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**1. CALL TO ORDER**

**2. EXECUTIVE SESSION**

Consideration of motion to recess into an executive session to discuss the following items:

- A.** For preliminary discussions related to the acquisition of property pursuant to the exception provided in K.S.A. 75-4319(b)(6) regarding the acquisition of property for the Mill Creek, Prairie to Cedar, Phase 1, Stormwater Improvements Project, PN 2-C-030-18.

**Staff Contact:** Ron Shaver

- B.** For preliminary discussions pertaining to a predevelopment agreement pursuant to the exception provided in K.S.A. 75-4319(b)(2) regarding the development of certain property in downtown Olathe.

**Staff Contact:** Ron Shaver

**3. RECONVENE FROM EXECUTIVE SESSION**

**4. BEGIN TELEVISED SESSION – 7:00 P. M.**

**5. PLEDGE OF ALLEGIANCE**

**6. SPECIAL BUSINESS**

- A.** Proclamation designating November 30, 2019 as Small Business Saturday.

**Staff Contact:** Liz Ruback

- B.** Consideration of Resolution No. 19-1064 appointing a member to the Mahaffie Stagecoach Stop and Farm Foundation Board.

**Staff Contact:** Liz Ruback

- C.** Consideration of Resolution No. 19-1065 appointing a member to the Board of Zoning Appeals.

**Staff Contact:** Liz Ruback

- D.** Consideration of Resolution No. 19-1066 appointing a member to the Planning Commission.

**Staff Contact:** Liz Ruback

## 7. CONSENT AGENDA

The items listed below are considered to be routine by the City Council and may be approved in one motion. These may include items that have been reviewed by the City Council in a prior planning session. There will be no separate discussion unless a Councilmember requests that an item be removed from the consent agenda and considered separately.

- A. Consideration of approval of the City Council meeting minutes of November 5, 2019.  
**Staff Contact:** Dianna Wright and Brenda Long
- B. Consideration of cereal malt beverage license applications for calendar year 2020.  
**Staff Contact:** Dianna Wright and Brenda Long
- C. Consideration of new drinking establishment license for Apogee Coffee & Draft, located at 607 N. Central and a renewal application for The Keuwo Group, d/b/a The Mayor's Lounge, located at 1318 E. Park St.  
**Staff Contact:** Dianna Wright and Brenda Long
- D. Consideration of authorization for Mayor Copeland to attend the 88th Annual Meeting of the U.S. Conference of Mayors in Washington, D.C. January 22 - 24, 2020.  
**Staff Contact:** Kim Delana
- E. Consideration of payment of a jury award in R.C. Rentals, LLC, et al. v. City of Olathe.  
**Staff Contact:** Ron Shaver
- F. Consideration of Consent Calendar.  
**Staff Contact:** Mary Jaeger and Beth Wright
- G. Consideration of Watershed Organization Agreements with Johnson County.  
**Staff Contact:** Mary Jaeger and Beth Wright
- H. Consideration of Supplemental Agreement No. 2 with Integrity Locating Services, LLC for the Underground Utility Locating Services Project, PN 8-C-001-18.  
**Staff Contact:** Mary Jaeger and Beth Wright
- I. Consideration of a Relocation and Reimbursement Agreement with ATMOS Energy Corporation for the Lone Elm Road, Old 56 Hwy to 151st, Improvements Project, PN 3-C-084-17.  
**Staff Contact:** Mary Jaeger and Beth Wright

- J.** Consideration of an Agreement with McCown Gordon Construction, LLC for construction management services for the Municipal Court Security Enhancements Project, PN 7-C-001-19.  
**Staff Contact:** Mary Jaeger and Beth Wright
- K.** Consideration of a Professional Services Agreement with Burns & McDonnell Engineering Company, Inc. to conduct a Risk & Resiliency Assessment of the water and wastewater utilities.  
**Staff Contact:** Mary Jaeger and Alan Shorthouse
- L.** Consideration of Resolution No. 19-1067 authorizing a survey and description of land or interest to be condemned for the Brougham Drive Regional Detention Basin Project, PN 2-C-002-16.  
**Staff Contact:** Mary Jaeger, Beth Wright and Ron Shaver
- M.** Consideration of renewal of contract with Active Net to provide a total registration hosted solution for the Parks and Recreation Department.  
**Staff Contact:** Michael Meadors and Amy Tharnish
- N.** Acceptance of bid and consideration of award of contract to Key Equipment & Supply Company, Inc for the design and construction of automated CNG side-loaders for the Public Works Department.  
**Staff Contact:** Mary Jaeger and Amy Tharnish
- O.** Consideration of renewal of contract with Cigna for the health and prescription stop-loss insurance program.  
**Staff Contact:** Dianna Wright and Amy Tharnish

## **8. NEW BUSINESS-PUBLIC WORKS**

- A.** Consideration of Ordinance No. 19-73 (VAC19-0004), requesting vacation of an existing utility easement at Central Elementary School; located at 407 E Cedar Street. Planning Commission recommends approval 9-0.  
**Staff Contact:** Aimee Nassif and Zach Moore

Action Needed: Consider a motion to approve or deny.

## **9. NEW CITY COUNCIL BUSINESS**

## **10. END OF TELEVISED SESSION**

## **11. GENERAL ISSUES AND CONCERNS OF CITIZENS**

## **12. CONVENE FOR PLANNING SESSION**

Reports are prepared for informational purposes and will be accepted as presented. There will be no separate discussion unless a Councilmember requests that a report be removed and considered separately.

**A. REPORTS**

1. Report on a request by K/H Jensen (on behalf of Sun Life Assurance Company of Canada) for issuance of industrial revenue bonds and tax phase in for the construction of a 600,000 sq. ft. light industrial facility located on a 36+/- acre parcel west of Old 56 Highway at 155th St. in the I-35 Logistics Park (Building D). The applicant is applying under master resolution 08-1068.  
**Staff Contact:** Dianna Wright and Emily Vincent
2. Report regarding revisions to the City's Industrial Revenue Bond and Tax Abatement (IRB) Policy, Tax Increment Financing (TIF) Policy, Community Improvement District (CID) Policy, and Transportation Development District (TDD) Policy.  
**Staff Contact:** Dianna Wright, Ron Shaver and Emily Vincent

**B. DISCUSSION ITEMS**

1. 2020 Proposed State Legislative Agenda. (10 mins)  
**Staff Contact:** Tim Danneberg
2. Resource Management Department Activities and Initiatives. (15 mins)  
**Staff Contact:** Dianna Wright

**13. ADDITIONAL ITEMS****14. ADJOURNMENT**

The City of Olathe offers public meeting accommodations. Olathe City Hall is wheelchair accessible. Assistive listening devices as well as iPads with closed captioning are available at each meeting. To request an ASL interpreter, or other accommodations, please contact the City Clerk's office at 913-971-8521. Two (2) business days notice is required to ensure availability.



# PROCLAMATION

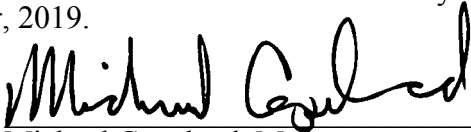
- WHEREAS,** small businesses employ over 47 percent of the working population in the United States; and
- WHEREAS,** 90 percent of consumers in the United States agree that small businesses contribute positively to the local community by supplying jobs and generating tax revenue; and
- WHEREAS,** according to the United States Small Business Administration, there were 28 million small businesses in the United States last year and small businesses has created 65 percent of net new jobs over the past two decades; and
- WHEREAS,** Small Business Saturday will stimulate economic growth for small merchants by following in the tradition of Black Friday and Cyber Monday, two of the busiest shopping days of the year; and
- WHEREAS,** advocacy groups and public and private organizations across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday; and
- WHEREAS,** Olathe, Kansas, celebrates our local small businesses and the contributions they make to our local economy and community.

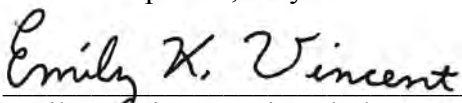
**NOW, THEREFORE,** I, Michael Copeland, Mayor of the City of Olathe, do hereby proclaim November 30, 2019, as

## SMALL BUSINESS SATURDAY

in our community, encouraging all citizens to support small businesses and merchants on Small Business Saturday, and throughout the year.

In witness whereof, I have hereunto set my hand and caused the seal of the City of Olathe to be affixed this nineteenth day of November, 2019.

  
Michael Copeland, Mayor

  
Emily K. Vincent, City Clerk



# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 11/19/2019

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**DEPARTMENT:** City Manager's Office

**STAFF CONTACT:** Liz Ruback

**SUBJECT:** Consideration of Resolution No. 19-1064 appointing a member to the Mahaffie Stagecoach Stop and Farm Foundation Board

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**ITEM DESCRIPTION:**

Consideration of Resolution No. 19-1064 appointing a member to the Mahaffie Stagecoach Stop and Farm Foundation Board

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**SUMMARY:**

The attached resolution, appointing a member to the Mahaffie Stagecoach Stop and Farm Foundation Board, is submitted for consideration by the City Council. The following individual is recommended for appointment:

<u>Name</u>	<u>Term Expiration</u>
Tim Reves	11/23

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**FINANCIAL IMPACT:**

N/A

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**ACTION NEEDED:**

Consider motion to adopt a appoint a member to the Mahaffie Stagecoach Stop and Farm Foundation Board

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**ATTACHMENT(S):**

- A. 11-19-19 Mahaffie appointment resolution

## RESOLUTION NO. 19-1064

### A RESOLUTION APPOINTING MEMBERS TO THE MAHAFFIE STAGECOACH STOP AND FARM FOUNDATION BOARD.

WHEREAS, the Olathe City Council approved amendments to the Articles of Incorporation and Bylaws of the Mahaffie Stagecoach Stop and Farm Foundation on August 5, 2003; and

WHEREAS, the Foundation is organized and shall be operated for the benefit of and to assist the functions and purposes of the Mahaffie Stagecoach Stop and Farm in Olathe; and

WHEREAS, the Foundation Board has been established to govern the business and affairs of the Foundation consistent with the Articles of Incorporation and Bylaws; and

WHEREAS, the Foundation Board shall consist of no less than nine (9) and no more than seventeen (17) members appointed for four-year staggered terms; and

WHEREAS, current members and terms of the Board are as follows:

<u>Member</u>	<u>Initial Appointment</u>	<u>Current Term</u>
Councilmember John Bacon	2/04	1/16-1-20
Don Bell	1/01	Honorary
Bob Courtney	10/03	1/17-1/21
Phil Estes	12/16	6/19-6/23
Jan Heinen	2/01	1/17-1/21
Barbara Hill	12/16	12/16-1/21
Dick Holdman	10/03	6/19-6/23
Kelly Peetoom	11/15	1/17-1/21
Connie Snider	12/12	1/17-1/21
Councilmember Marge Vogt	1/01	1/17-1/21
Beverly Wittenborn	2/08	6/19-6/23
Cara Rinne	10/18	10/18-1/21
Don Seifert	10/18	10/18-1/23: and

WHEREAS Jan Heinen has resigned from the Board; and

WHEREAS, the Governing Body finds that it is appropriate to appoint Tim Reves to a four-year term.

RESOLUTION NO. 19-1064

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING  
BODY OF THE CITY OF OLATHE, KANSAS:

SECTION ONE: That reappointments be made so that  
membership of the Mahaffie Stagecoach Stop and Farm Foundation  
Board is as follows:

Councilmember John Bacon	2/04	1/16-1-20
Don Bell	1/01	Honorary
Bob Courtney	10/03	1/17-1/21
Phil Estes	12/16	6/19-6/23
Tim Reves	11/19	11/19-11/23
Barbara Hill	12/16	12/16-1/21
Dick Holdman	10/03	6/19-6/23
Kelly Peetoom	11/15	1/17-1/21
Connie Snider	12/12	1/17-1/21
Councilmember Marge Vogt	1/01	1/17-1/21
Beverly Wittenborn	2/08	6/19-6/23
Cara Rinne	10/18	10/18-1/21
Don Seifert	10/18	10/18-1/23: and

SECTION TWO: This Resolution shall take effect immediately.

ADOPTED by the Governing Body this 19<sup>th</sup> day of November 2019.

SIGNED by the Mayor this 19<sup>th</sup> day of November 2019.

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Mayor

ATTEST:

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City Clerk

(Seal)

APPROVED AS TO FORM:

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City Attorney



# City of Olathe

## COUNCIL AGENDA ITEM

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MEETING DATE: 11/19/2019

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DEPARTMENT: City Manager's Office

STAFF CONTACT: Liz Ruback

SUBJECT: Consideration of Resolution No. 19-1065 appointing members to the Board of Zoning Appeals

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ITEM DESCRIPTION:

Consideration of Resolution No. 19-1065 appointing a member to the Board of Zoning Appeals

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SUMMARY:

The attached resolution, appointing a member to the Planning Commission, is submitted for consideration by the City Council. The following individual is recommended for appointment:

<u>Name</u>	<u>Term</u>
Marcia Youker	11/19-11/22
Barry Sutherland	11/19-11/22

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FINANCIAL IMPACT:

N/A

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ACTION NEEDED:

Consider motion to adopt a resolution appointing a member to the Board of Zoning Appeals

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ATTACHMENT(S):

A. 11-19-19 BZA appointments resolution

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RESOLUTION NO. 19-1065

A RESOLUTION REAPPOINTING MEMBERS TO THE BOARD OF ZONING APPEALS.

WHEREAS, the Board of Zoning Appeals (BZA) was created by Ordinance No. 83-50; and

WHEREAS, Ordinance No. 14-39, adopting the City's new Unified Development Ordinance, was approved by the Governing Body on June 17, 2014, continuing and revising the membership of the Board of Zoning Appeals in accordance with KSA 12-759; and

WHEREAS, Section 18.80.030 of the Unified Development Ordinance sets forth the membership, terms, powers, and duties of the Board of Zoning Appeals; and

WHEREAS, the Board consists of no less than five (5) and no more than seven (7) members appointed for three (3) year staggered terms; and

WHEREAS, BZA members shall hold no other public office for the City, except as a member of the Planning Commission; and

WHEREAS, current members and terms of the Board are as follows:

<u>Member</u>	<u>Initial Appointment</u>	<u>Current Term</u>
Dean Vakas	11/16	5/17 - 5/20
Jeremy Fry	11/16	11/16 - 5/19
Ryan Nelson	7/15	5/18 - 5/21; and

WHEREAS, Mike Rinke and Jose Munoz have resigned; and

WHEREAS, the Governing Body finds that it is appropriate to appoint Marcia Youker and Barry Sutherland each to a three-year term.

RESOLUTION NO. 19-1065

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY  
OF THE CITY OF OLATHE, KANSAS:

SECTION ONE: That appointments be made so that membership is  
comprised as follows:

<u>Member</u>	<u>Initial Appointment</u>	<u>Current Term</u>
Barry Sutherland	11/19	11/19 – 11/22
Jeremy Fry	11/16	11/16 - 5/19
Ryan Nelson	7/15	5/18 - 5/21
Marcia Youker	11/19	11/19 - 11/22
Dean Vakas	11/16	5/17 - 5/20

SECTION TWO: This Resolution shall take effect immediately.

ADOPTED by the Governing Body this 19th day of November, 2019. SIGNED by the  
Mayor this 19th day of November, 2019.

\_\_\_\_\_  
Mayor

ATTEST:

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

(Seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney





# City of Olathe

## COUNCIL AGENDA ITEM

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MEETING DATE: 11/19/2019

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DEPARTMENT: City Manager's Office

STAFF CONTACT: Liz Ruback

SUBJECT: Consideration of Resolution No. 19-1066 appointing a member to the Planning Commission

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ITEM DESCRIPTION:

Consideration of Resolution No. 19-1066 appointing a member to the Planning Commission

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SUMMARY:

The attached resolution, appointing a member to the Planning Commission, is submitted for consideration by the City Council. The following individual is recommended for appointment:

Name

Term

Taylor Breen

11/19-11/22

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FINANCIAL IMPACT:

N/A

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ACTION NEEDED:

Consider motion to adopt a resolution appointing a member to the Planning Commission

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ATTACHMENT(S):

- A. 11-19-19 Planning appointments resolution

## RESOLUTION NO. 19-1066

### A RESOLUTION APPOINTING A MEMBER TO THE PLANNING COMMISSION.

WHEREAS, the Planning Commission was created by Kansas Statute 12-701 et seq. and Chapter 2.32 of the Olathe Municipal Code; and

WHEREAS, the Commission consists of nine (9) to eleven (11) members appointed for three (3) year staggered terms; and

WHEREAS, current members and terms of the Commission are as follows:

<u>Member</u>	<u>Initial Appointment</u>	<u>Current Term</u>
Chip Corcoran	1/16	4/17 - 4/20
Shirley Allenbrand	7/19	7/19 – 7/22
Ryan Freeman	9/14	4/17 - 4/20
Jeremy Fry	8/09	4/17 - 4/20
Ryan Nelson	1/13	4/16 - 6/22
Marcia Youker	9/19	9/19 - 9/22
Barry Sutherland	6/16	6/16 - 6/22
Dean Vakas	6/15	4/18 - 4/21; and

WHEREAS, Jose Munoz has resigned; and

WHEREAS, the Governing Body finds that it is appropriate to appoint Taylor Breen to a three-year term.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

SECTION ONE: That the appointments be made so that membership is comprised as follows:

<u>Member</u>	<u>Initial Appointment</u>	<u>Current Term</u>
Chip Corcoran	1/16	4/17 - 4/20
Shirley Allenbrand	7/19	7/19 – 7/22
Ryan Freeman	9/14	4/17 - 4/20
Jeremy Fry	8/09	4/17 - 4/20
Taylor Breen	11/19	11/19 - 11/22
Ryan Nelson	1/13	4/16 - 6/22
Marcia Youker	9/19	9/19 - 9/22
Barry Sutherland	6/16	6/16 - 6/22
Dean Vakas	6/15	4/18 - 4/21

RESOLUTION NO. 19-1066

SECTION TWO: This Resolution shall take effect immediately.

ADOPTED by the Governing Body this 19<sup>th</sup> day of November, 2019.

SIGNED by the Mayor this 19<sup>th</sup> day of November, 2019.

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Mayor

ATTEST:

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City Clerk

(Seal)

APPROVED AS TO FORM:

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City Attorney



# City of Olathe

## COUNCIL AGENDA ITEM

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MEETING DATE: 11/19/2019

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DEPARTMENT: Resource Management

STAFF CONTACT: Dianna Wright and Brenda Long

SUBJECT: Consideration of approval of the City Council meeting minutes of November 5, 2019.

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ITEM DESCRIPTION:

Consideration of approval of the City Council meeting minutes of November 5, 2019.

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SUMMARY:

Attached are the City Council meeting minutes of November 5, 2019 for Council consideration of approval.

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FINANCIAL IMPACT:

None

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ACTION NEEDED:

Approval of the City Council meeting minutes of November 5, 2019.

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ATTACHMENT(S):

A:11-5-19 Council Minutes

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## 1. CALL TO ORDER

Councilmember Brownlee arrived at 6:34 p.m.

**Present:** Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

**Absent:** Campbell

Also present were City Manager Wilkes, Assistant City Manager Sherman and City Attorney Shaver.

## 2. EXECUTIVE SESSION

Consideration of motion to recess into an executive session to discuss the following items:

- A. For consultation with the City's attorneys which would be deemed privileged in the attorney-client relationship pursuant to the exception provided in K.S.A. 75-4319(b)(2) pertaining to a development agreement.

Motion by Randall seconded by Bacon to recess into an executive session for consultation with the City's attorneys which would be deemed privileged in the attorney-client relationship pursuant to the exception provided in K.S.A. 75-4319(b)(2) pertaining to a development agreement for 25 and resuming in the City Council Chamber.

**Yes:** Bacon, Randall, McCoy, Vogt, and Copeland

**Absent:** Brownlee, and Campbell

## 3. RECONVENE FROM EXECUTIVE SESSION

The meeting reconvened at 6:57 p.m. in the Council Chambers.

Motion by Randall seconded by Bacon to authorize staff to proceed with the strategies as discussed with and directed by the Governing Body.

**Yes:** Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

**Absent:** Campbell

## 4. BEGIN TELEVISED SESSION – 7:00 P. M.

## 5. PLEDGE OF ALLEGIANCE

The pledge was led by the American Legion Earl Collier Post 153 Color Guard.

**6. SPECIAL BUSINESS**

- A.** Proclamation recognizing November 11, 2019 as Veterans Day.  
Mayor Copeland presented a proclamation to Adjutant John Smith, with the American Legion Earl Collier Post 153 in recognition of Veterans Day, Monday, November 11th.
- B.** Proclamation recognizing November as Native American Heritage Month.  
Mayor Copeland presented a proclamation to Melissa Precht, the First Vice Regent of the Daughters of the American Revolution, Olathe Chapter, in recognition of Native American History Month.

**7. CONSENT AGENDA**

Councilmember Brownlee requested item "J" be removed for separate consideration and vote.

Motion by Randall, seconded by Bacon to approve the consent agenda with the exception of item "J." The motion carried by the following vote:

**Yes:** Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

**Absent:** Campbell

- A.** Consideration of approval of the City Council meeting minutes of October 15, 2019.  
Approved
- B.** Consideration of cereal malt beverage license applications for calendar year 2020.  
Approved
- C.** Consideration of new drinking establishment license for El Saguaro Mexican Grill II, LLC, located at 920 E. Old 56 Hwy and renewal applications for Mission Bowl, located at 1020 S. Weaver, Austin's Bar and Grill, located at 2103 E. 151st Street and Johnny's Tavern Ridgeview, Inc., located at 10384 Ridgeview..  
Approved
- D.** Consideration of business expense statement for Michael Wilkes for expenses incurred to attend the ICMA Annual Conference in Nashville, TN, October 18 - 24, 2019.  
Approved
- E.** Consideration of Resolution 19-1062, SU19-0004, for approval of a special use permit renewal (SU19-0004) for keeping chickens on a residential lot less than three (3) acres, 0.27± acres; located at 589 W. Layton Street. Planning Commission recommends approval 8 to 0.

Approved

- F.** Request for the acceptance of the dedication of land for public easements for a final plat for Mahaffie Warehouse, Second Plat (FP19-0023) containing 3 industrial lots on 5.47± acres; located southwest of the intersection of South Mahaffie Street and West 153rd Court. Planning Commission approved this plat 9-0.

Approved

- G.** Request for the acceptance of the dedication of land for public easements and right-of-way for a final plat for Stonebridge Trails 6th Plat (FP19-0020) containing 52 lots and 4 common tracts on 25.57± acres; located in the vicinity of 167th Street and Mur-Len Road. Planning Commission recommends approval 8 to 0.

Approved

- H.** Consideration of Consent Calendar.

Approved

- I.** Consideration of Resolution No. 19-1063 authorizing the 2020 Street Reconstruction Program, PN 3-R-000-20; and repealing Resolution No. 19-1010.

Approved

- J.** Consideration of Change Order No. 4 to the contract with Wiedenmann, Inc. for construction of the Sunset Drive and Ridgeview Road Water Main Replacement, Phase 2, Project, PN 5-C-033-16.

Councilmember Brownlee commented that she had initially wondered why the cost of this project had increased and then she realized it was because almost twice the work than what had originally been thought was going to be accomplished and she wanted to highlight this positive news.

Sabrina Parker, Water and Sewer Manager, briefly explained the bid process and the savings that was realized.

Motion by Brownlee and seconded by Randall to approve consent item J. Motion carried with the following vote:

**Yes:** Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

**Absent:** Campbell

- K.** Consideration of an easement conveyance from the City of Olathe to Every Metro, Inc. for the Woodland Road, K-10 to College Boulevard, Improvements Project, PN 3-C-041-18.

Approved

- L.** Consideration of a Master Agreement for Professional Services with Olsson, Inc. for design of the Waterline Rehabilitation Project, PN 5-R-000-20.  
Approved
- M.** Consideration of a Master Agreement for Professional Services with TREKK Design Group, LLC for design of the Sanitary Sewer Rehabilitation Project, PN 1-R-000-20, and the Neighborhood Sanitary Sewer Improvements Project, PN 1-R-100-20.  
Approved
- N.** Consideration of contract renewal with Ted Systems, LLC. for Lenel building security systems and services.  
Approved
- O.** Consideration of renewal of contract with Commerce Bank for the finance lease of cardio fitness equipment for the Community Center.  
Approved

## **8. NEW BUSINESS-PUBLIC WORKS**

- A.** Consideration of Ordinance No. 19-68 approving an engineer's survey and authorizing the acquisition of land for the Mahaffie Circle Improvements Project, PN 3-C-107-17.  
Motion by Randall, seconded by Bacon to approve Ordinance No. 19-68. The motion carried by the following vote:

**Yes:** Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

**Absent:** Campbell

## **9. NEW BUSINESS-ADMINISTRATION**

- A.** Consideration of Ordinance 19-69 authorizing issuance of the City's taxable Industrial Revenue bonds in an amount not to exceed \$13,880,000 to LE Commerce Center LLC, Series 2019, for the construction of a 210,000 sq. ft. distribution warehouse. (Building 1 Project)  
Motion by Randall, seconded by Bacon to approve Ordinance No. 19-69. The motion carried by the following vote:

**Yes:** Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

**Absent:** Campbell
- B.** Consideration of Ordinance 19-70 authorizing issuance of the City's taxable Industrial Revenue bonds in an amount not to exceed \$15,850,000 to Fremato USA, Inc., Series 2019, for the construction of a 250,000 sq. ft. warehouse (Warehouse Project) and authorizing an Omnibus Amendment of documents relating to certain outstanding



industrial revenue bonds.

Motion by Randall, seconded by Bacon to approve Ordinance No. 19-70. The motion carried by the following vote:

**Yes:** Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

**Absent:** Campbell

- C.** Consideration of Ordinance 19-71 authorizing issuance of the City's taxable Industrial Revenue bonds in an amount not to exceed \$3,000,000 to Carrier Series Plus, LLC, Series 2019, for the construction of a 21,400 sq. ft. industrial warehouse. (Lot 1 Project)

Motion by Randall, seconded by Bacon to approve Ordinance No. 19-71. The motion carried by the following vote:

**Yes:** Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

**Absent:** Campbell

- D.** Consideration of Ordinance No. 19-72 approving the issuance of health facility revenue bonds in the amount of \$30,000,000 on behalf of Olathe Medical Center, Inc, Series 2019B (Medical Office Building project.).

Motion by Randall, seconded by Bacon to approve Ordinance No. 19-72. The motion carried by the following vote:

**Yes:** Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

**Absent:** Campbell

## **10. NEW CITY COUNCIL BUSINESS**

Councilmember McCoy thanked Parks & Rec for a tremendous Trunk or Treat activity. He also mentioned Mahaffie Farmstead and what a great place it is.

Councilmember Vogt added that Mahaffie was being filmed by PBS for a series called "Taste of History." She also offered her gratitude to veterans and their service to our country.

Councilmember Randall also mentioned his thanks to veterans and that their service is what allows us to be a great country. He thanked the other candidates who were on the ballot and thanked the public for voting.

Councilmember Bacon and Councilmember Brownlee also offered their thanks and gratitude to veterans as we approach Veterans Day.

## **11. END OF TELEVISED SESSION**

Councilmember Randall excused himself to attend another meeting at 7:19 p.m.

**12. GENERAL ISSUES AND CONCERNS OF CITIZENS**

Linda Bell, 13185 S. Homestead Lane, spoke in opposition to the non-discrimination ordinance.

Angela Preuss, 219 S. Pine, spoke in opposition to the non-discrimination ordinance.

Roxy Martin, 2609 W. Poplar Circle, spoke in opposition to the non-discrimination ordinance.

Matt Tormey, 1440 N. Hunter Drive, spoke in opposition to the non-discrimination ordinance.

Curt Pierson, 13641 S. Sycamore Street, spoke in opposition to the non-discrimination ordinance.

Brooke McMahan, 14510 S. Mullen Street, spoke in opposition to the non-discrimination ordinance.

Eli Hoedl, 17446 W. 161st Street, spoke in support of the non-discrimination ordinance.

Phyllis Tormey, 1440 N. Hunter Drive, spoke in opposition to the non-discrimination ordinance.

Rick Gale, 1125 E. Prairie Street, spoke regarding the non-discrimination ordinance.

Connie Leoni, 1361 E. Sleepy Hollow Drive, spoke in opposition to the non-discrimination ordinance.

Mary Trulson, 1593 E. Sheridan Bridge Lane, spoke regarding the non-discrimination ordinance.

Vanessa Uria, 14711 S. Murray Lane, spoke in opposition to the non-discrimination ordinance.

Christian Shelton, 321 S. Stevenson Street, spoke in opposition to the non-discrimination ordinance.

Brandon Frick, 15240 S. Mullen Street, spoke in support of the non-discrimination ordinance.

Mike Poland, 301 S. Stevenson, spoke in opposition to the non-discrimination ordinance.

Kimberly Breitenbach, 1800 S. Clairborne, spoke in opposition to the non-discrimination ordinance.

Angie Brotz, 12398 S. Parker Terrace, spoke in opposition to the non-discrimination ordinance.

Mayor Copeland indicated he believed the non-discrimination ordinance should be placed on the agenda for a vote. He pointed out that the Council had passed a resolution outlining the City's policy and asking the State Legislature to address this issue. Since they had adjourned and had not taken up this issue, he recommended the ordinance be placed on the December 3rd agenda. City Manager, Michael Wilkes, said there had been some slight edits to the proposed ordinance and the updated ordinance could be made available prior to a vote to allow any questions or comments to be submitted. Any comments would be provided to the Council for their consideration before the December 3rd council meeting.

### **13. CONVENE FOR PLANNING SESSION**

Reports are prepared for informational purposes and will be accepted as presented. There will be no separate discussion unless a Councilmember requests that a report be removed and considered separately.

#### **A. REPORTS**

1. Report regarding Proposed Amendments to Chapters 18.30, 18.50, and 18.90 of the Unified Development Ordinance (UDO19-0005). Planning Commission recommends approval 8-0. Councilmember Bacon asked about new requirements to accommodate for a truck staging area for warehousing companies. He asked if this was only for new developments or if existing companies with truck traffic would be required to provide a parking or staging area.

Aimee Nassiff, Chief Planning Official, said this provision is only for new or re-development. Current development would have to find their own parking so they are not parking on the right-of-way. She also shared that an existing development has already chosen to amend their parking lot plan to fall under these new code requirements.

Councilmember Brownlee asked what had motivated these changes.

Ms. Nassiff said many of these items had been discussed earlier in the year and these changes were intended to simply make it more easily understood.

Mrs. Brownlee asked if the changes would add additional cost to builders and Ms. Nassiff said these were already things that were being done and would not add additional cost for builders.

**2. Quarterly Procurement Report.**

The report was accepted.

**3. Cash Handling Process and Controls Audit Report.**

The Mayor thanked City Auditor, Mary Ann Vasser, for this report and the report was accepted without any further comment.

**14. ADDITIONAL ITEMS**

Councilmember McCoy acknowledged those who have given their life to this country allowing us the freedoms we experience today.

Councilmember Vogt expressed concern about the status of parking downtown during the construction and indicated she had received many e-mails regarding the issue. She said she had talked to City Manager, Michael Wilkes, and asked him to look for solutions that might help to accommodate parking for the downtown business owners.

Mayor Copeland asked when they could expect these suggestions and Mr. Wilkes said they hoped to have a report to the Council on November 19th.

Councilmember Brownlee mentioned that today was her daughter's birthday and that in light of her being in elected office over the years, many times her birthday was overlooked on election day.

Mrs. Brownlee asked City Attorney, Ron Shaver, for a report about lawsuits against local government regarding non-discrimination issues so they can better understand what the City could potentially face.

Mr. Shaver said they have that information and will make it available to the Council.

## **15. ADJOURNMENT**

Meeting adjourned at 7:58 p.m.

Brenda D. Long  
Assistant City Clerk



# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 11/19/2019

---

**DEPARTMENT:** Resource Management

**STAFF CONTACT:** Dianna Wright and Brenda Long

**SUBJECT:** Consideration of cereal malt beverage license applications for calendar year 2020

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**ITEM DESCRIPTION:**

Consideration of cereal malt beverage license applications for calendar year 2020

---

**SUMMARY:**

The applications for the following businesses have met the necessary requirements for issuance of cereal malt beverage licenses are recommended for approval by staff. The applications are available for review in the City Clerk's Office.

Name	License #	Site
QuikTrip #215	20-37	15710 S. US 169 HWY
QuikTrip #219	20-38	17840 W. 119 <sup>th</sup> Street
Golden Palace	20-41	1711 S. Mur-Len Road
Main Event Entertainment	20-42	11950 S. Kansas City Road
Mr. Gyros Greek Food & Pastries	20-43	14983 W. 119 <sup>th</sup> Street
El Saguaro Mexican Grill, LLC	20-44	824 N. Ridgeview Road
Price Chopper # 40	20-45	15970 S. Mur-Len Road
Payless Discount Food	20-46	2101 E. Santa Fe
Hen House #32	20-47	13600 S. Black Bob Road
Whole Foods Market	20-48	14615 W. 119 <sup>th</sup> Street
Murphy Express #8794	20-49	481 N. K7 Hwy
Fast Snack Pack 1	20-50	12885 S. Mur-Len Road
*El Panzote	20-51 & 20-52	1100 S. Payne Street
Johnny's Hickory House BBQ	20-54	1375 W. Old 56 HWY
Blaze Pizza	20-55	11991 S. Black Bob Road
The Rub Bar B Que	20-58	10512 S. Ridgeview

\*These businesses have applied for consumption on premises and sale at retail.

---

**FINANCIAL IMPACT:**

License fees as established in Title 7 of the Olathe Municipal Code in the amount of \$200 for consumption on the premises, \$50 for sale at retail and separate \$25 stamp fee for the State of Kansas have been collected for each license application

---

**ACTION NEEDED:**

Approve the applications for license as part of the consent agenda.

---

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**MEETING DATE:** 11/19/2019

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**ATTACHMENT(S):**

None



# City of Olathe

## COUNCIL AGENDA ITEM

---

MEETING DATE: 11/19/2019

---

DEPARTMENT: Resource Management

STAFF CONTACT: Dianna Wright and Brenda Long

SUBJECT: Consideration of new drinking establishment license for Apogee Coffee & Draft, located at 607 N. Central and a renewal application for The Keuwo Group, d/b/a The Mayor's Lounge, located at 1318 E. Park St.

---

ITEM DESCRIPTION:

Consideration of new drinking establishment license for Apogee Coffee & Draft, located at 607 N. Central and a renewal application for The Keuwo Group, d/b/a The Mayor's Lounge, located at 1318 E. Park St.

---

SUMMARY:

The applications for the businesses noted below have been submitted for drinking establishment licenses in accordance with Title 7, Liquor Laws, of the Olathe Municipal Code (OMC). The applications are available in the City Clerk's office for review.

---

Apogee Coffee & Draft  
607 N. Central  
Olathe, KS 66061

The Keuwo Group  
d/b/a The Mayor's Lounge  
1318 E. Park Street  
Olathe, KS 66061

---

FINANCIAL IMPACT:

The license fee as established in Title 7 of the Olathe Municipal Code in the amount of \$500.00 for a drinking establishment has been collected for these license applications.

---

ACTION NEEDED:

Approve these applications for a license as part of the consent agenda.

---

ATTACHMENT(S):

A: Apogee Coffee & Draft  
B: The Keuwo Group



## Brenda Long

---

**From:** Brenda Long  
**Sent:** Thursday, October 31, 2019 12:35 PM  
**To:** Benjamin Laxton; Carl Anderson; Dennis Pine; GIS Shared; James Gorham; Rachelle Breckenridge  
**Subject:** DEL - Apogee Coffee & Draft 10-28-19  
**Attachments:** DEL - Apogee Coffee & Draft 10-28-19.pdf

Tracking:	Recipient	Response
	Benjamin Laxton	Approve: 10/31/2019 4:51 PM
	Carl Anderson	Approve: 11/1/2019 9:05 AM
	GIS Shared	Approve: 11/1/2019 8:57 AM
	James Gorham	Approve: 11/1/2019 11:17 AM
	Rachelle Breckenridge	Approve: 11/02/2019 1:48 PM

Please use the voting tab to make comments and recommendations for the attached new drinking establishment license application by, November 7.

[Brenda Long](#), Assistant City Clerk

(913) 971-8675 | [OlatheKS.org](http://OlatheKS.org)

Resource Mgmt | City of Olathe, Kansas

**Setting the Standard for Excellence in Public Service**





October 30<sup>th</sup>, 2019

R.E. "Tuck" Duncan  
Attorney at Law LLC  
212 SW 8<sup>th</sup> Avenue, Suite 202  
Topeka, Kansas 66603

RE: Apogee KC, LLC. dba Apogee Coffee & Draft  
670 N Central St

Dear Mr. Duncan:

The Planning Division has received your request to operate a drinking establishment at the RoKC Climbing Gym zoned M2 District and located at 654 N. Central Street. This use is permitted in the M2 District as a primary use with a Special Use Permit as identified in Olathe Unified Development Ordinance (UDO) section 18.20.500.

Accessory uses are also permitted under the terms and conditions of UDO 18.50.020. Upon review of your request and information provided in your letter dated October 8, 2019 Apogee KC, LLC. ("Apogee KC") will be permitted at the above location as an accessory use only to the RoKC Climbing Gym. As an accessory use, Apogee KC may only operate within the same days and hours as RoKC Climbing Gym and also maintain its internal customer access to the gym.

Accessory uses are approved as incidental uses to the primary activity on the property, therefore, if the primary use closes or is otherwise no longer in operation, Apogee KC must apply for and obtain a Special Use to continue with liquor sales.

Please note that this letter provides zoning verification review and approval only. Additional licenses or permits regarding liquor sales are still applicable and may be required.

If you should have any questions, please feel free to contact me at [AENassif@Olatheks.org](mailto:AENassif@Olatheks.org) or Patti Kangethe at [PLKangethe@OlatheKS.org](mailto:PLKangethe@OlatheKS.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Aimee Nassif". The signature is fluid and cursive, with the first name "Aimee" and last name "Nassif" clearly distinguishable.

Aimee E. Nassif, AICP  
Chief Planning & Development Officer

cc: Patti Kangethe; Development Services Coordinator

AN/plk

RECEIVED

RECEIVED

CITY OF OLATHE

CITY OF OLATHE  
CITY CLERK OFFICE

## DRINKING ESTABLISHMENT LICENSE APPLICATION

Date: Oct. 21, 2019 Business Phone: 913-208-9095Name of Applicant: Apogee Coffee & DraftBusiness Address of Applicant: 607 North Central St. Olathe KS 66061  
City State ZipE-mail Address of Applicant (optional): apogeeke@gmail.com

Legal description of premises: \_\_\_\_\_

Owner of premises (if different than applicant): RoKC Olathe, LLCAddress of owner of premises: 654 N. Central Olathe KS 66061  
City State Zip

## Items required that must accompany this application:

- A. Site Plan: Attach a drawing of the premises showing the location in relation to other buildings, structures, parking areas, public or private streets, and sidewalks within 200 feet. The site plan should include the number of parking spaces, seating capacity and number of employees servicing the largest shift.
- B. Copy of Kansas Liquor License Application
- C. Copy of renewed State of Kansas drinking establishment license (May be submitted separately after issuance by the state)
- D. License Fee (\$500.00 – 2 year licensing period)

The biennial fee for Drinking Establishments authorized by K.S.A. Supp. 41-2622 is hereby established and fixed at **FIVE HUNDRED DOLLARS (\$500.00)**. All applications for new or renewal city licenses shall be submitted to the City Clerk for consideration by the Governing Body. No license fee shall be refunded for any reason.

TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS CORRECT AND TRUTHFUL.

Robert E. Duncan II  
Name of Applicant (Print Please)

[Signature]  
Signature

Attorney / Process Agent  
Title

State of Kansas

County of Shawnee

[Signature]  
Notary

Sworn and subscribed before me this

This 21<sup>ST</sup> day of Oct, 2019

DIAnna Little SEAL  
NOTARY PUBLIC  
STATE OF KANSAS  
MY APPT. EXPIRES 2-13-21

# Cash Receipt



Receipt #: 48955  
User: BRENDADL  
Dept: CC  
Date: 10/28/2019  
Time: 9:52:14

CITY OF OLATHE - CITY CLERK CASH RECEIPT  
PO BOX 768  
OLATHE KS 66061

Customer: Apogee Coffee

THANK YOU FOR YOUR PAYMENT

ON BEHALF OF CITY TREASURER, DIANNA WRIGHT \_\_\_\_\_

Item	Description	Notes	Amount
DRINKING ESTAB	Apogee Coffee and Draft	434912	\$500.00
<b>**Final**      Total Received</b>			<b>\$500.00</b>



## Brenda Long

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**From:** Brenda Long  
**Sent:** Thursday, October 24, 2019 10:21 AM  
**To:** Benjamin Laxton; Carl Anderson; David Bryant; Dennis Pine; Dianna Wright; GIS Shared; James Gorham; Jo Prochko; Rachelle Breckenridge  
**Subject:** DEL - Mayor's Lounge\_La Concha 10-23-19  
**Attachments:** DEL - Mayor's Lounge\_La Concha 10-23-19.pdf

Tracking:	Recipient	Response
	Benjamin Laxton	Approve: 10/25/2019 7:22 PM
	Carl Anderson	Approve: 10/25/2019 10:46 AM
	Dianna Wright	Approve: 10/28/2019 9:37 AM
	GIS Shared	Approve: 10/28/2019 8:21 AM
	James Gorham	Approve: 10/28/2019 4:00 PM
	Rachelle Breckenridge	Approve: 10/31/2019 11:55 AM

Please use the voting tab to make comments and recommendations for the attached renewal drinking establishment license application by October 31.

[Brenda Long](#), Assistant City Clerk

(913) 971-8675 | [OlatheKS.org](http://OlatheKS.org)

Resource Mgmt | City of Olathe, Kansas

**Setting the Standard for Excellence in Public Service**





To: Brenda Long, Assistant City Clerk  
From: Dianna Wright, Director Resource Management  
Subject: The Keuwo Group, Inc (dba Mayor's Lounge La Concha)  
Liquor License Renewal  
Date: May 24, 2018

Resource Management is in receipt The Keuwo Group, Inc (dba Mayor's Lounge La Concha) liquor license renewal application. In reviewing their application, Mayor's Lounge La Concha failed to meet the gross sales requirement pertaining to food established in OMC Section 7.06.020, which states drinking establishments desiring to provide food service to unaccompanied minors must also comply with the provisions outlined in Section 7.02.030C. OMC Section 7.02.030C requires establishments to derive at least fifty percent (50%) of its gross receipts in each calendar year from the sale of food in order to permit those under the age of twenty-one (21) to remain on the premises without a parent or guardian.

Given the provisions of OMC Section 7.02.030C and the gross food sales receipts presented on their application of 32.6%, Mayor's Lounge La Concha would be restricted from allowing those under the age of twenty-one (21) to remain on the premises without a parent or guardian.

Should you require any additional information please do not hesitate to let me know.

---

## CITY OF OLATHE

## DRINKING ESTABLISHMENT LICENSE APPLICATION

Date: 10/20/2019 Business Phone: 913-568-2000Name of Applicant: The Kenwo Group IncBusiness Address of Applicant: 1318 East Park St. Olathe KS 66061  
City State Zip

E-mail Address of Applicant (optional): \_\_\_\_\_

Legal description of premises: 1318 East Park St, Olathe, KS 66061Owner of premises (if different than applicant): DPREAddress of owner of premises: 7939 Flyod, Overland Park KS 66204  
City State Zip

## Items required that must accompany this application:

- A. Site Plan: Attach a drawing of the premises showing the location in relation to other buildings, structures, parking areas, public or private streets, and sidewalks within 200 feet. The site plan should include the number of parking spaces, seating capacity and number of employees servicing the largest shift.
- B. Copy of Kansas Liquor License Application
- C. Copy of renewed State of Kansas drinking establishment license (May be submitted separately after issuance by the state)
- D. License Fee (\$500.00 – 2 year licensing period)

The biennial fee for Drinking Establishments authorized by K.S.A. Supp. 41-2622 is hereby established and fixed at **FIVE HUNDRED DOLLARS (\$500.00)**. All applications for new or renewal city licenses shall be submitted to the City Clerk for consideration by the Governing Body. No license fee shall be refunded for any reason.

TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS CORRECT AND TRUTHFUL.

BERTRAND KENWO  
Name of Applicant (Print Please)

Kenwo Group Inc  
Signature

President  
Title

State of Kansas

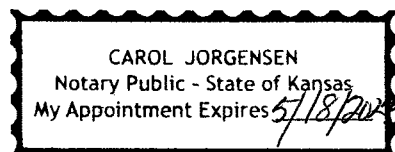
County of Johnson

Carol Jorgensen  
Notary

Sworn and subscribed before me this

This 23 day of October, 2019

SEAL



RECEIVED

OCT 23 2019

CITY OF OLATHE  
CITY CLERK OFFICE



# Cash Receipt

Receipt #: 48919  
User: BRENDADL  
Dept: CC  
Date: 10/23/2019  
Time: 13:21:13



CITY OF OLATHE - CITY CLERK CASH RECEIPT  
PO BOX 768  
OLATHE KS 66061

Customer: The Keuwo Group

THANK YOU FOR YOUR PAYMENT

ON BEHALF OF CITY TREASURER, DIANNA WRIGHT \_\_\_\_\_

Item	Description	Notes	Amount
DRINKING ESTAB	The Keuwo Group	1068	\$500.00
<b>**Final**      Total Received</b>			<b>\$500.00</b>



# City of Olathe

## COUNCIL AGENDA ITEM

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MEETING DATE: 11/19/2019

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DEPARTMENT City Manager's Office

STAFF CONTACT: Kim Delana

SUBJECT: Consideration of authorization for Mayor Copeland to attend the 88<sup>th</sup> Annual Meeting of the U.S. Conference of Mayors in Washington, D.C. January 22 - 24, 2020.

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ITEM DESCRIPTION:

Consideration of authorization for Mayor Copeland to attend the 88<sup>th</sup> Annual Meeting of the U.S. Conference of Mayors in Washington, D.C. January 22 - 24, 2020

---

SUMMARY:

The City Council is asked to approve the attached travel request authorization for Mayor Copeland to attend the 88<sup>th</sup> Annual Meeting of the U.S. Conference of Mayors. Over 250 mayors from cities of all sizes and regions will gather for the conference in Washington, D.C. to discuss issues of importance to cities, share best practices, and converse with top federal officials.

---

FINANCIAL IMPACT:

Funds are available in the City Council's professional training budget.

---

ACTION NEEDED:

Consider authorization for Mayor Copeland to attend the 88<sup>th</sup> Annual Meeting of the U.S. Conference of Mayors.

---

ATTACHMENT(S):

A. Copeland TRA

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City Manager Signature (if required)



# City of Olathe

## COUNCIL AGENDA ITEM

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MEETING DATE: 11/19/2019

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DEPARTMENT: Legal

STAFF CONTACT: Ron Shaver, City Attorney

SUBJECT: Consideration of payment of a jury award *in R.C. Rentals, LLC, et al. v. City of Olathe*

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ITEM DESCRIPTION:

Consideration of payment of a jury award in *R.C. Rentals, LLC, et al. v. City of Olathe*

---

SUMMARY:

The City acquired the building located at 1200 E. Santa Fe Street (former R.C. Rentals, LLC/All American Auto Mart used vehicle dealership) as part of the Santa Fe Street and Ridgeview Road Geometric Improvements Project (PN 3-C-083-15) through the eminent domain process and paid the Court-appointed appraisers award of \$590,000 in November, 2018. The property owner appealed the award and the case proceeded to a jury trial. On November 6, 2019, the jury entered an award of \$801,000 for the taking of the property (\$211,000 above the Court-appointed appraisers award) which was memorialized in a Journal Entry signed by all parties and District Court Judge Gurney on November 12, 2019 ([Attachment A](#)).

During the jury trial, the City's appraiser provided a final appraised value of \$470,000 for the property. The landowner's appraiser provided a final appraised value of \$1,000,000 for the property and the former owner testified his belief that the property should be valued at \$1,250,000 based on an adjacent land sale. The jury award was a compromise in between the appraisals of the City and the former landowner.

The judgment, court costs and interest to be paid are as outlined below:

Judgment	\$211,000
Interest at 6.5% from 12/1/1-6/30/19	\$7,964.84
Interest at 7.0% from 7/1/19-11/6/19	<u>\$5,219.34</u>
TOTAL	\$224,184.18

(plus statutory judgment interest until paid).

---

FINANCIAL IMPACT:

See above. Funds to pay the judgment will come from the project fund.

---

ACTION NEEDED:

Approve payment of the jury award (plus interest) in *R.C. Rentals, LLC, et al. v. City of Olathe*.

---

ATTACHMENT(S):

Attachment A - RC Rentals v. City of Olathe Journal Entry 11.12.2019

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**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL COURT DEPARTMENT**

**R.C. RENTALS, LLC, ET AL.**

**Plaintiffs,**

**v.**

**CITY OF OLATHE, KANSAS.**

**Defendant.**

**Case No. 18-CV-6707  
Division: 11**

**JOURNAL ENTRY**

ON THE 4<sup>th</sup> day of November, 2019, the above-captioned matter came on for trial. Plaintiffs appeared by and through Travis A. Wymore and Ward K. Brown of Withers, Brant, Igoe & Mullennix, P.C., their counsel of record, and by Regan Studna and other company representatives. Defendant appeared by and through Ron Shaver, its City Attorney, and by and through Timothy P. Orrick of Orrick & Erskine, LLP. There were no other appearances.

Thereafter, a jury pool was summoned. Jury selection was conducted by the Court and Counsel, preemptory strikes were made, and a jury of 12 persons and 1 alternate was seated and sworn. Counsel for the parties presented opening statements. Plaintiff presented its case in chief, including the testimony of witnesses and the identification and admission of various exhibits, all as more fully set forth in the record. Plaintiff then rested its case in chief. Defendant then presented its case in chief, including the testimony of witnesses and the identification and admission of various exhibits, all as more fully set forth in the record. Defendant then rested. Plaintiff presented no rebuttal evidence.

The Court and counsel conducted an instruction conference. The Court then read its Instructions to the jury. Counsel for the parties gave closing arguments. The Court's Bailiff was sworn, and the jury was sequestered for deliberations. On the 6<sup>th</sup> day of November, 2019 the jury foreperson delivered a written verdict to the Bailiff, who delivered it to the Court. The Court, after having reviewed the jury's verdict, found it to be in the proper form, and read the verdict, as follows:

The Fair Market Value of the entire property immediately prior to the taking on November 30, 2018 (within a range from \$470,000 to \$1,250,000) was:

**\$801,000.00**

At the Court's request, the jury foreperson affirmed the verdict. The parties waived polling the jury. The Court then accepted the verdict, thanked the jury for its service, and discharged the jury.

The Court finds Defendant initiated an administrative condemnation action, City of Olathe v. R.C. Rentals, LLC, et al., Johnson County District Court Case No. 18-CV-4590 to acquire the real property which is the subject of this appeal, and on November 30, 2018 paid \$590,000.00 to the Clerk of the Johnson County District Court in satisfaction of the Court-Appointed Appraisers' award, thereby completing the administrative action and acquiring title and the right of possession to the subject property. Therefore, Plaintiffs are entitled to a judgment against Defendant in the amount of \$211,000.00, the difference between the verdict and the amount previously deposited by Defendant with the Clerk of the Court, plus statutory interest at the judgment rate and costs, as follows:

1. Difference between the verdict and the amount previously deposited with the Clerk of the Court: \$211,000.00
2. Statutory Judgment Interest at the rate of 6.50% from December 1, 2018 through June 30, 2019 (212 days at \$37.57 per day) is: \$7,964.84
3. Statutory Judgment Interest at the rate of 7.00% from July 1, 2019 through November 6, 2019 (129 days at \$40.46 per day) is: \$5,219.34

Total: \$224,184.18;

plus statutory judgment interest until paid.

IT IS SO ORDERED

/s/ PAUL GURNEY  
Dated: 11/12/19

---

The Honorable Paul C. Gurney  
Judge of the Johnson County District Court  
Division 11

**Prepared and approved by:**

WITHERS, BRANT, IGOE & MULLENIX, P.C.

By: /s/ Travis A. Wymore  
Travis A. Wymore, KS #23034  
Two South Main  
Liberty, Missouri 64068  
816-781-4788  
816-792-2807 (fax)  
twymore@withersbrant.com

ATTORNEYS FOR PLAINTIFFS

AND

Clerk of the District Court, Johnson County Kansas  
11/12/19 01:20pm HS

ORRICK & ERSKINE, L.L.P.

By: /s/ Timothy P. Orrick  
Timothy P. Orrick, KS #12511  
11900 College Blvd., Suite 204  
Overland Park, Kansas 66210  
913-888-1777  
913-888-1794 (fax)  
[timorrick@orricklawgroup.com](mailto:timorrick@orricklawgroup.com)

ATTORNEYS FOR DEFENDANT

*Clerk of the District Court, Johnson County Kansas*  
11/12/19 01:20pm HS



# City of Olathe

## COUNCIL AGENDA ITEM

---

MEETING DATE: 11/19/2019

---

DEPARTMENT: Public Works  
STAFF CONTACT: Mary Jaeger/Beth Wright  
SUBJECT: Consideration of Consent Calendar

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ITEM DESCRIPTION:  
Consideration of Consent Calendar.

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SUMMARY:  
Consent Calendar consists of Project Completion Certificates, Change Orders, and Final Pay Estimates for Public Works projects.

---

FINANCIAL IMPACT:  
N/A

---

ACTION NEEDED:  
Approve Consent Calendar for November 19, 2019.

---

ATTACHMENT(S):  
A: Consent Calendar  
B: Change Orders

---



## City Council Information Sheet

Date: November 19, 2019

**ISSUE:** Consent Calendar for: November 19, 2019**DEPARTMENT:** Public Works**SUMMARY:****1) PROJECT COMPLETION CERTIFICATES**

- a) 2019 Local and Collector Mill and Overlay Project – 3-P-006-19 – Street
- b) Wabash Street Improvements from Parker Street to Troost Street – 3-R-003-19 - Street
- c) Compost Facility Expansion – 6-C-022-18 – Other: Compost Facility Expansion

**2) CHANGE ORDERS**

- a) 2019 Local and Collector Mill and Overlay Project – 3-P-006-19
- b) Wabash Street Improvements from Parker Street to Troost Street – 3-R-003-19
- c) Compost Facility Expansion – 6-C-022-18

**3) FINAL PAYMENT TO CONTRACTORS**

- a) 2019 Local and Collector Mill and Overlay Project – 3-P-006-19
 

Final Payment	\$ 149,601.69
Paid to Date	\$ 2,538,740.33
Original Contract Amount	\$ 2,819,120.50
Total Change Orders	\$ (130,778.48)

- Change Order 1: \$0.00 (7/22/19)
  - Change Order 2: \$0.00 (8/6/19)
  - Change Order 3 - FINAL: -\$130,778.48 (11/19/19)

Final Contract Amount	\$ 2,688,342.02
-----------------------	-----------------

Contractor – Freeman Concrete Construction

- b) Wabash Street Improvements from Parker Street to Troost Street – 3-R-003-19

Final Payment	\$ 23,651.80
Paid to Date	\$ 375,766.93
Original Contract Amount	\$ 468,860.70
Total Change Orders	\$ (69,441.97)

- Change Order 1: \$0.00 (7/22/19)
  - Change Order 2: \$0.00 (8/6/19)
  - Change Order 3 - FINAL: -\$69,441.97 (11/19/19)

Final Contract Amount	\$ 399,418.73
-----------------------	---------------

Contractor – Freeman Concrete Construction

<b>c) Compost Facility Expansion – 6-C-022-18</b>		
<b>Final Payment</b>	<b>\$</b>	<b>59,128.10</b>
<b>Paid to Date</b>	<b>\$</b>	<b>838,523.40</b>
<b>Original Contract Amount</b>	<b>\$</b>	<b>740,532.00</b>
<b>Total Change Orders</b>	<b>\$</b>	<b>157,119.50</b>
Change Order 1: \$154,492.00 (8/21/18)		
Change Order 2 - FINAL: \$2,627.50 (11/19/19)		
<b>Final Contract Amount</b>	<b>\$</b>	<b>897,651.50</b>
<b>Contractor – O'Donnell and Sons</b>		

**Submitted by: Mary Jaeger, Director / Beth Wright, Deputy Director**



CHANGE ORDER NO: 3 - FINAL

CITY PROJECT NO: 3-P-006-19

CONTRACT DATE: March 5, 2019

CONTRACTOR: Freeman Concrete Construction

ENGINEER: City of Olathe

PROJECT NAME: 2019 Local and Collector Street Mill and Overlay

ENCUMBRANCE NO. 700982

ITEM#	DESCRIPTION	Original QTY	Revised QTY	Unit	Original Unit Price	Revised Unit Price	Total
1***	Remove and Replace Concrete Curb & Gutter (< 15 LF)	925	1,391	L.F.	\$33.00	N/A	\$15,378.00
2***	Remove and Replace Concrete Curb & Gutter (≥ 15 LF)	53,589	49,819	L.F.	\$22.50	N/A	(\$84,825.00)
3***	Remove and Replace 6" Concrete Driveway (optional as directed by Engineer)	56	146	S.Y.	\$58.65	N/A	\$5,278.50
4***	Remove and Replace 7" Commercial Driveway (optional as directed by Engineer)	60	58	S.Y.	\$69.90	N/A	(\$139.80)
5***	Remove 4" Concrete Sidewalk	5,715	5,700	L.F.	\$10.50	N/A	(\$157.50)
6***	Install 4" Concrete Sidewalk	5,715	5,700	L.F.	\$19.25	N/A	(\$288.75)
7***	Remove 5" Concrete Sidewalk	29	0	L.F.	\$10.70	N/A	(\$310.30)
8***	Install 5" Concrete Sidewalk	29	0	L.F.	\$24.10	N/A	(\$698.90)
9***	Remove 8" Shared Use Path	83	88	L.F.	\$17.10	N/A	\$85.50
10***	Install 8" Shared Use Path	83	88	L.F.	\$34.25	N/A	\$171.25
11***	Install Type I ADA Sidewalk Ramp	63	59	EA.	\$1,550.00	N/A	(\$6,200.00)
12***	Install Type II ADA Sidewalk Ramp	27	28	EA.	\$1,980.00	N/A	\$1,980.00
15***	Pavement Crack Repair (optional as directed by Engineer)	60	127	S.Y.	\$33.00	N/A	\$2,211.00
16***	Full Depth Base Repair (optional as directed by Engineer)	2,300	2,387	S.Y.	\$44.00	N/A	\$3,828.00
17***	Install 2" BM-2FR Asphaltic Concrete Surface	14,629	14,217	Tons	\$55.50	N/A	(\$22,865.00)
18***	Install 4" Solid Yellow (HPS-S) Pavement Marking	9,680	896	L.F.	\$1.60	N/A	(\$14,054.40)
19***	Install 6" Solid White (HPS-S) Pavement Marking	120	198	L.F.	\$2.60	N/A	\$202.80
20***	Install 6" White Crosswalk Thermoplastic Pavement Marking	120	141	L.F.	\$7.50	N/A	\$157.50
21***	Install 24" White Thermoplastic Pavement Marking	52	55	L.F.	\$26.75	N/A	\$80.25
25***	Adjust Existing Manhole (optional as directed by Engineer)	5	0	EA.	\$2,030.00	N/A	(\$10,150.00)
26***	Remove and Install Curb Inlet Top	3	9	EA.	\$1,850.00	N/A	\$11,100.00
27***	Remove and Install 6' x 4' Curb Inlet	1	2.25	EA.	\$5,330.00	N/A	\$6,662.50
34***	Asphalt Indexing	0	1	LS	\$14,047.79	N/A	\$14,047.79

## DOCUMENTS SUPPORTING THIS CHANGE ORDER ARE TO BE ATTACHED

The Original Contract Sum	\$2,819,120.50
Net change by Previous Change Orders	\$0.00
The Contract Sum Prior to This Change Order Was	\$2,819,120.50
Remaining Owner's Allowance	(\$52,270.92)
Total Change Order Amount	(\$78,507.56)
The Contract Sum Shall be <u>Unchanged (Increased) (Decreased)</u> by This Change Order	(\$130,778.48)
The New Contract Sum With All Approved Change Orders Will Be	\$2,688,342.02
Original Contract Time	N/A
The Contract time Will Be	N/A
(Unchanged) By	N/A days
The Contract Time With All Approved Change Orders is	N/A
The Day of Substantial Completion as of the Date of This Change Order Therefore is	N/A

## RECOMMENDED

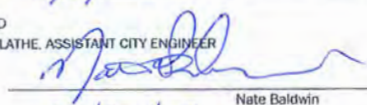
City of Olathe Public Works

Project Manager - Nico Estrada-Stephen

By:   
Date: 10/30/19

## APPROVED


CITY OF OLATHE, ASSISTANT CITY ENGINEER

By:   
Date: 10/30/19  
Nate Baldwin

## APPROVED

Freeman Concrete Construction

Contractor

By:   
Date: 10-30-19By: \_\_\_\_\_ AGREEMENT TO THIS \_\_\_\_\_ day of \_\_\_\_\_ 2019  
City Clerk



CHANGE ORDER NO: 3 - FINAL  
 CITY PROJECT NO. 3-R-003-19  
 CONTRACT DATE: March 19, 2019  
 CONTRACTOR: Freeman Concrete Construction  
 ENGINEER: HW Lochner

PROJECT NAME: Wabash Street Improvements from Parker St to Troost St

ENCUMBRANCE NO. 700984

ITEM#	DESCRIPTION	Original QTY	REVISED QTY	UNIT	ORIGINAL UNIT PRICE	REVISED UNIT PRICE	TOTAL
3***	Remove Existing Drive	858	908	SY	\$7.41	N/A	\$370.50
6***	Tree Removal (EST)	2	0	EA	\$271.05	N/A	(\$542.10)
7***	Linear Grading	1,140	1,190	LF	\$39.90	N/A	\$1,995.00
8***	Sub-Grade Repair (EST)	250	0	SY	\$5.62	N/A	(\$1,405.00)
11***	Asphaltic Concrete Surface (2") (BM-2FR)	378	360	TN	\$69.12	N/A	(\$1,244.16)
12***	Asphaltic Concrete Base (6") (BM-2BFR)	1134	1,021	TN	\$64.84	N/A	(\$7,356.75)
17***	Concrete Driveway (6") (Residential)	872	922	SY	\$37.33	N/A	\$1,866.50
23***	Drain Tile Connection (EST)	100	0	LF	\$31.91	N/A	(\$3,191.00)
24***	Water Main Relocation (6") (HDPE) (EST)	15	18	LF	\$269.87	N/A	\$809.61
25***	Water Main Relocation (8") (HDPE) (EST)	85	0	LF	\$172.37	N/A	(\$14,651.45)
33***	Tree Replacement (EST)	2	0	EA	\$460.79	N/A	(\$921.58)
34***	Shrub Replacement (EST)	15	2.0	EA	\$81.32	N/A	(\$1,057.16)
37***	Sodding	4,500	2,835	SY	\$5.15	N/A	(\$8,574.75)
40***	Asphalt Indexing	0	1.0	LS	\$2,460.37	N/A	\$2,460.37
41***	Liquidated Damages	0	9.0	PER DAY	(\$2,000.00)	N/A	(\$18,000.00)

DOCUMENTS SUPPORTING THIS CHANGE ORDER ARE TO BE ATTACHED

The Original Contract Sum	\$468,860.70
Net change by Previous Change Orders	\$0.00
The Contract Sum Prior to This Change Order Was	\$468,860.70
Remaining Owner's Allowance	(\$20,000.00)
Total Change Order Amount	(\$49,441.97)
The Contract Sum Shall be Unchanged (Increased) (Decreased) by This Change Order	(\$69,441.97)
The New Contract Sum With All Approved Change Orders Will Be	\$399,418.73
Original Contract Time	N/A days
The Contract time Will Be (Unchanged) By	N/A days
The Contract Time With All Approved Change Orders is	N/A days
The Day of Substantial Completion as of the Date of This Change Order Therefore is	N/A

RECOMMENDED

City of Olathe Public Works

Project Manager - Nico Estrada-Stephen

By:

Date:

  
11/4/2019

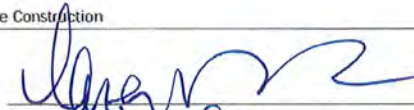
APPROVED

Freeman Concrete Construction

Contractor

By:

Date:

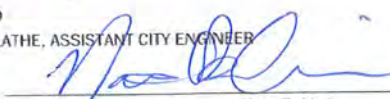
  
11/19

APPROVED

CITY OF OLATHE, ASSISTANT CITY ENGINEER

By:

Date:

  
11/4/2019  
Nate Baldwin

By:

City Clerk

AGREEMENT TO THIS

day of

2019



CHANGE ORDER NO: 2 - FINAL

PROJECT NAME: Compost Facility Expansion

CITY PROJECT NO. 6-C-022-18

CONTRACT DATE: May 15, 2018

ENCUMBRANCE NO. 700883

CONTRACTOR: O'Donnell &amp; Sons

ENGINEER: Engineering Solutions &amp; Design

ITEM#	DESCRIPTION	Original QTY	REVISED QTY	UNIT	ORIGINAL UNIT PRICE	REVISED UNIT PRICE	TOTAL
11**	Rip-Rap, Erosion Control, & Stabilization - Phase 1	0	1	LS	N/A	\$31,072.50	\$31,072.50
12**	Rip-Rap, Erosion Control, & Stabilization - Phase 2	0	1	LS	N/A	\$6,555.00	\$6,555.00
	Owner's Allowance	1	N/A	LS	\$35,000.00	\$0.00	(\$35,000.00)

## DOCUMENTS SUPPORTING THIS CHANGE ORDER ARE TO BE ATTACHED

The Original Contract Sum	\$740,532.00
Net change by Previous Change Orders	\$154,492.00
The Contract Sum Prior to This Change Order Was	\$895,024.00
The Contract Sum Shall be <del>Unchanged</del> (Increased) (Decreased) by This Change Order.....	\$2,627.50
The New Contract Sum With All Approved Change Orders Will Be.....	\$897,651.50
Original Contract Time.....	N/A days
The Contract time Will Be (Unchanged) By.....	N/A days
The Contract Time With All Approved Change Orders is	N/A days
The Day of Substantial Completion as of the Date of This Change Order Therefore is.....	N/A

## RECOMMENDED

City of Olathe Public Works

Project Manager - Matt Kapfer

## APPROVED

O'Donnell &amp; Sons

Contractor

By

Date:

*Matt Kapfer*  
10-31-2019

By

Date:

*Paul Shuckler*  
10/28/19

## APPROVED

CITY OF OLATHE, ASSISTANT CITY ENGINEER

By:

Date:

*Nate Baldwin*  
11/1/2019  
Nate Baldwin

By:

AGREEMENT TO THIS

day of

2019

City Clerk





# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 11/19/2019

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**DEPARTMENT:** Public Works

**STAFF CONTACT:** Mary Jaeger / Beth Wright

**SUBJECT:** Consideration of Watershed Organization Agreements with Johnson County.

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**ITEM DESCRIPTION:**

Consideration of Watershed Organization Agreements with Johnson County.

