic violence hotlines, and an increase in city gun violence;

**WHEREAS**, in January 2013, Hadiya Pendleton was tragically shot and killed at age 15; and on June 7, 2024 to recognize the 27th birthday of Hadiya Pendleton (born: June 2, 1997), people across the United States will recognize National Gun Violence Awareness Day and wear orange in tribute to -

- (1) Hadiya Pendleton and other victims of gun violence; and
- (2) the loved ones of those victims; and

**WHEREAS**, the idea was inspired by a group of Hadiya's friends, who asked their classmates to commemorate her life by wearing orange; they chose this color because hunters wear orange to announce themselves to other hunters when out in the woods, and orange is a color that symbolizes the value of human life; and

**WHEREAS**, anyone can join this campaign by pledging to wear orange on June 7th, the first Friday in June in 2024, to help raise awareness about gun violence; and

**WHEREAS**, by wearing orange on June 7, 2024 Americans will raise awareness about gun violence and honor the lives of gun violence victims and survivors; and

**WHEREAS**, we renew our commitment to reduce gun violence and pledge to do all we can to keep firearms out of the hands of people who should not have access to them, and encourage responsible gun ownership to help keep our families and communities safe.

**NOW, THEREFORE BE IT RESOLVED**, that I, Mayor Michael Poppa, do hereby proclaim June 7, 2024, to be National Gun Violence Awareness Day in the City of Roeland Park. I encourage all community members to support local efforts to prevent the tragic effects of gun violence and to honor and value human lives.

---

Michael Poppa, Mayor

**Item Number:** Reports of City Liaisons- VI.-A.  
**Committee** 6/3/2024  
**Meeting Date:**



**City of Roeland Park**  
Action Item Summary

**Date:** 5/29/2024  
**Submitted By:** Planning Commission  
**Committee/Department:** Planning Commission  
**Title:** **Planning Commission**  
**Item Type:** Report

**Recommendation:**

**Informational only. Lisa Brunner to provide update.**

**Details:**

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

**What are the implications to intersectionality?**

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- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

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

## Additional Information

### REVIEWERS:

Department	Reviewer	Action	Date
Administration	Nielsen, Kelley	Approved	5/29/2024 - 2:03 PM

## **Goals/Objectives & Terms**

**Item Number:** New Business- VIII.-A.  
**Committee** 6/3/2024  
**Meeting Date:**



**City of Roeland Park**  
Action Item Summary

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**Date:** 5/30/2024  
**Submitted By:** Keith Moody  
**Committee/Department:** Admin.  
**Title:** **Approve Construction Manager at Risk for Community Center Phase 2 Renovations (10 min)**  
**Item Type:** Agreement

**Recommendation:**

**Staff recommends entering into a Construction Manager at Risk Agreement with Universal Construction for Phase 2 renovations at the Community Center.**

**Details:**

In 2023 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). Based upon this effort the City Council selected Universal Construction to serve as the CMAR for the Public Works facility renovations. They have proven to be a dependable and capable construction manager. Our experience with putting phase 1 renovations at the Community Center out for bid have highlighted the importance of having a partnership with such a contractor when completing work in a public facility which will remain partially occupied during the renovation.

Universal has proposed the same fee structure for the Community Center project as the City agreed to for the Public Works project:

1. \$20k design and planning stage service fee.
2. 3% of construction costs for the general contractor and project supervision services.

This remains very competitive pricing. Universal stepped up to complete the incomplete punch list items from the Phase 1 contractor.

Selecting the CMAR will complete the team for this project. With Universal onboard we will finalize a construction phasing plan and detailed timeline that minimizes disruption during this renovation project. We have



budgeted \$1.6 million total for phase 2 (including design by SFS \$120k, CMAR fees \$64k, and construction costs \$1.416 M).

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. They will attend design meetings and offer value engineering ideas during design. Once we reach a final design, they will secure competitive bids from qualified trade contractors and bring back a maximum not to exceed price for construction. At that time Council will be asked to amend the CMAR agreement to incorporate the maximum not to exceed price.

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

**What are the implications to intersectionality?**

- Does this item benefit all racial groups?
- Does this item benefit Community for All Ages?
- Does this item exclude or disproportionately impact any social identities? If yes, what populations and why?
- What (if any) social determinants of health are impacted by this item?
- What (if any) are the unintended economic and environmental impacts of this item?
- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

Amount of Request: Current estimate is \$64,000; 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**

**REVIEWERS:**

Department	Reviewer	Action	Date
Administration	Moody, Keith	Approved	5/28/2024 - 2:08 PM

## Goals/Objectives & Terms

### ATTACHMENTS:

Description	Type
▣ CMAR Agreement with Universal for Phase 2 CC Renovations	Cover Memo
▣ SFS Memo and Composite Scores	Cover Memo
▣ Universal Construction RFP Submittal for CMAR	Cover Memo

**CITY OF ROELAND PARK, KANSAS CONTRACT BETWEEN  
CITY OF ROELAND PARK, KANSAS AND CONSTRUCTION MANAGER**

---

**Roeland Park Community Center  
4850 Rosewood Drive, Roeland Park, KS**

City of Roeland Park, Kansas  
4600 W 51st St, #200  
Roeland Park, KS 66205

Construction Manager:

Universal Construction Company, Inc., a Missouri corporation  
2320 NE Independence Avenue  
Lee's Summit, MO 64064

## TABLE OF CONTENTS

### Roeland Park Community Center Renovation – Phase II

		<b><u>Page</u></b>
AGREEMENT	CITY AND CONSTRUCTION MANAGER	A-1 to A-3
EXHIBIT A	PROGRAM REQUIREMENTS	PR-1
EXHIBIT B	GENERAL CONDITIONS	GC-i to GC-54
EXHIBIT C	CONSTRUCTION MANAGER'S PRECONSTRUCTION AND CONSTRUCTION FEE PROPOSAL	PCF-1
EXHIBIT D	FORM OF AFFIDAVIT OF PARTIAL PAYMENT	1 to 2
EXHIBIT E	FORM OF BILL OF SALE	1
EXHIBIT F	FORM OF BAILMENT AGREEMENT	1
EXHIBIT G	FORM OF AFFIDAVIT OF FINAL PAYMENT	1 to 2
EXHIBIT H	INSURANCE REQUIREMENTS	1 to 4
EXHIBIT I	FORM OF PERFORMANCE BOND	1 to 2
EXHIBIT J	FORM OF STATUTORY PAYMENT BOND	1 to 2
EXHIBIT K	FORM OF MAINTENANCE BOND	M-1 to M-2

**CITY OF ROELAND PARK, KANSAS**

**AGREEMENT BETWEEN  
CITY OF ROELAND PARK, KANSAS  
AND CONSTRUCTION MANAGER**

**Roeland Park Community Center Renovation – Phase II**

THIS AGREEMENT is made and entered into this 3rd day of June, 2024, by and between the **City of Roeland Park, Kansas**, (the "City"), and Universal Construction Company, Inc. (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 Community Center Renovation – Phase II**; 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 date set forth in the GMP amendment to the Agreement (as contemplated in section 2.2.4 of the General Conditions of the Construction Management Agreement- Exhibit B). 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  |
| 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 flue Agreement is not executed 6y 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 dale of this Agreement.)*

*[Add appropriate Acknowledgment form here.]*

## **EXHIBIT A**

### **PROGRAM REQUIREMENTS**

The project consists of the renovation of the existing building at 4850 Rosewood Drive, Roeland Park, KS 66205. The renovated facility will house: offices, conference space, work space, crew space, food service space, workout areas and support space.

The project may also create improvements to the site as required to support the building program.



**EXHIBIT B**

**GENERAL CONDITIONS TO CONSTRUCTION MANAGER AGREEMENT**

**TABLE OF CONTENTS**

	Description	Page Number
ARTICLE 1	GENERAL PROVISIONS.....	1
	1.1 Definitions .....	1
	1.2 Relationship of Parties.....	4
ARTICLE 2	CONSTRUCTION MANAGER'S RESPONSIBILITIES .....	4
	2.1 Preconstruction Phase Services .....	5
	2.2 Guaranteed Maximum Price Proposal and Contract Time .....	6
	2.3 Basis of GMP .....	7
	2.4 Construction Phase .....	8
ARTICLE 3	CITY'S RESPONSIBILITIES .....	12
	3.1 Information and Services .....	12
	3.2 Structural and Environmental Tests, Surveys, and Reports .....	12
	3.3 City's Designated Representative .....	13
	3.4 Designer .....	13
ARTICLE 4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES.....	13
	4.1 Payments .....	13
	4.2 City's Right to Withhold Payment.....	14
	4.3 Completion Date.....	14
ARTICLE 5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES .....	14
	5.1 Compensation .....	14
	5.2 GMP .....	14
	5.3 Savings .....	14
	5.4 Liquidated Damages.....	14
	5.5 Change Orders.....	15
ARTICLE 6	COST OF THE WORK FOR CONSTRUCTION PHASE .....	17
	6.1 Cost of Work Items .....	17
	6.2 Costs Not to Be Reimbursed .....	19
	6.3 Discounts, Rebates, and Refunds .....	20
	6.4 Accounting Records .....	20
ARTICLE 7	PAYMENT APPLICATIONS FOR CONSTRUCTION PHASE SERVICES .....	20
	7.1 Payments .....	20
	7.2 Payments Withheld.....	22
	7.3 Substantial Completion.....	22
	7.4 Final Completion and Final Payment .....	23

ARTICLE 8	GENERAL CONDITIONS .....	24
8.1	Extent of Contract.....	24
8.2	Assignment .....	25
8.3	Appointment of Service Agent .....	25
8.4	Non-Discrimination, Affirmative Action, and Sexual Harassment .....	25
8.5	Insurance .....	26
8.6	Bonds and Other Performance Security .....	26
8.7	Indemnity.....	26
8.8	Contract Documents/Contract for Construction.....	27
8.9	Defects in the Contract Documents .....	27
8.10	Copies of the Agreement.....	28
8.11	Scope, Nature and Intent of Drawings and Specifications.....	28
8.12	Shop Drawings.....	29
8.13	Construction Manager's Responsibilities as to Ambiguities .....	30
8.14	Concealed Conditions .....	30
8.15	Permits, Fees, and Notices .....	31
8.16	General Administration of the Contract.....	31
8.17	Construction Manager's Employees .....	32
8.18	Samples .....	33
8.19	Protection of Work and City Property.....	33
8.20	Protection of Property/Liability .....	33
8.21	Tests and Inspections.....	33
8.22	Superintendence and Supervision.....	34
8.23	Construction Manager's Office at Site of Work .....	35
8.24	Work Stoppages.....	35
8.25	Patent Liability Clause.....	35
8.26	Independent Contractor.....	35
8.27	Separate Contracts .....	36
8.28	Relations with Other Contractors.....	36
8.29	Provision for Emergencies.....	37
8.30	Assignment and Subletting of Contract.....	37
8.31	Authority and Duty of the Designer .....	38
8.32	Liquidated Damages .....	38
8.33	Partial Occupancy or Use.....	39
8.34	Correction of Work .....	39
8.35	Dispute Resolution .....	40
8.36	Delays and Extensions of Time .....	41
8.37	Remedies for Default by Construction Manager .....	41
8.38	Termination of the Agreement for the Convenience of the City.....	42
8.39	Termination by Contractor .....	43
8.40	Waiver of Consequential Damages and Anticipatory Profit.....	43
8.41	Ownership and Use of Design and Design Documents .....	43
8.42	Use of Premises.....	44
8.43	Allowances .....	44
8.44	Cutting, Patching, and Digging .....	44
8.45	Cleaning Up .....	44
8.46	Temporary Facilities .....	44
8.47	Sanitary Regulations and Water .....	45
8.48	Unfavorable Construction Conditions .....	45
8.49	Safety Precautions and Programs .....	45

8.50	Safety of Persons and Property .....	46
8.51	Safety Program .....	47
8.52	Handling of Emergencies, Emergency Plan.....	48
8.53	Weekends, Holiday, and Night Work .....	48
8.54	Approval of Equals .....	48
8.55	Test of Materials Offered by Construction Manager.....	49
8.56	Testing of Completed Work .....	49
8.57	Borrow and Waste Areas.....	49
8.58	Street Signs and Traffic Aids .....	49
8.59	Federal Lobbying Activities.....	49
8.60	Titles, Subheads, and Capitalization.....	50
8.61	Severability.....	50
8.62	Taxes .....	50
8.63	Governing Law .....	50
8.64	Venue.....	50
8.65	Warranty.....	
8.66	Access to Work .....	51
8.67	Professional Services .....	51
8.68	Environmental Matters.....	51
8.69	Order of Precedence .....	53
8.70	Cash Basis .....	54
8.71	Kansas Open Records Act .....	54

## 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 within a reasonable time frame. 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 within a reasonable time frame. 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, in writing, 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, in writing, 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 City.

- 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, in writing, 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 at any time upon written request.
- 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 with the weekly review outlined in section 2.4.4.1.

**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, 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. This provision shall not prohibit the City from ensuring work is completed in a timely and satisfactory manner.
- 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, Statutory Bond, and a Maintenance (forms attached hereto as **Exhibit I, Exhibit J, Exhibit K**) 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 City Engineer/Designer 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 Agreement 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 Contract 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, in writing, 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, in writing, 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 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 contractors perform in its stead, 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, if the Construction Manager fails to promptly remove all materials, equipment, tools and construction equipment and machinery thereon owned by Construction Manager, take possession of same;

**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 in writing 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 7:00 p.m. and 7:00 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 othersubmittals 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, this provision 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.** Construction Manager at Risk 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.



**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 in writing, providing full details thereof, including an estimate of the amount of loss or liability.

The Contractor shall promptly notify the City in writing 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.

*[The remainder of this page is left intentionally blank]*

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 City Engineer/Designer“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.

*[The remainder of this page is left intentionally blank]*

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 CITY ENGINEER/DESIGNER 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 Ryneerson 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

**ROELAND PARK COMMUNITY CENTER**

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 COMMUNITY CENTER**, 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.

*[Bottom Half of Page Intentionally Left Blank]*

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 COMMUNITY CENTER**

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.

**EXHIBIT K**

CITY OF ROELAND PARK, KANSAS

MAINTENANCE BOND

**ROELAND PARK COMMUNITY CENTER**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_  
\_\_\_\_\_, of \_\_\_\_\_, as principal, hereinafter referred to as the "Construction  
Manager," and \_\_\_\_\_, hereinafter referred to as the  
"Surety", 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 \_\_\_\_\_  
\_\_\_\_\_ (\$\_.00), 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 Construction Manager, has on the \_\_\_\_\_ day of \_\_\_\_\_,  
2023, 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 COMMUNITY CENTER  
RENOVATION**, designated, defined and described in the Agreement and the Contract Documents, and in  
accordance with the Specifications and Plans and other Contract Documents therefor; a copy of the  
Agreement being attached hereto and made a part hereof.

