

PROJECT MANAGEMENT & OWNER'S REPRESENTATIVE AGREEMENT

This Project Management & Owner's Representative Agreement (this "Agreement") is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and Lane4 Property Group, Inc., hereinafter "Lane4" (collectively, the "Parties"). City is in need of certain services for a Project Manager and Owner's Representative – Olathe Downtown Library Project, pertaining to the design and construction of a mixed-use office and public library building in downtown Olathe, Kansas (the "Project"), with Lane4 acting as a fiduciary to the City on various matters related to the design and construction of the Project.

NOW, THEREFORE, the Parties agree as follows:

1. SCOPE OF SERVICES. The City and Lane4 have defined the management activities anticipated to be required for the management of the Project. The list of management activities along with the role and responsibility of each party related to these activities is provided in **Exhibit A**, attached hereto and incorporated herein by reference. The list of roles and responsibilities in **Exhibit A** identifies whether each party has a lead role, participating role, or shared role for each activity.

2. FEES AND EXPENSES. In exchange for Lane4's performance of the services identified on **Exhibit A**, the City will make the following payments to Lane4:

- a. Development Fee.** The "Development Fee" is five percent (5%) of the total Project costs, excluding land, commissions, Colliers International's consulting fee, legal fees, tenant improvement costs in excess of \$80/psf, interior design, advertising, utility tap fees, and building permit fees. The Development Fee will be paid to Lane4 as follows: (i) twenty-five percent (25%) upon the first to occur of (x) construction commencement and (y) one year following completion of the Project's schematic design documents (i.e., design documents required for the Project's preliminary development plan application) (the "Schematic Design Documents"); (ii) fifty percent (50%) in fourteen (14) equal installments over a fourteen (14) month construction period; and (iii) twenty-five percent (25%) upon the opening of the library portion of the Project.
- b. Construction Management Fee.** The "Construction Management Fee" is Ninety Thousand and NO/100 Dollars (\$90,000.00), which will be paid to Lane4 as follows: (i) seventy-five percent (75%) in fourteen (14) equal installments over a fourteen (14) month construction period; and (ii) twenty-five percent (25%) upon the opening of the library portion of the Project.
- c. Expense Reimbursement.** Any reasonable expenses paid by Lane4 in performing the services set forth on **Exhibit A** shall be reimbursed by the City, including, by way of example, expenses paid in connection with the Project's groundbreaking ceremony. Lane4 shall itemize all such expenses when submitted to the City for reimbursement. City agrees to promptly review any such reimbursement request and then reimburse Lane4 within thirty (30) days of approval by the Governing Body or other agent of City in accordance with the City's Procurement Policy. If the City does not approve any given portion of a reimbursement request, the portion that the City does approve will be processed for reimbursement while the City and Lane4 address the City's disapproval of certain expenses.

3. ADDITIONAL SERVICES. Both the City and Lane 4 agree the roles and responsibilities outlined in **Exhibit A** are representative of the primary project management activities anticipated

to be required for the management of said project, however, these roles and responsibilities should not be considered to be a complete and exhaustive list of all management activities that may be required. If additional roles and responsibilities are identified for Lane4 or any other changes to **Exhibit A** are desired, and both Parties are in agreement with respect to such changes, **Exhibit A** may be modified by written amendment to this Agreement signed by the Parties which shall replace the existing **Exhibit A** with the modified **Exhibit A**. Any such amendment will indicate whether the Development Fee and/or Construction Management Fee will be adjusted in conjunction with the modification to **Exhibit A**.

4. TERMINATION FOR LACK OF FUNDS. If, for whatever reason, adequate funding is not made available by City to support or justify the Project, or the current scope of the Project, City may terminate (if funding is not available to continue the Project) or reduce the amount of services to be provided by Lane 4 (if funding is not available to continue the current scope of the Project) under this Agreement. In such event, City will notify Lane4 in writing at least thirty (30) days in advance of such termination or reduction of services for lack of funds. In such event, City will pay Lane4 any unpaid Development Fee and Construction Management Fee earned through the effective date of the termination (prorated for partial month) and reimburse Lane4 any reimbursable expenses under Section 2(c) hereof that were incurred by Lane4 prior to the effective date of the termination.