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**SUMMARY:**

In 2016, the Board of County Commissioners adopted a new strategic plan for the Johnson County Stormwater Management Program (SMP). The plan includes watershed-based approaches for stormwater management. In order to implement the plan, six (6) Watershed Organizations will be formed in Johnson County to coordinate watershed-wide stormwater management projects. The Watershed Organizations will be formed with membership from the municipalities in Johnson County that lie within each watershed boundary. The City of Olathe will participate in Watershed Organizations 2, 3 and 6. Watershed Organization boundaries are shown in Attachment C.

The Watershed Organization Agreements establish the purpose, membership requirements, and by-laws for the Watershed Organizations. To support these Organizations, the County is currently working on watershed plans and updated policies for the Stormwater Management Advisory Council (SMAC).

It is anticipated that the Watershed Organization formation, watershed planning and SMAC policy updates will be completed in 2020.

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**Financial Impact:**

The watershed-based SMAC program will expand project eligibility to include water quality protection, system management, and flood control. Traditionally, only flood control projects were funded with 75% County funding. Under the new program, projects with a watershed scope will be eligible to receive 100% County funding, while local projects will receive 50% funding.

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**ACTION NEEDED:**

Approval of Watershed Organization Agreements with Johnson County.

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**ATTACHMENT(S):**

A: Watershed Organization Agreements

B: Watershed Organization By-Laws

C: Watershed Organization Boundary Map

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## **Agreement for the Establishment of Watershed Organization 2 in Johnson County, Kansas**

This Agreement is entered into by and among the cities of Leawood, Lenexa, Olathe, Overland Park, and Prairie Village, Kansas (collectively “Watershed Organization Member” or “Members”); in connection with their desire and intent to undertake a cooperative effort relating to stormwater and flood control matters within the Watershed Organization boundaries.

### **Recitals**

A. Previously, stormwater improvement efforts within Johnson County have been carried out independently, rather than cooperatively.

B. The Members desire to cooperate in future stormwater-related projects through an informal watershed organization for the purposes of broadly and comprehensively cooperating in stormwater management projects within a particular watershed giving appropriate consideration to watershed-wide, rather than solely local concerns (hereinafter the “Watershed Organization”).

C. The Members acknowledge that funds for stormwater structural and non-structural measures and projects including proper maintenance of the stormwater system may be spent in a collaborative effort directed towards common benefits without focusing upon location within one jurisdiction or another.

D. The Members recognize that benefits may be derived from a comprehensive collaborative approach and the development of a master plan to reduce flood risks, replace and maintain systems, and improve water quality within the watershed.

E. The Watershed Organization will be the means by which the Members will participate and obtain funding from the Johnson County Stormwater Management Program.

F. The Watershed Organization boundary is depicted on the attached exhibit.

### **Agreement**

The Members to this Agreement agree as follows:

1. Each of the undersigned Members shall be a member of Watershed Organization 2 (the “Organization”) which shall be an unincorporated association.
2. The Organization shall develop and implement a master plan that will identify and prioritize improvements to address flooding, water quality and stormwater system replacement (hereinafter the “Watershed Master Plan”).

3. The Organization's general approach shall be to develop stormwater related studies and improvement projects using recognized and accepted stormwater engineering principles and practices.
4. The Organization shall discuss minimum design standards, policies and actions in an effort to promote consistency and a uniform approach to stormwater management improvements throughout the watershed.
5. The Organization will prioritize improvement projects identified in the Watershed Master Plan and may collaborate to pursue the identified projects. The primary funding source for these improvement projects shall be the Johnson County Stormwater Management Program.
6. The Organization may also pursue funding from the Johnson County Stormwater Management Program for stormwater improvement projects which have benefits limited to a sole Member jurisdiction (i.e., local projects).
7. The Organization may participate in a watershed-wide public education program to promote the benefits of the Organization's cooperative effort with respect to flood risk reductions, water quality and system replacement.
8. The Organization's internal operating procedures shall be as set forth by the "Watershed Organization By-laws," a copy of which is attached to this Agreement.
9. This Agreement shall be effective on January 1, 2020 and shall remain in effect for 10 years.
10. It is not the purpose or intent of this Agreement to create, supplant, preempt or supersede the authority or role of any jurisdiction or governmental entity. Nothing in this Agreement shall be deemed to be contrary to any Member's statutory or other duties or obligations and the Organization shall have no authority or ability to encumber any funds of any Member or enter into a contract or agreement on behalf of any Member.
11. Individual Member's may terminate their participation in this Agreement and the Organization at any time by written notice to the Organization.



**Signature Page (1 of 5)**

**City of Leawood, Kansas**

\_\_\_\_\_  
Peggy J. Dunn, Mayor

\_\_\_\_\_  
Attest: City Clerk

\_\_\_\_\_  
Date

**Signature Page (2 of 5)**

**City of Lenexa, Kansas**

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Michael A. Boehm, Mayor

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Attest: City Clerk

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Date

**Signature Page (3 of 5)**

**City of Olathe, Kansas**

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Michael Copeland, Mayor

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Attest: City Clerk

---

Date

**Signature Page (4 of 5)**

**City of Overland Park, Kansas**

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Carl R. Gerlach, Mayor

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Attest: City Clerk

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Date

**Signature Page (5 of 5)**

**City of Prairie Village, Kansas**

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Eric Mikkelsen, Mayor

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Attest: City Clerk

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Date

## **Agreement for the Establishment of Watershed Organization 3 in Johnson County, Kansas**

This Agreement is entered into by and among the cities of Leawood, Olathe, Overland Park, Spring Hill, and unincorporated Johnson County, Kansas (collectively “Watershed Organization Member” or “Members”); in connection with their desire and intent to undertake a cooperative effort relating to stormwater and flood control matters within the Watershed Organization boundaries.

### **Recitals**

A. Previously, stormwater improvement efforts within Johnson County have been carried out independently, rather than cooperatively.

B. The Members desire to cooperate in future stormwater-related projects through an informal watershed organization for the purposes of broadly and comprehensively cooperating in stormwater management projects within a particular watershed giving appropriate consideration to watershed-wide, rather than solely local concerns (hereinafter the “Watershed Organization”).

C. The Members acknowledge that funds for stormwater structural and non-structural measures and projects including proper maintenance of the stormwater system may be spent in a collaborative effort directed towards common benefits without focusing upon location within one jurisdiction or another.

D. The Members recognize that benefits may be derived from a comprehensive collaborative approach and the development of a master plan to reduce flood risks, replace and maintain systems, and improve water quality within the watershed.

E. The Watershed Organization will be the means by which the Members will participate and obtain funding from the Johnson County Stormwater Management Program.

F. The Watershed Organization boundary is depicted on the attached exhibit.

### **Agreement**

The Members to this Agreement agree as follows:

1. Each of the undersigned Members shall be a member of Watershed Organization 3 (the “Organization”) which shall be an unincorporated association.

2. The Organization shall develop and implement a master plan that will identify and prioritize improvements to address flooding, water quality and stormwater system replacement (hereinafter the “Watershed Master Plan”).
3. The Organization’s general approach shall be to develop stormwater related studies and improvement projects using recognized and accepted stormwater engineering principles and practices.
4. The Organization shall discuss minimum design standards, policies and actions in an effort to promote consistency and a uniform approach to stormwater management improvements throughout the watershed.
5. The Organization will prioritize improvement projects identified in the Watershed Master Plan and may collaborate to pursue the identified projects. The primary funding source for these improvement projects shall be the Johnson County Stormwater Management Program.
6. The Organization may also pursue funding from the Johnson County Stormwater Management Program for stormwater improvement projects which have benefits limited to a sole Member jurisdiction (i.e., local projects).
7. The Organization may participate in a watershed-wide public education program to promote the benefits of the Organization’s cooperative effort with respect to flood risk reductions, water quality and system replacement.
8. The Organization’s internal operating procedures shall be as set forth by the “Watershed Organization By-laws,” a copy of which is attached to this Agreement.
9. This Agreement shall be effective on January 1, 2020 and shall remain in effect for 10 years.
10. It is not the purpose or intent of this Agreement to create, supplant, preempt or supersede the authority or role of any jurisdiction or governmental entity. Nothing in this Agreement shall be deemed to be contrary to any Member’s statutory or other duties or obligations and the Organization shall have no authority or ability to encumber any funds of any Member or enter into a contract or agreement on behalf of any Member.
11. Individual Member’s may terminate their participation in this Agreement and the Organization at any time by written notice to the Organization.

**Signature Page (1 of 5)**

**City of Leawood, Kansas**

\_\_\_\_\_  
Peggy J. Dunn, Mayor

\_\_\_\_\_  
Attest: City Clerk

\_\_\_\_\_  
Date



**Signature Page (2 of 5)**

**City of Olathe, Kansas**

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Michael Copeland, Mayor

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Attest: City Clerk

---

Date

**Signature Page (3 of 5)**

**City of Overland Park, Kansas**

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Carl R. Gerlach, Mayor

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Attest: City Clerk

---

Date

**Signature Page (4 of 5)**

**City of Spring Hill, Kansas**

---

Steven M. Ellis, Mayor

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Attest: City Clerk

---

Date

**Signature Page (5 of 5)**

**Board of County Commissioners of Johnson County, Kansas**

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Ed Eilert, Chairman

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Attest: Deputy County Clerk

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Date

## **Agreement for the Establishment of Watershed Organization 6 in Johnson County, Kansas**

This Agreement is entered into by and among the cities of Bonner Springs, De Soto, Lake Quivira, Lenexa, Olathe, Shawnee, and unincorporated Johnson County (collectively “Watershed Organization Member” or “Members”); in connection with their desire and intent to undertake a cooperative effort relating to stormwater and flood control matters within the Watershed Organization boundaries.

### **Recitals**

A. Previously, stormwater improvement efforts within Johnson County have been carried out independently, rather than cooperatively.

B. The Members desire to cooperate in future stormwater-related projects through an informal watershed organization for the purposes of broadly and comprehensively cooperating in stormwater management projects within a particular watershed giving appropriate consideration to watershed-wide, rather than solely local concerns (hereinafter the “Watershed Organization”).

C. The Members acknowledge that funds for stormwater structural and non-structural measures and projects including proper maintenance of the stormwater system may be spent in a collaborative effort directed towards common benefits without focusing upon location within one jurisdiction or another.

D. The Members recognize that benefits may be derived from a comprehensive collaborative approach and the development of a master plan to reduce flood risks, replace and maintain systems, and improve water quality within the watershed.

E. The Watershed Organization will be the means by which the Members will participate and obtain funding from the Johnson County Stormwater Management Program.

F. The Watershed Organization boundary is depicted on the attached exhibit.

### **Agreement**

The Members to this Agreement agree as follows:

1. Each of the undersigned Members shall be a member of Watershed Organization 6 (the “Organization”) which shall be an unincorporated association.

2. The Organization shall develop and implement a master plan that will identify and prioritize improvements to address flooding, water quality and stormwater system replacement (hereinafter the “Watershed Master Plan”).
3. The Organization’s general approach shall be to develop stormwater related studies and improvement projects using recognized and accepted stormwater engineering principles and practices.
4. The Organization shall discuss minimum design standards, policies and actions in an effort to promote consistency and a uniform approach to stormwater management improvements throughout the watershed.
5. The Organization will prioritize improvement projects identified in the Watershed Master Plan and may collaborate to pursue the identified projects. The primary funding source for these improvement projects shall be the Johnson County Stormwater Management Program.
6. The Organization may also pursue funding from the Johnson County Stormwater Management Program for stormwater improvement projects which have benefits limited to a sole Member jurisdiction (i.e., local projects).
7. The Organization may participate in a watershed-wide public education program to promote the benefits of the Organization’s cooperative effort with respect to flood risk reductions, water quality and system replacement.
8. The Organization’s internal operating procedures shall be as set forth by the “Watershed Organization By-laws,” a copy of which is attached to this Agreement.
9. This Agreement shall be effective on January 1, 2020 and shall remain in effect for 10 years.
10. It is not the purpose or intent of this Agreement to create, supplant, preempt or supersede the authority or role of any jurisdiction or governmental entity. Nothing in this Agreement shall be deemed to be contrary to any Member’s statutory or other duties or obligations and the Organization shall have no authority or ability to encumber any funds of any Member or enter into a contract or agreement on behalf of any Member.
11. Individual Member’s may terminate their participation in this Agreement and the Organization at any time by written notice to the Organization.

**Signature Page (1 of 7)**

**City of Bonner Springs, Kansas**

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Jeff Harrington, Mayor

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Attest: City Clerk

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Date

**Signature Page (2 of 7)**

**City of De Soto, Kansas**

---

Rick Walker, Mayor

---

Attest: City Clerk

---

Date



**Signature Page (3 of 7)**

**City of Lake Quivira, Kansas**

---

Ben C. Kalny, Mayor

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Attest: City Clerk

---

Date

**Signature Page (4 of 7)**

**City of Lenexa, Kansas**

---

Michael A. Boehm, Mayor

---

Attest: City Clerk

---

Date

**Signature Page (5 of 7)**

**City of Olathe, Kansas**

---

Michael Copeland, Mayor

---

Attest: City Clerk

---

Date

**Signature Page (6 of 7)**

**City of Shawnee, Kansas**

---

Michelle Distler, Mayor

---

Attest: City Clerk

---

Date

**Signature Page (7 of 7)**

**Board of County Commissioners of Johnson County, Kansas**

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Ed Eilert, Chairman

---

Attest: Deputy County Clerk

---

Date

**BY-LAWS OF  
WATERSHED ORGANIZATION 2  
JOHNSON COUNTY, KANSAS**

**ARTICLE I  
STATEMENT OF PURPOSE**

Pursuant to the agreement between the Cities of Leawood, Lenexa, Olathe, Overland Park, and Prairie Village, Kansas (collectively the “Members”); the following rules are to govern the transaction of business by Watershed Organization 2 (the “Organization”), an unincorporated association. The objectives, purposes, powers and duties of the Organization are as follows:

1. Implement goals of Watershed Organization Agreement (“Agreement” as adopted by the Members.
2. Coordinate efforts among the Members in planning of improvements within the Watershed.
3. Discuss stormwater investments under consideration and better collaborate on a watershed basis.
4. Develop and maintain a watershed-based master plan that includes projects and policies to reduce flood risk, maintain and replace systems and improve water quality irrespective of jurisdictional boundaries.
5. Work cooperatively to implement the watershed-based master plan by jointly developing and funding studies and projects that benefit the watershed.
6. Work cooperatively to adopt common stormwater design standards and achieve a consistent level of service throughout the watershed.
7. Develop best management practices designed to protect investment in existing stormwater improvements through proper maintenance.
8. Assist with permitting and other common needs or benefits.
9. Provide letters of support for outside funding source applications.

**ARTICLE II  
MEMBERSHIP**

**Section 1. Membership.**

Each Member which is and remains a signatory to the Watershed Organization Agreement shall appoint one representative to serve as a participating member of the Watershed Organization. Membership qualifications shall be established, vacancies filled, and members removed as determined by each Member for that Member’s position.

In order to ensure further coordination of stormwater management throughout the Watershed, other entities that have an interest may be invited to nominate a representative from their organizations to serve as ex officio members on the Organization. The qualifications for and manner of appointment

for ex-officio members shall be at the sole discretion of the participating Members of the Organization.

## **Section 2. Quorum.**

A quorum shall consist of a majority of the entire membership of the Organization. In the absence of a quorum, the Organization may discuss issues on the agenda but may not conduct any formal business or take any action on behalf of the Organization. Members may attend meetings and vote by telephone or by proxy.

## **Section 3. Voting.**

Each member of the Organization present at a meeting shall be entitled to one vote.

# **ARTICLE III OFFICERS AND THEIR DUTIES**

## **Section 1. Officers.**

The officers of the Organization shall consist of a chairperson, vice-chairperson, and secretary, who shall be members appointed to the Organization. The officers shall perform the duties prescribed in these bylaws, and any other duties prescribed by the parliamentary authority adopted by the Organization.

## **Section 2. Election of Officers.**

- (a) The Organization shall elect officers by a majority vote annually at the first regular meeting of the calendar year.
- (b) Nomination of officers shall be made from the floor by Organization members. Nominees shall accept the nomination in order to become a candidate. After an acceptance, Members may discuss nominations.
- (c) Elections shall follow immediately after any discussion of the nomination, and shall be made by motion of any Organization member. The motion shall receive a second prior to a vote on the motion by Organization members.
- (d) A candidate receiving a majority vote of the entire membership of the Organization shall be declared elected and shall fill the office nominated for one year or until the successor shall take office. In the event that no candidate receives a majority vote of the entire membership of the Organization, the election process shall be repeated.
- (e) Any vacancies in offices shall be filled immediately by regular election procedure.

## **Section 3. The Chairperson's Duties.**

The Chairperson:

- (a) Shall call any regular or special meetings of the Organization and authorize the agenda for any meeting.
- (b) Shall be the presiding officer at all meetings of the Organization at which the Chairperson is present.
- (c) Shall have the privilege of recognizing all speakers and Organization members and declaring who has the floor for the purposes of all discussions and proceedings before the Organization,
- (d) Shall decide all points of order and procedure in accordance with the parliamentary procedure adopted by the Organization, and
- (e) Shall sign all official documents for the Organization.

**Section 4. The Vice-Chairperson's Duties.**

The Vice-Chairperson:

- (a) Shall act as the Chairperson in the absence or disability of the Chairperson.
- (b) Shall co-sign all official documents for the Organization.

**Section 5. The Secretary's Duties.**

The Secretary:

- (a) Shall act as the Chairperson in the absence or disability of the Chairperson and Vice-Chairperson.
- (b) Shall attest to the Chairperson's and Vice-Chairperson's signature on all official documents for the Organization.
- (c) Shall tend to any correspondence with the Jurisdiction's staff, applicants, and the public, as directed by the Chairperson and as necessary for carrying out duties and objectives of the Organization.
- (d) Shall take and keep minutes of all Organization meetings.
- (e) Shall be the Custodian of Records for the Organization.

**Section 6. Acting Officers.**

- (a) In the absence or disability of the Chairperson, the Vice-Chairperson, and Secretary, an acting Chairperson shall be selected by the members of the Organization present.
- (b) In the absence or disability of the Secretary, an acting Secretary shall be selected by the members of the Organization present.
- (c) A member of the Organization may act to fulfill the duties of only one office at a time unless serving in the absence or disability of another officer.

**ARTICLE IV  
SUPPORT STAFF**

The Organization shall utilize, as necessary, the staff provided and authorized by the Members to assist in the completion of the Organization's work. Support staff may include:



- (a) Staff planner(s), engineer(s), or appointed consultants for the Member responsible for planning and public works functions in the Watershed Organization;
- (b) Designated planner, engineer, or consultant for the Organization, funded by funds made available through the Organization's actions or as authorized by the Members;
- (c) Any other support staff designated to represent the interests of the Members and assist in implementation of the Watershed Organization Watershed Plan.

## **ARTICLE V MEETINGS**

### **Section 1. Regular Meetings.**

- (a) Regular meetings of the Organization shall be held as needed, but at least bi-annually.
- (b) A meeting may be cancelled by directive of the presiding officer for failure to assemble a quorum for a scheduled meeting.
- (c) Held via teleconferences, Skype, etc...

### **Section 2. Special Meetings.**

- (a) Special meetings may be called as needed to handle business of the Organization. Special meetings may be called by the Chairperson, or at the request of three members of the Organization to the Chairperson, provided that prior notice is given to each Member of the Organization of the time, place, and agenda of such meeting, and provided all other public notice requirements are met.
- (b) No business other than that specified in the agenda may be considered at a special meeting, except by unanimous consent of the Members present at the special meeting.

## **ARTICLE VI PARLIAMENTARY PROCEDURE**

The rules contained in the current edition of *Robert's Rules of Order* shall govern the Organization in all cases to which they are applicable except where they are inconsistent with these bylaws, any special rules of order the Organization may adopt, or any of the Kansas Statutes Annotated that are applicable to the operation of the Organization.

## **ARTICLE VII AMENDMENT OF BYLAWS**

**Section 1.** These bylaws may be amended by an affirmative vote of the majority of the Organization.

**Section 2.** Proposals for amendment of the bylaws shall be presented in writing at a meeting of the Organization and action on the proposed amendment shall be taken at a subsequent meeting.

These bylaws are approved and adopted by Watershed Organization 2 this 1<sup>st</sup> day of January, 2020.

**BY-LAWS OF  
WATERSHED ORGANIZATION 3  
JOHNSON COUNTY, KANSAS**

**ARTICLE I  
STATEMENT OF PURPOSE**

Pursuant to the agreement between the Cities of Leawood, Olathe, Overland Park, Spring Hill, and unincorporated Johnson County, Kansas (collectively the “Members”); the following rules are to govern the transaction of business by Watershed Organization 3 (the “Organization”), an unincorporated association. The objectives, purposes, powers and duties of the Organization are as follows:

1. Implement goals of Watershed Organization Agreement (“Agreement” as adopted by the Members.
2. Coordinate efforts among the Members in planning of improvements within the Watershed.
3. Discuss stormwater investments under consideration and better collaborate on a watershed basis.
4. Develop and maintain a watershed-based master plan that includes projects and policies to reduce flood risk, maintain and replace systems and improve water quality irrespective of jurisdictional boundaries.
5. Work cooperatively to implement the watershed-based master plan by jointly developing and funding studies and projects that benefit the watershed.
6. Work cooperatively to adopt common stormwater design standards and achieve a consistent level of service throughout the watershed.
7. Develop best management practices designed to protect investment in existing stormwater improvements through proper maintenance.
8. Assist with permitting and other common needs or benefits.
9. Provide letters of support for outside funding source applications.

**ARTICLE II  
MEMBERSHIP**

**Section 1. Membership.**

Each Member which is and remains a signatory to the Watershed Organization Agreement shall appoint one representative to serve as a participating member of the Watershed Organization. Membership qualifications shall be established, vacancies filled, and members removed as determined by each Member for that Member’s position.

In order to ensure further coordination of stormwater management throughout the Watershed, other entities that have an interest may be invited to nominate a representative from their organizations to

serve as ex officio members on the Organization. The qualifications for and manner of appointment for ex-officio members shall be at the sole discretion of the participating Members of the Organization.

## **Section 2. Quorum.**

A quorum shall consist of a majority of the entire membership of the Organization. In the absence of a quorum, the Organization may discuss issues on the agenda but may not conduct any formal business or take any action on behalf of the Organization. Members may attend meetings and vote by telephone or by proxy.

## **Section 3. Voting.**

Each member of the Organization present at a meeting shall be entitled to one vote.

# **ARTICLE III OFFICERS AND THEIR DUTIES**

## **Section 1. Officers.**

The officers of the Organization shall consist of a chairperson, vice-chairperson, and secretary, who shall be members appointed to the Organization. The officers shall perform the duties prescribed in these bylaws, and any other duties prescribed by the parliamentary authority adopted by the Organization.

## **Section 2. Election of Officers.**

- (a) The Organization shall elect officers by a majority vote annually at the first regular meeting of the calendar year.
- (b) Nomination of officers shall be made from the floor by Organization members. Nominees shall accept the nomination in order to become a candidate. After an acceptance, Members may discuss nominations.
- (c) Elections shall follow immediately after any discussion of the nomination, and shall be made by motion of any Organization member. The motion shall receive a second prior to a vote on the motion by Organization members.
- (d) A candidate receiving a majority vote of the entire membership of the Organization shall be declared elected and shall fill the office nominated for one year or until the successor shall take office. In the event that no candidate receives a majority vote of the entire membership of the Organization, the election process shall be repeated.
- (e) Any vacancies in offices shall be filled immediately by regular election procedure.

### **Section 3. The Chairperson's Duties.**

The Chairperson:

- (a) Shall call any regular or special meetings of the Organization and authorize the agenda for any meeting.
- (b) Shall be the presiding officer at all meetings of the Organization at which the Chairperson is present.
- (c) Shall have the privilege of recognizing all speakers and Organization members and declaring who has the floor for the purposes of all discussions and proceedings before the Organization,
- (d) Shall decide all points of order and procedure in accordance with the parliamentary procedure adopted by the Organization, and
- (e) Shall sign all official documents for the Organization.

### **Section 4. The Vice-Chairperson's Duties.**

The Vice-Chairperson:

- (a) Shall act as the Chairperson in the absence or disability of the Chairperson.
- (b) Shall co-sign all official documents for the Organization.

### **Section 5. The Secretary's Duties.**

The Secretary:

- (a) Shall act as the Chairperson in the absence or disability of the Chairperson and Vice-Chairperson.
- (b) Shall attest to the Chairperson's and Vice-Chairperson's signature on all official documents for the Organization.
- (c) Shall tend to any correspondence with the Jurisdiction's staff, applicants, and the public, as directed by the Chairperson and as necessary for carrying out duties and objectives of the Organization.
- (d) Shall take and keep minutes of all Organization meetings.
- (e) Shall be the Custodian of Records for the Organization.

### **Section 6. Acting Officers.**

- (a) In the absence or disability of the Chairperson, the Vice-Chairperson, and Secretary, an acting Chairperson shall be selected by the members of the Organization present.
- (b) In the absence or disability of the Secretary, an acting Secretary shall be selected by the members of the Organization present.
- (c) A member of the Organization may act to fulfill the duties of only one office at a time unless serving in the absence or disability of another officer.

## **ARTICLE IV SUPPORT STAFF**

The Organization shall utilize, as necessary, the staff provided and authorized by the Members to assist in the completion of the Organization's work. Support staff may include:

- (a) Staff planner(s), engineer(s), or appointed consultants for the Member responsible for planning and public works functions in the Watershed Organization;
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### **Section 1.** Regular Meetings.

- (a) Regular meetings of the Organization shall be held as needed, but at least bi-annually.
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## **ARTICLE VI PARLIAMENTARY PROCEDURE**

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## **ARTICLE VII AMENDMENT OF BYLAWS**

**Section 1.** These bylaws may be amended by an affirmative vote of the majority of the Organization.

**Section 2.** Proposals for amendment of the bylaws shall be presented in writing at a meeting of the Organization and action on the proposed amendment shall be taken at a subsequent meeting.

These bylaws are approved and adopted by Watershed Organization 3 this 1<sup>st</sup> day of January, 2020.

**BY-LAWS OF  
WATERSHED ORGANIZATION 6  
JOHNSON COUNTY, KANSAS**

**ARTICLE I  
STATEMENT OF PURPOSE**

Pursuant to the agreement between the Cities of Bonner Springs, De Soto, Lake Quivira, Lenexa, Olathe, Shawnee, and unincorporated Johnson County, Kansas (collectively the “Members”); the following rules are to govern the transaction of business by Watershed Organization 6 (the “Organization”), an unincorporated association. The objectives, purposes, powers and duties of the Organization are as follows:

1. Implement goals of Watershed Organization Agreement (“Agreement” as adopted by the Members.
2. Coordinate efforts among the Members in planning of improvements within the Watershed.
3. Discuss stormwater investments under consideration and better collaborate on a watershed basis.
4. Develop and maintain a watershed-based master plan that includes projects and policies to reduce flood risk, maintain and replace systems and improve water quality irrespective of jurisdictional boundaries.
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6. Work cooperatively to adopt common stormwater design standards and achieve a consistent level of service throughout the watershed.
7. Develop best management practices designed to protect investment in existing stormwater improvements through proper maintenance.
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In order to ensure further coordination of stormwater management throughout the Watershed, other entities that have an interest may be invited to nominate a representative from their organizations to



serve as ex officio members on the Organization. The qualifications for and manner of appointment for ex-officio members shall be at the sole discretion of the participating Members of the Organization.

## **Section 2. Quorum.**

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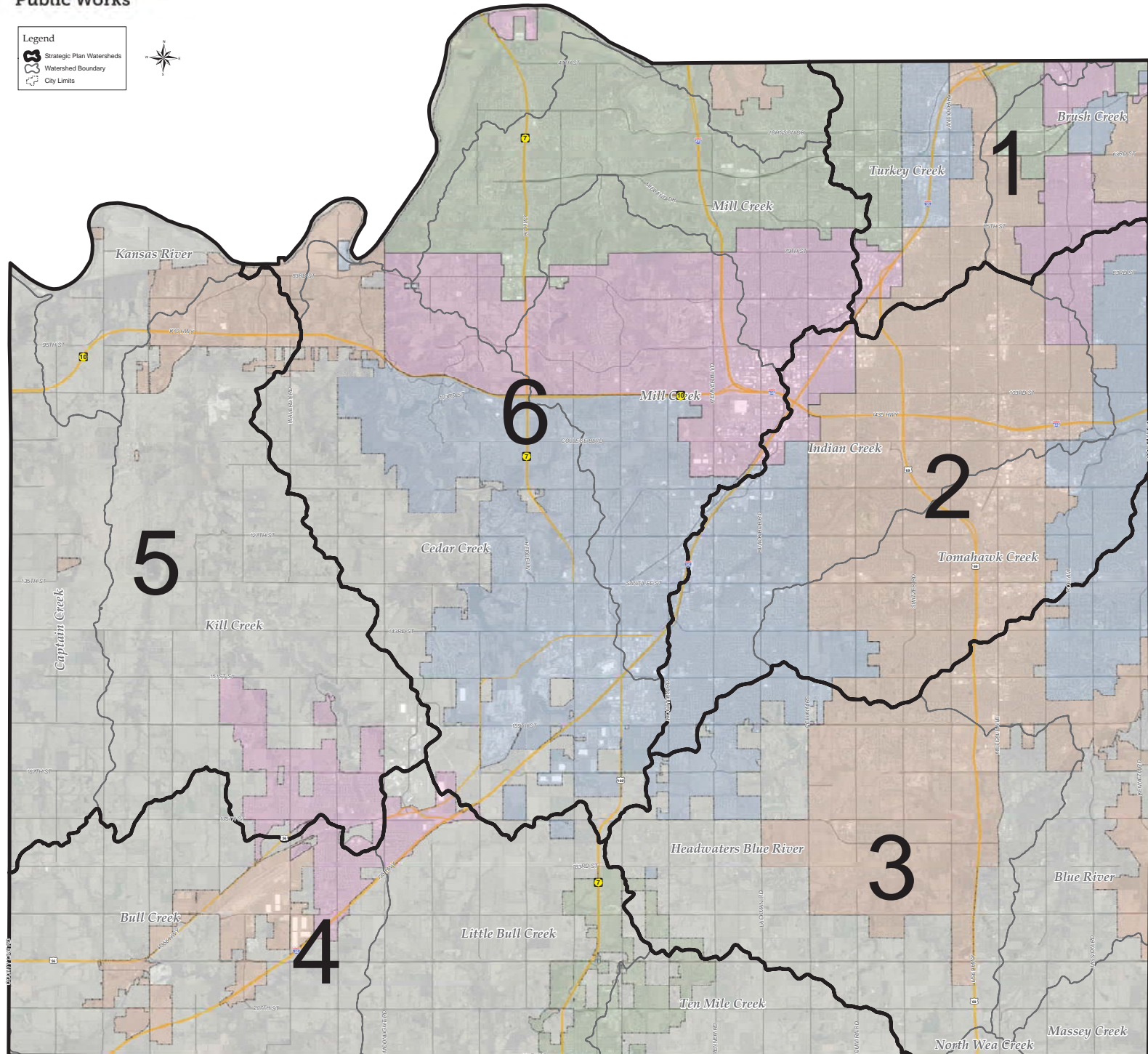
These bylaws are approved and adopted by Watershed Organization 6 this 1<sup>st</sup> day of January, 2020.

# Watershed Boundary Map

JOHNSON COUNTY  
KANSAS  
Public Works

Legend

- Strategic Plan Watersheds
- Watershed Boundary
- City Limits





# City of Olathe

## COUNCIL AGENDA ITEM

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MEETING DATE: 11/19/2019

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DEPARTMENT: Public Works

STAFF CONTACT: Mary Jaeger/Beth Wright

SUBJECT: Supplemental Agreement No. 2 with Integrity Locating Services, LLC for the Underground Utility Locating Services Project, PN 8-C-001-18.

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### ITEM DESCRIPTION:

Consideration of Supplemental Agreement No. 2 with Integrity Locating Services, LLC for the Underground Utility Locating Services Project, PN 8-C-001-18.

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### SUMMARY:

In June 2013, the City of Olathe began outsourcing a portion of the underground utility locating services for city-owned underground utilities, including traffic-related infrastructure, fiber, and water and sewer mains.

A Request for Qualifications for this project was issued on August 18, 2017. Two (2) firms responded to this request and Integrity Locating Services, LLC (Integrity) was selected based on the submitted qualifications and their current experience working with Olathe on utility locating services. On December 5, 2017, City Council approved a \$250,000 Professional Services Agreement with Integrity that included two additional one-year options that would allow extension of the agreement to December 31, 2020.

This Supplemental Agreement is based on a per ticket basis with a maximum amount of \$245,000. With approval of the Supplemental Agreement, the total fee for all services from 2018 through 2020 would increase from \$510,000 to \$755,000. If utility locating services exceed the amount of \$245,000 in 2020, staff will return with a Supplemental Agreement for City Council consideration.

The anticipated start date is January 1, 2020 with work continuing through December 31, 2020.

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### FINANCIAL IMPACT:

The Supplemental Agreement is for a maximum amount of \$245,000 and will be funded from the Public Works Operating Budget.

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### ACTION NEEDED:

Approval of Supplemental Agreement No. 2 with Integrity Locating Services, LLC for the Underground Utility Locating Services Project, PN 8-C-001-18.

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### ATTACHMENT(S):

A: Supplemental Agreement No. 2

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**SUPPLEMENTAL AGREEMENT NO. 2  
FOR PROFESSIONAL SERVICES  
City of Olathe, Kansas**

This Supplemental Agreement made this 19<sup>th</sup> day of November, 2019, by and between the City of Olathe, hereinafter referred to as the "City", and Integrity Locating Services, LLC hereinafter referred to as the "Contractor".

WITNESSETH:

WHEREAS, the City and Contractor have previously entered into an Agreement, dated December 5, 2017 ("the Agreement"), For the location of city-owned underground utilities, Project Number 8-C-001-18 hereinafter referred to as the "Project"; and

WHEREAS, Section V, A, Paragraph 6 of the agreement provides the city with an option to extend the contract for two additional (1) year periods ending December 31, 2020.

WHEREAS, this Supplemental Agreement No. 2 between the parties heretofore is to provide an extension of locating services from January 1, 2020 through December 31, 2020 for the project.

WHEREAS, the City is desirous of entering into Supplemental Agreement No. 2 to pay the Contractor for the extension of services rendered to the City Related to the Project; and

WHEREAS, the City is authorized and empowered to contract with the Contractor for the necessary extension of locating services under the Agreement, and necessary funds for the payment of said services related to the Project are available and authorized under the Agreement;

NOW THEREFORE, the parties hereby agree as follows:

- A. The location of City-owned underground utilities shall continue through December 31, 2020. The original contract completion date of December 31, 2018 in section II, D, Paragraph 1 of the agreement is hereby amended as follows: All work must be completed on or before December 31, 2020.
- B. The total fee for the aforementioned extension of locating services provided pursuant to this Supplemental Agreement No. 2 is \$245,000, which raises the total fee for all services provided under the Agreement from \$510,000 to

\$755,000.

IN ALL OTHER RESPECTS, the terms and conditions of the Agreement will remain in full force and effect, except as specifically modified by this Supplemental Agreement No. 2, including all policies of insurance which will cover the work authorized by this Supplemental Agreement No. 2



IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement No. 2 to be executed as of the day and year first above written.

**CITY OF OLATHE, KANSAS**

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

Michael E. Copeland, Mayor

ATTEST:

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

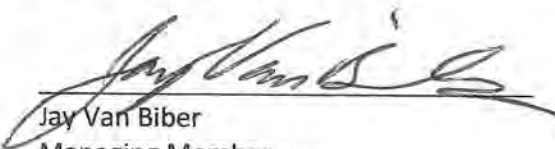
(Seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney/Deputy City Attorney/  
Assistant City Attorney

**INTEGRITY LOCATING SERVICES, LLC**

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

  
Jay Van Biber  
Managing Member



# City of Olathe

## COUNCIL AGENDA ITEM

---

**MEETING DATE:** 11/19/2019

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**DEPARTMENT:** Public Works

**STAFF CONTACT:** Mary Jaeger / Beth Wright

**SUBJECT:** An agreement with ATMOS for utility relocations for the Lone Elm Road, Old 56 Hwy to 151<sup>st</sup>, Improvements Project, PN 3-C-084-17.

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**ITEM DESCRIPTION:**

Consideration of a Relocation and Reimbursement Agreement with ATMOS Energy Corporation for the Lone Elm Road, Old 56 Hwy to 151<sup>st</sup>, Improvements Project, PN 3-C-084-17.

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**SUMMARY:**

This agreement is in place to relocate the necessary portions of the ATMOS utility lines located along Lone Elm Road between Old 56 Highway and 151<sup>st</sup> Street. This relocation is necessary to move the utility to a location that will allow for the City of Olathe to construction the improvements associated with the Lone Elm Road, Old 56 Hwy to 151<sup>st</sup>, Improvements Project.

ATMOS has provided an estimated total cost of \$130,161 for the relocation work. Olathe's portion of the estimated cost is \$76,014. This estimate reflects 58.4% of the total cost of relocation of the utility equipment located within existing utility easements along the corridor. These costs include all materials, construction, labor, survey, inspection, and other costs necessary to complete the relocations in the area.

The relocation of these lines is tentatively scheduled to begin in this month with completion by the end of 2019.

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**FINANCIAL IMPACT:**

Funding for the Lone Elm Road, Old 56 Hwy to 151<sup>st</sup>, Improvements Project, as approved in the 2019 Capital Improvement Plan, includes:

GO Bonds	\$13,675,000
CARS	\$ 2,000,000
STP	\$ 3,785,000
<b>Total</b>	<b>\$19,460,000</b>

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**ACTION NEEDED:**

Approval of a Relocation and Reimbursement Agreement with ATMOS Energy Corporation for the Lone Elm Road, Old 56 Hwy to 151<sup>st</sup>, Improvements Project, PN 3-C-084-17.

---

**ATTACHMENT(S):**

- A: Relocation and Reimbursement Agreement
  - B: Project Fact Sheet
  - C: Project Location Map
-

**RELOCATION AND REIMBURSEMENT AGREEMENT**

**THIS RELOCATION AND REIMBURSEMENT AGREEMENT (the "Agreement")**, is made and entered into this day of October 14, 2019 by and between the **CITY OF OLATHE, KANSAS**, a Kansas Municipality, hereinafter referred to as "**City**" whose mailing address is 100 E. Santa Fe Street, P.O. Box 768, Olathe, Kansas 66051-0768, and **ATMOS ENERGY CORPORATION**, a Texas Corporation authorized to conduct business in the State of Kansas, successor in interest to United Cities Gas Company, Inc., and Union Gas Corporation, Inc.), hereinafter referred to as "**Company**", whose mailing address is P.O. Box 650205, Dallas, TX 75265-0205 (collectively, the "**Parties**" and each individually, a "**Party**").

**WITNESSETH:**

**WHEREAS**, Company is the owner of a Natural Gas Pipeline (the "**Pipeline**"), located in easements obtained by Union Gas Corporation, Inc. (predecessor in interest to the Company) dated December 27, 1972, July 8, 1975 and April 14, 1982 described and recorded at Books 880, 1059 and 1752 Pages 359, 842, 297 and 299 respectively in the Register of Deeds Office, Johnson County, Kansas, (the "**Easement**") being more particularly identified on **Exhibit A, attached hereto and made a part hereof**; and

**WHEREAS**, City owns a public road right-of-way lying in the NE and SE quarter of Section 3, 14S, 23E and the NW and SW quarter of 2, 14S, 23E by virtue of Improve System of Road Papers recorded in Book XX Page XX in the Register of Deeds Office, Johnson County, Kansas; and

**WHEREAS**, City desires that the Pipeline be relocated in connection with improvements being made by the City to Lone Elm Road ( Old 56 Hwy to 151<sup>st</sup> Street ) (the "**Improvements**") located in part of the Northeast Quarter of Section the and Southeast quarter of Section 3, 14S, 23E and the Northwest and Southwest quarter of 2, 14S, 23E 1, 14S, 23E in Johnson County, Kansas; and

**WHEREAS**, under the terms of this Agreement, Company is willing to relocate the Pipeline (install new pipeline and purge, cap and abandon the old pipeline in place) to accommodate the Improvements;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual promises of the Parties herein contained, Company and City hereby agree as follows:

1. Company will relocate, adjust, and/or protect the Pipeline by abandoning 770' of plastic main and service and relocating with approximately 270' 6" high pressure HDPE main 380' of 2" HDPE main and 120' of 1 1/4" HDPE service line, to clear the proposed roadway improvements as shown on **Exhibits A and B, attached hereto and made a part hereof**, (the "**Work**") located within the Easement and the public road right-of-way for the Improvements, as shown on **Exhibit A**. Company further agrees to furnish or subcontract all labor, tools, materials and equipment

necessary for the Work, PROVIDED CITY AGREES TO PAY ITS PROPORTIONATE SHARE OF ALL COSTS ATTRIBUTABLE THERETO.

2. The costs for the Work are estimated to be (\$ 130,161.00) (one hundred thirty thousand, one hundred sixty-one and 00 cents) (hereinafter referred to as the "Estimated Costs") as shown on **Exhibit B attached hereto and made a part hereof**. The Company will – account for the Actual Costs of the construction, relocation and inspection by using actual and related costs accumulated in accordance with standard work order accounting procedures, and the Company shall keep a detailed and accurate account of all labor, materials, supplies, incidentals, administrative, engineering, inspection, and other necessary cost involved in such work. The City, or any other authorized agent of the City shall have access at all reasonable times to such Company records. It is understood that these Company records are kept at the Company's divisional office located in Denver, CO and all costs incurred by the City related to the inspection of the project records shall be borne by the City.
3. For purposes of this Agreement, "Actual Costs" shall include all fees and expenses incurred by Company both before and after execution of this Agreement for engineering, operations, land, attorneys, appraisers, and other experts, in connection with the negotiation of this and other Agreements with the City pertaining to the Work, the negotiation and acquisition of easements whether through negotiated settlements or condemnation, other legal and appraisal costs, and the handling of encroachment work in connection with the project, but limited to the Scope, Assumptions, and Amount set forth in **Exhibit B**.
4. City agrees to reimburse Company its Actual Costs for the Work (the "Reimbursement"). An itemized invoice shall be sent to the City by Company reflecting the amount equal to 58.4 % of the estimated costs incurred by Company for the Work. This percentage will reimburse and pay to the Company all of the Company's cost of construction, relocation and/or inspection of those parts of the Pipeline located within private easement areas in accordance with **Exhibit A**. Within thirty (30) days after the receipt of an invoice from Company, City shall pay the Reimbursement to Company at the following address:

**ATMOS ENERGY CORPORATION**

P.O. Box 841425

Dallas, TX 75284-1425

5. In the event the Actual Costs for the Work estimated by Company exceed the Reimbursement, the Parties agree to adjust the payment due Company from City by execution of a Supplemental Agreement in substantially the form of **EXHIBIT C attached hereto and made a part hereof**. Company reserves the right to adjust hourly rates and equipment charges to the effective current year hourly rates and charges for services provided under future supplemental agreements. If the Company anticipates costs will exceed the reimbursement, it will inform the City in writing and work with the City to mitigate such cost increases.

6. In the event that the Actual Costs for the Work are less than the Reimbursement payable herein, Company shall return to City the balance of the Reimbursement advanced within thirty (30) days of the date that Company issues a Certificate of Full Completion (as defined herein) for the Work and provides such Certificate to City. "Full Completion" shall mean that the Company shall have completed all of the Work. The Certificate of Full Completion shall be in substantially the form attached hereto as **Exhibit E, attached hereto and made a part hereof**. The City shall, within ten (10) days following delivery of the Certificate of Full Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Full Completion, and, if satisfied, shall promptly notify Company in writing. Such notice to Company shall constitute City's acceptance of the Work and full satisfaction of the Company's obligations hereunder.
7. In the event the City fails to pay the Reimbursement as required by this Agreement (and as described in Paragraph 4, above), Company shall have the right to stop the Work, without obligation or liability, and the Pipeline shall remain in place as it exists on the date of this Agreement and/or Company, at its election, shall have the right to take whatever actions are deemed necessary by Company in its sole discretion to protect the Pipeline.
8. In the event City, for whatever reason, requires additional work to be done or materials to be used by Company not contemplated by or in Company's estimate of the Work, as shown on **Exhibit C**, City agrees to pay Company all additional Actual Costs incurred by Company to satisfy such additional requirements made by City. Company further reserves the right, upon written demand, to secure additional advances from City in the event City alters its plans in any manner or changes the scope of the Work. Any such advances shall be agreed upon in writing by Company and City under a Supplemental Agreement as set forth in Paragraph 5 above and **Exhibit C**.
9. Subject to natural gas commitments and other delays caused by force majeure, Company will endeavor with all due diligence to complete the Work before May 2020.
10. The Company agrees to indemnify and hold harmless the City against and from any and all liability, loss and expense and shall defend all claims resulting from loss of life or damage or injury to persons or property where causation is directly resulting from the work performed by the Company, except said indemnification shall not apply to those claims resulting from the negligent acts of agents or employees of the City. To the extent permitted by law, and subject to the provisions of the Kansas Tort Claims Act, City agrees to indemnify and hold Company, its employees, agents independent contractors and consultants (collectively, the "City Indemnified Parties") harmless from and against any and all suits, claims, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorneys' fees, resulting from, arising out of, or in any way connected with:

- a. the negligence or willful misconduct of City its employees, agents, independent contractors and consultants in connection with the performance of the work performed on the Improvements; and
- b. any delay or expense resulting from any litigation filed against the City.

The City's indemnification of the Company shall not apply to claims resulting from the willful misconduct or negligence acts of Company or its employees, agents, contractors and consultants.

This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act ("RCRA"; 42 U.S.C. Section 6901 et seq.) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Company is permitted to conduct any of Company's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

11. At all times while this Agreement is in effect, Company shall maintain insurance as required by **Exhibit D, attached hereto and made a part hereof**. In compliance with the provisions contained in Exhibit D, Company has provided the City a Self-Insurance Letter referencing the project relating to the improvement; a Revised Certificate of Liability Insurance evidencing excess liability and automobile liability referencing the project relating to the Improvement and a Certificate of Liability Insurance evidencing workers' compensation and referencing the project relating to the Improvement.
12. Company, for itself, its successors and assigns, and any third party with whom Company has contracted for the performance of the Work, agrees that in performance of the Work the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, disability, national origin or ancestry.
13. Nothing in this Agreement shall in any way modify, waive or abandon any right, title or interest Company has in and to the above described easement.
14. The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

15. This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas, including, but not limited to, the Kansas Cash Basis law. The unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision(s) , or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In the event it shall become necessary for either Party to commence litigation to enforce any provisions of this Agreement, in addition to any other relief awarded, the prevailing Party shall be entitled to recover its costs of suit, including its reasonable attorney's fees. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas, or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.
16. The terms of this Agreement shall constitute covenants running with the land and shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns. The obligations of the Parties herein shall survive the termination of this Agreement, unless otherwise provided. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.
17. 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. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.
18. This Agreement may be amended only by the mutual consent of the Parties and by the execution of said amendment by the Parties or their successors in interest in writing.
19. Time is of the essence of this Agreement. The Parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
20. Pursuant to Article V of City Ordinance No. 10-64, the City grants the Company the right to construct relocated pipelines and facilities within the new road right-of-way, including any modifications and/or improvements to those relocated pipelines and facilities after they have been constructed. In the event Company is required to subsequently relocate the pipeline and facilities being relocated as a result of this Agreement, the City shall be required to reimburse Company for the cost associated with the subsequent relocation since those pipeline facilities were originally located in a private easement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, we hereunto set our hands and deals on the day and year below  
our signatures indicated.

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_  
Michael Copeland

Title: Mayor

State of Kansas )  
 ) SS  
County of Johnson)

## Corporate Acknowledgment

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, personally appeared \_\_\_\_\_, who being duly sworn, did say the he/she is \_\_\_\_\_ for The City of Olathe, Kansas, a municipal corporation duly organized in accordance with the laws of the state of Kansas, and said instrument was signed on behalf of \_\_\_\_\_ and \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said municipality.

In Testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year written above.

Notary Public  
My Commission Expires: \_\_\_\_\_



ATMOS ENERGY CORPORATION

By: Bart Armstrong  
Bart Armstrong

Title: Vice President, Operations

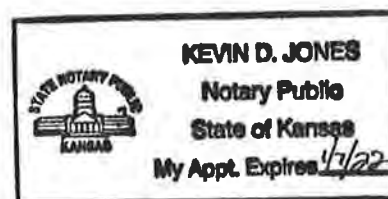
State of Kansas     )  
                              )  
County of Johnson    )     SS

Corporate Acknowledgment

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on the 8<sup>th</sup> day of NOVEMBER, 2019, personally appeared **Bart Armstrong**, who being duly sworn, did say the he is Vice President, Operations for the Colorado Kansas Division of Atmos Energy Corporation, a Texas Corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and BART ARMSTRONG acknowledged said instrument to be the free act and deed of said corporation.

In Testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year written above.

Kevin D. Jones  
Notary Public  
My Commission Expires: 1/7/2022



**EXHIBIT A**  
**ATMOS ENERGY CORPORATION EASEMENT**  
**AND AREA TO PERFORM WORK ALONG THE IMPROVEMENTS**

PLAN: L&L & Long  
SCALE  
0 20 40

SW 1/4 SEC 2-14-23

UNPLATTED

LEGEND

- EXIST. PAVEMENT AND DRAINAGE
- EXIST. PAVEMENT
- EXIST. DRAINAGE
- EXIST. UTILITY
- EXIST. CONSTRUCTION LIMITS
- EXIST. CONSTRUCTION LIMITS

- (101) Sta. 63+03.05, 45.00' LT. Remove and Replace 5'x3' Curb Inlet. Install 120' LF 24" RCP (N). Install 15' LF 15" RCP (E). Connected to Ex. 15" RCP with Concrete Pipe Collar. Connected to Ex. 15" RCP (S).
- (102) Sta. 63+03.52, 44.52' RT. Remove and Replace 5'x3' Curb Inlet. Install 6' LF 15" RCP (W). Connected to Ex. 15" RCP with Concrete Pipe Collar.
- (103) Sta. 64+73.32, 41.48' LT. Remove and Replace 5'x3' Curb Inlet. Install 120' LF 24" RCP (N). Install 15' LF 15" RCP (E). Connected to Ex. 15" RCP with Concrete Pipe Collar. Connected to Ex. 15" RCP (S).
- (104) Sta. 64+73.32, 41.48' RT. Remove and Replace 5'x3' Curb Inlet. Install 120' LF 24" RCP (N). Install 15' LF 15" RCP (E). Connected to Ex. 15" RCP with Concrete Pipe Collar. Connected to Ex. 15" RCP (S).
- (105) Sta. 65+01.43, 39.50' LT. Remove and Replace 5'x3' Curb Inlet. Install 120' LF 24" RCP (N). Install 15' LF 15" RCP (E). Connected to Ex. 15" RCP with Concrete Pipe Collar. Connected to Ex. 15" RCP (S).
- (106) Sta. 65+02.00, 39.50' RT. Remove and Replace 5'x3' Curb Inlet. Install 120' LF 24" RCP (N). Install 15' LF 15" RCP (E). Connected to Ex. 15" RCP with Concrete Pipe Collar. Connected to Ex. 15" RCP (S).

# Exhibit A

SE 1/4 SEC 3-14-23

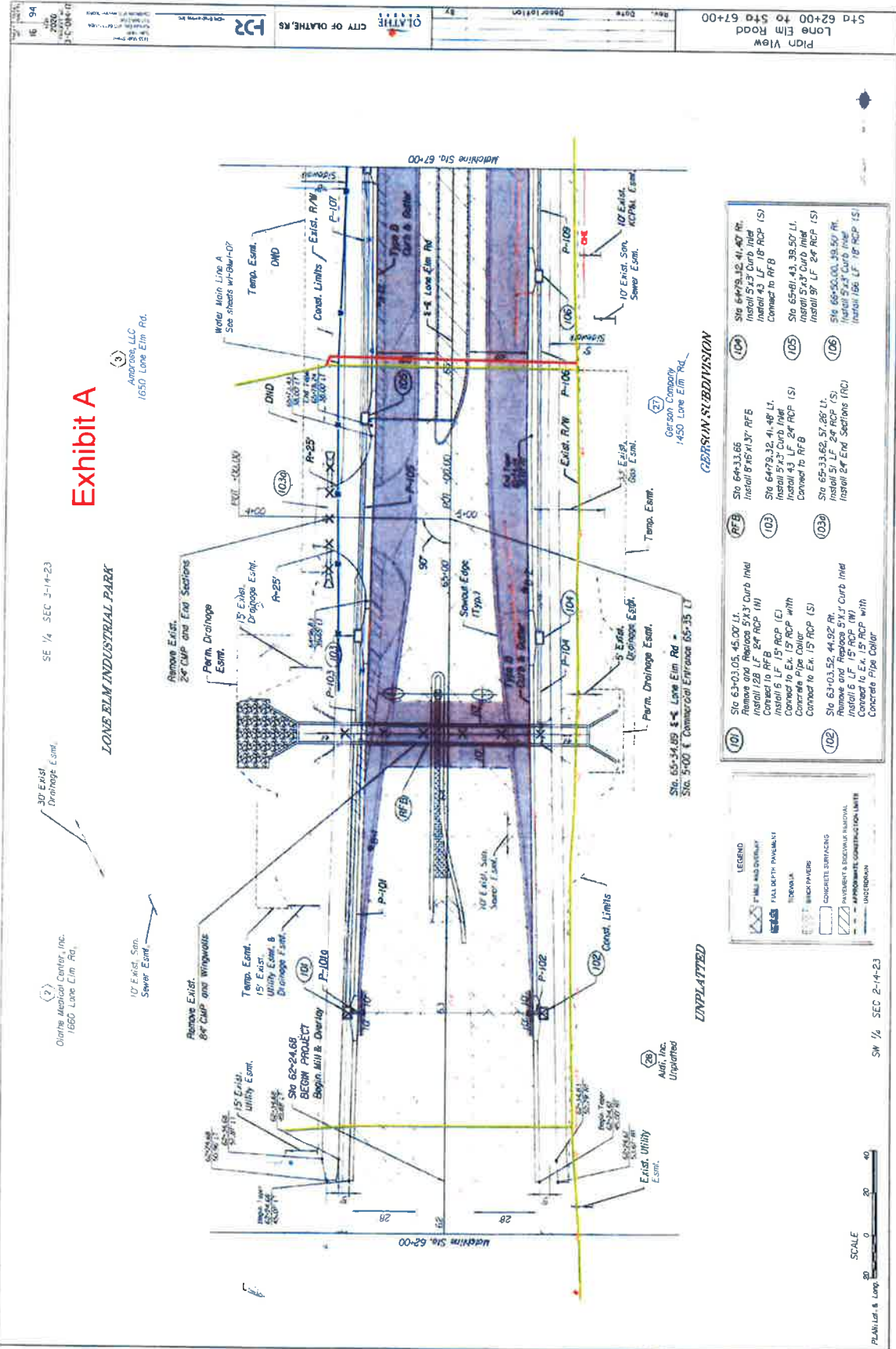
(2) Olathe Medical Center, Inc.  
1660 Lone Elm Rd.

LONE ELM INDUSTRIAL PARK

(3) Anderson, LLC  
1650 Lone Elm Rd.

10' Exist. San. Sewer Exst.

30' Exist. Drainage Exst.



CDERSON SUBDIVISION

(27) Carlson Company  
1450 Lone Elm Rd.

(28) Ault, Inc.  
Unplatted

Plan View  
Lone Elm Road  
Sta 62+00 to Sta 67+00



## 12

Cresficon, Inc.  
1001 Old 56 Hwy



- (210)** S1a 99-80.44, 39.50' Lt.  
Install 5'X3' Curb Inlet  
Install 155 LF 15" RCP (S)
- (211)** S1a 99-80.71, 39.50' Rt.  
Install 5'X3' Curb Inlet  
Install 136 LF 15" RCP (S)

NW 1/4 SEC 2-14-23





- Exist: R/W

12  
Cresticon, Inc.  
1001 Old 56 Hwy

*Proposed storm sewer & drainage improvements for Old 56 Highway are shown to assemble the anticipated requirements for the DLT intersection. Detailed calculations will be completed after Field Check. Pipe profiles have not been created for Old 56 Highway drainage.*

NE 1/4 SEC 3-14-23

*SOUTHWEST BUSINESS PARK*

17

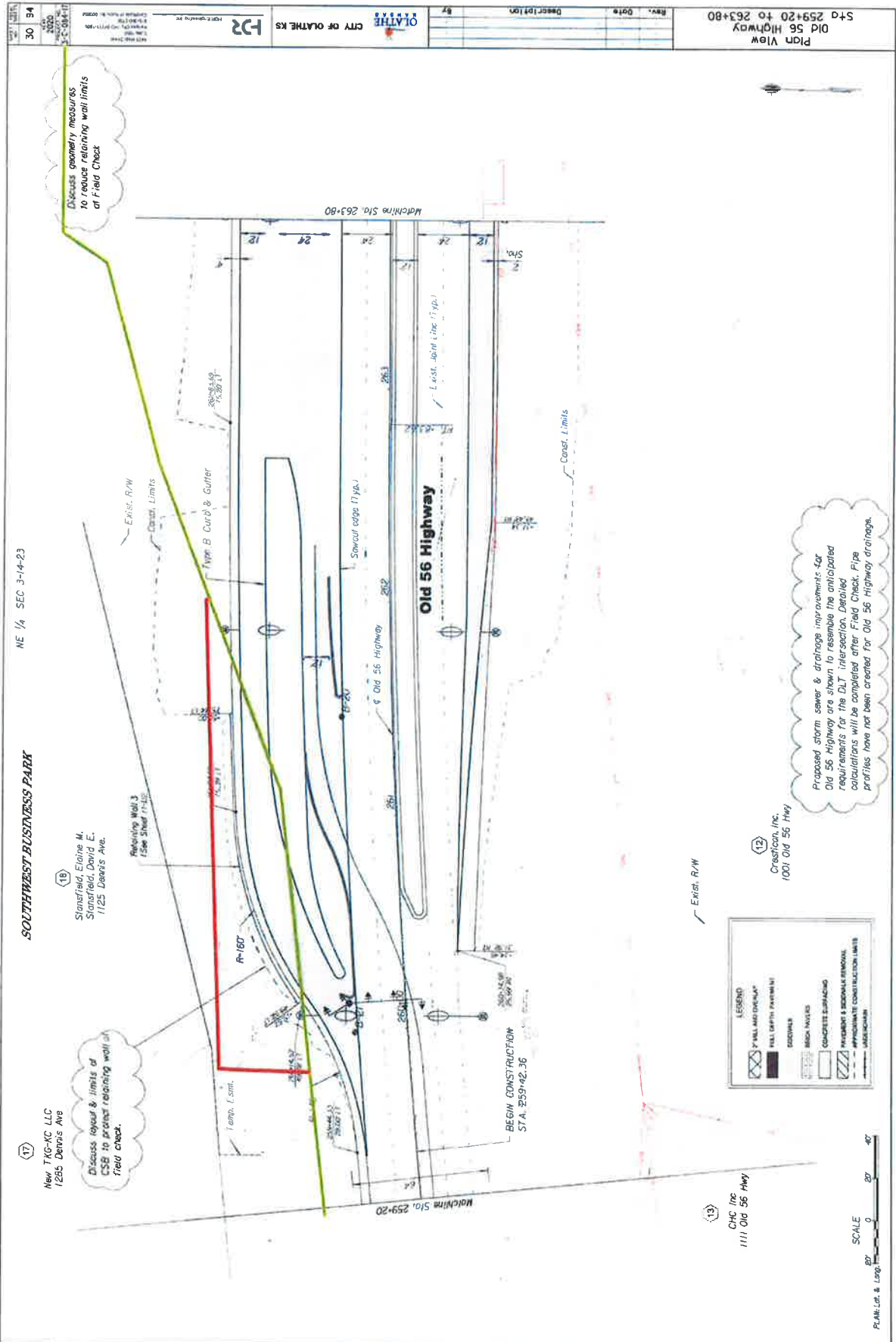
New TKG-KC LLC  
1285 Dennis Ave



Stansfield, Elaine M.  
Stansfield, David E.  
1125 Dennis Ave.

Discuss layout & limits of CSB to protect retaining wall at field check.

Discuss geometry measures  
to reduce retaining wall limits  
at Field Check



U.S. Form 104-A

**1361056**  
**RIGHT OF WAY CONTRACT**

FOR AND IN CONSIDERATION of the sum of ONE DOLLAR to us in hand paid, receipt of which is hereby acknowledged, and other valuable considerations WAREHOUSE HOLDING CO., a limited partnership % Ed Scharf

2222 Avenue of the Stars #1005  
Los Angeles, California 90067

do hereby grant to Union Gas System, Inc., Independence, Kansas, successors or assigns, the right of way to install, maintain, protect, alter, repair, operate, remove and replace pipe lines, meters, regulators and other equipment necessary for the transportation, regulation and measurement of gases on, over and through certain lands, situated in Johnson County, State of Kansas described as follows:

An easement 2 Rods (33 feet) in width East of and adjacent to the West property line (East right-of-way line, Lone Elm Road) of the following described tract:

The West 825 feet of the Southwest 1/4 of Section 2, Township 14, Range 23,  
in the City of Olathe, Johnson County, Kansas.

together with right of unimpaired access to said pipe line and the rights of ingress and egress on, over and through said land for any and all purposes necessary and incident to the exercise by said grantee of the rights granted hereunder.

The said grantors shall have the right to fully use and enjoy the said premises except as the same may be necessary for the purposes herein granted to the said grantee. Grantors agree not to build, create or construct, any obstruction, engineering works, or other structure over said pipe line or lines, nor permit same to be done by others. Grantee agrees to pay any damages which may arise to crops and fences by reason of its operations on this land.

As a part of the consideration hereinabove set forth Grantors hereby grant to Grantee the right to construct and operate an additional pipe line or pipe lines alongside said first pipe line through said land on the payment of the roddage consideration above mentioned.

The terms, conditions and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto and the contract may be assigned by either party. It is agreed that all statements and representations made by the parties or their agents in negotiating this agreement are merged herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 20th

day of August, A. D., 19 81 Edward Scharf (SEAL)

Warehouse Holding Co.

Signed, Sealed and Delivered in the presence of STATE OF KANSAS } (SEAL)

1981 } (SEAL)

12 APR 14 PM 12 58 0 (SEAL)

1 RUG 288-81

RECEIVED  
 REG. CLERK'S OFFICE

BY DEP.

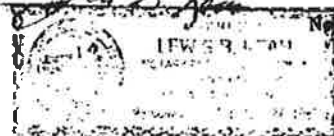
[VOL 1752 PAGE 299]

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES } ss.