NOW, THEREFORE, upon acceptance of the Improvement by the City in substantial compliance with the  
Contract Documents, if said Improvement endures without defect or need of repair or maintenance for a  
period of two (2) years from the date of final acceptance, then this obligation shall be and become null  
and void.

If the Improvement requires repairs or maintenance within such two (2) year period then this obligation  
shall remain in full force and effect and Construction Manager and the Surety shall be responsible for the  
prompt payment of the penal sum to the City for such repairs and/or maintenance including any incidental  
costs associated therewith, including but not limited to the costs of consultants and/or engineering  
investigations, testing, analysis and any other costs incurred to determine the cause of the defect and/or  
the necessary repair or maintenance and attorney fees incurred in collection of this Maintenance Bond.

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 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 Construction Manager 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.

IN TESTIMONY WHEREOF, said Construction Manager 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 \_\_\_\_\_, 2023.

ATTEST:  
(SEAL)

\_\_\_\_\_  
Construction Manager/Principal  
By \_\_\_\_\_  
Print Name: \_\_\_\_\_  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Secretary

(SEAL)

\_\_\_\_\_  
SURETY COMPANY  
By \_\_\_\_\_  
Attorney-in-Fact

NOTE:

1. Date of bond must not be prior to date of contract.
2. If Construction Manager 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.



## MEMORANDUM

---

TO **Keith Moody, City Administrator**  
City of Roeland Park, Kansas  
4600 W. 51<sup>st</sup> 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,

A handwritten signature in black ink that reads "Kelly C. Stindt". The signature is fluid and cursive.

Kelly C. Stindt  
Principal



Public Works Facility Renovation - 1800 Merriam Lane

**Construction Manager Selection - Interview Evaluation**

January 20, 2023

	Sands Construction	<b>Universal Construction</b>	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	<b>440</b>	413
Average	69.2	<b>88</b>	82.6

Universal Construction  
Request for Qualifications  
Construction Management at-Risk



January 10, 2023



BUILDING A BETTER COMMUNITY.



# ROELAND PARK PUBLIC WORKS

Kelly Stindt  
SFS Architecture  
2100 Central St.  
Kansas City, MO 64108

**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.

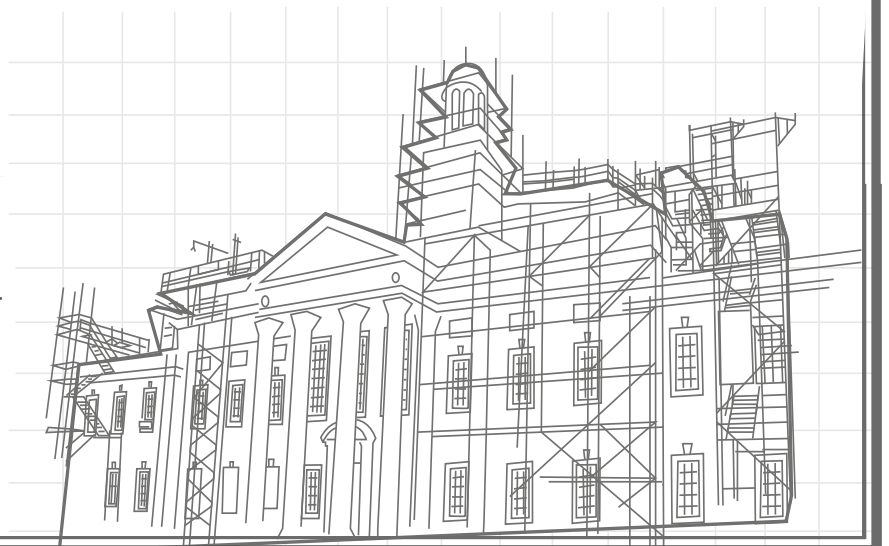


We want this to be the most collaborative construction project you've ever been a part of. Our mission at Universal is "to provide the tools to elevate the construction experience." We accomplish this by embracing a team atmosphere, keeping owners informed with transparent communication, and bringing 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





# TABLE OF CONTENTS

<b>TAB</b>	<b>SECTION</b>	<b>PAGE</b>
<b>A</b>	Relevant Experience	1
<b>B</b>	Organizational Chart	5
<b>C</b>	Key Personnel	6
<b>D</b>	Preconstruction Services	9
<b>E</b>	Self-Performed Work	12
<b>F</b>	Subcontractor Solicitation	13
<b>G</b>	Cost Control System	14
<b>H</b>	Schedule Control	15
<b>I</b>	Payment + Performance Bonds	16
<b>J</b>	Insurance	17
<b>K</b>	Safety Program / History	18
<b>L</b>	Quality Program	19

# RELEVANT EXPERIENCE

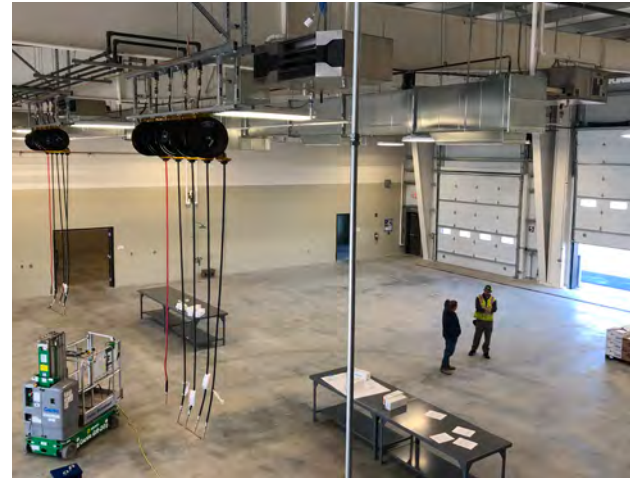
A





# 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](mailto: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.

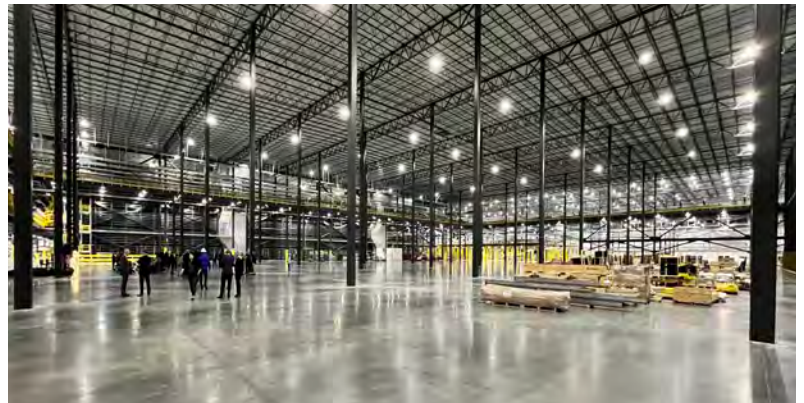
Outside, outdoor fenced-in parking stalls accommodate 168 buses as well as a fueling station. Outside of the gated area is a parking lot with an additional 220 spots.

**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

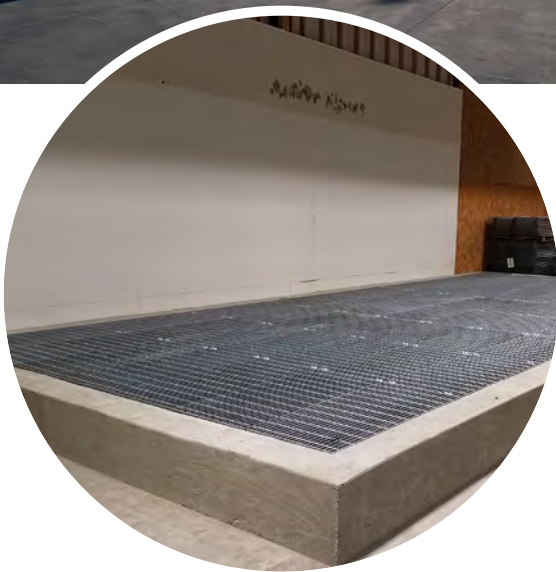
[dvance@blrck.com](mailto:dvance@blrck.com)

**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](mailto: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 Kracl**

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

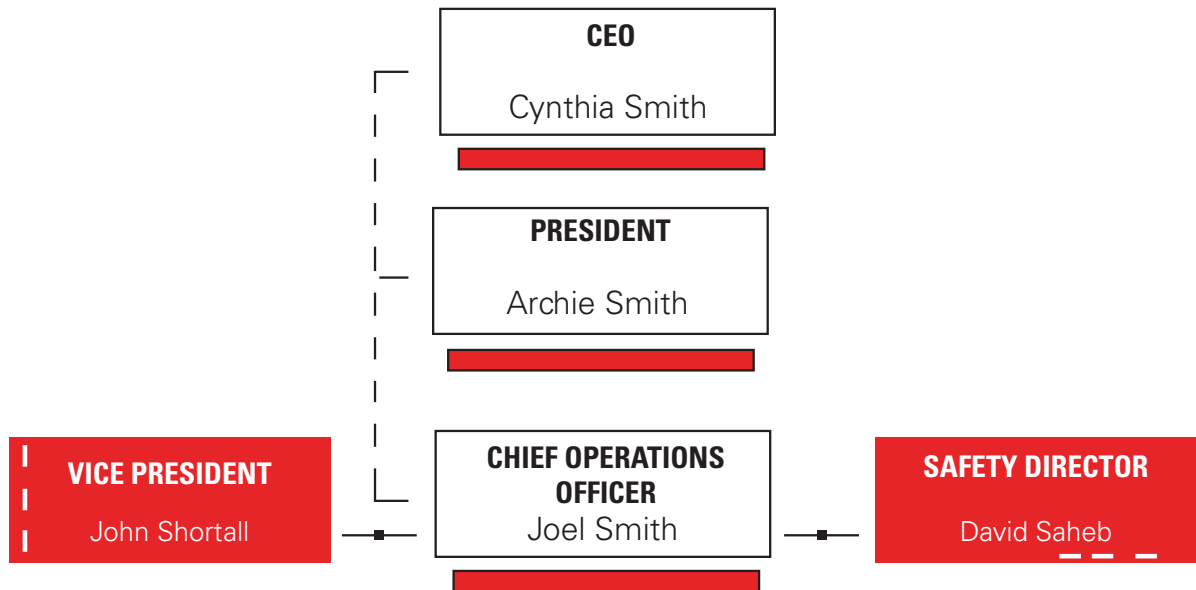


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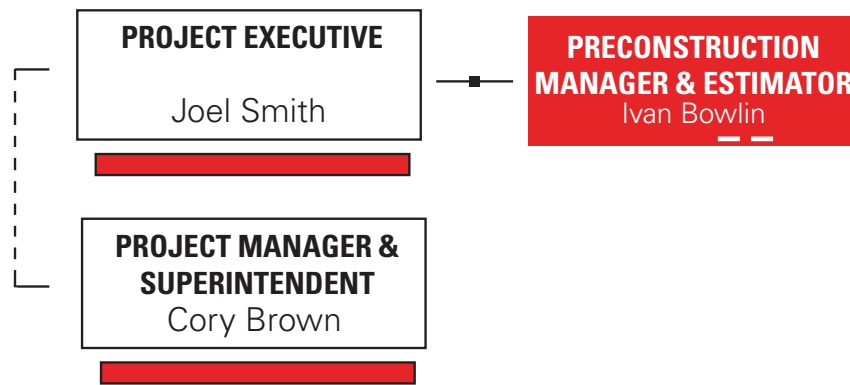


# ORGANIZATIONAL CHART

## 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

## Ivan Bowlin

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



D

# 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

**0.92%**  
UNDER OUR  
PROJECT  
ESTIMATES

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.



# 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)		
<b>Recommended Value for New Facility</b>			<b>\$21,759,381</b>		

# 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



E



# 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 that reads "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](http://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).

<b>PRODUCER</b> Thomas McGee, L.C. P.O. Box 419013 Kansas City MO 64105	<b>CONTACT NAME:</b> Jen Pellegrino	
	<b>PHONE (A/C, No, Ext):</b> 816-843-4632	<b>FAX (A/C, No):</b> 816-472-5018
<b>E-MAIL ADDRESS:</b> jpellegrino@thomasmcgee.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> Midwest Builders Casualty Mutual Co. *		13126
<b>INSURER B:</b> Continental Casualty Company		20443
<b>INSURER C:</b> Continental Insurance Co		35289
<b>INSURER D:</b> Cincinnati Casualty Company		28665
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**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"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <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	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <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"/> <b>UMBRELLA LIAB</b> <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	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> 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"/> OTHER 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)

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
	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 



# 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.

**Item Number:** New Business- VIII.-B.  
**Committee** 6/3/2024  
**Meeting Date:**



## City of Roeland Park

Action Item Summary

---

**Date:** 5/16/2024  
**Submitted By:** Keith Moody  
**Committee/Department:** Admin  
**Title:** **Approve Agreement with Placer AI (5 min)**  
**Item Type:** Agreement

### Recommendation:

**Staff recommends approval of a 1-year service agreement with Placer AI, with service to commence 7/1/24.**

### Details:

Placer AI provided a presentation to Council on 5/20/24 highlighting the ability of their program as well as how their data is gathered and tested for accuracy. Attached is the Civic Solutions presentation that Chris Harder with Placer AI covered. Also attached is the service agreement. The 1-year subscription fee will be paid in two \$6,000 installments, the first in July of 2024 and the second in January of 2025. The City will access the benefits of the program during this initial year of subscription to determine if we wish to continue subscribing in future years.

Initially staff has identified four types of information available from Placer AI that we believe would be beneficial.

1. The first is vehicle traffic volume data for any city street segment. Placer can provide estimates quickly without the need to place counters in the field.
2. The second is visitor data to our public facilities (the pool, community center, sports dome, parks). This tells us where people come from, when they use the facilities and how frequently.
3. The third is daytime population demographic data. This data is currently not available to the city and would enhance our police minority contact reporting insights.
4. Fourth is visitor (customer) data that can aid existing and prospective businesses in their marketing and product/service decisions. This is a business recruiting and retention benefit.

The City of Olathe subscribes to Placer AI and they are pleased with the service. They continue to expand on how they are able to employ the data.

This is not a budgeted item for 2024. With Council approval staff will incorporate a budget amendment reflecting the additional subscription fee into wanted to move forward with a subscription in 2024 we would reflect half a year of the fee in the appropriate line-item budget for 2024.

