

AGENDA
CITY OF ROELAND PARK, KANSAS
CITY COUNCIL MEETING
ROELAND PARK
Roeland Park City Hall - 4600 W 51st St
October 17, 2016 7:00 PM

Pledge of Allegiance
Roll Call
Modification of Agenda

I. Citizens Comments

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. Comments about items that appear on the agenda will be taken as each item is considered. Citizens are requested to keep their comments under 5 minutes. Please turn all cellular telephones and other noise-making devices off or to "silent mode" before the meeting begins.

A. Linda Mau

II. Consent Agenda

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

- A. Appropriation Ordinance # 897
- B. September 19, 2016
- C. September 26, 2016
- D. October 3, 2016

III. Business From the Floor

A. Applications / Presentations

- 1. Parks Update – Jennifer Provyn
- 2. ETC – Citizen Satisfaction Survey

IV. Mayor's Report

- A. Announcements
- B. Ardie Davis Proclamation (Teresa Kelly, Erin Thompson and Michael Poppa)

V. Workshop and Committee Reports

- A. Committee and Council Report

VI. Reports of City Liaisons

- A. NE Animal Control (Sheri McNeil and Ryan Kellerman)
- B. Shawnee Indian Mission (Bill Art)

VII. Unfinished Business

VIII. New Business

- A. Discussion of Contract for Caves Stabilization and Grading with Pyramid Construction

IX. Ordinances and Resolutions:

X. Reports of City Officials:

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

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

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

Clerk before the Mayor (Chair) calls for Public Comments.

2. **Public Comment on Agenda Items.** Public comment will be accepted on Agenda items. A member of the public, who wishes to speak on an Agenda item, including items on the Consent Agenda, must fill out a Request to Speak form and submit it to the City Clerk before the Mayor (Chair) calls the Agenda item.
- C. **Purpose.** The purpose of addressing the City Council is to communicate formally with the Council regarding matters that relate to Council business or citizen concerns within the subject matter jurisdiction of the City Council. Persons addressing the City Council on an agenda item shall confine their remarks to the matter under consideration by the Council.
 - D. **Speaker Decorum.** Each person addressing the City Council, shall do so in an orderly, respectful, dignified manner and shall not engage in conduct or language that disturbs, or otherwise impedes the orderly conduct of the Council meeting. Any person, who so disrupts the meeting shall, at the discretion of the Mayor (Chair) or a majority of the Council Members present, be subject to removal from that meeting.
 - E. **Time Limit.** In the interest of fairness to other persons wishing to speak and to other individuals or groups having business before the City Council, each speaker shall limit comments to five minutes. If a large number of people wish to speak, this time may be shortened by the Mayor (Chair) so that the number of persons wishing to speak may be accommodated within the time available.
 - F. **Speak Only Once.** Second opportunities for the public to speak on the same issue will not be permitted unless mandated by state or local law. No speaker will be allowed to yield part or all of his/her time to another, and no speaker will be credited with time requested but not used by another.
 - G. **Addressing the Council.** Comment and testimony are to be directed to the Mayor (Chair). Dialogue between and inquiries from citizens at the lectern and individual Council Members, members of staff, or the seated audience is not permitted. Council Members seeking to clarify testimony or gain additional information should direct their questions through the Mayor (Chair). Always speak from the microphone to ensure that all remarks are accurately and properly recorded. Only one speaker should be at the microphone at a time. Speakers are requested to state their full name, address and group affiliation, if any, before delivering any remarks.

H. Agendas and minutes can be accessed at www.roelandpark.org or by contacting the City Clerk

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

Item Number: Citizens Comments- I.-A.
Committee 10/17/2016
Meeting Date:



City of Roeland Park

Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **Linda Mau**
Item Type:

Recommendation:

Details:

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

Item Number: Consent Agenda- II.-A.
Committee 10/17/2016
Meeting Date:



City of Roeland Park
Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **Appropriation Ordinance # 897**
Item Type:

Recommendation:

Details:

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description

Appropriation Ordinance # 897

Type

Cover Memo

The City of Roeland Park, Kansas

4600 West Fifty-First Street

Roeland Park, Kansas 66205

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

Thursday, October 13, 2016

Appropriation Ordinance - 10/17/2016 - #897

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

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

Section 2: This Ordinance shall take effect and be in force from and after its passage. Passed and approved this 17th day of October, 2016.

Attest:

City Clerk

Mayor

Total Appropriation Ordinance

\$

181,739.21

There are sufficient funds in the General Fund to cover general fund expenditures.