On this 20th day of August, 1981, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Edward Scharf, to me known to be the General Partner of Warehouse Holding Co., a limited partnership,  
to me known to be the identical  
person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal this 20th day of August, 19 81

My commission expires \_\_\_\_\_





U.S.A. Form 104

# 337495✓ RIGHT OF WAY CONTRACT

FOR AND IN CONSIDERATION of the sum of ONE DOLLAR to us in hand paid, receipt of which is hereby acknowledged, ~~AND WHEREBY THE GRANTOR HEREBY GRANTS~~ ~~FOR WHICH HE RECEIVES AND ACCEPTS THE SUM OF ONE DOLLAR TO US IN HAND PAID~~ ~~RECEIVED~~

I. Robert Carlton, unmarried

Address \_\_\_\_\_ do  
~~HEREBY~~ hereby grant to UNION GAS SYSTEM, INC., of Independence, Kansas, successors or assigns, the right of way to lay, maintain, protect, alter, repair, operate, remove and relay pipe lines for the transportation of liquids and/or gases and if necessary erect, maintain and operate telegraph or telephone lines on, over, and through certain lands, situate in \_\_\_\_\_  
 Johnson County, State of Kansas described  
 as follows:

A strip of land two (2) rods in width running north and south along the west property line of the west 825 feet of the SW 1/4 of Section 2, Township 14 South, Range 23 East, now in the city of Olathe, Johnson County, Kansas.

together with right of unimpaired access to said pipe line and the rights of ingress and egress on, over and through said land for any and all purposes necessary and incident to the exercise by said grantee of the rights granted hereunder.

The said grantors shall have the right to fully use and enjoy the said premises except as the same may be necessary for the purposes herein granted to the said grantee. Grantors agree not to build, create or construct, any obstruction, engineering works, or other structure over said pipe line or lines, nor permit same to be done by others. Grantee agrees to pay any damages which may arise to crops and fences by reason of its operations on this land.

As a part of the consideration hereinabove set forth Grantors hereby grant to Grantee the right to construct and operate an additional pipe line or pipe lines alongside said first pipe line through said land on the payment of the roddage consideration above mentioned.

The terms, conditions and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto and the contract may be assigned by either party. It is agreed that all statements and representations made by the parties or their agents in negotiating this agreement are merged herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this

day of December, A. D., 1972. J. Robert Carlton (SEAL)

Signed, Sealed and Delivered in the presence of \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
 (SEAL)

\_\_\_\_\_  
 (SEAL)

STATE OF Missouri  
COUNTY OF Richmond

On this 15th day of December, 1972, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared J. Robert Cullen

\_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal this 15th day of December, 1972

My commission expires 3-4-76 \_\_\_\_\_ Notary Public.

STR \_\_\_\_\_  
Line \_\_\_\_\_  
Township \_\_\_\_\_  
County \_\_\_\_\_

Right of Way  
FROM

TO

STATE OF KANSAS } SS  
COUNTY OF JOHNSON }  
FILED FOR RECORD }  
1972 DEC 27 PM 3 41 8  
Marguerite M. Brenner  
MARGUERITE M. BRENNER  
REGISTER OF DEEDS  
No. \_\_\_\_\_  
By \_\_\_\_\_ DEP

VOL 880 PAGE 360

U.S. Form 104-A

1361055

## RIGHT OF WAY CONTRACT

FOR AND IN CONSIDERATION of the sum of ONE DOLLAR to us in hand paid, receipt of which is hereby acknowledged, and other valuable considerations

CLAIRE L. WALLINGFORD

480 East Cedar

Olathe, Kansas 66061

do hereby grant to Union Gas System, Inc., Independence, Kansas, successors or assigns, the right of way to install, maintain, protect, alter, repair, operate, remove and replace pipe lines, meters, regulators and other equipment necessary for the transportation, regulation and measurement of gases on, over and

through certain lands, situated in Johnson County, State of Kansas

described as follows: An easement 1 rods (16 feet) in width, East of and adjacent to the West property line (East right-of-way line, Lone Elm Road), of the South 15 acres of the following described tract of land:

All of the Northwest 1/4 of Section 2, Township 14, Range 23, Johnson County, Kansas, that lies North of the Northerly right-of-way line of the Atchison, Topeka and Santa Fe Railroad and South of the Southerly right-of-way line of U.S. Highway No. 50, now known as U.S. Highway No. 56, as now located, and West of the following described line: Beginning at a point on the Northerly right-of-way line of said railroad and 811 feet East of the West line of said Section 2; thence Northerly to a point on the Southerly right-of-way of said highway and 815.6 feet East of the West line of said Section 2.

together with right of unimpaired access to said pipe line and the rights of ingress and egress on, over and through said land for any and all purposes necessary and incident to the exercise by said grantee of the rights granted hereunder.

The said grantors shall have the right to fully use and enjoy the said premises except as the same may be necessary for the purposes herein granted to the said grantee. Grantors agree not to build, create or construct, any obstruction, engineering works, or other structure over said pipe line or lines, nor permit same to be done by others. Grantee agrees to pay any damages which may arise to crops and fences by reason of its operations on this land.

As a part of the consideration hereinabove set forth Grantors hereby grant to Grantee the right to construct and operate an additional pipe line or pipe lines alongside said first pipe line through said land on the payment of the roddage consideration above mentioned.

The terms, conditions and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto and the contract may be assigned by either party. It is agreed that all statements and representations made by the parties or their agents in negotiating this agreement are merged herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 13<sup>th</sup>

day of April, A. D. 19 72 Claire L. Wallingford (SEAL)  
Claire L. Wallingford

Signed, Sealed and Delivered in the presence of

Claire L. Wallingford (SEAL)  
STATE OF KANSAS  
COUNTY OF JOHNSON  
APR 14 1972

APR 14 PM 12 57 6

702

RECORDS SECTION

RY .DEF.

ERUG 288-81

1752 PAGE 297

STATE OF Kansas } ss.  
COUNTY OF LeFlore

On this 13 day of April, 1912, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared John W. Hollister, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal this 17 day of April, 1912

Charles J. Jones  
Notary Public.  
My commission expires Oct. 4, 1913

1030728 ✓

U.G.S. Form 104-A

## RIGHT OF WAY CONTRACT

STATE OF KANSAS  
COUNTY OF JOHNSON } SS  
FILED FOR RECORD

FOR AND IN CONSIDERATION of the sum of ONE DOLLAR to us in hand paid, receipt of which is hereby acknowledged, and other valuable considerations

1975 SEP 8 PM 5 03.6

Pitman Construction Co., Inc. Box 620 Olathe, Kansas

Margaret M. Brauner  
THURGOOD & LOREN  
REGISTER OF DEEDS

BY \_\_\_\_\_ DEP.

do hereby grant to Union Gas System, Inc., Independence, Kansas, successors or assigns, the right of way to install, maintain, protect, alter, repair, operate, remove and replace pipe lines, meters, regulators and other equipment necessary for the transportation, regulation and measurement of gases on, over and through certain lands, situate in \_\_\_\_\_ County, State of Kansas described as follows:

one rod along the south property line in the Olatha Industrial Tracts

Lot 3, in the SE ¼ of NE ¼ of 3-14-23

together with right of unimpaired access to said pipe line and the rights of ingress and egress on, over and through said land for any and all purposes necessary and incident to the exercise by said grantee of the rights granted hereunder.

The said grantors shall have the right to fully use and enjoy the said premises except as the same may be necessary for the purposes herein granted to the said grantee. Grantors agree not to build, create or construct, any obstruction, engineering works, or other structure over said pipe line or lines, nor permit same to be done by others. Grantee agrees to pay any damages which may arise to crops and fences by reason of its operations on this land.

As a part of the consideration hereinabove set forth Grantors hereby grant to Grantee the right to construct and operate an additional pipe line or pipe lines alongside said first pipe line through said land on the payment of the roddage consideration above mentioned.

The terms, conditions and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto and the contract may be assigned by either party. It is agreed that all statements and representations made by the parties or their agents in negotiating this agreement are merged herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 4th

day of September, A. D., 1975. S.A. Stockdale (SEAL)

S.A. Stockdale President

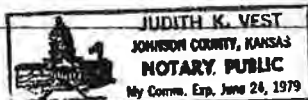
Signed, Sealed and Delivered in the presence of

Judith K. Vest

(SEAL)

(SEAL)

(SEAL)



VOL 1059 PAGE 842

STATE OF Kansas  
COUNTY OF Johnson } ss.

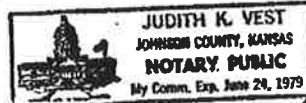
On this 4th day of September, 1975, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared J. R. Stockdale

\_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as a free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal this 4th day of September, 1975.

Judith K. Vest  
Notary Public.

My commission expires June 24, 1979



VOL 1059 PAGE 843



October 14, 2019

**Exhibit "B"**

**CITY PROJECT**

**Lone Elm Road**

**( Old 56 Hwy to 151<sup>st</sup> Street )**

**City of Olathe Project No.3-C-084-17**

**Atmos Project NO. 060.44331**

Contractor Labor:	\$70,100.00
Material:	\$ 10,000.00
Company Labor:	\$ 7,200.00
Indirect company labor, with overheads and benefits:	\$ 42,861.00
Total Cost:	\$ 130,161.00
Reimbursement @ 58.4%:	\$ 76,014.00
Atmos Responsibility 41.6%	\$ 54,147.00

## EXHIBIT C

### SUPPLEMENTAL AGREEMENT NO. \_\_ TO RELOCATION AND REIMBURSEMENT AGREEMENT CITY OF OLATHE, KS

**THIS SUPPLEMENTAL AGREEMENT (the "Supplemental Agreement")**, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **CITY OF OLATHE, KANSAS**, a Kansas Municipality hereinafter referred to as "**City**" whose mailing address is 100 E. Santa Fe Street, P.O. Box 768, Olathe, Kansas 66051-0768, and **ATMOS ENERGY CORPORATION**, a Texas Corporation authorized to conduct business in the State of Kansas, successor in interest to United Cities Gas Company, Inc., and Union Gas Corporation, Inc.), hereinafter referred to as "**Company**", whose mailing address is P.O. Box 650205, Dallas, TX 75265-0205 (collectively, the "Parties" and each individually, a "Party")  
WITNESSETH:

WHEREAS, City and Company have previously entered into that certain Relocation and Reimbursement Agreement, dated ("the Agreement"), pursuant to which, in connection with the Improvements, the City agreed to pay the Actual Costs incurred by Company in performing the Work hereinafter referred to as the "Project"; and

WHEREAS, the Agreement provides that the Reimbursement to be paid to Company by City may be adjusted by a Supplemental Agreement; and

WHEREAS, this Supplemental Agreement No. 1 is to provide reimbursement for up to 100% of the additional estimated costs of the Work as outlined in **Exhibit F** to this Supplemental Agreement No. 1; and

WHEREAS, Company has incurred certain additional costs associated with the Work; and

WHEREAS, the City is authorized and empowered to contract with the Company for the necessary additional costs related to the Work under the Agreement, and necessary funds for the payment of said costs are available.

NOW THEREFORE, for and in consideration set forth in the Agreement, the forgoing recitations and the promises and covenants contained herein, the Parties hereby agree as follows:

- A. That the Compensation under the Agreement be amended by adding the fees as indicated in **Exhibit G** attached hereto and made a part hereof, which shall be in addition to the fees provided in the Agreement. City agrees to pay Company an amount not to exceed (), including reimbursable. This Supplemental Agreement No. 1 raises the total estimated cost of the Project to \$, and the maximum Actual Costs paid by City to Company to \$ for the Work. This is the total of the original fee of \$ for the Agreement, plus \$ for this Supplemental Agreement. Any compensation for additional costs related to the Work



incurred by Company and owed by City shall be agreed upon in a subsequent Supplemental Agreement.

- B. That **Exhibit C** of the Agreement is hereby amended to include the costs and scope of work as outlined in **Exhibit F** attached hereto and made a part thereof.

IN ALL OTHER RESPECTS, the terms and conditions of the Agreement shall remain in full force and effect, except as specifically modified by this Supplemental Agreement 1, including all policies of insurance which shall cover the Work authorized by this Supplemental Agreement 1.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement No. 1 to be executed as of the day and year first above written.

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_  
City Manager

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**ATMOS ENERGY CORPORATION**

By: \_\_\_\_\_  
Bart Armstrong  
Vice President, Operations

## EXHIBIT D

### INSURANCE REQUIREMENTS

**A.** Company shall procure, and maintain as required, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the project. The cost of such insurance shall be included in the Company's bid.

**B.** Company shall maintain the following coverages and minimum limits.

1. Commercial General Liability: [ISO "occurrence" form or its equivalent] \$1,000,000 per occurrence limit and products - completed operations limit including explosion, collapse and underground. Any general aggregate limit should be at least \$2 million. Policy must include Hazardous Materials endorsement CG2278 or equivalent.
2. Business Auto Coverage: (*Owned and non-owned autos*) \$1,000,000 per occurrence 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. When workers compensation insurance policy is applicable "other states" coverage is required.
4. Umbrella Liability: minimum limit of \$1,000,000 excess of Commercial General Liability and Automobile Liability.
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 Company nor has the CITY assessed the risk that may be applicable to Company. Company shall assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverages. The Company's insurance shall be primary and any insurance or self-insurance maintained by the City shall be excess and not contribute with the coverage maintained by Company.

**C.** Additional Insured. The City shall be listed by ISO endorsement or its equivalent as additional insureds for the project. Any and all coverage available to the named insured is applicable to the additional insured. The Company'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 which includes products and completed operations.
2. The insurance coverages are to be provided by Kansas admitted insurance companies with a Best's rating of at least A-:VII. Those not admitted 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 describes coverages shall be the responsibility and at the sole risk of the Company.
4. The commercial general liability policy shall not contain an endorsement excluding contractual or completed operations liability.
5. 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.
6. 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 thirty (30) days' advance written notice has been given to the City.

**F.** Subcontractors. All coverages for subcontractors shall be subject to all of the requirements stated herein.



June 19, 2019

City of Olathe, Kansas  
100 E. Santa Fe Street  
P.O. Box 768  
Olathe, KS 66051-0768

RE: Self-Insurance General Liability

To Whom It May Concern:

Please be advised that Atmos Energy is insured for general liability in excess of \$1,000,000. The first \$1,000,000 is administered through a self-insured risk management program.

The self-insured risk management program will apply and respond to claims pursuant to Section 10 (Indemnification/Hold Harmless) of the Relocation and Reimbursement Agreement between the City of Olathe, KS and Atmos Energy Corporation.

Please contact the undersigned if there are questions concerning this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeannette Almanza", with a stylized flourish at the end.

Jeannette Almanza  
Lead Risk Management Analyst  
(972) 855-9774  
[jeannette.almanza@atmosenergy.com](mailto:jeannette.almanza@atmosenergy.com)



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
08/30/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  
MCGRIFF, SEIBELS & WILLIAMS, INC.  
P.O. Box 10265  
Birmingham, AL 35202

CONTACT  
NAME:  
PHONE (A/C, No, Ext): 800-476-2211 FAX (A/C, No):  
E-MAIL  
ADDRESS:

### INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A :Associated Electric & Gas Insurance Services Limited

INSURER B :

INSURER C :

INSURER D :

INSURER E :

INSURER F :

INSURED  
Atmos Energy Corporation  
Attn: Jeannette Almanza  
5430 LBJ Freeway, Suite 160  
Dallas, TX 75240

### COVERAGES

CERTIFICATE NUMBER: N9L8JPSZ

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 WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY						\$
A	UMBRELLA LIAB			XL5036608P	10/01/2019	10/01/2020	EACH OCCURRENCE \$ 2,000,000
	X EXCESS LIAB						AGGREGATE \$ 2,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$1,000,000						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
							\$
							\$
							\$
							\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

### CERTIFICATE HOLDER

### CANCELLATION

City of Olathe, Kansas  
100 E. Santa Fe Street  
P.O. Box 768  
Olathe, KS 66051-0768

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



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
09/20/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**  
Marsh USA Inc.  
4400 Comerica Bank Tower  
1717 Main Street  
Dallas, Texas 75201-7357  
Attn: Dallas.certs@marsh.com - Fax# 212-948-0519  
CN101222416--ALL-19-20\* ALWVC

<b>CONTACT</b>	
NAME:	
PHONE	FAX
(A/C, No, Ext):	(A/C, No):
E-MAIL	
ADDRESS:	
<b>INSURER(S) AFFORDING COVERAGE</b>	
NAIC #	
INSURER A : Travelers Property Casualty Co. Of America	25674
INSURER B : The Travelers Indemnity Company	25658
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

**INSURED**  
Almos Energy Corporation  
Attn: Jeannelle Almanza  
5430 LBJ Freeway, Suite 160  
Dallas, TX 75240

**COVERAGES** **CERTIFICATE NUMBER:** HOU-003150231-38 **REVISION NUMBER:** 33

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 SUBR INSD VVVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b>					
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR					EACH OCCURRENCE \$
						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
						GENERAL AGGREGATE \$
						PRODUCTS - COMP/OP AGG \$
						\$
	GEN'L AGGREGATE LIMIT APPLIES PER:					
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
	OTHER:					
A	<b>AUTOMOBILE LIABILITY</b>		TC2J CAP 152D6628	04/01/2019	04/01/2020	
	<input checked="" type="checkbox"/> ANY AUTO		Applies to AOS			COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS		(Except Autos registered in:			BODILY INJURY (Per person) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		LA, MS, TN & TX)			BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR					EACH OCCURRENCE \$
	<b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$
						\$
	DED <input type="checkbox"/> RETENTION \$					
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>		UB-5N448043-19-51-K	10/01/2019	10/01/2020	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N				X PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. EACH ACCIDENT \$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Where required by written contract, Certificate Holder is an Additional Insured under the Automobile Liability Policy as respects operations of the named insured.

## CERTIFICATE HOLDER

City of Olathe, Kansas  
100 E. Santa Fe Street  
P.O. Box 768  
Olathe, KS 66051-0768

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  
of Marsh USA Inc.

Manashi Mukherjee

*Manashi Mukherjee*

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**EXHIBIT E**  
**CERTIFICATE OF FULL COMPLETION**

*Pursuant to **Paragraph 6** of the Agreement, the City shall, within ten (10) days following delivery of this Certificate, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in this Certificate.*

---

**CERTIFICATE OF FULL COMPLETION**

The undersigned, **ATMOS ENERGY CORPORATION** (the “**Company**”), pursuant to that certain Agreement dated as of \_\_\_\_\_, 2014, between the **City of Olathe, Kansas** (the “**City**”) and the Company (the “**Agreement**”), hereby certifies to the City as follows:

1. That as of \_\_\_\_\_, 20\_\_\_\_, the relocation of the Pipeline (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. The Project has been completed in a workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement).
3. Lien waivers for applicable portions of the Project have been obtained, or, to the extent that a good faith dispute exists with respect to the payment of any construction cost with respect to relocation of the Pipeline, Company has provided the City with a bond or other security reasonably acceptable to the City.
4. This Certificate of Full Completion is being issued by the Company to the City in accordance with the Agreement to evidence the Company’s satisfaction of all obligations and covenants with respect to the Project.
6. The City’s acceptance of this Certificate shall evidence the satisfaction of the Company’s agreements and covenants to relocate the Pipeline.

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ATMOS ENERGY CORPORATION**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTED:**  
**CITY OF OLATHE, KANSAS**

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

Title: \_\_\_\_\_

(Insert Notary Form(s) and Legal Description)



**Project Fact Sheet**  
**Lone Elm Road, Old 56 Hwy to 151<sup>st</sup>,**  
**Improvements Project**  
**3-C-084-17**  
**November 19, 2019**

Attachment B

**Project Manager:** Beth Wright / Therese Vink

**Description:** This project will improve Lone Elm Road to a four-lane arterial section between Old 56 Highway and 151<sup>st</sup> Street along with geometric improvements at the intersection of Lone Elm Road and Old 56 Highway. Improvements will include storm sewer, street lights, on-street bike lanes, landscaping and sidewalks. Also included in this project will be modifications to the existing bridge over the railroad to provide pedestrian access.

**Justification:** This project is needed to address the additional capacity needs in the area.

**Comments:** The project has been selected to receive federal funding (STP) for construction in 2020.

<b>Schedule:</b>	<b>Item</b>	<b>Date</b>
Design:	RFQ	08/22/2017
	Consultant Selection	11/07/2017
	Land Acquisition	09/01/2019
	Final Design	11/22/2019 - Estimate
	Utility Relocations	12/31/2019 - Estimate
<b>Council Actions:</b>	<b>Date</b>	<b>Amount</b>
Project Authorization (Design)	11/07/2017	\$1,500,000
PSA with HDR	11/07/2017	\$1,052,500
Discussion/Presentation	09/04/2018	N/A
Project Authorization	09/18/2018	\$19,460,000
KDOT Agreement	04/02/2019	\$3,875,000
Supplemental No. 3	04/02/2019	\$86,561
ATMOS Agreement	11/19/2019	\$76,014
<b>Funding Sources:</b>	<b>Amount</b>	<b>CIP Year</b>
GO Bonds	\$13,675,000	2021
STP	\$ 3,785,000	2020
CARS	\$ 2,000,000	2020
<b>Expenditures:</b>	<b>Budget</b>	<b>Amount to Date</b>
Design	\$ 1,500,000	\$1,285,103
Land Acquisition	\$ 1,500,000	\$ 390,558
Staff	\$ 200,000	\$ 43,247
Construction	\$11,310,000	\$ 0
Utilities	\$ 1,500,000	\$ 3,075
Inspection	\$ 250,000	\$ 0
Inflation	\$ 1,000,000	\$ 0
<u>Contingency</u>	<u>\$ 2,200,000</u>	<u>\$ 2,694</u>
<b>Total</b>	<b>\$19,460,000</b>	<b>\$1,724,677</b>



# Lone Elm Road; Old 56 Highway to 151st St PN 3-C-084-17







# City of Olathe

## COUNCIL AGENDA ITEM

---

**MEETING DATE:** 11/19/2019

---

**DEPARTMENT:** Public Works

**STAFF CONTACT:** Mary Jaeger/Beth Wright

**SUBJECT:** This agreement will provide for construction management services for the Municipal Court Security Enhancements project.

---

**ITEM DESCRIPTION:**

Consideration of an Agreement with McCown Gordon Construction, LLC for construction management services for the Municipal Court Security Enhancements Project, PN 7-C-001-19.

---

**SUMMARY:**

The 2019 Capital Improvement Plan includes \$850,000 for the Municipal Court Security Enhancements Project. This project will provide for an expansion on the west side of the municipal court building to accommodate screening measures to screen all persons, purses, bags, etc. entering the building.

The final design was presented to Council on April 2, 2019. On May 24, 2019, the project was issued for bids. The project was bid using the low-bid lump-sum method. Bidding closed on June 24, 2019, and no bids were submitted for the project. Following the close of bidding, staff discussed options for moving this project forward. Staff recommends moving forward with the project utilizing the Construction Manager as Constructor delivery method. Previously known as Construction Manager at Risk, the City has utilized this delivery method for numerous building projects. In order to move this project forward without additional delays, staff recommends contracting directly with McCown Gordon Construction (McCown Gordon), who is well qualified for this project. McCown Gordon recently completed construction of the Indian Creek Library project and are currently constructing the Park Maintenance Facilities project.

Attached as Exhibit A is the Construction Manager as Constructor Agreement with McCown Gordon. Approval of the Agreement is a two-step process. Initial approval of the Agreement authorizes McCown Gordon for pre-construction services, establishes their construction management fee, and authorizes McCown Gordon to provide pre-construction services. As part of pre-construction services, McCown Gordon will immediately work with staff to review alternatives for managing site logistic and building access issues and will solicit subcontractor bids for all scopes of work. This Agreement stipulates compensation for the pre-construction services provided by McCown Gordon will be a lump sum cost of \$5,000. The pre-construction phase will conclude in approximately 7 weeks with McCown Gordon presenting to the City a Guaranteed Maximum Price (GMP) for the construction of the project. Staff anticipates returning to the City Council on January 21, 2020, with a GMP amendment. Approval of the GMP amendment will authorize McCown Gordon to move forward with construction of the project.

Weather permitting, staff anticipates construction beginning in March 2020. It is anticipated the construction duration will be approximately 4 months.

---

**FINANCIAL IMPACT:**

Funding for the Municipal Court Security Enhancements project, as approved in the 2019 Capital Improvement Plan, includes:

GO Bonds	\$800,000
----------	-----------

---

**MEETING DATE:** 11/19/2019

---

<u>Court Technology Fund</u>	<u>\$50,000</u>
<b>Total</b>	<b>\$850,000</b>

---

**ACTION NEEDED:**

Approval of an Agreement with McCown Gordon Construction, LLC for construction management services for the Municipal Court Security Enhancements Project, PN 7-C-001-19.

---

**ATTACHMENT(S):**

A: Agreement

B: Project Fact Sheet

# **AIA** Document A133<sup>TM</sup> – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status and address)

City of Olathe, Kansas  
100 E. Santa Fe  
P.O. Box 768  
Olathe, KS 66061

and the Construction Manager:  
(Name, legal status and address)

McCown Gordon Construction, LLC  
850 Main Street  
Kansas City, MO 64105  
816-960-1111

for the following Project:  
(Name and address or location)

Olathe Municipal Court Security Enhancements  
1200 S. Harrison Street  
Olathe, KS 66061  
Project No. 7-C-001-19

The Architect:  
(Name, legal status and address)

Hoefer Wysocki Architects, LLC  
11460 Tomahawk Creek Parkway, Suite 400  
Leawood, KS 66211  
913-307-3700

The Owner's Designated Representative:  
(Name, address and other information)

Jeff Blakeman  
City of Olathe, Kansas  
1385 S. Robinson Drive  
Olathe, KS 66061  
Telephone Number: 913-971-9047 (office)  
Email Address: jblakeman@olatheks.org

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201<sup>TM</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA<sup>®</sup> Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

The Construction Manager's Designated Representative:  
(Name, address and other information)

Arlen Kleinsorge, Project Executive  
McCown Gordon Construction, LLC  
850 Main Street  
Kansas City, MO 64105  
816-577-0659  
akleinsorge@mccowngordon.com

The Architect's Designated Representative:  
(Name, address and other information)

Ken Henton, Partner  
Hoefler Wysocki Architects, LLC  
11460 Tomahawk Creek Parkway, Suite 400  
Leawood, KS 66211  
913-307-3700  
ken.henton@hoeflerwysocki.com

The Owner and Construction Manager agree as follows.

## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, as amended, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, as amended, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager. The term Contract Sum as used in AIA 201-2007 shall mean the guaranteed Maximum Price.

## **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 2.1 Preconstruction Phase**

**§ 2.1.1** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### **§ 2.1.2 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The schedule of such meetings shall be coordinated and mutually agreeable with the Owner, Architect, and Construction Manager. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Owner's and Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### **§ 2.1.4 Phased Construction**

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### **§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Owner's and Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Owner's and Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project.

**§ 2.1.7** The Construction Manager shall prepare, for the Owner's and Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of

construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

#### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development 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 Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications. All such clarifications and assumptions shall take precedence over the Architect's documents used to establish the Guaranteed Maximum Price only to the extent the clarifications and assumptions are clearly annotated in writing (including annotations on the Architect's documents if necessary) and submitted to the Owner and Architect, and subsequently approved in writing by the Owner;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information

presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 2.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 2.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

**§ 2.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

**§ 2.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### **§ 2.3 Construction Phase**

#### **§ 2.3.1 General**

**§ 2.3.1.1** For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 2.3.1.2** The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

#### **§ 2.3.2 Administration**

**§ 2.3.2.1** Those portions of the Work that 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 submit to the Owner and Architect for the Owner's and Architect's review, documentation identifying any subcontractor pre-qualification process utilized by the Construction Manager. The Construction Manager shall also submit for the Owner's and Architect's review a list of pre-qualified subcontractors which the Construction Manager intends to obtain bids. The Owner and Architect may suggest specific persons from whom, or entities from which, the Construction Manager shall obtain bids. In such an instance, and provided the Construction Manager has no objection to a particular person or entity suggested by the Owner or Architect, the Construction Manager shall provide these persons or entities with the Construction Manager's pre-qualification documentation in order to provide an opportunity for these persons or entities to become pre-qualified. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and after analyzing such bids, shall deliver to the Owner and Architect for review a summary of all bids received. Additionally, the Construction Manager shall, if so requested by the Owner, deliver copies of all bids received to the Owner and Architect for their review. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection, and the Construction Manager shall not contract with anyone to whom the Owner has a reasonable objection.

**§ 2.3.2.2** If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity



recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 2.3.2.3** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

**§ 2.3.2.4** If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

**§ 2.3.2.5** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

**§ 2.3.2.6** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

**§ 2.3.2.7** The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

**§ 2.3.2.8** 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 Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

## **§ 2.4 Professional Services**

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

## **§ 2.5 Hazardous Materials**

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

## **ARTICLE 3 OWNER'S RESPONSIBILITIES**

### **§ 3.1 Information and Services Required of the Owner**

**§ 3.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

**§ 3.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a 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; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect 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 the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The authority of the Owner's authorized representative to make decisions on behalf of the Owner shall be limited to those decisions customarily allowed in the capacity of the representative's position. Certain decisions of the Owner may require action or approval by other staff, commissions, or the governing body of the City of Olathe. The Owner's Representative shall not be required to make decisions on matters which the representative is not authorized to make. It is the responsibility of the Owner's Representative to determine which action or approval can be made by the Owner's Representative or is required to be made by others. The Construction Manager is entitled to rely upon the action or approval provided by the Owner's Representative as binding and authorized action or approval.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. However, in no event shall any Owner-related legal, insurance, accounting, and/or audit services be provided on behalf of the Construction Manager providing such services to the Owner, nor shall the Construction Manager serve any other role than as an independent contractor of the Owner.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties, and responsibilities as described in AIA Document B133™–2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. Such additional services shall be provided in accordance with the time schedules discussed and agreed to by the Owner, Architect, and Construction Manager. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

Compensation for Preconstruction Phase services shall be fixed as a lump sum amount for the services anticipated to be provided, including all customary and routine reimbursable expenses, all as further defined in **Exhibit 1**.

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

The total cost of compensation for Preconstruction Phase services including all customary and routine reimbursable expenses, all further outlined in **Exhibit 1**, is Five Thousand dollars (\$5,000.00).

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within seven ( 7 ) weeks of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted for any additional services provided by the Construction Manager based upon the actual hours incurred by the Construction Manager's staff multiplied by the hourly rates for the staff as shown in the Construction Manager's Hourly Rate Schedule identified as **Exhibit 2**.

*(Paragraph deleted)*

### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty ( 30 ) days after the date the invoice is received and approved by the Owner shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

*(Insert rate of monthly or annual interest agreed upon.)*

One and one-half percent (1.50%) (or the maximum allowable by law, whichever is lower) of the past due amount per month (18% annual interest rate) from the invoice date.

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

The Construction Manager's fee shall be computed based upon the Cost of the Work as defined in Article 6 multiplied by four percent ( 4.00%). The Owner and Construction Manager agree the amount of the Construction Manager's fee will be computed at the time the GMP is developed and the amount will be identified in the GMP Amendment. The fee shall be identified in a schedule of values, earned as work progresses, and billed monthly as part of the Construction Manager's applications for payment.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

For changes in the Work that either increase or decrease the Guaranteed Maximum Price, the fee paid to the Construction Manager shall equitably adjust at the rate identified in Section 5.1.1 as the Guaranteed Maximum Price adjusts.

**§ 5.1.3** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

For Subcontractor's increase in the Cost of the Work, the Subcontractor's overhead shall be limited to Ten percent (10.00%) of the actual cost of the work and the Subcontractor's profit shall be limited to five percent (5.00%) of the actual cost of the work.

**§ 5.1.4** Rental rates for Construction Manager-owned equipment shall not exceed ninety percent ( 90 %) of the standard rate paid at the place of the Project.

**§ 5.1.5** Unit prices, if any:

*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
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**§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

**§ 5.2.2** The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**§ 5.3 Changes in the Work**

**§ 5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 5.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 6.1 Costs to Be Reimbursed**

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### **§ 6.2 Labor Costs**

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval, and wages and salaries of the Construction Manager's supervisory and administrative personnel stationed at the Construction Manager's principal office and other locations, but only for that portion of their time required to perform the Work of this Agreement. Costs for such Work shall be computed based on actual time worked by the personnel multiplied by the hourly rates shown in the Construction Manager's Hourly Rate Schedule identified as **Exhibit 2**.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 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.

§ 6.2.4 Costs paid or incurred by the Construction Manager for 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 such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### **§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

## **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

## **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Insurance and bonds provided by the Construction Manager shall be included in the GMP at the following rates: General Liability Insurance at 0.95%; Builders Risk Insurance at 0.35%; Bonds at 0.90%.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

**§ 6.6.7** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.6.10 Expenses incurred for providing Building Information Modeling Services;

§ 6.6.11 Utility costs, if billed to the Construction Manager, including but not limited to water, gas, oil, and electricity consumed in the performance of the Work.

§ 6.6.12 Weather protection and snow removal, if required.

§ 6.6.13 Protection of existing or adjoining property and repairs to adjoining property if required as a result of the performance of the Work of this contract.

§ 6.6.14 **Costs related to the Construction Manager's drug free workplace and safety administration of the Project.**

#### **§ 6.7 Other Costs and Emergencies**

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### **§ 6.8 Costs Not To Be Reimbursed**

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.



### **§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; 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 Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to the Owner and Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

**§ 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 as follows:

**§ 7.1.3** Provided that an Application for Payment is received by the Owner and Architect not later than the first day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty ( 30 ) days after the Owner and Architect receives the Application for Payment. The Owner will provide the Construction Manager with a schedule identifying dates established by the Owner for the issuance of progress payments. The Owner, Architect, and Construction Manager will review this schedule and develop a project specific schedule identifying dates for the submittal and review of the



Construction Manager's Applications for Payment, and the Owner's subsequent payment to the Construction Manager.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall be prepared to make available to the Owner but not submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner and Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent ( 5.00 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent ( 5.00 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.
- .8 Subtract retainage of five percent (5.00%) from that portion of the Work performed by the Construction Manager's Subcontractors.

§ 7.1.8 The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 7.1.10** In taking action on the Construction Manager's Applications for Payment, the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Owner or Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Owner or Architect has made exhaustive or continuous on-site inspections; or that the Owner or Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## **§ 7.2 Final Payment**

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 7.2.4** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## **ARTICLE 8 INSURANCE AND BONDS**

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

### 8.1 Insurance

The Construction Manager shall be required to maintain and carry in force for the duration of the contract, insurance coverage of the types and meeting the or exceeding the minimum coverage amounts identified in **Exhibit 3**, City of Olathe, Kansas Insurance Requirements for Contractors.

### 8.2 Bonds

The Construction Manager shall furnish a Performance and Maintenance Bond (form as provided in **Exhibit 4**) and a Statutory Bond (form as provided in **Exhibit 5**) covering faithful performance of the Contract and payment of obligations arising thereunder as per the requirements stated in the General Conditions. The cost of such Bonds shall be included in the Cost of the Work. The amount of each bond shall be equal to One-Hundred percent (100%) of the Guaranteed Maximum Price.

- .1 The Construction Manager shall deliver the required bonds to the Owner no later than Ten (10) days after the Owner's approval of the Guaranteed Maximum Price Amendment. In no case shall the Construction Manager commence Work at the project site until such time as the bonds have been received and approved by the Owner.

## ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: *(Specify)*

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

**§ 10.1.2** In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

**§ 10.1.3** If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

## **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007:

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

## **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201-2007.

## § 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

## § 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

## § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract 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 Contract.

## § 11.5 Other Provisions:

### .1 Licensing Requirements

The Construction Manager must be authorized to do business in the State of Kansas. If the Construction Manager is a corporation organized outside the State of Kansas it shall review its authorization with the State of Kansas and if necessary file the required documentation with the State of Kansas in order to receive authorization to do business in the State of Kansas. The Construction Manager, if organized outside the State of Kansas, must furnish evidence to the Owner of their authority to do business in the State of Kansas. Such evidence must be furnished to the Owner prior to any Contract award.

The Construction Manager and all Subcontractors performing construction work on this project shall meet all licensing requirements of the City of Olathe for the work which they intend to perform.

### .2 Appointment of Process Agent

The Construction Manager, if not a resident of Johnson County, Kansas, shall appoint a Process Agent being a resident of Johnson County, Kansas. The Construction Manager shall submit with the Guaranteed Maximum Price proposal the Appoint of Process Agent form as provide in **Exhibit 6**. This Process Agent form will be filed by the Owner with the Clerk of District Court of Johnson County, Kansas, as provided by law.

### .3 Non-Collusive Affidavit

The Construction Manager shall submit with the Guaranteed Maximum Price proposal the Non-Collusive Affidavit as provided in **Exhibit 7**.

### .4 Tax Exemption

All applicable taxes, sales, consumer, use and other similar taxes, imposed by any taxing authority, on materials, equipment or supplies to be incorporated in the work shall be tax exempt.

The Construction Manager shall be required to furnish taxing authorities any necessary information or reports pertaining thereto, as required.

Pursuant to KSA 79-3606, both services and materials for this project are exempt from the Kansas Retailers' Sales Tax and the Kansas Compensating Tax. Within fifteen (15) days after the date of Contract approval, Owner will provide a Kansas Sales tax exemption certificate number to the Construction Manager. The Construction Manager and each Subcontractor or repairman must furnish the exemption certificate number to each supplier on Kansas Sales Tax Division Form STD 74. The exemption certificate number shall be placed on all invoices for material to be incorporated in the work. All invoices shall be held by Construction Manager for 5 years, and shall be subject to audit by the Director of Taxation. Upon completion of the work, Construction Manager shall file with the Owner on a form provided by the Director of Taxation, a sworn statement that all purchases made under the exemption certificate were entitled to be exempt from the Kansas Retailers' Sales Tax and the Kansas

Compensating Tax. Construction Manager shall assume full responsibility for proper use of the exemption certificate number and shall pay all legally assessed penalties for improper use of the certificate number.

#### **.5 Affirmative Action / Other Laws**

During the performance of this Agreement, the Construction Manager agrees that:

- a. Construction Manager shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
- b. 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 commission;
- c. 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 contract and it may be canceled, terminated or suspended, in whole or in part, by the City without penalty;
- d. 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, the Construction Manager shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
- e. the Construction Manager shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by the City with Construction Manager if:

- a. Construction Manager employs fewer than four employees during the term of such contract; or
- b. Construction Manager's contract with the City total \$10,000 or less in aggregate.

The Construction Manager further agrees and acknowledges that it 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. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

**.6 No Third Party Beneficiaries**

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

**.7 Independent Contractor**

The Construction Manager is an independent contractor and as such is not an agent or employee of the City of Olathe, Kansas.

**.8 Covenant Against Contingent Fees**

Construction Manager warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**.9 Compliance with Laws**

Construction Manager shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Work or the Project at the time Services are rendered, including but not limited to The Kansas Fairness in Public Construction Contract Act, K.S.A. 16-1901 et seq. Construction Manager shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this Agreement.

**.10 Titles, Subheads, and Capitalization**

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

**.11 Severability Clause**

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

**.12 Construction Manager's Warranty Period**

All WORK completed by the Construction Manager under the terms of this Agreement shall be warranted by the Construction Manager for a period of one (1) year unless otherwise specifically stated in the Contract Documents to be warranted for a longer period of time, including any extended warranty or special warranty period if specified in the Contract Documents. The commencement of the warranty period is the date of Substantial Completion unless specifically stated otherwise.

**ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner 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 Owner and Construction Manager.

**§ 12.2** The following documents comprise the Agreement:

- .1** AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2** AIA Document A201–2007, General Conditions of the Contract for Construction, as amended
- .3** AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

.4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

.5 Other documents:

*(List other documents, if any, forming part of the Agreement.)*

Exhibit 1 – Preconstruction Services *(required for approval of the Agreement)*

Exhibit 2 – Construction Manager Hourly Rate Schedule *(required for approval of the Agreement)*

Exhibit 3 – Insurance Requirements *(insurance documents required for approval of the Agreement)*

Exhibit 4 – Performance and Maintenance Bond *(required with submission of GMP proposal)*

Exhibit 5 – Statutory Bond *(required with submission of GMP proposal)*

Exhibit 6 – Appointment of Process Agent *(required with submission of GMP proposal)*

Exhibit 7 – Non-Collusive Affidavit *(required with submission of GMP proposal)*



This Agreement is entered into as of the day and year first written above.

City of Olathe, Kansas

McCown Gordon Construction, LLC.

(Signature)

(Signature)

(Printed name)

(Printed name)

(Title)

(Title)

ATTEST

(City Clerk/Deputy City Clerk)

APPROVED AS TO FORM

(City Attorney/Deputy City Attorney/  
Assistant City Attorney)

# AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

Olathe Municipal Court Security Screening Improvements  
1200 S. Harrison Street  
Olathe, Kansas 66061

### THE OWNER:

(Name, legal status and address)

City of Olathe, Kansas  
100 E. Santa Fe  
P.O. Box 768  
Olathe, Kansas 66061

### THE ARCHITECT:

(Name, legal status and address)

Hoefer Wysocki Architects  
11460 Tomahawk Creek Parkway, Suite 400  
Leawood, KS 66211  
913-307-3700

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

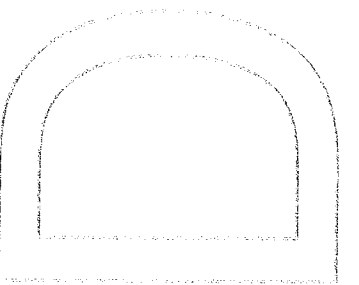
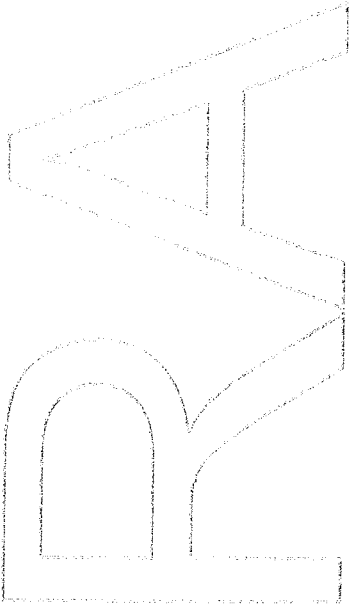
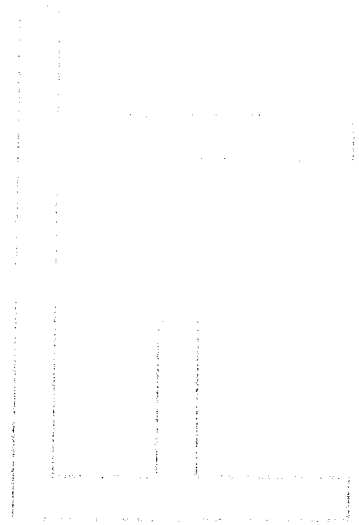
### TABLE OF ARTICLES

- |    |  |
|----|--|
| 1  | GENERAL PROVISIONS                               |
| 2  | OWNER  |
| 3  | CONTRACTOR                                       |
| 4  | ARCHITECT  |
| 5  | SUBCONTRACTORS                                   |
| 6  | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7  | CHANGES IN THE WORK                              |
| 8  | TIME   |
| 9  | PAYMENTS AND COMPLETION                          |
| 10 | PROTECTION OF PERSONS AND PROPERTY               |
| 11 | INSURANCE AND BONDS                              |
| 12 | UNCOVERING AND CORRECTION OF WORK                |
| 13 | MISCELLANEOUS PROVISIONS                         |

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



## INDEX

(Topics and numbers in bold are section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### Access to Work

**3.16**, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7, 14.1, **15.2**

Addenda

1.1.1, **3.11**

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, **15.1.4**

### Additional Inspections and Testing

9.4.2, 9.8.3, **12.2.1**, **13.5**

Additional Insured

11.1.4

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### Allowances

**3.8**, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, **13.5.1**

### Arbitration

8.3.1, 11.3.10, 13.1, **15.3.2**, **15.4**

## ARCHITECT

**4**

Architect, Definition of

**4.1.1**

Architect, Extent of Authority

2.4, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, **12.1**, **12.2.1**, **13.5.1**, **13.5.2**, **14.2.2**, **14.2.4**, **15.1.3**, **15.2.1**

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.3, 9.6.4, **15.1.3**, **15.2**

Architect's Additional Services and Expenses

2.4, 11.3.1.1, **12.2.1**, **13.5.2**, **13.5.3**, **14.2.4**

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, **15.2**, 9.4.1, 9.5

Architect's Approvals

2.4, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, **12.1.2**, **12.2.1**

Architect's Copyright

1.1.7, **1.5**

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, **13.5.2**, **15.2**, **15.3**

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, **13.5**

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, **13.5.2**

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, **1.5**, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, **13.5**, **15.2**

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, **11.3.7**

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, **13.5**

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

### Award of Subcontracts and Other Contracts for Portions of the Work

**5.2**

### Basic Definitions

**1.1**

Bidding Requirements

1.1.1, **5.2.1**, **11.4.1**

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1, **15.2.5**, **15.2.6.1**, **15.3.1**, **15.3.2**, **15.4.1**

### Boiler and Machinery Insurance

**11.3.2**

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

## **Capitalization**

### **1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

### **Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7,

9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval

13.5.4

Certificates of Insurance

9.10.2, 11.1.3

### **Change Orders**

1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8,

5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1,

9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2,

15.1.3

Change Orders, Definition of

7.2.1

### **CHANGES IN THE WORK**

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,

11.3.9

Claims, Definition of

15.1.1

### **CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

### **Claims for Additional Cost**

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

### **Claims for Additional Time**

3.2.4, 3.7.4, 6.1.1, 8.3.2, 10.3.2, 15.1.5

### **Concealed or Unknown Conditions, Claims for 3.7.4**

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,

11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

### **Cleaning Up**

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,

6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,

15.1.4

Commencement of the Work, Definition of

8.1.2

### **Communications Facilitating Contract**

#### **Administration**

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,

9.10, 12.2, 13.7, 14.1.2

### **COMPLETION, PAYMENTS AND**

**9**

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,

13.7

### **Compliance with Laws**

1.6, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2,

11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1,

14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,

9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

### **Consolidation or Joinder**

15.4.4

### **CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, 6

Construction Change Directive, Definition of

7.3.1

### **Construction Change Directives**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3,

9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

### **Contingent Assignment of Subcontracts**

5.4, 14.2.2.2

### **Continuing Contract Performance**

15.1.3

Contract, Definition of

1.1.2

### **CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 11.3.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of

1.5.2, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

### **Contract Sum**

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7,

9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4,

8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2,

15.1.5.1, 15.2.5

Contract Time, Definition of

8.1.1

### **CONTRACTOR**

**3**

Contractor, Definition of

3.1, 6.1.2

## **Contractor's Construction Schedules**

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

### **Contractor's Employees**

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

## **Contractor's Liability Insurance**

### **11.1**

#### **Contractor's Relationship with Separate Contractors and Owner's Forces**

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

#### **Contractor's Relationship with Subcontractors**

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

#### **Contractor's Relationship with the Architect**

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

#### **Contractor's Representations**

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

#### **Contractor's Responsibility for Those Performing the Work**

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

#### **Contractor's Review of Contract Documents**

3.2

#### **Contractor's Right to Stop the Work**

9.7

#### **Contractor's Right to Terminate the Contract**

14.1, 15.1.6

#### **Contractor's Submittals**

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

#### **Contractor's Superintendent**

3.9, 10.2.6

#### **Contractor's Supervision and Construction**

##### **Procedures**

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

#### **Contractual Liability Insurance**

11.1.1.8, 11.2

#### **Coordination and Correlation**

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

#### **Copies Furnished of Drawings and Specifications**

1.5, 2.2.5, 3.11

#### **Copyrights**

1.5, 3.17

#### **Correction of Work**

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

## **Correlation and Intent of the Contract Documents**

### **1.2**

#### **Cost, Definition of**

7.3.7

#### **Costs**

2.4, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

## **Cutting and Patching**

3.14, 6.2.5

### **Damage to Construction of Owner or Separate Contractors**

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

#### **Damage to the Work**

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 11.3.1, 12.2.4

#### **Damages, Claims for**

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

#### **Damages for Delay**

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

## **Date of Commencement of the Work, Definition of 8.1.2**

## **Date of Substantial Completion, Definition of 8.1.3**

### **8.1.3**

#### **Day, Definition of**

### **8.1.4**

#### **Decisions of the Architect**

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

## **Decisions to Withhold Certification**

9.4.1, 9.5, 9.7, 14.1.1.3

### **Defective or Nonconforming Work, Acceptance, Rejection and Correction of**

2.3, 2.4, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

#### **Definitions**

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

## **Delays and Extensions of Time**

3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

#### **Disputes**

6.3, 7.3.9, 15.1, 15.2

## **Documents and Samples at the Site**

### **3.11**

#### **Drawings, Definition of**

### **1.1.5**

### **Drawings and Specifications, Use and Ownership of 3.11**

#### **Effective Date of Insurance**

8.2.2, 11.1.2

## **Emergencies**

10.4, 14.1.1.2, 15.1.4

#### **Employees, Contractor's**

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

#### **Equipment, Labor, Materials or**

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

#### **Execution and Progress of the Work**

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,

3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3  
 Extensions of Time  
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.5, 15.2.5  
**Failure of Payment**  
 9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2  
 Faulty Work  
 (See Defective or Nonconforming Work)  
**Final Completion and Final Payment**  
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3, 14.2.4, 14.4.3  
 Financial Arrangements, Owner's  
 2.2.1, 13.2.2, 14.1.1.4  
 Fire and Extended Coverage Insurance  
 11.3.1.1  
**GENERAL PROVISIONS**  
**1**  
**Governing Law**  
**13.1**  
 Guarantees (See Warranty)  
**Hazardous Materials**  
 10.2.4, 10.3  
 Identification of Subcontractors and Suppliers  
 5.2.1  
**Indemnification**  
 3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7  
**Information and Services Required of the Owner**  
 2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3  
**Initial Decision**  
**15.2**  
**Initial Decision Maker, Definition of**  
 1.1.8  
 Initial Decision Maker, Decisions  
 14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5  
 Initial Decision Maker, Extent of Authority  
 14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5  
**Injury or Damage to Person or Property**  
**10.2.8, 10.4**  
 Inspections  
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5  
 Instructions to Bidders  
 1.1.1  
 Instructions to the Contractor  
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2  
**Instruments of Service, Definition of**  
**1.1.7**  
 Insurance  
 3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11  
**Insurance, Boiler and Machinery**  
**11.3.2**

**Insurance, Contractor's Liability**  
**11.1**  
 Insurance, Effective Date of  
 8.2.2, 11.1.2  
**Insurance, Loss of Use**  
**11.3.3**  
**Insurance, Owner's Liability**  
**11.2**  
**Insurance, Property**  
 10.2.5, 11.3  
 Insurance, Stored Materials  
 9.3.2  
**INSURANCE AND BONDS**  
**11**  
 Insurance Companies, Consent to Partial Occupancy  
 9.9.1  
 Intent of the Contract Documents  
 1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4  
**Interest**  
**13.6**  
**Interpretation**  
 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1  
 Interpretations, Written  
 4.2.11, 4.2.12, 15.1.4  
 Judgment on Final Award  
 15.4.2  
**Labor and Materials, Equipment**  
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2  
 Labor Disputes  
 8.3.1  
 Laws and Regulations  
 1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4  
 Liens  
 2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8  
 Limitations, Statutes of  
 12.2.5, 13.7, 15.4.1.1  
 Limitations of Liability  
 2.3, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2  
 Limitations of Time  
 2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15  
**Loss of Use Insurance**  
**11.3.3**  
 Material Suppliers  
 1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5  
**Materials, Hazardous**  
 10.2.4, 10.3

Materials, Labor, Equipment and  
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13,  
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,  
9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and  
Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 15.2.8

### **Mediation**

8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**,  
15.4.1

### **Minor Changes in the Work**

1.1.1, 3.12.8, 4.2.8, 7.1, 7.4

## **MISCELLANEOUS PROVISIONS**

### **13**

**Modifications, Definition of**

#### **1.1.1**

Modifications to the Contract

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,  
10.3.2, 11.3.1

### **Mutual Responsibility**

#### **6.2**

**Nonconforming Work, Acceptance of**

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of  
2.3, 2.4, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,  
12.2.1

Notice

2.2.1, 2.3, 2.4, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7,  
9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2,  
14.1, 14.2, 15.2.8, 15.4.1

### **Notice, Written**

2.3, 2.4, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10,  
10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8,  
15.4.1

### **Notice of Claims**

3.7.4, 10.2.8, **15.1.2**, 15.4

Notice of Testing and Inspections

13.5.1, 13.5.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.2.2, 9.6.6, 9.8, 11.3.1.5

Orders, Written

1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2,  
14.3.1

## **OWNER**

### **2**

**Owner, Definition of**

#### **2.1.1**

**Owner, Information and Services Required of the**

2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,  
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1,  
13.5.2, 14.1.1.4, 14.1.4, 15.1.3

**Owner's Authority**

1.5, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2,  
4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,  
7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1,  
9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3,  
13.2.2, 14.3, 14.4, 15.2.7

**Owner's Financial Capability**

2.2.1, 13.2.2, 14.1.1.4

### **Owner's Liability Insurance**

#### **11.2**

**Owner's Relationship with Subcontractors**

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

### **Owner's Right to Carry Out the Work**

2.4, 14.2.2

### **Owner's Right to Clean Up**

#### **6.3**

**Owner's Right to Perform Construction and to  
Award Separate Contracts**

#### **6.1**

### **Owner's Right to Stop the Work**

#### **2.3**

**Owner's Right to Suspend the Work**

14.3

**Owner's Right to Terminate the Contract**

14.2

### **Ownership and Use of Drawings, Specifications and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11, 3.17, 4.2.12,  
5.3

### **Partial Occupancy or Use**

9.6.6, **9.9**, 11.3.1.5

### **Patching, Cutting and**

**3.14**, 6.2.5

Patents

3.17

### **Payment, Applications for**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,  
14.2.3, 14.2.4, 14.4.3

### **Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,  
9.10.3, 13.7, 14.1.1.3, 14.2.4

### **Payment, Failure of**

9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3,  
13.7, 14.2.4, 14.4.3

### **Payment Bond, Performance Bond and**

7.3.7.4, 9.6.7, 9.10.3, **11.4**

### **Payments, Progress**

9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

## **PAYMENTS AND COMPLETION**

### **9**

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, **9.6.4**, 9.6.7, 14.2.1.2

PCB

10.3.1



**Performance Bond and Payment Bond**  
7.3.7.4, 9.6.7, 9.10.3, 11.4

**Permits, Fees, Notices and Compliance with Laws**  
2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

**PERSONS AND PROPERTY, PROTECTION OF**  
10

Polychlorinated Biphenyl  
10.3.1

**Product Data, Definition of**  
3.12.2

**Product Data and Samples, Shop Drawings**  
3.11, 3.12, 4.2.7

**Progress and Completion**  
4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

**Progress Payments**  
9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**Project, Definition of**  
1.1.4

Project Representatives  
4.2.10

**Property Insurance**  
10.2.5, 11.3

**PROTECTION OF PERSONS AND PROPERTY**  
10

Regulations and Laws  
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Rejection of Work  
3.5, 4.2.6, 12.2.1

Releases and Waivers of Liens  
9.10.2

Representations  
3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field Conditions by Contractor**  
3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor  
3.12

**Rights and Remedies**  
1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4

**Royalties, Patents and Copyrights**  
3.17

Rules and Notices for Arbitration  
15.4.1

**Safety of Persons and Property**  
10.2, 10.4

**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

**Samples, Definition of**  
3.12.3

**Samples, Shop Drawings, Product Data and**  
3.11, 3.12, 4.2.7

**Samples at the Site, Documents and**  
3.11

**Schedule of Values**  
9.2, 9.3.1

Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

**Shop Drawings, Definition of**  
3.12.1

**Shop Drawings, Product Data and Samples**  
3.11, 3.12, 4.2.7

**Site, Use of**  
3.13, 6.1.1, 6.2.1

Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing  
4.2.6, 12.2.1, 13.5

**Specifications, Definition of**  
1.1.6

**Specifications**  
1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations  
13.7, 15.4.1.1

Stopping the Work  
2.3, 9.7, 10.3, 14.1

Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4

**Subcontractor, Definition of**  
5.1.1

**SUBCONTRACTORS**  
5

Subcontractors, Work by  
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

**Subcontractual Relations**  
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule  
3.10.2, 3.12.5, 4.2.7

**Subrogation, Waivers of**  
6.1.1, 11.3.7

**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7

**Substantial Completion, Definition of**  
**9.8.1**  
Substitution of Subcontractors  
5.2.3, 5.2.4  
Substitution of Architect  
4.1.3  
Substitutions of Materials  
3.4.2, 3.5, 7.3.8

**Sub-subcontractor, Definition of**  
**5.1.2**  
Subsurface Conditions  
3.7.4

**Successors and Assigns**  
**13.2**

**Superintendent**  
3.9, 10.2.6

**Supervision and Construction Procedures**  
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3  
Surety  
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7  
Surety, Consent of  
9.10.2, 9.10.3  
Surveys  
2.2.3

**Suspension by the Owner for Convenience**  
**14.3**  
Suspension of the Work  
5.4.2, 14.3  
Suspension or Termination of the Contract  
5.4.1.1, 14

**Taxes**  
3.6, 3.8.2.1, 7.3.7.4

**Termination by the Contractor**  
14.1, 15.1.6

**Termination by the Owner for Cause**  
5.4.1.1, 14.2, 15.1.6

**Termination by the Owner for Convenience**  
**14.4**  
Termination of the Architect  
4.1.3  
Termination of the Contractor  
14.2.2

**TERMINATION OR SUSPENSION OF THE CONTRACT**  
**14**

**Tests and Inspections**  
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1, 12.2.1, **13.5**

**TIME**  
**8**

**Time, Delays and Extensions of**  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

**Time Limits**  
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

**Time Limits on Claims**  
3.7.4, 10.2.8, **13.7**, 15.1.2

**Title to Work**  
9.3.2, 9.3.3

**Transmission of Data in Digital Form**  
**1.6**

**UNCOVERING AND CORRECTION OF WORK**  
**12**

**Uncovering of Work**  
**12.1**  
Unforeseen Conditions, Concealed or Unknown  
3.7.4, 8.3.1, 10.3  
Unit Prices  
7.3.3.2, 7.3.4  
Use of Documents  
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

**Use of Site**  
**3.13**, 6.1.1, 6.2.1

**Values, Schedule of**  
**9.2**, 9.3.1  
Waiver of Claims by the Architect  
13.4.2  
Waiver of Claims by the Contractor  
9.10.5, 13.4.2, 15.1.6  
Waiver of Claims by the Owner  
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6  
Waiver of Consequential Damages  
14.2.4, 15.1.6  
Waiver of Liens  
9.10.2, 9.10.4

**Waivers of Subrogation**  
6.1.1, 11.3.7

**Warranty**  
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7

**Weather Delays**  
15.1.5.2

**Work, Definition of**  
**1.1.3**  
Written Consent  
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2  
Written Interpretations  
4.2.11, 4.2.12  
Written Notice  
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1  
Written Orders  
1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are 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.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are 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.

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2.

#### **§ 1.1.9 SITE**

The term Site refers to that portion of the property on which the Work is to be performed or which has been otherwise set aside for use by the Contractor.

#### **§ 1.1.10 PUNCH LIST**

The term Punch List means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be

performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within thirty (30) days of Substantial Completion, subject to the availability of special order parts and materials.

## **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

## **§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

## **§ 1.4 INTERPRETATION**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 1.4.2** In the event of conflict among the various provisions of the Contract Documents, the terms shall be interpreted in the following order of priority:

- .1 Modifications to the Contract
- .2 The Contract
- .3 Special Conditions, if any
- .4 General Conditions

## **§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications. Provided all payments have been made to Architect in accordance with its agreement with Owner, the Instruments of Service are the Owner's exclusive property. The Owner owns all copyrights in and to the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

## **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, and the Owner's interest therein.

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.2** Except for trade permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the Site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.4** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner (or such shorter time as may be reasonable under the circumstances) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's

additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 GENERAL**

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

*(Paragraphs deleted)*

§ 3.2.1 By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

§ 3.2.2 The Contractor must carefully study and compare the Contract Documents among themselves and further compare the Contract Documents with any other information furnished by the Owner pursuant to Section 3.2 before commencing Work at the Site and at frequent intervals during its progress.

§ 3.2.3 The Contractor must take field measurements and verify Site conditions, and must carefully compare such field measurements and Site conditions and other information known to the Contractor with the Contract Documents, before ordering any material or doing any Work at the Site.

§ 3.2.4 The Contractor must make frequent inspections during the progress of the Work to confirm that Work previously performed by the Contractor is in compliance with the Contract Documents and applicable laws and regulations bearing on the performance of the Work and Referenced Standards and that portion of Work previously performed by the Contractor or by others are in proper condition to receive subsequent Work.

§ 3.2.5 If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

§ 3.2.6 The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

**§ 3.2.7** If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

**§ 3.2.8** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Persons permitted to perform Work under Contractor or any Subcontractor or Sub-Subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by law.

### **§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for

those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, or are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

**§ 3.5.3** The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

### **§ 3.6 TAXES**

**§ 3.6.1** The Owner enjoys tax exempt status. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that certificate to exempt any purchases made for the Work from taxes. Contractor will pass on all savings for the tax-exempt status to the Owner. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

**§ 3.6.2** The Contractor will require all Subcontractors and bidders to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to verify that no taxes are to be paid on material procurement and that such savings shall be passed on to the Owner.

**§ 3.6.3** The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable time frame after receipt of such request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.

.1 The Contractor will require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.

.2 The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as Contractor is bound to the Owner.

**§ 3.6.4** The Contractor shall pay sales, consumer, use and similar taxes, including unemployment compensation taxes, for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner shall (if required) pay for the building permit. Contractor shall secure the building permit, and shall secure and pay for trade permits and fees as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.



§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent must provide his or her email address and cell phone number to Owner and Architect and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, within twenty-one (21) days after being awarded the Contract, shall prepare and submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule within twenty-one (21) days after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's and Architect's approval. The Owner's and Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules approved by the Owner and Architect.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Current Construction Schedule, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. The Contractor shall display a Current Construction Schedule at the site for reference and reliance by the Owner and Architect. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials,

field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that 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 Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor 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 Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect 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 Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security as a cost of the Work. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP, WORKING HOURS, AND NOISE**

**§ 3.15.1** Work will be performed in accordance with the Contract Documents and the Codes, Ordinances, and other applicable law governing the Contractor's performance of the Work. No delays resulting from compliance with applicable laws or regulations may form the basis for any claim by the Contractor for delay damages or additional compensation or for any extensions of the Contract Time.

**§ 3.15.2** The Contractor must keep the Site and adjacent areas free from accumulation of waste materials or rubbish caused by operations under the Contract, and must keep tools, construction equipment, machinery and surplus materials suitably stored when not in use. If the Contractor fails to do so in a manner reasonably satisfactory to the Owner or the Architect within forty-eight (48) hours after notice or as otherwise required by the Contract Documents, the Owner may clean the Site and back charge the Contractor for all costs associated with the cleaning. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.3** The Contractor must not permit work outside of hours established in the Contract Documents or on holiday observed by the Owner without the consent of the Owner. The Contractor must notify the Owner as soon as possible if Work must be performed outside such times established in the Contract Documents. In no event shall the Contractor permit Work to be performed at the Site without the presence of the Contractor's superintendent, other assigned project staff, or a designated representative of the Contractor, all whom must be knowledgeable of the Work required for the Project.

**§ 3.15.4** The Contractor must comply with all Codes, Ordinances, and other applicable law covering the regulation of noise levels. It is the duty of the Contractor to familiarize itself with those provisions and perform the Work in compliance with those provisions.

### **§ 3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** Loss: For purposes of indemnification requirements, the term "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with the performance of this Agreement.

**§ 3.18.2** Indemnification and Hold Harmless: For purposes of this Agreement, Consultant agrees to indemnify, defend and hold harmless City and its agents from any and all Loss where Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of Consultant or its subcontractors.

**§ 3.18.3 Comparative Fault & Contributory Negligence:** It is agreed as a specific element of consideration of this Agreement that this indemnity will apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of City or any Third Party and, further notwithstanding any theory of law including, but not limited to, a characterization of City's or any Third Party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Consultant's obligation hereunder will not include amounts attributable to the fault or negligence of City or any Third Party for whom Consultant is not responsible.

**§ 3.18.4 Damage Limitations:** In the case of any claims against City or its agents indemnified under this Agreement, by Consultant or its subcontractors, the indemnification obligation contained in this Agreement will not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Consultant or its subcontractors, by the minimum insurance required by this Agreement, nor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 3.18.5 Negligence by the City:** Consultant is not required hereunder to defend City or its agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

**§ 4.1.1** The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 4.1.2** Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the Site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

The Owner and Contractor shall endeavor to include the Architect in communications about matters arising out of or relating to the aspects of the Contract which involve the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect shall consult with the Owner on matters of aesthetic effect, but the Owner shall have the final decision on such matters.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall update this list throughout the Project and keep Owner and the Architect advised of any new Subcontractors employed.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor met all criteria set forth in the Contract Documents and was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

### **§ 6.2 MUTUAL RESPONSIBILITY**

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.