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

**What are the implications to intersectionality?**

- Does this item benefit all racial groups?
- Does this item benefit Community for All Ages?
- Does this item exclude or disproportionately impact any social identities? If yes, what populations and why?
- What (if any) social determinants of health are impacted by this item?
- What (if any) are the unintended economic and environmental impacts of this item?
- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

Amount of Request: \$12,000	
Budgeted Item?	Budgeted Amount: \$6k would be added to the 2024 Budget Amendment and 2025 Proposed Budget
Line Item Code/Description: 5218-101 General Overhead- IT & Communications	

**Additional Information**

**REVIEWERS:**

Department	Reviewer	Action	Date
Administration	Moody, Keith	Approved	5/16/2024 - 5:39 PM

## Goals/Objectives & Terms

### ATTACHMENTS:

Description	Type
▣ Placer AI Service Agreement	Cover Memo
▣ Placer Civic Solutions Presentation	Cover Memo



**PLACER LABS, INC.**

**ORDER FORM**

City of Roeland Park, Kansas	( <b>“Customer”</b> )	Placer Labs, Inc.	( <b>“Placer”</b> )
Address:	4600 W. 51st Street Roeland Park, KS 66205	Address:	440 N Barranca Ave., #1277 Covina, CA 91723
Contact Person:	Keith Moody	Contact Person	Chris Harder
Email:	kmoody@roelandpark.org	Billing Contact Person:	Jason Tsui
Phone:	913-722-2600	Billing Email*:	<a href="mailto:billing@placer.ai">billing@placer.ai</a>
Billing Contact Email:	kmoody@roelandpark.org	Billing Phone*:	415-228-2444 ext 806

\*Not for use for official notices.

**1. Services.**

The services provided under this Order Form (the **“Services”**) include:

- Access, via Placer Venue Analytics Platform (**“Placer’s Platform”**), to all major venues within the United States
- Customer may not provide access to any third party agents acting on its behalf (including any consultants, contractors, or other agents of Customer) without prior written consent from Placer. Any such approved access may be subject to an additional fee pursuant to a written amendment to this Order Form
- Access, via Placer’s Platform, to reports, including Visits, Trade Areas, Customer Journey, Customer Insights, Dwell Times, and Visitation by Hour/Day
- Actionable insights include:
  - Foot traffic counts and dwell time
  - True Trade Areas displaying frequent-visitors-density by home and work locations
  - Customers’ demographics, interests, and time spent at relevant locations
  - Where customers are coming from and going to, and the routes they take
  - Benchmarking of Foot Traffic, Market Share, Audiences, and other key metrics
  - Competitive insights
  - Void Analysis Reports
- Access to Xtra reports per ad hoc needs; in Excel, KML, Tableau, and other formats: Quarterly Maximum of 26 credits; Annual Maximum of 104 credits
- Access to STI Demographics Bundle + Mosaic Data Set, and AGS CrimeRisk. The applicable Advanced Demographics and Psychographics are generated using the Input Datasets from the data vendors as set forth below:

Description	Input Datasets Used
<b>STI Demographics Bundle</b>	PopStats
	Spending Patterns
	Workplace
	Market Outlook
<b>Experian Mosaic</b>	Mosaic Segmentation
<b>AGS CrimeRisk</b>	CrimeRisk

**2. Permitted Uses**

The data, information and materials accessible via the Services are referred to as “**Placer Data**”. Customer may use Placer Data solely for the following purposes (“**Permitted Uses**”): (a) Customer may use Placer Data for Customer’s internal business purposes; and (b) Customer may incorporate Placer Data into Research Data, as described and subject to the restrictions below.

“**Research Data**” means datasets and other materials created by Customer that result in any part from Customer’s use of Placer Data. The Customer may share Research Data with current and potential customers, and in marketing materials; provided that the Customer shall cite Placer as a provider of such information (for such purpose only, Placer grants Customer the rights to use the Placer.ai name and logo, provided that any such use of the Placer.ai name and logo must clearly indicate that Placer is the provider of data only, and is not involved in any analysis, conclusion, recommendation). Customer shall not, directly or indirectly, resell, distribute, sublicense, display or otherwise provide Placer Data to any third parties, except that Customer may display Placer Data as part of Research Data.

### 3. Term and Termination.

**Initial Term:** The initial term of this Order Form will begin as of the last signature date set forth below, and will continue for 12 consecutive months thereafter (the “**Initial Term**”). Each renewal or additional term, if any, is referred to as “**Additional Term**,” and the Initial Term and any Additional Terms are referred to collectively as the “**Term**.”

**Additional Term:** Placer will notify the Customer at least thirty (30) days before expiration of the Initial Term or any Additional Term, and this Order Form shall be automatically renewed for additional periods of the same duration as the Initial Term, unless either party provides written notice of non-renewal prior to the expiration of the then-current term.

**Termination:** Either party may terminate this Order Form upon thirty (30) days’ notice if the other party materially breaches any of the terms or conditions of this Order Form or the Agreement (as defined below), and the breach remains uncured during such thirty (30) days. In addition, Placer may immediately suspend Customer’s access to the Services, or terminate the Order Form, in the event of non-payment by the Customer or breach by Customer of any restrictions regarding usage of the Services.

### 4. Fees.

\$12,000/year invoiced: semi-annually.

Invoice sent electronically to Customer’s billing contact email via NetSuite.

Customer shall pay the fees set forth above in this Order Form.

Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.

Customer is responsible for all applicable taxes arising directly from the Services other than U.S. taxes based on Placer’s net income.

If Customer believes that Placer has billed Customer incorrectly, Customer must contact Placer no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Placer’s customer support department at support@placer.ai.

Placer may increase the Fees any time following the Initial Term (but not more frequently than once in any twelve (12) month period). The amount of such annual increase will equal the greater of CPI or four percent (4%) per annum.

In the event of any termination, Customer will pay in full for the Services.

All billing will be sent via electronic invoice to the Customer contact indicated above. Customer shall pay all fees within thirty (30) days of the invoice date.

**5. Support.**

Placer will use commercially reasonable efforts to provide customer service and technical support in connection with the Services on weekdays during the hours of 9:00 A.M. through 5:00 P.M. Pacific Time, with the exclusion of federal holidays. For any such support, please contact us at support@placer.ai.

**6. Mutual NDA.**

Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party). Proprietary Information of Placer includes, without limitation, non-public information regarding features, functionalities and performance of, and pricing for, the Services. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted by the Agreement) or disclose to any third party any Proprietary Information. The foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, (b) was in the possession of or known to the Receiving Party, prior to disclosure thereof by the Disclosing Party, without any restrictions or confidentiality obligations, (c) was rightfully disclosed to it, without any restrictions or confidentiality obligations, by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law, provided that the Receiving Party provides the Disclosing Party with prompt written notice of such requirement and reasonably cooperates with the Disclosing Party to limit or challenge such requirement. These provisions regarding Proprietary Information shall apply in perpetuity and shall survive any termination of the Order Form or the Agreement.



**7. Miscellaneous.**

All notices under the Order Form and the Agreement will be in writing and will be deemed to have been duly given (a) upon delivery by a recognized delivery service (e.g., FedEx) with delivery confirmation, (b) upon receipt, if sent by U.S. certified or registered mail, return receipt requested, or (c) when sent via email, if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Notices shall be sent to the addresses set forth in the Order Form, which addresses may be subsequently modified by written notice given in accordance with these provisions.

**Trial Offering.** If Placer provides Customer with additional Services or Placer Data during the Term and identifies such Services or Placer Data as for evaluation or trial purposes only (a “Trial Offering”), access to the Trial Offering is permitted only during the period designated by Placer (or if not designated, 30 days from receipt of access) (“Trial Subscription Term”), unless the Trial Offering is earlier terminated as provided below. During the Trial Subscription Term, Customer may only use the Trial Offering for internal evaluation purposes and may not otherwise use or distribute the Trial Offering for any other purposes. Notwithstanding any provision included in this Order Form or the Agreement to the contrary, in respect of the Trial Offering Customer acknowledges and agrees that: (i) either party may terminate the Trial Subscription Term immediately and without liability upon written notice to the other party; (ii) any Trial Offering is provided “as is”; (iii) Placer provides no warranty, service levels or indemnity for any Trial Offering and (iv) Placer's liability related to any Trial Offering will not exceed USD \$100. Notwithstanding the foregoing, the Services and Placer Data provided in this Order Form is not considered a Trial Offering.

Customer grants Placer the right to use Customer’s company name and company logo, for Placer’s promotional purposes.

This Order Form is entered into by and between Customer and Placer effective as of the date of the last signature below. This Order Form and use of the Services are governed by, and Customer and Placer agree to, the License Agreement located at <https://www.placer.ai/placer-license-agreement/> (the “**Agreement**”); provided, however, that in the event of any conflict between this Order Form and the Agreement, this Order Form shall control. Unless otherwise defined in this Order Form, capitalized terms herein have the same meaning as in the Agreement.

**“Customer”**

City of Roeland Park, Kansas
By:
Name:
Title:
Date:

**“Placer”**

Placer Labs, Inc.
By:
Name:
Title:
Date:



# Civic Solutions

Best-in-class location analytics to help **civic leaders** boost performance, increase visibility, and drive economic success.

# Placer.ai is the Leader in Privacy-Preserving Location Intelligence

Placer.ai is the most advanced location analytics platform describing physical locations, the people and businesses that interact with them, and the markets they inhabit.

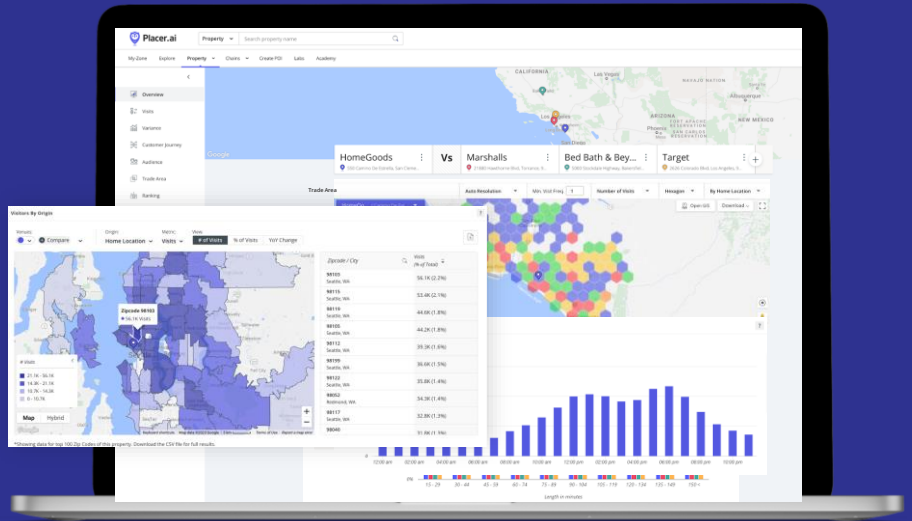
Placer is loved and trusted by:



**4000+**  
CUSTOMERS



**30+**  
INDUSTRIES



## CIVIC



## RETAIL



## COMMERCIAL REAL ESTATE



## FINANCE



## LEISURE



## MEDIA





# Over 900 Civic Clients Across the Country...

Including Cities, Counties, Districts, Economic Development Organizations, Travel and Tourism DMOs, Chambers of Commerce, Downtowns, Conference Centers, etc.



*"Conversations get serious when you can show objective data around how visitors behave, where they shop and eat, and more. After decades with no new development here in Fox Lake, Placer changed the game. We would not have won the development deals we did without its incredible data; it's paid for itself thousands of times over."*



**Donovan Day**

Community & Economic  
Development Director

Village of Fox Lake, IL

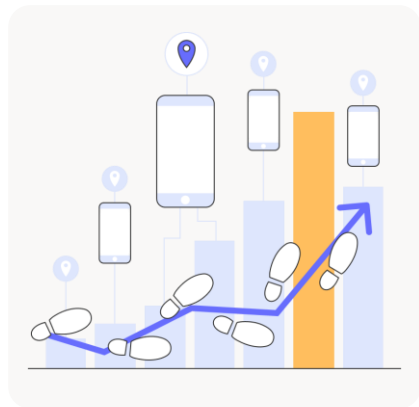


# How Placer.ai Works

Placer is powered by high-quality mobile location data and best-in-class proprietary technology.

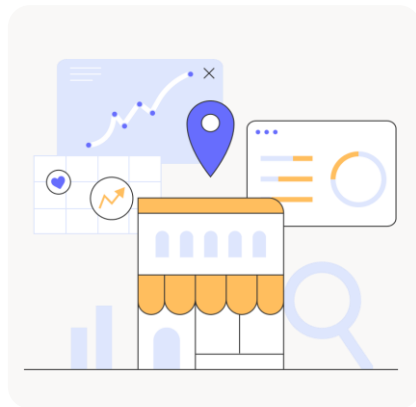
## 01 Observe Human Movement

Privacy-safe foot traffic data from tens of millions of mobile devices forms an aggregated view of US commercial activity.



## 02 Analyze Every Location

Machine learning accurately describes human movement throughout the U.S., from specific POIs to chains, markets, and regions.



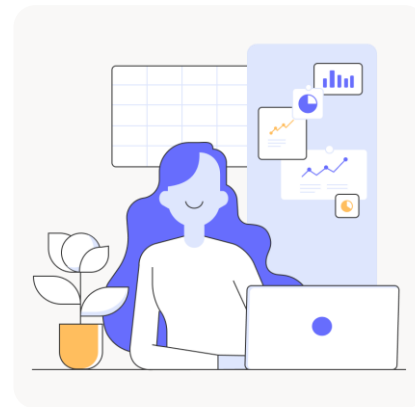
## 03 Enhance with 360° Data

Visitation data is enhanced with Placer Marketplace 3rd party datasets that further describe businesses, consumers, and markets.



## 04 Generate Actionable Insights

Robust, statistically significant insights into how people and places interact are presented via an intuitive UI, data feeds, or the Placer API.



# Placer's Data Differentiators

Placer's best-in-class data delivers actionable insights for any location.



## Unparalleled Accuracy

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Placer's data accuracy is continually validated against 1st party and authoritative data sources — with correlations consistently exceeding 90%.



## Broad, Quality Coverage

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Placer's panel covers every county in the U.S. and contains historical data since Jan 1, 2017. Data is sourced exclusively from premium partner apps and is 100% background data.



## Privacy By Design

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Placer data is only sourced from apps that require affirmative opt-in and disclose how data is used. Placer doesn't capture MAIDs or any PII, and Placer's data is aggregated and up-leveled to avoid presenting any individual-level data.



## 3rd Party Marketplace

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Placer integrates dozens of third party demographic, psychographic, and behavioral data sets from leading providers like Experian and STI.