Appropriation Ordinance - 10/17/2016 - #897

Vendor	Dept	Acct #	Description	Invoice Description	Amount	Chk #	Check /EFT
							Date
Accu-Screen Inc.	106	5207.106	Medical Expense & Drug Testing	Invoice: 9/16/16 /	106.15	66081	106.15
Advance Auto Parts	102	5260.102	Vehicle Maintenace	Invoice: 5128626025589 /	33.10	66048	33.10
Advance Auto Parts	102	5260.102	Vehicle Maintenace	Invoice: 9/30/16 /	51.88	66100	58.47
Advance Auto Parts	102	5260.102	Vehicle Maintenace	Invoice: 5128627226406 /	6.59	66100	
American Fidelity Assurance Co.	101	2052.101	Supplemental Insurance Payable	Invoice: 1410117A /	258.33	66049	258.33
American Fidelity Assurance Co.	101	2052.101	Supplemental Insurance Payable	Invoice: 1410118A /	258.33	66101	258.33
American Fidelity Assurance	101	2052.101	Supplemental Insurance Payable	Invoice: B515932 /	1,490.36	66050	1,490.36
American Public Works Association	106	5405.106	Dues, Subscriptions & Books	Invoice: 741811 /	45.00	66102	45.00
Asphalt Sales Company, Inc	270	5438.270	In-house Street Maintenance	Invoice: 132414 /	341.10	66103	2,158.90
Asphalt Sales Company, Inc	270	5438.270	In-house Street Maintenance	Invoice: 132330 /	604.12	66103	
Asphalt Sales Company, Inc	270	5438.270	In-house Street Maintenance	Invoice: 132461 /	321.90	66103	
Asphalt Sales Company, Inc	270	5438.270	In-house Street Maintenance	Invoice: 132264 /	891.78	66103	
Breeden Holdings, LLC	102	5260.102	Vehicle Maintenace	Invoice: 1026771 /	149.95	66104	306.90
Breeden Holdings, LLC	102	5260.102	Vehicle Maintenace	Invoice: 1026723 /	131.95	66104	
Breeden Holdings, LLC	106	5260.106	Vehicle Maintenace	Invoice: 1025963 / 104 oil change	25.00	66104	
Brody Buster	101	5410.101	Committee Funds	Invoice: 9/16 BARKTOBERFEST /	300.00	66051	300.00
Jeff Carta	101	5410.101	Committee Funds	Invoice: 9/16 BARKTOBERFEST /	300.00	66052	300.00
Monica Carrillo	101	4245.101	Cereal Malt Beverage License	Invoice: 10/16 REFUND /	10.00	66105	10.00
Carquest Auto Parts	106	5260.106	Vehicle Maintenace	Invoice: 2380411153 /	84.28	66106	84.28
City of Fairway	101	5511.101	Fireworks	Invoice: 9/16 FIREWORKS /	2,000.00	66053	2,000.00
Occupational Health Centers of the	104	5214.104	Other Contracted Services	Invoice: 1009684503 /	64.00	66082	64.00
Consolidated Communications	101	5202.101	Telephone	Invoice: 9/9/16 /	551.73	66054	551.73
Custom Tree Care, Inc.	104	5214.104	Other Contracted Services	Invoice: 15489 /	76.00	66043	152.00
Custom Tree Care, Inc.	104	5214.104	Other Contracted Services	Invoice: 15488 / 4316 w 53 terr	76.00	66043	
E. Edwards, Inc.	106	5308.106	Clothing & Uniforms	Invoice: 9161612052 /	139.49	66107	139.49
E-M Sales	106	5304.106	Janitorial Supplies	Invoice: 10/4/16 /	94.80	66108	94.80
ETC Institute	101	5516.101	Strategic Planning	Invoice: 21643 /	1,500.00	66083	1,500.00
Family Support Payment Center	101	2055.101	Employee Garnishment Payable	Invoice: 9/22/16 HARPER /	328.62	66044	328.62
Family Support Payment Center	101	2055.101	Employee Garnishment Payable	Invoice: 10/6/16 HARPER /	328.62	66084	328.62
Becky Fast	108	5206.108	Travel Expense & Training	Invoice: 3/16 TRAINING /	660.65	66085	660.65
Galls, LLC	102	5308.102	Clothing & Uniforms	Invoice: 6058518 /	70.23	66045	86.73
Galls, LLC	102	5308.102	Clothing & Uniforms	Invoice: 6031847 /	16.50	66045	
Galls, LLC	102	5308.102	Clothing & Uniforms	Invoice: 6085775 /	413.94	66055	413.94
Galls, LLC	102	5308.102	Clothing & Uniforms	Invoice: 6136435 /	18.90	66086	24.29
Galls, LLC	102	5308.102	Clothing & Uniforms	Invoice: 6100611 /	5.39	66086	
Galls, LLC	102	5308.102	Clothing & Uniforms	Invoice: 6822879 /	11.97	66109	11.97
Grabill Plumbing, Inc.	101	5210.101	Maintenace & Repair Building	Invoice: 20013 /	228.98	66056	228.98
Andre'e Gross	102	5206.102	Travel Expense & Training	Invoice: KWIK SHOP 9/14/16 /	17.45	66057	17.45
David J. Grummon, P.A.	103	5209.103	Professional Services	Invoice: 9/13/16 /	202.00	66046	202.00