§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 **Change Proposals** The Contractor must submit change proposals (in the form and manner agreed to by the Owner, Architect, and Contractor) covering a contemplated change in the Work within twenty-one (21) days after request of the Owner or the Architect, or within ten (10) days of the event giving rise to the Contractor's claim for a change in the Work. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including but not limited to: cost (properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost) plus a fixed fee for profit and overhead which includes office overhead and site-specific overhead and general conditions. The limits of the percent charged for overhead and profit shall be as stated in the Agreement between the Owner and Contractor. Change proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor to proceed with the Work involved in the change proposal in accordance with this Section 7.2.2 without accepting the change proposal in its entirety.

§ 7.2.3 If the Owner determines that a change proposal is appropriate, the Owner, Architect, and Contractor will coordinate on the preparation of the appropriate form as required by the Owner to properly document the change in the Work. The form will be submitted to the Owner for signature(s) and approval. No such change is effective until the form documenting the change in the Work is signed by the Owner and/or Architect, whichever is required for the particular form.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect (after having been reviewed and approved by the Owner), directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The

Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 MINOR CHANGES IN THE WORK**

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### **ARTICLE 8 TIME**

#### **§ 8.1 DEFINITIONS**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### **§ 8.2 PROGRESS AND COMPLETION**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner, or prior to approval of Certificates of Insurance, and Additional Insured Endorsement and Notice of Cancellation Endorsement required to be submitted to Owner under the Agreement. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If Contractor's Work shall fall behind schedule for reasons that are not excused under the terms of the Contract, Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Construction Schedule as a cost of the Work.

**§ 8.2.4** The Contractor must conform to the most recently approved Construction Schedule. The Contractor must complete the indicated Work or achieve the required percentage of completion, as applicable, within any interim completion dates established in the most recently approved Construction Schedule.

**§ 8.2.5** The Contractor must maintain at the Site, available to the Owner and the Architect for their reference during the progress of the Work, a copy of the approved Construction Schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved Construction Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Construction Schedule.

**§ 8.2.6** The Contractor represents that its bid includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and final Completion. Accordingly, the Contractor may not make any claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

**§ 8.2.7** If the Contractor's progress is not maintained in accordance with the approved Construction Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Construction Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner.

**§ 8.2.8** The Owner reserves the right to issue a written directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. If the Owner requires an acceleration of the Construction Schedule and no adjustment is made in the Contract Sum, or if the Contractor disagrees with any adjustment made, the Contractor must file a claim as provided in Article 15 or the same will be deemed to be conclusively waived.

### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

*(Paragraphs deleted)*

**§ 8.3.1** Excusable delays are delays in the progress of the Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule, or delays to Work not previously identified as critical path activities as shown on the most recently approved Construction Schedule but which become critical path activities as a result of a delay, and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time, caused by conditions which could not reasonably be anticipated by, are beyond the control of, and are without the fault or negligence of the Owner, as set forth in Section 8.3.2, the Contractor or anyone for whose acts the Contractor is responsible. Excusable delays do not include any delays caused in whole or in part by any Subcontractors, Sub-subcontractors or suppliers. Excusable delays may, but do not necessarily, include:

- .1 weather delays as further defined in Section 8.3.6;
- .2 acts of government and regulatory agencies and officials (other than the Owner in its capacity as Owner);
- .3 catastrophic events such as fire, flood and unavoidable casualties; and
- .4 strikes or labor disputes.

**§ 8.3.2** Compensable delays are limited to delays in the progress of the Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule, or delays to Work not previously identified as critical path activities as shown on the most recently approved Construction Schedule but which become critical path activities as a result of a delay, and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time, caused solely and exclusively by acts or omissions of the Owner (except actions taken by the Owner acting as a regulatory authority to protect the public health or safety or to conform to law).

**§ 8.3.3** Unexcused delays are delays in Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule, or delays to Work not previously identified as critical path activities as shown on the most recently approved Construction Schedule but which become critical path activities as a result of a delay, and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time, and which are not excusable delays or compensable delays. No increase in the Contract Sum or extension of the Contract Time will be made for an unexcused delay.

**§ 8.3.4** The Contractor must provide written notice of any actual or prospective delay promptly, and in no event later than ten (10) days after the occurrence of the event giving rise to such delay. The notice must be given to the Owner and Architect within the specified time. In the case of a continuing delay, the Contractor must provide an initial notice and a further notice at each progress meeting throughout the duration of the delay. The notice must contain all of the specific information required in Section 8.3.5. The Contractor's failure to provide the written notice containing the information specified in Section 8.3.5 within the ten (10) days prescribed above will be conclusively deemed a waiver of any claim for delay arising from such occurrence.

§ 8.3.5 The Contractor's notice must identify those portions of the Construction Schedule affected by the delay and must include an estimate of the cost and probable effect of the delay, if any, on the progress of the Work. Supporting documentation must include, but is not limited to:

- .1 A written detailed statement of the reasons and causes for the delay;
- .2 inclusive dates of the delay;
- .3 specific trades and portions of the Work affected by the delay;
- .4 status of Work affected before commencement of the delay;
- .5 effect of the delay on available "float" time;
- .6 a critical path method (CPM) analysis demonstrating that the delay has affected an activity then on the critical path at the time of the occurrence of the delay as shown on the most recently approved Construction Schedule, or that the delay has an effect on an activity not previously on the critical path as shown on the most recent approved Construction Schedule, but which becomes a critical path activity as a result of a delay; and
- .7 if the Contractor claims that the delay is an excusable delay or compensable delay, evidence that the delay was unforeseeable, beyond the Contractor's control, and without the fault or negligence of the Contractor or the negligence of anyone for whose acts the Contractor is responsible including any Subcontractor, Sub-subcontractor or supplier; and in the case of a compensable delay, was caused solely and exclusively by the acts or omissions of the Owner (excepting actions taken by the Owner to protect the public health or safety or to conform to law) or anyone for whose acts the Owner is responsible, and which are unreasonable under the circumstances involved and not reasonably within the contemplation of the parties.

§ 8.3.6 In order for the Contractor to be entitled to an extension of the Contract Time for unusually severe weather, the following conditions must be satisfied:

- .1 The weather experienced at the Site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month;
- .2 The unusually severe weather must delay Work which at the time of the unusual severe weather was a critical path activity as shown on the most recently approved Construction Schedule, or delays Work not previously identified as critical path activity as shown on the most recently approved Construction Schedule but which become critical path activity as a result of a delay, and which prevents the Contractor from achieving Substantial Completion before expiration of the Contract Time. The delay must be beyond the control and without the fault or negligence of the Contractor. For example, the impacted activity must not have occurred during unusually severe weather due to previous unexcused delays; and
- .3 The Contractor must have provided written notice of the weather-related delay complying with Sections 8.3.4 and 8.3.5 above.

The following schedule of monthly anticipated adverse weather delays constitute the base line for monthly weather time evaluations. The Contractor's Construction Schedule must reflect these anticipated adverse weather delays in all-weather dependent activities.

#### MONTHLY ANTICIPATED ADVERSE WEATHER DELAY.

Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
6	4	3	3	3	3	2	2	2	2	3	3

Upon acknowledgement of the Notices to Proceed and continuing throughout the Contract, the Contractor must record on the daily superintendent report, the occurrence of adverse weather and resultant impact to normally scheduled Work. Actual adverse weather delay days must prevent Work on critical path activities, or must prevent Work not previously identified as a critical path activity as shown on the most recent approved Construction Schedule but which becomes a critical path activity as a result of a delay, for fifty (50) percent or more of the Contractor's scheduled workday. The number of actual adverse weather delays must include Contractor's scheduled workdays impacted by

actual adverse weather (even if the adverse weather occurred in the previous month), be calculated chronologically from the first to the last day each month, and be recorded as full days. If the Contractor has complied with Sections 8.3.4 and 8.3.5 and the provisions of this Section 8.3.6 and the number of actual adverse weather delay workdays exceeds the number of days anticipated in the table above, and have adversely affected critical path weather-dependent activities, the Contractor is entitled to a Modification of the Contract Time and Contract Sum.

§ 8.3.7 If strikes or labor disputes are to be considered as the basis for an excusable delay, they must be documented by data evidencing (i) the trades directly and indirectly involved in or affected by the strike or labor dispute, (ii) reasons for the strike or labor dispute, (iii) the onset and duration of the strike or labor dispute, and (iv) the measures taken by the Contractor to avoid or overcome the effects of any delay.

§ 8.3.8 Upon receipt of a notice from the Contractor of the occurrence of a delay complying with Sections 8.3.4 and 8.3.5 (and if applicable 8.3.6 and 8.3.7), the Owner will review the most recently approved Construction Schedule to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Construction Schedule, including the application of any unused "float" time available in the schedule. The Owner may require the Contractor to submit a more detailed Construction Schedule than previously required in order to permit the Owner to evaluate the delay. Based on such review, the Contractor must, if required by the Owner, submit for the Owner's approval a revised Construction Schedule which minimizes the adverse effects of the delay.

§ 8.3.9 No extension of the Contract Time or increase in the Contract Sum will be allowed for any delay or part thereof occurring more than ten (10) days before written notice of the delay is provided by the Contractor. No extension of the Contract Time or increase in the Contract Sum will be made to the extent that performance is, was or would have been suspended, delayed or interrupted by another cause for which the Contractor is responsible. No increase in the Contract Sum will be made to the extent performance was or would have been suspended, delayed or interrupted by another cause for which the Owner is not solely and exclusively responsible.

§ 8.3.10 The Contractor acknowledges and agrees that the profit, additional bond cost and overhead (which includes extended office overhead and site-specific overhead and general conditions) if any, incurred by the Contractor in performing work beyond the Work required by the Contract Documents and any and all other costs, compensation or damages due Contractor (including any of its Subcontractors or suppliers), is included in, and payable to the Contractor as part of the Change Order or Construction Directive. Contractor waives any and all other damages and cost of any nature or kind whatsoever including claims for local and cumulative impacts as a result of such Change Order or Construction Directive Work and any and all other claims of any type or nature whatsoever including any claim for loss of productivity or loss of efficiency. The Contractor will be compensated for compensable delays only for actual and direct damages resulting from such compensable delays. Actual direct damages are limited to site specific general conditions and do not include any indirect costs such as home office overhead. The Contractor will be compensated for such actual and direct damages for compensable delays not attributable to performance of Change Order.

§ 8.3.11 In the event the Owner denies the Contractor's request for a change in the Contract Time or, in the case of a compensable delay, a change in the Contract Sum, the Contractor may, within ten (10) days after such denial, submit a Claim as provided in Article 15. Submissions made prior to the denial must be resubmitted after the denial. Any Claim on account of denial of a change that is not made within such ten (10) days of the denial is deemed waived.

#### § 8.3.12 DELAY DAMAGES

- .1 By executing a Change Order or Contract Amendment, the Contractor represents that the Contractor is not entitled to an increase in the Contract Sum or an extension of the Contract Time beyond that specified in the Change Order or Contract Amendment for the Work performed or to be performed under the Change Order. The Contractor is not entitled to an increase in the Contract Sum or extension of the Contract Time as a result of the issuance by the Owner of Construction Change Directive unless the Contractor asserts a claim as required by this Article 8 and Article 15;
- .2 The provisions of the Section 8.3.12.1 do not apply to claims that meet all of the following conditions: (i) the claim arises under the Contract; (ii) the claim is limited to actual and direct damages (i.e. profit, additional bond and insurance cost (if any) and overhead (only site-specific overhead and not including home office overhead)) incurred as a result of a delay in completing the Project which the Contractor acknowledges are fully compensated for by payment of the adjustment

.3

amount specified in Section 8.3.11; (iii) the Contract establishes a time limit for achieving Substantial Completion and the claim is for delays that prevent achievement of Substantial Completion of the Contract within that time limit; (iv) the delay for which damages are claimed is caused solely and exclusively by the Owner, Architect, or anyone for whom they are responsible; (v) the delay is not caused by actions taken by the Owner to protect the public health or safety or to conform to law; and (vi) the Contractor has fully complied with Sections 8.3.4 and 8.3.5; and A time extension may be granted only for an excusable delay that is beyond the Contractor's control and occurs without the Contractor's fault or negligence. No time extension will be granted in the absence of a written claim for the time extension complying with Sections 8.3.4 and 8.3.5 (and if applicable, 8.3.6 and 8.3.7).

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### **§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner and Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

*(Paragraphs deleted)*

**§ 9.3.1** In accordance with the procedures outline in the Agreement, the Contractor must submit to the Architect itemized Applications for Payment for Work completed on a monthly basis in accordance with a schedule approved by the Owner. Each Application for Payment must be consistent with the approved Schedule of Values. In order to expedite the review and approval of Applications for Payment, the Contractor agrees to coordinate with the Owner and Architect on a schedule to review with the Owner and Architect a draft Application for Payment prior to submitting a formal Application for Payment.

**§ 9.3.2** The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. The application must be notarized and supported by sufficient data to demonstrate the Contractor's right to payment and compliance with the payment provisions of the Contract to the satisfaction of the Owner and Architect, such as copies of requisitions from Subcontractors and material suppliers, partial lien waivers, releases and other documents. Each Application for Payment must reflect approved Contract Modifications and the Contract retainage provided for in the Contract Documents.

**§ 9.3.3** Applications for Payment may include materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. The Owner has no obligation or responsibility to pay for materials stored off the Site. If specifically approved in writing in advance by the Owner, an Application for Payment may include materials and equipment stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site is conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to protect the Owner's interests. Payment for materials and equipment stored off the Site will, in addition, be conditioned upon the Contractor's provision of applicable insurance, storage and transportation to the Site.

§ 9.3.4 Until the conditions set forth in this Section have been satisfied by Contractor, the amount of each monthly Application for Payment must include the value of each line item as indicated on the approved Schedule of Values, to the extent completed, less retainage as stated in the Agreement. The retainage will not be paid to the Contractor until thirty (30) days after all of the following conditions have been satisfied: (A) the Contractor has fully performed the Contract to the point of achieving final completion of the Work; (B) the Contractor has completed all Punch List items to the satisfaction of the Owner and the Architect; (C) the Contractor has delivered to the Owner all Project close-out documents as required by the Agreement, including (1) all maintenance and operating manuals; (2) marked sets of as-built drawings and/or other electronic media documenting as-built conditions; (3) all guarantees and warranties required under the Contract Documents; (4) a list of names, addresses, and telephone numbers for all subcontractors and others providing guarantees and warranties; and (D) the applicable governmental authorities have issued to the Owner the final use and occupancy permit for the Project.

§ 9.3.5 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner, no later than the time of payment. By submitting an Application for Payment, the Contractor further warrants that all Work for which payments have previously been received from the Owner are free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities having provided labor, materials and equipment relating to the Work.

§ 9.3.6 Before the Contractor receives a progress payment, the Contractor must certify in writing that, in accordance with contractual arrangements, Subcontractors and suppliers:

- .1 have been paid from the proceeds of previous progress payments; and
- .2 will be paid in a timely manner from the proceeds of the progress payment currently due.

In the event the Contractor has not paid or does not pay as certified, such failure constitutes a ground for termination under terms of the Contract.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner for review and approval a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as



may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

## § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

## **§ 9.7 FAILURE OF PAYMENT**

If the Architect does not issue a Certificate of Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

## **§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is 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 Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list (Punch 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 Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. 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.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner 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.

## **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner 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 Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, reduction in liquidated damages if appropriate, 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 Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## § 9.10 FINAL COMPLETION AND FINAL PAYMENT

*(Paragraphs deleted)*

§ 9.10.1 When the Contractor has completed or corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the Owner and the Architect and request a final inspection of the Work as provided in Section 9.10.2. The Contractor's notice and request for a final inspection must be accompanied by a final Application for Payment and the Submittals required by Section 9.10.3.

§ 9.10.2 Upon receipt of the Contractor's notice and request for final inspection, the Owner and the Architect will promptly make such inspection and, when the Owner and the Architect concur that the Work has been fully completed and is acceptable under the Contract Documents, the Architect will issue a Certificate of Final Completion to the Owner. The Contractor's notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be finally complete.

§ 9.10.3 Neither final payment nor any remaining retained percentage will become due until the Contractor submits the following documents to the Architect:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner), have been paid or otherwise satisfied, submitted on AIA Document G706, Affidavit of Payment of Debts and Claims (latest edition) or such other form as may be prescribed by the Owner;
- .2 a release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier, accompanied by AIA Document G706A, Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;
- .3 a certificate evidencing that the Contractor's liability insurance and Performance Bond remain in effect during the correction period (as stated in the Agreement) following Substantial Completion as set forth in Section 12.2.2.1 and 12.2.2.2;
- .4 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .5 consent of surety to final payment, submitted on AIA Document G707 (latest edition) or other form prescribed by the Owner;
- .6 other data required by the Owner establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be prescribed by the Owner;
- .7 an as-built site plan in the form and number required by the Contract Documents;
- .8 all warranties and bonds required by the Contract Documents;
- .9 Record Documents as provided in Section 3.11 and return of Contract Documents as provided therein;
- .10 Attic stock items as required by the Contract Documents; and
- .11 As applicable, documentation of approval by the agency having jurisdiction for all Storm Water Management (SWM) work as to allow closeout of the SWM Permit. Approval by the appropriate agency

will be based on satisfying all Permit requirements including the submission of all required SWM documentation.

#### **§ 9.10.4**

*(Paragraphs deleted)*

If the Contractor is unable to secure from any Subcontractor or supplier a release or waiver required under the Contract, the Contractor must furnish a bond satisfactory to the Owner to indemnify the Owner and any co-obligees under the bond against any lien or claim from such Subcontractor or supplier. The Contractor must also indemnify the Owner for all costs incurred by the Owner in removing, discharging or otherwise settling all Subcontractor or supplier liens or claims, including all personnel and consultant costs and reasonable attorneys' fees.

*(Paragraph deleted)*

### **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

#### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

#### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

*(Paragraphs deleted)*

**§ 10.2.1** The Contractor must take reasonable precautions for the safety of, and must provide reasonable protection to prevent damage, injury or loss to:

- .1 All persons at the Site and other persons who may be affected by the Work or other operations of the Contractor;
- .2 the Work and materials and equipment to be incorporated therein or otherwise utilized in the performance of the Contract, whether in storage on or off the Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the Site or adjacent thereto and not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The Contractor must implement and maintain, as required by the Contract Documents, applicable laws and regulations and orders of public authorities having jurisdiction, manufacturers' instructions or recommendations, existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including issuing appropriate notices, distributing material safety data sheets and other hazard communication information, providing protective clothing and equipment, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**§ 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**§ 10.2.4** The Contractor must not load nor permit any part of any structure at the Site to be loaded or subjected to stresses or pressures so as to endanger its safety or that of adjacent structures or property.

**§ 10.2.5** When explosives or other hazardous materials or equipment are stored or used or unusual methods are employed in the performance of the Work, the Contractor must exercise utmost care and conduct such activities under supervision of properly qualified personnel.

**§ 10.2.6** If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of any of the Owner's employees or agents, or of others for whose acts it is contended that the Owner is liable, written notice of such injury or damage, whether or not insured, must be given to the Owner within a reasonable time not exceeding ten (10) days after the onset or occurrence of such damage or injury or such shorter time as may be required by the Occupational Safety Hazards Administration (OSHA). The notice must provide sufficient detail to enable the Owner to investigate the matter. If notice is not received by the Owner within the time specified, any claim arising from the occurrence will be deemed to be conclusively waived, except to the extent of any applicable insurance (excluding self-insurance) coverage covering such occurrence. The provisions of this Section may not be used by the Contractor in lieu of the requirements of Article 7 when the Contractor is seeking an adjustment in the Contract Sum and are in addition to the requirements of Article 8 when the Contractor is seeking an adjustment in the Contract Time.

**§ 10.2.7** The Contractor must promptly remedy, at its sole cost and expense, damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, 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, unless otherwise instructed in writing by the Owner. This obligation is in addition to, and not in limitation of, the Contractor's obligations for indemnification under Section 3.18 and the Contractor's responsibility to repair and or replace that portion of the Work and any materials and equipment to be incorporated therein which are damaged as a result of criminal mischief as specified in Section 10.2.10.

**§ 10.2.8** The Contractor is responsible for taking all reasonable and necessary precautions to secure and protect the Site, the Work, materials and equipment to be incorporated therein, and any tools or equipment of the Contractor necessary or beneficial to the performance of the Work from damage due to vandalism, theft, or other criminal mischief. The Contractor must repair and/or replace that portion of the work and any materials or equipment to be incorporated therein and any tools or equipment of the Contractor necessary or beneficial to performance of the Work which are damaged or stolen due to vandalism, theft or any other criminal mischief at its expense whether or not covered by insurance. No increase in the Contract Sum will be granted to the Contractor as a consequence of any delay, impacts or inefficiencies resulting from any act of vandalism, theft or other criminal mischief whether or not caused or contributed to by the Contractor's negligence.

**§ 10.2.9** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.10** The Owner, Architect, designated representatives, or visitors must comply with the Contractor's safety policies and programs at all times while on Site.

#### **§ 10.2.11 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party as soon as reasonably possible but not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### **§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. In the event the Contractor encounters on the Site material reasonably believed to be a

Hazardous Material (other than those for which the Contractor may have specific responsibility for remediation under the Contract), and the Contractor's reasonable precautions will be inadequate to prevent foreseeable damage or injury and the Contractor cannot proceed with the Work in the absence of the removal, containment or remediation of the Hazardous Material, the Contractor must immediately stop Work in the area affected and report the condition to the Owner and the Architect, in writing, within 24 hours of discovery.

**§ 10.3.2** Upon receipt of notice of suspected Hazardous Materials, Owner will cause an investigation to be made to verify the presence and extent of such materials, to determine whether such materials are in fact hazardous, and the steps necessary for their removal, containment or remediation.

**§ 10.3.3** If the Owner's investigation confirms the presence of Hazardous Materials which present a risk of injury or damage which will not be adequately protected against by the Contractor's reasonable precautions, then the Work in the affected area must not thereafter be resumed except at the written direction of the Owner. The Work in the affected area will be resumed promptly (i) in the absence of a finding of Hazardous Material by the Owner, (ii) upon the removal, containment or remediation of the Hazardous Materials, or (iii) upon the establishment of appropriate safety precautions.

**§ 10.3.4** The Contractor may request a change in the Contract Sum or Contract Time if the Contractor incurs additional costs on account of or is delayed by the need to remove, contain or remediate Hazardous Materials which has not been rendered harmless at the Site unless the Contractor is responsible for same under the Contract. Any such requested change in the Contract Sum or Contract Time must be made in writing within ten (10) days of discovery of any Hazardous Materials, which has not been rendered harmless giving rise to the request for the change and must fully comply with Articles 7, 8, and 15 or any claim will be deemed conclusively waived by the Contractor.

*(Paragraphs deleted)*

**§ 10.3.5** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.6** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.7** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

## **§ 10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor must take all necessary action, without the necessity for any special instruction or authorization from the Owner or Architect, to prevent threatened damage, injury or loss. The Contractor must promptly, but in all events within twenty-four (24) hours of the emergency, report such action in writing to the Owner and Architect. If the Contractor incurs additional costs on account of or is delayed by such emergency, the Contractor may request a change in the Contract Sum or Contract Time to account for such additional costs or delay in accord with Articles 7, 8 and 15. The Contractor must file any such request within ten (10) days of the emergency or it is deemed waived. Any adjustment in the Contract Sum or Contract Time shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

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- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. The Contractor must notify the Owner as soon as practicable of said cancellation. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

## § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework,

testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Owner's services and expenses required as a result of such insured loss.

*(Paragraph deleted)*

§ 11.3.1.3 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

#### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

*(Paragraph deleted)*

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor. Contractor must notify Owner as soon as practicable of said cancellation or if any policy is allowed to expire or coverage limits fall below the minimum amounts required herein.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees



of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.3.8** A loss insured under the Contractor's property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Contractor as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The bonds shall be issued by a United States Department of Treasury listed corporate surety, accompanied by current powers of attorney, on a form acceptable to Owner.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, and upon written authorization from the Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request, upon written authorization from the Owner to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### **§ 12.2 CORRECTION OF WORK**

##### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated,

installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within the period of time as agreed to by the Owner and Contractor and as set forth in the Contract after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period (or the period as agreed to by the Owner and Contractor and set forth in the Contract) for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

**§ 12.2.2.2** The period of time as agreed to by the Owner and Contractor and set forth in the Contract for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The period of time as agreed to by the Owner and Contractor and set forth in the Contract for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the period of time as agreed to by the Owner and Contractor and set forth in the Contract for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

#### **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

### **ARTICLE 13 MISCELLANEOUS PROVISIONS**

#### **§ 13.1 GOVERNING LAW**

The Contract shall be governed by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws provisions.

#### **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract 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 Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notices are to be provided to the representatives of the parties designated in this Contract. Written notices are deemed to have been duly served if delivered in person to the addressee for whom it was intended, or if delivered by overnight courier. The date of any notice is deemed to be the earlier of the date of personal delivery or the delivery by overnight courier.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor must schedule all tests, inspections or specific approvals required by law or the Contract Documents so as to avoid any delay in the Work. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner and Architect.

§ 13.5.5 If the Owner and Architect is to observe tests, inspections or approvals required by the Contract Documents, the Owner and/or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 In addition to the tests required by this Section 13.5, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the time period specified by applicable law.

### § 13.8 DOCUMENT RETENTION AND AUDIT PROVISIONS

Contractor shall account for all materials, equipment and labor entering into the Work and must keep such full and detailed records as may be necessary for proper financial management pursuant to the Contract Documents for a period of five (5) years after final payment. Furthermore, the Owner has the right to examine the Contractor's records directly or indirectly pertaining or relating to the Work or the Contract and the Contractor must grant the Owner access to and an opportunity to copy such records at all reasonable times during the Contract period and for five (5) years after final payment.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

*(Paragraphs deleted)*

#### §14.1.1 NO RIGHT TO STOP WORK FOR NON-PAYMENT

The Contractor has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract for cause if the Contractor:

- .1 Fails to supply adequate properly skilled workers or proper materials;
- .2 Fails to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 Fails to comply with any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 Fails to perform the Work in accordance with the Contract Documents or otherwise breaches any provision of the Contract Documents;
- .5 Anticipatorily breaches or repudiates the Contract;
- .6 Fails to make satisfactory progress in the prosecution of the Work required by the Contract; or
- .7 Endangers the performance of this Contract.

*(Paragraphs deleted)*

§ 14.2.2 The Owner may terminate the Contract, in whole or in part, whenever the Owner determines that sufficient grounds for termination exist as provided in Subsection 14.2.1. The Owner will provide the Contractor with a written notice to cure the default. If the default is not cured, the termination for default is effective on the date specified in the Owner's written notice. However, if the Owner determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Owner may terminate the Contract immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the Contract, the Contractor must compensate the Owner for additional costs that foreseeably would be incurred by the Owner, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

§ 14.2.3 Upon receipt of written notice from the Owner of termination, the Contractor must:

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- .1 cease operations as directed by the Owner in the notice and, if required by the Owner and County, participate in an inspection of the Work with the Owner, County and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 except as directed by the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.

§ 14.2.4 Following written notice from the Owner of termination, the Owner may:

- .1 take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 accept assignment of subcontracts and purchase orders, and
- .3 complete the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.5 Upon termination for cause,

- .1 the Contractor must take those actions described in Section 14.2.3, and the Owner may take those actions described in Section 14.2.4, subject to the prior rights of the Contractor's Surety.
- .2 If the Contractor files for Bankruptcy protection, or a petition is filed against it, under applicable Bankruptcy laws, and Contractor wishes to affirm the Contract, Contractor shall immediately file with the Bankruptcy Court a motion to affirm the Contract and shall provide satisfactory evidence to Owner and to the Court of its ability to cure all present defaults and its ability to timely and successfully complete the Work. If Contractor does not make such an immediate filing, Contractor accepts that Owner may petition the Bankruptcy Court to lift the Automatic Stay and permit Owner to terminate the Contract.

§ 14.2.6 When the Owner terminates the Contract for cause, the Contractor is not entitled to receive further payment until the Work is completed and the costs of completion have been established.

§ 14.2.7 If the unpaid balance of the Contract Sum less amounts which the Owner is entitled to offset from the unpaid Contract balance including actual or Liquidated Damages, exceeds the costs of completing the Work, including compensation for the Owner's and the Architect's services made necessary thereby, such excess will be paid to the Contractor or Surety, as directed by the Surety. If such costs exceed the unpaid Contract balance, the Contractor must pay the difference to the Owner upon written demand. This obligation for payment survives termination of the Contract.

§ 14.2.8 In completing the Work following termination for cause, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of sole source procurement and negotiated compensation.

### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall not include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

*(Paragraphs deleted)*

§ 14.4.1 The Owner may, at any time, terminate the Contract or any portion thereof or of the Work for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 Cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner and the Architect/Engineer to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 Complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 Unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 Except as directed by the Owner, terminate all existing subcontracts and purchase orders related to the Work and enter into no further subcontracts or purchase orders therefor.

§ 14.4.3 Following written notice from the Owner of termination, the Owner may:

- .1 Take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 Accept assignment of subcontracts and purchase orders; and
- .3 Complete the Work by whatever reasonable method the Owner may deem expedient.

§ 14.4.4 In case of termination for the Owner's convenience, the Contractor will be entitled to compensation only for the following items:

- .1 Payment for acceptable Work performed up to the date of termination;
- .2 The costs of preservation and protection of the Work if requested to do so by the Owner;
- .3 The cost of terminating the following contracts including:
  - (i.) Purchased materials but only if not returnable and provided to the Owner, or the restocking or return charge, if any, if returnable at the Owner's written election;
  - (ii.) Equipment rental contracts if not terminable at no cost but not to exceed an amount equal to thirty (30) days rental;
- .4 Documented transportation costs associated with removing Contractor-owned equipment;
- .5 Documented demobilization and close-out costs; and
- .6 Overhead and profit on the foregoing not to exceed ten (10%) percent.

The Contractor is not entitled to any other costs or compensation (including lost or expected profit, uncompensated overhead or related expenses, or the cost of preparing and documenting its compensable expenses under this Subsection 14.4.4 as a consequence of the Owner's termination of the Contract for convenience. The Contractor conclusively and irrevocably waives its right to any other compensation or damages (compensatory or punitive) arising from termination of the Contract. If the Owner and the Contractor are unable to agree upon the amounts specified in this subsection, the Contractor may submit a Claim as provided in Article 15. The Claim must be limited to resolution of the amounts specified in Subsections 14.4.4.1, 14.4.4.2, 14.4.4.3 and 14.4.4.4 of this Subsection 14.4.4. No other cost, damages or expenses may be claimed or paid to the Contractor or considered as part of the Claim, the same being hereby conclusively and irrevocably waived by the Contractor. Any such Claim must be delivered to the Owner within thirty (30) days of the termination of the Contract and must contain a written statement setting forth the specific reasons and supporting calculations and documentation as to the amounts the Contractor claims to be entitled to under this Subsection as a result of the termination of the Contract.

§ 14.4.5 The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 CLAIMS**

#### **§ 15.1.1 DEFINITION**

A Claim is a written demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### **§ 15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten-percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a subcontractor, as applicable.

#### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path of construction, or had an adverse effect on Work not previously on the most recent approved Construction Schedule but which become critical path activities as a result of a delay.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part and advise the Owner of such rejection, (3) approve the Claim and forward to the Owner, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

## **§ 15.3 MEDIATION**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing,



delivered to the other party to the Contract, and filed with the person or entity administering the mediation. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**§ 15.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any dispute under the Agreement not resolved by mediation shall be litigated in the District Court of Johnson County, Kansas, or the closest Court of competent jurisdiction thereto as a bench trial, provided however, that a bench trial does not violate any provisions of the Fairness in Public Construction Contracting Act.

*(Paragraphs deleted)*

## **EXHIBIT 1**

### **Preconstruction Services**

The following outlines the primary services anticipated to be provided by McCown Gordon Construction, LLC throughout the Preconstruction Phase of the project. Preconstruction Phase services are anticipated to be a seven (7) week duration, beginning with review of the contract documents and concluding with the submission of the Guaranteed Maximum Price (GMP) proposal.

#### **Pre-Design Services**

- ~~Participate in planning workshops with the Owner and Architect.~~
- ~~Participate in project kick-off meeting with Owner and Architect.~~
- ~~Participate in meetings with the Owner and Architect to understand project scope and expectations.~~
- ~~Participate in meetings with the Owner and Architect to understand and evaluate the project budget.~~
- ~~Provide the Owner and Architect with a magnitude of cost for the facility being contemplated.~~
- ~~Provide the Owner and Architect with a review of the project scope and magnitude of cost budget as needed to present to the Olathe City Council.~~

#### **Design Phase Services**

- ~~Participate in design meetings with the Owner and Architect on a bi-weekly basis.~~
- ~~Conduct material and constructability reviews as the project design evolves.~~
- ~~Participate in sustainability and LEED discussions and evaluations.~~
- ~~Provide Building Information Modeling (BIM) support.~~
- ~~Participate in value engineering discussions and provide necessary cost options.~~
- ~~Participate in life cycle cost discussions and provide costs analysis as necessary.~~
- ~~Develop detailed cost estimates at specific stages throughout the design phase. Cost estimates are anticipated at schematic design, design development, and 50% construction documents.~~
- ~~Provide the Owner and Architect with updated budget analysis as design evolves.~~
- ~~Develop a master project schedule incorporating Owner and Architect processes. Provide weekly updates as necessary.~~
- ~~Advise the Owner and Architect on options to accelerate the construction schedule, including options such as fast track construction, multiple bid packages, etc.~~

#### **Bidding and GMP Development**

- Participate in meetings with Owner and Architect to review the project design, to discuss site logistics, and to discuss other project matters impacting the construction of the project.
- Conduct bidding of the project and provide the Owner with a Guaranteed Maximum Price (GMP) for the construction of the project.

#### **McCownGordon Construction Staffing Expectations**

- McCownGordon's team that will be involved in the preconstruction phase services summarized above are anticipated to include:
  - Arlen Kleinsorge      Project Executive
  - Jesse Dull              Estimator
  - Josh Davidson        Project Manager
  - Brian Curtain         Project Superintendent

#### **Cost of Preconstruction Phase Services**

McCown Gordon Construction, LLC proposes to provide the preconstruction phase services require for this project, including but not limited to those specifically outlined above, for a lump sum cost of Five Thousand dollars (\$5,000.00). Included in this cost are reimbursable expenses incurred as a result of providing the preconstruction phase services, including but not limited to local travel for project meetings, document reproduction services (not including printing of bid documents), facsimile transmission and long-distance telephone calls, postage and parcel delivery charges, etc.

Expenses not typically consider customary and routine for preconstruction services, such as out of town travel (transportation, lodging, meals), and printing of bid documents, shall be considered an additional expense if incurred as a result of providing additional services requested by the Owner.

**EXHIBIT 2**

**McCownGordon Construction Hourly Rate Schedule**

**McCownGordon Construction, L.L.C.****Cit of Olathe Courts Security****Hourly Rates for Construction, Administration, & Supervision  
July 01 2019**

<b><u>PROJECT STAFF</u></b>	<b><u>RATE</u></b>
Project Executive/Market Leader	\$ 145.00
Senior Project Manager	\$ 120.00
Project Manager	\$ 90.00
Senior Project Engineer	\$ 73.00
Project Engineer/Field Enginner	\$ 66.00
Project Coordinator	\$ 54.00
Preconstruction Manager	\$ 120.00
Estimator	\$ 75.00
Safety Director	\$ 115.00
Safety Coordinator	\$ 76.00
General Superintendents	\$ 138.00
Sr Superintendents	\$ 117.00
Superintendents	\$ 107.00
Assistant Superintendent	\$ 87.00
Carpenter Foreman - (regular time)	\$ 79.00
Carpenter - (regular time)	\$ 77.00
Labor Foreman - (regular time)	\$ 56.00
Laborer - (regular time)	\$ 54.00
BIM Specialist	\$ 80.00
MEP Manager/Engineering Services	\$ 120.00
QA/QC Maager	\$ 100.00
Information Systems Support	\$ 65.00

These rates are subject to change but by not more than 5% in a given six month period.

### **EXHIBIT 3**

## **CITY OF OLATHE KANSAS INSURANCE REQUIREMENTS FOR CONTRACTORS**

### **OLATHE MUNICIPAL COURT SECURITY ENHANCEMENTS PROJECT NO. 7-C-001-19**

Contractor shall procure, and maintain as required, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the project. The cost of such insurance shall be included in the Contractor's bid.

**A. Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1. Insurance Services Office form Commercial General Liability coverage "occurrence" form CG 0001 or its equivalent.
2. Insurance Services Office form, Business Auto Coverage, code 1 "any auto".
3. Workers Compensation and Employers Liability: Workers compensation limits as required by the statutes of the state of Kansas and employers liability.
4. Contractor shall maintain an all risk, builder's risk insurance policy including the perils of flood and earthquake, in an amount equal to the contract price for the duration of the project. All deductibles will be the responsibility of the contractor.

**B. Minimum Limits of Insurance.** Contractor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence, product - completed operations. The general aggregate limit shall be at least \$2,000,000 with a per site/project endorsement.
2. Business Auto Coverage: \$1,000,000 per occurrence.
3. Workers Comprehensive and Employers Liability: Workers compensation as required by the statutes of the state of Kansas and employers liability limits of \$500,000/\$500,000. When workers compensation insurance is applicable "other states" coverage is required.
4. Umbrella Liability: minimum limit of \$1,000,000.
5. Coverage Limits. Coverage limits for General and Auto Liability exposures may be met by a combination of primary policy limits 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 Contractor nor has the CITY assessed the risk that may be applicable to Contractor. Contractor shall assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverages. The contractor's insurance shall be primary and any insurance or self-insurance maintained by the City shall be excess and not contribute with the coverage maintained by contractor.

**C. Self-Insured Retentions.** Self-insured retentions must be declared to and approved by the City. This may be on the certificate of insurance or a separate attached document. Any and all deductibles or self-insurance in the above describes coverages shall be the responsibility and at the sole risk of the Contractor. The City may require written guarantees for payment procedures of self-insured losses and related investigations, claims administration and cost of defense.

**D. Acceptability of Insurers.** Insurance is to be placed with Kansas-admitted insurers with a Best's rating of no less than A VII; or an insurer(s) approved by the City.

**E. Verification of Coverage.** Contractor shall furnish the City, certificates of insurance accompanied by additional insured endorsements (ISO Form CG 20 10; and CG 20 37) or equivalent effecting the coverage required by the City to include products and completed operations. The endorsements and certificate for each insurance policy are to be executed by a person authorized by the insurer to bind coverage. The certificates are to be on forms received and approved by the City before work commences. The City reserves the right, at any time, to require complete, certified copies of all required insurance policies.

**F. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability.
  - a. Contractor shall furnish the City, certificates of insurance accompanied by additional insured endorsements ISO Form as specified or equivalent for coverage required by the City.
  - b. Contractor's insurance shall be primary and any insurance or self-insurance maintained by the City shall be separate and excess and shall not contribute with it.
  - c. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
  - d. The Contractor'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.
  - e. The commercial general liability policy shall not contain an endorsement excluding contractual or completed operations liability.
2. Umbrella Liability. This coverage may be obtained by a following form excess liability policy.
3. All Coverages. Each insurance policy(ies) required shall not be suspended, voided, or canceled; except after thirty (30) days' advance written notice has been given to the City.
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.

**G. Subcontractors.** The contractor shall include all subcontractors as additional insureds under its insurance policies or shall submit to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

## **EXHIBIT 4**

### **CITY OF OLATHE, KANSAS PERFORMANCE & MAINTENANCE BOND**

\_\_\_\_\_, as surety ("Surety"), and  
\_\_\_\_\_, as principal ("Contractor"), enter into and execute this Bond ("Performance Bond"), and bind themselves in favor of the City of Olathe, Kansas as obligee ("Owner"), in the initial amount of \$\_\_\_\_\_, which amount is one hundred percent (100%) of the Contract Sum, or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and Owner, (the "Penal Sum").

WHEREAS, the Contractor has executed a contract with the Owner dated \_\_\_\_\_ under City Project No. 7-C-001-19 to timely and fully provide all labor, tools, equipment and materials or supplies in conformance with generally accepted standards for quality, skill and construction of similar projects in a workmanlike manner, as designated, described and required by the Instruction to Bidders, Bid Proposal, the Contract Documents, General and Technical or Special Specifications of the Contract, Plans, and any Written Addendum's or Change Orders, (hereinafter collectively referred to as the "Contract"), as may be necessary to ensure the timely completion of the Municipal Court Security Enhancements Project in the City of Olathe, Johnson County, Kansas (the "Project");

WHEREAS, the Owner has required the Contractor to furnish this Performance and Maintenance Bond as a condition to executing the Contract with the Contractor, and has further required the Contractor to guarantee and maintain the Project work in accordance with the Contract for the period as stated in the Contract from the date of final payment.

It is agreed if the Contractor shall in all particulars promptly and faithfully perform each and every covenant, condition, and part of the Contract, according to the true intent and meaning in each case, and the Project improvements shall be constructed in accordance with the Contract so as to endure without defect and need of repair for the period(s) as stated in the Contract Documents, then this obligation shall be and become null and void; otherwise it shall remain in full force and effect.

The Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree:

- 1) The Contract is incorporated by reference and made a part of this Bond. The Surety and the Contractor are bound for the full performance of the Contract including without exception all of the Contract Documents as designated, defined and described in the Contract, and in accordance with the Olathe Technical Specifications and Design Criteria Manual) and all terms and conditions, both express and implied.
- 2) If the Owner shall provide to Surety the written notice of the Owner stating that the Contractor is in breach or default of the Contract, and that such breach or default remains uncured by the Contractor, then upon delivery of such notice to the Surety in the method for providing notices as set forth in Paragraph 7 below, Surety must promptly notify the Owner in writing which action it will take as permitted in Paragraph 3.

- 3) Upon the delivery of the Owner's written notice of breach or default by the Contractor as provided in Paragraph 2 above, the Surety may promptly remedy the breach or default or must, within ten (10) days, proceed to take one of the following courses of action:
- a. **Proceed Itself.** Complete performance of the Contract including correction of defective and nonconforming Work through its own contractors or employees, approved as being acceptable to the Owner, in the Owner's sole discretion, provided, however, that Contractor will not be retained, and provided further that Owner's discretion to approve Surety's contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract and is not affiliated with the Contractor. During this performance by the Surety the Owner will pay the Surety from its own funds only those sums as would have been due and payable to the Contractor under the Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the remaining Contract balance less any sums due the Owner under the Contract. During this performance Surety's payment and performance bond must remain in full force and effect; or
  - b. **Tender a completing contractor acceptable to Owner.** Tender a contractor, approved as being acceptable to the Owner (in the Owner's sole discretion), together with a contract for fulfillment and completion of the Contract executed by the completing contractor, to the Owner for the Owner's execution. Owner's discretion to approve Surety's completing contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract and is not affiliated (as defined in the General Conditions of Contract) with the Contractor. Owner's discretion to approve Contractor as the completing contractor, however, shall be in Owner's sole subjective discretion. Upon execution by the Owner of the contract for fulfillment and completion of the Contract, the completing contractor must furnish to the Owner a performance and maintenance bond and a separate statutory payment bond, each in the form of those bonds previously furnished to the Owner for the Project by the Contractor. Each such bond must be in the Penal Sum of the full cost to complete the Contract. The Owner will pay the completing contractor from its own funds only those sums as would have been due and payable to the Contractor under the Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the remaining Contract balance less any sums due the Owner under the Contract. To the extent that the Owner is obligated to pay the completing contractor sums which would not have then been due and payable to the Contractor under the Contract (any sums in excess of the then remaining Contract balance less any sums due the Owner under the Contract), the Surety must pay to the Owner the full amount of those sums at the time the completing Contractor is tendered to the Owner so that the Owner can utilize those sums in making timely payment to the completing contractor; or
  - c. **Tender the Full Penal Sum.** Tender to the Owner the full Penal Sum of the surety bond. The Owner will refund to the Surety without interest any unused portion not spent by the Owner procuring and paying a completing contractor or completing the construction contract itself, plus the cost allowed under Section 4, after completion of the contract for fulfillment and completion of the Contract and the expiration of any applicable warranties; or



- d. **Other Acts.** Take any other acts mutually agreed upon in writing by the Owner and the Surety.
- e. **IT SHALL BE NO DEFENSE TO SURETY'S OBLIGATION TO UNDERTAKE ONE OF THE PRECEDING COURSES OF ACTION THAT THE CONTRACTOR CONTENDS THAT IT IS NOT IN BREACH OR DEFAULT OF THE CONTRACT, OR THAT THE NOTICE OF BREACH OR DEFAULT WAS DEFECTIVE, OR THAT THE CONTRACTOR HAS RAISED ANY OTHER CLAIM OF DEFENSE OR OFFSET, PROVIDED ONLY THAT SURETY HAS RECEIVED THE WRITTEN NOTICE OF THE OWNER AS SPECIFIED IN PARAGRAPH 2.**
- 4) In addition to those duties set forth herein above, the Surety must promptly pay the Owner (i) all losses, costs and expenses resulting from the Contractor's breach(es) or default(s), including, without limitation, fees, expenses and costs for architects, engineers, consultants, testing, surveying and attorneys, plus (ii) liquidated or actual damages, whichever may be provided for in the contract, for lost use of the Project, plus (iii) re-procurement costs and fees and expenses, plus (iv) costs incurred at the direction, request, or as a result of the acts or omissions of the Surety; provided that in no event shall Surety's liability exceed the Penal Sum of this Bond.
- 5) The Surety waives notice of any Modifications to the Contract, including changes in the Contract Time, the Contract Sum, the amount of liquidated damages, or the Work to be performed. The parties expressly agree that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract Sum more than 25 percent (25%), so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement so amended. The term "*amendment*" or "*modification*" wherever used in this Bond, and whether referring to this Bond or the Contract, shall include any alteration, addition, extension, or modification of any character whatsoever.
- 6) The Surety provides this Performance and Maintenance Bond for the sole and exclusive benefit of the Owner and, if applicable, any dual obligee designated by attached rider, together with their heirs, administrators, executors, successors, and assigns. No other party, person or entity has any rights against the Surety.
- 7) All notices to the Surety, the Contractor or the Owner must be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

**SURETY**

Name: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, \_\_\_\_\_  
ZIP: \_\_\_\_\_

**CONTRACTOR**

Name: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, ZIP: \_\_\_\_\_

**OWNER**

City of Olathe, Kansas  
Attn: Jeff Blakeman, Sr. Building Design Project Manager  
P.O. Box 768  
Olathe, KS 66051-0768

**with a copy to:**

City Attorney's Office  
P.O. Box 768  
Olathe, KS 66051-0768

- 8) The recitals contained in this Performance and Maintenance Bond are incorporated by reference herein and are expressly made part of this Performance and Maintenance Bond.
- 9) This Performance and Maintenance Bond shall be governed by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws provisions.
- 10) In the event any legal action shall be filed upon this Performance and Maintenance Bond, venue shall lie exclusively in the District Court of Johnson County, Kansas.

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**IN TESTIMONY WHEREOF**, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at

\_\_\_\_\_ ,

on this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Contractor**

**Surety**

\_\_\_\_\_  
(Typed Firm Name)

\_\_\_\_\_  
(Typed Firm Name)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Seal)

By:

By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

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(Title)

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(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Date of Execution)

\_\_\_\_\_  
(Date of Execution)

**(Accompany this bond with Attorney-in-Fact's authority from the Surety Company certified to include the date of the bond.)**

STAFF NOTES:

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 Departments 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-Facts Authority from the surety company certified to include the date of the bond.

## **EXHIBIT 5**

### **CITY OF OLATHE, KANSAS STATUTORY BOND**

\_\_\_\_\_, a \_\_\_\_\_, organized under the laws of the state of \_\_\_\_\_, and authorized to do business in the state of Kansas, as surety ("Surety"), and \_\_\_\_\_, as principal ("Contractor"), enter into and execute this Bond ("Statutory Bond"), and bind themselves unto the City of Olathe, Kansas and any Beneficiary of this Statutory Bond, in the initial amount of \$\_\_\_\_\_, which amount is one hundred percent (100%) of the Contract Sum, or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and the City of Olathe as Owner, (the "Penal Sum").

WHEREAS, the Contractor has executed a contract with the Owner dated \_\_\_\_\_ under City Project No. 7-C-001-19 to timely and fully provide all labor, tools, equipment and materials or supplies in conformance with generally accepted standards for quality, skill and construction of similar projects, in a workmanlike manner, designated, described and required by the Instruction to Bidders, Bid Proposal, the Contract, General and Technical or Special Specifications of the Contract, and any Written Addendum's or Change Orders, (the "Contract"), used or consumed in connection with or in or about the Municipal Court Security Enhancements Project in the City of Olathe, Johnson County, Kansas (the "Project");

WHEREAS, the Owner has required the Contractor to guarantee payment of all labor, materials, tools, equipment or supplies furnished pursuant to the Contract for the Project that were used or consumed in connection with or in or about the Project, and all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project, and

WHEREAS, the Owner has required the Contractor to furnish this Statutory Bond as a condition to awarding and executing the Contract with the Contractor, to guarantee the stated obligations.

NOW THEREFORE, if the Contractor and the subcontractors of the Contractor shall pay all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project, or the making of the Project improvements described in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect;

The Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree:

- 1) The Contract is incorporated by reference and made a part of this Bond. The Surety and the Contractor are bound for the full performance of the Contract and all of the terms and conditions, both express and implied, and, without limitation, specifically including the Contractor's obligation to pay all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project.
- 2) For purposes of this Statutory Bond, "Beneficiary" is defined as any person or entity to whom there is due any sum for labor, materials, tools, equipment or supplies furnished pursuant to the

Contract for the Project that were used or consumed in connection with or in or about the Project, or whom otherwise incurred indebtedness for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project, and any such person or entity's assigns.

- 3) In no event is the Surety obligated hereunder for sums in excess of the Contract Sum or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and Owner.
- 4) Upon receipt of a claim from a Beneficiary hereunder, the Surety must promptly, and in no event later than thirty (30) days after receipt of such claim, respond to such claim in writing (furnishing a copy of such response to the Owner) by:
  - a. making payment of all sums not in dispute; and
  - b. stating the basis for disputing any sums not paid.
- 5) The Surety waives notice of any Modifications to the Contract, including changes in the Contract Time, the Contract Sum, the amount of liquidated damages, or the Work to be performed in connection with the Project. The parties expressly agree that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract Sum more than 25 percent (25%), so as to bind the Contractor and the Surety to the full and faithful performance of the Contract so amended. The term "*amendment*" or "*modification*" wherever used in this Bond, and whether referring to this Bond or the Contract, shall include any alteration, addition, extension, or modification of any character whatsoever.
- 6) METHOD OF NOTICE. All notices to the Surety, the Contractor or the Owner must be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

**SURETY**

Name: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, \_\_\_\_\_  
ZIP: \_\_\_\_\_

**CONTRACTOR**

Name: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, \_\_\_\_\_  
ZIP: \_\_\_\_\_

**OWNER**

City of Olathe, Kansas  
Attn: Jeff Blakeman, Sr. Building Design Project Manager  
P.O. Box 768

Olathe, Kansas 66051-0768

**with a copy to:**

City Attorney's Office  
P.O. Box 768  
Olathe, KS 66051-0768

- 7) The recitals contained in this Statutory Bond are expressly made part of this Statutory Bond.
- 8) This Statutory Bond shall be governed by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws provisions.
- 9) In the event any legal action shall be filed upon this Statutory Bond, venue shall lie exclusively in the District Court of Johnson County, Kansas.

[REMAINDER OF THIS 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**

**Surety**

\_\_\_\_\_  
(Typed Firm Name)

\_\_\_\_\_  
(Typed Firm Name)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Seal)

By:  
\_\_\_\_\_  
(Signature)

By:  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Date of Execution)

\_\_\_\_\_  
(Date of Execution)

**(Accompany this bond with Attorney-in-Fact's authority from the Surety Company certified to include the date of the bond.)**



**EXHIBIT 6**

**APPOINTMENT OF PROCESS AGENT**

KNOW ALL MEN BY THESE PRESENTS:

That pursuant to K.S.A. 16-113, as amended, \_\_\_\_\_  
("Contractor") does hereby appoint and designate \_\_\_\_\_, a  
resident of the State of Kansas, as and for their process agent, and hereby consents, without power of  
revocation, that actions may be commenced against said Contractor in any court of competent  
jurisdiction in Johnson County, Kansas, which might arise out of a contractual relationship with the State  
of Kansas or any political or taxing subdivision or unit thereof by service of process on said Contractor,  
and said Contractor stipulates and agrees that such service shall be taken and held in all courts to be as  
valid and binding as if service of process had been made upon the President or any other chief official of  
said corporation.

IN WITNESS WHEREOF the above named Contractor has caused these presents to be executed  
by its president and its secretary, and authenticated by its corporate seal at  
\_\_\_\_\_, in said State of \_\_\_\_\_, this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

CORPORATE NAME \_\_\_\_\_

By \_\_\_\_\_

President \_\_\_\_\_

SEAL

ATTEST:

\_\_\_\_\_

Secretary

## EXHIBIT 7

### NONCOLLUSIVE AFFIDAVIT OF PRIME BIDDER

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and states that:

(1) He/she is \_\_\_\_\_ (owner, partner, officer, representative or agent) of \_\_\_\_\_, (company) the bidder having submitted the attached bid:

(2) He/she is fully informed of the contents of the attached bid and of all the circumstances surrounding the preparation of such bid;

(3) Such bid is genuine and is not a collusive or sham bid;

(4) Neither the said bidder nor any of its officers, partners, owners, representatives, employees, or parties interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other bidder, firm, or person to:

- (a) submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted;
- (b) refrain from bidding in connection with such contract;
- (c) fix the price or prices in the attached bid, or the price or prices of any other bidder;
- (d) fix any overhead, profit, or cost element of the bid price, or the bid prices of any other bid;
- (e) secure an unlawful advantage against the City of Olathe, Kansas, or any person interested in the proposed contract.

(5) The price or prices quoted in the attached bid are fair and proper and not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties interest, including this affiant.

By \_\_\_\_\_

Title \_\_\_\_\_

Subscribed to and sworn to before me, the undersigned, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



**Project Fact Sheet**  
**Municipal Court Security Enhancements**  
**7-C-001-19**  
**November 19, 2019**

**Project Manager:** Beth Wright / Jeff Blakeman

**Description:** This project will provide for an expansion on the west side of the municipal court building to accommodate screening measures to screen all persons, purses, bags, etc. entering the building.

**Justification:** This screening will eliminate the carrying of both open and concealed weapons into the municipal court building.

<b>Schedule:</b>	<b>Item</b>	<b>Date</b>
	Funding Authorization	Dec. 4, 2018
	Contract Award - Design	Dec. 4, 2018
	Contract Award – Construction	Est. Jan. 2020
	Construction Start	Est. March 2020
	Construction Completion	Est. July 2020

<b>Council Actions:</b>	<b>Date</b>	<b>Amount</b>
Funding Resolution	12-04-2018	\$850,000
Award of Design Contract	12-04-2018	\$82,300
Award of Construction Management Agreement	11-19-2019	\$5,000

<b>Funding Sources:</b>	<b>Amount</b>	<b>CIP Year</b>
General Obligation Bonds	\$ 800,000	2019
Court Technology Fund	\$50,000	2019

<b>Expenditures:</b>	<b>Budget</b>	<b>Amount to Date</b>
Staff Costs	\$ 45,000	\$ 9,400
Design	\$ 82,300	\$ 65,000
Construction	\$ 650,000	\$ 0
Inspection/Testing	\$ 5,000	\$ 0
FFE	\$ 40,000	\$ 0
Contingency	\$ 27,700	\$ 80
<b>Total</b>	<b>\$ 850,000</b>	<b>\$ 74,480</b>



# City of Olathe

## COUNCIL AGENDA ITEM

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**MEETING DATE:** 11/19/2019

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**DEPARTMENT:** Public Works

**STAFF CONTACT:** Mary Jaeger/Alan Shorthouse

**SUBJECT:** Professional Services Agreement with Burns & McDonnell Engineering Company, Inc. to conduct a Risk Assessment of the water and wastewater utilities.

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**ITEM DESCRIPTION:**

Consideration of a Professional Services Agreement with Burns & McDonnell Engineering Company, Inc. to conduct a Risk & Resiliency Assessment of the water and wastewater utilities.

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**SUMMARY:**

America's Water Infrastructure Act (AWIA) requires by law that water systems serving more than 3,300 people develop or update risk assessments and emergency response plans (ERPs). The law specifies the components that the risk assessments and ERPs must address and establishes deadlines by which water systems must certify to EPA completion of the risk assessment and ERP. The risk assessment portion of AWIA is due to the EPA by March 31, 2020.

This project will review the City's infrastructure to determine physical security, cyber security and resiliency to natural disasters. This study will serve as the foundation for the goal in Olathe's 2040 Strategic Plan that targets infrastructure that is prepared for and can recover quickly from a disaster.

Six consulting firms submitted Statements of Qualifications to the City of Olathe. Of the 6, Burns & McDonnell was selected as the firm best qualified. This Professional Services Agreement with Burns & McDonnell Engineering Company, Inc. provides for the required review of the City's infrastructure to meet required resiliency planning.

The total fee for the services provided in this Professional Services Agreement is \$182,280.

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**FINANCIAL IMPACT:**

The funding for the Harold Street Wastewater Treatment Plant and Renner Pump Station Generator Replacement Projects includes:

Water & Sewer Funds	\$182,280
<b>Total</b>	<b>\$182,280</b>

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**ACTION NEEDED:**

Approval of a Professional Services Agreement with Burns & McDonnell Engineering Company, Inc. to conduct a Risk & Resiliency Assessment of the water and wastewater utilities.

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**ATTACHMENT(S):**

A: Professional Services Agreement

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## **PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and Burns & McDonnell Engineering Company, Inc., hereinafter "Consultant" (collectively, the "Parties").

City intends to complete a professional services project (hereinafter called the "Project") in Olathe, Kansas, described as follows:

### **Risk Assessment and Emergency Response Planning Support (Phases 1 and 2)** **Project No. 19-0253**

The Project is more fully described in **Exhibit A** (attached hereto and incorporated herein by reference).

By executing this Agreement, Consultant represents to City that Consultant is professionally qualified to perform services on this Project and is licensed to practice engineering by all public entities having jurisdiction over Consultant and the Project.

### **SECTION I - DEFINITIONS**

As used in this Agreement, the following terms will have the following meanings unless otherwise stated or reasonably required by the Agreement, and other forms of any defined words will have a meaning parallel thereto. All terms defined in the most recent version of the Engineers Joint Contract Documents Committee (EJCDC) Standard General Conditions of the Construction Contract (the "General Conditions") adopted by City will have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement will prevail in the interpretation of this Agreement.

**"Additional Services"** means services in addition to those listed in **Exhibit B**.

**"City"** means the City of Olathe, Kansas, a municipal corporation duly organized under the laws of the State of Kansas, its employees, appointees, and officers.

**"Consultant"** means the company or individual identified above, herein, and its affiliates, subsidiaries, employees, agents, and assigns.

**"Construction Cost"** means and includes but is not limited to the cost of the entire construction of the Project, including all supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed in connection with the Project, without deduction on account of penalties, liquidated damages or other amounts withheld from payment to a construction contractor or contractors, but such cost will

not include Consultant's fee, or any other payments to Consultant as set forth herein, and will not include cost of land or rights-of-way and easement acquisition.

"Contract Documents" means those documents so identified in the Agreement for Construction of this Project including all Consultant Documents.

"Consultant Documents" means all documents required or reasonably implied by the nature of the scope of services to be performed by Consultant hereunder, including, but not limited to, plans, specifications, drawings, tracings, designs, calculations, sketches, models and reports.

"Professional Services" means the professional services, labor, materials, supplies, testing, surveying, title work, inspection, if applicable, and all other acts, duties, and services required of Consultant under this Agreement including any Additional Services.

"Project" is as above described.

"Project Manager" means the person employed and designated by City to act as the City's representative for the Project.

"Right-of-Way" and "Easements" means and includes the public street, highway, or road right-of-way and any other land dedicated to or otherwise subject to public use.

"Subsurface Borings and Testing" means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all the foregoing.

"Traffic Control Plan" means a specific plan that includes but is not limited to signing; application and removal of pavement markings; construction sequencing and scheduling; methods and devices for delineation and channelization; placement and maintenance of devices; traffic regulation; and inspection made in accordance with the City's technical specifications.

## **SECTION II - COMPENSATION**

### **A. FEES & EXPENSES**

1. Total Fee: City agrees to pay Consultant an amount not to exceed \$182,280 (one hundred eighty-two thousand, two hundred and eighty Dollars), including reimbursable expenses as described herein. The fee is based on the performance of the scope of services outlined in this Agreement, including **Exhibit B** attached hereto and incorporated by reference, and will be billed by Consultant using hourly rates and equipment charges as set forth in **Exhibit C** attached hereto and incorporated by

reference, plus reimbursable expenses as set forth below. All bills will be submitted to City monthly as provided herein. Payment to Consultant will not exceed the following percentages in each phase of the Project without prior written consent of City.

2. Reimbursable Expenses: Consultant will be reimbursed at the actual cost, not to exceed a total expense of \$3,700 (three thousand, seven hundred Dollars) for the following expenses related only to the Project: (a) expense of transportation in connection with the Project; (b) expenses in connection with authorized out-of-town travel; (c) long-distance communications; (d) expenses of printing and reproductions; (e) postage and facsimile transmissions; (f) expenses of renderings and models requested by City, and (g) other costs as authorized by City in writing as set forth herein.

## **B. SERVICES BEYOND THE SCOPE OF SERVICES**

1. Change in Scope: For modifications in authorized Project scope, modifications of drawings, or modifications to specifications previously accepted by City, when requested by City and through no fault of Consultant, Consultant will be compensated for time and expense required to incorporate such modifications at Consultant's standard hourly rates per **Exhibit C**; provided, however, that any increase in fee or extension of time for Consultant to complete the services must be approved by City in writing. Consultant will correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Consultant's negligence or other actionable fault.
2. Additional Services: Consultant will provide Additional Services authorized by a supplemental agreement executed in writing by the Parties. Prior to commencing any Additional Services, Consultant must submit a proposal outlining the Additional Services to be provided, estimation of total hours, completion date, and a maximum fee based upon the hourly rate schedule attached hereto as **Exhibit C**. Such Additional Services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by Section III, preparing changes in plans ordered by City or made necessary by causes beyond the control of Consultant, providing services necessitated in the event the Professional Services are suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by Consultant, and providing any other special services not otherwise covered by this Agreement which may be requested by City to complete the Project. Payment to Consultant as compensation for Additional Services will be in accordance with the hourly rate schedule attached as **Exhibit C**.
3. Special Services: Consultant may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. If Consultant is requested, in writing, by City, to appear as a witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as **Exhibit C**.

Consultant will not be paid extra by City if Consultant's appearance is to defend its Professional Services.

**C. BILLING & PAYMENT**

1. Billing: Consultant may bill City monthly for completed Professional Services, including reimbursable expenses. The bill submitted by Consultant must itemize the Professional Services and reimbursable expenses for which payment is requested. City agrees to pay Consultant within thirty (30) days of approval by the Governing Body or other agent of City in accordance with the City's Procurement Policy.
2. City's Right to Withhold Payment: In the event City becomes credibly informed that any representations of Consultant provided in its monthly billing are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consultant until the inaccuracy and the cause thereof is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact will be made known to Consultant immediately. Consultant will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City will be paid to Consultant in accordance with the contract payment procedures.
3. Progress Reports: A progress report must be submitted with each monthly pay request indicating the percentage of Professional Services completed to date. This report will serve as support for payment to Consultant.

**D. SCHEDULE**

All services must be completed on or before the dates outlined in **Exhibit B**.

**SECTION III - RESPONSIBILITIES OF CONSULTANT**

Consultant will perform the Professional Services in all phases of the Project to which this Agreement applies as herein provided and which are required for the Project as described below:

**A. GENERAL DUTIES AND RESPONSIBILITIES**

1. Personnel: Consultant will assign only qualified personnel to perform any service concerning the Project as identified in Consultant's response to the Request for Proposals. At the time of execution of this Agreement, the Parties anticipate that the following individual will perform as the project manager: Sarah Tuite, PE, and the principal on this Project: Darin Brickman, PE. As principal on this Project, this person will be the primary contact with the City's Project Manager and will have authority to bind Consultant. So long as the individual named above remains actively employed or



retained by Consultant, such individual will perform the function of principal on this Project. For the Professional Services rendered hereunder, Consultant, and any of its subcontractors, will employ engineers, architects, landscape architects, and surveyors licensed by the Kansas State Board of Technical Professions.