# Placer.ai Solutions for Civic Leaders

Table of Contents



## Retail Recruitment

Leverage critical demographic information such as average HHI and household size



## Event Analysis

Measure turnout, increase sponsors and vendors, and analyze economic impact



## Travel & Tourism

Discover visitation to any destination, attraction, convention center. Understand origin market and visitor journey



## Sales Tax Estimation

Correlate Visitation with Sales and reveal sales data for key sectors based on visitation history since 2017



## Transportation / Parks & Open Spaces / Infrastructure

Reveal usage for any day and time and identify investment opportunities



## Marketing & Reports

Prove the effectiveness of marketing efforts on financial return, driving increased sales tax revenue



## Business Attraction & Workforce Analysis

Reveal workforce potential and discover changes to workforce trends



## COVID Recovery | ARPA

Understand the impact of economic events like COVID and recovery since 2019



## Support Local Business

Identify gaps in retail offerings. Provide insights about customer journey, dwell time, and marketing effectiveness.



# 01 Attract the Best Fit Retailers

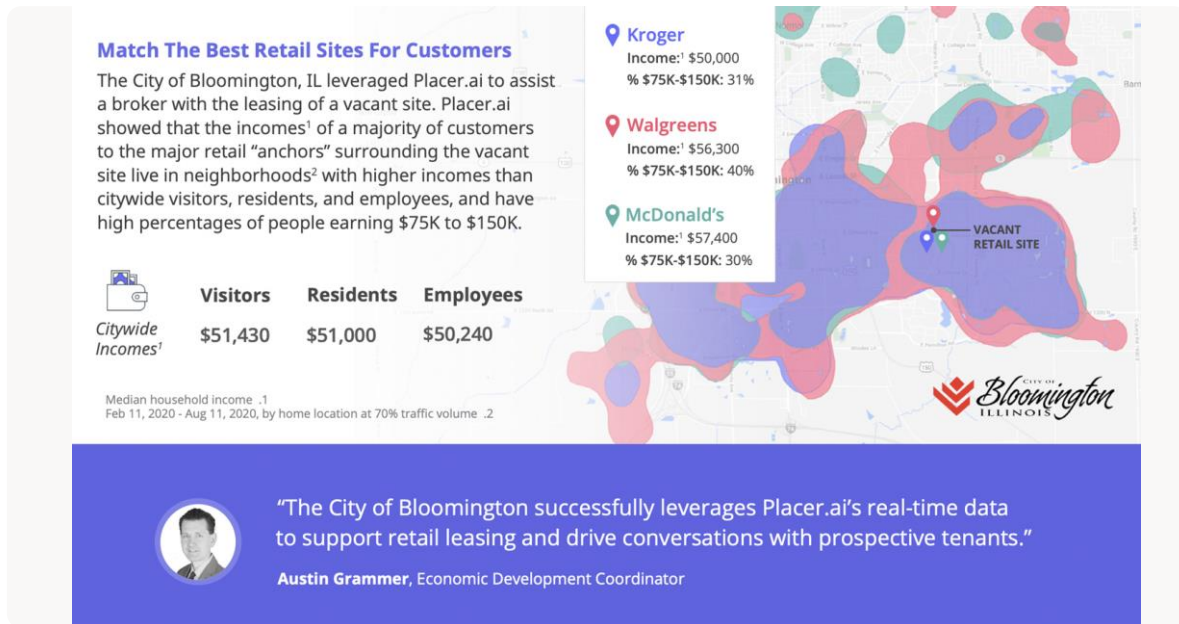


## The Problem

Civic leaders need to understand the true audience and trade area of any site in order to attract retailers most likely to perform well in a particular location. Lacking key market and location insights can lead conversations to stall with prospective tenants.

## Placer's Solution

- **Demand Gap Analysis** (STI Gap analysis)
- **Leakage Study (XTRA and Favorite Places)**
- **Void Analysis**
- **Site Selection**
- **Trade Area Demographics & Psychographics**
- **Market Analysis** expands market profile



## ANSWER QUESTIONS LIKE...

Q: What are the demographic and psychographic profiles of our visitors?

Q: Where are our best customers coming from?

Q: Where do visitors go before and after their visit?



# Attract New Development Case Study

Village of Fox Lake Attracts \$335M in New Tourist Developments

## The Challenge

The Village of Fox Lake, Illinois, is situated near a chain of highly trafficked lakes. There had not been commercial development in 40 years and lake visitors had little to do in town. How could the city quantify visit traffic, then use that to attract new business?

## Placer's Outcome

Using Placer, Fox Lake was able to quantify their strong traffic - 240k unique visitors, visiting 3+ times each year, with high HHI - then used that data to attract more than \$335M in new development, including multiple hotels, a new marina, amphitheater, and more.

[Explore the deck](#)

[See the full case study](#)



*Conversations with developers get serious when you can show objective data around how visitors behave, where they shop and eat, and more. After decades with no new development here in Fox Lake, Placer changed the game. We would not have won the development deals we did without its incredible data; it's paid for itself thousands of times over."*

**Donovan Day**

Community and Economic Development Director

# 02 Reveal Effectiveness of Marketing Efforts

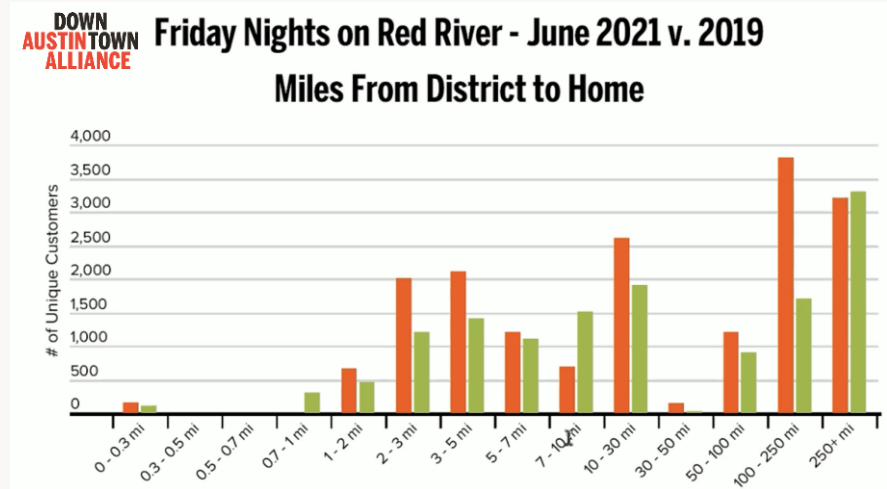


## The Problem

Civic leaders need to optimize marketing strategy and prove ROI of marketing efforts, whether marketing to tourists in general or to drive attendance at a specific event.

## Placer's Solution

- **True Trade Area** reveals home locations for visitors to any location on any day.
- **Visitation by Origin** shows top zip codes and Census blocks for visitors to any location.
- **Visitor metrics** for day of week, dwell time, and peak visit hours.
- **Variance** shows week over week, month over month, year over year trends.



Downtown Austin Alliance uses Placer to prove the effectiveness of their marketing efforts in attracting visitors from further distances, driving sales tax in downtown.

## ANSWER QUESTIONS LIKE...

Q: Has weekday park visitation increased post-marketing campaign?

Q: What zip codes include the target audience for this upcoming event?

Q: What trending social media interests and topics do visitors have?

# 03 Reveal True Value Of Local Attractions



## The Problem

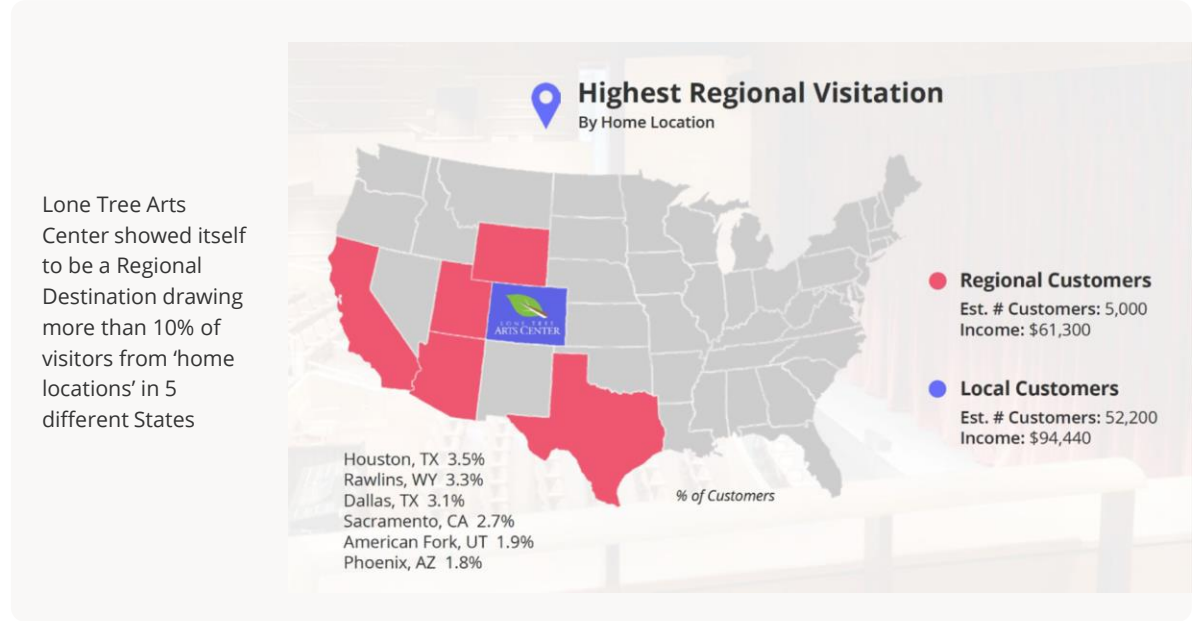
Civic leaders need to understand the performance and potential of attractions, parks, venues and places of interest to make the best decision for their community.

## Placer's Solution

- Visitation metrics
- True Trade Area
- Visitor Journey
- Visitor Demographics and Psychographics
- Competitors and Collaborators

### EXAMPLE: Lone Tree Arts Center

Placer showed 10% of visitors come from cities in Texas, Utah, Wyoming, Arizona, and California and illustrated the value of Arts Center to local businesses and hotels. As a result, they could optimize the ROI of marketing efforts with insights into local and regional visitors.



## ANSWER QUESTIONS LIKE...

Q: What are the peak visitation times for this property during the weekday?

Q: How far away and from where do visitors come? How often do they visit?

Q: What does the visit trend say about venue usage year over year?

# 04 Optimize and Measure Local Events

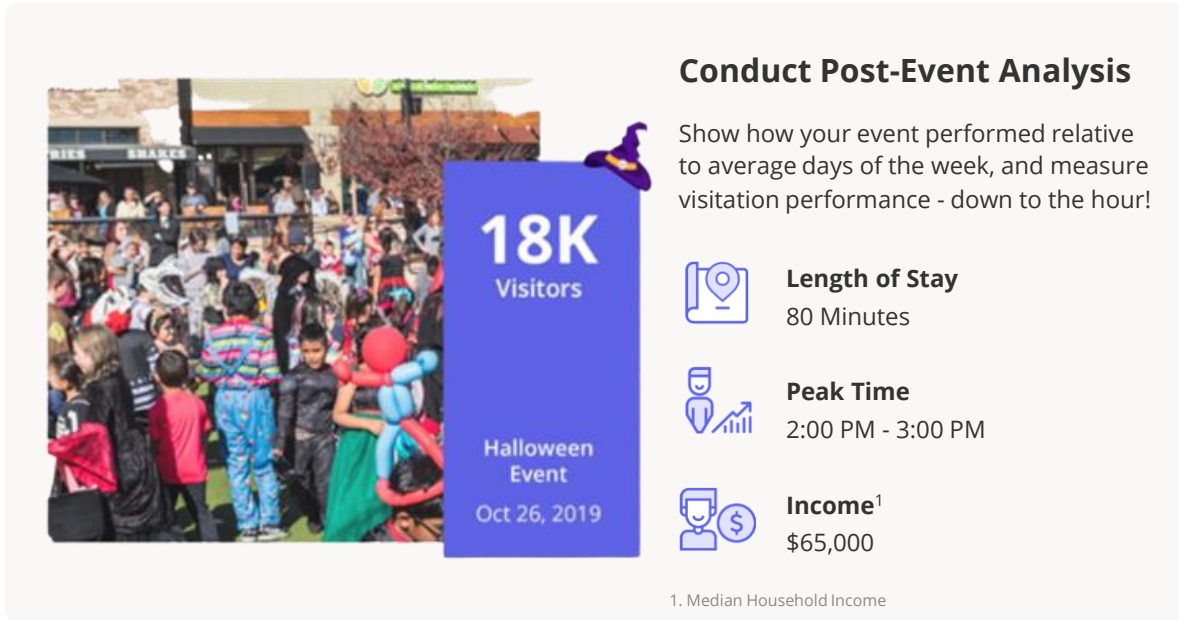


## The Problem

Civic leaders need granular insights to drive and measure attendance of local events (ticketed and non-ticketed) and to quantify their impact to local businesses. Typical ways to track attendance and engagement can be time consuming and costly.

## Placer's Solution

- **Visitation metrics:** number of visitors, peak times, home locations, MoM, dwell time.
- **Visitor demographics:** home locations, HHI, brand affinities, consumer preferences.
- **Visitor Journey** routes, parking areas.
- **Favorite Places** other locations visited.
- **Economic Impact:** event visitors contribution to other businesses in the area.



## ANSWER QUESTIONS LIKE...

Q: What are the demographic and psychographic profiles of our visitors?

Q: Where are our best customers coming from?

Q: Where do visitors go before and after their visit?