5. TERMINATION FOR LACK OF PERFORMANCE. City reserves the right to terminate this Agreement if, following the City's written notice to Lane4 setting forth in detail Lane4's failure to substantially perform specific services set forth on **Exhibit A**, Lane4 does not cure such deficiency within thirty (30) days. Upon such termination, City shall pay Lane4 any unpaid Development Fee and Construction Management Fee earned through the effective date of the termination (prorated for partial month) and reimburse Lane4 any reimbursable expenses under Section 2(c) hereof that were incurred by Lane4 prior to the effective date of the termination. If construction does not commence within two (2) years following the date of this Agreement (as set forth at the top of the signature page of this Agreement), Lane4 shall have the right at any time thereafter to terminate this Agreement upon written notice to City, at which time City shall pay Lane4 any unpaid Development Fee earned through the effective date of the termination (prorated for partial month) and reimburse Lane4 any reimbursable expenses under Section 2(c) hereof that were incurred by Lane4 prior to the effective date of the termination. In the event of a termination of the Agreement pursuant to this Section 4 which takes place during the design stage of the Project (i.e., pre-construction), Lane4's unpaid Development Fee through the effective date of termination for purposes of this Section 4 shall be calculated as the percentage completion of the Schematic Design Documents multiplied by twenty-five percent (25%) of the total Development Fee (i.e., the portion of the Development Fee described in Section 2(a)(i)).

6. DISPUTE RESOLUTION. City and Lane4 agree that disputes relative to the Project will 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 may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Lane4 will proceed with the services as per this Agreement as if no dispute existed, and City will continue to make payment for Lane4's services as set forth herein; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

7. SUBCONTRACTING BY LANE 4. Except as provided in **Exhibit A**, Lane 4 may not subcontract or assign any of the services to be performed under this Agreement without first obtaining the written approval of City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge Lane4 from any obligation under this

Agreement. Any person or firm proposed for subcontracting services under this Agreement will maintain throughout the duration of the Agreement, insurance as provided in Section 9 herein, and will provide City with certification thereof upon City's request.

8. CONTRACTING WITH GENERAL CONTRACTOR AND DESIGN PROFESSIONALS.

The Parties agree that unless otherwise agreed to by the Parties, City will contract directly with the Project's general contractor, design professionals, and any other third parties providing goods or services to the Project and will be solely responsible for any fees and expenses related to such contracts. While Lane4 may manage some or all of such third parties providing goods and services, as set forth on **Exhibit A** and otherwise pursuant to the terms of this Agreement, in no event shall Lane4 be financially responsible in any way for such contracts. In the event the Parties agree that Lane4 will directly contract with any such third party, City will either pay such third party directly for all fees and expenses incurred under such contract, or if agreeable to both City and Lane4, Lane4 will pay such fees and expenses and be reimbursed by the City under Section 2(c) hereof.

9. INSURANCE. Lane4 will maintain, throughout the duration of this Agreement, insurance as provided in **Exhibit B**. Any third party engaged to provide goods or services to the Project pursuant to Section 6 hereof shall satisfy the insurance requirements set forth in **Exhibit B** during the Term of this Agreement.

10. CITY AUTHORIZATION. As a provider of management services for the City's Project, Lane4 will frequently rely on City feedback, approvals, and authorization to proceed with aspects of Lane4's services hereunder. The Parties agree that Lane4 may rely on written feedback, approvals, and authorization from the City Manager, City Attorney, City Council, or any other person delegated such authority in writing by any of the aforementioned (the "City Authorities"). In no event will Lane4 have any liability under this Agreement for relying on the City Authorities or waiting to proceed with any given activity hereunder until written feedback, approvals, or authorization, as applicable, is received from one or more City Authorities.

11. INDEMNIFICATION AND HOLD HARMLESS. For purposes of this Agreement, Lane4 agrees to indemnify and hold harmless City, its officers, appointees, employees, and agents from any and all loss, damage, liability or expense related to the Project, of any nature whatsoever caused or incurred as a result of the negligence of Lane4, its affiliates, subsidiaries, or employees. For purposes of this Agreement, subject to the limitations of the Kansas Tort Claims Act, City agrees to indemnify and hold harmless Lane4, its officers, appointees, employees, and agents from any and all loss, damage, liability or expense related to the Project, of any nature whatsoever caused or incurred as a result of the negligence of the City, its officers, appointees, employees, and/or agents. In the event that a 3rd party files a claim for damages against the City and Lane4 pertaining to the Project, the indemnified party (between the City and Lane4) will not settle such claim without the consent of the indemnifying party.