3. Service By and Payment to Others: Any services authorized in writing by City and performed by any party other than Consultant or its subcontractors (a "Third Party") in connection with the proposed Project will be contracted for and paid for by City. In addition to payments for the Third Party's professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other services required or requested by City or Consultant which are not defined within the scope of services of Consultant as set forth herein. Fees for such extra services will be subject to negotiation between City and the Third Party. Fees will be approved by City in writing prior to the execution of any extra services. Although Consultant may assist City in procuring such services of Third Parties, Consultant will in no way be liable to either City or such Third Parties in any manner whatsoever for such services or for payment thereof.
4. Subcontracting or Assignment of Services: Consultant may not subcontract or assign any of the Professional 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 Consultant from any obligation under this Agreement. Any person or firm proposed for subcontracting Professional Services under this Agreement will maintain throughout the duration of the Agreement, insurance as provided in Section V.D.2. herein, and will additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 per claim and in the aggregate and provide City with an insurance certificate showing the insurance limits provided by Consultant's subconsultant. Any services completed by a City-approved subcontractor of Consultant pursuant to this Agreement may not be increased more than ten percent (10%) over the actual cost of the services.
5. Endorsement: Consultant must sign and seal all final engineering reports furnished by Consultant. Any review or approval by City of any documents prepared by Consultant, will be solely for determining whether such documents are consistent with the City of Olathe Design Criteria for Public Improvements and may not be construed as City assuming responsibility for the accuracy, adequacy, fitness, suitability and coordination of Consultant's services and deliverables. No review of such documents will relieve Consultant of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its services and deliverables.
6. Inspection of Documents: Consultant must maintain all Project records for inspection by City at reasonable times and places upon written request during the contract period and for three (3) years from the date of final payment.

7. Standard of Care: Consultant will exercise the same degree of care, skill, and diligence in the performance of the Professional Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances. If Consultant fails to meet the foregoing standard, Consultant will perform at its own cost, and without reimbursement from City, the Professional Services necessary to correct errors and omissions which are caused by Consultant's negligence.

#### **SECTION IV - CITY OF OLATHE'S RESPONSIBILITIES**

##### **A. COMMUNICATION**

City will provide to Consultant information and criteria regarding City's requirements for the Project; examine and timely respond to Consultant's submissions; and give written notice to Consultant, who will respond promptly, whenever City observes or otherwise becomes aware of any defect in the Professional Services.

##### **B. ACCESS**

City will provide access for Consultant to enter public and private property related to the Project and performance of Consultant's obligations under this Agreement.

##### **C. DUTIES**

City will perform the various duties and services in all phases of the Project which are outlined and designated in **Exhibit B** as City's responsibility.

##### **D. PROGRAM AND BUDGET**

City will provide all relevant information reasonably required for Consultant to perform its obligations herein, including but not limited to City's objectives, schedule, constraints, budget with reasonable contingencies, and other necessary design criteria for the Project.

##### **E. ADMINISTRATIVE SERVICES**

City will furnish all City-related legal, accounting, insurance and audit services as may be necessary at any time for completion of the Project. However, in no event will any City-related legal, accounting, insurance and or audit services be provided on behalf of Consultant, nor will Consultant serve any other role than as an independent contractor of City.

**F. PROJECT REPRESENTATIVE**

City will designate a Project Manager to represent City in coordinating this Project with Consultant. The City's Project Manager will have the authority to transmit instructions and decisions of City.

**SECTION V - GENERAL PROVISIONS**

**A. TERMINATION**

1. Notice: City reserves the right to terminate this Agreement for either cause (due to Consultant's failure to substantially perform its obligations hereunder) or for its convenience and without cause or default on the part of Consultant, by providing fifteen (15) days' written notice of such termination to Consultant. Upon receipt of such notice from City, Consultant will, at City's option as contained in the notice: (1) immediately cease all Professional Services; or (2) meet with City and, subject to City's approval, determine what Professional Services will be required of Consultant in order to bring the Project to a reasonable termination in accordance with the request of City. Consultant will also provide to City copies of all drawings and documents completed or partially completed at the date of termination for which Consultant has been fully paid. If City defaults on its obligations under this Agreement, (due to City's failure to substantially perform its obligations under this Agreement), Consultant must notify City by written notice of its intent to terminate and City will have fifteen (15) days from the date of the notice to cure or to submit a plan for cure acceptable to Consultant. In no event may Consultant terminate the contract solely for its convenience without cause.

Address for Notice:

City of Olathe  
Attn: John Gilroy  
1385 S. Robinson Drive  
Olathe, KS 66061

Burns & McDonnell Engineering Co., Inc.  
Attn: Sarah Tuite  
9400 Ward Parkway  
Kansas City, MO 64114

2. Compensation for Convenience Termination: If City terminates for its convenience as provided herein, City will compensate Consultant for all Professional Services completed and accepted and reimbursable expenses incurred to the date of its receipt of the termination notice and any additional Professional Services and reimbursable expenses requested by City to bring the Project to reasonable termination. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed.
3. Compensation for Cause Termination: If City terminates for cause or default on the part of Consultant, City will compensate Consultant for the reasonable cost of Professional Services and reimbursable expenses completed and accepted to date of its receipt of

the termination. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed. City also retains all its rights and remedies against Consultant including but not limited to its rights to sue for damages, interest and attorney fees.

4. Incomplete Documents: Neither Consultant nor its subcontractors will be responsible for errors or omissions in documents which are incomplete because of an early termination under this Section, or Consultant having been deprived of the opportunity to complete such documents and prepare them to be ready for construction.
5. Termination for Lack of Funds: If, for whatever reason, adequate funding is not made available to City to support or justify continuation of the level of Professional Services to be provided by Consultant under this Agreement, City may terminate or reduce the amount of Professional Services to be provided by Consultant under this Agreement. In such event, City will notify Consultant in writing at least thirty (30) days in advance of such termination or reduction of Professional Services for lack of funds.

## **B. DISPUTE RESOLUTION**

City and Consultant 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, Consultant will proceed with the Professional Services as per this Agreement as if no dispute existed, and City will continue to make payment for Consultant's completed Professional Services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

## **C. OWNERSHIP OF CONSULTANT DOCUMENTS**

Consultant will provide City a copy of all final Consultant Documents, including but not limited to prints, reproductions, reports, plans, specifications and related documents, which will become the property of City, if Consultant's copyrighted instruments will remain in the ownership of Consultant if Consultant, at Consultant's sole discretion, may so identify them by appropriate markings. If Consultant is paid in full for its Professional Services, then City may subsequently reuse these final documents without any additional compensation or agreement of Consultant. However, such reuse without written verification or adaptation by Consultant for the specific purpose intended by City will be at City's sole risk and without liability or legal exposure to Consultant. City does not take any responsibility for the reuse of documents by others.

#### **D. INSURANCE**

1. General: Consultant will maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in such amounts as required in **Exhibit D (City of Olathe Insurance Requirements)**. Professional Liability may be written on a "claims made" basis. Consultant will provide certificates of insurance and renewals thereof on forms acceptable to City (**Exhibit E – Certificate of Insurance**). Consultant is required to promptly notify City of a material change or cancellation of any policy listed on the Certificate.
2. Subcontractor's Insurance: If a part of the Professional Services under this Agreement is to be sublet, Consultant will require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss in the minimum amounts designated herein. Consultant agrees to provide the City's Risk Manager a certificate of insurance acceptable to the Risk Manager at least seven (7) days prior to allowing the subcontractor to perform any services on this Project. Consultant agrees that any subcontractor providing services on said Project without providing a certificate of insurance acceptable to the City's Risk Manager will immediately cease all services on said Project and will assume all financial risk associated with such failure thereto.

#### **E. INDEMNITY**

1. Loss: For purposes of indemnification requirements, the term "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with the performance of this Agreement.
2. Indemnification and Hold Harmless: For purposes of this Agreement, Consultant agrees to indemnify, defend and hold harmless City and its agents from any and all Loss where Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of Consultant or its subcontractors.
3. Comparative Fault & Contributory Negligence: It is a specific element of consideration of this Agreement that the indemnity in Section V.E.2 will apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of City or any Third Party and, further notwithstanding any theory of law including, but not limited to, a characterization of City's or any Third Party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Consultant's obligation hereunder will not include amounts attributable to the fault

or negligence of City or any Third Party for whom Consultant is not responsible.

4. Damage Limitations: The indemnification obligation contained in this Agreement will not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Consultant or its subcontractors, by the minimum insurance required by this Agreement, nor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
5. Negligence by the City: Consultant is not required hereunder to defend City or its agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence.

**F. AFFIRMATIVE ACTION/OTHER LAWS**

1. Kansas Act Against Discrimination: During the performance of this Agreement, Consultant agrees that:
  - a. Consultant will observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and will not discriminate against any person in the performance of work under the present contract because of race, religion, color, gender, disability, national origin, ancestry, or age;
  - b. in all solicitations or advertisements for employees, Consultant will include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("commission");
  - c. if Consultant fails to comply with the way Consultant reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Consultant will be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by City without penalty;
  - d. if Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Consultant will be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
  - e. Consultant will include the provisions of subsections a. through d. in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
2. Exceptions to Applicability: The provisions of this Section will not apply to a contract entered into by City with Consultant if (a) Consultant employs fewer than four (4)

employees during the term of such contract; or (b) Consultant's contract with City totals Ten Thousand Dollars (\$10,000) or less in aggregate.

3. Kansas Age Discrimination in Employment Act: Consultant further agrees and acknowledges that it will 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 federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.
4. Kansas Fairness in Public Construction Contract Act: The Parties agree and acknowledge that the services provided under this Agreement are within the scope of the Kansas Fairness in Public Construction Contract Act (K.S.A. 16-1901 et seq.) and that no provision of this Agreement waives, alters, or supersedes any provisions of said Act.

#### **G. 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.

#### **H. APPLICABLE LAW, JURISDICTION, AND 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, excluding Kansas' choice-of-law principles. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County, Kansas.

#### **I. NO THIRD-PARTY BENEFICIARIES**

Nothing contained herein will create a contractual relationship with, or any rights in favor of, any Third Party.

#### **J. INDEPENDENT CONTRACTOR**

Consultant is an independent contractor and not an agent or employee of City.

#### **K. DELIVERABLES**

1. Project Drawings: Project drawings which are developed by Consultant using a Computer Aided Drafting (CAD) System will be made available to City per the City of

Olathe Technical Specifications and Design Criteria for Public Improvements. However, due to the potential that the information set forth on the electronic media could be modified by City, or other City consultants, unintentionally or otherwise, Consultant will remove all indices of its ownership, professional corporation name, seal, and/or involvement from each electronic display. If City provides such electronic media to others for any purpose, City will require the electronic media to be returned to City upon completion of such use. City recognizes that use of such electronic media will be at City's sole risk and without any liability risk or legal exposure by Consultant.

2. Project Documentation: All documentation provided City other than Project drawings will be furnished in either Microsoft Word file format or pdf format.

#### **L. COVENANT AGAINST CONTINGENT FEES**

Consultant represents that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this representation, City may terminate this Agreement without liability or may, in its discretion, deduct from the Total Fee or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

#### **M. COMPLIANCE WITH LAWS**

Consultant will abide by all applicable federal, state and local laws, ordinances and regulations applicable to the performance of Professional Services at the time the Professional Services are performed. Consultant will secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of the obligations under this Agreement, and will provide City a copy of its certificate of good standing to conduct business in the State of Kansas with this Agreement (**Exhibit F**).

#### **N. TITLES, SUBHEADS AND CAPITALIZATION**

Titles and subheadings as used herein are provided only as a matter of convenience and will have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals has no legal bearing on the interpretation of such terms.

#### **O. SEVERABILITY CLAUSE**

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.

**P. AMBIGUITY CLAUSE AND HIERARCHY OF INTERPRETATION**

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 any exhibits attached hereto or incorporated by reference as noted below. In the event of any conflict or inconsistency between this Agreement and its exhibits, the following hierarchy of interpretation will apply:

1. This Agreement;
2. Scope of Services (Exhibit B);
3. City's Request for Proposals/Request for Qualifications (incorporated by reference);
4. Consultant's Response to RFP/RFQ (incorporated by reference).

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

**R. EXECUTION OF CONTRACT**

The parties hereto have caused this Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_ 201\_\_.

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_  
Michael Copeland, Mayor

ATTEST:

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

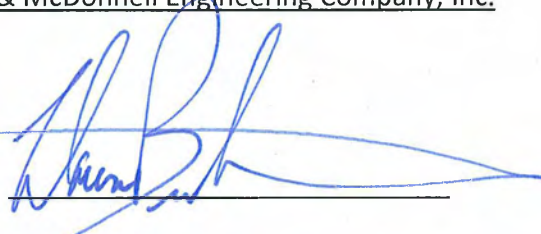
(Seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney/Deputy City Attorney/  
Assistant City Attorney

Burns & McDonnell Engineering Company, Inc.

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

  
Darin Brickman, PE, Vice President  
9400 Ward Parkway  
Kansas City, MO 64114

**TABLE OF CONTENTS  
OF EXHIBITS**

<b>Exhibit A</b>	<b>Description of Project</b>
<b>Exhibit B</b>	<b>Scope of Services</b>
<b>Exhibit C</b>	<b>Fee &amp; Rate Schedule</b>
<b>Exhibit D</b>	<b>City of Olathe Insurance Requirements</b>
<b>Exhibit E</b>	<b>Certificate of Insurance</b>
<b>Exhibit F</b>	<b>Certificate of Good Standing to Conduct Business in Kansas</b>

## **EXHIBIT A**

### **Description of Project**

The City of Olathe (City) is subject to the requirements of the America's Water Infrastructure Act (AWIA) of 2018 which requires community water systems serving a population greater than 3,300 to perform a Risk and Resiliency Assessment (RRA) of their water system and prepare an Emergency Response Plan (ERP) within the timeframes outlined in AWIA. The City must provide certification to the Environmental Protection Agency (EPA) upon completion of the RRA on or before March 31, 2020. The deadline for certification that an Emergency Response Plan (ERP) has been completed is September 30, 2020 or six months from the RRA certification, whichever date is sooner.

The City has requested that Burns & McDonnell Engineering Company (Consultant) provide professional engineering, physical security, and cyber security consulting services as described herein. This project includes the following tasks which are described in additional detail in Exhibit B Scope of Services:

- Phase 1: Document Review and Critical Asset Identification
  - Meetings/Workshops
  - Review of existing documents
  - Identify critical infrastructure and networks
  - Characterize critical infrastructure and networks
- Phase 2: Risk and Resiliency Assessment
  - Meetings/Workshops
  - On-site assessment of critical infrastructure
  - Assessment of monitoring practices, financial infrastructure, and operations and maintenance
  - Evaluation of capital and operational needs for risk and resilience management
  - Consequence and Vulnerability Analysis

Phase 3: Development of an Emergency Response Plan is also required for AWIA compliance; however, as requested by the City, this task will be performed under separate agreement.

## **EXHIBIT B**

### **Scope of Services**

The City of Olathe (City) has requested that Burns & McDonnell Engineering Company (Consultant) provide professional engineering, physical security, and cybersecurity consulting services to supplement the City's Emergency Preparedness Coordinator's efforts in becoming compliant with the America's Water Infrastructure Act (AWIA) 2018.

AWIA focuses on water system risk and resiliency; however, the City is taking a proactive approach by including limited wastewater conveyance and treatment infrastructure in the RRA. The City of Olathe's water system generally consists of horizontal collector wells and vertical wells, raw water transmission, Water Treatment Facility 2, chemical storage and handling facilities, finished water storage, pumping, and distribution. The City's wastewater system generally consists of two wastewater facilities, one lagoon treatment facility, and several sewer lift stations. Electronic infrastructure includes treatment and distribution process control and communications systems, SCADA, business enterprise information technology (IT), and financial infrastructure includes equipment and systems used by the City to manage utility finances.

#### **Project Management and Administration**

Consultant will manage and administer the project and allocate resources to complete the project within schedule and budget limitations. Consultant will conduct project status/coordination calls/meetings as necessary to supplement the meetings and workshops outlined in the following tasks.

### **Phase 1 - Document Review and Critical Asset Identification**

#### **Task 1.1: Project Kickoff Meeting**

Consultant will prepare for and conduct a project kickoff meeting with the City's key stakeholder representatives. The meeting will include a PowerPoint presentation outlining regulatory requirements of AWIA, project objectives, project organization chart, and schedule outlining all project meetings/workshops and required attendees necessary to complete the RRA by the regulatory deadline of March 31, 2020.

Prior to the kickoff meeting, Consultant will prepare a project workplan and schedule of activities/meetings, data needs list, and list of key personnel and desired appointment schedules. Hard copies of relevant documents may be exchanged at the meeting.

#### **Task 1.2: Review and Summarize Regulatory and Background Information**

Consultant will review existing documents including, but not limited to, previously conducted security assessments including the City's 2002 Bioterrorism Act Vulnerability Assessment, Emergency Response Plan/Procedures, water system master plan, security plan, cybersecurity plan, applicable policies, standard operating procedures, etc. as provided by the City. Additional

documentation for review may include:

1. Facility site maps and distribution drawings of key facilities including SCADA, electronic security systems, and command and control facilities.
2. Applicable Federal and State Emergency Management planning and support arrangements relative to day-to-day and emergency operations.
3. Existing and pending mutual aid support agreements to include those agencies and services associated with law enforcement, environmental protection, emergency medical, fire department(s) and area investigative and threat analysis activities.
4. Interface-support agreements with other utilities.
5. Day-to-day and emergency maintenance, security, and operations procedures for preventative maintenance, scheduled maintenance, and contract arrangements for emergency repair by replacement of major elements of the water plant and key distribution components.

Requirements of AWIA will be summarized in an “AWIA Compliance Cross-Walk” and existing documents that may serve as a starting point or meets compliance obligations will be referenced. This document review and analysis will assist with establishing a baseline to serve the risk assessment and future ERP development tasks. Consultant will prepare a draft technical memorandum and AWIA Compliance Crosswalk to identify gaps in documentation.

### **Task 1.3: Identification/Characterization of Critical Assets**

Consultant will utilize the documents reviewed in Task 1.1 to become familiar with City-owned and operated assets. The Consultant will prepare for and participate in a Critical Asset Workshop with key City representatives to review known critical assets, apparent risks, potential failures, and initiate the characterization process. Critical infrastructure may include the following asset categories:

- Physical barriers
- Source water
- Pipes and constructed conveyances, water collection, and intakes
- Pretreatment and treatment facilities
- Chemical storage and handling facilities
- Storage and distribution facilities
- Electronic, computer, or other automated systems

Critical infrastructure will be characterized by its functionality to the overall water and wastewater system including its dependencies (i.e. power, chemicals, etc.) and interdependencies and overall significance to risk management. Consultant will verify the finalized critical asset list with the City for approval prior to the Risk and Resiliency Assessment (Phase 2).

### **Phase 1 Deliverables**

<b>Task</b>	<b>Deliverables</b>
Task 1.1: Project Kick Off Meeting	Meeting minutes
Task 1.2: Review and Summarize Regulatory and Background Information	Draft Technical Memorandum and Compliance Crosswalk Final Technical Memorandum and Compliance Crosswalk Final Compliance Crosswalk in Excel Format
Task 1.3: Identification/Characterization of Critical Assets	Draft Summary of Critical Assets Final Summary of Critical Assets

### **Phase 2 - Risk and Resiliency Assessment**

The following tasks will be completed by the Consultant to prepare the Risk and Resiliency Assessment.

#### **Task 2.1: RRA Round Table**

Consultant will prepare for and conduct an RRA Kick-Off Meeting to achieve the following objectives:

1. Set goals, objectives, and schedule for the RRA Process – This process includes defining specific outcomes, conditions, or performance targets that collectively describe an effective and desired risk management and security posture.
2. Assess Risks to Potential Critical Assets – Review the critical infrastructure inventory and characterization developed in Task 1 and discuss the City’s present concerns relative to single points of failure and relevant threat categories including baseline natural hazards, malevolent (outsider and insider), and cybersecurity.
3. Consequence Identification – Review consequences associated with successful execution of identified threats to critical assets. Consequences considered may include duration loss, pressure loss, loss of fire protection, risk to public health, economic impact, and financial impacts to the City.

Results of the RRA Round Table will be used by the Consultant to develop a comprehensive list of threat-asset pairings and consequences for use in Risk Assessment.

*[Tools: Baseline Information on Malevolent Acts for Community Water Systems (EPA, July 2019); AWWA J100-10 Reference Threats]*

#### **Task 2.2: Risk Assessments**

Consultant will perform on-site assessment of critical infrastructure by collecting the following data for each facility:

1. Facility description and purpose
2. Capacity, volume, redundancy, etc. available at each facility
3. Power source, description, and access
4. Building/materials of construction, doorways, access, openings, hatches, etc.
5. Physical perimeter, surrounding areas, utilities, adjacent land use
6. Tools, chemicals, equipment, or other materials stored
7. Personnel/operational access, operational security policies
8. Physical security access control, surveillance, and detection systems
9. Network/SCADA connectivity and security
10. Potential physical security vulnerabilities
11. Environmental hazards

Each infrastructure assessment worksheet will be supplemented by site plans and annotated with information provided by City operational staff.

Consultant will perform an assessment of monitoring practices, operations, and maintenance for general conformance with AWWA G430-14 Security Practices for Operation and Management and industry best practices. A summary of areas of non-compliance will be prepared to assist the City in prioritizing future procedure and policy development as well as capital improvements.

Consultant will perform an assessment of cyber vulnerabilities to financial infrastructure encompassing equipment and systems used to operate and manage utility finances. Examples include billing, payment, and accounting systems, including third parties used for these services.

Consultant will perform an evaluation of capital and operational needs for risk and resilience management. This evaluation will include equipment, resources, supplies, and key personnel required for risk and resilience management. Risks associated with dependency threats such as loss of power utility or loss of chemical or equipment supplier, or loss of key personnel.

*[Tools: AWWA Cybersecurity Risk Management Tool, Computer Security Evaluation Tool (CSET), Nessus Profession, TCPDump, Nmap]*

### **Task 2.3: Risk and Resiliency Analysis**

Utilizing data collected and derived from preceding tasks and the EPA Vulnerability Self-Assessment Tool (VSAT), Consultant will perform the risk analysis to calculate the risk of asset-threat pairs using parameters including likelihood, effectiveness, adversary success, and consequence of loss for approximately 100 threat-asset pairs.

*[Tools: EPA Vulnerability Self-Assessment Tool (VSAT), NetworkMiner]*



#### **Task 2.4: Risk and Resiliency Assessment Report**

Consultant will prepare draft and final Risk and Resiliency Assessment Report summarizing results of Tasks 2.1-2.4. The report will include a prioritized list of suggested improvements to reduce mitigate consequences, reduce risks to the system, or improve resiliency of critical infrastructure. Planning level costs for these recommended improvements will be provided.

A draft Risk and Resiliency Assessment Report will be complete by March 13, 2020. Review comments shall be provided by the City within 7 calendar days, for final RRA development and certification by the AWIA deadline of March 31, 2020. RRA Certification will be provided by the City through the EPA's Central Data Exchange (CDX) System on or before March 31, 2020.

*[Tools: AWWA J100-10 Risk Analysis and Management for Critical Asset Protection Standard for Risk and Resilience of Water and Wastewater Systems (AWWA, July 2010), Dradis Pro]*

#### **Phase 2 Deliverables**

<b>Task</b>	<b>Deliverables</b>
Task 2.1: RRA Round Table	Meeting minutes
Task 2.2: Risk Assessments	<ul style="list-style-type: none"><li>• Completed infrastructure assessment sheets.</li><li>• Summary of Operations and Maintenance deficiencies.</li><li>• Summary of cyber vulnerabilities.</li><li>• Summary of capital and operational vulnerabilities.</li></ul>
Task 2.3: Risk and Resiliency Analysis	Summary of Risk Analysis Results
Task 2.4: Risk and Resiliency Assessment Report	Draft Risk and Resiliency Assessment Report Final Risk and Resiliency Assessment Report

#### **Schedule**

<b>Deadlines</b>	<b>Activity</b>
December 2, 2019	Receive Notice to Proceed
January 17, 2020	Phase 1 - Review and Summarize Regulatory and Background Information
March 31, 2020	Phase 2 – Final Risk and Resiliency Assessment and Report

**EXHIBIT C**  
**Fee & Rate Schedule**

City of Olathe, Kansas  
AWIA Compliance Support, Phases 1 and 2  
Burns & McDonnell Professional Engineering Services Fee Proposal

	Labor										Total Labor Cost	Expenses (Repro, Travel, etc.)	Total Non-Labor and Subconsultant Cost	TOTAL LABOR EXPENSE COSTS
Description / Work Tasks	Principal in Charge	Quality Manager	Engineer	Electrical Engineer	Env. Engineer	Physical Security Level 12	Physical Security Level 10	Cyber Security Level 13	Cyber Security Level 10	Subtotal				
	Water	Water	Water	Water	Water									
	Level 17	Level 14	Level 13	Level 11	Level 10									
	\$243.00	\$228.00	\$235.00	\$183.00	\$170.00	\$219.00	\$181.00	\$253.00	\$188.00					
Phase 1 - Review and Summarize Regulatory and Background Information	2	2	32	0	72	12	52	16	32	220	\$ 42,806	\$ 500	\$ 500	\$ 43,306
Project Management/Administration	2	2	16							20	\$ 4,702	\$ 500		
AWIA Kickoff Meeting			4		8	4	4	4	4	28	\$ 5,664			
Document Review and Compliance Summary			4		32	8	24	12	12	92	\$ 17,768			
Critical Assets Workshop			8		8		8		8	32	\$ 6,192			
Critical Asset Characterization/Summary					24		16		8	48	\$ 8,480			
Phase 2 - Risk and Resiliency Assessment	2	2	44	104	228	32	120	52	132	716	\$ 135,774	\$ 3,200	\$ 3,200	\$ 138,974
Project Administration	2	2	20							24	\$ 5,642	\$ 500		
RRA Round Table			16		16	8	8	8	8	64	\$ 13,208	\$ 150		
Risk Assessments (Field)				40	40		40			120	\$ 21,360	\$ 2,000		
Assessment - Monitoring Practices				24	24		4		4	56	\$ 9,948			
Assessment - Financial/IT/OT Infrastructure								10	20	30	\$ 6,290			
Assessment - Cybersecurity Data Collection								10	40	50	\$ 10,050			
Evaluation - Capital and Operational Needs				16	24					40	\$ 7,008			
Evaluation - Cybersecurity Data Analysis								20	20	40	\$ 8,820			
Risk Analysis (VSAT)					60		20			80	\$ 13,820			
Draft RRA Report				16	40	20	40			116	\$ 21,348	\$ 250		
Findings and Recommendations - Cybersecurity									32	32	\$ 6,016			
Address Comments and Final RRA Report				8	24		8		8	48	\$ 8,496	\$ 250		
Q Review			8			4		4		16	\$ 3,768	\$ 50		
Total														
Labor Hours	4	4	76	104	300	44	172	68	164	936	Expense Costs		\$ 3,700	
Labor Costs	\$972	\$912	\$17,860	\$19,032	\$51,000	\$9,636	\$31,132	\$17,204	\$30,832	\$178,580	Total \$		182,280	

## EXHIBIT C

### Fee and Rate Schedule

#### Schedule of Hourly Professional Service Billing Rates

Position Classification	Classification Level	Hourly Billing Rate
General Office *	5	\$64.00
Technician *	6	\$78.00
Assistant *	7	\$90.00
	8	\$123.00
	9	\$147.00
Staff *	10	\$170.00
	11	\$183.00
Senior	12	\$204.00
	13	\$228.00
Associate	14	\$237.00
	15	\$241.00
	16	\$248.00
	17	\$250.00

#### NOTES:

1. Position classifications listed above refer to the firm's internal classification system for employee compensation. For example, "Associate", "Senior", etc., refer to such positions as "Associate Engineer", "Senior Architect", etc.
2. For any nonexempt personnel in positions marked with an asterisk (\*), overtime will be billed at 1.5 times the hourly labor billing rates shown.
3. Project time spent by corporate officers will be billed at the Level 17 rate plus 25 percent.
4. For outside expenses incurred by Burns & McDonnell, such as authorized travel and subsistence, and for services rendered by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 10%.
5. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt. A late payment charge of 1.5% per month will be added to all amounts not paid within 30 days of the invoice date.
6. The services of contract/agency and/or any personnel of a Burns & McDonnell subsidiary or affiliate shall be billed to Owner according to the rate sheet as if such personnel is a direct employee of Burns & McDonnell.
7. The rates shown above are effective for services through December 31, 2019, and are subject to revision.

Form BMR919A

**EXHIBIT D**  
**CITY OF OLATHE INSURANCE REQUIREMENTS**

A. Consultant shall procure, and maintain as required, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the project. The cost of such insurance shall be included in the Consultant's bid.

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

1. Commercial General Liability (CGL): [ISO "occurrence" form or its equivalent] \$1,000,000 per occurrence limit including personal and advertising injury and products - completed operations. Any general aggregate limit should be at least \$2,000,000.
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 applicable state workers' compensation laws and employer's liability limits or equivalent 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 include 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, listing the City as a certificate holder, accompanied by an additional insured endorsement or equivalent.
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 must meet all of the requirements stated herein.

**EXHIBIT E**  
**Certificate of Insurance**



# CERTIFICATE OF LIABILITY INSURANCE

12/1/2019

DATE (MM/DD/YYYY)

11/8/2019

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> Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	<b>CONTACT NAME:</b>	
	<b>PHONE (A/C, No, Ext):</b>	<b>FAX (A/C, No):</b>
<b>INSURED</b> 1334942 BURNS & MCDONNELL ENGINEERING COMPANY, INC. ATTN: LYNDA LEVAN PO BOX 419173 KANSAS CITY MO 64141-6173 TUIITE, SARAH	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Liberty Mutual Fire Insurance Company	
	<b>INSURER B:</b> Zurich American Insurance Company	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
<b>INSURER F:</b>		

**COVERAGES \*** **CERTIFICATE NUMBER:** 16401963 **REVISION NUMBER:** XXXXXXXX

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 WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	N	TB2-641-432888-038	12/1/2018	12/1/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	N	AS2-641-432888-048	12/1/2018	12/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
A	<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/A	WC2-641-432888-018	12/1/2018	12/1/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	PROFESSIONAL LIABILITY	N	N	EOC9140546	12/1/2018	12/1/2019	\$1,000,000 PER CLAIM; \$1,000,000 AGGREGATE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: PSA-AWIA. CITY OF OLATHE KS IS AN ADDITIONAL INSURED AS RESPECTS GENERAL LIABILITY AND AUTO LIABILITY, AND THESE COVERAGES ARE PRIMARY AND NON-CONTRIBUTORY, AS REQUIRED BY WRITTEN CONTRACT. THIRTY (30) DAYS NOTICE OF CANCELLATION BY THE INSURER WILL BE PROVIDED TO THE CERTIFICATE HOLDER, TEN (10) DAYS NOTICE IN THE EVENT OF NONPAYMENT OF PREMIUM).

**CERTIFICATE HOLDER**

16401963  
CITY OF OLATHE KS  
1385 S ROBINSON DR  
OLATHE KS 66061

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Joseph M. Agnello*

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**EXHIBIT F**  
**Certificate of Good Standing to Conduct Business in Kansas**



**STATE OF KANSAS**  
**OFFICE OF**  
**SECRETARY OF STATE**  
**SCOTT SCHWAB**

I, SCOTT SCHWAB, Secretary of State of the state of Kansas, do hereby certify, that according to the records of this office.

Business Entity ID Number: 7075690

Entity Name: BURNS & MCDONNELL ENGINEERING COMPANY, INC.

Entity Type: FOREIGN FOR PROFIT

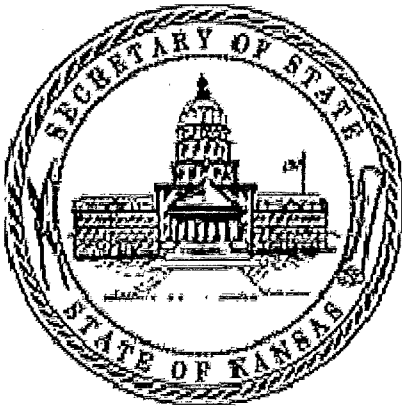
State of Organization: MO

Resident Agent: INCORP SERVICES, INC.

Registered Office: 534 S Kansas Ave Suite 1000, TOPEKA, KS 66603

was filed in this office on October 03, 1973, and is in good standing, having fully complied with all requirements of this office.

No information is available from this office regarding the financial condition, business activity or practices of this entity.



In testimony whereof I execute this certificate and affix the seal of the Secretary of State of the state of Kansas on this day of July 25, 2019

**SCOTT SCHWAB**  
**SECRETARY OF STATE**

Certificate ID: 1109020 - To verify the validity of this certificate please visit <https://www.kansas.gov/bess/flow/validate> and enter the certificate ID number.



# City of Olathe

## COUNCIL AGENDA ITEM

---

MEETING DATE: 11/19/2019

---

DEPARTMENT: Public Works & Legal  
STAFF CONTACT: Mary Jaeger / Beth Wright / Ron Shaver  
SUBJECT: Authorization of a survey for eminent domain for the Brougham Drive Regional Detention Basin Project, PN 2-C-002-16.

---

ITEM DESCRIPTION:  
Consideration of Resolution No. 19-1067 authorizing a survey and description of land or interest to be condemned for the Brougham Drive Regional Detention Basin Project, PN 2-C-002-16

---

SUMMARY:  
Project No. 2-C-002-16 was created by Resolution No. 18-1068 on August 7, 2018.

This project is in place to meet the stormwater detention needs of properties within the Coffee Creek watershed, to reduce the risk of flooding of four (4) homes and to address flooding on Black Bob Road south of 167<sup>th</sup> Street. The project includes construction of two (2) earthen embankments and reinforced concrete box culverts on Coffee Creek along the future Brougham Drive alignment south of 167<sup>th</sup> Street and the future Lindenwood Drive alignment south of 167<sup>th</sup> Street. Attachment A is a map of the project area.

Property needs to be acquired on 3 tracts of land for the project.

This resolution is the first step in the eminent domain process (Attachment B).

To keep the project on schedule, land acquisition needs to be completed by February 28, 2020 to allow the project to be completed by late fall 2020. Staff is continuing to negotiate with the property owner to try to reach an agreement to acquire the property before using the eminent domain process.

---

FINANCIAL IMPACT:  
Funding for the Brougham Drive Regional Detention Basin Project includes:

General Obligation Bonds	\$ 1,000,000
Stormwater Fund	\$ 600,000
Johnson County CIP	\$ 375,000
<u>Johnson County SMAC</u>	<u>\$ 4,225,000</u>
TOTAL	\$ 6,200,000

---

ACTION NEEDED:  
Approve Resolution No. 19-1067 authorizing a survey and description of land or interest to be condemned for the Brougham Drive Regional Detention Basin Project, PN 2-C-002-16.

---

ATTACHMENT(S):

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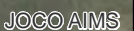
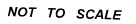
---

MEETING DATE: 11/19/2019

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A: Project Location Map

B: Eminent Domain Resolution





**RESOLUTION NO. 19-1067**

**A RESOLUTION DECLARING IT NECESSARY TO ACQUIRE PRIVATE PROPERTY IN OLATHE, KANSAS FOR THE PURPOSE OF CONSTRUCTING EARTHEN EMBANKMENTS AND REINFORCED CONCRETE BOX CULVERTS ON COFFEE CREEK ALONG THE FUTURE BROUGHAM DRIVE ALIGNMENT SOUTH OF 167<sup>TH</sup> STREET AND THE FUTURE LINDENWOOD DRIVE ALIGNMENT SOUTH OF 167<sup>TH</sup> STREET FOR THE BROUGHAM DRIVE REGIONAL DETENTION BASIN PROJECT, PN 2-C-002-16, AND FURTHER DIRECTING THE CITY ENGINEER OR DESIGNEE TO CAUSE A SURVEY TO BE MADE OF THE LAND NEEDED FOR SUCH IMPROVEMENT.**

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:**

**SECTION ONE:** It is necessary to acquire by appropriation and proceedings in Eminent Domain fee simple title to private property in Olathe, Kansas for the construction of an earthen embankment and reinforced concrete box culverts on Coffee Creek along the future Brougham Drive alignment south of 167<sup>th</sup> Street and the future Lindenwood Drive alignment south of 167<sup>th</sup> Street for the Brougham Drive Regional Detention Basin Project, PN 2-C-002-16. The City Engineer or designee is hereby directed and instructed to cause to be prepared and made a survey of the land necessary for such purpose and to prepare a certificate showing the results of such survey over her signature and to cause the same to be filed in the Office of the City Clerk of the City of Olathe, Kansas. Said report shall also contain a description of the land which is necessary for such purposes.

**SECTION TWO:** After the filing of said survey and report by the City Engineer or designee, the City Attorney of the City of Olathe, Kansas shall cause a proper ordinance to be prepared and submitted to the Governing Body for consideration, providing for the acquisition of private property in Olathe, Kansas by appropriate proceedings in Eminent Domain.

**SECTION THREE:** The City Clerk shall cause this Resolution to be published once in the official City newspaper.

**ADOPTED** by the Governing Body this 19<sup>th</sup> day of November, 2019.

**SIGNED** by the Mayor this 19<sup>th</sup> day of November, 2019.

---

Michael E. Copeland  
Mayor

ATTEST:

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Emily K. Vincent  
City Clerk

(Seal)

APPROVED AS TO FORM:

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Ronald R. Shaver  
City Attorney

Publish one time and return one Proof of Publication to the City Clerk, one to Public Works, and one to the City Attorney.



# City of Olathe

## COUNCIL AGENDA ITEM

---

MEETING DATE: 11/19/2019

---

DEPARTMENT: Resource Management

STAFF CONTACT: Michael Meadors/Amy Tharnish

SUBJECT: Consideration of renewal of contract with Active Net to provide the total registration hosted solution for the Parks and Recreation Department.

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### ITEM DESCRIPTION:

Consideration of renewal of contract with Active Net to provide a total registration hosted solution for the Parks and Recreation Department

---

### SUMMARY:

In 2013, the Parks and Recreation Department selected Active Net for its registration solution. Active Net is the backbone of the Parks and Recreation Department and is used to take registrations for programs, activities and memberships, track and book rental for shelters, gyms, Venues at 061, birthday parties and ballfields. Active Net will continue to provide support services including upgrades, enhancement requests and maintenance issues as part of the technology fee. Also, as part of the fee, Active Net maintains compliance with all credit card processing requirements. This fee is one and one-half percent (1.5%) of all transactions processed through Active Net registration.

Annual cost over the next five (5) years is projected to be as follows:

2020 - \$ 300,000

2021 - \$ 300,000

2022 - \$ 345,000

2023 - \$ 397,000

2024 - \$ 456,000

The projected amount is calculated from the technology fee (1.5%) to the total transaction dollars anticipated for memberships, activities and rentals. Amount could increase if usage or participation numbers increase.

Staff recommends the renewal of contract to Active Net for the total hosted solution for an additional five (5) years.

---

### FINANCIAL IMPACT:

\$1,800,000 for transactions fees for 2020 through 2024. Funding will come from the Recreation Division's operating budget.

---

### ACTION NEEDED:

Renewal of contract to Active Net for an additional five (5) years.

---

### ATTACHMENT(S):

None

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# City of Olathe

## COUNCIL AGENDA ITEM

---

MEETING DATE: 11/19/2019

---

DEPARTMENT: Resource Management

STAFF CONTACT: Mary Jaeger/Amy Tharnish

SUBJECT: Acceptance of bid and consideration of award of contract to Key Equipment & Supply Company, Inc for the design and construction of automated CNG side-loaders for the Public Works Department.

---

### ITEM DESCRIPTION:

Acceptance of bid and consideration of award of contract to Key Equipment & Supply Company, Inc for the design and construction of automated CNG side-loaders for the Public Works Department

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### SUMMARY:

On August 30, 2019 three (3) proposals were received from firms who could design and construct automated CNG side-loaders for the Public Works Department.

Purchasing a Solid Waste Collection Truck (such as an automated CNG side-loader) is a multi-step process. The vendor doing the design work, works alongside two different manufacturers. One company to manufacture a cab and one to manufacture the chassis and then working with one or both manufacturers to merge the cab and chassis together. The lead-times on the cab and chassis are unpredictable. By awarding this three-year, design-build contract, it will allow the vendor adequate time to plan for the lead-times necessary to create the desired vehicle. More importantly, this will provide Solid Waste (SW) and Vehicle Maintenance (VM) Fleet standardization moving forward.

The RFP evaluation process provided an in-depth understanding of the overall construction of the units along with the services that will be provided upon receipt of the equipment. An evaluation team of SW and VM staff assessed the proposals based on familiarity with the types of products and services being requested, design, build, quality and vehicle performance (best value added), service and maintenance plans, and cost. Key Equipment & Supply Company, Inc was the highest scoring respondent.

This contract will allow the City to purchase replacements over the next three years. The following list is contingent upon available funds, need for replacement, and annual review with VM Superintendent, Resource Management, and City Manager's office. In Fiscal Year 2020, Vehicle# 2070157 & 2070159, both 2013 Side Loaders, are up for scheduled replacement. The replacements in Fiscal Years 2021 and 2022 will be similar in make and model and will be approximately three (3) unit replacements per fiscal year.

Staff recommends a three (3) year contract with annual review with Key Equipment & Supply Company, Inc. No Olathe vendors could provide these services.

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### FINANCIAL IMPACT:

Estimated annual expenditures over the next three years will be \$2,975,850 (approximately three (3) units per year, at \$330,650 per unit) and will be funded by the Vehicle and Equipment Replacement Fund.

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### ACTION NEEDED:

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MEETING DATE: 11/19/2019

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Award of contract to Key Equipment & Supply Company, Inc.

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ATTACHMENT(S):

A. Composite Score Sheet

<b>RFP 19-0147 SIDE LOADERS</b>			
	Elliott Equipment Co.	Elliott Equipment Co.	Key Equipment & Supply Co
	Grandview, MO	Grandview, MO	Kansas City, KS
	Bid 1	Bid 2	Bid 1
<b>PROPOSAL SCORES:</b>	663	568	<b>742</b>
Recommended Award			



# City of Olathe

## COUNCIL AGENDA ITEM

---

MEETING DATE: 11/19/2019

---

DEPARTMENT: Resource Management

STAFF CONTACT: Dianna Wright/Kim Marshall

SUBJECT: Consideration of renewal of contract with Cigna for the health and prescription stop-loss insurance program.

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ITEM DESCRIPTION:

Consideration of renewal of contract with Cigna for the health and prescription stop-loss insurance program

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SUMMARY:

The City of Olathe purchases individual stop-loss on an annual basis. The stop-loss coverage is fully insured and provides financial protection to the City who is self-funded for health and prescription coverage. This insurance provides coverage for individual claimants who exceed the specific deductible of \$200,000. In addition, the City also has an aggregating specific deductible of \$150,000 that must be met before reimbursements are paid to the City. The \$150,000 aggregating specific deductible can be satisfied by one or several individuals with large claims that exceed the specific deductible.

The City's healthcare broker, Lockton, requested proposals from fourteen (14) stop-loss vendors. Nine (9) responded and five (5) declined to respond. Those that declined indicated their rates would not be competitive compared to current rates. Based on claims activity, Cigna has proposed a 17% increase to the stop loss premiums effective 1/1/2020 with an estimated annual premium of \$1,183,663. Lockton had assumed a 12% premium increase when developing the 2020 health premium rates for the City. Based upon the significant high cost claims activity for the City during 2017, 2018 and year to date 2019, and Lockton's analysis of the proposed quotes, it was determined that Cigna had provided the best option for the City by keeping the coverage the same; \$200,000 specific deductible and \$150,000 aggregating specific deductible. (See Attachment A and B for details).

We believe this renewal is representative of current market conditions and reflects the City's commitment to loss control and proactive claims and risk management.

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FINANCIAL IMPACT:

The Cigna quote is an additional \$174,119 dollars per year and there are adequate funds in the Risk Management fund.

---

ACTION NEEDED:

Renewal of the contract with Cigna for the health and prescription stop-loss insurance program.

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ATTACHMENT(S):

A. Marketing and Risk Evaluation

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MEETING DATE: 11/19/2019

---

B. Marketing Detail - \$200,000 Specific Deductible

# Marketing and Risk Evaluation

Financial Assessment	Current	Renewal	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6	Option 7	Option 8
Carrier	Cigna	Cigna	OBE	Anthem SL	TM HCC	Optum	Partners	Berkley	Sun Life	HIM
Quote Status	Current	Quoted - Firm	Quoted - Firm	Quoted - Firm	Quoted - Firm	Quoted - Illustrative	Quoted - Illustrative	Quoted - Illustrative	Quoted - Illustrative	Quoted - Illustrative
Coverage Included	Med, RX	Med, RX	Med, RX	Med, RX	Med, RX	Med, RX	Med, RX	Med, RX	Med, RX	Med, RX
Enrollment	1,032	1,032	1,032	1,032	1,032	1,032	1,032	1,032	1,032	1,032
Specific Deductible	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000
Aggregating Specific Deductible	\$150,000	\$150,000	\$350,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000
Annual Interface Fee	\$0	\$0	\$37,152	\$37,152	\$37,152	\$37,152	\$37,152	\$37,152	\$37,152	\$37,152
Total Fixed Cost	\$1,009,544	\$1,183,663	\$1,110,226	\$1,198,152	\$1,208,555	\$1,223,292	\$1,355,899	\$1,360,259	\$1,404,222	\$1,410,414
Total Laser Liability	\$0	\$0	\$0	\$150,000	\$100,000	\$0	\$0	\$0	\$0	\$0
Maximum Overall Liability	\$1,159,544	\$1,333,663	\$1,460,226	\$1,498,152	\$1,458,555	\$1,373,292	\$1,505,899	\$1,510,259	\$1,554,222	\$1,560,414
Change from Current										
Max Fixed Cost Change %		17%	10%	19%	20%	21%	34%	35%	39%	40%
Fixed Cost Annual Change \$		\$174,119	\$100,682	\$188,608	\$199,011	\$213,748	\$346,356	\$350,715	\$394,678	\$400,870
Max Liability Change %		15%	26%	29%	26%	18%	30%	30%	34%	35%
Max Liability Annual Change \$		\$174,119	\$300,682	\$338,608	\$299,011	\$213,748	\$346,356	\$350,715	\$394,678	\$400,870
2nd Year Renewal Protection (No New Lasers/Rate Cap)										
Renewal Protection Included		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Rate Cap Maximum %		45%	40%	40%	50%	50%	50%	55%	39%	40%
Max 2 Year Specific Fixed Cost - if Rate Cap Applies		\$2,899,974	\$2,649,681	\$2,860,704	\$3,002,810	\$3,039,653	\$3,371,172	\$3,448,226	\$3,341,601	\$3,370,132
3rd Party Contractual & Risk Assessment										
AM Best Financial Rating			A		A++	A+		A+	A+	A
Stop Loss Carrier Block Size			\$274M		\$1.13B	\$300M		\$298M	\$1.20B	\$865k
Reasonable & Customary Limitation			Yes - 2		Yes - 2	No		Yes - 2	Yes - 2	No
Medical Plan Document Mirroring			Yes - 2		Yes - 2	Yes - 1		Yes - 2	Yes - 2	Yes - 1
SL Carrier Best Practice Disclosure			Yes		Yes	Yes		Yes	Yes	Yes
Experience Refund Option		No	No	No	No	Yes	No	No	No	No
Gapless Coverage		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Additional Notes										
Markets Declining:	Symetra, Voya, Liberty Mutual, Swiss Re, ISU									
Market DTO Reasons:	Uncompetitive to current rates									
Commentary/Recommendation:	TM HCC includes laser.									
3rd Party Contractual & Risk Assessment Notes:	<p>*Equivalent rate takes into account recommended best practice initiatives for protection, and weights each value. This is for comparison purposes only, the actual quoted rate overrides.</p> <p>1) Approved plan language reference/definition utilized throughout policy, no additional exclusions or definitions of eligible claims that may create a gap between SPD and policy. Will not cover expenses paid as benefit exceptions, any expenses not specifically covered in SPD must be approved in advance.</p> <p>2) Plan Mirroring created via endorsement - makes changes to underlying policy definitions and/or exclusions/limitations. Endorsement alters policy language to defer to the plan language instead of the underlying policy. Must be approved for Endorsement.</p> <p>3) Confirmation in writing from carrier that provisions can be treated as added, but no endorsement available. Must validate on case by case basis.</p>									

# Marketing Detail - \$200k Specific Deductible

Option Carrier	Current Cigna	Renewal Cigna	Option 1 QBE	Option 2 Anthem SL	Option 3 TM HCC
Individual Specific Stop Loss Coverage					
Status	Current	FIRM	FIRM (pending disclosure)	FIRM (pending disclosure)	FIRM (pending disclosure)
Individual Specific Deductible	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000
Aggregating Specific Deductible	\$150,000	\$150,000	\$350,000	\$150,000	\$150,000
Contract	84/12	96/12	24/12	24/12	24/12
Coverage	Med, RX	Med, RX	Med, RX	Med, RX	Med, RX
# of Lives	1,032	1,032	1,032	1,032	1,032
Run-In Limitation	\$0	\$0	\$0	\$0	\$0
Fixed Cost					
Composite Specific Rate	\$81.52	\$95.58	\$86.65	\$93.75	\$94.59
Annual Interface Fee	\$0	\$0	\$37,152	\$37,152	\$37,152
Annual Specific Cost	\$1,009,544	\$1,183,663	\$1,110,226	\$1,198,152	\$1,208,555
Commission	0%	0%	0%	0%	0%
Administrative Fee (No Rate Impact)	0%	5%	5%	5%	5%
Laser Liability					
Laser 1	\$0	\$0	\$0	\$350,000	\$300,000
Total Laser Liability	\$0	\$0	\$0	\$150,000	\$100,000
Annualized Coverage					
Fixed Cost	\$1,009,544	\$1,183,663	\$1,110,226	\$1,198,152	\$1,208,555
Maximum Overall Liability	\$1,159,544	\$1,333,663	\$1,460,226	\$1,498,152	\$1,458,555
Change From Prior Year					
\$ Fixed Cost Change		\$174,119	\$100,682	\$188,608	\$199,011
% Fixed Cost Change		17.2%	10.0%	18.7%	19.7%
No New Laser Rate Cap Coverage					
2020 Rate Cap	40%	45%	40%	40%	50%
Max 2 Year Fixed Cost		\$2,899,974	\$2,649,681	\$2,860,704	\$3,002,810
Simulated Average Number of Claims					
Simulated Average Reimbursements		\$910,263	\$729,260	\$910,263	\$910,263
Value to Change Current Deductible/Carrier (negative is savings)		\$0	\$107,567	\$14,489	\$24,892
*Due to rounding rates can slightly vary from proposal. Please refer to proposal for carrier rates.					
Commentary/Recommendation: Value to Change Deductible = (Renewal Simulated Reimbursements - Alternate Option Simulated Reimbursements) - (Renewal Fixed Cost - Alternate Option Fixed Cost)					



# City of Olathe

## COUNCIL AGENDA ITEM

---

MEETING DATE: 11/19/2019

---

DEPARTMENT: Public Works, Planning Division

STAFF CONTACT: Andrea Fair, Planning Intern and Zach Moore, Planner II

SUBJECT: VAC19-0004: Vacation of an Existing Utility Easement at Central Elementary School,  
Applicant: Olathe Unified School District #233

---

### ITEM DESCRIPTION:

Consideration of Ordinance No. 19-73 (VAC19-0004), requesting vacation of an existing utility easement at Central Elementary School; located at 407 E Cedar Street. Planning Commission recommends approval 9-0.

---

### SUMMARY:

This is a request to vacate and existing, 12-foot-wide, utility easement at 407 E Cedar Street. The Olathe School District is working to relocate surface utilities in order to provide additional green space for students at Central Elementary.

The site is located within the City of Olathe water and sewer service area. The Public Works Department has reviewed the vacation request and recommends approval as proposed. The applicant has also provided the required utility sign-off letters to verify there are no conflicts with private utility providers.

Public notification letters to surrounding properties within 200 feet per *Unified Development Ordinance (UDO)* requirements. Staff has not received any concerns regarding the proposed vacation of public easements.

The Planning Commission held a public hearing on October 28, 2019. The Planning Commission recommended approval of the vacation of an existing utility easement with a vote of 9-0 as reflected in the minutes. No individuals spoke in opposition of the vacation request at the public hearing.

---

### FINANCIAL IMPACT:

None

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### ACTION NEEDED:

1. Approve Ordinance No. 19-73 for vacation of an existing utility easement as recommended by Planning Commission.
  2. Reject the vacation of an existing utility easement and return to the Planning Commission for further consideration, advising the Commission of the reasons for the rejection.
- 

### ATTACHMENT(S):

- A. Planning Commission Packet
  - B. Planning Commission Minutes
-

---

MEETING DATE: 11/19/2019

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C. Ordinance No. 19-73  
D. Vacation "Exhibit A"





Planning Division

**STAFF REPORT****Planning Commission Meeting: October 28, 2019**

<b>Application:</b>	<b><u>VAC19-0004</u> Vacate an Existing Utility Easement at Central Elementary School</b>
<b>Location:</b>	305 E. Cedar Street
<b>Owner/Applicant:</b>	Olathe Unified School District #233
<b>Engineer:</b>	David Wood, Kaw Valley Engineering, Inc.
<b>Staff Contact:</b>	Andrea Fair, Planning Intern

**1. Comments:**

This is a request to vacate an existing, 12-foot-wide, utility easement at 305 E Cedar Street. The Olathe School District is working to relocate surface utilities in order to provide additional play area for students at Central Elementary School. This easement was recorded on the Millbrooke Plat in 1959.

**2. Public Notice:**

The applicant mailed the required public notification letters to surrounding properties within 200 feet per *Unified Development Ordinance (UDO)* requirements. Staff has not received any concerns or feedback regarding the proposed vacation of public easements.

The applicant has also provided the required utility sign-off letters to verify there are no conflicts with private utility providers.

**3. Utilities:**

The site is located within the City of Olathe water and sewer service area. The Public Works Department has reviewed the exhibits for the proposed easement vacation and recommends approval as proposed.

**4. Streets/Right-of-Way:**

The site has access to East Cedar Street. There are no proposed changes to the access drives to public streets with this vacation.



*Site Aerial*



*View looking south from East Cedar Street*

5. **Staff Recommendation:**

Staff recommends approval of VAC19-0004 as proposed.



Attachment A



VACATE UTILITY EASEMENT - CENTRAL ELEMENTARY SCHOOL  
VAC19-0004



**DESCRIPTION:**

A 12 FOOT WIDE UTILITY EASEMENT BEING VACATED AND LOCATED ACROSS A PORTION OF LOT 1 AND LOT 3, MILLBROOKE, A SUBDIVISION IN THE CITY OF OLATHE, AS FILED IN BOOK 21 AT PAGE 61 RECORDED IN THE REGISTER OF DEEDS OFFICE, ALL IN JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED BY KENNETH J. DEDRICK, PS-1067 ON THIS 9TH DAY OF JULY, 2019 AS FOLLOWS:

ALL THAT PART OF A PLATTED 12 FOOT WIDE UTILITY EASEMENT AS BEING LOCATED IN SAID LOT 1 AND SAID LOT 3 OF MILLBROOKE.

THE DATA USED TO CREATE THIS DESCRIPTION WAS GATHERED BY FIELD SURVEY ON MAY 23, 2019.

CONTAINS 2,395 SQUARE FEET OR 0.055 ACRES MORE OR LESS.

**SURVEYOR'S CERTIFICATION:**

I, KENNETH J. DEDRICK, BEING A DULY REGISTERED AND LICENSED LAND SURVEYOR IN THE STATE OF KANSAS, HEREBY CERTIFY THAT THIS REAL PROPERTY DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND IS CORRECT TO THE BEST OF MY BELIEF AND KNOWLEDGE.



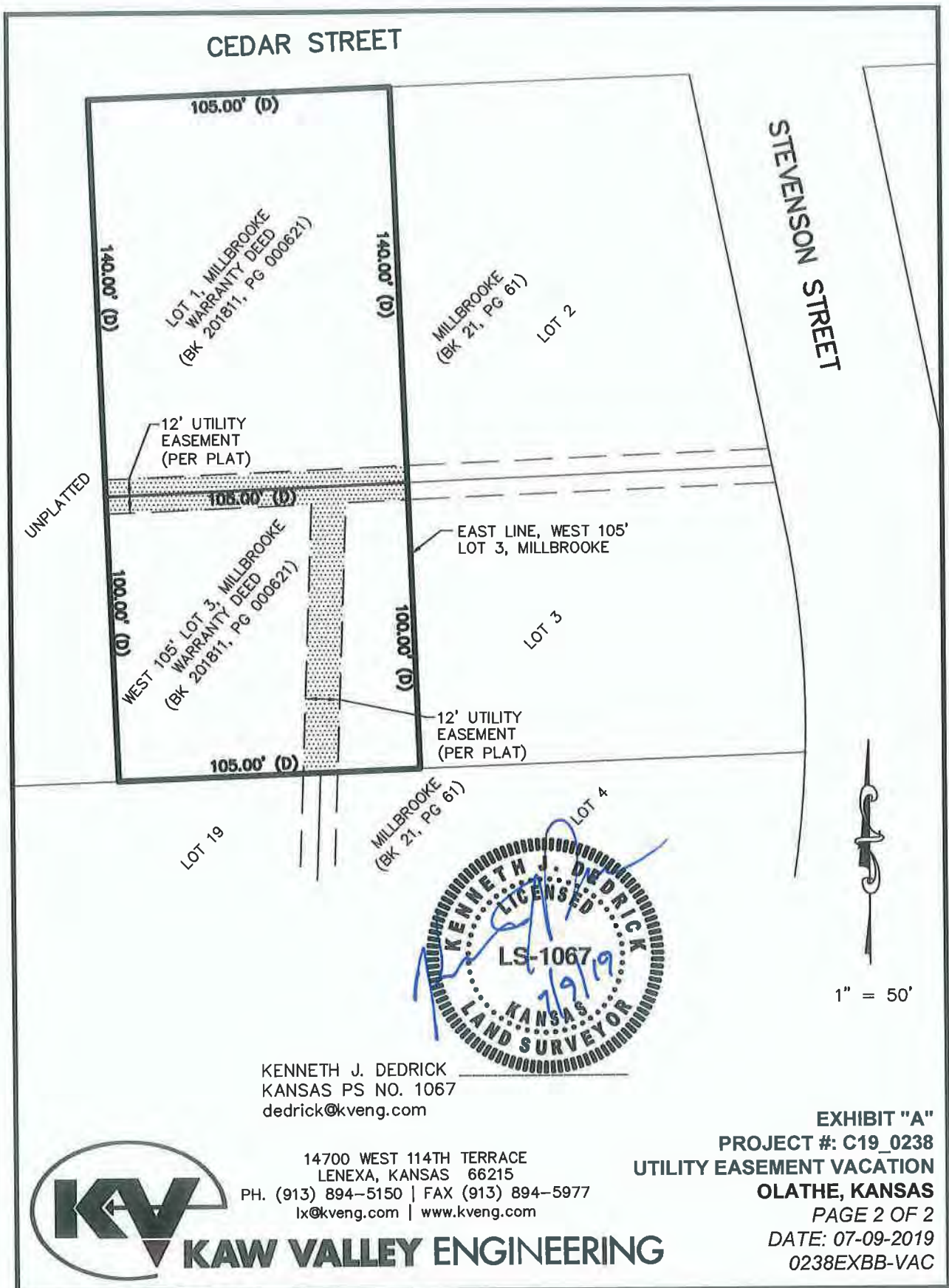
KENNETH J. DEDRICK  
KANSAS PS NO.. 1067  
dedrick@kveng.com



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LENEXA, KANSAS 66215  
PH. (913) 894-5150 | FAX (913) 894-5977  
lx@kveng.com | www.kveng.com

**KAW VALLEY ENGINEERING**

**EXHIBIT "A"**  
**PROJECT #: C19\_0238**  
**UTILITY EASEMENT VACATION**  
**OLATHE, KANSAS**  
**PAGE 1 OF 2**  
**DATE: 07-09-2019**  
**0238EXBB-VAC**





Planning Division

**MINUTES****Planning Commission Meeting: October 28, 2019**

<b>Application:</b>	<b><u>VAC19-0004</u> Vacate an Existing Utility Easement at Central Elementary School</b>
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**Andrea Fair, Planning Intern**, presented a request to vacate an existing 12-foot utility easement at 305 East Cedar. The subject property borders Central Elementary School on the east side and is currently owned by the Olathe School District. The school district is working to relocate surface utilities in order to provide additional play space. The easement was recorded on the Millbrooke Plat in 1959. Public Works has reviewed this proposed vacation and recommends approval as proposed. She noted that there is access to East Cedar, and there are no proposed changes to access to drives and public utilities.

**Ms. Fair** stated that the applicant mailed notification letters as required by the UDO. Staff has not received any concerns or feedback at this time. Therefore, staff recommends approval of the vacation of the existing utility easements.

**Chair Vakas** opened the public hearing and asked if the applicant had anything to add; they did not. **Chair Vakas** called for a motion to close the public hearing.

*Motion by Comm. Freeman, seconded by Comm. Allenbrand, to close the public hearing.*

*Motion passed 9-0.*

*Motion to recommend VAC19-0004 for approval as proposed was made by Comm. Freeman and seconded by Comm. Sutherland.*

**Aye:** Youker, Sutherland, Freeman, Nelson, Allenbrand, Fry, Munoz, Corcoran, Vakas  
(9)

**No:** (0)

*Motion was approved 9-0.*

**ORDINANCE NO. 19-73**

**AN ORDINANCE VACATING AN UTILITY EASEMENT LOCATED AT 407 EAST CEDAR STREET IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS**

**WHEREAS**, Olathe Unified School District #233, does petition the City Council of the City of Olathe, Kansas, for the vacating of a certain utility easement below described:

LOT 1 AND THE WEST 105 FEET OF LOT 3, MILLBROOKE, A SUBDIVISION OF LAND IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS.

(hereinafter called "property"); and

**WHEREAS**, A petition for vacation (VAC19-0004) was filed with the City of Olathe, Kansas, on the 9th day of September 2019; and

**WHEREAS**, proper notice of such vacation petition was given pursuant to K.S.A. 12-504 and Section 18.40.190 of the Unified Development Ordinance; and

**WHEREAS**, a public hearing on such petition was held before the Planning Commission of the City of Olathe, Kansas, on the 28th day of October 2019; and

**WHEREAS**, said Planning Commission has recommended that such utility easement vacation petition be approved; and

**WHEREAS**, the petitioner states that he is the owner of record of the property; and

**WHEREAS**, the City Council has determined that the utility easement is not needed by the city; no private rights will be injured or endangered by the vacation; the public will suffer no loss or inconvenience thereby; and that in justice to the applicant the petition should be granted.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OLATHE, KANSAS:**

**SECTION ONE:** That the following described existing utility easement granted to the City of Olathe, Kansas, by a plat of Millbrooke, a subdivision in the City of Olathe, Johnson County, Kansas, is hereby vacated:

LOT 1 AND THE WEST 105 FEET OF LOT 3, MILLBROOKE, A SUBDIVISION OF LAND IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS.

**SECTION TWO:** That the City Clerk is hereby directed to file a certified copy of this ordinance with the County Clerk and the Register of Deeds of Johnson County, Kansas.

**SECTION THREE:** That this Ordinance shall take effect from and after its passage and publication as provided by law.

**PASSED** by the City Council this 19<sup>th</sup> day of November 2019.

**SIGNED** by the Mayor this 19<sup>th</sup> day of November 2019.

---

Mayor

ATTEST:

---

City Clerk

(Seal)

APPROVED AS TO FORM:

---

City Attorney



**DESCRIPTION:**

A 12 FOOT WIDE UTILITY EASEMENT BEING VACATED AND LOCATED ACROSS A PORTION OF LOT 1 AND LOT 3, MILLBROOKE, A SUBDIVISION IN THE CITY OF OLATHE, AS FILED IN BOOK 21 AT PAGE 61 RECORDED IN THE REGISTER OF DEEDS OFFICE, ALL IN JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED BY KENNETH J. DEDRICK, PS-1067 ON THIS 9TH DAY OF JULY, 2019 AS FOLLOWS:

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THE DATA USED TO CREATE THIS DESCRIPTION WAS GATHERED BY FIELD SURVEY ON MAY 23, 2019.

CONTAINS 2,395 SQUARE FEET OR 0.055 ACRES MORE OR LESS.