# Prove Event Impact & Win Grants

## Case Study

Placer Helps Event Marketing Team Quantify Event Impact

### The Challenge

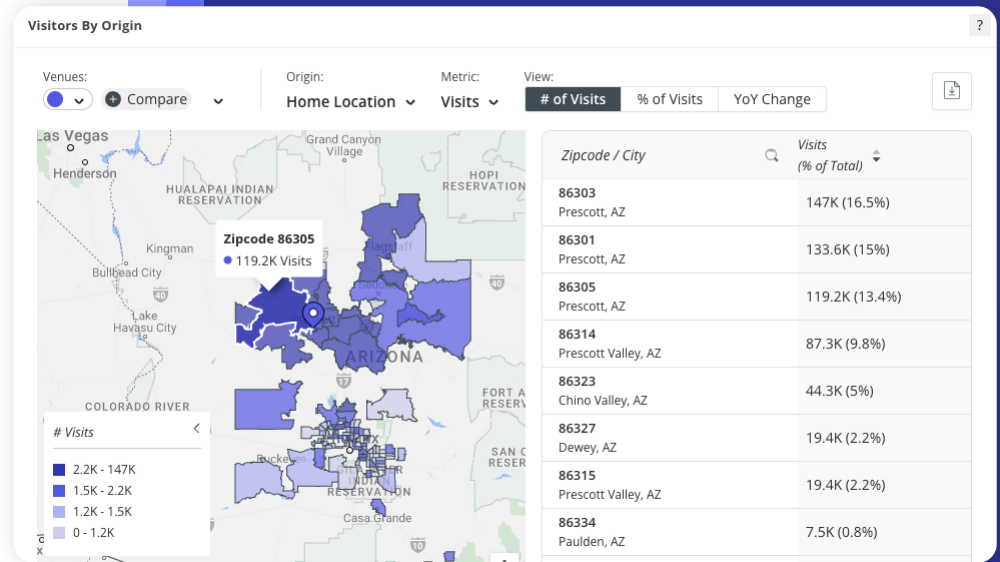
The City of Prescott, AZ hosts a 6 week Christmas celebration but couldn't accurately measure the attendance or impact of each event, or how best to market them. How can the Office of Tourism drive attendance and prove event value to the local economy?

### Placer's Outcome

The city's Office of Tourism used Placer to track foot traffic and visit patterns over the 6 weeks, validating earlier targeted marketing efforts and showing an economic impact of \$52M. This data helped the Christmas City organizers secure \$200k in new grants.

[Explore the deck](#)

[See the full case study](#)



*With Placer, we market events more efficiently than ever before... and have helped our partners land multiple grants to help put on the Christmas City event. Placer has been a wonderful asset to the Office of Tourism and our partners.*

**Cristina Binkley**  
Tourism & Economic Initiatives Coordinator

# 05 Discover Changes To City Or District Over Time

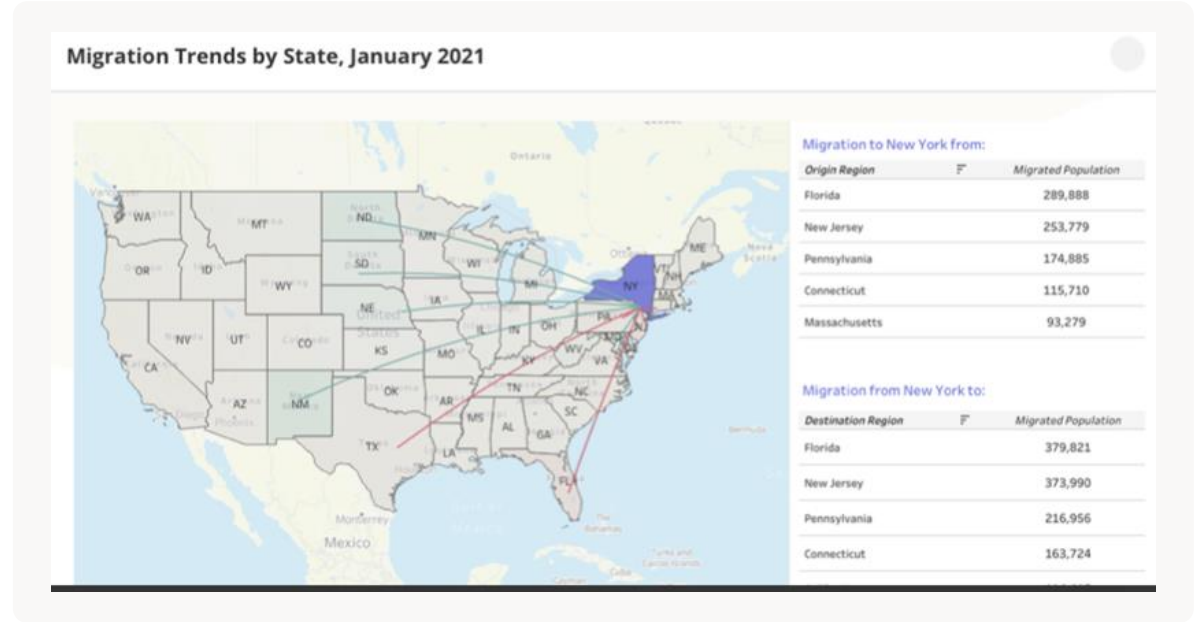


## The Problem

Civic leaders need to understand changes to resident, visitor, and employee populations in their communities.

## Placer's Solution

- **Movement of Residents, Visitors, and Employees:** origin location to destination based on time frame.
- **Demographics and Psychographics,** HHI, brand preferences, favorite places, work locations, home locations, age, ethnicity, race, psychographics.



## ANSWER QUESTIONS LIKE...

Q: How are zipcode populations changing year over year?

Q: Where are old residents moving? New residents coming from?

Q: How many SNAP households do we have within the trade area?



# 06 Leakage Analysis (Favorite Places Outside a City or District)

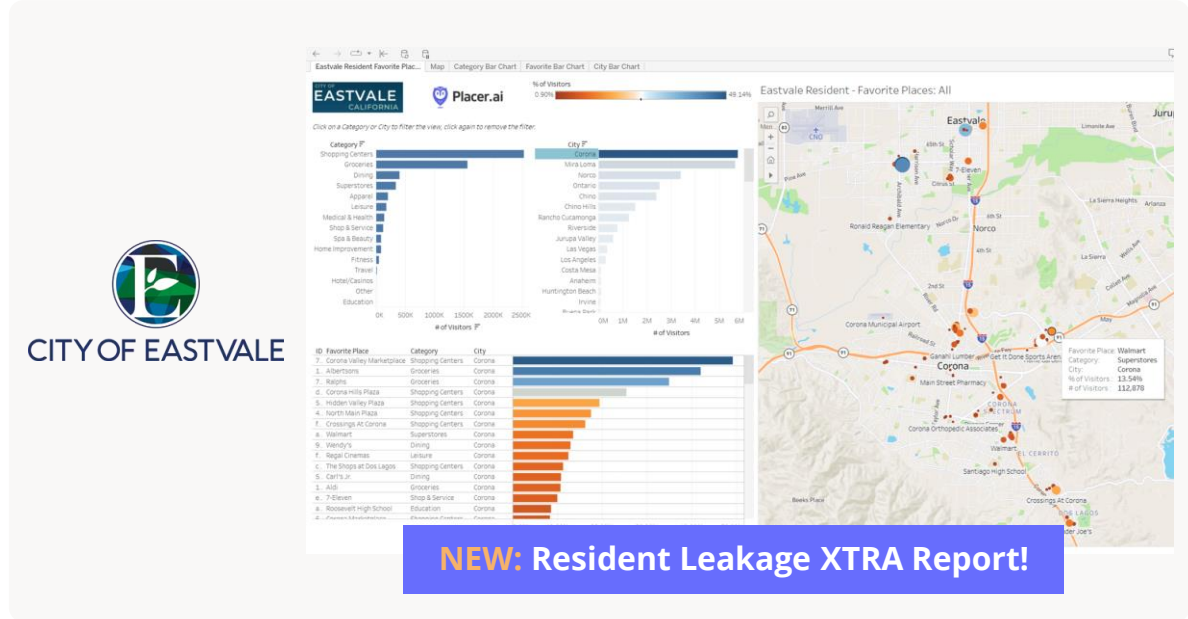


## The Problem

Civic leaders need to understand to what degree and where do residents, visitors, and employees shop outside the City or District Boundary.

## Placer's Solution

- **Leakage Report** for any city or district.
- **Gap Analysis** total leakage amount for every retail category.
- **Favorite Places:** Top locations outside the district/city visited by residents, employees, and visitors.
- **Visitation metrics** for retail category plus travel and hotel.
- **Average ticket size** for chain locations.



## ANSWER QUESTIONS LIKE...

Q: Which retail categories contribute to leakage?

Q: What top venues in other cities are your residents visiting? How often?

Q: What sales revenue and tax was lost as a result of leakage?

# 07 Public Realm

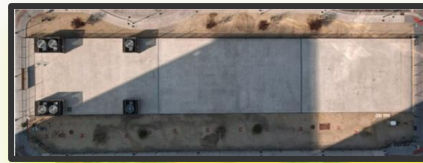


## The Problem

Civic leaders need to understand how changes to streets, parks and open spaces benefit the community in order to assess ROI and equity.

## Placer's Solution

- **Visitation Metrics** before and after intervention: total visits, peak visit times, dwell time, prior and post locations, distance traveled to destination.
- **True Trade Area** reveals home and work location for visitors.
- **Favorite Places** reveals locally visited businesses.
- **Variance** compares month over month and year over year



Bloomberg  
Philanthropies

	Est. # of Visitors	Est. # of Visits
<b>Before:</b>	53.4K	77.5K
<b>After:</b>	68K	97.2K



## ANSWER QUESTIONS LIKE...

Q: What are the demographic and psychographic profiles of our visitors?

Q: Where are our best customers coming from?

Q: Where do visitors go before and after their visit?

# Urban Regeneration Funding Case Study



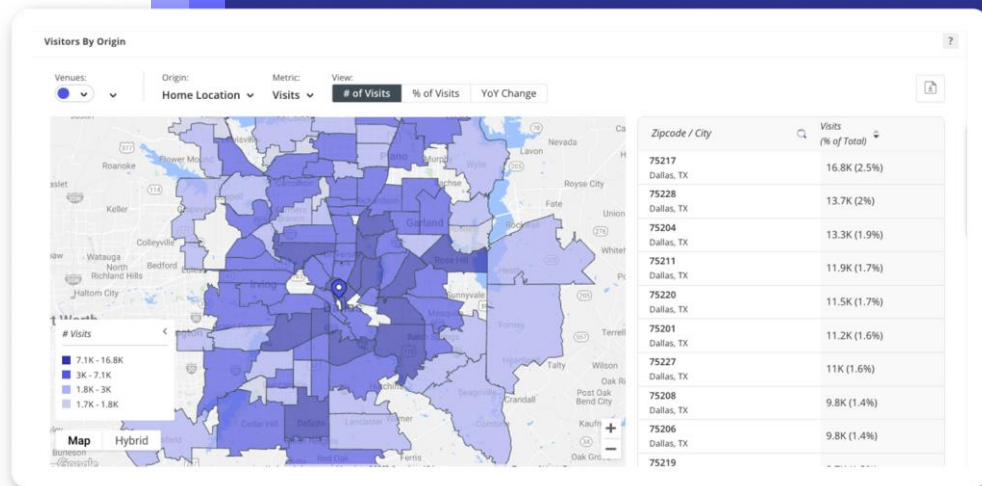
Downtown Kansas City Secures \$85M To Cover Interstate & Create Urban Community Park

## The Challenge

After decades of growth, Kansas City, MO wants to revitalize its urban core with the South Loop Project, a project to reconnect divided neighborhoods by building a vibrant downtown park space over I-670. How could Downtown KC prove the widespread impact of the park, rally public support, and secure necessary funding?

## Placer's Outcome

Using Placer to analyze the similar Klyde Warren Park in Dallas, TX, Downtown KC used insights around regional draw, year-round activation, visitation by zip code, and more to show the park's positive city impact, helping attract \$85M in investments to date.



*"With Placer, data goes beyond opinions. That data helped our state representatives, state senators, city council, private and philanthropic donors see how their constituents would benefit. I don't know how we could have done it without Placer."*

**Tommy Wilson**

Director of Business Recruitment & Research,  
Downtown Council of Kansas City

[Explore the deck](#)

[See the full case study](#)

# 08 Analyzing Public Investments (Equity and ROI)



## The Problem

Civic leaders need to understand usage of public parks and facilities to show how investments improve the space and support surrounding businesses, and to understand who benefits from public improvements.

## Placer's Solution

- **True Trade Area:** home and work locations of visitors
- **Visitor Journey:** Popular routes. Post and Prior locations.
- **Visitor Metrics:** Day of week, time of day, peak time, and overall dwell time for venue.



The city of San Antonio was considering a bond measure to raise a few million dollars to upgrade a downtown Park. Debate centered on *who* would benefit from additional investment in downtown.

## ANSWER QUESTIONS LIKE...

Q: Where do visitors to the park come from? How often do they come?

Q: How does weekday and weekend usage compare?

Q: What are the top customer segments for this public asset?

# 09 Optimize Resources, Define District, Justify Assessments



## The Problem

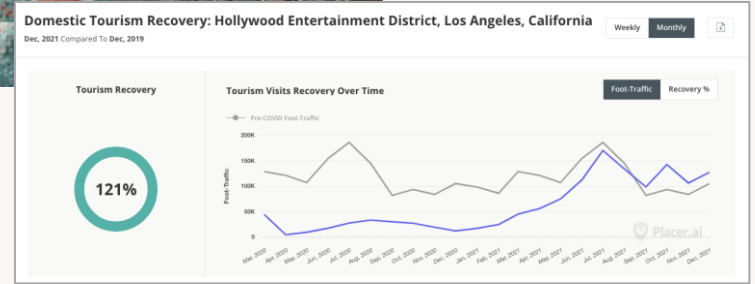
Civic leaders need to optimize resources for marketing, cleaning, safety, and district promotion. For example, during the peak of COVID in 2020, stakeholders voted to 'end' the assessment for the Tourism Overlay Zone. How could they get the data to justify timing for reauthorization of the assessment?

## Placer's Solution

- **Visitor metrics** - when is it used? by whom? for how long?
- **TTA home and work locations** for visitors
- **Distance** traveled by visitors
- **Origination by Market XTRA report** reveals home locations of visitors staying overnight



THE HOLLYWOOD PARTNERSHIP



“Bottom line, we had the analytics to demonstrate the compelling case that Board members needed in order to make the difficult decision to re-start the assessment.”



## ANSWER QUESTIONS LIKE...

Q: How long do visitors typically stay in the area? Where do they go?

Q: How far do visitors travel? What are their home and work zip codes?

Q: What percentage of visitors stay overnight in the district?