12. ASSIGNMENT. Lane4 may not assign its interests in this Agreement without the prior written consent of City, except that Lane4 may assign its interests in this Agreement to any entity that is more than fifty percent (50%) owned by Lane4 or one or more principals (in the aggregate) of Lane4 without City consent.

13. ENTIRE AGREEMENT. This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both

Parties to this Agreement.

14. NO THIRD-PARTY BENEFICIARIES. Nothing contained herein will create a contractual relationship with, or any rights in favor of, any third party.

15. INDEPENDENT CONTRACTOR. Lane4 is an independent contractor and is not an agent or employee of City.

16. COMPLIANCE WITH LAWS. Lane4 will abide by all applicable federal, state and local laws, ordinances and regulations applicable at the time the services are rendered.

17. APPLICABLE LAW, JURISDICTION, VENUE. Interpretation of this Agreement and disputes arising out of or related to this Agreement will be subject to and governed by the laws of the State of Kansas. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County, Kansas.

18. SEVERABILITY. If any provision of this Agreement is determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) will be null and void; provided, however, that the remaining provisions of this Agreement will be unaffected and will continue to be valid and enforceable.

19. AMBIGUITY. If any ambiguity, inconsistency or conflict arises in the interpretation of this Agreement, the same will be resolved by reference first to the terms and conditions of this Agreement and then to **Exhibit A**.

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

The Parties hereto have caused this Agreement to be executed this _____ day of _____ 2020.

CITY OF OLATHE, KANSAS

By: _____
John W. Bacon, Mayor

ATTEST:

Brenda D. Long, City Clerk

(SEAL)

APPROVED AS TO FORM:

Ronald R. Shaver, City Attorney


Lane4 Property Group, Inc.

By: _____

Michael Berenbom – Vice President,
Investments

4705 Central Street
Kansas City, MO 64112
Direct: (816) 268.9104
Cell: (816) 216.8996
mberenbom@lane4group.com

Exhibit A
SCOPE OF SERVICES MATRIX – RESPONSIBILITIES OF LANE4 & THE CITY

| Olathe Downtown Library | | | |
|--------------------------------------|--|--|---|
| August 24, 2020 | | | |
| Lead Role | X |  |  |
| Participating Role | P | | |
| DEVELOPMENT ACTIVITY: | | LANE4 Property Group | City of Olathe |
| Due Diligence: | | | |
| 1. | Coordinate with existing Due Diligence subs to integrate with design team | X | P |
| 2. | Additional Property due diligence - obtain any additional required bids and manage geotechnical engineering reports, ALTA/Topo Surveys, environmental reports and other preliminary due diligence | X | P |
| 3. | Review additional due diligence bids and pay direct or include in draws | | X |
| Pre-Development Design: | | | |
| 4. | Obtain & manage preliminary site plans & project massing | X | P |
| 5. | Finalization of Building size and scope | X | X |
| 6. | Determination of Parking requirements and parking structure options | X | X |
| 7. | Create & manage preliminary design schedule | X | P |
| 8. | Obtain preliminary elevations and schematic plans for budgetary pricing | X | P |
| 9. | Obtain finalized pricing for design services | X | P |
| 10. | Prepare design services agreement and negotiate terms | P | X |
| 11. | Execute contracts - to be held by City | | X |
| 12. | Manage communications with design professionals including- architectural, civil, structural, MEP engineering and other services | X | P |
| 13. | Host and maintain regular design meetings to complete work as required | X | P |
| 14. | Compile meeting minutes and distribute | X | P |
| Pre-Development Construction: | | | |
| 15. | Obtain preliminary updated cost based on updated preliminary design documents | X | P |
| 16. | Review preliminary scopes of work for completeness | X | P |
| 17. | Identify and coordinate any fees or scopes not included in GC scope including - Special Tests & Inspections, FFE procurement process, utility provider coordination and tap fees, traffic studies, permits | X | X |
| 18. | Coordinate additional sub contractors/design professionals for above scopes | X | P |
| 19. | Execute contracts - to be held by City | | X |
| 20. | Prepare preliminary construction schedules for City review | X | P |
| 21. | Prepare construction management services agreement and negotiate terms | P | X |
| 22. | Execute contract - to be held by City | | X |
| Pre-Development Other: | | | |
| 23. | Manage design teams for any off-site approvals necessary | X | X |
| 24. | Manage 3rd party consultants for any traffic improvements with City of Olathe and neighborhood related activities regarding the project | X | X |
| 25. | Public Communication and materials distribution | P | X |