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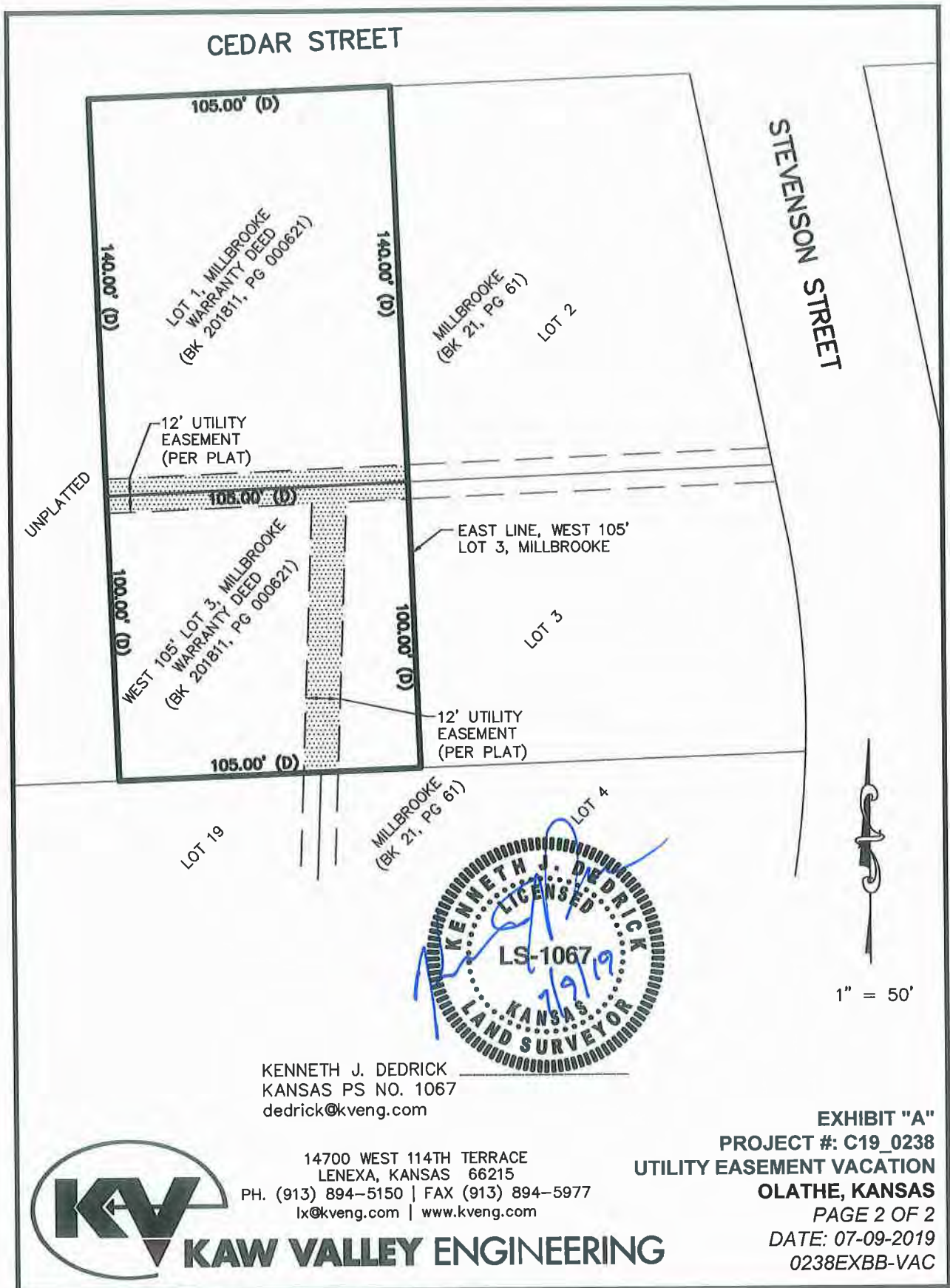
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**KAW VALLEY ENGINEERING**

**EXHIBIT "A"**  
**PROJECT #: C19\_0238**  
**UTILITY EASEMENT VACATION**  
**OLATHE, KANSAS**  
**PAGE 1 OF 2**  
**DATE: 07-09-2019**  
**0238EXBB-VAC**





# City of Olathe

## COUNCIL AGENDA ITEM

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MEETING DATE: 11/19/2019

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DEPARTMENT: Resource Management

STAFF CONTACT: Dianna Wright/Emily Vincent

SUBJECT: Report on a request by K/H Jensen (on behalf of Sun Life Assurance Company of Canada) for issuance of industrial revenue bonds and tax phase in for the construction of a 600,000 sq. ft. light industrial facility located on a 36+/- acre parcel west of Old 56 Highway at 155<sup>th</sup> St. in the I-35 Logistics Park (Building D). The applicant is applying under master resolution 08-1068.

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### ITEM DESCRIPTION:

Report on a request by K/H Jensen (on behalf of Sun Life Assurance Company of Canada) for issuance of industrial revenue bonds and tax phase in for the construction of a 600,000 sq. ft. light industrial facility located on a 36+/- acre parcel west of Old 56 Highway at 155<sup>th</sup> St. in the I-35 Logistics Park (Building D). The applicant is applying under master resolution 08-1068

---

### SUMMARY:

The City has received an application for approximately \$30,618,896 in industrial revenue bonds for the construction of a 600,000 square foot light industrial facility on a 36+/- acres located west of Old 56 Highway at 155<sup>th</sup> Street. This is a single series of bonds to be issued to cover building costs.

- Construct a 600,000 sq. ft. warehouse facility on a 36+/- acre parcel of land.
- The Applicant seeks to have the project receive approximately a 10-year, 50% property tax phase in for industrial uses in conjunction with the issuance of the City's industrial revenue bonds. This project is applying for and falls under the City's tax abatement policy (master resolution) for a property tax phase in, Policy F-5 and Resolution 18-1111 and under the KH Jensen Master Resolution 08-1068.
- Single series of bonds for this facility project under the application.
  - One 600,000 sq. ft. light industrial facility.
- Requests amount not to exceed \$30,618,896 of industrial revenue bonds:
  - \$3,192,077 allocated to acquire land
  - \$27,426,819 to construct the building and other costs
  - No funds are allocated for furniture, fixtures & equipment
- Creates 235 new jobs over the next 10 years.
  - Average salaries:  
Year one = \$32,500  
  
Year ten = \$40,291
  - \$9,469,000 approximately in new annual wages in year 10
  - \$77,616,520 approximately in new wages combined over the next 10 years
- Current estimated property taxes at this site (all jurisdictions): \$486 (\$13,179 appraised value for 2019 and \$3,954 assessed value for 2019). Olathe's current tax revenue from the property

\$96.

- Property taxes on the project over the 10-year phase in period considering an estimated appraised value of \$18,465,000:
  - All taxing jurisdictions = \$5,689,670 10-year total / \$568,967 annually
  - Olathe = \$1,126,640 10-year total / \$112,664 annually
- Property taxes over the 10-year phase in period with an estimated 50% property tax abatement:
  - All jurisdictions = \$2,844,830 10-year total / \$284,483 annually
  - Olathe = \$563,320 10-year total / \$56,332 annually

Olathe will realize approximately \$112,570 in new annual tax revenue after phase in period expires

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**FINANCIAL IMPACT:**

See attached materials for more detailed fiscal impact information.

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**ACTION NEEDED:**

Accept report and hold a public hearing regarding the project at the December 3<sup>rd</sup> meeting.

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**ATTACHMENT(S):**

Attachment A: Application   Attachment B: Executive Summary   Attachment C: Firm Data Sheet  
Attachment D: Cost Benefit Analysis



**CITY OF OLATHE, KANSAS**  
**APPLICATION FOR ISSUANCE OF INDUSTRIAL REVENUE BONDS**  
 (IRB)  
 Existing Olathe Business

*This application is submitted in conformance with the city's tax abatement policy. It is understood that the city may require in lieu payments for property which becomes tax exempt. The attached sheets, if any, are submitted as Exhibits A-G of this application. This application must be submitted within sufficient time to meet procedural requirements of the abatement policy, (refer to the tax abatement calendar).*

**A non-refundable \$2,000 application / filing fee must accompany this application.** If bonds are issued, the City will require an issuance fee of .0025 of the first \$40 million of bonds issued plus .0020 of the amount of bonds issued in excess of \$40 million (issuance fee shall not be less than \$2,500. For warehouse distribution or logistics-type projects the City will require an issuance fee of .0030 of the par amount of bonds being issued (which amount shall not be less than \$2,500). Additionally, the applicant shall be responsible for bond counsel fees, trustee fees and other fees associated with the issuance of the bonds. See Section 6 of Resolution No.18-1111 and contact Bond Council for a more detailed explanation of the fees.

K/H Jensen as agent for Sun Life Assurance Company of Canada

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**Applicant's Name**

Djensen@Kessingerhunter.com

816 936 8505

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**Applicant's Email Address**

2600 Grand Blvd, 7th Floor , Kansas City, Missouri

---

**Telephone Number**

---

**Applicant's Address**

Dan Jensen , Developer

816 936 8505

---

**Name and Title of Responsible Officer/Contact**

2600 Grand Blvd, 7th Floor , Kansas City, Missouri

---

**Telephone Number**

---

**Address (if other than corporate address)**

Eric Holmberg

---

**Attorney for Applicant**

eric@holmberglaw.com

703 591 4996

---

**Attorney's Email Address**

---

**Telephone Number**

---

**Attorney's Address**

---

**Bond Purchaser/Underwriter for Applicant**

816-218-7523

---

**Bond Purchaser/Underwriter's Address**

Gary Anderson of Gilmore & Bell

---

**Telephone Number**

---

**Bond Counsel for Applicant**

---

**Bond Counsel's Address**

---

**Telephone Number**

## I. BUSINESS INFORMATION

If the applicant corporation, or its parent, is a publicly-held corporation and regularly files annual reports on Form 10-K, respectively attach as a part of this application: Exhibit A - a copy of the most recent Form 10-K, and Exhibit B - the applicant's most recent annual report to shareholders.

- A. In what line or lines of business is the applicant engaged?

Real Estate Development

- B. Is the applicant (or its parent) a proprietorship, partnership, or corporation (LLC)?

Corporation (LLC)

- C. Year and State of incorporation 2007 Kansas

If proprietorship, partnership, or close corporation, list the names of owners and the approximate amounts owned by each of its principal stockholders.

- D. List the names and titles of the officers of the applicant firm:

Dan Jensen/Manager

- E. List the name of the certified public accounting firm (or firms) which has performed audits of the applicant's (or its parent's) books and records for the past three (3) years. Attach financial reports (income statements, retained earnings statements, changes in working capital, balance sheets, etc.) for same years as Exhibit C.

N/A

- F. Have the applicant's credit instruments been rated by a rating service? No  
Indicate name of rating service and types of instruments. Attach most recent copy of credit rating report as Exhibit D.

G Describe all outstanding or threatened litigation:

None

## II. THE PROJECT

Briefly describe the nature of the proposed project, including information as to the structure itself (size of building, amount of land to be purchased, etc.), whether it is an expansion of an existing facility or the construction of a new facility, and what products or services are to be manufactured or provided there.

600,000 SF , state-of-the-art bulk distribution facility to be built either to suit for a specific user or possibly on a speculative basis. on 36+/- acres in I-35 Logistics Park. This will be the third of ultimately six buildings totaling approximately 4.5 million SF.

A. Approximate amount requested for:

Land (Attach a legal description of property as <u>Exhibit E</u> )	\$ 3,192,077
Building	\$ 24,620,000
Machinery and Equipment	\$
Pollution Control Facilities	\$
Other Costs*	\$ 2,806,819
Total	\$ 30,618,896

\* State other costs:

Soft cost, carry, operating expense

B. Does the applicant, or its parent, presently have offices or industrial facilities located in Olathe, Kansas? ☒ Yes If so, describe.

K/H Jensen developed I-35 Logistics Park building B (821,000 SF) & building C (567,155SF)

C. Where is the location of the project?

155th & 159th & Old 56 Hwy

D. Is the prospective location properly zoned? Yes \_\_\_\_\_ If a zoning change is pending, cite application number and present status. If application has not been made, briefly describe what change will be needed and plans for submitting application:

E. Describe the type of buildings to be constructed and type of machinery and equipment to be financed?

High Cube bulk distribution/ logistics and/or manufacturing facility

F. Will the applicant be in direct competition with other local firms? Yes \_\_\_\_\_ If so, name the firms:

Block & Company, Van Trust, Odessy Development, Heise Meyer

Describe the nature of the competition:

they too are in the industrial real estate development business.

G. Are adequate public streets and utilities available to the proposed site? Yes

H. Specify if unusual demands for water and sewer will be made?

No

I. Does the applicant plan to use the City of Olathe solid waste service? Yes \_\_\_\_\_. If not, please identify special solid waste requirements or arrangements already made:

It is always our intention for our tenants to use the City's solid waste service if they are cost competitive

J. What percentage of usable floor space will be occupied by applicant? 0% What percentage will be occupied by other occupants? 100% Indicate each occupant, if known.

not known at this time



K. Name and address of construction contractor and/or architect:

Merit Construction Company/ Davidson Design

L. How many persons will be employed at the project? \_\_\_\_\_ Will this project represent an increase in employment opportunities in Olathe, Kansas? Unsure  
*\* Please complete Appendix I on page 10.*

M. Briefly describe the approximate number of persons to be employed by the project at all levels (e.g. - management, office, skilled and unskilled):

See Firm Data Sheet

N. What dollar amount, and percentage of the applicant's total projected annual sales for the next ten (10) years, is expected to be generated by the project?

See Firm Data Sheet

O. What percentage of sales will be sold locally? \_\_\_\_\_ Is this percentage increasing, decreasing, or remaining stable from the current trend? Increasing

P. What is the estimated annual amount of merchandise and services purchased locally by the applicant?

See Firm Data Sheet

Q. Is there likelihood for expansion of the proposed facility within three (3) years? No  
If such expansion is contemplated, please describe:

R. Has, or will, an environmental audit be performed for the site? Yes

### III. FINANCING

A. Will the applicant pledge any assets other than the project itself to secure the bonds? No  
If so, what?

B. Will a bond and interest reserve be provided for? No State amount and source of funding.

C. What portion of the project will be financed from funds other than bond proceeds?

None

What is the source of such funds?

D. What will be the applicant's equity investment? Please describe:

20% +/-

E. Does the applicant have any major contractual arrangements that would tend to assure, or be a detriment to, the successful financing and marketing of the proposed bonds? No  
If so, please describe:

F. List previous participation in IRB financing:

167th & Lone Elm (retired) I-35 Logistics Park building B & building C

G. Has a bond underwriter determined whether or not the bonds are marketable? No If so, describe its determination and attach statement as Exhibit F.

N/A

H. Have arrangements been made for the marketing of the bonds? No Describe interest rate structure and term of bonds.

I. Indicate whether bonds will be publicly or privately placed.

Privately

J. Has the applicant considered conventional financing?

yes

K. Does the applicant, or its parent, intend to purchase all or any part of the proposed bond issue?

yes

L. Indicate name of primary officer, institution name, and address of trustee and/or fiscal agent.

to be determined

M. Proposed date of issuing the bonds: to be determined

N. ***Prior to the contractor starting construction on the project***, the applicant shall **notify the City Clerk** whether or not to proceed with an application for a **sales tax exemption** from the state of Kansas. *Prior to, or at completion, of the project*, the applicant shall inform the City Clerk to proceed with the appropriate filing with the state board of tax appeals for a tax abatement on the project.

#### IV. FINANCIAL PLAN

Attach, as Exhibit G of this application, **projected proforma statements** for the first ten (10) years of operations which include revenue projections, operating expense projections, and debt amortization schedule.

#### V. TAXES

A. What is the requested tax abatement term in years? 10 years Percentage requested 50 %

B. If a Fixed PILOT payment is proposed for the project, please outline proposed structure:

would consider a fixed PILOLOT payment but not one that has annual growth.

- C. Under normal circumstances, the City will require payment in lieu of payments for property which becomes tax exempt. If tax abatement is requested, please describe special features or benefits of the project, which would justify tax abatements at the requested percentage and term. Include information about other local revenues associated with the project, such as sales taxes and franchise fees.

Over the past 10 years, K/H Jensen has developed three buildings in the City of Olathe totaling approximately 2,000,000 SF. These buildings have been leased to strong national and international tenants such as FedEx, Bushnell, S&S Activewear, IA Auto, KGP Logistics & ITRenew. Each of the tenant's have created well paying jobs with significant payrolls. We also really put big box development on the map not only in Olathe but in the entire Kansas City Metro area. each of our developments have turned undeveloped low tax generating ground into productive developments that create jobs and even with 50% tax abatement create significant income to the City, State & County.

## VI. CERTIFICATION OF APPLICANT

Applicant understands and agrees to pay all fees described on Page 1 of this application.

Applicant agrees to comply with the provisions of Chapter 2.82 of the Olathe Municipal Code (the "Code") regarding Public Art for the Project or to pay the necessary payment to the City's Public Art Fund.

It is understood that a performance agreement shall be required, as set forth in the City's tax abatement policy, for applications requesting tax abatement. I hereby swear that the foregoing and attached information dated this 13<sup>th</sup> day of August 2019, is true and correct to the best of my knowledge.

Further, it is understood that additional information may be requested by the City of Olathe to assist the Governing Body in its consideration of this matter.

Signed

Daniel Jensen  
Name

By

K/H Jensen, LC Manager  
Title of Responsible Officer

**APPENDIX I\***  
**EMPLOYMENT INFORMATION**  
**APPLICATION FOR ISSUANCE OF INDUSTRIAL REVENUE BONDS**

State law requires a fiscal impact analysis be performed prior to the issuance of a tax abatement. Information provided in sections below of Appendix I is essential in order for the city to meet this requirement.

Current number of employees at firm's present site. SEE FIRM DATA SHEET

Occupational Classification	Total	Average Starting Wage	Average Maximum Wage	Number By County of Residence *
				Johnson
				Other
				Johnson
				Other
				Johnson
				Other
				Johnson
				Other
				Johnson
				Other
				Johnson
				Other

November 19, 2019

**Single Series Bonds**  
**Under a Master Resolution Request**  
K/H Jensen - Sun Life Assurance Company of Canada  
(I-35 Logistics Park)  
Industrial Revenue Bond & Tax Phase-In Project  
Executive Summary  
Located on the following Parcel: DF231408-3003  
(occupying 47% of this parcel)



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## **Introduction**

The City has received an approximately \$30,618,896 industrial revenue bond application from K/H Jensen as an agent for Sun Life Assurance Company of Canada (I-35 Logistics Park Building D) ("Applicant") for construction of a light industrial facility on a 36+/- acre parcel located west of Old 56 Highway at 155<sup>th</sup> Street. The Applicant anticipates construction of approximately 600,000 square feet of space to accommodate light industrial uses. The Applicant seeks to have the project, which will be constructed on the parcel, receive a 10-year, 50% property tax phase-in in conjunction with the issuance of the City's industrial revenue bonds.

Bonds for this project are expected to be issued in one series. This series of bonds to be issued would allow the Applicant to construct one 600,000 square foot industrial building on a 36+/- acre parcel. The Applicant requests issuance of an amount not to exceed \$30,618,896 of industrial revenue bonds for construction of this building. The proceeds from the bonds would be divided as follows: \$3,192,077 would be allocated to cover costs to acquire the land for the project, \$27,426,819 of the bonds would cover costs to construct the building, and no funds would be allocated to cover costs to purchase fixtures and equipment for the building.

The following information about this request relates to the projected impacts of the building planned for construction and was derived from the attached application materials.

## **Employment**

The project is expected to create 235 new jobs over the next 10 years. The average salaries are expected to be \$32,500 in the first year. These jobs would create approximately \$77,616,520 in total new wages to the Olathe economy over the next 10 years.

## **Machinery & Equipment**

This application requests none of the bond revenues for furniture, fixtures or equipment for sales tax exemption purposes. However, it is expected that tenants would purchase FF&E that would then be subject to sales taxes, increasing revenue to the city of Olathe.

## **IRB Request**

The request is to issue industrial revenue bonds in a single series for the construction of a 600,000-square foot facility. It is anticipated that the bonds will be taxable industrial revenue bonds backed by the revenue generated from the facility. The applicant plans to purchase the bonds.

## **Tax Abatement Request**

The Applicant is requesting a 10-year, 50% property tax phase-in for its project, under the City's Tax Abatement Resolution 18-1111 and Policy F-5. The abatement would be for the new investment in improvements associated with the request to issue bonds for the project. The level of capital investment meets the criteria for a 10-year property tax abatement for new businesses in an existing master resolution under the City's tax abatement policy, Resolution No. 18-1111, as the project will result in an investment over \$3 million. This project is applying under existing master resolution 08-1068.

## **Taxes**

Current estimated property taxes generated at this site (all jurisdictions): \$486 (city portion of taxes - \$96) based on a 2019 appraised value of \$13,179 and an assessed value of \$3,954). The future property taxes generated by this project have been computed using a targeted level of real property estimated appraised value at build out that is \$18,465,000. This investment will result in approximately \$568,967 in annual property taxes at full value for all taxing jurisdictions, and \$112,664 in property taxes to the City. With an estimated 50% property tax phase-in, the tax revenue will be approximately \$2,844,830 for all jurisdictions over the 10-year abatement period, and \$563,320 to the City over the 10-year abatement period.

## **Sales**

The project is expected to facilitate \$500,000 in new annual sales each year of the abatement. A total of \$5,000,000 million in new sales is expected over the 10-year life of the abatement project as a result of the facility being constructed.

## **Special Assessments**

There are currently no special assessments associated with this property.

## **Franchise Fees**

It is expected that the project will generate \$22,500 in new franchise fees the first year and \$225,000 in franchise fees over the 10-year period.



### **Water, Sewer & Garbage**

The applicant anticipates generating an additional \$60,000 in revenue from increased water, wastewater and trash service during the 10-year abatement period.

### **Local Competition**

The applicant will be in competition with other local developers of speculative space.

### **Annual Purchases**

The applicant has projected that the project would generate approximately \$5,500,000 in new operating expenditures in the first year and a total of \$10,000,000 over the 10-year period, approximately 15% of which will potentially be subject to local sales taxes over the abatement period.

### **Cost-Benefit Analysis**

As required by Kansas law, staff completed a cost-benefit analysis of the project on the City of Olathe. The Kansas, Inc. model reflects the impact upon the city, county, school district, and state. A variety of information concerning the firm, the construction, and the community was input into the model.

The cost-benefit model shows that the facility will have a benefit to cost ratio of 1.17 to 1 for the City of Olathe, which translates into an annual rate of return on the City's investment of taxes abated of 116.77%. The payback period for incentives and taxes abated will be approximately 6 years.

### **County & School District Impact**

It is expected that the project will bring approximately 306 total new jobs (direct and in-direct) to the City, with 283 new residents moving into Johnson County over the next 10 years. This project will be located in the Gardner Edgerton School District. Of the new residents, 40% are expected to move into the Gardner Edgerton School District. The impact on the school district would be about 33 new students over the next 10 years. Per Kansas law, the City will provide written information to the County and the School District pertaining to this request.

### **Performance Agreement**

The applicant has been informed that a performance agreement will be required as part of a tax abatement for the project which is locating on 46% of parcel DF231408-3003. The minimum targeted expenditures would be approximately 80% of the projected bond issuance for this project, or \$24,495,116.

## Firm Data Sheet

Information for firm that will occupy the facility and its employees

PLEASE NOTE APPENDIX TWO (BOTTOM TABS)

Use information on firm that will occupy the facility

Name of Firm

K/H Jensen LLC / Speculative Warehouse Facility Building D. Lot 4

Description of the firm's location or expansion in the community:

36+/- acres inside the 340 acre I-35 Logistics Park at 155th, 159th & Old 56 Hwy

Requested tax abatement term in years 10 Yrs Abatement percentage requested 50%

Square footage of the facility 600,000

Acreage of land the project will occupy 36

NAICS or SIC Code 4225- Distribution

Market Value of the firm's initial new or additional investment in:

<i>Land</i>	<u>\$3,192,077</u>
<i>Building and Improvements</i>	<u>\$24,620,000</u>
<i>Furniture, Fixtures and Equipment</i>	<u></u>
<i>Other Costs</i>	<u>\$2,806,819</u>
<i>Total</i>	<u>\$30,618,896</u>

Project expansion (if acceptable):

*Year of expansion* N/A

*Additional investment in:*

<i>Land</i>	<u>N/A</u>
<i>Building and Improvements</i>	<u>N/A</u>
<i>Furniture, Fixtures and Equipment</i>	<u>N/A</u>

Total Sales (from the most current completed fiscal year):

*Year* N/A *Sales* N/A

New or additional sales of the firm - as a result of the project:

<i>Year</i>			
<i>1</i>	<u>\$500,000</u>	<i>6</i>	<u>\$500,000</u>
<i>2</i>	<u>\$500,000</u>	<i>7</i>	<u>\$500,000</u>
<i>3</i>	<u>\$500,000</u>	<i>8</i>	<u>\$500,000</u>
<i>4</i>	<u>\$500,000</u>	<i>9</i>	<u>\$500,000</u>
<i>5</i>	<u>\$500,000</u>	<i>10</i>	<u>\$500,000</u>

Percent of those sales subject to sales tax in the:

*City (Olathe)* 0%

<i>County (Johnson)</i>	<u>0%</u>
<i>State (Kansas)</i>	<u>0%</u>

Annual net taxable income, as a percent of sales, on which state corporate income taxes will be computed: 10%

New or Additional annual purchases of the firm as a result of the project:  
(items used in operations of business, not inventory that will be sold)

<i>Year</i>	
1	<u>\$5,500,000</u>
2	<u>\$500,000</u>
3	<u>\$500,000</u>
4	<u>\$500,000</u>
5	<u>\$500,000</u>
6	<u>\$500,000</u>
7	<u>\$500,000</u>
8	<u>\$500,000</u>
9	<u>\$500,000</u>
10	<u>\$500,000</u>

Percent of those purchases subject to sales taxes in the:

<i>City (Olathe)</i>	<u>15%</u>
<i>County (Johnson)</i>	<u>30%</u>
<i>State (Kansas)</i>	<u>30%</u>

Additional annual utilities that will be used by the firm as a result of the project

Water	<u>\$50,000</u>
Wastewater	<u>\$15,000</u>
Telephone	<u>\$100,000</u>
Electricity	<u>\$250,000</u>
Gas	<u>\$100,000</u>
Garbage	<u>\$10,000</u>
Cable	<u></u>

Number of new employees to be hired each year (to be used to complete Appendix II)

<i>Year</i>	
1	<u>100</u>
2	<u>80</u>
3	<u>25</u>
4	<u>20</u>
5	<u>10</u>
6	<u></u>
7	<u></u>
8	<u></u>
9	<u></u>
10	<u></u>

Number of new employees moving to the county each year (use numbers from above):

Year	From Out-of-State	From Another Kansas County	Will not move	Total
1	4	30	66	100
2	15	15	50	80
3	10	5	10	25
4	5	5	10	20
5	2	3	5	10
6				
7				
8				
9				
10				
Total	36	58	141	235

Average annual salary of all employees:

Year	
1	\$32,500
2	\$33,312
3	\$34,145
4	\$35,000
5	\$35,786
6	\$36,500
7	\$37,414
8	\$38,350
9	\$39,300
10	\$40,291

Household size of a typical new worker 2.83

Number of school age children in the household of a typical new worker 0.83

## Construction

Initial construction or expansion

Cost of Construction at the firm's new or expanded facility \$30,618,896

If construction is by an outside contractor, estimate percent profit on the cost of construction: 4.00%

Total construction salaries (A) \$5,000,000

Amount paid to average construction worker during the construction period (B) \$29,441  $A \div C = B$

Number of construction workers (C) 170

Household size of an average construction worker 2.83

Expansion II (if applicable):

Cost of Construction at the firm's new or expanded facility N/A

If construction is by an outside contractor, estimate percent profit on the cost of construction: \_\_\_\_\_

Total construction salaries (A) \_\_\_\_\_

Amount paid to average construction worker during the construction period (B) \_\_\_\_\_  $A \div C = B$

Number of construction workers (C) \_\_\_\_\_

Household size of an average construction worker \_\_\_\_\_

**Visitors**

Number of out-of-town visitors expected at the firm:

Year			
1	<u>300</u>	6	<u>360</u>
2	<u>320</u>	7	<u>360</u>
3	<u>340</u>	8	<u>390</u>
4	<u>350</u>	9	<u>400</u>
5	<u>360</u>	10	<u>400</u>

Number of days that each visitor will stay in the area 1.5

Number of nights that a typical visitor will stay in a local hotel or motel:

<i>In the City of Olathe</i>	<u>1</u>
<i>Anywhere in the county</i>	<u>0.5</u>

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Firm Data Sheet  
January 2018

**Sales Tax Exemption Certificate**

*Prior to the contractor starting construction on the project, that applicant shall notify the City Clerk whether or not to proceed with an applicant for a sales tax exemption from the state of Kansas.*

**Project Completion and Processing of the Tax Abatement**

*Prior to the completion of the project, the applicant shall inform the City and Bond Counsel to proceed with the state board of tax appeals for a tax abatement on the project.*

# A Tax Abatement Cost-Benefit Analysis of K/H Jensen Speculative Warehouse BLD D

City or County where the firm is or will be located: **City of Olathe**

Date of Analysis: **Tuesday, November 12, 2019**

Description of the firm's location or expansion in the community:  
**600,000 sf**

**This report includes an analysis of costs and benefits from the firm for the following taxing entities, where the firm is or will be located. These taxing entities, with the exception of a neighboring school district, if shown, are considering tax abatements or incentives for the firm:**

<b>City:</b>	<b>Olathe</b>
<b>County:</b>	<b>Johnson</b>
<b>School District:</b>	<b>Gardner Edgerton Schools</b>
<b>A neighboring School District:</b>	<b>Olathe School District</b>
<b>Special Taxing District:</b>	<b>Johnson County Community Colleg</b>
<b>Special Taxing District:</b>	<b>School District Excluded Mills</b>
<b>State of Kansas</b>	

## Contents of this report:

About this Cost-Benefit Analysis Report	Page 2
Summary of Costs and Benefits for all Taxing Entities	Page 4
The Economic Impact that the Firm will have on the Community	Page 6
Costs and Benefits for:	
City:	Olathe
County:	Johnson
School District:	Gardner Edgerton Schools
A neighboring School District:	Olathe School District
Special Taxing District:	Johnson County Community College
Special Taxing District:	School District Excluded Mills
State of Kansas	
	Page 7
	Page 9
	Page 11
	Page 13
	Page 15
	Page 17
	Page 19

Data Used in this Analysis, if included , follows the Costs and Benefits for the State of Kansas

## **About this Cost-Benefit Analysis Report**

This cost-benefit analysis report was prepared using the Kansas Tax Abatement Cost-Benefit Model - a computer program that analyzes economic and fiscal impact. The pages that follow, in this report, show the impact that the firm included in this analysis, the firm's employees and workers in spin-off jobs will have on the community and the state.

The economic impact over the next ten years is calculated along with the accompanying public costs and benefits for the State of Kansas and the taxing entities included in this analysis.

This analysis also shows the effect of tax abatements and incentives that may be considered for the firm

Here is how the analysis was performed:

1. Data was entered for the state and community's tax and other rates; the firm and its employees; tax abatements and other incentives being considered for the firm; construction activity; and expected visitors.

2. Using the data entered, as well as some rates built into the computer program, calculations were made of the economic impact of the firm along with the related costs and benefits.

The calculations of impact include direct, indirect and induced impact. Regional economic multipliers, specific to the firm's industry group, were used by the program to calculate the direct and induced or spin-

These are the report sections:

**Summary of Costs and Benefits for all Taxing Entities** This report page summarizes the costs and benefits for all taxing entities resulting from the firm and from new direct, indirect and induced jobs.

**The Economic Impact that the Firm will have on the Community** This report page shows the number of direct, indirect and induced jobs that will be created in the community, the number of new residents and additional school children, and increases in local personal income, retail sales, economic activity and the property tax base in the first year and over the next ten years.

**Costs and Benefits for Each Taxing Entity** These report pages summarize the costs and benefits for the State of Kansas and for each taxing entity as a result of the firm locating or expanding in the Kansas community.

The public benefits include additional revenues from the firm and employees for your taxing entities - - - sales taxes, property taxes, utilities, utility franchise fees, other payments by new residents, payments by the firm and additional school funding. Public costs include the additional costs of public services for new residents and the firm, costs of educating new students that move to the school district, along with tax abatements and incentives provided to the firm.

In addition to a presentation of public costs and benefits, this report also computes the present value of net benefits to be received by each taxing entity; the payback period for incentives and taxes to be abated; the rate of return on investment for each entity and cost-benefit ratios.

### Present Value

The present value of the expected cash flow over the next ten years - the excess of benefits over cost - for each entity was computed. Present value is a way of expressing in today's dollars, dollars to be paid or received in the future. Today's dollar and a dollar to be received or paid at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. The analysis uses a discount rate that is entered to make the dollars comparable--by expressing them in today's dollars or in present value.

Generally, a positive present value indicates an acceptable investment.

### Payback Period

The investment payback period for each taxing entity was computed. This analysis views the financial incentives, including tax abatement, that the taxing entities are considering for the firm as an investment that the public will be making in the company. The payback period, therefore, is the number of years that it will take each taxing entity to recover the cost of incentives from the net annual benefits that they will receive. This payback period also shows the point in time where the cost and benefits are equal for the level and length of tax abatements and incentives being granted.

The payback period is a basis for judging the appropriateness of providing incentives to a firm. Generally, the shorter the payback period the better the investment.

### Rate of Return on Investment

The rate of return on investment for each taxing entity was also computed. As with the computation of payback, the rate of return analysis views the incentives that each taxing entity is considering as an investment that the public will be making in the company. The rate of return, therefore, is annual rate of return, over the next ten years, on each taxing entity's investment in the firm.

Generally, a rate of return in excess of the taxing entity's cost of capital is considered desirable.

### Cost-Benefit Ratio

The cost-benefit ratio for each taxing entity was also computed. This ratio compares public benefits over a ten year period from the new or expanding firm to public costs during the same period. For example, a cost-benefit ratio of 1.55 (or 1.55 to 1) shows that ten year benefits are 155 percent of public costs. Conversely, a cost-benefit ratio of .75 shows that public benefits are only 75 percent of public costs -- costs exceed benefits.

Generally, a cost-benefit ratio of 1.30 to 1 is considered acceptable for a taxing entity to grant tax abatements and other financial incentives to a firm.

**Data Used in this Analysis** These report pages, if included, show the data used in this cost-benefit analysis.



## Summary of Costs and Benefits for all Taxing Units

### Benefits:

	Sales Taxes	Property Taxes	Utilities and Utility Franchise Fees	Corporate and Personal Income Taxes	Additional School Funding	Other Revenues	Total Benefits
City: Olathe	\$656,935	\$2,025,350	\$285,000				
County: Johnson	\$776,852	\$1,838,944				\$912,368	\$3,879,653
S. D: Gardner Edgerton		\$3,790,717				\$1,854,025	\$4,469,821
S. D: Olathe School Distri		\$0			\$3,885,116		\$7,675,833
Johnson County Commu		\$772,783			\$0		\$0
School District Excluded		\$665,498				\$394,273	\$1,167,056
State of Kansas	\$3,919,768	\$1,118,390		\$3,624,340		\$22,434,078	\$23,099,577
						\$969,677	\$9,632,175

### Costs, Incentives and Taxes Abated:

	Costs of Services for the Firm and New Residents	Costs of Educating New Students	Taxes Abated	Incentives	Total Costs, Incentives and Taxes Abated
City: Olathe	\$1,997,031		\$1,008,903		
County: Johnson	\$744,889		\$914,073	\$0	\$3,005,934
S. D: Gardner Edgerton		\$3,885,116	\$1,892,261	\$0	\$1,658,962
S. D: Olathe School Distri		\$0			\$5,777,377
Johnson County Commu	\$179,844		\$383,041		\$0
School District Excluded	\$37,122,426		\$0		\$562,885
State of Kansas	\$858,031	\$2,447,529	\$558,067	\$0	\$37,122,426
					\$3,863,627

Net Benefits:

	Total Benefits	Total Costs Incentives and Taxes Abated	Net Benefits
City: Olathe	\$3,879,653	\$3,005,934	\$873,718
County: Johnson	\$4,469,821	\$1,658,962	\$2,810,858
S. D: Gardner Edgerton	\$7,675,833	\$5,777,377	\$1,898,455
S. D: Olathe School Distri	\$0	\$0	\$0
Johnson County Commu	\$1,167,056	\$562,885	\$604,171
School District Excluded	\$23,099,577	\$37,122,426	(\$14,022,850)
State of Kansas	\$9,632,175	\$3,863,627	\$5,768,548

Other:

	Present Value of Net Benefits to be Received Over the next 10 Years	Present Value of Incentives and Taxes Abated Over the next 10 Years	Payback Period for Incentives and Taxes Abated	Rate of Return over the next 10 years on Investment of Incentives and Taxes Abated	Cost-Benefit Ratio
City: Olathe	\$714,440	\$611,853	6 Years	116.77%	1.17
County: Johnson	\$1,673,225	\$554,342	3 Years	301.84%	3.02
S. D: Gardner Edgerton	\$1,150,856	\$1,147,578	10 Years	100.29%	1.00
S. D: Olathe School Distri	\$0				
Johnson County Commu	\$360,450	\$232,298	6 Years	155.17%	1.55
School District Excluded	(\$8,091,691)	\$0	N/A	0.00%	0.00
State of Kansas	\$3,587,040	\$338,440	During construction period.	1059.87%	10.60

**The Economic Impact of the Firm**

	<u>In the first year</u>	<u>Over the next ten years</u>
Number of jobs to be created	130	306
Number of new residents in the community	102	283
Number of additional students in the local school district	12	33
Increase in local personal income	\$2,925,000	\$69,854,926
Increase in local retail sales	\$1,316,250	\$31,434,717
Increase in the community's property tax base	\$30,644,674	\$36,049,916

## Costs and Benefits for the City of: Olathe

Benefits to the city from the firm, its employees and spin-off benefits:

Year	Sales Taxes	Property Taxes	Utilities and Utility Franchise Fees	Other Municipal Revenues	Total
Construction Period	\$22,500	\$0	\$0	\$500,000	\$522,500
1	\$38,518	\$186,894	\$28,500	\$17,839	\$271,750
2	\$48,496	\$190,209	\$28,500	\$31,616	\$298,821
3	\$56,318	\$193,617	\$28,500	\$37,619	\$316,053
4	\$63,115	\$197,107	\$28,500	\$42,269	\$330,991
5	\$67,293	\$200,672	\$28,500	\$45,064	\$341,530
6	\$68,609	\$204,223	\$28,500	\$45,830	\$347,162
7	\$70,287	\$207,765	\$28,500	\$46,609	\$353,162
8	\$72,133	\$211,333	\$28,500	\$47,639	\$359,605
9	\$73,922	\$214,938	\$28,500	\$48,529	\$365,889
10	\$75,744	\$218,592	\$28,500	\$49,354	\$372,190
Total	\$656,935	\$2,025,350	\$285,000	\$912,368	\$3,879,653

The City's costs, property taxes abated and incentives provided to the firm:

Year	City Costs for the firm and Municipal Services for New Residents	Property Taxes Abated	Incentives	Total
Construction Period	\$0	\$0	\$0	\$0
1	\$170,304	\$93,411	\$0	\$263,715
2	\$187,854	\$94,999	\$0	\$282,853
3	\$195,365	\$96,614	\$0	\$291,978
4	\$201,217	\$98,256	\$0	\$299,473
5	\$204,672	\$99,926	\$0	\$304,598
6	\$205,601	\$101,625	\$0	\$307,226
7	\$206,546	\$103,353	\$0	\$309,899
8	\$207,507	\$105,110	\$0	\$312,617
9	\$208,485	\$106,897	\$0	\$315,382
10	\$209,479	\$108,714	\$0	\$318,193
Total	\$1,997,031	\$1,008,903	\$0	\$3,005,934

## Net Costs and Benefits for the City of: Olathe

Year	Public Benefits	Public Costs, Property Taxes Abated and Incentives	Net Benefits or (Costs)	Present Value of Net Benefits	Present Value of taxes abated and incentives
Construction Period	\$522,500	\$0	\$522,500	\$522,500	\$0
1	\$271,750	\$263,715	\$8,035	\$7,304	\$84,918
2	\$298,821	\$282,853	\$15,967	\$13,195	\$78,511
3	\$316,053	\$291,978	\$24,074	\$18,087	\$72,587
4	\$330,991	\$299,473	\$31,517	\$21,526	\$67,110
5	\$341,530	\$304,598	\$36,932	\$22,931	\$62,046
6	\$347,162	\$307,226	\$39,936	\$22,542	\$57,364
7	\$353,162	\$309,899	\$43,262	\$22,200	\$53,036
8	\$359,605	\$312,617	\$46,987	\$21,919	\$49,034
9	\$365,889	\$315,382	\$50,507	\$21,419	\$45,334
10	\$372,190	\$318,193	\$53,996	\$20,817	\$41,913
Total	\$3,879,653	\$3,005,934	\$873,718	\$714,440	\$611,853

Discounted payback period for taxes abated and incentives .....	6 Years
Average annual rate of return over the next ten years on the city's investment of taxes abated and incentives for the firm .....	116.77%
Cost-Benefit Ratio .....	1.17

## **Costs and Benefits for Johnson County**

Benefits to the county from the firm, its employees and spin-off benefits:

Year	Sales Taxes	Property Taxes	Other County Revenues	Total
Construction Period	\$36,875	\$0	\$0	\$36,875
1	\$53,842	\$169,365	\$72,627	\$295,834
2	\$56,029	\$172,442	\$137,208	\$365,680
3	\$64,960	\$175,623	\$168,370	\$408,953
4	\$72,731	\$178,894	\$191,544	\$443,168
5	\$77,498	\$182,241	\$205,128	\$464,866
6	\$78,997	\$185,538	\$208,615	\$473,150
7	\$80,911	\$188,793	\$212,161	\$481,866
8	\$82,963	\$192,054	\$215,768	\$490,785
9	\$84,985	\$195,337	\$219,436	\$499,758
10	\$87,062	\$198,657	\$223,167	\$508,886
Total	\$776,852	\$1,838,944	\$1,854,025	\$4,469,821

The County's costs, property taxes abated and incentives provided to the firm:

Year	County Costs for the firm and County Services for New Residents	Property Taxes Abated	Incentives	Total
Construction Period	\$0	\$0	\$0	\$0
1	\$29,623	\$84,631	\$0	\$114,254
2	\$55,696	\$86,069	\$0	\$141,765
3	\$67,767	\$87,533	\$0	\$155,300
4	\$76,886	\$89,021	\$0	\$165,906
5	\$82,244	\$90,534	\$0	\$172,778
6	\$83,642	\$92,073	\$0	\$175,715
7	\$85,064	\$93,638	\$0	\$178,702
8	\$86,510	\$95,230	\$0	\$181,740
9	\$87,981	\$96,849	\$0	\$184,830
10	\$89,476	\$98,495	\$0	\$187,972
Total	\$744,889	\$914,073	\$0	\$1,658,962

## Net Costs and Benefits for Johnson County

Year	Public Benefits	Public Costs, Property Taxes Abated and Incentives	Net Benefits or (Costs)	Present Value of Net Benefits	Present Value of taxes abated and incentives
Construction Period	\$36,875	\$0	\$36,875	\$36,875	\$0
1	\$295,834	\$114,254	\$181,580	\$165,072	\$76,936
2	\$365,680	\$141,765	\$223,914	\$185,052	\$71,131
3	\$408,953	\$155,300	\$253,653	\$190,573	\$65,764
4	\$443,168	\$165,906	\$277,261	\$189,372	\$60,802
5	\$464,866	\$172,778	\$292,088	\$181,363	\$56,214
6	\$473,150	\$175,715	\$297,434	\$167,893	\$51,972
7	\$481,866	\$178,702	\$303,163	\$155,570	\$48,051
8	\$490,785	\$181,740	\$309,044	\$144,171	\$44,425
9	\$499,758	\$184,830	\$314,927	\$133,559	\$41,073
10	\$508,886	\$187,972	\$320,913	\$123,725	\$37,974
Total	\$4,469,821	\$1,658,962	\$2,810,858	\$1,673,225	\$554,342

Discounted payback period for taxes abated and incentives ..... 3 Years

Average annual rate of return over the next ten years on the county's investment of taxes abated and incentives for the firm ..... 301.84%

Cost-Benefit Ratio ..... 3.02

**Costs and Benefits for the School District where the firm is or will be located: Gardner Edgerto**

Benefits to the school district from the firm, its employees and spin-off benefits:

Year	Property Taxes	Additional State, Federal and Other School Funding	Total
1	\$350,454	\$146,124	\$496,578
2	\$356,526	\$279,733	\$636,259
3	\$362,730	\$351,165	\$713,895
4	\$369,060	\$402,342	\$771,402
5	\$375,509	\$432,170	\$807,679
6	\$382,007	\$439,517	\$821,524
7	\$388,559	\$446,988	\$835,548
8	\$395,194	\$454,587	\$849,781
9	\$401,922	\$462,315	\$864,238
10	\$408,755	\$470,175	\$878,930
Total	\$3,790,717	\$3,885,116	\$7,675,833

Total costs for the School District:

Year	Additional Costs	Property Taxes Abated	Total
1	\$146,124	\$175,197	\$321,322
2	\$279,733	\$178,176	\$457,909
3	\$351,165	\$181,205	\$532,370
4	\$402,342	\$184,285	\$586,627
5	\$432,170	\$187,418	\$619,588
6	\$439,517	\$190,604	\$630,121
7	\$446,988	\$193,845	\$640,833
8	\$454,587	\$197,140	\$651,727
9	\$462,315	\$200,491	\$662,806
10	\$470,175	\$203,900	\$674,074
Total	\$3,885,116	\$1,892,261	\$5,777,377



# Net Costs and Benefits for the School District: Gardner Edgerton Schools

Year	Public Benefits	Total Costs and Property Taxes Abated	Net Benefits or (Costs)	Present Value of Net Benefits	Present Value of Taxes Abated
1	\$496,578	\$321,322	\$175,256	\$159,324	\$159,270
2	\$636,259	\$457,909	\$178,350	\$147,397	\$147,253
3	\$713,895	\$532,370	\$181,524	\$136,382	\$136,142
4	\$771,402	\$586,627	\$184,774	\$126,203	\$125,869
5	\$807,679	\$619,588	\$188,091	\$116,790	\$116,372
6	\$821,524	\$630,121	\$191,402	\$108,041	\$107,591
7	\$835,548	\$640,833	\$194,714	\$99,919	\$99,473
8	\$849,781	\$651,727	\$198,054	\$92,394	\$91,967
9	\$864,238	\$662,806	\$201,431	\$85,426	\$85,028
10	\$878,930	\$674,074	\$204,855	\$78,980	\$78,612
Total	\$7,675,833	\$5,777,377	\$1,898,455	\$1,150,856	\$1,147,578

Discounted payback period for taxes abated and incentives ..... 10 Years

Average annual rate of return over the next ten years on the school district's investment of taxes abated and incentives for the firm ..... 100.29%

Cost-Benefit Ratio ..... 1.00

## **Costs and Benefits for a neighboring School District: Olathe School District**

Benefits to the school district from the firm, its employees and spin-off benefits:

Year	Property Taxes	Additional State, Federal and Other School Funding	Total
1	\$0	\$0	\$0
2	\$0	\$0	\$0
3	\$0	\$0	\$0
4	\$0	\$0	\$0
5	\$0	\$0	\$0
6	\$0	\$0	\$0
7	\$0	\$0	\$0
8	\$0	\$0	\$0
9	\$0	\$0	\$0
10	\$0	\$0	\$0
Total	\$0	\$0	\$0

Total costs for the School District:

Year	Additional Costs
1	\$0
2	\$0
3	\$0
4	\$0
5	\$0
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0
Total	\$0

## Net Costs and Benefits for the School District: Olathe School District

Year	Public Benefits	Total Costs	Net Benefits or (Costs)	Present Value of Net Benefits
1	\$0	\$0	\$0	\$0
2	\$0	\$0	\$0	\$0
3	\$0	\$0	\$0	\$0
4	\$0	\$0	\$0	\$0
5	\$0	\$0	\$0	\$0
6	\$0	\$0	\$0	\$0
7	\$0	\$0	\$0	\$0
8	\$0	\$0	\$0	\$0
9	\$0	\$0	\$0	\$0
10	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0

Discounted payback period for taxes abated and incentives ..... N/A

Average annual rate of return over the next ten years on the school district's investment of taxes abated and incentives for the firm ..... N/A

Cost-Benefit Ratio ..... N/A

# Costs and Benefits for Special Taxing District: Johnson County Community College

Benefits to the special taxing district from the firm, its employees and spin-off benefits:

Year	Property Taxes	Additional Revenues	Total
1	\$70,993	\$17,100	\$88,093
2	\$72,323	\$31,303	\$103,626
3	\$73,707	\$36,257	\$109,964
4	\$75,137	\$40,471	\$115,608
5	\$76,604	\$42,988	\$119,592
6	\$78,030	\$43,719	\$121,749
7	\$79,419	\$44,462	\$123,881
8	\$80,801	\$45,218	\$126,019
9	\$82,186	\$45,987	\$128,172
10	\$83,583	\$46,768	\$130,351
Total	\$772,783	\$394,273	\$1,167,056

Total costs for the Special Taxing District:

Year	Additional Costs	Property Taxes Abated	Total
1	\$7,800	\$35,464	\$43,264
2	\$14,279	\$36,067	\$50,346
3	\$16,538	\$36,680	\$53,219
4	\$18,460	\$37,304	\$55,764
5	\$19,609	\$37,938	\$57,547
6	\$19,942	\$38,583	\$58,525
7	\$20,281	\$39,239	\$59,520
8	\$20,626	\$39,906	\$60,532
9	\$20,976	\$40,584	\$61,561
10	\$21,333	\$41,274	\$62,607
Total	\$179,844	\$383,041	\$562,885

# **Net Costs and Benefits for Special Taxing District: Johnson County Community College**

Year	Public Benefits	Total Costs and Property Taxes Abated	Net Benefits or (Costs)	Present Value of Net Benefits	Present Value of Taxes Abated
1	\$88,093	\$43,264	\$44,828	\$40,753	\$32,240
2	\$103,626	\$50,346	\$53,280	\$44,033	\$29,808
3	\$109,964	\$53,219	\$56,745	\$42,633	\$27,559
4	\$115,608	\$55,764	\$59,843	\$40,874	\$25,479
5	\$119,592	\$57,547	\$62,045	\$38,525	\$23,557
6	\$121,749	\$58,525	\$63,223	\$35,688	\$21,779
7	\$123,881	\$59,520	\$64,361	\$33,027	\$20,136
8	\$126,019	\$60,532	\$65,487	\$30,550	\$18,616
9	\$128,172	\$61,561	\$66,611	\$28,250	\$17,212
10	\$130,351	\$62,607	\$67,743	\$26,118	\$15,913
Total	\$1,167,056	\$562,885	\$604,171	\$360,450	\$232,298

Discounted payback period for taxes abated and incentives .....	6 Years
Average annual rate of return over the next ten years on the taxing district's investment of taxes abated and incentives for the firm .....	155.17%
Cost-Benefit Ratio .....	1.55

# **Costs and Benefits for Special Taxing District: School District Excluded Mills**

Benefits to the special taxing district from the firm, its employees and spin-off benefits:

Year	Property Taxes	Additional Revenues	Total
1	\$61,277	\$843,773	\$905,050
2	\$62,394	\$1,615,280	\$1,677,674
3	\$63,549	\$2,027,757	\$2,091,306
4	\$64,737	\$2,323,270	\$2,388,007
5	\$65,953	\$2,495,506	\$2,561,459
6	\$67,150	\$2,537,929	\$2,605,079
7	\$68,329	\$2,581,074	\$2,649,404
8	\$69,511	\$2,624,952	\$2,694,463
9	\$70,699	\$2,669,577	\$2,740,275
10	\$71,901	\$2,714,959	\$2,786,860
Total	\$665,498	\$22,434,078	\$23,099,577

Total costs for the Special Taxing District:

Year	Additional Costs	Property Taxes Abated	Total
1	\$1,434,998	\$0	\$1,434,998
2	\$2,722,637	\$0	\$2,722,637
3	\$3,365,980	\$0	\$3,365,980
4	\$3,838,245	\$0	\$3,838,245
5	\$4,114,545	\$0	\$4,114,545
6	\$4,184,492	\$0	\$4,184,492
7	\$4,255,628	\$0	\$4,255,628
8	\$4,327,974	\$0	\$4,327,974
9	\$4,401,550	\$0	\$4,401,550
10	\$4,476,376	\$0	\$4,476,376
Total	\$37,122,426	\$0	\$37,122,426

## Net Costs and Benefits for Special Taxing District: School District Excluded Mills

Year	Public Benefits	Total Costs and Property Taxes Abated	Net Benefits or (Costs)	Present Value of Net Benefits	Present Value of Taxes Abated
1	\$905,050	\$1,434,998	(\$529,948)	(\$481,771)	\$0
2	\$1,677,674	\$2,722,637	(\$1,044,964)	(\$863,607)	\$0
3	\$2,091,306	\$3,365,980	(\$1,274,675)	(\$957,682)	\$0
4	\$2,388,007	\$3,838,245	(\$1,450,238)	(\$990,532)	\$0
5	\$2,561,459	\$4,114,545	(\$1,553,086)	(\$964,344)	\$0
6	\$2,605,079	\$4,184,492	(\$1,579,414)	(\$891,538)	\$0
7	\$2,649,404	\$4,255,628	(\$1,606,225)	(\$824,247)	\$0
8	\$2,694,463	\$4,327,974	(\$1,633,512)	(\$762,045)	\$0
9	\$2,740,275	\$4,401,550	(\$1,661,275)	(\$704,543)	\$0
10	\$2,786,860	\$4,476,376	(\$1,689,516)	(\$651,382)	\$0
Total	23,099,577	\$37,122,426	(\$14,022,850)	(\$8,091,691)	\$0

Discounted payback period for taxes abated and incentives ..... N/A

Average annual rate of return over the next ten years on the taxing district's investment of taxes abated and incentives for the firm ..... 0.00%

Cost-Benefit Ratio ..... 0.00

## **Costs and Benefits for the State of Kansas**

Benefits to the State from the firm, its employees and spin-off benefits:

Year	Sales Taxes	Property Taxes	Corporate and Personal Income Taxes	Other State Revenues	Total
Construction Period	\$227,500	\$0	\$186,408	\$0	\$413,908
1	\$255,333	\$103,346	\$135,881	\$27,025	\$521,585
2	\$280,232	\$105,137	\$252,706	\$66,949	\$705,024
3	\$325,166	\$106,977	\$298,886	\$88,632	\$819,662
4	\$364,276	\$108,859	\$340,639	\$102,258	\$916,032
5	\$388,252	\$110,778	\$367,973	\$109,380	\$976,382
6	\$395,790	\$112,723	\$379,131	\$111,239	\$998,883
7	\$405,419	\$114,672	\$393,414	\$113,131	\$1,026,636
8	\$415,683	\$116,636	\$408,042	\$115,054	\$1,055,414
9	\$425,835	\$118,623	\$422,888	\$117,010	\$1,084,355
10	\$436,282	\$120,639	\$438,375	\$118,999	\$1,114,295
Total	\$3,919,768	\$1,118,390	\$3,624,340	\$969,677	\$9,632,175

The State's costs, property taxes abated and incentives provided to the firm:

Year	State Costs for the firm and Services for New Residents	Cost of Educating New Students	Property Taxes Abated	Incentives	Total
Construction Period	\$0	\$0	\$0	\$0	\$0
1	\$23,367	\$29,650	\$51,669	\$0	\$104,686
2	\$58,876	\$143,230	\$52,548	\$0	\$254,653
3	\$78,407	\$222,330	\$53,441	\$0	\$354,179
4	\$90,583	\$265,095	\$54,350	\$0	\$410,028
5	\$96,919	\$285,460	\$55,274	\$0	\$437,653
6	\$98,567	\$290,313	\$56,213	\$0	\$445,093
7	\$100,243	\$295,248	\$57,169	\$0	\$452,660
8	\$101,947	\$300,267	\$58,141	\$0	\$460,355
9	\$103,680	\$305,372	\$59,129	\$0	\$468,181
10	\$105,442	\$310,563	\$60,134	\$0	\$476,140
Total	\$858,031	\$2,447,529	\$558,067	\$0	\$3,863,627



# **Net costs and benefits for the State of Kansas:**

Year	Public Benefits	Public Costs, Property Taxes Abated and Incentives	Net Benefits or (Costs)	Present Value of Net Benefits	Present Value of taxes abated and incentives
Construction Period	\$413,908	\$0	\$413,907	\$413,907	\$0
1	\$521,585	\$104,686	\$416,899	\$378,999	\$46,972
2	\$705,024	\$254,653	\$450,370	\$372,206	\$43,427
3	\$819,662	\$354,179	\$465,482	\$349,723	\$40,151
4	\$916,032	\$410,028	\$506,004	\$345,607	\$37,121
5	\$976,382	\$437,653	\$538,729	\$334,508	\$34,320
6	\$998,883	\$445,093	\$553,789	\$312,599	\$31,730
7	\$1,026,636	\$452,660	\$573,976	\$294,540	\$29,336
8	\$1,055,414	\$460,355	\$595,059	\$277,599	\$27,123
9	\$1,084,355	\$468,181	\$616,174	\$261,317	\$25,076
10	\$1,114,295	\$476,140	\$638,154	\$246,035	\$23,184
Total	\$9,632,175	\$3,863,627	\$5,768,548	\$3,587,040	\$338,440

Discounted payback period for taxes abated and incentives ..... During construction period.

Average annual rate of return over the next ten years on the state's investment of taxes abated and incentives for the firm ..... 1059.87%

Cost-Benefit Ratio ..... 10.60

# Local rates and constants used in the Analysis of K/H Jensen Speculative Warehouse BLD D

## City:

Olathe	City name
24.406	City mill levy
\$296,642	Average market value of new residential property in the city
1.500%	City sales tax rate
6.000%	City transient guest tax rate
\$103	Annual net revenues per household for city owned utilities
\$236	Average annual utility franchise fees collected per household
\$103	Annual revenues per resident, in addition to property, transient guest and sales taxes, utilities and utility franchise fees
\$133	The city's annual marginal cost of providing municipal services, excluding utilities, to each new resident
\$94	Annual per worker revenues for the city from businesses -- in addition to property, transient guest and sales taxes and utilities
\$121	Annual marginal cost, per worker, of providing city services, excluding utilities, to businesses

## County:

Johnson	Name of county
22.1120	County mill levy
\$281,260	Average market value of new residential property in the county
1.475%	County sales tax rate
0.000%	County transient guest tax rate
\$496	The county's annual revenues per resident, excluding property; transient guest and sales taxes
\$171	The county's annual marginal cost of providing municipal services to each new resident
1.00	Regional economic multiplier adjustment for the County
\$218	Annual per worker revenues for the county from businesses -- in addition to property, transient guest and sales taxes and utilities
\$121	The county's annual marginal cost, per worker, of providing services to businesses

## School District 1 -- Where the firm is or will be located

Gardner Edgerton Schools	Name of school district
45.775	School district 1's local option mill levy
\$194,904	Average market value of new residential property in school district 1
\$12,155	School district 1's estimated marginal cost per child
\$8,816	State funding per child in school district 1
\$3,339.00	Federal and other annual funding per child in school district 1

## School District 2 -- A neighboring school district where some of the firms's new employees will live

Olathe School District	Name of school district
------------------------	-------------------------

50.665	School district 2's local option mill levy
\$271,734	Average market value of new residential property in school district 2
\$12,734	School district 2's estimated marginal cost per child
\$8,361	State funding per child in school district 2
\$4,373.00	Federal and other annual funding per child in school district 2

## Special Taxing District 1 -- Where the firm is or will be located:

Johnson County Community College	Special tax district 1
9.266	Special tax district 1's mill levy
\$416,511	Average market value of new residential property in special tax district 1
\$0.00	Special tax district 1's cost per resident
\$0.00	Special tax district 1's annual addl. revenues (excl prop taxes) from each new resident
\$78	The district's annual marginal cost, per worker, of providing services to businesses
\$171	Annual per worker revenues for the district from businesses -- in addition to property sales taxes and utilities

## Special Taxing District 2 -- Where the firm is or will be located:

School District Excluded Mills	Special tax district 2
8	Special tax district 2's mill levy
\$294,111	Average market value of new residential property in special tax district 2
\$11,154.00	Special tax district 2's cost per resident
\$8,234.00	Special tax district 2's annual addl. revenues (excl prop taxes) from each new resident
\$2,920	The district's annual marginal cost, per worker, of providing services to businesses
\$0	Annual per worker revenues for the district from businesses -- in addition to property sales taxes and utilities

## State of Kansas:

13.5	State mill levy
0.065	State sales tax rate
\$508.00	State's annual marginal revenues per new resident (excl property, income and sales taxes)
\$468.00	State's annual marginal cost of providing services to each new resident
0.115	State tax classification for residential real property
0.25	State tax classification for commercial and industrial real property
0	State tax classification for commercial and industrial machinery and equipment (7 years or more life)
0.3	State tax classification for all other tangible personal property:
7	Economic life, in years for straight line depreciation of commercial and industrial machinery & equipment
0	Minimum taxable value as a percent of retail cost of commercial and industrial machinery & equipment
\$180	The state's annual marginal cost, per worker, of providing services to businesses
\$212	Annual per worker revenues for the state from businesses, excluding property, income and sales taxes
45.00%	Percent of gross salary that a typical Kansas worker spends on taxable goods and services

### Personal Income Taxes:

Income >	Over	But Not Over	=	Tax	+	Tax Rate
	\$0	\$30,000		\$0		3.50%
	\$30,000	\$60,000		\$1,050		6.25%
	\$60,000			\$2,925		6.45%
Standard Deduction >		\$6,000				
Allowance per: Exemption >		\$2,250				

### Corporate Income Taxes:

Corporate Income Tax Rate >	4.00%
Surtax Rate >	3.05%
Amount Over Which Surtax Applies >	\$50,000.00

### Other Rates:

1.70%	Inflation
10.00%	Discount rate for calculating the present value of costs and benefits

### Comments:

UPDATED 5/19 Updated 8/17 to account for the now excluded prorated 8 mills from the general school fund at th

Market or retail value of the firm's initial new or additional investment in: 1

\$3,192,077	Land
\$27,426,819	Building and improvements
\$0	Furniture, Fixtures and Equipment

Sum of the firm's initial new or additional investment

\$30,618,896

**Projected Expansions**

0 Year of 2nd Expansion

\$0	Land
\$0	Building and improvements
\$0	Furniture, Fixtures and Equipment

Sum of the firm's second expansion investment

\$0

0 Year of 3rd Expansion

\$0	Land
\$0	Building and improvements
\$0	Furniture, Fixtures and Equipment

Sum of the firm's third expansion investment

\$0

0 Year of 4th Expansion

\$0	Land
\$0	Building and improvements
\$0	Furniture, Fixtures and Equipment

Sum of the firm's fourth expansion investment

\$0

**Sales and Purchases**

2

New or additional sales of the firm:

Year 1:	\$500,000
Year 2:	\$500,000
Year 3:	\$500,000
Year 4:	\$500,000
Year 5:	\$500,000
Year 6:	\$500,000
Year 7:	\$500,000
Year 8:	\$500,000
Year 9:	\$500,000
Year 10:	\$500,000
Total:	\$5,000,000

Annual operating expenditures by the firm subject to sales taxes:

Year 1:	\$5,500,000
Year 2:	\$500,000
Year 3:	\$500,000
Year 4:	\$500,000
Year 5:	\$500,000
Year 6:	\$500,000
Year 7:	\$500,000
Year 8:	\$500,000
Year 9:	\$500,000
Year 10:	\$500,000
Total:	\$10,000,000

Percent of sales subject to sales taxes in the:

City:	0.00%
County:	0.00%
State:	0.00%

Percent of annual taxable operating expenditures in the:

City:	15.00%
County:	30.00%
State:	30.00%

% of sales on which state corporate income taxes will be computed (ie: Annual net taxable income)

10.00%

Will the Firm be located within City property tax jurisdiction ? ( Y or N ): ☒ Y

### Revenues from utilities and franchise fees

Net revenues from city-owned utilities provided to the firm

City utility franchise fees to be collected on the firm's utility usage

Construction period	\$0
Year 1:	\$6,000
Year 2:	\$6,000
Year 3:	\$6,000
Year 4:	\$6,000
Year 5:	\$6,000
Year 6:	\$6,000
Year 7:	\$6,000
Year 8:	\$6,000
Year 9:	\$6,000
Year 10:	\$6,000
Total:	\$60,000

Construction period	\$0
Year 1:	\$22,500
Year 2:	\$22,500
Year 3:	\$22,500
Year 4:	\$22,500
Year 5:	\$22,500
Year 6:	\$22,500
Year 7:	\$22,500
Year 8:	\$22,500
Year 9:	\$22,500
Year 10:	\$22,500
Total:	\$225,000

### Payments by the firm and the cost of providing other services to the firm 4

Extra payments that the firm will make to the city, county and state -- those payments over and above property, sales and income taxes and utilities and other on-going payments made by all firms

City	County	State
Construction period: \$500,000	\$0	\$0
Year 1:	\$0	\$0
Year 2:	\$0	\$0
Year 3:	\$0	\$0
Year 4:	\$0	\$0
Year 5:	\$0	\$0
Year 6:	\$0	\$0
Year 7:	\$0	\$0
Year 8:	\$0	\$0
Year 9:	\$0	\$0
Year 10:	\$0	\$0
Total:	\$0	\$0

Extra cost of providing public services to the firm -- those services that are over and above incentives, utilities and typical services provided to all firms in the city, county and

City	County	State
Construction period: \$0	\$0	\$0
Year 1:	\$0	\$0
Year 2:	\$0	\$0
Year 3:	\$0	\$0
Year 4:	\$0	\$0
Year 5:	\$0	\$0
Year 6:	\$0	\$0
Year 7:	\$0	\$0
Year 8:	\$0	\$0
Year 9:	\$0	\$0
Year 10:	\$0	\$0
Total:	\$0	\$0

## Employee information

5

Number of new employees to  
be hired each year

Number of new employees  
moving to the county each year  
from out of state

Total number of new  
employees moving to the  
county each year

Year 1:	100
Year 2:	80
Year 3:	25
Year 4:	20
Year 5:	10
Year 6:	0
Year 7:	0
Year 8:	0
Year 9:	0
Year 10:	0
Total:	235

Year 1:	4
Year 2:	15
Year 3:	10
Year 4:	5
Year 5:	2
Year 6:	0
Year 7:	0
Year 8:	0
Year 9:	0
Year 10:	0
Total:	36

Year 1:	34
Year 2:	30
Year 3:	15
Year 4:	10
Year 5:	5
Year 6:	0
Year 7:	0
Year 8:	0
Year 9:	0
Year 10:	0
Total:	94

New indirect employees who will be moving to the county, as  
a per cent of new direct employees:

From out-of-State:

Total moving to the county:

## Employee salary and household information

6

Average annual  
salaries of  
employees

Year 1:	\$32,500
Year 2:	\$33,312
Year 3:	\$34,145
Year 4:	\$35,000
Year 5:	\$35,786
Year 6:	\$36,500
Year 7:	\$37,414
Year 8:	\$38,350
Year 9:	\$39,300
Year 10:	\$40,291
Total:	\$362,598

Where new employees moving to the county  
will live

<input type="text" value="60.00%"/>
<input type="text" value="40.00%"/>
<input type="text" value="0.00%"/>
<input type="text" value="100.00%"/>
<input type="text" value="100.00%"/>

In the City.