# 10 COVID Recovery

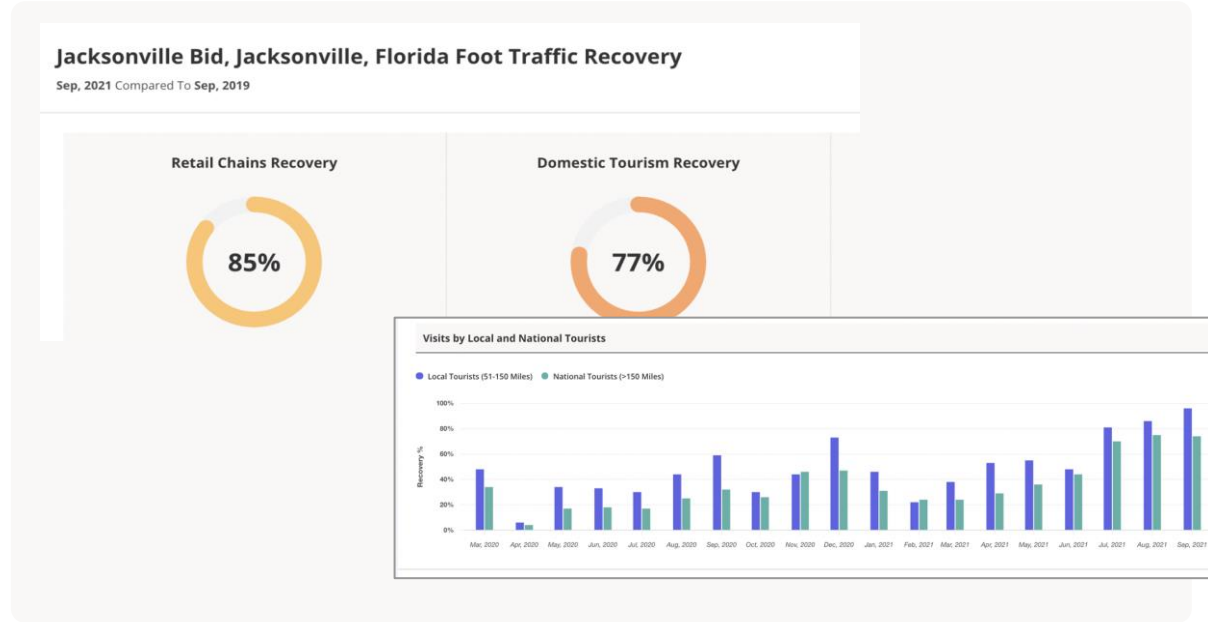


## The Problem

Civic leaders need to understand the impact of COVID and how retail and tourism have recovered since 2019.

## Placer's Solution

- [COVID Recovery Dashboard](#)
- **Retail and Tourism Recovery score** for every city, county, state and district.
- **Retail score** by category and zipcode.
- **Domestic Tourism** recovery score.



## ANSWER QUESTIONS LIKE...

Q: How does the local economy compare to performance in 2019?

Q: What categories are performing well? What categories are struggling?

Q: How do you compare with another district, city, or county?





# Monthly Reports



## Data at your fingertips

Get a snapshot of your City, County, District plus Points of Interest. See the visitation trends and overall metrics for a primary point of interest, whether it be an entire city, a district, or a venue(s). Evaluate category trends for retail, office, restaurants, hotels.

- **Overall Metrics** for primary point of interest (could be entire city, district, or venue(s).
- **Category Trends** for retail, office, restaurants, hotels.
- **POI Widget** for any venue, open space, district, group

### HOW IT WORKS:

Get reports delivered direct to your inbox. Share data with local leaders, business and property owners, stakeholders, real estate professionals, granting agencies, etc. Promote content via email, social media, and websites.







# Website Embed Widgets



## Share real-time foot traffic data about your community

Enhance your website with real time foot traffic data. Use Zip Code Foot Traffic Data to track changes to retail, dining, and visitor traffic in every zip code. Viewed as Regional Change and Monthly Trends. Note: Data is based on visits to existing POIs in Placer. Customers can add unlimited POIs.

## Realtime Economic Activity in our Community

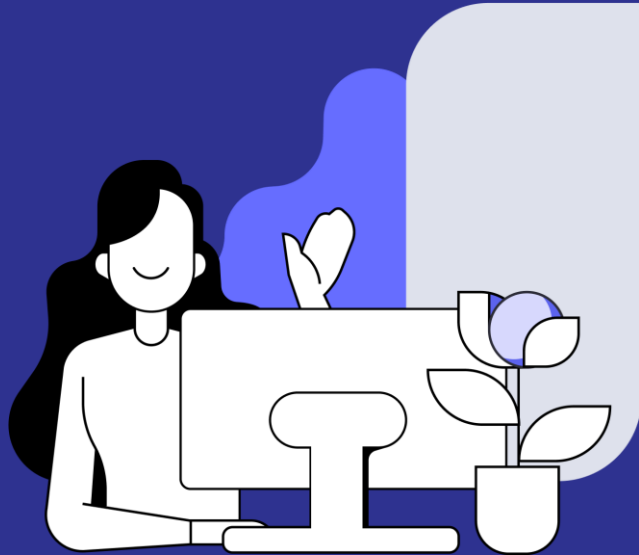
### Zip Code 90210, California Foot Traffic Trends



# Insights Made Easy: Flexible Data, Support Guaranteed



Placer offers flexible data exploration and delivery options to best fit your existing workflow – and a team of dedicated service professionals to **support you every step of the way.**



## 24/7 Platform Access

Explore and analyze on-demand with self-service access to the world's leading location analytics platform



## Automated Data Feeds & API

Employ automated data delivery via Placer's customizable data feeds and API. Also available via marketplace partnerships, including Snowflake and AWS.



## White-Glove Service

Enjoy expert strategic guidance from your team of dedicated support professionals, or engage our analytical research team for bespoke analysis and insights.



# Ready to Learn More?

NEXT STEPS



Placer.ai  
Platform Demo



Cross-Functional  
Intros & Demos



Data Validation



Sign the  
Contract!



Onboarding &  
Training



Long-term  
Partnership



# Thank You

[www.placer.ai](http://www.placer.ai)





# Related Resources



CASE STUDY

Placer Helps Prescott, AZ Office of Tourism Quantify Annual Event Impact, Secures \$200K in Grants

[View the Deck](#)

[Explore Case Study](#)



CASE STUDY

BusinessFlare helps Tequesta, FL develop response plan to pending bridge closure

[View the Deck](#)

[Explore Case Study](#)



CASE STUDY

Garden City, KS Uses Placer To Inform Sales and Tax Projections, Lands National Coffee Retailer

[View the Deck](#)

[Explore Case Study](#)



CASE STUDY

Village of Fox Lake Attracts \$335M in New Tourist Developments

[View the Deck](#)

[Explore Case Study](#)





# Related Resources



CASE STUDY

Grand Forks Wins National \$100k Grant to Revitalize Town Square

[View the Deck](#)

[Explore Case Study](#)



CASE STUDY

Tourism Dependent City Uses Placer To Improve Sales Tax Revenue Forecasting By 37%

[Explore Case Study](#)



CASE STUDY

Downtown Kansas City Secures \$85M To Cover Interstate & Create Urban Community Park

[View the Deck](#)

[Explore Case Study](#)





# Appendix



Background slides



# Unparalleled Accuracy

## Highest-Quality Data

Placer.ai derives its insights from the largest, high-quality mobile device panel available, and benchmarks against authoritative data sources.

## Verified Truth Set

Placer.ai data is constantly validated by top retailers against credit card transactions, store revenue, vehicle and people counters, and other objective measurements.

**96.7%**  
correlation to  
domestic store  
revenue growth

### Best Buy



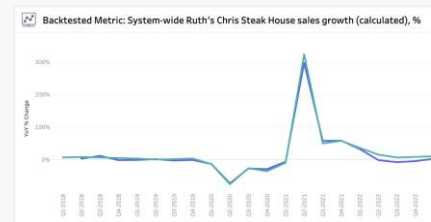
**96%**  
correlation to  
sales of alcoholic  
beverages

### TX Alcoholic Beverage Commission



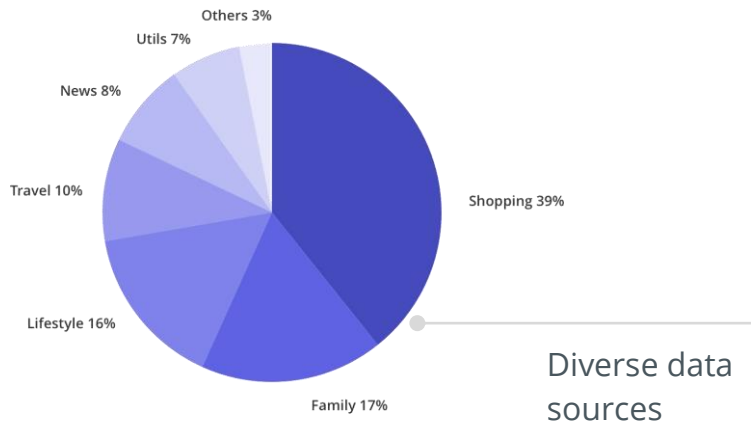
**99.6%**  
correlation to  
Ruth's Chris sales  
numbers

### Ruth's Chris Steakhouse



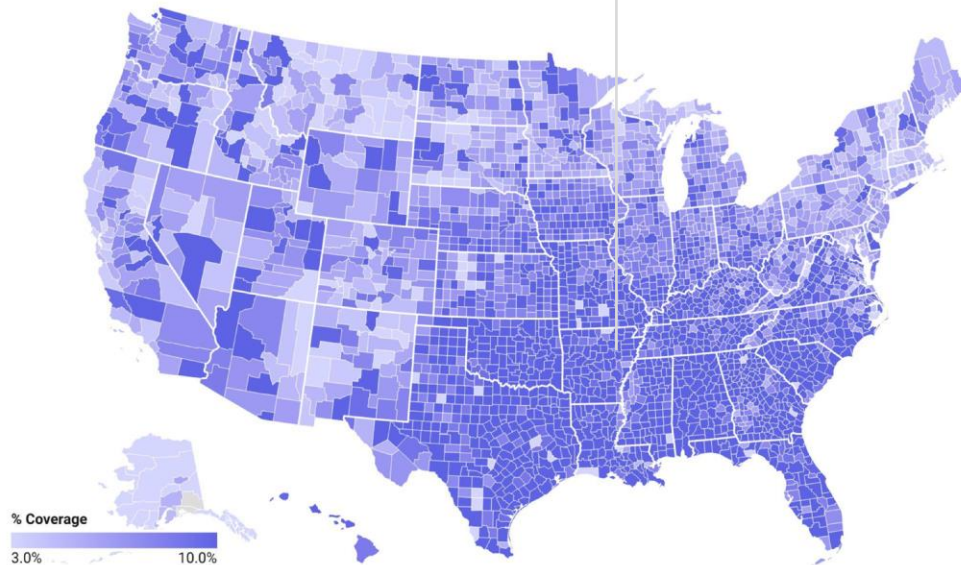
# Broad, High-Quality Coverage

Placer's broad, diverse, and high-quality data partnerships provide visibility into of tens of millions of mobile devices, forming a **statistically significant panel** which accurately reflects the real-world movement of the entire U.S. population.



100%

Background location events



# Privacy By Design

Placer's unique and unwavering commitment enables **exclusive partnerships** and **future-proofs our business**.



## We Don't Collect User Identifiers

All data we receive is stripped of identifiers, including MAIDs, email addresses and phone numbers through our proprietary *differential privacy service* (DPS) — keeping all PII out of our data.



## We Invest Heavily in Data Security

We use end-to-end encryption to protect data in transit and at rest, using a centralized key management system and rotating keys. We also employ the ISMS from ISO 27001, including a risk management program based on the ISO 31000. All data is collected, stored, and processed only on US servers.



## We Never Share User Level Data

We only provide aggregated statistical information about physical locations, such that every bit of information preserves K-anonymity of 50.



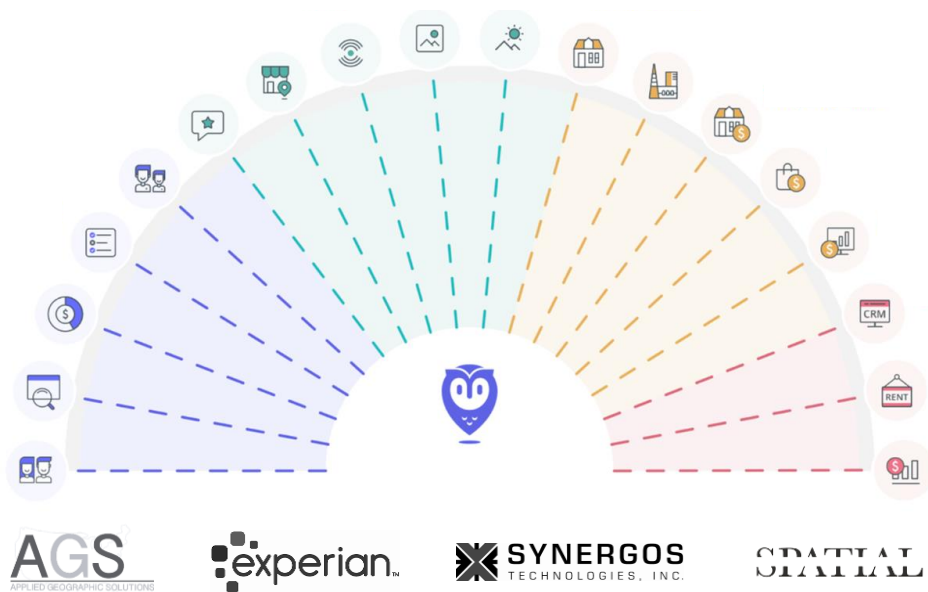
# The Placer Marketplace

## Dozens of Third Party Data Sets

The Placer Marketplace provides streamlined access to 20+ third party demographic, psychographic, and behavioral data from industry leaders like Experian, Mosaic, and STI.

## 360° Consumer Understanding

The powerful combination of Placer's True Trade Area and industry-leading external data sets allows for robust and nuanced analysis of consumers and markets.



**Item Number:** New Business- VIII.-C.  
**Committee** 6/3/2024  
**Meeting Date:**



## City of Roeland Park

Action Item Summary

---

**Date:** 5/28/2024  
**Submitted By:** Donnie Scharff, Director of Public Works  
**Committee/Department:** Public Works  
**Title:** **Approve Agreement with KDOT for the 2025 Nall Ave Road Improvements (5 min)**  
**Item Type:** Agreement

### Recommendation:

**This agreement is standard procedure and necessary for the City to use the federal dollars allocated toward the project. The agreement has been reviewed and approved by the City attorney.**

### Details:

Roeland Park was awarded \$660k of Federal STP funding for the 2025 Nall improvement project. KDOT is the administering agency for all federally funded projects regardless of the fact that the road is not under KDOT jurisdiction. This was the case for the 2020 Roe Blvd. project as well. The attached agreement is the standard form used by KDOT for such projects.