David J. Grummon, P.A.	103	5209.103	Professional Services	Invoice: 10/4/16 /	10/12/2016	190.00	66110	190.00
Tim Janssen	108	5206.108	Travel Expense & Training	Invoice: COSTCO 9/20/16 /	10/5/2016	713.22	66087	713.22
Tim Janssen	101	5219.101	Meeting Expense	Invoice: 10/3/16 D'BRONX /	10/12/2016	73.54	66111	73.54
Johnson County Park & Recreation [	101	5766.101	Pool Equipment	Invoice: 092016 /	10/5/2016	2,275.00	66088	2,275.00
Ka-Comm., Inc.	102	5211.102	Maintenace & Repair Equipment	Invoice: 142129 /	10/12/2016	371.00	66112	371.00
Kansas City Board of Public Utilities	101	5121.101	Franchise Exps/Traffic Signals	Invoice: 2834 9/27/16 /	10/5/2016	29.56	66089	29.56
KC Copiers, Inc.	106	5214.106	Other Contracted Services	Invoice: 19366 /	10/12/2016	149.00	66113	149.00
KCP & L	101	5201.101	Electric	Invoice: 9/26/16 MULTIPLE /	9/28/2016	2,580.89	66058	3,252.31
KCP & L	106	5201.106	Electric	Invoice: 9/26/16 MULTIPLE /	9/28/2016	671.42	66058	
KCP & L	106	5201.106	Electric	Invoice: 1275 10/4/16 /	10/12/2016	1,764.26	66114	1,764.26
Keller Fire & Safety	290	5210.290	Maintenace And Repair Building	Invoice: 171469 /	10/12/2016	166.00	66115	166.00
Kansas Gas Service	101	5199.101	Natural Gas	Invoice: 1745/7836 9/13/16 /	9/28/2016	67.06	66059	114.88
Kansas Gas Service	106	5199.106	Natural Gas	Invoice: 1745/7836 9/13/16 /	9/28/2016	47.82	66059	
Kansas One-Call System, Inc.	101	5120.101	Street Light Repair & Maintenance	Invoice: 6090440 /	10/12/2016	174.00	66116	174.00
League of Kansas Municipalities	105	5206.105	Travel Expense & Training	Invoice: 162623 /	9/28/2016	140.00	66060	140.00
The Legal Record	101	5204.101	Legal Printing	Invoice: L63156 /	10/5/2016	140.81	66090	402.75
The Legal Record	101	5204.101	Legal Printing	Invoice: L63157 /	10/5/2016	248.40	66090	
The Legal Record	101	5204.101	Legal Printing	Invoice: L63184 /	10/5/2016	13.54	66090	
The Legal Record	101	5204.101	Legal Printing	Invoice: L63154 /	10/12/2016	86.32	66117	190.47
The Legal Record	101	5204.101	Legal Printing	Invoice: L63272 /	10/12/2016	19.24	66117	
The Legal Record	101	5204.101	Legal Printing	Invoice: L63363 /	10/12/2016	14.72	66117	
The Legal Record	101	5204.101	Legal Printing	Invoice: L63155 /	10/12/2016	70.19	66117	
Lowe's Business Acct./GEMB	101	5210.101	Maintenace & Repair Building	Invoice: 1760 10/12/16 /	9/28/2016	(1.47)	66061	974.60
Lowe's Business Acct./GEMB	101	5210.101	Maintenace & Repair Building	Invoice: 1760 10/12/16 /	9/28/2016	97.39	66061	
Lowe's Business Acct./GEMB	101	5210.101	Maintenace & Repair Building	Invoice: 1760 10/12/16 /	9/28/2016	37.92	66061	
Lowe's Business Acct./GEMB	101	5210.101	Maintenace & Repair Building	Invoice: 1760 10/12/16 /	9/28/2016	206.81	66061	
Lowe's Business Acct./GEMB	101	5210.101	Maintenace & Repair Building	Invoice: 1760 10/12/16 /	9/28/2016	16.99	66061	
Lowe's Business Acct./GEMB	101	5210.101	Maintenace & Repair Building	Invoice: 1760 10/12/16 /	9/28/2016	(17.90)	66061	
Lowe's Business Acct./GEMB	101	5210.101	Maintenace & Repair Building	Invoice: 1760 10/12/16 /	9/28/2016	41.51	66061	
Lowe's Business Acct./GEMB	106	5210.106	Maintenace And Repair Building	Invoice: 1760 10/12/16 /	9/28/2016	18.97	66061	
Lowe's Business Acct./GEMB	106	5306.106	Materials	Invoice: 1760 10/12/16 /	9/28/2016	467.47	66061	
Lowe's Business Acct./GEMB	106	5308.106	Clothing & Uniforms	Invoice: 1760 10/12/16 /	9/28/2016	18.97	66061	
Lowe's Business Acct./GEMB	106	5318.106	Tools	Invoice: 1760 10/12/16 /	9/28/2016	17.95	66061	
Lowe's Business Acct./GEMB	106	5320.106	Grounds Maintenance	Invoice: 1760 10/12/16 /	9/28/2016	18.01	66061	
Lowe's Business Acct./GEMB	106	5320.106	Grounds Maintenance	Invoice: 1760 10/12/16 /	9/28/2016	43.56	66061	
Lowe's Business Acct./GEMB	106	5320.106	Grounds Maintenance	Invoice: 1760 10/12/16 /	9/28/2016	8.42	66061	
Venessa Maxwell-Lopez	103	5209.103	Professional Services	Invoice: 9/23/16 /	9/28/2016	150.00	66062	150.00
Midwest Public Risk	107	5126.107	Health Insurance	Invoice: 80215M /	9/28/2016	24,013.35	66063	24,013.35
Miller Management Systems, LLC	101	5408.101	Miscellaneous Charges	Invoice: 16545 /	9/28/2016	10.00	66077	10.00
Municode	101	5214.101	Other Contracted Services	Invoice: 275693 /	9/28/2016	1,216.75	66064	1,216.75
Nationwide Retirement Solutions	101	2060.101	Section 457 Employee Payable	Invoice: 9/22/16 PAYROLL /	9/21/2016	1,100.46	66047	1,100.46
Nationwide Retirement Solutions	101	2060.101	Section 457 Employee Payable	Invoice: 10/6/16 PAYROLL /	10/5/2016	1,140.82	66091	1,140.82
Northeast Johnson Cty. Chamber of	101	5203.101	Printing & Advertising	Invoice: 20702 /	9/28/2016	250.00	66065	280.00