In the school district where the firm is located.

In school district 2

In special taxing district 1.

In special taxing district 2.

Where employees will shop, as a percent of their total shopping:

<input type="text" value="80.00%"/>
<input type="text" value="70.00%"/>
<input type="text" value="60.00%"/>

In Kansas.

Within the County.

In the City.

Household size of a typical new worker at the firm.

Number of school age children in the household of  
a typical new worker at the firm.

Percent of new workers who move to the community that will  
(1) buy new homes or mobile homes within the first five years or  
(2) require the building of new residential units.

## Value of incentives being offered to the firm:

Construction period:	By the City	By the County	By the State
	\$0	\$0	\$0
Year 1:	\$0	\$0	\$0
Year 2:	\$0	\$0	\$0
Year 3:	\$0	\$0	\$0
Year 4:	\$0	\$0	\$0
Year 5:	\$0	\$0	\$0
Year 6:	\$0	\$0	\$0
Year 7:	\$0	\$0	\$0
Year 8:	\$0	\$0	\$0
Year 9:	\$0	\$0	\$0
Year 10:	\$0	\$0	\$0
Total:	\$0	\$0	\$0

## Percent of property taxes to be abated on:

8

	Land	Buildings and Improvements	Furniture, Fixtures & Equipment
Year1	50.00%	50.00%	0.00%
Year2	50.00%	50.00%	0.00%
Year3	50.00%	50.00%	0.00%
Year4	50.00%	50.00%	0.00%
Year5	50.00%	50.00%	0.00%
Year6	50.00%	50.00%	0.00%
Year7	50.00%	50.00%	0.00%
Year8	50.00%	50.00%	0.00%
Year9	50.00%	50.00%	0.00%
Year10	50.00%	50.00%	0.00%

## Property taxes to be abated by the following taxing entities:

- ☒ = Yes - Taxes to be abated  
☒ City ☒ Special Taxing District 1  
☒ County ☐ Special Taxing District 2  
☒ School District ☒ The State



**Construction**

	Initial construction or expansion	2nd Expansion	3rd Expansion	4th Expansion
Construction Cost	\$30,618,896	\$0	\$0	\$0
Construction Profit Percentage	4.00%	0.00%	0.00%	0.00%
Taxable materials purchased in:				
Kansas	\$0	\$0	\$0	\$0
The County	\$0	\$0	\$0	\$0
The City	\$0	\$0	\$0	\$0
Taxable FFE purchased in:				
Kansas	\$0	\$0	\$0	\$0
The County	\$0	\$0	\$0	\$0
The City	\$0	\$0	\$0	\$0
Total Construction Salaries:	\$5,000,000	\$0	\$0	\$0
Construction Salaries spent in:				
Kansas	\$3,500,000	\$0	\$0	\$0
The County	\$2,500,000	\$0	\$0	\$0
The City	\$1,500,000	\$0	\$0	\$0
Amt. paid to avg. cons. worker	\$29,441	\$0	\$0	\$0
HH size - avg. cons. worker:	2.83	0	0	0
Nr. cons. workers:	170	0	0	0

10

**Visitors**

Number of out-of-town visitors expected at the firm each year

Year 1:	300
Year 2:	320
Year 3:	340
Year 4:	350
Year 5:	360
Year 6:	360
Year 7:	360
Year 8:	390
Year 9:	400
Year 10:	400
Total:	3,580

1.5 Average number of days that each visitor will stay in the city

Daily retail spending by a visitor, excluding lodging:

\$90	In the City
\$90	Anywhere in the County

The number of nights that a typical visitor will stay in a local hotel or motel:

1	In the City
0.5	Anywhere in the County

Average daily hotel / motel room rates:

117	In the City
98	Anywhere in the County



# City of Olathe

## COUNCIL AGENDA ITEM

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MEETING DATE: 11/19/2019

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DEPARTMENT: Resource Management

STAFF CONTACT: Dianna Wright/Ron Shaver/Emily Vincent

SUBJECT: Report regarding revisions to the City's Industrial Revenue Bond and Tax Abatement (IRB) Policy, Tax Increment Financing (TIF) Policy, Community Improvement District (CID) Policy, and Transportation Development District (TDD) Policy.

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### ITEM DESCRIPTION:

Report regarding revisions to the City's Industrial Revenue Bond and Tax Abatement (IRB) Policy, Tax Increment Financing (TIF) Policy, Community Improvement District (CID) Policy, and Transportation Development District (TDD) Policy.

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### SUMMARY:

The City reviews its IRB policy on an annual basis and the TIF, CID and TDD policies every other year. This review is made to ensure that the policies keep in line with the City Council's economic development goals as well as market trends.

Proposed revisions to the policies were shared at the Economic Development Council (EDC) Advisory Board meeting on Tuesday, November 5<sup>th</sup>. The EDC was supportive of the revisions.

The proposed changes include the following:

- Increasing the investment threshold for Sales Tax Exemption IRBs from \$2.5m to \$3m.
- Adding a Community Benefit Component to the IRB, CID, TIF and TDD policies that requires the owner of a property receiving an incentive to (1) at all times be a dues-paying member in good standing with both the Olathe Chamber of Commerce and the Olathe Economic Development Council and (2) make an annual donation to the Olathe Community Foundation in an amount to be determined in the sole discretion of the owner, but no less than \$3,000 annually.
- Eliminating the sunset date for the TDD policy.

Attached are the policies with additions highlighted in blues and revisions highlighted in red.

In addition to these policies, two technical changes are being made to O.M.C. 2.82.130. This section deals with the public art payments that are made as part of applications for incentives. The ordinance simply clarifies the requirements for the developers. No substantive changes are being made to the public art program.

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### FINANCIAL IMPACT:

None

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MEETING DATE: 11/19/2019

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**ACTION NEEDED:**

Review the proposed changes. Based on City Council direction, staff will prepare the policies and public art ordinance amendment for formal consideration on December 3, 2019.

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**ATTACHMENT(S):**

Attachment A: Draft IRB Policy    Attachment B: Draft TIF Policy    Attachment C: Draft CID Policy  
Attachment D: Draft TDD Policy    Attachment E: Letter of support from Olathe EDC    Attachment F:  
Draft Ordinance No. 19-XX

CITY OF OLATHE		Policy No.:	F-5
COUNCIL POLICY STATEMENT		Date Issued:	12-XX-2019
General Scope:	Finance	Effective Date:	01-01-2020
Specific Subject:	Industrial Revenue Bond and Property Tax Abatement Policy	Cancellation Date:	12-31-2020
		Supersedes No.:	Listed Below

Purpose:

To set forth the general public policy objectives of the City as relates to industrial revenue bonds and property tax abatements regarding new businesses.

Statement of Policy:

The statement of policy is hereby incorporated with Resolution No. ~~18-1111~~ 19-XXXX.

Establishment of previous tax abatement policies were incorporated with Resolution Nos. 18-1111, 17-1086, 17-1001, 16-1003, 14-1079, 13-1093, 12-1081, 11-1074, 10-1076, 09-1099, 08-1128, 07-1147, 06-1177 and 05-1129. The tax abatement policies for new and existing businesses were combined with Resolution 05-1129.

Establishment of previous property tax abatement policy for new businesses was incorporated with Resolutions 04-1156, 03-1159, 02-1141, 01-1162, 00-1067, 00-1007, 98-1205, 97-1150, 96-1018, 95-1180, 94-1163, 93-1172, 93-1008, 92-1013, 90-1170, 90-1092, 89-1098 and 88-1136.

Establishment of previous property tax abatement policy for existing businesses was incorporated with Resolutions 04-1155, 03-1158, 02-1140, 01-1161, 00-1068, 00-1008, 98-1206, 97-1151, 96-1017, 95-1179, 94-1163, 93-1172, 93-1008, 92-1013, 90-1170, 90-1092, 89-1098 and 88-1136.

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RESOLUTION NO. 19-XXXX

A RESOLUTION ESTABLISHING POLICIES RELATING TO INDUSTRIAL REVENUE BONDS AND  
PROPERTY TAX ABATEMENTS; AND REPEALING RESOLUTION NO. 18-1111

WHEREAS, the City of Olathe, Kansas (the "City") recognizes that it is essential to stimulate economic growth and development for industries and businesses in order to provide services, employment and tax revenues for the benefit of the community; and

WHEREAS, it is further recognized that the stimulation of balanced economic development is a joint responsibility of the private and public sectors, working closely together to create a positive business environment and to encourage industry to locate and expand in the City; and

WHEREAS, the economic development program goals of the City (the "Goals") include identifying/securing funding to maintain existing and build new infrastructure, including but not limited to water, sewer, roads, and quality of life amenities; identifying market niches and industries; identifying incentives appropriate to targeted industries; creating a uniform, consistent brand and identity to market Olathe and attract targeted industries; developing intellectual infrastructure necessary for a knowledge-based economy; and creating an environment that supports local business creation, retention and expansion; and also include the broader goals of economic diversification, broadening of the property tax base, stimulation of private investment, creation and quality of employment opportunities, and increased per capita income; and

WHEREAS, to meet these economic development goals, the City recognizes the occasional necessity of issuing industrial revenue bonds and granting property tax exemptions and tax incentives for real property pursuant to the provisions of Section 13 of Article 11 of the Kansas Constitution or K.S.A. 12-1740 et seq. and 79-201a; and

WHEREAS, the granting of property tax exemptions and tax incentives for real property is a privilege, not a right, and the City recognizes that use of such exemptions and incentives should be considered in a prudent, judicious, and selective manner based upon the economic and community benefits of an economic development project to the City on a case by case basis.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OLATHE,  
KANSAS:

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Section 1. Policy Statement. To meet the economic goals of the City as outlined above, it shall be the policy of the Governing Body of the City to consider either a 50% real property tax abatement or a negotiated fixed payment in lieu of taxes ("PILOT") payment for portions of a project that qualify for tax abatement under Kansas law so long as the project meets the criteria listed in Section 2. Depending upon how the tax abatement is structured over the term, the percentage tax abatement or PILOT payment for a project may be different from year to year and may exceed or be less than an overall average of 50%.

It shall also be the policy of the City that economic development projects pay their fair share of property tax, special improvement district assessments and cost of utility services. Economic development projects shall have a positive financial impact on the City, and the City reserves the right to approve the cost-benefit analysis model used to determine the financial impact. The Governing Body shall consider the following factors when granting property tax incentives pursuant to Section 13 of Article 11 of the Kansas Constitution and K.S.A. 12-1740 et seq. and 79-201a:

A. Existence of Economic Benefit. The project must add to the Olathe economy and demonstrate how it achieves the Goals stated above. Evaluation criteria to be used in determining benefit to the community shall include, but shall not be limited to the following: the amount of capital investment; whether the project produces value-added products and services; and whether the project provides a positive fiscal impact and economic impact.

B. Type of Business. The project shall be of a nature that has been identified by the Governing Body as desirable to stimulate the local economy and improve the quality of life for its citizens. The project should be one in which a substantial part of its total products and/or services are either exported from the Olathe area or they would add jobs and replace purchases now being made by Olathe citizens in areas outside of the City if the items are for local consumption. Additional considerations may include whether the project would be considered a business 'headquarters', whether a project has the effect of supporting or spurring retail development, and whether a project would help the City achieve successful completion of an existing commercial or industrial park or the development of a new commercial or industrial enterprise. The City will also consider providing incentives to encourage the expansion of existing Olathe businesses who would not otherwise qualify to receive incentives as set forth herein.

C. Targeted Industries. An abatement adjustment of up to 5%, for a total of 55%, may be considered for projects that are in targeted industries and development types. The current targeted industries include quality high technology and bioscience-related businesses (including, but not limited to, businesses in the alternative energy, animal health, and food

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safety fields) and office development. At any time, the Olathe Economic Development Council may provide the City with a revised targeted industry list for approval by the Governing Body. The Governing Body may exceed the 5% adjustment for any project it determines to be of extraordinary benefit to the entire City.

D. Targeted Area. An abatement adjustment of up to 50%, for a total of 100%, may be considered for projects that locate in the Olathe Downtown Business District (as identified in Exhibit A) which meet the minimum investment thresholds set forth in Section 3. At any time, the Olathe Economic Development Council may provide the City with a revised targeted area list for approval by the Governing Body.

E. Excluded Businesses. In addition to the uses of property prohibited by K.S.A. 79-201a Second, the following uses shall not be eligible for property tax abatement: car wash, day care, private school, veterinary clinic, storage facility, branch bank offices and limited service hotels. The City may, at its sole discretion, not provide a property tax abatement for an otherwise eligible use, or waive any of these prohibitions if the applicant demonstrates compelling and unique circumstances regarding its project.

F. Maintain Existing Tax Base. To facilitate new development, the City and the Olathe Chamber of Commerce shall assist new industries that invest in new buildings, building expansion or install or locate new machinery and equipment in the City. However, the amount of property taxes or special assessments on the existing land and facilities shall under no circumstances be reduced for new development projects.

G. Definitions of Existing Business & Existing Small Business. A business shall be an "Existing Business" if it has had facilities and operations in the City for a period of not less than one year prior to submitting an application for issuance of industrial revenue bonds in accordance with this policy. All other businesses shall be "New Businesses."

H. Transfer of Ownership. The owner or lessee of any property that is all or partially exempt from ad valorem taxes as the result of the City having granted the exemption shall obtain the City's written consent before 1) transferring majority ownership of the property or 2) transferring majority ownership in the owner or lessee, unless the transfer is to an affiliate or a related entity.

I. Warehouse Distribution & Logistics Projects. The primary location in which the City will consider providing property tax abatements for qualifying warehouse distribution, and logistics-type development projects will be within a three (3) mile radius of the I-35 and Lone Elm Road interchange as the areas identified on Exhibit B.

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J. Sales Tax Exemption on Building Materials and/or Personal Property. The City will consider, in exceptional ~~on a case-by case~~s-basis, issuance of industrial revenue bonds for the sole purpose of enabling a project to obtain a sales tax exemption certificate on its building materials and/ or personal property (with no real property tax abatement). This consideration may include many factors which may induce the City to issue such bonds. These factors include, but ~~not be~~ are not limited to, whether a project will result in the adaptive re-use of an underutilized property; whether a project is included in a tax increment financing district (TIF), transportation development district (TDD), or community improvement district (CID); and whether, but-for issuance of bonds to obtain a sales tax exemption certificate on building materials/personal property, the project would not occur, and whether the project will bring significant capital investment to the City. The City will not consider issuance of bonds to obtain a sales tax exemption certificate on building materials/personal property for investments of less than ~~Two~~ Three Million ~~Five Hundred Thousand~~ Dollars (\$~~2,5~~3,000,000), or for development of a greenfield site not associated with a TIF, TDD, or CID.

K. Investment not Limited to Bond-Financed Project Costs. For purposes of determining compliance with the required investment thresholds herein, the term “investment” includes all costs of a project requesting issuance of industrial revenue bonds regardless of whether those costs are financed with bond proceeds. Such project costs may include, but not be limited to, land acquisition, bond issuance costs, professional fees, and machinery and equipment and/or other personal property costs related to the project.

Section 2. Abatement Criteria and Adjustments. It is the intention of the Governing Body that all projects receiving property tax abatement meet the criteria that are detailed below. Failure to meet the standards set forth below may result in a decrease in the total abatement percentage available to a project. Adjustments made to increase the total amount of abatement are intended to be provided as an extra incentive to exceed certain criteria when others may not be met.

A. Employment – Wages. Projects requesting a property tax abatement must increase the amount and diversity of additional employment opportunities in the City. The City expects all projects which receive a property tax abatement to produce a high quantity of jobs and pay above average wages. The City encourages businesses seeking a property tax abatement to engage in local business-education partnerships to enhance the overall quality of the City's workforce.

B. Design Criteria. The City will, at its sole discretion, require higher design standards for the design of buildings and materials used for projects receiving property tax abatement. Projects

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must utilize construction materials and provide an architectural design that exceeds the minimum requirements set forth in the City's Unified Development Ordinance. All projects must be environmentally acceptable to the location intended as well as the surrounding area. Preference will be given to businesses that exceed applicable environmental regulations and energy efficiency standards.

C. Compatibility with Adopted City Plans. All projects shall be consistent with the City's Comprehensive Plan, any applicable corridor plans, and other plans of the City which may be relevant to the project. When evaluating proposed projects, the City will consider a variety of factors to determine compliance, including compatibility of the location of the business with land use and development plans of the City and the availability of existing infrastructure facilities and essential public services. The proposed use must be clean, nonpolluting and consistent with all policies, ordinances, and codes. Based upon future growth, the applicant must be willing to work with the City to provide a traffic study on any projected traffic impact increase on the City. The City will look favorably upon projects which result in infill development, Brownfield redevelopment, adaptive re-use of an existing building, or ameliorate a blight condition.

D. Community Benefit. Projects requesting incentives will agree to actively participate in the civic, charitable, educational, philanthropic, and economic development of the City of Olathe. Accordingly, during the entire term of any incentive the owner of the property receiving the incentive will (1) at all times be a dues-paying member in good standing with both the Olathe Chamber of Commerce and the Olathe Economic Development Council and (2) make an annual donation to the Olathe Community Foundation in an amount to be determined in the sole discretion of the owner, but no less than \$3,000 annually.

Section 3. Term of Abatement. The abatement period for a project approved under this Resolution shall be determined by the amount of new capital investment in the City. Capital investment shall include expenditures for land, building or personal property subject to ad valorem taxation.

A. Existing Businesses. The normal term of abatement for each stand-alone (non-business park) project where the applicant is an Existing Business is 10 years so long as the Existing Business makes a capital investment of no less than \$5 million.

B. New Businesses. The normal term of abatement for each project where the applicant is a New Business is 10 years so long as the New Business makes a capital investment of no less than \$10 million.

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C. Businesses Locating in a Business Park. The normal term of abatement for each project where the applicant is locating within a business park where the Governing Body has already established an abatement term and total investment and the applicant wishes to be assigned a portion of the interest in industrial revenue bonds shall be 10 years so long as the applicant makes a minimum investment of \$2 million if an Existing Business and \$3 million if a New Business.

D. Commencement of Abatement. The abatement term for projects under authority of Section 13 of Article 11 of the Kansas Constitution shall begin in the calendar year after the calendar year in which the business commences its operations or the calendar year in which expansion of an existing business is completed, as the case requires. The abatement term for projects under authority of K.S.A. 12-1740 through 12-1749 and 79-201a shall begin in the calendar year after the calendar year in which the bonds are issued. Projects which include multiple phases shall have an expiration date for the commencement of the term of the abatement for all phases as determined by the Governing Body at the time of the adoption of the Resolution of Intent.

E. Incremental Tax Revenues. When a project's abatement term expires, for all incremental City property tax revenues above the property tax revenues received by the City the last year of a project's abatement term, the City Manager or designee may segregate all such revenues received by the City for the following tax year into a separate account for Economic Development Promotion activities, as such activities are defined in the Transient Guest Tax Charter Ordinance.

Section 4. Procedure. The City shall consider granting a tax exemption pursuant to this Resolution after receipt of a complete application from the applicant in a form prescribed by the City together with the application fee. The application shall be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the project's preliminary site plans and building elevations, to prepare a fiscal impact analysis, and to contact the unified school district within which the property proposed for exemption is located. The project's site plans and building elevations are subject to final approval to ensure that they are similar to the preliminary plans and elevations submitted.

Based on each application and such additional information as may be requested by the City, the City shall prepare or cause to be prepared a fiscal impact analysis of the proposed exemption on the City and state of Kansas, which analysis shall be used by the Governing Body in considering the request for abatement. In making its decision, the Governing Body may also consider any fiscal and/or

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economic impact analyses performed by the unified school district within which the property proposed for exemption is located or the Johnson County Economic Research Institute.

Prior to formal action on each resolution of intent, the Governing Body shall conduct a public hearing thereon, to be scheduled at least seven days after publication of notice. Notice of the hearing shall also be sent to the Johnson County Clerk's Office and the unified school district within which the property proposed for exemption is located. The Olathe Chamber of Commerce and the City shall contact representatives of the unified school district to discuss an application that includes a request for tax abatements. The contact shall be made with school district representatives prior to Governing Body discussion of the application and abatement request. The Governing Body shall consider the school district's feedback and input in reviewing such requests.

#### Section 5. Performance Agreement.

A. Contents. Any tax exemption granted pursuant to this Resolution shall be accompanied by a performance agreement between the applicant and/or lessee and the City, which is subject to annual review and determination by the Governing Body that the conditions qualifying the business for the exemption continue to exist. The City, including the City's internal auditor, may, at any time, review information provided by the company, lessee, county, or state, or may request additional information to determine compliance with the Agreement. If the Governing Body finds that the business or project is not in compliance, then the tax exemption may be modified pursuant to the performance agreement or eliminated as the Governing Body deems appropriate. The County Assessor and the Board of Tax Appeals shall be notified of such action. Each performance agreement shall contain a notice and waiver disclosing to each applicant that the City reserves the right to grant future tax abatements on comparable projects in amounts different than the abatement granted to such applicant. Such notice and waiver shall include a provision that the applicant waives any right to request a modification or amendment of such abatement based upon such differences. The City Manager or designee is hereby authorized to do all things necessary to complete and/or terminate transactions on the City's behalf which have been approved by the Governing Body, including, but not limited to, preparing and executing all documents deemed necessary for such purposes by the City Manager, City staff, the City Attorney, and/or outside legal counsel or bond counsel.

B. Expiration of Resolutions. Each business park master resolution shall provide that it expires on the date that is ten (10) years after the date of the adoption of the master resolution. The Governing Body shall not consider an assignment resolution under a master resolution after the date of expiration of the master resolution unless the Governing Body shall have first extended

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the expiration date of the master resolution. Each stand alone resolution of intent or assignment resolution shall provide that it expires on the date that is three years after the date of the adoption of such resolution unless either (i) bonds shall have been issued for the project, or (ii) a building permit shall have been issued by the City for construction of the related project.

C. Clawbacks. Each performance agreement for a project shall provide that the percentage of property tax abatement will be reduced if, within one (1) year after the issuance of the bonds, the applicant has not incurred the required minimum capital investment, which is equal to 80% of the principal amount of the bonds for industrial revenue bonds or 80% of the estimated project costs for a constitutional abatement. The Governing Body may also reduce or eliminate a property tax abatement for a project which does not comply with applicable laws as required by the project's performance agreement.

D. Utilization of City Services. The performance agreement shall require that the company receiving the property tax abatement (or any other user of the property) utilize solid waste services provided by the City. This requirement shall not apply to any user if (1) the user demonstrates that solid waste services provided by the City are not adequate to serve such user's reasonable needs, (2) the City is not able to demonstrate that it can provide solid waste services at a competitive price; or (3) the user has an existing contract with another provider of solid waste services; provided, however, that the user agrees not to renew any such contract during the abatement term and to then utilize the City's solid waste services by the end of the first year of the abatement term.

E. Fee Schedule. City staff shall prepare a fee schedule and shall make the fee schedule available to each applicant upon request. The fee schedule shall apply to both industrial revenue bond and constitutional tax abatement requests.

Section 6. Fees. The Governing Body hereby establishes the following fees:

A. Application Fee. For Existing Businesses, a non-refundable application fee of \$2,000 shall accompany all applications for the issuance of industrial revenue bonds or for constitutional tax abatement. For New Businesses, a non-refundable application fee of \$4,000 shall accompany all applications for the issuance of industrial revenue bonds or for constitutional tax abatement. All applications for master resolutions of intent where the requested amount of bonds exceeds \$10,000,000 shall be charged an additional application fee of \$4,000.

B. Issuance Fees.

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1. Projects Requesting Real Property Tax Abatement. For projects requesting real property tax abatement which are not warehouse distribution or logistics-type development projects, the City shall receive an issuance fee of (i) .0025 of the first \$40 million par amount of bonds being issued or the amount of constitutional tax abatement being requested, plus (ii) .0020 of the par amount in excess of \$40 million of bonds being issued or the amount of constitutional tax abatement being requested. For projects requesting real property tax abatement which are warehouse distribution or logistics-type development projects, the City shall receive an issuance fee of .0030 of the par amount of bonds being issued or the amount of constitutional tax abatement being requested. In no event shall such issuance fee be less than \$2,500. The fee shall be due and payable at the time the bonds are issued or, for constitutional tax abatements, at the time the ordinance is adopted exempting the property from taxation.

2. Projects Not Requesting a Real Property Tax Abatement. For projects not requesting real property tax abatement, the City shall receive an issuance fee of (i) .0010 of the par amount of bonds being issued on behalf of a for-profit company. In no event shall the issuance fee be less than \$2,000. The fee shall be due and payable at the time the bonds are issued.

3. Projects for Tax-Exempt Nonprofit Organizations. The City will not charge an issuance fee for bonds issued on behalf of tax-exempt nonprofit organizations [designated as such under United States Internal Revenue Code (26 U.S.C. § 501(c)(3))] unless otherwise approved by the Governing Body. The City will not charge an issuance fee for any amount of any bond issue that refunds a prior bond issue for a tax-exempt nonprofit organization.

C. Additional Costs. The applicant shall reimburse the City for all costs associated with the cost-benefit analysis, all legal publication notices, application fees to the Board of Tax Appeals, the City's bond counsel fees and all other miscellaneous costs, including, but not limited to, the City's reasonable costs to process any modifications to existing bond-financed projects (e.g., subordinations and assignments).

D. Waiver of Fees. The City may elect to waive any or all of the City's fees in the event the project is deemed to be a targeted industry or in a targeted area.

E. Public Art. Prior to issuance of any bonds, all projects requesting real property tax abatement will comply with all applicable provisions of Olathe Municipal Code Chapter 2.82, and any amendments thereto, which pertain to Public Art associated with Development Incentives.

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Section 7. Appraised Valuation Objective. The Governing Body desires to increase the non-residential tax base to preserve and enhance the City's fiscal capacity to provide public infrastructure and services necessary to support economic development. The Governing Body's objective is to increase commercial and industrial development to 30% of the total appraised valuation of property within the City. The Governing Body's objective also includes maintaining the commercial and industrial development at 30% of the total appraised valuation of property within the City.

Section 8. Authority of Governing Body. The Governing Body reserves the right to deviate from any policy, but not any procedure, set forth in this Resolution or any other procedural requirements of state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interests of the City.

Section 9. Sunset Date. Since the justification for tax abatements will be lessened as the local economy moves towards its goals of balance and diversification, this policy shall automatically expire on December 31, 2020 unless it is readopted for an additional term. No such tax abatement shall be granted following such expiration, unless this policy is readopted.

Section 10. Previous Resolution Repealed. Resolution No. 18-1111 is hereby repealed.

Section 11. Effective Date. This Resolution shall take effect on January 1, 2020.

ADOPTED by the Governing Body of the City of Olathe, Kansas this \_\_\_\_\_ of \_\_\_\_, 2019.

SIGNED by the Mayor this this \_\_\_\_\_ of \_\_\_\_, 2019.

CITY OF OLATHE, KANSAS

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Mayor

ATTEST:

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City Clerk

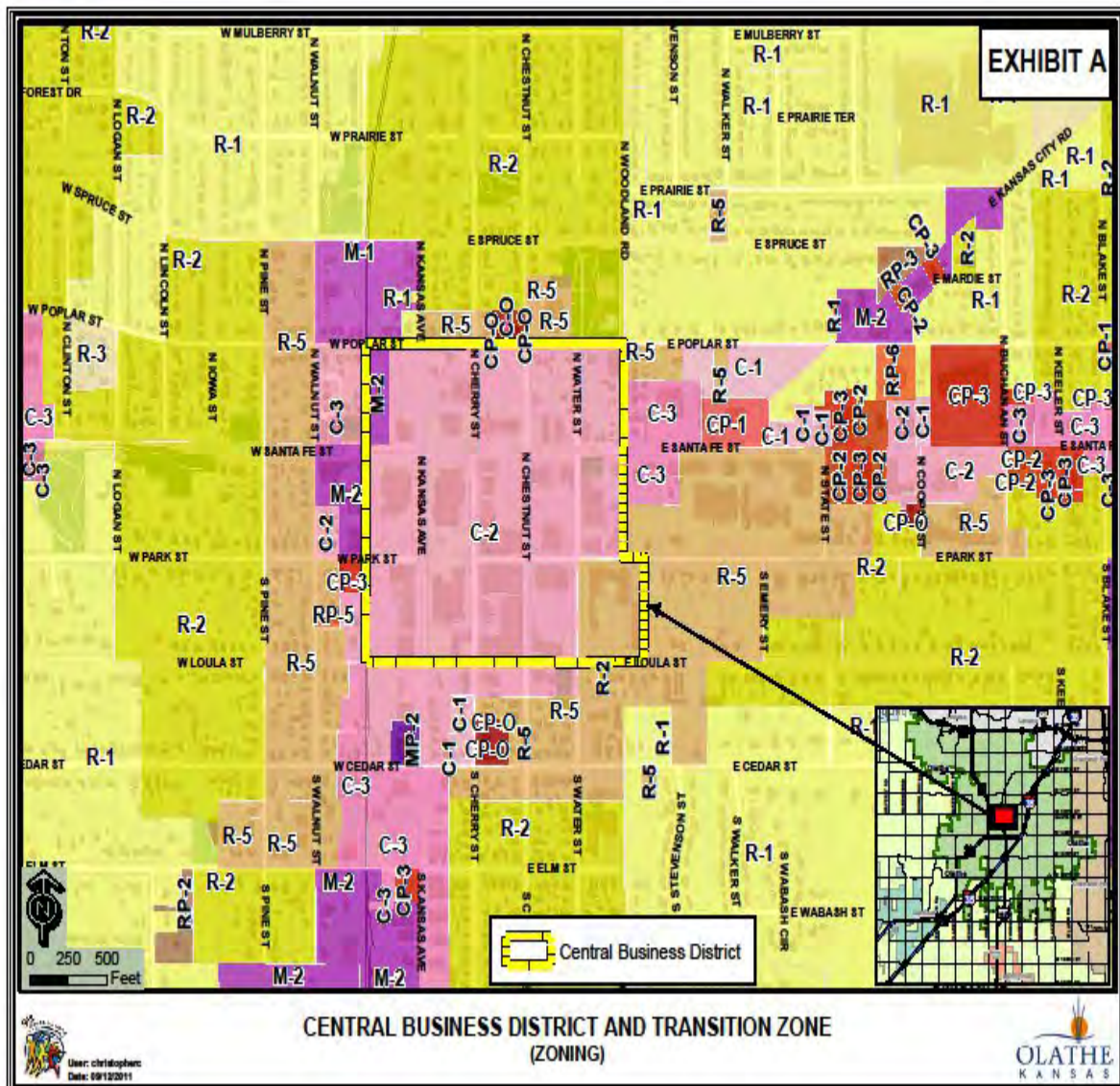
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APPROVED AS TO FORM:

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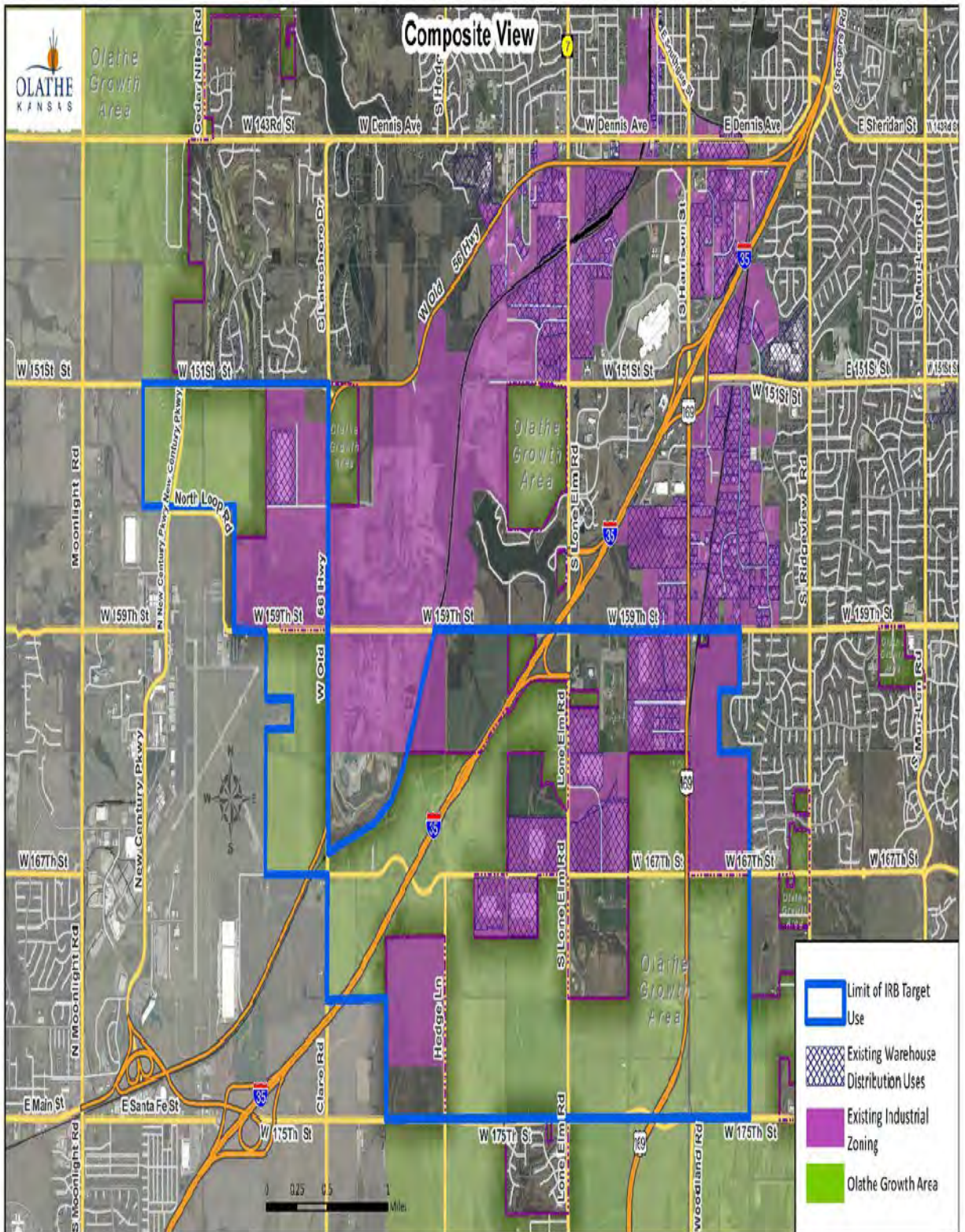
City Attorney

EXHIBIT A





## EXHIBIT B





CITY OF OLATHE		Policy No.:	F-7
COUNCIL POLICY STATEMENT		Date Issued:	12-XX-2019
General Scope:	Finance	Effective Date:	1-1-2020
Specific Subject:	Tax Increment Financing Policy	Cancellation Date:	12-31-2021
		Supersedes No.:	Listed Below

Purpose:

To set forth general public policy objectives of the city as it relates to redevelopment district applications and procedures for new economic development projects.

Statement of Policy:

The statement of policy is hereby incorporated with Resolution No. ~~17-1087~~ 19-XXXX. Previous policies covering Tax Increment Financing were established with Resolution Nos. [17-1087](#), 15-1089, 13-1096, 11-1065, 09-1101, 07-1148, and 03-1053.

## RESOLUTION NO. 19-XXXX

A RESOLUTION ESTABLISHING A CITY OF OLATHE, KANSAS POLICY RELATING TO TAX INCREMENT FINANCING REDEVELOPMENT DISTRICT APPLICATIONS AND PROCEDURES; AND REPEALING CERTAIN PRIOR RESOLUTIONS.

WHEREAS, the City of Olathe, Kansas (the "City") recognizes that it is essential to stimulate economic growth and development of new commercial enterprise in order to provide services, employment and tax revenues for the benefit of the community; and

WHEREAS, it is further recognized that the stimulation of balanced economic development is a joint responsibility of the private and public sectors, working closely together creating a positive business environment and to induce commercial development and expansion in the City; and

WHEREAS, the economic development program goals of the City include economic diversification, broadening of the property tax base, stimulation of private investment, enhancement and support of new development, creation and quality of employment opportunities, and increased per capita income; and

WHEREAS, to meet these economic development goals, the City recognizes the need to assist in the redevelopment of property located within the City by the creation of Tax Increment Financing ("TIF") redevelopment districts; an economic development vehicle established by K.S.A. [12-1770](#) et seq. for the financing of qualified redevelopment projects; and

WHEREAS, the City finds it in the best interest of the public to establish certain policies and guidelines for the consideration of proposals that may be presented to the City by private developers requesting TIF assistance; and

WHEREAS, by adopting this policy the City has determined that the use of TIF should be reserved for projects which further an important and clearly definable public interest of the City, and the City desires to restrict those projects which are eligible for TIF assistance to projects which further such a purpose; and

WHEREAS, by adopting this policy the City intends to set forth a flexible framework for evaluating requests for TIF assistance; and

WHEREAS, the use of TIF by the City is an important economic development tool to stimulate the local economy and improve the quality of life for its citizens; and

WHEREAS, the use of TIF represents an important tool for encouraging the development of projects the City finds and determines are desirable and in the public interest; and

WHEREAS, all prospective TIF projects must be carefully evaluated by the City because the character of tax revenues generated by different developments can vary widely, and in most cases will impact other taxing jurisdictions in the Olathe community; and

WHEREAS, the City desires to use TIF for those projects which demonstrate the highest public benefit by eliminating blight, financing desirable public improvements, strengthening the employment and economic base, increasing property values, reducing poverty, creating economic stability, upgrading older neighborhoods, facilitating economic self-sufficiency, and implementing the Comprehensive Plan and economic development goals of the City; and

WHEREAS, each TIF application submitted to the City will be evaluated on its own merits, and an evaluation of the proposal will be performed by a TIF Committee comprised of City staff and/or consultants and a Chamber representative; and

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WHEREAS, all projects must demonstrate financial and economic reasons such that but for TIF assistance, conditions of blight, extenuating circumstances regarding the site, location, or other factors preclude the viability of project.

NOW, THEREFORE, THE TAX INCREMENT FINANCING REDEVELOPMENT DISTRICT POLICY FOR THE CITY OF OLATHE, KANSAS WILL BE AS FOLLOWS:

SECTION ONE: ADOPTION OF POLICIES AND PROCEDURES: The Tax Increment Financing (TIF) Application Procedures and Application Form are hereby adopted. The City Manager is hereby authorized to implement the following procedures and to make such additional changes and clarifications that shall be deemed advisable and in the best interest of the City.

SECTION TWO: POLICY STATEMENT:

1. It shall be the policy of the City to consider creation of a redevelopment district for qualifying redevelopment projects. Prior to and following the creation of the redevelopment district, the applicant shall meet all state law and City requirements relating to the redevelopment plan and project.
2. It is the policy of the City to consider the judicious use of TIF for those projects which demonstrate a substantial and significant public benefit by constructing public improvements in support of developments that will, by creating new jobs and retaining existing employment, eliminate blight, strengthen the employment and economic base of the City, increase property values and tax revenues, reduce poverty, create economic stability, upgrade older neighborhoods, facilitate economic self sufficiency, promote projects that are of community wide importance, and implement the Comprehensive Plan and economic development goals of the City.
3. Care will be exercised in the use of TIF to thoroughly evaluate each project to ensure that the benefits that will accrue from the approval of TIF are appropriate for the costs that will result, and that they are equitable to the City as a whole.
4. The City will charge a TIF application and an administrative service fee as set forth in this policy.

SECTION THREE: POLICY GUIDELINES. The following criteria are to be used by the City's TIF Committee and staff to evaluate TIF applications:

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1. Each TIF application must demonstrate that “but for” the use of TIF, the project is not feasible and would not be completed without the proposed TIF assistance.
  2. All TIF applications requesting the issuance of bonds or notes will be required to demonstrate that the incremental real property taxes and/or the sales and transient guest taxes expected to be generated will be sufficient to provide a debt coverage factor of at least 1.25 times the projected debt service on the tax increment bonds or notes. Debt service coverage greater than 1.25 times may be necessary to market any notes or bonds that are limited to public offerings. Developer or bank purchased bonds may be less than 1.25 times debt service coverage.
  3. The total amount of TIF assistance provided for projects will be based on the economic payoff expectations of the project and its significance to the community. In general, the goal would be a 10-year payoff. Longer periods may be considered if a determination is made that the project is of community-wide significance.
  4. Each TIF application must include evidence that the applicant:
    - (a) Has the financial ability to complete and operate the project.
    - (b) Will be liable for, or contribute equity or private financing of at least fifty percent (50%) of the total cost of the redevelopment project (including private development costs) or provide a performance bond for the completion of the project. Projects with equity or private financing contributions from the developer in excess of fifty percent (50%) of the total redevelopment project costs will be viewed more favorably.
  5. The City will not consider creation of a TIF district unless the applicant certifies that it intends to submit a Redevelopment Plan and begin negotiating a Redevelopment Agreement within sixty (60) days of creation of the TIF district. Thereafter, the City will require satisfactory assurance that the project will be completed in a timely manner in accordance with the Redevelopment Plan and Agreement.
  6. TIF applications for new or expanded industrial, manufacturing, office, and retail projects will be viewed more favorably than service commercial (commercial uses that mainly provide a service rather than the sale of products) projects. TIF projects which create jobs with wages that exceed the community average will be encouraged. Industrial, manufacturing, retail and office developments will be given more consideration than warehouse type uses based upon the projected employment per square foot. Additional consideration will be given to projects in
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excess of Twenty Million Dollars (\$20,000,000) or if the development has the ability to stimulate the local economy and improve the quality of life for its citizens.

7. TIF applications for retail and service commercial projects should be limited to those projects in which a substantial part of its total products and/or services are either exported from the Olathe area or they would add jobs and replace purchases now being made by Olathe citizens in areas outside of the City. Additional considerations may include whether the project has the effect of supporting or stimulating new retail development, and whether existing sales tax revenue is substantially impacted by relocation of existing retail development into a TIF project.

8. TIF applications for residential development projects may be considered for removal of blight and revitalization of older developed neighborhoods, and/or to provide for public improvements to benefit economic development and employment.

9. TIF applications for the redevelopment of existing residential neighborhoods, commercial and industrial areas will be viewed favorably. Projects to stabilize current residential neighborhoods, commercial, and industrial areas that have or will likely experience deterioration will be favored.

10. All TIF applications shall comply with the requirements of the Kansas TIF Statute.

11. Project eligible costs covered by TIF funds shall be identified in the application and the Redevelopment Plan.

12. TIF applications that include the establishment of business areas, or the redevelopment of existing business areas, shall include information as to the business type of the major tenants of the TIF area. In addition, a thorough market analysis should be completed which identifies: (1) the population areas that will be drawn from; and (2) the businesses of similar types which would be competing with the TIF area businesses.

13. Prior to reimbursement of any TIF-eligible project costs, TIF projects will comply with all applicable provisions of Olathe Municipal Code Section [2.82](#) (and any amendments thereto) which pertain to Public Art associated with Development Incentives. No costs incurred as a result of compliance with said Section [2.82](#) may be reimbursed by TIF funds.

14. Applicants will agree to actively participate in the civic, charitable, educational, philanthropic, and economic development of the City of Olathe. Accordingly, during the entire term of the redevelopment agreement the applicant will (1) at all times be a dues-paying member in good standing with both the Olathe Chamber of Commerce and the Olathe Economic Development

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Council and (2) make an annual donation to the Olathe Community Foundation in an amount to be determined in the sole discretion of the owner, but no less than \$3,000 annually.

SECTION FOUR: PROCEDURE. The City may consider issuing tax increment financing bonds or reimbursing the eligible costs from tax increments pursuant to state law and this Resolution after the following occurs:

1. A complete TIF application is received by the City from the applicant in a form prescribed by the City. The TIF application shall be submitted in sufficient time for staff to follow established procedures, review the project documents, and to meet with the unified school district within which the property proposed for redevelopment is located.
2. Upon review of the TIF application, the City may require and the applicant shall furnish further information in order to clarify the submittal.
3. After creation of the TIF redevelopment district, the City may designate the applicant as the proposed developer through the adoption of a Memorandum of Understanding.
4. The applicant shall, in consultation with the City and the Planning Commission proceed with the preparation of a Redevelopment Plan pursuant to state law and City requirements, including a complete and comprehensive financial feasibility study demonstrating that the economic benefits of the project exceed the cost, the tax increment to be derived from the project will fully fund such costs or bond payments, and that the term of the redevelopment district does not exceed a mutually agreed upon period of time.
5. The applicant and City will enter into a Redevelopment Agreement upon satisfactory completion of the Redevelopment Plan.

SECTION FIVE: FEES. This Resolution establishes a non-refundable TIF fee of one percent (1%) of the total TIF assistance authorized. The service fee, which is a TIF eligible cost, should be paid as follows:

Initial Application Fee (Due at the time of submittal of the application)	5% or \$5,000 whichever is less
Advance Funds Deposit (Due one (1) week prior to consideration of the resolution calling for a public hearing to create the TIF District by the City Council)	15% or \$10,000 whichever is less
Redevelopment Plan Fee	15% or \$10,000 whichever is less

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(Due one (1) week prior to consideration of the Redevelopment Plan by the City Council)

Ordinance Approving Redevelopment Agreement and Issuance of Bonds	65% or \$75,000, whichever is less
Maximum fee	1% of total TIF assistance or \$100,000, whichever is less

Reapplication fees for substantial changes will be charged at the same rate as the schedules shown above.

#### TIF Administration Service Fee

A five percent (5%) annual administrative service fee shall be paid to the City from the tax increment generated from the project prior to disbursement of the increment to the developer or bond trustee to cover the administrative costs incurred by the City for the administration of and other City costs associated with each approved TIF Project. Such administrative service fee shall be in addition to the TIF application fee and any other fees associated with the TIF Project.

The applicant may be required to pay additional costs such as outside consultant and attorney fees as required for the City to fully analyze the TIF application. TIF application fees (excluding non-refundable), additional consultant and attorney fees may be reimbursed to applicant or paid to City from bond proceeds or TIF revenues. However, City bond issuance costs may not be reimbursed from TIF project revenue if TIF project reimbursable costs are payable from City sales tax or transient guest tax.

**SECTION SIX: REQUEST FOR PROPOSAL.** The City may initiate a Request for Proposal for a redevelopment project. The fees shown above are for both City initiated and non-City initiated redevelopment projects. The City reserves the right, at its sole discretion, to reduce or waive the above fees if a redevelopment project is City-initiated and it is determined to be in the best interest of the City to do so. Upon the filing of a TIF application that is non-City initiated, the City reserves the right to cause a public notice to be inserted in a newspaper of general circulation in the City or on the City's website requesting proposals for development in the proposed project area.

**SECTION SEVEN: DESIGN CRITERIA.** Development proposals under a TIF application are expected to meet the "highest development standards" as outlined by the City's adopted development policies for commercial and industrial buildings, as well as all Design Guidelines adopted by the Planning Commission and City Council. Development proposals are expected to demonstrate innovative design with human scale that exceeds the design standards of conventional development

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throughout the City. A TIF project requires the use of high quality building materials, noteworthy architectural design and site design to achieve visual interest, provide human scale, place a premium on developing land in harmony with existing natural features, and enhance the value and function of adjacent properties.

All TIF projects will be required to utilize a Planned Zoning District and will include strict architectural, site, and landscape design requirements. As well, the redevelopment plan and agreement, development review process, and zoning ordinances will establish land use controls, allowed uses and materials, traffic improvements, environmental preservation areas and other design criteria to ensure the development will achieve the highest development standards possible.

The compatibility of the TIF project with land use and development plans of the City and the availability of existing infrastructure facilities and essential public services will be a consideration. The project must be environmentally acceptable to the location intended as well as the surrounding area. Preference will be given to businesses that do their own pre-treatment or do not require extensive environmental controls. The proposed use must be clean, nonpolluting, and consistent with all policies, ordinances, and codes. Based upon future growth, the applicant must be willing to provide a traffic study on any projected traffic impact increase on the City.

SECTION EIGHT: EMPLOYMENT AND BUSINESS RELOCATIONS. TIF applications are expected to include the following:

1. If the TIF application is being recommended based upon job creation criteria, language will be included in the redevelopment plan which stipulates that the City's obligation to the developer may be reduced if satisfactory evidence shows that the indicated number and quality of jobs have not been generated.
2. If businesses are to be relocated from other areas of the City, sufficient justification will be included to indicate why this relocation should be considered. If existing businesses are to be relocated to the TIF area, the base year activity for purposes of determining the sales tax increment will be the last twelve month period at the businesses current location, immediately preceding the relocation.

SECTION NINE: METHOD OF FINANCING. TIF applications may request that TIF assistance be provided in one of the following forms:

1. Special Obligation Bond Financing;
  2. Direct Reimbursement to the applicant on a "pay as you go" basis;
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3. Pledge of tax increment financing revenues to pay private financing; or
4. Any combination of the foregoing methods.

The City is, at its sole discretion, to determine the appropriate method of financing for a TIF project. In deciding which method of financing to use, the prevailing factor in making the determination will be total costs and the security for the bonds. The City will not provide credit enhancements for the special obligation bonds; however, credit enhancement provided by the developer on any bonds will be viewed favorably. The City shall not issue General Obligation Bonds for TIF eligible costs. The proposed method of financing will be clearly shown in the TIF application and the Plan.

SECTION TEN: TAXES AVAILABLE TO REPAY TIF OBLIGATIONS. The City will, at its sole discretion, give preference to TIF redevelopment project applications which request reimbursement of eligible project costs solely from the incremental real property taxes generated by the TIF project. Should an applicant request reimbursement of eligible project costs from the City's 1% general sales tax and/or the City's transient guest tax, the applicant shall demonstrate the necessity of including the City's sales and/or transient guest tax in writing. In the event that a TIF redevelopment project requires that the City include its general sales tax to repay reimbursable project costs, the City will, at its sole discretion, make available 50% of the general City sales tax. Transient guest taxes may, at the sole discretion of the City, be used as part of the tax increment if the City consents to make available any or all of its general City sales tax, but generally the City will only make 50% of the transient guest tax available to reimburse eligible redevelopment project costs. If an applicant requests reimbursement of eligible project costs from any amount of the City's sales tax, no more than twenty percent (20%) of the total square feet of the development may be leased to non-sales tax producing tenants. The City will not include utility franchise taxes collected from private utilities or as payments in-lieu of taxes from publicly owned utilities to repay TIF obligations to the extent that such exclusion is permitted by law.

SECTION ELEVEN: STAR BOND PROJECTS. The City shall contribute all revenues required by state law to be included within a STAR Bond project district. However, the City may, at its sole discretion, contribute additional revenues within a STAR Bond project district beyond those required by state law.

SECTION TWELVE: AUTHORITY OF GOVERNING BODY. The Governing Body reserves the right to deviate from any policy, but not any procedure set forth in this Resolution or any other procedural

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requirements of state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interests of the City.

SECTION THIRTEEN: SUNSET DATE. Since the justification and necessity for creation of TIF districts may be lessened as the local economy moves towards its goals of balance and diversification and the City's redevelopment needs are satisfied, this policy shall automatically expire December 31, 2021 unless it is readopted for an additional term. No such TIF project shall be approved following such expiration, unless this policy is readopted or repealed by adoption of a new policy.

SECTION FOURTEEN: PREVIOUS RESOLUTIONS REPEALED. Resolution No. 17-1087 is hereby repealed.

SECTION FIFTEEN: EFFECTIVE DATE. This Resolution shall take effect January 1, 2020.

ADOPTED by the Governing Body this \_\_\_\_ day of \_\_\_\_\_, 2019.

SIGNED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Mayor

ATTEST:

\_\_\_\_\_

City Clerk

(SEAL)

APPROVED AS TO FORM:

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City Attorney

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CITY OF OLATHE		Policy No.:	F-9
COUNCIL POLICY STATEMENT		Date Issued:	12-XX-2019
General Scope:	Administration	Effective Date:	1-1-2020
Specific Subject:	Community Improvement Districts	Cancellation Date:	12-31-2021
		Supersedes No.:	Listed Below

Purpose:

It shall be the policy of the City to consider establishment of Community Improvement Districts, when the Governing Body deems it necessary, to finance certain Improvement Projects within the City.

Statement of Policy:

The statement of policy is hereby incorporated with Resolution No. ~~17-1088~~ 19-XXXX. Previous policies regarding Community Improvement Districts were incorporated by Resolution Nos. 13-1094, 11-1064 and 09-1106.

## RESOLUTION NO. 19-XXXX

A RESOLUTION ESTABLISHING POLICIES RELATING TO COMMUNITY IMPROVEMENT DISTRICTS IN THE CITY OF OLATHE, KANSAS

WHEREAS, the City of Olathe, Kansas ("the City") recognizes that community improvement is essential to stimulate economic growth and development for industries and businesses in order to provide services, employment and tax revenues for the benefit of the community; and

WHEREAS, it is further recognized that community improvement and the stimulation of balanced economic development is a joint responsibility of the private and public sectors, working closely together to create a positive business environment and to encourage industry to locate and expand in the City; and

WHEREAS, to meet these community improvement and economic development goals, the City recognizes the occasional necessity of levying a community improvement district sales tax and/or special assessments in order to pay the costs of infrastructure improvements; and

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WHEREAS, certain infrastructure and related improvements must be constructed to serve commercial development projects which add to and diversify the Olathe tax base as well as projects which would provide an extraordinary or particularly unique community-wide economic opportunity; and

WHEREAS, K.S.A. [12-6a26](#) et seq., the Community Improvement District Act ("the Act") authorizes the governing body of any city or county to create community improvement districts ("Improvement Districts" or "CID") that may within an Improvement District, acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip or extend buildings, structures and facilities; sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, water mains and extensions and other site improvements; parking garages; streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers; parks, lawns, trees and other landscape; communication and information booths, bus stops and other shelters, stations, terminals, hangers, rest rooms and kiosks; paintings, murals, display cases, sculptures, fountains and other cultural amenities; airports, railroads, light rail and other mass transit facilities; and lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits; and to operate or to contract for the provision of music, news, child-care, or parking lots or garages, and buses, minibuses or other modes of improvement; provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons; to provide or contract for cleaning, maintenance and other services to public or private property; to produce and promote any tourism, recreational or cultural activity or special event, including, but not limited to, advertising, decoration of any public place in the district, promotion of such activity and special events and furnishing music in any public place; to support business activity and economic development, including, but not limited to, the promotion of business activity, development and retention and the recruitment of developers and business; to provide or support training programs for employees of businesses; and to contract for or conduct economic impact, planning, marketing or other studies ("Improvement Project"); and

WHEREAS, the Act gives discretion to governing bodies to approve Improvement Projects which are located within of the boundaries of Improvement Districts, and Improvement Projects which may include contracting for or conducting economic impact, planning, marketing or other studies; and

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WHEREAS, the Act further authorizes governing bodies, in order to pay the costs of such Improvement Projects, to impose a Community Improvement District sales tax on the selling of tangible personal property at retail or rendering or furnishing services within Improvement Districts in any increment of .10% or .25% not to exceed 2.0% and/or the levy of special assessments upon property within such Improvement Districts and to issue special and or general obligation revenue bonds payable from such sales taxes and/or special assessments;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

Section 1. Policy Statement. To meet the economic goals of the City as outlined above, it shall be the policy of the City to consider establishment of Community Improvement Districts, when the Governing Body deems it necessary, to finance certain Improvement Projects within the City. The City shall finance Improvement Projects by (a) special assessments levied on property within the Improvement District benefited by the Improvement Project, and/or (b) an Improvement District sales tax on the sale of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas Retailers' Sales Tax Act, and amendments thereto, within the Improvement District. However, the City hereby expresses its intent to consider the issuance of full faith and credit general obligation bonds to pay for Improvement District costs if such bonds are issued to pay for public infrastructure improvements which are financed by special assessments but are not financed by an Improvement District sales tax. The City, in accordance with the Act and in addition to and notwithstanding any limitations on the aggregate amount of the retailers' sales tax contained in K.S.A. [12-187](#) through [12-197](#), may, at its sole discretion, levy a sales tax within an Improvement District in any increment from .10% or .25% up to 2%, all of which may be pledged to repay any special obligation bonds issued to finance the Improvement Project. If special assessments are to be imposed within the Improvement District, the City shall follow the assessment procedures outlined in K.S.A. [12-6a01](#) et. seq. and shall adhere to Policy [PI-5](#), the City's policy on financing public improvements through special benefit districts.

Section 2. Project Eligibility. Pursuant to the Act, certain projects and activities may be paid from the proceeds of a Community Improvement District sales tax or special assessments. The City hereby identifies projects and activities identified as eligible for reimbursement under the Act which it will deem eligible and ineligible for reimbursement:

A. Eligible Projects. The following projects within the district to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair,

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install, relocate, furnish, equip or extend shall be eligible for reimbursement out of the proceeds of a Community Improvement District sales tax or special assessments:

1. Public buildings, structures and facilities, and not-for-profit museums;
  2. Sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, water mains and extensions and other site improvements;
  3. Parking garages;
  4. Streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;
  5. Parks, lawns, trees and other landscape;
  6. Communication and information booths, bus stops and other shelters, stations, terminals, hangers, rest rooms and kiosks;
  7. Outdoor amenities, including but not limited to, fountains;
  8. Airports, railroads, light rail and other mass transit facilities;
  9. Lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits.
  10. To provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons for public property, public buildings and outdoor spaces.
  11. To provide or contract for cleaning, maintenance and other services to public property, public buildings and outdoor spaces;
  12. To contract for or conduct economic impact, planning, marketing or other studies related to the district.
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B. Ineligible Projects. The following projects within the district to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip or extend shall be ineligible for reimbursement out of the proceeds of a Community Improvement District sales tax or special assessments:

1. Private buildings, structures and facilities, other than not-for-profit museums;
2. Indoor cultural amenities, including but not limited to, paintings, murals and display cases, which are not located in a private not-for-profit museum;
3. To operate or to contract for the provision of music, news, child-care, or parking lots or garages, and buses, minibuses or other modes of transportation;
4. To provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons inside private buildings;
5. To provide or contract for cleaning, maintenance and other services to private property;
6. To produce and promote any tourism, recreational or cultural activity or special event, including, but not limited to, advertising, decoration of any public place in the district, promotion of such activity and special events and furnishing music in any public place;
7. To support business activity and economic development, including, but not limited to, the promotion of business activity, development and retention and the recruitment of developers and business;
8. To provide or support training programs for employees of businesses.
9. Public Art, as such term is defined in Chapter [2.82](#) of the Olathe Municipal Code.

Section 3. Procedure. Pursuant to the Act, the City shall consider creation of a CID after receipt of a completed CID Petition ("Petition") (Exhibit A) and a Petition Fee as described in Section 6(a). The completed Petition will be reviewed by the City's Economic Development Committee and any other staff required for review of the Petition prior to consideration of a complete and valid Petition by the Governing Body.

To form an Improvement District, the following procedure is established:

A. Petition Procedure. A valid Petition proposing the creation of an Improvement District, the making of Improvement Projects relating thereto and the imposition of a Community

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Improvement District sales tax or special assessments in order to pay the costs of such Improvement Projects must be filed with the City Clerk of the City of Olathe.

1. Petition Sufficiency. The Petition must be signed by the owners of more than fifty-five percent (55%) of the land area within the proposed district, and signed by owners collectively owning more than fifty-five percent (55%) by assessed value of the land area within the proposed district, if the petitioners are seeking financing in whole or in part by a proposed Community Improvement District sales tax. The Petition must be signed by the owners of record, whether resident or not, of all of the land area within the proposed Improvement District if the petitioners are (1) seeking financing only by assessment and (2) not seeking the issuance of full faith and credit bonds pursuant to the Act.

2. Petition Submittal Requirements. The Petition shall be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the Improvement Project's site plans, and to analyze the merits of the proposed Improvement District in the context of existing economic development and infrastructure projects. The Petition must contain a description of the following:

- a. the general nature of the Improvement Project;
- b. the estimated cost of the Improvement Project, supplemented by a preliminary budget describing each element of the Improvement Project proposed to be paid for by Improvement District sales tax or assessments;
- c. the proposed method of financing the Improvement Project;
- d. the proposed amount and method of assessment, if any;
- e. the proposed amount of any Improvement District sales tax, if any;
- f. a map and legal description of the proposed Improvement District.

B. Supplemental Information. The City reserves the right to request any additional information to supplement the Petition, including those items described in Exhibit A, prior to consideration by the Governing Body.

C. District Financed Only by Special Assessments. Upon filing of a Petition for an Improvement District financed only by special assessments, the Governing Body may proceed without notice or a hearing to make findings by ordinance as to the nature, advisability and

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maximum cost of the project, the boundaries of the Improvement District and the amount and method of assessment. Upon making such findings the Governing Body may authorize the Improvement Project in accordance with such findings as to the advisability of the Improvement Project, except no assessments may be levied against the municipality at large. The assessments may be reduced or eliminated once the City has received sufficient funds to pay the debt service on any bonds issued for the Improvement Project which would have been paid out of such annual installment. The ordinance shall be effective upon publication once in the official City newspaper.

D. Public Hearing Procedure. After review of a completed Petition by the Economic Development Committee, and prior to creating any Improvement District (except an Improvement District financed only by special assessments, for which no public hearing is required) the Governing Body shall, by resolution, direct and order a public hearing on the advisability of creating such Improvement District and the construction of such Improvement Projects therein, and to give notice of the hearing by publication at least once each week for two (2) consecutive weeks in the official City Newspaper and by certified mail to all property owners within the proposed Improvement District, the second publication to be at least seven (7) days prior to the hearing and such certified mail sent at least ten (10) days prior to such hearing. The notice of public hearing shall contain the following information:

1. the time and place of the hearing;
2. the general nature of the proposed Improvement Project;
3. the estimated cost of the proposed Improvement Project;
4. the proposed method of financing the costs of the Improvement Project;
5. the proposed amount of the Community Improvement District sales tax, if any;
6. the proposed amount and method of assessment, if any; and
7. a map and legal description of the proposed Improvement District.

E. Governing Body Findings. After the Public Hearing is conducted on the proposed Improvement District, the Governing Body shall determine the advisability of creating an Improvement District setting forth the boundaries thereof, authorizing the proposed Improvement Projects, approving the maximum costs thereof, levy the Improvement District

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sales tax, imposing any special assessments and approving the method of financing the same. Such determinations will be made by adoption of an ordinance.

F. Project Account. The City shall create a separate account for each Improvement District and Improvement Project, and all Improvement District sales tax and or special assessment revenues shall be deposited into such account.

Section 4. Criteria and Adjustments. It is the intention of the Governing Body that all Improvement Projects related to proposed Improvement Districts meet the criteria detailed below. Failure to meet the standards set forth below may result in rejection of the Petition or a decrease in the proposed CID sales tax percentage or proposed special assessments. Adjustments may be made to increase the proposed CID sales tax or proposed special assessments intended to be provided as an extra incentive to exceed certain economic development criteria. However, in no instance shall adjustments to the proposed CID sales tax or special assessments exceed the maximum allowable CID sales tax or special assessments which may be levied pursuant to the Act.