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

### What are the implications to intersectionality?

- Does this item benefit all racial groups?
- Does this item benefit Community for All Ages?
- Does this item exclude or disproportionately impact any social identities? If yes, what populations and why?
- What (if any) social determinants of health are impacted by this item?
- What (if any) are the unintended economic and environmental impacts of this item?
- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

Amount of Request: N/A	
Budgeted Item?	Budgeted Amount: Approving the agreement has not fiscal impact. The project is planned for 2025.
Line Item Code/Description: 5467-270 Special Street and Highway Fund- RSRP- Nall	

**Additional Information**

**REVIEWERS:**

Department	Reviewer	Action	Date
Public Works	Moody, Keith	Approved	5/28/2024 - 5:27 PM

## Goals/Objectives & Terms

### ATTACHMENTS:

Description	Type
▫ Agreement with KDOT Nall Ave	Cover Memo



PROJECT NO. 046 N-0771-01  
STP-N077(101)  
MARC TIP # 352003  
NALL AVENUE FROM 51<sup>ST</sup> STREET TO 58<sup>TH</sup> STREET  
CITY OF ROELAND PARK, KANSAS

## A G R E E M E N T

This Agreement is between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Roeland Park, Kansas** (“Sponsor”), **collectively**, the “Parties.”

### RECITALS:

- A. The Mid-America Regional Council (MARC) has been designated by the states of Kansas and Missouri as the Metropolitan Planning Organization (MPO) for the bi-state Kansas City metropolitan region.
- B. The Sponsor has submitted a Project to MARC and MARC has approved Sponsor’s Project for receipt of Surface Transportation Block Grant Program (STBG) federal funds.
- C. The Sponsor agrees to sponsor the Project, as further described in this Agreement.
- D. The Secretary and the Sponsor are empowered by the laws of Kansas to enter into agreements for the development of such projects, and the Secretary is authorized to administer funds for such projects.

**NOW THEREFORE**, the Parties agree to the following terms and provisions.

## ARTICLE I

**DEFINITIONS:** The following terms as used in this Agreement have the designated meanings:

1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. **“City”** means the City of Roeland Park, Kansas, with its place of business at 4600 W 51st Street, Roeland Park, Kansas 66205.
3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.

4. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
5. **“Construction Engineering” or “CE”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
6. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“Encroachment”** means any building, structure, vehicle, parking area, or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
11. **“Federal Government”** means the United States of America and any executive department or agency thereof.
12. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
13. **“Fiscal Year 2025” or “FFY 2025”** means the twelve-month period used by the United States Federal Government for financial reporting and budgeting beginning on October 1, 2024, and ending on September 30, 2025.
14. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261, *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280, *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. § 65-3430, *et seq.*, Hazardous Waste.

15. **“KDOT”** means the Kansas Department of Transportation, an agency of the State of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
16. **“Letting” or “Let”** means the process of receiving bids prior to an award of a Construction contract for any portion of the Project.
17. **“Local Public Authority” or “LPA”** means the City of Roeland Park, Kansas, with its place of business at 4600 W 51st Street, Roeland Park, Kansas 66205.
18. **“MARC”** means the Mid-America Regional Council, with its place of business at 600 Broadway, Suite 200, Kansas City, MO 64105.
19. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
20. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge, and road construction projects, as reasonably determined by the Secretary.
21. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the Sponsor.
22. **“Preliminary Engineering” or “PE”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
23. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the Sponsor, as and when authorized by the Secretary prior to Letting, being: **Project No. 46 N-0771-01; Nall Avenue complete streets project from 51<sup>st</sup> Street to 58<sup>th</sup> Street; milling and overlay, sidewalk maintenance and ramp enhancements, base repairs, pavement markings and signing for bicycle Share the Road in Roeland Park, Kansas**, and is the subject of this Agreement.
24. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
25. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
26. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
27. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and the Secretary’s successors and assigns.

28. **“Sponsor”** means the City of Roeland Park, Kansas, with its place of business at 4600 W 51st Street, Roeland Park, Kansas 66205.
29. **“STBG”** means the Surface Transportation Block Grant Program authorized under 23 U.S.C. § 133, flexible funding that may be used by locals for projects to preserve and improve the conditions and performance of any Federal-aid eligible highway; construction or rehabilitation of a bridge or tunnel on any public road; pedestrian and bicycle infrastructure; and transit capital projects.
30. **“Urbanized Area”** means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an “urbanized area” by the U.S. Secretary of Commerce.
31. **“Utilities” or “Utility”** means all privately, publicly, or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

## ARTICLE II

### FUNDING:

1. Funding. The table below reflects the funding commitments of each Party. The Participating Costs of Construction include all Construction Contingency Items. The Parties agree the costs and contributions reflected below are estimates to be used for encumbrance purposes and are subject to change.

Party	Funding Source	Responsibility
Secretary	FFY 2025 STBG	80% of Participating Costs of Construction and Construction Engineering (CE) in Fiscal Year 2025 not to exceed \$660,630.00.
Sponsor	Local Match	20% of Participating Costs of Construction and CE.  100% of Participating Costs exceeding the Secretary’s funding limit in the Secretary’s total contribution.  100% of Costs of Preliminary Engineering (PE), Right of Way, Utility adjustments, and Non-Participating Costs.

## ARTICLE III

### SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the Sponsor acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives such that the Sponsor may obtain participation of federal funds in the cost of the Project.
2. **Reimbursement Payments.** The Secretary agrees to make partial payments to the Sponsor for amounts not less than one thousand dollars (\$1,000.00) and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer employed by the Sponsor that the Project is being constructed within substantial compliance of the Design Plans.
3. **Secretary Authorization.** The Secretary is authorized by the Federal Government to administer STBG funds.
4. **Fiscal Year Allocation.** The Secretary has allocated STBG funds from federal fiscal year (FFY) 2025 for the Project.
5. **Reimbursement Payments.** The Secretary agrees to reimburse the Sponsor for eighty percent (80%) of the total actual and eligible costs incurred by the Sponsor as described above in Article II, but not to exceed \$660,630.00 for the Project, subject to any federal reduction in STBG funds. The Secretary shall not be responsible for the total actual costs that exceed \$825,787.50 for the Project. The Secretary agrees to make partial payments, for amounts not less than \$1,000 and no more frequently than monthly, to the Sponsor upon receipt of proper billings.
6. **Final Payment.** Any final amount due for the authorized work performed under this Project will be based upon the Sponsor's most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of the Secretary's Bureau of Fiscal Services.

## ARTICLE IV

### SPONSOR RESPONSIBILITIES:

1. **Incorporation of Project Application.** The Sponsor shall undertake and complete the Project and in accordance with the terms and conditions of this Agreement.
2. **Procurement.** The Sponsor shall undertake the purchase of materials related to the Project in accordance with the procedures established by the current K.S.A. 75-3739 *et seq.* and 49 C.F.R. 18.32, or the Sponsor's procurement policies or regulations if such policies or regulations are

approved by KDOT's Bureau of Local Projects (BLP). The Secretary shall not be responsible for any obligations that the Sponsor has assumed with using the State of Kansas' procurement procedures. Furthermore, the Sponsor acknowledges and agrees its request to the Secretary to use the State of Kansas' procurement procedures shall not bind the Secretary to render or provide assistance in any manner associated with this Agreement.

3. **Meeting Requirements.** The Sponsor agrees, during the life of the Project, to attend any meetings requested by representatives of the Secretary or the MARC, if the Secretary deems such meetings to be necessary.

4. **Conformity with State and Federal Requirements.** The Sponsor shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design's road memorandums, or an equivalent Sponsor manual that the Sponsor certifies in the same or substantially similar to the KDOT Local Projects LPA Project Development Manual, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions required by the Secretary or by the Sponsor with the Secretary's concurrence, and with the rules and regulations of the FHWA pertaining to the Project.

5. **Inspections.** Representatives of the Secretary or the MARC, if the Secretary deems necessary, may make periodic inspections of the Project and the records of the Sponsor as may be deemed necessary or desirable. The Sponsor will accomplish or direct or cause its subcontractors to accomplish any corrective action or work required by the Secretary's representatives as needed for federal participation. The Secretary does not undertake (for the benefit of the Sponsor, its subcontractors, or any third party) the duty to perform the day to day detailed monitoring of the Project, or to catch any errors, omissions, or deviations from the Project's scope of work by the Sponsor or its subcontractors.

6. **Reports.** The Sponsor shall advise the Secretary regarding the progress of the Project at such times and in such a manner as the Secretary may require, including, but not limited to, meetings, interim progress reports, summary of expenditures, and a detailed final report.

7. **Legal Authority.** The Sponsor agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

8. **Financial Obligation.** The Sponsor will be responsible for twenty percent (20%) of the total actual costs incurred for the Project as described above in Article II up to \$660,630.00. In addition, the Sponsor agrees to be responsible for one hundred percent (100%) of the total actual costs of the Project that exceed \$660,630.00. Further, the Sponsor agrees to be responsible for one hundred percent (100%) of all costs of items found not eligible for reimbursement by the Secretary.

9. **Project Costs Prior to FHWA Approval.** The Sponsor agrees to be responsible for one hundred percent (100%) of any Project costs incurred by the Sponsor for the Project prior to the funding for the Project being authorized, obligated, and approved by the FHWA.

10. **Restricted Funding Source.** The Sponsor acknowledges and understands Secretary's share of the Project's total, actual, and eligible costs will be funded through the federal aid STBG Funds allocated to the Kansas City Urbanized Area. The Secretary does not assume any liability in connection with the Project. The Sponsor shall reimburse the Secretary for any funds approved for this Project and expended by the Secretary for which the Secretary is not reimbursed by the Federal Government (Federal Aid STBG Funds).

11. **Davis-Bacon Act Requirements.** As provided at 23 U.S.C. 133(i), all projects funded with STBG funding shall be treated as located on a Federal-aid highway. Accordingly, 23 U.S.C 113 applies, and Davis-Bacon wage rates must be paid. In general, Davis-Bacon requires that all laborers and mechanics employed by the applicant, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work on an award or project in excess of \$2000 funded directly by or assisted in whole or in part by funds made available under STBG shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA). For additional guidance on how to comply with DBA provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction> . See also <https://www.fhwa.dot.gov/construction/cqit/dbacon.cfm>.

12. **Billings and Reporting.** The Sponsor agrees to submit proper billings to the Secretary for amounts not less than \$1,000 and no more frequently than monthly. The Sponsor will submit progress reports on the Project, in a form acceptable to the Secretary, together with the billings. Further, if a final report is required for the Project, the Sponsor must submit such final report to the Secretary prior to the Sponsor's receipt of final payment.

13. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

14. **Annual Project Audit.** The Sponsor will participate and cooperate with the Secretary in an annual audit of the Project. If any such audits reveal payments have been made with federal funds by the Sponsor for items considered Non-Participating Costs, the Sponsor shall promptly reimburse the Secretary for such items upon notification by the Secretary.

15. **Retention of Records.** The Sponsor shall maintain accounting records and other evidence pertaining to the costs incurred and to make the records available at its office at all reasonable times during the period of Agreement performance and for five (5) years thereafter. Such accounting records and other evidence pertaining to the costs incurred will be made available for inspection by the Secretary, FHWA, U.S. Department of Transportation (USDOT), and Office of Inspector General, or their authorized representatives, and copies thereof shall be furnished if requested.



16. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the Sponsor shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the Sponsor to any party outside of the Secretary and all costs incurred by the Sponsor not to be reimbursed by the Secretary for any phase or any other major expense associated with the Project.

17. **Cancellation by Sponsor.** If the Sponsor cancels the Project after receiving written approval from MARC, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The Sponsor agrees to reimburse the Secretary within thirty (30) days after receipt by the Sponsor of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

18. **Secretary Authorization.** The Secretary is authorized by the Sponsor to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

19. **Design and Specifications.** The Sponsor shall be responsible to make or contract to have made Design Plans for the Project.

20. **Submission of Design Plans to Secretary.** Upon their completion, the Sponsor shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article IV, paragraph 4 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer who is responsible for the preparation of the geological investigations or studies. All technical professionals involved in the Project are required to meet the applicable licensing and/or certification requirements as stated in K.S.A. § 74-7001, *et seq.*

21. **Consultant Contract Language.** The Sponsor shall include language requiring conformity with Article IV, paragraph 4 above, in all contracts between the Sponsor and any Consultant with whom the Sponsor has contracted to perform services for the Project. In addition, any contract between the Sponsor and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article IV, paragraph 4 above. In addition, any contract between the Sponsor and any Consultant with whom the Sponsor has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- (a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- (b) **Progress Reports.** Language requiring the Consultant to submit to the Sponsor (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

- (c) Third-Party Beneficiary. Language making the Secretary a third-party beneficiary in the agreement between the Sponsor and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third-party beneficiary to this agreement between the Sponsor and the Consultant. This third-party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the Sponsor or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant’s negligent acts, errors, or omissions. Nothing in this provision precludes the Sponsor from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”

22. **Responsibility for Adequacy of Design**. The Sponsor shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary’s representatives is not intended to and shall not be construed to be an undertaking of the Sponsor’s and its Consultant’s duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the Sponsor, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the Sponsor.

23. **Letting and Administration by Sponsor**. The Sponsor shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the Secretary. The Sponsor further agrees to administer the construction of the Project in accordance with the Design Plans, in the manner required by the FHWA and the Sponsor’s manual that is the same or substantially similar to the KDOT Local Projects LPA Project Development Manual, and administer the payments due the Contractor, including the portion of the cost borne by the Secretary.

24. **Prevailing Wages**. The Sponsor will require the Contractor to pay prevailing wages. The Sponsor will incorporate into the Construction contract the current general wage decision for the county in which the Project is being constructed. The Sponsor can obtain the current wage decision from KDOT’s Bureau of Construction and Materials website.

25. **Performance Bond**. The Sponsor will require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

26. **Plan Retention**. The Sponsor will maintain a complete set of final Design Plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project’s completion. The Sponsor further agrees to make such reproducible, prints,

drawings, and certifications available for inspection by the Secretary upon request. The Sponsor shall provide access to or copies of all the above-mentioned documents to the Secretary.

27. **General Indemnification.** To the extent permitted by law and subject to the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the Sponsor will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the Sponsor, the Sponsor's employees, agents, subcontractors or its consultants. The Sponsor shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

28. **Indemnification by Contractors.** The Sponsor agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the Sponsor from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors, or suppliers. If the Secretary or the Sponsor defends a third party's claim, the Contractor shall indemnify the Secretary and the Sponsor for damages paid to the third party and all related expenses either the Secretary or the Sponsor or both incur in defending the claim.

29. **Authorization of Signatory.** The Sponsor shall authorize a duly appointed representative to sign for the Sponsor any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

30. **Removal of Encroachments.** The Sponsor shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the Sponsor and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

31. **Future Encroachments.** Except as provided by state and federal laws, the Sponsor agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

32. **Utilities.** The Sponsor agrees to the following with regard to Utilities:

(a) **Utility Relocation.** The Sponsor will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

(b) Status of Utilities. The Sponsor shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The Sponsor will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The Sponsor shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the Sponsor as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The Sponsor shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the Sponsor's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The Sponsor will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The Sponsor shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) Indemnification. To the extent permitted by law and subject to the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the Sponsor will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the Sponsor except as provided by state and federal laws.