Northeast Johnson Cty. Chamber of	108	5206.108	Travel Expense & Training	Invoice: 20721 /	9/28/2016	30.00	66065	
Northeast Johnson Cty. Chamber of	108	5206.108	Travel Expense & Training	Invoice: 20743 /	10/5/2016	40.00	66092	40.00
Next To Nature Landscape, LLC	106	5214.106	Other Contracted Services	Invoice: 363585 /	10/12/2016	4,123.00	66118	4,123.00
Office Depot, Inc.	101	5301.101	Office Supplies	Invoice: 863194036002 /	9/28/2016	8.88	66066	54.20
Office Depot, Inc.	101	5301.101	Office Supplies	Invoice: 863194036001 /	9/28/2016	45.32	66066	
OnBase by Hyland	101	5214.101	Other Contracted Services	Invoice: 313873 /	10/12/2016	2,349.00	66119	2,349.00
Phoenix Concrete & Underground, L	270	5456.270	CARS Projects	Invoice: 130099130 3 /	10/12/2016	29,337.67	66120	29,337.67
Purchase Power	101	5205.101	Postage & Mailing Permits	Invoice: 9/20/16 /	9/28/2016	639.85	66067	639.85
Michael Poppa	101	5410.101	Committee Funds	Invoice: 9/8/16 BANNER /	9/28/2016	180.79	66068	180.79
Praxair Distribution Inc	106	5214.106	Other Contracted Services	Invoice: 74423918 /	10/5/2016	26.38	66093	26.38
Balls Food Stores	102	5301.102	Office Supplies	Invoice: 638144 /	9/28/2016	17.84	66069	17.84
Balls Food Stores	102	5452.102	Community Policing	Invoice: 638168 /	10/5/2016	103.12	66094	202.69
Balls Food Stores	101	5219.101	Meeting Expense	Invoice: 638156 /	10/6/2016	99.57	66094	
Balls Food Stores	102	5307.102	Other Commodities	Invoice: 638163 /	10/12/2016	69.33	66121	89.32
Balls Food Stores	101	5408.101	Miscellaneous Charges	Invoice: 638173 /	10/12/2016	19.99	66121	
Principal Life	107	5130.107	City Paid Life Insurance	Invoice: 9/17/16 /	9/28/2016	822.03	66070	822.03
Wex Bank	102	5302.102	Motor Fuels & Lubricants	Invoice: 47057237 /	10/5/2016	1,507.76	66095	1,507.76
Rejis Commission	102	5214.102	Other Contracted Services	Invoice: INV0050430 /	9/28/2016	204.20	66071	204.20
Riteway Maintenance & Supply, LLC	101	5214.101	Other Contracted Services	Invoice: 15688 /	9/28/2016	120.00	66072	120.00
Riteway Maintenance & Supply, LLC	101	5214.101	Other Contracted Services	Invoice: 15719 /	10/5/2016	910.00	66096	910.00
Road Builders Machinery & Supply C	270	5438.270	In-house Street Maintenance	Invoice: R33200 /	10/12/2016	1,200.00	66122	3,000.00
Road Builders Machinery & Supply C	270	5438.270	In-house Street Maintenance	Invoice: R33093 /	10/12/2016	1,800.00	66122	
Roeland Park Community Foundatio	108	5103.108	Salaries - Elected Officials	Invoice: CKOCT /	10/1/2016	60.00	66078	60.00
George Schlegel	101	5230.101	Art Commissioner	Invoice: CHECKOCT /	10/1/2016	100.00	66079	100.00
Shafer, Kline & Warren, Inc.	270	5209.270	Professional Services	Invoice: 1300993301 /	10/12/2016	4,025.00	66123	30,937.24
Shafer, Kline & Warren, Inc.	270	5209.270	Professional Services	Invoice: 1300993402 /	10/12/2016	8,036.07	66123	
Shafer, Kline & Warren, Inc.	270	5209.270	Professional Services	Invoice: 13009901032 / plan review & p	10/12/2016	2,553.61	66123	
Shafer, Kline & Warren, Inc.	270	5209.270	Professional Services	Invoice: 1300992606 /	10/12/2016	655.00	66123	
Shafer, Kline & Warren, Inc.	270	5209.270	Professional Services	Invoice: 1300992806 /	10/12/2016	255.00	66123	
Shafer, Kline & Warren, Inc.	270	5209.270	Professional Services	Invoice: 1300993004 /	10/12/2016	67.50	66123	
Shafer, Kline & Warren, Inc.	510	5209.510	Professional Services	Invoice: 13009922011 /	10/12/2016	10,437.56	66123	
Shafer, Kline & Warren, Inc.	104	5214.104	Other Contracted Services	Invoice: 13009901032 / plan review & p	10/12/2016	4,217.50	66123	
Shafer, Kline & Warren, Inc.	450	5625.450	Stormwater Maintenance	Invoice: 13009920012 /	10/12/2016	690.00	66123	
Breanna Speck	101	4245.101	Cereal Malt Beverage License	Invoice: 10/4/16 OVER PMT /	10/12/2016	49.00	66124	49.00
Staples Advantage	101	5301.101	Office Supplies	Invoice: 8040884940 /	9/28/2016	5.98	66073	467.12
Staples Advantage	101	5301.101	Office Supplies	Invoice: 8040794604 /	9/28/2016	70.07	66073	
Staples Advantage	101	5301.101	Office Supplies	Invoice: 8040972520 /	9/28/2016	303.35	66073	
Staples Advantage	101	5304.101	Janitorial Supplies	Invoice: 8040794604 /	9/28/2016	87.72	66073	
Strasser True Value	106	5318.106	Tools	Invoice: 222245 /	10/12/2016	3.61	66125	3.61
Suburban Lawn & Garden	106	5320.106	Grounds Maintenance	Invoice: 848290 /	10/12/2016	78.38	66126	78.38
USIC Locating Services, LLC	101	5120.101	Street Light Repair & Maintenance	Invoice: 197351 /	10/12/2016	1,926.10	66127	1,926.10
Verizon Wireless	102	5202.102	Telephone	Invoice: 9772541152 /	10/5/2016	295.46	66097	295.46
The Victor L. Phillips Co.	270	5438.270	In-house Street Maintenance	Invoice: RK53858 /	10/12/2016	831.91	66128	831.91

Water District No 1 of Johnson Cour	106	5197.106	Water	Invoice: 7177 9/21/16 /	9/28/2016	104.49	66074	104.49
Water District No 1 of Johnson Cour	101	5197.101	Water	Invoice: 9/26/16 MULTIPLE /	10/5/2016	171.34	66098	1,070.53
Water District No 1 of Johnson Cour	106	5197.106	Water	Invoice: 9/26/16 MULTIPLE /	10/5/2016	899.19	66098	
WCA Waste Corporation	115	5272.115	Solid Waste Contract	Invoice: 990000164447 /	10/5/2016	34,493.52	66099	34,493.52
WCA Waste Corporation	106	5320.106	Grounds Maintenance	Invoice: 990000150317 /	10/12/2016	113.19	66129	113.19
Wells Fargo Financial Leasing	102	5214.102	Other Contracted Services	Invoice: 5003375069 /	9/28/2016	445.50	66075	891.00
Wells Fargo Financial Leasing	105	5214.105	Other Contracted Services	Invoice: 5003375069 /	9/28/2016	445.50	66075	
Johnny on the Spot	106	5320.106	Grounds Maintenance	Invoice: 1383448576 /	10/12/2016	150.00	66130	185.00
Johnny on the Spot	106	5320.106	Grounds Maintenance	Invoice: 1383348578 /	10/12/2016	35.00	66130	
The Work Zone, Inc.	102	5307.102	Other Commodities	Invoice: 43321 / Blitz traffic sign	9/28/2016	70.20	66076	70.20
Forte	101	5214.101	Other Contracted Services	EFT#10/1/16 Invoice: 9/30/16 ALL ACCT	10/1/2016	280.74		
Forte	101	5214.101	Other Contracted Services	EFT#10/4/16 Invoice: 10/4/16 COURT V	10/4/2016	10.45		
Forte	101	5214.101	Other Contracted Services	EFT#10/4/16 Invoice: 10/4/16 ADMIN /	10/4/2016	10.45		
Forte	101	5214.101	Other Contracted Services	EFT#10/4/16 Invoice: 10/4/16 COURT /	10/4/2016	62.69		
Forte	101	5214.101	Other Contracted Services	EFT#10/4/16 Invoice: 10/4/16 ADMIN V	10/4/2016	10.45		
KPERS	101	2040.101	KPERS Accrued Employee	EFT#9/26/2016 Invoice: 9/26/2016 /	9/26/2016	1,654.86		
KPERS	107	5123.107	KPERS City Contribution	EFT#9/26/2016 Invoice: 9/26/2016 /	9/26/2016	2,531.93		
KPF	101	2045.101	KP&F Employee Withholding Payable	EFT#9/26/2016 Invoice: 9/26/2016 /	9/26/2016	2,388.81		
KPF	107	5131.107	KP&F City Contribution	EFT#9/26/2016 Invoice: 9/26/2016 /	9/26/2016	6,822.29		
Miller Management Systems, LLC	101	5214.101	Other Contracted Services	Invoice: EFTOCT /	10/1/2016	1,558.00		
						\$ 181,739.21		

Item Number: Consent Agenda- II.-B.
Committee 10/17/2016
Meeting Date:



City of Roeland Park

Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **September 19, 2016**
Item Type:

Recommendation:

Details:

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description



September 19

Type

Cover Memo

**CITY COUNCIL MEETING MINUTES
CITY OF ROELAND PARK, KANSAS
Roeland Park City Hall
4600 W 51st Street, Roeland Park, KS 66205
Monday, September 19, 2016 7:00 P.M.**

- Joel Marquardt, Mayor
- Becky Fast, Council Member
- Tim Janssen, Council Member
- Ryan Kellerman, Council Member

- Teresa Kelly, Council Member
- Sheri McNeil, Council Member
- Michael Poppa, Council Member
- Michael Rhoades, Council Member
- Erin Thompson, Council Member

- Keith Moody, City Administrator
- Jennifer Jones-Lacy, Asst. Admin.
- Kelley Bohon, City Clerk
- John Morris, Police Chief
- Jose Leon, Public Works Director

Admin

Poppa
Fast

Finance

Kelly
Janssen

Safety

Thompson
Rhoades

Public Works

Kellerman
McNeil

PLEDGE OF ALLEGIANCE

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

ROLL CALL

City Clerk Bohon called the roll noting that CMBR Kellerman absent. CMBR Kellerman did arrive later after the start of the meeting.

MODIFICATION TO THE AGENDA

Governing Body Workshop Items 2-6 were added to the agenda under New Business.

I. CITIZEN COMMENTS:

Tom Madigan. Mr. Madigan spoke to the need of an education process for cyclists so that know they are to abide by the same rules and laws as motorists. He felt this could be accomplished by the cycling community, the City and Police Department.

Kyle Rogler (5309 Juniper Drive) Mr. Rogler expressed his concerns over Roeland Park's mixed use development (MXD) zoning. On September 13th, the Planning Commission approved the zoning based on the development plan filed by Commerce Bank for its new site and a medical office. As a Planning Commissioner he voted to approve the MXD zoning, but opposed the development plan due to concerns how this development does not follow the performance standards and tenets established in the MXD zoning. He did not feel that the development fell in line with Roeland Park's desire to create a more pedestrian-oriented development stating that the current development plan departs from the goals and standards to provide a more typical auto-oriented development and does not reflect an area that people would walk in. He recommended the Governing Body listen to the Planning Commission meeting audio. He also asked the Council to look into the legal issue of regulatory taking, an issue brought up before the Planning Commission by the City Administrator that would apply if the development plan was opposed due to the application of the MXD standards in the sense that it would diminish the economically reasonable use of the land.

CMBR Rhoades asked that this information be sent to the City Attorney.

CMBR Kellerman arrived at the meeting.

II. CONSENT AGENDA

- A. Appropriation Ordinance #896**
- B. June 20, 2016 City Council Minutes**

- C. **July 18, 2016 City Council Minutes**
- D. **August 15, 2016 City Council Minutes**
- E. **Renewal of Building Inspection Service Agreement with Westwood**

MOTION: CMBR THOMPSON MOVED AND CMBR POPPA SECONDED TO APPROVE THE CONSENT AGENDA.
(MOTION PASSED 8-0)

III. BUSINESS FROM THE FLOOR

A. Applications/Presentations

1. Bishop Miede Homecoming Parade

MOTION: CMBR THOMPSON MOVED AND CMBR POPPA SECONDED TO APPROVE THE CONSENT AGENDA.
(MOTION PASSED 8-0)

2. Community Service Award

Police Chief Morris said the sergeant who was to receive the award had a family medical emergency and this item will be postponed until a future Council meeting.

3. New Officer

Police Chief Morris introduced Officer Greg Rader, a veteran officer of 2-3 years who worked for the Lansing Police Department. He is also a sergeant in the Army National Guard. Chief Morris said he is doing a great job and they've given him the nickname "Maverick."

Chief Morris also invited Councilmembers to participate in a ride-along.

(Applause)

IV. MAYOR'S REPORT

A. Kansas Family and Community Education Week Proclamation (Sheri McNeil and Tim Janssen)

CMBR McNeil read the proclamation into the record.

MOTION: CMBR MCNEIL MOVED AND CMBR JANSSEN SECONDED TO APPROVE THE KANSAS FAMILY AND COMMUNITY EDUCATION PROCLAMATION FOR THE WEEK OF OCTOBER 9-15, 2016. (MOTION PASSED 8-0)

B. Diaper Need Awareness Week Proclamation (Erin Thompson and Michael Rhoades)

CMBR Thompson read the proclamation into the record.

MOTION: CMBR THOMPSON MOVED AND CMBR RHOADES SECONDED TO APPROVE THE DIAPER NEED AWARENESS WEEK PROCLAMATION FOR THE WEEK OF SEPTEMBER 26-OCTOBER 2, 2016. (MOTION PASSED 8-0)

Mayor Marquardt said that there was a discussion on Tobacco 21 during the preceding Workshop and CMBR Thompson and City Administrator Moody are available to take questions, and they should be forwarded to staff or Ms. Thompson.

V. WORKSHOP COMMITTEE REPORTS

A. Governing Body Workshop Report

CMBR Thompson reported the items discussed were:

- Voting delegates to the League of Kansas Municipalities Annual Conference, to be decided on later in the meeting
- Committee appointments and reappointments will be moved to the November Council meeting.
- Incorporating the agenda item process flow chart to Ordinance 931, to be discussed later in the meeting.
- Weed control along the curb line. After staff has researched environmentally safe product options they will continue the discussion
- Renewal of building inspection services with City of Westwood, approved on the Consent Agenda.
- A preschool play area fence at the Community Center. Johnson County Parks and Rec will install the iron fence and are no longer requesting financial assistance from the City.

B. Redevelopment Committee Report

The committee discussed and reviewed the RFPs to level the ground at the cave site by either filling or imploding the old mines. The winning firm Terracon Pyramid was willing to accept a not to exceed price of \$942,000 for filling the mine with stable materials. Their approach provided less uncertainty for the stability of the site and makes the property closer to being shovel ready.

KDOT right-of-way sale. The City is still waiting for an agreement from KDOT for the northeast corner of Johnson and Roe and waiting for the agreement for KDOT for the proportional profit share after the sale of the property.

CMBR McNeil said the last study at the old pool site said that any fill that had been put in would have to be removed before fresh fill could be added and asked if that was included. CMBR Thompson said it is included and will be taken out and ground up.