A. Improvement Development District Committee Consideration. The City's Economic Development Committee and any other staff required to review Petitions shall utilize the following criteria to evaluate Petitions:

1. "But For" Test. Each Petition should demonstrate that "but for" the creation of a CID and use of Improvement District sales tax and/or the levy of special assessments, the Improvement Project is not feasible and would not be completed without the proposed CID assistance. The Petitioner must provide adequate information for the Committee to evaluate whether the proposed project satisfies this test, including, but not limited to, a project pro forma showing expenditures, revenues, and anticipated return on investment both with and without the CID assistance.

2. Debt Service Coverage Ratio for Special Obligation Community Improvement District Sales Tax Revenue Bonds. All Petitions requesting the imposition of a CID sales tax and the issuance of special obligation bonds should demonstrate that the CID sales taxes expected to be generated will be sufficient to provide enough security to pay off the bonds. The CID sales taxes generated should provide a debt service coverage ratio of at least 1.25 times the projected debt service on the special obligation bonds or notes. A debt service coverage ratio greater than 1.25 times may be necessary to market any notes or bonds that are public offerings. Petitioner or bank purchased bonds may be less than 1.25 times debt service coverage.

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3. Debt Service Coverage Ratio for Special Obligation Community Improvement District Special Assessment Revenue Bonds. All Petitions requesting the imposition of CID special assessments and the issuance of special obligation bonds or temporary notes should demonstrate that the CID special assessments expected to be levied will be sufficient to provide enough security to pay off the bonds. The CID special assessments should generate enough revenue to provide a debt service coverage ratio of at least 1.25 times the projected debt service on the special obligation bonds or notes. A debt service coverage ratio greater than 1.25 times may be necessary to market any notes or bonds that are public offerings. Petitioner or bank purchased bonds may be less than 1.25 times debt service coverage.

4. Projected Payoff. The total amount of CID assistance provided for projects will be based on the economic payoff expectations of the Improvement Project and the Improvement Project's significance to the community. In general, the goal for Improvement Projects (including any associated CID special assessments) would be a 10-year payoff. Longer periods may be considered up to the maximum statutory payoff period of 22 years from creation of the Improvement District if a determination is made that the Improvement Project is of community-wide significance.

5. Developer Contribution & Cost Allocation. Each Petition should include evidence that the Petitioner will do the following:

- a. Have the financial ability to complete and operate the Improvement Project,
  - b. Will be liable for, or contribute equity or private financing of at least fifty percent (50%) of the total cost of the Improvement Project or provide a performance bond, letter of credit, or other appropriate security for the completion of the Improvement Project (Improvement Projects with equity or private financing contributions from the developer in excess of fifty percent (50%) will be viewed more favorably),
  - c. Demonstrate a financial nexus between the public and private improvements financed by the CID assistance. Preference will be given to projects in which at least 50% of the CID-eligible costs will pay for construction of public buildings, structures, and facilities, including but not limited to, major public City-specified infrastructure or City-owned facilities within the Improvement District which must be improved to serve the Improvement Project and which would not otherwise require improvement but for the Improvement Project.
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6. Project Completion. The City will require satisfactory assurance that the Improvement Project will be completed in a timely manner in accordance with the Development Agreement described in Section 5.

B. Governing Body Consideration. The Governing Body shall consider the following factors when creating a CID pursuant to the Act:

1. Existence of Economic Benefit. Strong consideration will be given to Improvement Projects which add to and diversify the Olathe tax base as well as Improvement Projects which would provide an extraordinary or particularly unique community-wide economic opportunity. Evaluation criteria to be used in determining economic benefit to the community shall include, but shall not be limited to, consideration of the amount of capital investment and a determination of whether the proposed Improvement Project enables the development and location of new products, services and amenities in the City rather than the relocation of existing City businesses.

2. Location. The Governing Body will give strong consideration for an Improvement District that will be located in a targeted area for economic development or redevelopment, has specific site constraints making development more difficult or costly, or is considered in need of rehabilitation in some way. Targeted areas for economic development or redevelopment may include, but not be limited to, the state Enterprise Zone, blighted areas or conservation areas as defined under K.S.A. [12-1770a](#), and the Downtown Core.

3. Design Criteria. The City will require higher standards for the design of improvements and materials used in making improvements within an Improvement District than the minimum requirements set forth in the design guidelines provided by the City's Planning Services Division. Preference will be given to businesses that practice sustainable design practices, including but not limited to, energy efficient construction, use of recycled materials, use of native and drought-resistant landscaping, and conservation of natural hydrological systems. The proposed use must be clean, nonpolluting and consistent with all City policies, ordinances, and codes. The Improvement Project's site plans and building elevations and the Improvement Project's plans are subject to final approval by the City's Planning Services Division to ensure that they are similar to the preliminary plans and elevations submitted.

4. Compatibility with Adopted City Plans. All Improvement Projects should be consistent with the City's Comprehensive Plan, street improvement plans, and any special established

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corridor plans. The City will consult these plans for consistency prior to the City approving any proposed Improvement District. When evaluating proposed Improvement Districts, the City will consider (1) the compatibility of the location of the proposed Improvement Project(s); (2) the compatibility of the proposed land uses with land use, capital improvement, and other relevant plans of the City; and (3) the availability of existing infrastructure facilities and essential public services. Preference will be given to projects which enhance pedestrian, bicycle, or public transit options. If an Improvement Project requires a rezoning in addition to any rezoning required within the Improvement District, the Petitioner shall demonstrate the Improvement Project's compatibility with land use, capital improvement, and other relevant plans of the City.

5. Traffic Impacts. All Improvement Projects shall conform to the City's Access Management Plan and any other plans and/or policies which would automatically trigger the issuance of a Traffic Impact Study or any other study. All additional studies shall be submitted with the Petition for consideration by the Economic Development Committee and before consideration of the Petition by the Governing Body.

6. Utilization of City-Owned Utilities. All Improvement Districts within the boundaries of City-owned utility service areas (including the City's water, sewer, and solid waste services) shall use City-owned utilities. Exceptions will only be made when it is demonstrated in writing that City-owned utilities cannot feasibly provide acceptable service to the Improvement District.

7. Community Benefit. Petitioners will agree to actively participate in the civic, charitable, educational, philanthropic, and economic development of the City of Olathe. Accordingly, during the entire term of the development or redevelopment agreement the petitioner will (1) at all times be a dues-paying member in good standing with both the Olathe Chamber of Commerce and the Olathe Economic Development Council and (2) make an annual donation to the Olathe Community Foundation in an amount to be determined in the sole discretion of the owner, but no less than \$3,000 annually.

Section 5. Development or Redevelopment Agreement. Any Improvement District approved by ordinance pursuant to this Resolution shall be accompanied by a development or redevelopment agreement ("Agreement") between the Petitioner and/or lessee and the City. The Agreement will be subject to approval by the Governing Body prior to reimbursement of eligible Improvement Project costs either on a pay-as-you-go basis or by issuance of CID Sales Tax Revenue Bonds or CID Special Assessment Revenue Bonds, and prior to construction of the Improvement Project. However, in no

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event will the City create a CID and levy a CID sales tax for more than one (1) year without an Agreement, unless a longer term for negotiation of the Agreement is approved by the Governing Body. If no such term is approved by the Governing Body, the Governing Body may, at its sole discretion, dissolve the CID by ordinance and utilize any CID revenues for eligible purposes under the Act. The City shall review information provided by the Petitioner, lessee, county, or state to determine compliance with the Agreement. Each Agreement shall contain a notice and waiver disclosing to each Petitioner that the City reserves the right to create future Improvement Districts on comparable projects with different Improvement District sales tax rates or different amounts of special assessments than those approved for such project. The aforementioned notice and waiver shall include a provision that the Petitioner waives any right to request a modification or amendment of such Improvement District sales tax rate or amount of special assessments based upon such differences.

All costs of preparation of the Agreement, publication of legal notices and all other related Petition costs shall be paid by the Petitioner.

Section 6. Fees. The Governing Body hereby establishes the following fees:

A. Petition Fee. A non-refundable Petition Fee of \$5,000 shall accompany all Petitions and shall be paid prior to consideration of all Petitions for the creation of an Improvement District by the Economic Development Committee. Should an Improvement District be created, the petition fee shall be credited toward the City's Administrative Service Fee paid by Petitioner.

B. Advance Funds Deposit. An Advance Funds Deposit of \$10,000 shall be made to the City prior to consideration of all Petitions for the creation of an Improvement District by the Governing Body to cover the costs of 3rd party advisors (including, but not limited to, bond counsel and financial advisors) engaged by the City to review the Petition and related documents on behalf of the City. Such Advance Funds Deposit will be replenished by the Petitioner if requested by the City prior to creation of an Improvement District. Should an Improvement District be created, the Advance Funds Deposit shall be credited toward the City's Administrative Service Fee paid by Petitioner. Should any of the Advance Funds Deposit not be utilized to pay the City's advisors as described herein, such amount will be refunded to Petitioner.

C. Bond Issuance Fee. The City shall receive an issuance fee of (i) 25 basis points (.25%) of the first \$10 million par amount of Improvement District sales tax revenue bonds being issued, plus (ii) 20 basis points (.20%) of the par amount of the second \$10 million of bonds being issued,

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plus (iii) 10 basis points (.10%) of the par amount in excess of \$20 million of bonds being issued for each series of bonds to be paid by the proceeds of a CID sales tax or special assessments. In no event shall the issuance fee be less than \$2,000 or more than \$150,000. The fee shall be due and payable at the time the bonds are issued. The City will not charge the issuance fee for any amount of any bond issue that refunds a prior bond issue.

D. Administrative Service Fee. In addition to the fees listed above, the Petitioner shall pay to the City, at the time prescribed in the Agreement, an Administrative Service Fee of five percent (5%) of the total cost of the CID project, minus the Petition Fee, for the cost of work done by the City to reimburse the City for the services rendered by the City in the administration and supervision of the project. Such Administrative Service Fees may be paid from the Improvement District sales tax generated from the project, special assessments, bond proceeds, or from a direct billing to the Petitioner. The payment method of the administrative service fee shall be determined on a case by case basis under the terms of the Agreement.

E. Additional Costs. The Petitioner shall reimburse the City for all costs associated with the analysis of a proposed Improvement District, including costs of all legal publication notices, resolutions, ordinances, and other proceedings relating to the creation or administration of the district or the issuance of bonds therefore, the City's necessary bond counsel and any other legal fees, financial advisor fees, any consultant fees, any interest which may accrue on money borrowed by the City during the period of construction and the amount of a reserve fund for the bonds, and all other miscellaneous costs.

F. Public Art. Prior to reimbursement of any CID-eligible project costs, Improvement Projects will comply with all applicable provisions of Olathe Municipal Code Section [2.82](#) (and any amendments thereto) which pertain to Public Art associated with Development Incentives. No costs incurred as a result of compliance with said Chapter [2.82](#) may be reimbursed by CID funds.

Section 7. Authority of Governing Body. The Governing Body reserves the right to deviate from any policy, but not any procedure set forth in this Resolution or any other procedural requirements of state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interests of the City.

Section 8. Sunset Date. Since the justification and necessity for creation of Improvement Development Districts may be lessened as the local economy moves towards its goals of balance and diversification and the City's improvement needs are satisfied, this policy shall automatically expire on December 31, 2021 unless it is readopted for an additional term. No such Improvement Project

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shall be granted following such expiration, unless this policy is readopted or repealed by adoption of a new policy.

Section 9. Previous Resolution Repealed. Resolution No. 17-1088 is hereby repealed.

Section 10. Effective Date. This Resolution shall take effect on January 1, 2020.

ADOPTED by the Governing Body of the City of Olathe, Kansas this \_\_\_\_ day of \_\_\_\_\_, 2019.

SIGNED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Mayor

ATTEST:

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City Clerk

(SEAL)

APPROVED AS TO FORM:

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Deputy City Attorney

## EXHIBIT A

CITY OF OLATHE

COMMUNITY IMPROVEMENT DISTRICT

PETITION PROCEDURE

CID Petition Procedures

1. PETITION:

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Submission. The Community Improvement District Petition form, policies, and procedures are available from the City's Resource Management Department or City Clerk's office. Not less than two (2) paper copies and one (1) electronic copy of the completed Petition should be submitted to the Economic Development Committee together with the required Petition fee. The completed Petition shall be submitted to the City Clerk of the City of Olathe with copies to the Director of Resource Management, City of Olathe, 100 E. Santa Fe, P. O. Box 768, Olathe, Kansas 66061.

Petition Fee. Each Petition shall be accompanied with a non-refundable Petition fee made payable to the City of Olathe. The Petition fee will be used by the City to pay the costs incurred by the City in the review of the Petition. The City has established a Petition fee and has established a policy for reimbursement of additional costs as outlined in Section 6 of the CID Policy. In the event that costs for third-party services incurred by the City exceed the fee collected, the Petitioner will reimburse the City for such additional cost prior to final consideration of the Petition by the City Council. The Petitioner shall be required to pay all additional costs such as those set forth in Section 6 of the CID Policy.

Preliminary Determination of Completeness. Upon submission, the Petition will be reviewed by the Economic Development Committee to determine if it is complete under the staff review guidelines described below. If the Petition is incomplete or if additional information is needed, the Petitioner will be notified in writing that the Petition is not complete and the reasons will be stated referring to the specific criteria that are not met, including, but not limited to, additional information required and/or financial, legal, planning, and development concerns.

Requests for Proposals. The City may initiate a Request for Proposals for a redevelopment project. The fees shown above are for both City-initiated and non-City initiated redevelopment projects. The City reserves the right to modify, reduce, or waive the above fees if such consideration for a CID project is determined to be in the best interest of the City. Upon the filing of a complete Petition that is non-City initiated, the City reserves the right to cause a public notice to be inserted in a newspaper of general circulation in the City or on the City's website requesting proposals for development in the proposed Improvement District.

## 2. STAFF REVIEW:

Review of the Petition will be conducted by the City's Economic Development Committee (which includes, but is not limited to, members of the City Manager's Office, Legal, Resource Management, and Public Works departments), and if necessary by other City staff, the City's Financial Advisor, Bond Counsel, and any other outside consultant deemed necessary for review of the Petition. Initial review

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time will be approximately thirty (30) days from the date the completed Petition is submitted to the City. However, more or less time may be required for particular Petitions. Upon receipt of a complete Petition and after review by the City's Economic Development Committee, the Economic Development Committee shall forward a recommendation to the City Council for consideration. The recommendation of the City's Economic Development Committee is advisory and may be approved, denied, or amended by the City Council. Petitioners will be notified of the City's Economic Development Committee forwarding the Petition to the City Council for consideration at a Council study session and a regular Council meeting.

Petitions that are determined to be incomplete or do not conform to the City's CID policy will not be forwarded to the City Council. Petitioners will be notified of the determination that the Petition will not be forwarded and should be modified before being considered in the future.

The following is a list of additional information which may be requested by the City's Economic Development Committee. The Economic Development Committee may request any or all of this information prior to consideration of a Petition for creation of a CID by the Governing Body in connection with the Economic Development Committee's evaluation of the Petition and determination of whether the Petition is complete and conforms to the City's CID Policy:

A. Describe the proposed Improvement Project, including the size and scope, phasing and anticipated timing of the Improvement Project. Specifically outline City facilities and residential development, if any, to be included in the Improvement Project.

B. State the need and justification for CID assistance and the type and amount of assistance being requested by providing the following information:

1. A project proforma containing assumptions for CID assistance, including a revenue worksheet which estimates the sales taxes and/or special assessment revenues to be generated within the Improvement District, as well as internal rate of return, both with and without public assistance.
2. An explanation of how but for CID assistance, this Improvement Project will be unable to proceed due to extraordinary economic conditions.
3. Substantiation that alternative methods of financing have been thoroughly explored as well as why CID assistance is necessary.

C. Provide an outline of the costs associated with the development of the proposed Improvement Project and related parcel or parcels located within the Improvement District

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under the criteria described in Section 3 (Developer Contribution & Cost Allocation) of the City's CID Policy. Identify in the outline those costs proposed to be funded with CID financing and the proposed payback time frame (provide a debt service schedule showing rates and assumptions). The information shall include interest rates and all assumptions.

D. Discuss the condition(s) that would qualify the proposed Improvement District as an eligible area as defined within the City of Olathe CID Policy.

E. Discuss and document information used to describe the market feasibility of the Improvement Project. Provide copies of any formal feasibility or comparable studies.

F. Provide a traffic study detailing any projected traffic impact increase on the City that is based upon the Improvement Project.

G. Describe the impacts of the proposed Improvement Project on existing and proposed infrastructure and services including, but not limited to: water, sanitary sewer, storm water, solid waste, and streets where not otherwise described. Please note that where available, City services shall be utilized.

H. Identify the property within the Improvement District that is currently in the control of the Petitioner(s) via ownership or option, and who will own the property if not the Petitioner(s). If under option, note the option expiration date.

I. Attach a letter from a financial institution indicating that the Petitioner(s) has sufficient financial resources to obtain the private financing for the Improvement Project.

J. State whether the property to be included in the Improvement District is currently zoned for the proposed use. If not, describe what zoning change(s) will be required.

K. Describe whether the proposed Improvement Project will result in the relocation of residential, commercial, industrial or public facilities. If so, discuss the nature of any anticipated relocations.

L. Identify any proposed commercial and or governmental tenants of the Improvement Project. Have leases been negotiated or signed? What type of lease is contemplated?

M. Briefly describe the "economic and quality of life" benefits of the proposed Improvement Project to the City.

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N. Provide any and all relevant information on the Petitioner's background and development experience as it relates to the proposed Improvement Project. Include resumes of and contact information for key individuals assigned to the project as well as other projects completed including location and contact persons from local governments and bank references. Also include a copy of the development company's organizational structure.

O. Identify and provide contact information for the Petitioner's consultants involved or proposed to be involved in the project noting relevant experience on similar projects (i.e., civil engineer, land use planner, Petitioner's legal counsel, Petitioner's financial advisor).

### 3. DEVELOPMENT CONSIDERATION:

The City Council may desire to hold one or more study sessions before any public hearing is held. During this period the Petitioner may be required to submit additional information as requested and/or appear before the City Council to present information regarding the Petition. The City Council will make all findings and determinations required by the CID Act.

The City Council conducts hearings and other requirements as prescribed by state law. The proposed developer prepares a Petition pursuant to Kansas law and City requirements. The cost of all studies shall be paid by the Petitioner and should be prepared by a professional consultant having a favorable reputation for the preparation of such studies. The studies shall be submitted to the City in a timely manner for review by staff prior to any City Council meetings or study sessions. Additionally, consideration of the Petition shall adhere to the requirements of the CID Policy and may require additional studies as necessary. The City's Economic Development Committee reviews the Petition and submits it to the City Council with comments. The City's Economic Development Committee makes no assurances, promises or guarantees as to the determinations of the City Council after a Petition is forwarded to the City Council for consideration.

The City Council reviews and discusses the Petition during Council study sessions. At a regular Council meeting, the City Council considers an Ordinance making necessary findings and creating the Improvement District setting forth the boundaries thereof, authorizing the proposed Improvement Projects, approving the estimated costs thereof, levying the Community Improvement District sales tax, imposing any special assessments, and approving the method of financing the same. Authorization of the issuance of bonds or reimbursement of eligible costs may also be considered at this time.

After approval of all elements required to be submitted in the Petition and creation of the Improvement District, but prior to reimbursement of eligible improvements and/or issuance of CID

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Sales Tax Revenue Bonds or CID Special Assessment Revenue Bonds, the City and Petitioner shall prepare a Development or Redevelopment Agreement. Additional requirements and costs, as needed, may be included in the Redevelopment Agreement.

4. NOTIFICATION / PUBLICATION RESPONSIBILITIES:

Legal notices and mailings to taxing districts and property owners shall be prepared or caused to be prepared, delivered, and mailed by the City pursuant to state law. Copies of certifications of mailing, signed delivery certifications, or other proofs of notifications shall be forwarded to the City Clerk. The City shall also prepare or cause to be prepared any Notices of Public Hearings to be published and forward to the City Clerk for publication in a timely manner as required by state law. The Petitioner is responsible for all costs associated with publications, mailings, certifications, delivery, and preparation of notices. The City shall be reimbursed for any expenses associated with Petition and the CID formation process.

5. OTHER COSTS OR EXPENSES:

Petitioner shall reimburse the City for all reasonable documented, out-of-pocket expenses incurred in connection with the CID including attorney's fees, financial advisor fees, and any consultant fees. Said reimbursements to the City shall be deemed "reimbursable expenditures" which may be included in the costs of issuance when CID bonds are issued.

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CITY OF OLATHE		Policy No.:	F-6
COUNCIL POLICY STATEMENT		Date Issued:	12-XX-2019
General Scope:	Finance	Effective Date:	1-1-2020
Specific Subject:	Transportation Development District	Cancellation Date:	Until Repealed
		Supersedes No.:	Listed Below

Purpose:

To set forth general public policy objectives of the city as it relates to transportation development essential to stimulate economic growth and development for industries and businesses in order to provide services, employment and tax revenues for the benefit of the community.

Statement of Policy:

The statement of policy is hereby incorporated with Resolution No. ~~17-1089~~ 19-XXXX. Previous policies covering Transportation Development Districts were established with Resolution Nos. [17-1089](#), 15-1087, 13-1095, 11-1066, 09-1100, 07-1146, and 07-1055.

## RESOLUTION NO. 19-XXXX

A RESOLUTION ESTABLISHING POLICIES RELATING TO TRANSPORTATION DEVELOPMENT DISTRICTS IN THE CITY OF OLATHE, KANSAS; AND REPEALING CERTAIN PRIOR RESOLUTIONS.

WHEREAS, the City of Olathe, Kansas ("the City") recognizes that transportation development is essential to stimulate economic growth and development for industries and businesses in order to provide services, employment and tax revenues for the benefit of the community; and

WHEREAS, it is further recognized that transportation development and the stimulation of balanced economic development is a joint responsibility of the private and public sectors, working closely together to create a positive business environment and to encourage industry to locate and expand in the City; and

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WHEREAS, to meet these transportation and economic development goals, the City recognizes the occasional necessity of levying a transportation development district sales tax and/or special assessments in order to pay the costs of transportation infrastructure improvements; and

WHEREAS, certain transportation infrastructure improvements must be constructed to serve commercial development projects which add to and diversify the Olathe tax base as well as projects which would provide an extraordinary or particularly unique community-wide economic opportunity (each, an "Economic Development Project"); and

WHEREAS, K.S.A. 12-17,140 et seq., as amended ("the Act") authorizes the governing body of any city or county to create transportation development districts ("Transportation Districts" or "TDD") to acquire interests in property and to construct any project or undertaking relating thereto, within or without a Transportation District, to improve, construct, reconstruct, maintain, restore, replace, renew, repair, install, furnish, equip or extend any bridge, street, road, highway access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail or other mass transit facility or any other transportation related project or infrastructure including, but not limited to, utility relocation, sanitary and storm sewers and lift stations, drainage conduits, channels and levees, street light fixtures, connection and facilities, underground gas, water, heating and electrical services and connections located within or without the public right-of-way, sidewalks and pedestrian underpasses or overpasses, and water main and extensions ("Transportation Project"); and

WHEREAS, the Act gives discretion to governing bodies to approve Transportation Projects which are located outside of the boundaries of Transportation Districts; and

WHEREAS, the Act further authorizes governing bodies, in order to pay the costs of such Transportation Projects, to impose a transportation district sales tax on the selling of tangible personal property at retail or rendering or furnishing services within Transportation Districts in any increment of .10% or .25% not to exceed 1.0% and/or the levy of special assessments upon property within such transportation districts and to issue revenue bonds payable from such sales taxes and/or special assessments,

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OLATHE,  
KANSAS:

Section 1. Policy Statement. To meet the economic goals of the City as outlined above, it shall be the policy of the City to consider establishment of Transportation Districts, when the Governing Body deems it necessary, to finance certain Transportation Projects within the City. The City shall finance

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Transportation Projects by (a) special assessments levied on property within the Transportation District benefited by the Transportation Project, and/or (b) a transportation district sales tax on the sale of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas Retailers' Sales Tax Act, and amendments thereto, within the Transportation District. The City may, in accordance with the Act and, at its sole discretion, levy a sales tax within a Transportation District in any increment from .10% or .25% up to 1%, all of which may be pledged to repay authorized Transportation Project costs in one or more payments without the issuance of bonds or repay any special obligation bonds issued to finance the Transportation Project. If special assessments are to be imposed within the Transportation District, the City shall follow the assessment procedures outlined in K.S.A. [12-6a01](#).

Section 2. Procedure. Pursuant to the Act, the City shall consider creation of a TDD after receipt of a completed TDD Petition ("Petition") (Exhibit A) and a Petition Fee as described in Section 5(a). The completed Petition will be reviewed by the City's TDD Committee and any other staff required to review the Petition prior to consideration of a complete and valid Petition by the Governing Body.

To form a Transportation District, the following procedure is established:

A. Petition Procedure. A valid Petition proposing the creation of a Transportation District, the making of Transportation Projects relating thereto and the imposition of a transportation district sales tax or special assessments in order to pay the costs of such transportation projects must be filed with the City Clerk of the City of Olathe. The Petition must be signed by the owners of record, whether resident or not, of all of the land area within the proposed transportation district. The Petition shall be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the Economic Development Project's site plans, and to analyze the merits of the proposed Transportation District in the context of existing economic development and infrastructure projects. The Petition must contain a description of the following:

1. the general nature of the Transportation Project;
  2. the proposed uses of all Transportation District funds;
  3. the maximum cost of the Transportation Project supplemented by a preliminary budget describing each element of the Transportation Project proposed to be paid for by Transportation District sales tax or assessments;
  4. the proposed method of financing the Transportation Project;
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5. the proposed method of assessment, if any;
  6. the proposed amount of any Transportation District sales tax;
  7. a map and legal description of the proposed Transportation District.

B. Supplemental Information. The City reserves the right to request any additional information to supplement the Petition, including those items described in Exhibit A, prior to consideration by the Governing Body.

C. District Financed Only by Special Assessments. Upon filing of a Petition for a Transportation District financed only by special assessments, the Governing Body may proceed without notice or a hearing to make findings by ordinance as to the nature, advisability and maximum cost of the project, the boundaries of the Transportation District and the amount and method of assessment. Upon making such findings the Governing Body may authorize the Transportation Project in accordance with such findings as to the advisability of the Transportation Project. The ordinance shall be effective upon publication once in the official City Newspaper.

D. Property Outside of the Transportation District Boundary. The Transportation District boundaries and the method of financing for the Transportation Project shall not require that all property that is benefited by the Economic Development Project, whether the benefited property is within or without the Transportation District, be included in the Transportation District, or be subject to an assessment or a Transportation District sales tax.

E. Public Hearing Procedure. After review of a completed Petition by the TDD Committee, and prior to creating any Transportation District (except a Transportation District financed only by special assessments, for which no public hearing is required) the Governing Body shall, by resolution, direct and order a public hearing on the advisability of creating such Transportation District and the construction of such Transportation Projects therein, and to give notice of the hearing by publication at least once each week for two consecutive weeks in the official City Newspaper and by certified mail to all property owners within the proposed Transportation District, the second publication to be at least seven days prior to the hearing and such certified mail sent at least ten days prior to such hearing. The notice of public hearing shall contain the following information:

1. the time and place of the hearing;
  2. the general nature of the proposed Transportation Project;
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3. the maximum cost of the proposed Transportation Project;
  4. the proposed method of financing the costs of the Transportation Project;
  5. the proposed method of assessment, if any;
  6. the proposed amount of the Transportation District sales tax; and
  7. a map and legal description of the proposed Transportation District.

F. Governing Body Findings. After the Public Hearing is conducted on the proposed Transportation District, the Governing Body shall determine the advisability of creating a Transportation District setting forth the boundaries thereof, authorizing the proposed Transportation Projects, approving the maximum costs thereof, levy the Transportation District sales tax, imposing any special assessments and approving the method of financing the same. Such determinations will be made by adoption of an ordinance.

G. Project Account. The City shall create a separate account for each Transportation District and Transportation Project, and all transportation district sales tax and or special assessment revenues shall be deposited into such account.

Section 3. Criteria and Adjustments. It is the intention of the Governing Body that all Economic Development Projects and Transportation Projects related to proposed Transportation Districts meet the criteria detailed below. Failure to meet the standards set forth below may result in rejection of the Petition or a decrease in the proposed TDD sales tax percentage or proposed special assessments. Adjustments may be made to increase the proposed TDD sales tax or proposed special assessments intended to be provided as an extra incentive to exceed certain economic development criteria. However, in no instance shall adjustments to the proposed TDD sales tax or special assessments exceed the maximum allowable TDD sales tax or special assessments which may be levied pursuant to the Act.

A. Transportation Development District Committee Consideration. The City's TDD Committee and any other staff required to review Petitions shall utilize the following criteria to evaluate Petitions:

1. "But For" Test. Each Petition should demonstrate that "but for" the creation of a TDD and use of Transportation District sales tax and/or the levy of special assessments, the Economic Development Project is not feasible and would not be completed without the proposed TDD assistance.
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2. Debt Service Coverage Ratio for Special Obligation Transportation Development District Sales Tax Revenue Bonds. All Petitions requesting the imposition of a TDD sales tax and the issuance of special obligation bonds or temporary notes should demonstrate that the TDD sales taxes expected to be generated will be sufficient to provide enough security to pay off the bonds. The TDD sales taxes generated should provide a debt service coverage ratio of at least 1.25 times the projected debt service on the special obligation bonds or notes. A debt service coverage ratio greater than 1.25 times may be necessary to market any notes or bonds that are public offerings. Petitioner or bank purchased bonds may be less than 1.25 times debt service coverage.

3. Debt Service Coverage Ratio for Special Obligation Transportation Development District Special Assessment Revenue Bonds. All Petitions requesting the imposition of TDD special assessments and the issuance of special obligation bonds or temporary notes should demonstrate that the TDD special assessments expected to be levied will be sufficient to provide enough security to pay off the bonds. The TDD special assessments should generate enough revenue to provide a debt service coverage ratio of at least 1.15 times the projected debt service on the special obligation bonds or notes. A debt service coverage ratio greater than 1.15 times may be necessary to market any notes or bonds that are public offerings. Petitioner or bank purchased bonds may be less than 1.15 times debt service coverage.

4. Projected Payoff. The total amount of TDD assistance provided for projects will be based on the economic payoff expectations of the Transportation Project and the Economic Development Project's significance to the community. In general, the goal for Transportation Projects (including any associated TDD special assessments) would be a 10-year payoff. Longer periods may be considered up to the maximum statutory payoff period of 22 years from creation of the Transportation District if a determination is made that the Economic Development Project is of community-wide significance.

5. Developer Contribution & Cost Allocation. Each Petition should include evidence that the Petitioner will do the following:

- a. Have the financial ability to complete and operate the Economic Development Project,
  - b. Will be liable for, or contribute equity or private financing of at least fifteen percent (15%) of the total cost of the Economic Development Project or provide a performance
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bond for the completion of the Economic Development Project (Economic Development Projects with equity or private financing contributions from the developer in excess of fifteen percent (15%) will be viewed more favorably),

c. Demonstrate a financial nexus between the public transportation infrastructure financed by the TDD assistance and the private transportation infrastructure financed by the TDD assistance. The TDD-eligible costs identified by the Petitioner should be itemized within the Transportation Project as follows:

1) At least 50% of the TDD-eligible costs should pay for construction of major public City-specified transportation infrastructure outside of the Transportation District which must be improved to serve the Economic Development Project and which would not otherwise require improvement but for the Economic Development Project;

2) At least 25% of the TDD-eligible costs should pay for construction of public transportation infrastructure outside of the Transportation District, but which is located immediately adjacent to the Transportation District, which must be improved to serve the Economic Development Project and which would not otherwise require improvement but for the Economic Development Project;

3) No more than 25% of the TDD-eligible costs should be allocated to pay for construction of private transportation infrastructure costs within the Transportation District, including but not limited to construction of private parking lots and garages constructed to serve private businesses.

Projects with a portion of TDD-eligible costs dedicated to pay public transportation infrastructure costs in excess of seventy-five percent (75%) will be viewed more favorably by the TDD Committee and the Governing Body.

6. Project Completion. The City will require satisfactory assurance that the Economic Development Project and the Transportation Project will be completed in a timely manner in accordance with the Development Agreement described in Section 4.

B. Governing Body Consideration. The Governing Body shall consider the following factors when creating Transportation Development Districts pursuant to the Act:

1. Existence of Economic Benefit. Strong consideration will be given to Economic Development Projects which add to and diversify the Olathe tax base as well as Economic

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Development Projects which would provide an extraordinary or particularly unique community-wide economic opportunity. Evaluation criteria to be used in determining economic benefit to the community shall include, but shall not be limited to, consideration of the amount of capital investment and a determination of whether the proposed transportation improvements enable the development and location of new products and services in Olathe rather than the relocation of existing businesses already in the City.

2. Location. The Governing Body will give strong consideration for a Transportation District that will be located in a targeted area for economic development or redevelopment, has specific site constraints making development more difficult or costly, or is considered in need of rehabilitation in some way. Targeted areas for economic development or redevelopment may include, but not be limited to, the state Enterprise Zone, blighted areas or conservation areas as defined under K.S.A. [12-1770a](#), and the Downtown Core.

3. Design Criteria. The City will require higher standards for the design of improvements and materials used in making improvements within a Transportation District than the minimum requirements set forth in the design guidelines provided by the City's Planning Services Division. Preference will be given to businesses that do their own pre-treatment or do not require extensive environmental controls. The proposed use must be clean, nonpolluting and consistent with all policies, ordinances, and codes. The Economic Development Project's site plans and building elevations and the Transportation Project's plans are subject to final approval by the City's Planning Services Division to ensure that they are similar to the preliminary plans and elevations submitted.

4. Compatibility with Adopted City Plans. All Transportation Projects should be consistent with the City's Comprehensive Plan, street improvement plans, and any special established corridor plans. The City will consult these plans for consistency prior to the City approving any proposed Transportation District. When evaluating proposed Transportation Districts, the City will consider (1) the compatibility of the location of the proposed Economic Development Project and Transportation Project(s); (2) the compatibility of the proposed land uses with land use, capital improvement, and other relevant plans of the City; and (3) the availability of existing infrastructure facilities and essential public services. Preference will be given to projects which enhance pedestrian, bicycle, or public transportation options. If an Economic Development Project requires a rezoning in addition to any rezoning required within the Transportation District, the Petitioner shall demonstrate

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the Economic Development Project's compatibility with land use, capital improvement, and other relevant plans of the City.

5. Traffic Impacts. All Transportation Projects shall conform to the City's Access Management Plan and any other plans and/or policies which would automatically trigger the issuance of a Traffic Impact Study or any other study. All additional studies shall be submitted with the Petition for consideration by the TDD Committee and before consideration of the Petition by the Governing Body.

6. Utilization of City-Owned Utilities. All Transportation Districts within the boundaries of City-owned utility service areas (including the City's water, sewer, and solid waste services) shall use City-owned utilities. Exceptions will only be made when it is demonstrated in writing that City-owned utilities cannot feasibly provide acceptable service to the Transportation District.

7. Community Benefit. Petitioners will agree to actively participate in the civic, charitable, educational, philanthropic, and economic development of the City of Olathe. Accordingly, during the entire term of the development or redevelopment agreement the petitioner will (1) at all times be a dues-paying member in good standing with both the Olathe Chamber of Commerce and the Olathe Economic Development Council and (2) make an annual donation to the Olathe Community Foundation in an amount to be determined in the sole discretion of the owner, but no less than \$3,000 annually.

Section 4. Development or Redevelopment Agreement. Any Transportation District approved by ordinance pursuant to this Resolution shall be accompanied by a development or redevelopment agreement ("Agreement") between the Petitioner and/or lessee and the City. The Agreement will be subject to approval by the Governing Body prior to reimbursement of eligible Transportation Project improvements either on a pay-as-you-go basis or by issuance of TDD Sales Tax Revenue Bonds or TDD Special Assessment Revenue Bonds, and prior to construction of the Economic Development Project and the Transportation Project. The City shall review information provided by the Petitioner, lessee, county, or state to determine compliance with the Agreement. Each Agreement shall contain a notice and waiver disclosing to each Petitioner that the City reserves the right to create future Transportation Districts on comparable projects with different Transportation District sales tax rates or different amounts of special assessments than those approved for such project. The aforementioned notice and waiver shall include a provision that the Petitioner waives any right to request a modification or amendment of such Transportation District sales tax rate or amount of special assessments based upon such differences.

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All costs of preparation of the Agreement, publication of legal notices and all other related Petition costs shall be paid by the Petitioner.

Section 5. Petition and Bond Fees. The Governing Body hereby establishes the following fees:

A. Petition Fee. A non-refundable Petition Fee of \$5,000 shall accompany all Petitions and shall be paid prior to consideration of all Petitions for the creation of a Transportation District by the TDD Committee.

B. Advance Funds Deposit. An Advance Funds Deposit of \$10,000 shall be made to the City prior to consideration of all Petitions for the creation of an Improvement District by the Governing Body to cover the costs of 3rd party advisors (including, but not limited to, bond counsel and financial advisors) engaged by the City to review the Petition and related documents on behalf of the City. Such Advance Funds Deposit will be replenished by the Petitioner if requested by the City prior to creation of a TDD. Should a TDD be created, the Advance Funds Deposit shall be credited toward the City's Administrative Service Fee paid by Petitioner. Should any of the Advance Funds Deposit not be utilized to pay the City's advisors as described herein, such amount will be refunded to Petitioner.

C. Bond Issuance Fee. The City shall receive an issuance fee of (i) 25 basis points (.25%) of the first \$10 million par amount of Transportation District sales tax revenue bonds being issued, plus (ii) 20 basis points (.20%) of the par amount of the second \$10 million of bonds being issued, plus (iii) 10 basis points (.10%) of the par amount in excess of \$20 million of bonds being issued for each series of bonds to be paid by the proceeds of a TDD sales tax or special assessments. In no event shall the issuance fee be less than \$2,000 or more than \$100,000. The fee shall be due and payable at the time the bonds are issued. The City will not charge the issuance fee for any amount of any bond issue that refunds a prior bond issue.

D. Administrative Service Fee. In addition to the fees listed above, the Petitioner shall pay to the City, at the time prescribed in the Agreement, an Administrative Service Fee of five percent (5%) of the total cost of the TDD project, minus the Petition Fee, for the cost of work done by the City to reimburse the City for the services rendered by the City in the administration and supervision of the project. Such administrative service Fee may be paid from the Transportation District sales tax generated from the project, special assessments, bond proceeds, or from a direct billing to the Petitioner. The payment method of the administrative service fee shall be determined on a case by case basis under the terms of the Agreement.

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E. Additional Costs. The Petitioner shall reimburse the City for all costs associated with the analysis of a proposed Transportation District, all legal publication notices, the City's bond counsel and any other legal fees, financial advisor fees, any consultant fees, and all other miscellaneous costs.

F. Public Art. Prior to reimbursement of any TDD-eligible project costs, Transportation Projects will comply with all applicable provisions of Olathe Municipal Code Chapter [2.82](#), and amendments thereto, which pertain to Public Art associated with Development Incentives. No costs incurred as a result of compliance with said Chapter [2.82](#) may be reimbursed by TDD funds.

Section 6. Authority of Governing Body. The Governing Body reserves the right to deviate from any policy, but not any procedure set forth in this Resolution or any other procedural requirements of state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interests of the City.

~~Section 7. Sunset Date. Since the justification and necessity for creation of Transportation Development Districts may be lessened as the local economy moves towards its goals of balance and diversification and the City's transportation needs are satisfied, this policy shall automatically expire on December 31, 2019, unless it is readopted for an additional term. No such Transportation Project shall be granted following such expiration, unless this policy is readopted or repealed by adoption of a new policy.~~

~~Section 8.~~ Previous Resolution Repealed. Resolution No. 17-1089 is hereby repealed.

~~Section 9.~~ Section 8. Effective Date. This Resolution shall take effect on January 1, 2020.

ADOPTED by the Governing Body of the City of Olathe, Kansas this \_\_\_\_ day of \_\_\_\_\_, 2019.

SIGNED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Mayor

ATTEST:

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City Clerk

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(SEAL)

APPROVED AS TO FORM:

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City Attorney

## EXHIBIT A

### CITY OF OLATHE

### TRANSPORTATION DEVELOPMENT DISTRICT

### PETITION PROCEDURE

#### TDD Petition Procedures

##### 1. PETITION:

Submission. The Transportation Development District Petition form, policies, and procedures are available from the City's Strategic Financial Management Department or City Clerk's office. Not less than two (2) paper copies and one (1) electronic copy of the completed Petition should be submitted to the TDD Committee together with the required Petition fee. The completed Petition shall be submitted to the City Clerk of the City of Olathe with copies to the Director of Resource Management, City of Olathe, 100 E. Santa Fe, P. O. Box 768, Olathe, Kansas 66061.

Petition Fee. Each Petition shall be accompanied with a non-refundable Petition fee made payable to the City of Olathe. The Petition fee will be used by the City to pay the costs incurred by the City in the review of the Petition. The City has established a Petition fee and has established a policy for reimbursement of additional costs as outlined in Section 5 of the TDD Policy. In the event that costs for third-party services incurred by the City exceed the fee collected, the Petitioner will reimburse the City for such additional cost prior to final consideration of the Petition by the City Council. The Petitioner shall be required to pay all additional costs such as those set forth in section 5 of the TDD Policy.

Preliminary Determination of Completeness. Upon submission, the Petition will be reviewed by the TDD Committee to determine if it is complete under the Staff Review guidelines described below. If

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the Petition is incomplete or if additional information is needed, the Petitioner will be notified in writing that the Petition is not complete and the reasons will be stated referring to the specific criteria that are not met, including, but not limited to, additional information required and/or financial, legal, planning, and development concerns.

Requests for Proposals. The City may initiate a Request for Proposals for a redevelopment project. The fees shown above are for both City-initiated and non-City initiated redevelopment projects. The City reserves the right to modify, reduce, or waive the above fees if a TDD project is determined to be in the best interest of the City. Upon the filing of a complete Petition that is non-City initiated, the City reserves the right to cause a public notice to be inserted in a newspaper of general circulation in the City or on the City's website requesting proposals for development in the proposed Transportation District.

## 2. STAFF REVIEW:

Review of the Petition will be conducted by the City's TDD Committee (which includes, but is not limited to, members of the City Manager's Office, Legal, Resource Management, and Public Works departments), and if necessary by other City staff, the City's Financial Advisor, Bond Counsel, and any other outside consultant deemed necessary for review of the Petition. Initial review time will be approximately 30 days from the date the completed Petition is submitted to the City. However, more or less time may be required for particular Petitions. Upon receipt of a complete Petition and after review by the City's TDD Committee, the TDD Committee shall forward a recommendation to the City Council for consideration. The recommendation of the City's TDD Committee may be approved, denied, or amended by the City Council. Petitioners will be notified of the City's TDD Committee forwarding the Petition to the City Council for consideration at a Council study session and a regular Council meeting.

Petitions that are determined to be incomplete or do not conform to the City's TDD policy will not be forwarded to the City Council. Petitioners will be notified of the determination that the Petition will not be forwarded and should be modified before being considered in the future.

The following is a list of additional information which may be requested by the City's TDD Committee. The TDD Committee may request any or all of this information prior to consideration of a Petition for creation of a TDD by the Governing Body in connection with the TDD Committee's evaluation of the Petition and determination of whether the Petition is complete and conforms to the City's TDD Policy:

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A. Describe the proposed Economic Development Project and associated Transportation Project, including the size and scope, phasing and anticipated timing of the Economic Development Project and associated Transportation Project. Specifically outline residential development, if any, to be included in the Economic Development Project.

B. State the need and justification for TDD assistance and the type and amount of assistance being requested by providing the following information:

1. An Economic Development Project proforma containing assumptions for TDD assistance, including a revenue worksheet which estimates the sales taxes and/or special assessment revenues to be generated within the Transportation District, as well as internal rate of return with and without public assistance.
2. An explanation of how but for TDD assistance, this Economic Development Project will be unable to proceed due to extraordinary economic conditions.
3. Substantiation that alternative methods of financing have been thoroughly explored as well as why TDD assistance is necessary.

C. Provide an outline of the costs associated with the development of the proposed Economic Development Project and related parcel or parcels located within the Transportation District under the criteria described in Section 3 (Developer Contribution & Cost Allocation) of the City's TDD Policy. Identify in the outline those costs proposed to be funded with TDD financing and the proposed payback time frame (provide a debt service schedule showing rates and assumptions). The information shall include interest rates and all assumptions.

D. Discuss the condition(s) that would qualify the proposed Transportation District as an eligible area as defined within the City of Olathe TDD Policy.

E. Discuss and document information used to describe the market feasibility of the Economic Development Project. Provide copies of any formal feasibility or comparable studies.

F. Provide a traffic study detailing any projected traffic impact increase on the City that is based upon the Economic Development Project.

G. Describe the impacts of the proposed Economic Development Project on existing and proposed infrastructure and services including, but not limited to: water, sanitary sewer, storm water, solid waste, and streets where not otherwise described. Please note that where available, City services shall be utilized.

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H. Identify the property within the Transportation District that is currently in the control of the Petitioner via ownership or option, and who will own the property if not the Petitioner. If under option, note the option expiration date.

I. Attach a letter from a financial institution indicating that the Petitioner has sufficient financial resources to obtain the private financing for the Economic Development Project.

J. State whether the property to be included in the Transportation District is currently zoned for the proposed use. If not, describe what zoning change(s) will be required.

K. Describe whether the proposed Economic Development Project or Transportation Project will result in the relocation of residential, commercial, industrial or public facilities. If so, discuss the nature of any anticipated relocations.

L. Identify any proposed tenants of the Economic Development Project. Have leases been negotiated or signed? What type of lease is contemplated?

M. Briefly describe the "economic and quality of life" benefits of the proposed Economic Development Project to the City.

N. In no more than three pages provide relevant information on the Petitioner's background and development experience. Include resumes of key individuals assigned to the project as well as other projects completed including location and contact persons from local governments and bank references. Also include a copy of the development company's organizational structure.

O. Identify the Petitioner's consultants involved or proposed to be involved in the project noting relevant experience on similar projects (i.e., civil engineer, land use planner, Petitioner's legal counsel, Petitioner's financial advisor).

### 3. DEVELOPMENT CONSIDERATION:

The City Council may desire to hold one or more study sessions before any public hearing is held. During this period the Petitioner may be required to submit additional information as requested and/or appear before the City Council to present information regarding the Petition. The City Council will make all findings and determinations required by the TDD Statute (K.S.A. 12-17,140, et. seq.).

The City Council conducts hearings and other requirements as prescribed by state law. The proposed developer prepares a Petition pursuant to Kansas law and City requirements. The cost of all studies shall be paid by the Petitioner and should be prepared by a professional consultant having a

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favorable reputation for the preparation of such studies. The studies shall be submitted to the City in a timely manner for review by staff prior to any City Council meetings or study sessions. Additionally, consideration of the Petition shall adhere to the requirements of the TDD Policy and may require additional studies as necessary. The City's TDD Committee reviews the Petition and submits it to the City Council with comments. The City's TDD Committee makes no assurances, promises or guarantees as to the determinations of the City Council after a Petition is forwarded to the City Council for consideration.

The City Council reviews and discusses the Petition during Council study sessions. At a regular Council meeting, the City Council considers an Ordinance making necessary findings and creating the Transportation District setting forth the boundaries thereof, authorizing the proposed Transportation Projects, approving the maximum costs thereof, levying the Transportation District sales tax, imposing any special assessments, and approving the method of financing the same. Authorization of the issuance of bonds or reimbursement of eligible costs may also be considered at this time.

After approval of all elements required to be submitted in the Petition and creation of the Transportation District, but prior to reimbursement of eligible Transportation Project improvements and/or issuance of TDD Sales Tax Revenue Bonds or TDD Special Assessment Revenue Bonds, the City and Petitioner shall prepare a Development or Redevelopment Agreement. Additional requirements and costs, as needed, may be included in the Redevelopment Agreement.

#### 4. NOTIFICATION / PUBLICATION RESPONSIBILITIES:

Legal notices and mailings to taxing districts and property owners shall be prepared or caused to be prepared, delivered, and mailed by the City pursuant to state law. Copies of certifications of mailing, signed delivery certifications, or other proofs of notifications shall be forwarded to the City Clerk. The City shall also prepare or cause to be prepared any Notices of Public Hearings to be published and forward to the City Clerk for publication in a timely manner as required by state law. The Petitioner is responsible for all costs associated with publications, mailings, certifications, delivery, and preparation of notices. The City shall be reimbursed for any expenses associated with Petition and the TDD formation process.

#### 5. OTHER COSTS OR EXPENSES:

Petitioner shall reimburse the City for all reasonable documented, out-of-pocket expenses incurred in connection with the TDD including attorney's fees, financial advisor fees, and any consultant fees.

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Said reimbursements to the City shall be deemed "reimbursable expenditures" which may be included in the costs of issuance when TDD bonds are issued.

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November 11, 2019

Mayor Michael Copeland  
Olathe City Council Members  
City of Olathe  
100 E. Santa Fe  
Olathe, Kansas 66061

Dear Mayor Copeland and Council Members:

Thank you for seeking the input of the Chamber's Economic Development Council (EDC) on the proposed changes to the City's Tax Abatement and Industrial Revenue Bonds policy. The EDC, including members who represent the development community, appreciates the City Council's invitation to review and comment on the policy when it is reviewed annually.

After carefully considering the policy changes proposed by City staff, the EDC concluded that the City's tax abatement policy continues to be a vital tool for business recruitment. EDC members specifically commented on the following adjustments to the policy: 1) increased investment thresholds for both new and existing businesses seeking Sales Tax Exemption Industrial Revenue Bonds (IRBs) and 2) community benefit component to the IRB, CID, TIF, and TDD policies.

The EDC recognizes and supports the proposed recommendation to increase the required investment thresholds to obtain a tax abatement. The costs of issuance to obtain IRB financing on smaller projects is no longer cost effective, which has been borne out in recent years in Olathe and in neighboring cities. The EDC does not believe this increase in investment thresholds will deter business expansion in Olathe, especially when neighboring cities have similar thresholds and when Olathe continues to offer opportunities for smaller projects to obtain a tax abatement for investing in business parks which other cities do not offer.

The EDC Advisory Board believes that the tax incentives outlined in the policy will enable Olathe to continually attract new business and industry while allowing us to help existing businesses grow and expand. Members of the EDC applaud the City on its continued support of the overall policy. Thank you once again for providing us with the opportunity to review the tax abatement policy. We greatly value our partnership with the City of Olathe and appreciate the fact that the Olathe City Council and Olathe City Staff are business-friendly and supportive of progressive, positive growth.

Best regards,



Tim McKee  
Chief Executive Officer  
Olathe Chamber of Commerce



Oscar Healy  
Chair  
Olathe Economic Development Council



**OLATHE**  
CHAMBER OF COMMERCE  
ONE VISION. ONE VOICE.

18103 W. 106th Street  
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913.782.4636  
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chamber@olathe.org  
website  
www.olathe.org

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**ORDINANCE NO. 19-XX**

**AN ORDINANCE AMENDING OLATHE MUNICIPAL CODE SECTION 2.82.130  
PERTAINING TO PUBLIC ART AND REPEALING THE EXISTING SECTION.**

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

**SECTION ONE:** Section 2.82.130 of the Olathe Municipal Code is hereby amended to read as follows:

**“2.82.130 Public Art Associated with Development Incentives.**

(A) Any private developer/owner who requests ~~and obtains~~ development incentives for ~~any commercial~~ development project must commit Ten Cents (\$0.10) per square foot for all buildings and Fifteen Dollars (\$15.00) per parking space for any newly constructed surface parking spaces (not including resurfacing of existing parking areas) and newly constructed above- or below-ground parking structures (whether self-standing or integrated) not to exceed Five Hundred Thousand Dollars (\$500,000.00) to the provision of public art in conjunction with such project.

(B) If the private developer/owner receiving development incentives does not wish to have public art in conjunction with its commercial development project, or if such project will be developed on property zoned M-1 or MP-1, M-2 or MP-2, M-3 or MP-3, such developer/owner must pay to the City an amount equal to seventy-five percent (75%) of the cost it would have otherwise been required to pay for the provision of public art as part of its commercial development project under subsection (A) of this Section. Such payment will be made prior to issuance of a building permit on the project and deposited into the City's Public Art Fund.

(C) The Parks and Recreation Director or designee is charged with administration and enforcement of this Section and is authorized and empowered:

(1) To establish rules and regulations pertaining to the installation of public art pursuant to this Section and any payments to the City's Public Art Fund and to amend those rules and regulations as necessary;

(2) To receive, review, and recommend to the Governing Body approval or rejection of proposed public art installations



created pursuant to subsection (A) and to certify eligible art installations within the City;

(3) To initiate reviews, surveys, and verifications of all information and materials submitted pursuant to this Section in order to insure compliance. Actions taken pursuant to this subsection are subject to the approval of the City Manager or designee;

(4) To engage the Public Art Committee as required by this Chapter; and

(5) To receive, investigate, and make recommendations regarding complaints of violations of this Section, including making recommendations to the Public Art Committee regarding such complaints.”

**SECTION TWO:** Existing Section 2.82.130 is hereby repealed.

**SECTION THREE:** This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

**PASSED** by the Governing Body this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**SIGNED** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)

APPROVED AS TO FORM:

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City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.



# City of Olathe

## COUNCIL AGENDA ITEM

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MEETING DATE: 11/19/2019

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DEPARTMENT: Communications and Customer Service  
STAFF CONTACT: Tim Danneberg  
SUBJECT: 2020 Proposed State Legislative Agenda

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ITEM DESCRIPTION:  
2020 Proposed State Legislative Agenda

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SUMMARY:  
The 2020 proposed legislative program takes a policy level approach to address issues impacting the City of Olathe and local taxpayers. It is established by working with other local entities with similar interests, the City's lobbyist, legislators and the League of Kansas Municipalities.

The 2020 proposed agenda is similar to 2019 with a focus on issues such as local control and infrastructure. However, the proposed 2020 priority issue is asking the Legislature to adequately address remote sales tax collection and returning tax revenue to local jurisdictions. In addition to traditional sales tax, it includes language addressing revenue from special assessments such as CIDs and TDDs as well as transient guest tax.

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FINANCIAL IMPACT:  
None

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ACTION NEEDED:  
Provide feedback on the proposed 2020 Legislative Program and give direction to adjust or indicate support for moving forward.

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ATTACHMENT(S):  
A. Proposed 2020 State Legislative Agenda

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*City of Olathe, Kansas*

**STATE LEGISLATIVE PROGRAM**

**2020**

**DRAFT**

*“Setting the Standard for Excellence in Public Service”*

**CITY OF OLATHE, KANSAS**

## SUMMARY OF 2020 PRIORITY LEGISLATIVE INITIATIVES

1. **Internet Sales Tax and Fee Collections**-As a result of the Supreme Court Decision in Wayfair, states can now collect internet sales tax on remote sales as well as other fees and special assessments. Those would include local transient guest tax and special assessments in economic development related projects such as CIDs, TDDs and TIF districts. The City supports establishing a program to help Kansas collect and redistribute local internet sales and other local taxes or fees due from in-state purchases.
2. **Creating Jobs and Economic Investment in Kansas**—The City of Olathe has seen thousands of new jobs added and hundreds of millions of dollars in economic investment over the course of the last decade. The vast majority of that growth and investment would not have occurred if the City did not invest in the infrastructure it required. Local governments' ability to invest in growth related infrastructure is essential to growth in the state, and the City strongly opposes legislative efforts to limit revenue collection. That includes removing exemptions for growth and bond payments from the tax lid, or any other efforts to limit local governments' ability to responsibly and reasonably collect revenue. While the City recognizes repealing the lid may not be realistic, the City supports efforts to increase exemptions to reflect true cost increases.
3. **Comprehensive Transportation Program** – Recognizing it is critical to maintain Kansas infrastructure, the City supports responsible long-term investment the Comprehensive Transportation Plan. Funding should be allocated strategically to ensure there is an identifiable long-term return on investment for the entire state. Investing in growth areas is critical to creating a sustainable revenue stream that will address the shortage in statewide infrastructure needs. High growth areas such as the eastern K-10 corridor should be considered, and information about one specific Olathe project meeting that criteria is attached.
4. **Will of Local Voters**—The City shares the concerns of Legislators about the federal government's penchant for consistently elevating historically state decisions to the federal level. The City applies that same principal to local decisions. The City strongly urges the Legislature to consider respecting local voters when making decisions. The City believes government closer to the people is more effective, accountable and accessible. Currently, every Olathe resident can vote directly for four of the seven members of the governing body. However, Olathe residents can only vote for two of the 165 members of the Kansas Legislature.
5. **Municipal Elections** - The City opposes efforts to consolidate municipal elections with state and federal elections and/or to make them partisan. The City believes this dilutes local election significance.

6. **Representation of Local Taxpayers**—As the voice for local taxpayers, the City strongly opposes legislative efforts to limit or eliminate City engagement with the Legislature. In the last several sessions alone, the City has been able to prevent costly and unnecessary expenses for local taxpayers and protect their investments in their infrastructure. In many cases, issues that could negatively impact local taxpayers are strongly supported through legislative advocacy by other interest groups. It is imperative that local governments are in positions to provide accurate and timely information, so legislators can make informed decisions.
7. **Statutory Pass-Through Funding** – The City strongly opposes any effort to redirect local revenue that passes through the State of Kansas Treasury. This revenue pass-through is based on a longstanding partnership between local governments and the State of Kansas, and the funding sources were established as a means to fund local programs. Both the Special Alcohol Tax funds and the local portion of the Motor Fuels Tax should remain as intended; to be used by local governments rather than siphoned off for State use. Redirecting that revenue would not only impact the City’s ability to provide service, but it would devastate the City’s ability to maintain its infrastructure.
8. **State Aid** – Facing the same financial pressures as the State, the City recognizes it may not be realistic to expect a restoration of Local Ad Valorem Tax Relief (LAVTR/Demand Transfers) in the 2019 session. However, the City reminds the Legislature of its commitment to restore LAVTR to statutorily required levels.
9. **Right of Way Management** - The City supports the authority of cities to control the use of public property and right of way, including the ability to franchise entities that utilize the public right of way. The City opposes any further efforts to undermine local taxpayer (including adjacent property owner) ability to responsibly control local right of way usage, including the placement of temporary signs.
10. **Annexation** – The City has demonstrated time and time again that annexation can be used fairly and responsibly. The City opposes efforts that further limit local units of governments’ abilities to responsibly grow in well planned ways that ensure a high quality of life, sound economic practices and economic growth.
11. **State Sales Tax Exemptions** – The City opposes any effort to remove local government exemption from state-imposed sales tax. This cost would only be passed through to local taxpayers who are already paying state taxes.
12. **Enforcement of Liquor Sales Laws** - The City supports efforts to allow local government greater enforcement ability for violations of the Kansas Liquor Control Act regarding the sale of alcohol to minors. In addition, the City supports measures that would allow the City to require meaningful training for owners and employees of establishments found guilty of selling alcohol to minors and allow the costs of that training to be passed on to violators.

13. **Municipal Government Water Rights** - The City opposes any change to awarding water rights that could impact its ability to effectively provide water to its customers.
14. **Detachment of Annexed Properties** – The City believes land annexed into its boundaries and served by its fire department should be detached from the tax rolls of the prior rural fire district serving the area in a timely and reasonable manner. Based on recent legislative changes, residents living in these areas will be paying a higher tax rate to the rural district for an undefined amount of time. However, they will not receive services from those districts. While the City provides the service, Olathe typically will reduce impacted residents' property tax by the portion that would cover the city fire service. However, those residents continue paying the higher rates charged by the rural departments for a service they do not receive. The City recognizes those residents may have an obligation to finance the rural department's bonded indebtedness incurred while they were in their service area.
15. **Communication and Citizen Engagement** - The City believes it is irresponsible and unethical to use tax dollars to expressly advocate for the passage of ballot initiatives or election of candidates. However, the City believes an engaged population with easy access to city related information is critical to good government. As such, the City opposes legislative efforts to undermine its ability to keep taxpayers informed and engaged about key issues impacting them.
16. **Removal of Tax Exempt Property from Assessed Valuation**-The City supports giving local tax assessors the ability to remove land owned by political subdivisions from the tax rolls. Currently, that removal must be done by the Board of Tax Appeals, and the delay can make it difficult for local governments to accurately estimate mill rates for local taxpayers.
17. **Alternative Property Valuations**-The City supports requiring the Kansas Board of Tax Appeals to allow all three methods of valuations when determining a property's value.
18. **Budget Calendar**-While some relief was provided during the 2016 session, the City once again supports adjusting the municipal budget calendar. That could include delaying submittal time until after assessed valuation is available or separating setting a mill rate from the actual budget submittal deadline. The City would support a working group to include cities, counties and the state to jointly identify opportunities to address concerns without unduly shifting challenges from one level of government to the next.

**CITY OF OLATHE, KANSAS**  
**SUMMARY OF STANDING LEGISLATIVE POSITIONS**

1. **Employer-Employee Relations** - The City opposes legislation that would eliminate the local option provision in the Kansas Public Employer-Employee Relations Act (PEERA).
2. **Kansas Open Records and Open Meetings Act** - The City fully supports open and transparent government. However, the City recognizes there are circumstances the public is better served by preventing the disclosure of sensitive information. That includes instances where cities could be placed in a disadvantaged situation in negotiations, legal processes or exposure to unnecessary civil liability. In addition, the release of such information can impact government's ability to successfully prosecute criminals.
3. **"One-Call" Mandates** – The City opposes legislation requiring all municipal water and sewer services to participate in the "One-Call" program. This presents a significant cost burden on local utilities. Water and sewer utilities do not present the hazards of electrical utilities, and Olathe has experienced very few problems caused by digging near City lines. The City supports continued voluntary participation as well as continued assurance that the program and governing body remain subject to KORA and KOMA.
4. **Home Rule Authority** – The City opposes legislation that would directly or indirectly limit the constitutionally granted home rule authority of cities.
5. **Mandates** – The City opposes legislation that imposes additional state mandated functions, activities, or practices on units of local government without the funding required for compliance.
6. **Property Tax Abatement** – The City opposes legislation that would restrict municipal governing body discretion in the use of this economic development tool.
7. **Municipal Finance** – The City supports legislation that preserves existing municipal revenue sources, or provides authority for local option municipal revenue enhancement. Conversely, the City opposes legislation that erodes municipal revenue sources.
8. **Alcohol and CMB Regulation** – The City supports the continued authority of cities to license and regulate establishments where alcoholic liquor or cereal malt beverage is sold or consumed.
9. **KPERS/KP&F** – The City supports achieving a fully-funded public employee retirement system within a reasonable amount of time. In addition, the City supports separating the local government portion of the KPERS system from the state and school portion. The City believes KP&F employer contribution increases should be done in a more accountable and open way to ensure adequate public scrutiny and input.



10. **Eminent Domain** – The City opposes efforts to undermine the responsible use of this essential tool to foster economic development, improve blighted neighborhoods, revitalize economically stagnant areas and provide public infrastructure.
11. **Economic Development** -The City supports having the continued use of tools such as Transportation Development Districts, Tax Increment Financing and tax abatements to help create jobs and economic growth. The City supports the continued use of STAR Bonds as an economic development tool.
12. **Impact Fees/Excise Taxes** - As Kansas’ fastest growing major city, the City opposes efforts to further undermine new infrastructure funding through excise taxes and impact fees. The City has and continues to use excise taxes to directly finance infrastructure projects supporting new development. Should that tool no longer be available, the City would have no choice but to either slow growth in Kansas or pass the cost along to current taxpayers.

#### **CITY OF OLATHE, KANSAS ISSUES TO MONITOR**

1. **Massage Therapy**: The City will monitor efforts to create statewide safeguards in place for the safe and legal operation of massage therapy providers.
2. **Asset Forfeiture**: The City will continue monitoring any proposals which may limit or impede the City’s enforcement or ability to retain proceeds from forfeiture sales.
3. **Immigration**: As the federal government continues to grapple with immigration reform, state legislators often consider immigration issues. Such reforms could have a substantial impact on local governments in terms of enforcement and local resources. We will monitor any action which may impact the City of Olathe.
4. **Utilities Assessments**: Assessments on utilities as a source of revenue for the state continue to be one option legislators discuss during the 2019 session, that includes funding changes to the State Water Plan. We will monitor any discussions and alert the City if legislation advances that increase costs on the Olathe utilities users.
5. **Expanded Gaming**: There have been recent court cases and discussions about the possibility of expanding gaming in Kansas, primarily sports betting. The City will monitor any activity and work to ensure local governments are considered when allocating new revenue and addressing any associated costs.

6. **Body Cameras**: The City will monitor efforts to unduly undermine local governments' ability to implement policies governing the use of body cameras and associated footage.

OLATHE CITY COUNCIL

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## **CITY OF OLATHE**

### **MANAGEMENT TEAM 2019**

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Dianna Wright Director, Resource Management	971-8680
Mike Sirna Chief Information Officer	971-6669
Ron Shaver City Attorney	971-8946
Mary Jaeger Director, Public Works	971-9029
Mike Butaud Police Chief	971-6710
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