| | | | |
|-----|---|---|---|
| | Zoning & Entitlements: | | |
| 26. | Manage all processes for necessary zoning for project | P | X |
| 27. | Manage project's legal counsel for zoning & entitlements | P | X |
| 28. | Work with City Planning Department for necessary entitlements & approvals for land, infrastructure & building construction | P | X |
| 29. | Pay for all Entitlement fees | | X |
| 30. | Operate as public contact for Ownership including public relations in connection with obtaining project entitlements necessary | P | X |
| 31. | Manage 3rd party consultants for any neighborhood related activities regarding the project | P | X |
| 32. | Coordinate and manage public meetings/hearings | P | X |
| | | | |
| | Financial Analysis & Budgeting: | | |
| 33. | Create project budgets including projected land, soft and hard costs | X | P |
| 34. | Track project costs on monthly basis | X | P |
| 35. | Manage project contingency and utilization of same | X | P |
| | | | |
| | Marketing & Leasing: | | |
| 36. | Operate as public contact for ownership and manage public relations in connection with the project | P | X |
| 37. | Create project logo and distribution materials if necessary | P | X |
| 38. | Negotiate any additional project leases & execute same - including potential Olathe Chamber lease | | X |
| | | | |
| | Project Financing: | | |
| 39. | Continue negotiations to acquire Zimmerman at a lower cost | X | P |
| 40. | Financing for design & construction of the project including all hard and soft costs | | X |
| | | | |
| | Project Design & Construction Management: | | |
| 41. | Manage design professionals to complete design development and construction documents for project permitting | X | P |
| 42. | Attend regular design development meetings to ensure project conforms to budget expectations | X | P |
| 43. | Compile and send meeting minutes and updates (and/or by Architect) | X | |
| 44. | Review & provide guidance to design team and manage selection of exterior materials, structural means & methods, and construction materials | X | X |
| 45. | Review and approve applications for payment submitted by design professionals | X | P |
| 46. | Process Payment applications made by design professionals | | X |
| 47. | Review design packages and proposed specifications for the project | X | P |
| 48. | Review subcontractors bid list, bid results and proposed subcontractors | X | P |
| 49. | Manage general contractor during design and pre-construction for updated pricing throughout design phase - continual cost estimating | X | P |
| 50. | Manage general contractor and project sitework from commencement to completion of construction | X | P |
| 51. | Attend bi-weekly construction meetings as owner's representative | X | P |
| 52. | Compile and send meeting minutes and updates (and/or by general contractor) | X | |
| 53. | Review and approve applications for payment submitted by general contractor | X | P |
| 54. | Process payment applications made by contractor | | X |
| 55. | Obtain and ensure all lien waivers required by contractor are in order for each payment application | X | |
| 56. | Oversight and Management of Owner's Allowance | X | P |