33. **Hazardous Waste**. The Sponsor agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The Sponsor shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The Sponsor shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The Sponsor will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and Sponsor and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The Sponsor shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The Sponsor shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the Sponsor in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the Sponsor has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The Sponsor reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

34. Inspections. The Sponsor is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the KDOT Local Projects LPA Project Development Manual or an equivalent Sponsor manual that the Sponsor certifies is the same or substantially similar to the KDOT Local Projects LPA Project Development Manual.

(a) By Sponsor Personnel. Sponsor personnel who are fully qualified to perform the inspection services in a competent and professional manner may be utilized by the Sponsor to inspect the Project, in which case the Sponsor shall provide the Secretary with a list of such personnel who will act as the assigned inspectors and their certifications.

(b) By a Consultant. If the Sponsor does not have sufficiently qualified engineering employees to accomplish the Construction Engineering on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary services. The Consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the FHWA and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications.

(c) Protective Clothing. The Sponsor will require at a minimum all Sponsor personnel and all Consultant personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. If the Sponsor executes an agreement for Construction Engineering, the agreement shall contain this requirement as a minimum. The Sponsor may set additional clothing requirements for adequate visibility of personnel.

35. Corrective Work. Representatives of the Secretary may make periodic inspection of the Project and the records of the Sponsor as may be deemed necessary or desirable. The Sponsor will direct or cause its Contractor to accomplish any corrective action or work required by the Secretary's

representative as needed for a determination of federal participation. The Secretary does not undertake the duty to perform day-to-day detailed inspection of the Project for the benefit of the Sponsor, the contractor, the consultant, or any third party, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans.

36. **Traffic Control.** The Sponsor agrees to the following with regard to traffic control for the Project:

(a) **Temporary Traffic Control.** The Sponsor shall provide a temporary traffic control plan within the Design Plans, which includes the Sponsor's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The Sponsor's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same.

(b) **Permanent Traffic Control.** The location, form, and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. § 8-2005, must conform to the latest version of the MUTCD as adopted by the Secretary.

(c) **Parking Control.** The Sponsor will control parking of vehicles on the Sponsor streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) **Traffic Movements.** The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The Sponsor shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

37. **Access Control.** The Sponsor will maintain the control of access rights and prohibit the Construction or use of any entrances or access points along the Project within the Sponsor other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

38. **Entrance Control.** The Sponsor will control the construction or use of any entrances along the Project within the Sponsor including those shown on the final Design Plans.

39. **Maintenance.** When the Project is completed and final acceptance is issued the Sponsor will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the Sponsor will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

40. **Cap Amount for Project Costs.** The Sponsor agrees that the “Not to Exceed” dollar amount above is subject to change as listed in the Sponsor’s MPO’s Transportation Improvement Plan (“TIP”). Final “Not to Exceed” dollar amounts will be determined by the Secretary at the time of Letting. Any necessary changes to the “Not to Exceed” amounts will be documented through a supplemental agreement.

## ARTICLE V

### FEDERAL REQUIREMENTS:

1. **Debarment & Suspension.** This Agreement is a covered transaction for purposes of 2 C.F.R. Parts 180 and/or 1200. By signature on this Agreement, the Sponsor verifies that neither it, nor its agents or employees, are presently debarred, suspended, proposed for debarment, declared ineligible, disqualified, or voluntarily excluded from participation in this transaction by any federal department or agency as reflected in the System for Award Management (SAM). Exec. Orders No. 12549 and 12689; 2 C.F.R. § 200.213.

2. **System for Award Management.** The Sponsor has registered with the System for Award Management (<http://www.sam.gov>), which provides a Unique Entity Identifier (SAM). The Sponsor shall maintain such registration at all times during which it has active federal awards.

3. **Buy America Compliance.** The Parties agree to comply with the Buy America requirements of 23 CFR § 635.410, as applicable, when purchasing items using Federal funds under this Agreement. Buy America requires the Parties to purchase only steel and iron produced in the United States, unless a waiver has been granted by FHWA or the product is subject to a general waiver. Costs for applicable materials which are not certified either compliant or under waiver will not be reimbursed. Buy America requirements apply to all contractors/subcontractors and should be incorporated through appropriate contract provisions as needed.

4. **Prohibition on Certain Technologies.** All Parties agree that they will comply with 2 CFR § 200.216 and 2 CFR § 200.471 regulations. Such regulations provide that recipients and sub-recipients of federal funds are prohibited from obligating or expending loan or grant funds to 1) procure or obtain; 2) extend or renew a contract to procure or obtain, or; 3) or enter into a contract to procure or obtain telecommunication or video surveillance equipment, services, or systems produced by: Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); and Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Any expenditures for such telecommunication or video surveillance equipment, services or systems are unallowable costs and will not be reimbursed.

5. **Anti-Lobbying.** If the total value of this agreement exceeds one hundred thousand dollars (\$100,000.00), a Certification for Federal Aid Contracts and Accompanying Disclosure of Lobbying Activities will be attached and made a part of this Agreement. Such certification must state the recipient or subrecipient of a federal grant will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any



agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. 2 C.F.R. § Pt. 200, App. II.

6. **Audit.** All local governmental units, state agencies or instrumentalities, non-profit Organizations, institutions of higher education and Indian Tribal governments shall comply with Federal-Aid Transportation Act and the requirements of 2 C.F.R. Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (commonly known as the “Supercircular”). Further, the Sponsor agrees to the following provisions:

(a) **Audit.** It is the policy of the Secretary to make any final payments to the Sponsor for services related to the Project in a timely manner. The Audit Standards set forth in 2 C.F.R. Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” and specifically the requirements in Subpart F, 2 C.F.R. § 200.500, *et seq.* require either a single or program specific audit be performed by an independent certified public accountant in accordance with these standards. All information audited and audit standards and procedures shall comply with 2 C.F.R. § 200.500, *et seq.*

(b) **Audit Report.** The Secretary may pay any final amount due for the authorized work performed based upon the Sponsor’s most recent Single or Program Specific Audit Report “(Audit Report)” available and a desk review of the claim by the Contract Audit Section of KDOT’s Bureau of Fiscal Services. The Sponsor, by executing this Agreement, acknowledges the final payment is subject to all single or program specific audits which cover the time period of the expenses being claimed for reimbursement. The Parties agree once the Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the Secretary will review the Audit Report for items which are declared as not eligible for reimbursement. The Sponsor agrees to refund payment made by the Secretary to the Sponsor for items subsequently found to be not eligible for reimbursement by audit.

(c) **Agency Audit.** The Secretary and/or the FHWA may request, in their sole discretion, to conduct an audit of the Project. Upon the request of the Secretary and/or the FHWA for an audit, the Sponsor will participate and cooperate in the audit and shall make its records and books available to representatives of the requesting agency for a period of five (5) years after date of final payment under this Agreement. If the audit reveals payments have been made with federal funds by the Sponsor for items considered Non-Participating Costs, the Sponsor shall promptly reimburse the Secretary for such items upon notification by the Secretary.

## ARTICLE VI

### GENERAL PROVISIONS:

1. **Amendments.** Any change in this Agreement, whether by modification and/or supplementation must be accomplished by a formal contract amendment or supplement signed and approved by the duly authorized representatives of the Sponsor and the Secretary.
2. **Incorporation of Documents.** The final Design Plans, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for Construction Engineering services (if applicable) and other Attachments (Index provides List of Attachments) are all essential documents of this Agreement and are hereby incorporated by reference and made a part of this Agreement.
3. **FHWA Approval.** Decisions as to what Project costs are federal Participating Costs will be made in accordance with the requirements of the FHWA.
4. **Civil Rights Act.** The Civil Rights Act Attachment, pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
5. **Contractual Provisions.** The provisions found in the current version of the Contractual Provisions Attachment (Form DA-146a), which is attached, are incorporated into and made a part of this Agreement.
6. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.
7. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the Sponsor and their successors in office.
8. **No Third-Party Beneficiaries.** No third-party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
9. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.
10. **Severability.** If any provision of this Agreement is held invalid, the invalidity does not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF ROELAND PARK, KANSAS

\_\_\_\_\_  
CITY CLERK (Date)

\_\_\_\_\_  
MAYOR (Date)

(SEAL)

Kansas Department of Transportation  
Secretary of Transportation

By: \_\_\_\_\_  
Greg M. Schieber, P.E. (Date)  
Deputy Secretary and  
State Transportation Engineer

Approved as to form:

**INDEX OF ATTACHMENTS:**

- Civil Rights Act Attachment
- Contractual Provisions Attachment (Form DA-146a)
- Certification for Federal Aid Contracts and Accompanying Disclosure of Lobbying Activities

**KANSAS DEPARTMENT OF TRANSPORTATION  
CIVIL RIGHTS ACT ATTACHMENT**

**PREAMBLE**

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency (“LEP”).

**CLARIFICATION**

Where the term “contractor” appears in the following “Nondiscrimination Clauses,” the term “contractor” is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Attachment shall govern should this Attachment conflict with provisions of the Document to which it is attached.

**ASSURANCE APPENDIX A**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration (“FTA”) or the Federal Aviation Administration (“FAA”) as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration (“FTA”), or Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **ASSURANCE APPENDIX E**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-259), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

### CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to



comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

**Federal Funds Lobbying Certification Attachment  
Required Contract Provision**

Definitions

1. **Designated Entity:** An officer or employee of any agency, a Member of Congress or any state legislature, an officer or employee of Congress or any state legislature, or an employee of a Member of Congress or any state legislature
2. **Federal Grant:** An award of financial assistance by the Federal government (Federal Aid Highway Program is considered a grant program)
3. **Influencing (or attempt):** Making, with the intent to influence, any communication to or appearance before any designated entity in connection with the making of any Federal grant
4. **Person:** An individual, corporation, company, association, authority, firm, partnership, society, state or local government
5. **Recipient:** All contractors, subcontractors or subgrantees, at any tier, of the recipient of fund received in connection with a Federal grant.

Explanation

As of December 23, 1989, Title 31 U.S.C. (new) Section 1352 limits the use of appropriated Federal funds to influence Federal contracting. Under this new section no appropriated funds may be used by the recipient of a Federal grant to pay any person to influence or attempt to influence a designated entity in connection with the naming of a Federal grant or the extension, renewal, amendment or modification of any grant. These restrictions apply to grants in excess of \$100,000.00. Submission of this Certification is required for participation in this Project by Federal Law. For each failure to file, a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 may be imposed.

**Note:** If funds other than appropriated Federal funds have or will be paid to influence or attempt to influence a designated entity it must be reported. If required, the reporting shall be made on KDOT Form No. 401, "Disclosure of Lobbying Activities", in accordance with its instructions. KDOT Form No. 401 is available through the Bureau of Design.

**THE ABOVE DEFINITIONS, EXPLANATION AND NOTE ARE ADOPTED AND INCORPORATED BY REFERENCE IN THIS CERTIFICATION FOR ALL PURPOSES THE SAME AS IF SET OUT IN FULL IN IT.**

The maker of this Certification states that it has been signed on the maker's behalf or, if on behalf of some other person, that the maker is vested with legal right and authority to bind and obligate the other person in the making of this Certification submitted in regard to this Agreement.

The maker certifies that: No Federal appropriated funds have been paid or will be paid by or on behalf of the maker, to any person, for influencing or attempting to influence any designated person in connection with the awarding of any Federal grant or the extension, continuation, renewal, amendment or modification of any Federal grant.

In the event that the maker subcontracts work in this Agreement, the maker will provide to and require the signing of this Certification by the subcontractor, and shall keep and maintain the original signed form as part of the contract with the subcontractor.

The maker understands that this Certification is a material representation of fact upon which reliance was placed as part of this transaction.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
By: \_\_\_\_\_

**Item Number:** New Business- VIII.-D.  
**Committee** 6/3/2024  
**Meeting Date:**



**City of Roeland Park**  
Action Item Summary

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**Date:** 6/3/2024  
**Submitted By:** Jennifer Jones-Lacy, Assistant City Administrator/Finance Director  
**Committee/Department:** Admin  
**Title:** **Property Tax Rebate Program Process (5 min)**  
**Item Type:** Discussion

**Recommendation:**

**Make the approval of recipients of the Property Tax Rebate Program a staff decision instead of having a committee approve recipients.**

**Details:**

Roeland Park's Property Tax Assistance program was established as part of the 2019 Budget process as a Council Objective to help low-income Roeland Parkers afford to stay in their homes. When established, the objective stated a committee consisting of two councilmembers, two residents and a neutral finance professional would determine the qualifications and award the rebates. This has been the process since.

After five years of going through this process, staff would like to recommend eliminating the committee component of determining the rebate recipients starting with 2024. The program has specific guidelines that we use to determine eligibility. This is something that can be done entirely by staff and would help streamline the process. In prior years, it has been a struggle to get the committee together to complete this task due to scheduling conflicts and the busy lives of members. This only delays our ability to get grant funds into the hands of recipients. We currently do not have a committee process for any other city-funded grant program and are not aware of any other city that has such a process. These programs are far and away handled administratively.

Moving forward, staff suggests that the program guidelines are approved by Council annually. This year, staff would bring the proposed 2025 guidelines to Council in October/November of this year for Council review and approval. This provides policy input of the program by Council while allowing the administrative processing of these applications to be handled by staff.

We have already received 19 applications from residents for this program in 2024. Our guidelines state that first round applications are due mid-May. Once we can confirm the applicant is current on their property taxes, typically available in May via AIMS, we can determine eligibility and approve their application.

**Community Impact:** Utilizing a lens of intersectionality, illustrate how this item would promote the city's commitment to equity, including improving social determinates of health:

**What are the implications to intersectionality?**

- Does this item benefit all racial groups?
- Does this item benefit Community for All Ages?
- Does this item exclude or disproportionately impact any social identities? If yes, what populations and why?
- What (if any) social determinants of health are impacted by this item?
- What (if any) are the unintended economic and environmental impacts of this item?
- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

**Financial Impact**

Amount of Request: n/a	
Budgeted Item?	Budgeted Amount: \$20,000
Line Item Code/Description: 5282.101 - Property Tax Rebate Program	

**Additional Information**

**REVIEWERS:**

Department	Reviewer	Action	Date
Administration	Jones-Lacy, Jennifer	Approved	5/30/2024 - 3:54 PM

## **Goals/Objectives & Terms**