C. Branding Committee Report

CMBR Poppa provided the Branding Committee update. Twenty-two graduate students have formed four teams creating competing versions of research participant sample plans as well as resuming secondary research for the final report. Currently the preliminary resident survey report is raw data that will be refined and provided to the project management team. They will be providing a guide to the Governing Body that will guide them through the rest of the process. Twenty undergraduate students are enrolled in the marketing research class and have received intensive instruction and qualitative research for the focus groups. They have begun crafting the focus group discussion guide to be used during the data collection process for each of the focus groups to be held in the next couple of weeks pending the committee's approval. They did approve going forward with the focus groups each of the non-Council committee members providing names of three residents, with those three then asking one more resident. They have about 20 participants currently in the focus groups and want to get to about 40-50. Thirty-two undergraduates are enrolled in Integrative Marketing Communication, have been briefed on the project and will be crafting competing implementation plans for the launch of the new branding imagery. A focus group discussion guide has been shared with the committee and they also have some promotional flyers for the focus group when asking for participants. To date, Benedictine has done a very good job of getting the committee everything needed in a timely fashion and they are looking forward to the focus groups.

CMBR McNeil asked if they would share the flyers with the Council that is asking neighbors to participate in the focus groups. City Administrator Moody will provide the flyer to the Council.

VI. REPORTS OF CITY LIAISONS

A. MARC – Bike & Pedestrian

CMBR Kelly said that Erin Bartlett reported on the local government pedestrian inventory that is based on the Walkable Community Survey. The next step is notifying cities to fill in sections that were not completed. Plans are to have report in November with best practices including ordinances and other policies to encourage pedestrian infrastructure development and maintenance.

Jeff Martin from KCMO gave a presentation on the Kansas City road diet program, adding bike lanes to roads. The cost estimate is about \$20,000 per block which is mainly for paint. This will be incorporated into the regular maintenance schedule. Two different criteria are taken into account when adding the bike lanes - when they do mill and overlay and are restriping the streets and also the criteria of choosing where, based on traffic counts, and then where it falls in their maintenance schedule.

Sarah Copeland from North KC reported in detail on the Burlington corridor plan. The plan aligns with the bike-ped portion of the Heart of American Bridge. Burlington has six transit routes that will be served by this. The cycle track is very unique. They will be losing right-turn lanes and losing on-street parking that will be put behind buildings rather than on the street and then adding the cycle track. By putting this area on a road diet it becomes more practical. The project will be phased in from east to west starting with the cycle track.

John Hornback from KCK gave a presentation on Wyandotte County's 20-20-20 movement, the goal of which is to encourage bike, hike and walk to improve health through physical activity, creating walkable neighborhoods and parks and safe cycling routes in Wyandotte County. He gave a presentation on Southwest Boulevard and Merriam Lane, tying into those trails, and also to County Line Road. He emphasized they were able to do this through strong community support through the Rosedale Development Association.

In the roundtable they reported on the completion of Roeland Park's bike-ped ad hoc study and were invited back to report at a future meeting. Also shared was the walk/bike to school pilot being planned for 2017.

B. MARC – First Tier Suburbs

CMBR Kelly reported the first quarterly newsletters have been published and disseminated to the Governing Body. North Kansas City reported on their Burlington corridor and Armor Road developments noting Armor Road is designated to be a complete street and has a two-way cycle track that makes it unique to the area. R.D. Mallams, mayor pro-tem of Gladstone, and Ms. Kelly led a brainstorming session focusing on business retention. General consensus is that investment in infrastructure attracts businesses. Topics included ways to be redevelopment ready, proactive strategies to do that, parking density and shared economy, sharing success/failure stories leading to best practices, lessons learned from funding experience, and who else should be at the table for conversations. Chambers of commerce and lenders were mentioned.

Upcoming events:

- Demographic trends on November 9th from 9-11 a.m. presented by Frank Link and Jeff Pinkerson of MARC at the MARC offices.
- Communication strategies to fully engage residents co-sponsored by the Regional Association of Public Information Officers will be in early 2017.
- Community for all Ages deadline for recognition is November 1st.

C. Stormwater Management Advisory Council

Public Works Director Leon said Friday, September 16th, the SMAC Committee met and approved the 2017 expenditures in the amount of \$23.3 million. That amount will be broken down to \$20.4 million in design and construction of projects, \$2.25 million in regional support projects and \$573,280 in administrative services. The strategic plan that the SMAC committee developed, which Mr. Leon has updated the Governing Body on, also approved \$450,000 for the county to use in a contract with Black & Veatch who helped put the strategic plan together to progress forward in implementation of the strategic over the next three to five years.

D. Roesland Elementary Report – Caring for Kids

Caring for Kids. CMBR Kelly said she started going to meetings a couple years ago when there was interest in the Council to create a liaison to Roesland. Caring for Kids is a network that acts as a neutral convener to engage the community around a neighborhood school. They had a report on actions and outcomes in the school district and had roundtable sessions with constituency. They also talked about the Principal's Closet, which is a school supply program where donations of school supplies can be made to Roesland and there's a closet in the principal's office

that children can access if they need school supplies. They have also introduced the Barton reading program. Volunteer information is on Shawnee Mission School District website. Their Fall Festival is October 31 from 9-1 and includes activities and games and focuses on healthy options and fun rather than candy. The next roundtable meeting is scheduled for October 13 at 9 a.m. at the Roesland Elementary School.

VII. UNFINISHED BUSINESS

- A.** *There was no Unfinished Business discussed.*

VIII. NEW BUSINESS

- A. Voting Delegates to the Kansas League of Municipalities Annual Conference**

CMBR Fast said she e-mailed and said she is not interested, but is listed on the list as interested.

CMBR Kelly and CMBR Poppa stated they are interested in being delegates.

Mayor Marquardt thanked everyone for volunteering, adding that he will be there for part of the meeting, but unable to attend during the voting.

MOTION: CMBR THOMPSON MOVED AND CMBR RHOADES SECONDED TO APPROVE THE APPOINTMENT OF CMBR KELLY AND CMBR POPPA AS THE CITY'S VOTING DELEGATES AT THE 2016 LEAGUE OF KANSAS MUNICIPALITIES ANNUAL MEETING WITH CMBR THOMPSON AS THE ALTERNATE. (MOTION PASSES 8-0)

- B. Preschool Play Area Fence Replacement at Community Center**

City Administrator Moody said JCPRD is moving forward with the iron fence and there is not a request for any additional funding from the City.

- C. Dedication of Easement for Plat**

This item was not discussed.