| | | | | |
|------|--|--|---|---|
| 57. | Review Approval Letters for construction scope changes | | X | P |
| 58. | Approve Approval Letters | | | X |
| 59. | Approve all Change Orders | | | X |
| 60. | Ensure architect and engineers are providing construction administration as required for project and is completed in accordance with plans and specifications - submittal approvals, RFI processing, required site walks, etc. | | X | P |
| 61. | FFE | | X | P |
| 62. | Coordinate FFE planning and design with FFE designer/interior designer/Library TI Architect (Gould Evans to lead the process of interior design and FFE selection, included in contract with City) | | X | P |
| 63. | Showroom tours led by Gould Evans and FFE specification package compilation by Gould Evans (included in Gould Evans contract with City) Final decisions on selections by City | | P | X |
| 63.a | Assist Gould Evans in FFE showroom tour coordination and specification package compilation for City Procurement | | X | P |
| 64. | Coordinate with City Staff for Procurement of FFE package by City | | X | X |
| 65. | Manage delivery of FFE, installation, punch list | | P | X |
| 66. | Move management of all library collections installation, equipment, books, staff move-in, etc. | | | X |
| 67. | Verify all requirements for Temporary Certificate of Occupancy and Final Certificate of Occupancy are met by general contractor and TCO and CO are obtained | | X | P |
| 68. | Manage Project Close out processes | | X | P |
| 69. | Complete punch walk and creation of punch list items alongside architects punch lists | | X | P |
| 70. | Manage general contractors completion of punch list items in timely manor | | X | P |
| 71. | Obtain final lien waivers from all contractors | | X | |
| 72. | Obtain final close out documents from general contractor including contacts list, warranties, manuals, as-builts | | X | |
| 73. | Coordinate owner training of equipment with contractors - City to dictate and coordinate specific City staff for training | | X | P |
| 74. | Review attic stock requirements and verify provided by general contractor as required | | X | P |
| 75. | Warranty Management including 11 month final warranty walk | | P | X |
| | | | | |
| | Project Commissioning | | | |
| 76. | Solicit proposals for Commissioning Agents | | X | P |
| 77. | Coordination of Commissioning Process | | X | X |
| 78. | Obtain final commissioning report | | X | P |
| | | | | |
| | Project Accounting: | | | |
| 79. | Compile all invoices and pay applications in monthly package | | X | P |
| 80. | Process payment applications and send payments | | | X |

Exhibit B
CITY OF OLATHE INSURANCE REQUIREMENTS

A. Intentionally Omitted.

B. Consultant shall maintain the following coverages and minimum limits.

1. Commercial General Liability (CGL): [ISO "occurrence" form or its equivalent] \$500,000 per occurrence limit and products - completed operations limit. Any general aggregate limit should be at least \$1 million.
2. Business Auto Coverage: (*Owned and non-owned autos*) \$500,000 per occurrence, combined single limit.
3. Workers Compensation and Employers Liability: Workers compensation limits as required by the statutes of the state of Kansas and employers liability limits of \$500,000/\$500,000/\$500,000.
4. Professional Liability: Minimum limits to be \$1,000,000 each claim / annual aggregate.
5. Coverage Limits. Coverage limits for General and Auto Liability exposures may be met by a combination of primary and umbrella policy limits.
6. Exposure Limits: The above are minimum acceptable coverage limits and do not infer or place a limit on the liability of the Consultant nor has the City assessed the risk that may be applicable to Consultant. Consultant shall assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverages. The Consultant's insurance shall be primary and any insurance or self-insurance maintained by the City will not contribute to, or substitute for, the coverage maintained by Consultant.

C. Additional Insured. CGL and auto policies must be endorsed to name the City as additional insured for the project. Any and all coverage available to the named insured is applicable to the additional insured. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

D. Verification of Coverage.

1. A certificate of insurance accompanied by an additional insured ISO form endorsement (CG 20 10; and CG 20 37) or equivalent effecting the coverage required by the City.
2. The insurance coverages are to be provided by Kansas authorized insurance companies with a Best's rating of at least A- VII. Those not meeting this standard must be approved by City.
3. Any self-insurance or self-insured retentions must be specified on the certificate of insurance. In addition, when self-insured the name, address, and telephone number of the claims office must be indicated on the certificate or separate attached document. Any and all deductibles or self-insurance in the above described coverages shall be the responsibility and at the sole risk of the Consultant.
4. When any of the foregoing insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage shall be submitted along with the application for final payment.
5. Any coverage provided by a Claims-Made form policy must contain a three-year tail option, extended reporting period, or must be maintained for three years post contract.

E. Cancellation. Each insurance policy required shall not be suspended, voided, or canceled, except after Consultant has provided thirty (30) days' advance written notice to the City.

F. Sub-Consultants. All coverages for sub-consultants shall be subject to all of the requirements stated herein.