- D. Officers' Use of Uniform Equipment off Duty (Workshop #2)**

Police Chief Morris said there are some places that officers work security events, primarily at St. Agnes and Bishop Miege, where they have been wearing security officer uniforms, which is just a shirt that says Security. He would like to change that policy to allow them to wear their police department uniform, safety vest, etc. Roeland Park's Police Department is the only agency in the county that doesn't allow its police officers to wear their uniforms off duty. Uniforms can only be worn while officers are actually working in the city of Roeland Park.

In times where they would wear their uniforms off duty, it would have to be approved by Police Chief Morris and the City Administrator. Representing the city at a social event sets a positive image for the citizens when they see a police officer. The great advantage to this is it allows more officers to work off duty to do so. Bishop Miege and St. Agnes would rather have officers in uniform representing the city and so he asked for that exception.

CMBR McNeil said it is a great idea and works also for the officer's safety, and would give residents an opportunity to come up and speak with the officers.

Chief Morris said if there is an incident to actually get into the streets, security guards do not have authority to direct traffic where police officers do. He added that kids are more approachable to officers in uniform.

MOTION: CMBR KELLY MOVED AND CMBR JANSSEN SECONDED TO ALLOW POLICE OFFICERS TO WEAR DEPARTMENT-ISSUED UNIFORM, EQUIPMENT, CLOTHING, PROTECTIVE EQUIPMENT AND WEAPON WHILE WORKING OFF-DUTY SECURITY WITHIN THE CITY OF ROELAND PARK. (MOTION PASSED 8-0)

CMBR Kelly asked if Item 6 from Workshop Discussion Items could be moved ahead on the agenda since there are guests at the meeting to speak to this item, to which everyone agreed.

E. August Financials (Workshop #3)

Ms. Jones-Lacy reported property taxes are on track. The City received an additional \$52,000 in ad valorem taxes in September. Franchise fees continue to be a source of concern primarily to natural gas receipts coming in lower at 29 percent. Cable is also down 27 percent, due to the proliferation of other sources of media such as Netflix and Amazon Prime. Landline phones have also continued to drop. Electric fees on the other hand are up. Court fines are showing a four percent decrease from last year, which was anticipated because the municipal court judge reduced the fee schedule. General Fund revenues are at \$3.9 million, and up \$24,000 from August 2015. Expenditures in the General Fund are also up compared to 2015 due to salary increases, the purchase of fiber in a cost share with Johnson County. There has been an increase of transfers to other funds from the General Fund. One example was the incurred additional expenses from the spring leaf pickup. It's the same expense just incurring earlier. The City's investments are performing well. Currently they have \$5.8 million invested in agency and governmental bonds, which include Kansas GO bonds in Manhattan, Kansas. They have accrued \$21,000 in interest in 2016. According to the latest Columbia Capital report, the City can expect \$52,000 in interest in 2016 on their investment. The City has also collected 79 percent of all revenues due to property taxes coming in January and June. The Special Street Fund is awaiting grant reimbursement for its CARS project. Expenditures in that fund included a 2015 storm sewer project as well as the Commerce Bank full access turn around. Overall expenses in all funds are at 40 percent for the year.

F. Annual City Administrator Evaluation Process (Workshop #4)

CMBR Poppa said he was looking for a consensus from the Governing Body on the timeline schedule for the 2016 performance evaluation for the City Administrator. The timeline in the packet has changed. The proposed timeline is as follows:

- 9/19/16 - Discuss the proposed timeline.
- 9/21 - City Administrator completes and returns the self-evaluation and the wage benefit comparative to the Admin Committee.
- 9/22 - Actual performance evaluation tool and the wage benefit comparison distributed to the Mayor and the Council. Will include the City Administrator self-evaluation on the tool so it can be reviewed while it is being completed.
- 9/29 - Completed evaluations returned by the Mayor and the Council to the Admin co-chairs. Will aggregate the evaluations and compile them together in one form.
- 9/30, Distribute to the City Administrator, the Mayor and the Council for review the final information.
- 10/3, Special Call City Council Meeting. The Mayor and Council will meet in Executive Session without the City Administrator to review and discuss the performance and compensation evaluations and determine the development plan for the upcoming year for the City Administrator.

Following this executive session, CMBR Poppa said it was possible to hold a separate executive session with the City Administrator to review the findings, the development plan, then resume in open meeting and take formal action on any changes to the City Administrator employment agreement or compensation package. In the alternative, a second Special Call City Council meeting could be held 10/10, followed with an open meeting.

Mayor Marquardt said he would recommend the second executive session on 10/10 if the Council felt they needed more time to review the evaluation findings, but is also fine holding it on 10/3.

CMBR Kellerman inquired of CMBR Poppa where it was decided to create this timeline. CMBR Poppa said he had received an e-mail from staff and the process was discussed at the 8/1 Workshop and was an appropriate item for the Admin Committee to put together to present to the entire Governing Body.

Mayor Marquardt said the City Administrator agreement states the review should be completed in September, but due to delays it will not be completed then.

CMBR Kelly said that the committee changes have created a non-hierarchical pairing of committee rotations, but did not change the process. She thanked CMBR Poppa for getting this to the Governing Body in an organized way.

CMBR Poppa reiterated that the Admin committee just began the evaluation process and the timeline is before the Council tonight for approval. Once everyone completes their individual performance evaluation, the Admin Committee will put the numbers together, and everyone will review them. As a Governing Body, they will then go into Executive Session and everyone will discuss the results and make decisions as an entire group for the following year.

CMBR Rhoades said he is support of the way it is planned to be done, but would have liked as a Council to decide what questions were to be on the evaluation. He said he did not feel it was an open process decision. He added that an ordinance was passed that states any ad hoc committee that is formed has to go through Council approval and if any members wants to join, then it goes to a Workshop for further discussion.

CMBR Kellerman said he would like to see due process and for the Governing Body to follow their own ordinances, noting that this is a committee that was formed. He stated that he and CMBR McNeil will be putting together a committee for the hiring process for a city engineer and anybody who wants to be on that committee can be on that as well. He added that going forward after performance evaluation, the next step is forming a committee for salary negotiations. He believes the two chairs of Admin and then a third person from the Council should be on the committee.

City Administrator Moody said according to his contract he has the right to approve of his evaluation process and he would prefer that the discussions concerning compensation be with the entire Governing Body.

CMBR Poppa clarified that an ad hoc committee was not formed for the evaluation process and this fell under the purview of the standing committee Administration service area. He added the questions are essentially the same as on past evaluations, but have been put together in a more concise manner and they are more qualitative. They are able to tie the results to compensation and agreement discussions.

CMBR Fast said that CMBR Poppa has reformatted the questionnaire in a very user-friendly way and that the previous survey evaluation was in a format which was very difficult to use and compiling the information was difficult.

CMBR Poppa reiterated that no questions were added.

CMBR Fast suggested that if anyone would like to look at the evaluation and add questions to e-mail the Council.

CMBR Rhoades said he trusts CMBR Poppa on what he has done. He said it would have been nice to know before it happened that the changes were made. It would have been nice to know that there was a committee forming for a new city attorney. They have passed an ordinance that if a member wants to join a specific committee they have a right to do that.

City Administrator Moody said there are standing committees and they have responsibilities. This evaluation process is an example of where that committee had served its function and this was their job. It is not an exclusion of the Council in the completion of the evaluation. Mr. Moody wanted to make sure that this was done as he has

stated previously, he works for everybody and he wants everyone to have the same input on the evaluation. This evaluation tool reflects that. The process for soliciting the city engineer and the city attorney was reviewed during a Workshop and which committees would perform those functions.

Mayor Marquardt said he believed it was discussed as far as who would be involved with the city attorney and city engineer process.

CMBR Kellerman said the point is they do not want anything hidden from the Governing Body and that there has been a lack of transparency. He thanked CMBR Poppa and CMBR Fast for putting this process together, but going forward a committee should be formed and formal action taken at a City Council meeting.

CMBR Rhoades also thanked CMBR Poppa and CMBR Fast for putting this together. He said in the future the whole Council should be made aware of when these types of decisions are being made.

CMBR McNeil inquired on some of the evaluation questions, specifically, "Demonstrates clear understanding of all duties and complies with law and City policies, rules and procedures. Ensures staff is knowledgeable of the same." She said it seems to be one thing and then "amount and quality of work are appropriate and sustainable."

CMBR Poppa clarified the first question is whether the employee has a clear understanding and that then extrapolates into if the employee does have a clear understanding, then the quality of work and the appropriateness and the sustainability should match that understanding.

City Administrator Moody said following his evaluation he will focus in on areas that are below average or need improvement more so than the ones exceeding expectations.

There was agreement from the Governing Body to move forward with the timeline as proposed.

G. Resolution Establishing a Moratorium on Wireless Telecom Work in Public Right-of-Way and Ordinance Amending Right-of-Way Use (Workshop #5)

City Attorney Shortlidge clarified that the term "moratorium" is improper, but is an "administrative delay" and noted the resolution has been revised to reflect that. Under both federal and state laws there are certain time limitations on which cities have to process these types of applications. The intent is an administrative delay process until it can get regulations in place to the extent they can.

MOTION: CMBR KELLY MOVED AND CMBR MCNEIL SECONDED TO APPROVE RESOLUTION 650. (MOTION PASSES 8-0.)

MOTION: CMBR KELLY MOVED AND CMBR MCNEIL SECONDED TO ADOPT ORDINANCE NO. 942, AN ORDINANCE RELATING TO RIGHT-OF-WAY MANAGEMENT, AMENDING AND APPEALING EXISTING SECTIONS 13-803, 13-809, 13-810, 13-811, 13-813, 13-815, 13-817, 13-824 AND 13-827 OF THE CODE OF THE CITY OF ROELAND PARK, KANSAS. (MOTION PASSES 8-0)

H. Aquatic Center Dome Blower/Heater Replacement (Workshop #6)

City Administrator Moody said the proposed item is to replace the blower/heater for the Aquatic Center Dome. The City has funds budgeted for the Aquatic Center and they will not have to amend the budget if they approve the purchase. This specific use of funds, however, is not anticipated in the budget.

Mayor Marquardt said this is a \$305,000 expenditure and asked if this was over and above typical expenditures in Roeland Park. City Administrator Moody said anticipated spending was \$255,000 on the pool this year, of both operating and capital expenditures. With this additional item it would take it to \$307,000 on the pool, capital and operating combined, for an additional \$52,000.

CMBR Rhoades said he would like to propose extending the relationship with Johnson County Parks and Rec to May 31, 2019.

Mayor Marquardt said that request would require JCPRD going back to their board for approval of this and could delay the dome repairs for an extra month or so.

CMBR Rhoades said they are having a meeting in two days and could discuss it at that time. He said he also feels it is important to end the contract at the end of a season cycle not the middle of it.

CMBR Fast said the issue is the blower/heater and adding a contract date change is a different focus. The blower and heater needs to be the sole focus because they want the county to help pay. The amendment is another issue and should not be contingent on getting the work done and getting the pool operating because all these teams are currently displaced.

CMBR Thompson agreed with CMBR Fast's statement and said the City needs to fulfill its obligation of the contract with JCPRD, which is to share costs, and did not feel it was fair to change that in the middle of the contract.

CMBR Poppa asked CMBR Rhoades for clarification of what part of the contract he wishes to extend. CMBR Rhoades said he would like to extend all aspects of the contract through May when the dome is removed for the summer season.

CMBR Kelly said that while it makes sense to have a contract end at the end of cycle, that is not the issue before the Council and believes they should operate in good faith to the contract they have now. If the Council wishes to have a separate discussion at a later date that would be appropriate. She reiterated previous comments that it is important to get the pool up and ready as soon as possible, and wants to expedite that as quickly as they can.

CMBR Kellerman asked for a time frame on when the dome is to be put up. City Administrator Moody said it was delayed this year to repaint the pool. They closed the pool early and shortened the summer season in order to paint it and putting down epoxy on the floors in the shower rooms.

CMBR Fast said CMBR Rhoades' proposal is a good idea for when the contract is done and when the bond is paid off. She said the county helped the City to take out that bond at no interest when the City was unable to do it on its own, and they offered to help with yearly expenses through the 20 years of bond payments.

CMBR Rhoades inquired whether JCPRD would keep to their end of paying half. Mayor Marquardt said it is agreed to pay for half of the upkeep of the pool on both sides.

Rhonda Pollard, Superintendent of Recreation at Johnson County addressed the Governing Body stating this issue will be brought before their board at the September 21st meeting. They are wanting to see what the Blazers could contribute to the project, but know that it's at least \$10,000. They hope to know that final figure before the meeting. The remaining costs would be split after the Blazers' contribution.

MOTION: CMBR RHOADES MOVED AND CMBR JANSSEN SECONDED TO APPROVE THE ROELAND PARK PORTION OF THE EXPENDITURE FOR THE HEATER/BLOWER FOR THE AQUATIC CENTER WITH A STIPULATION THAT THE COUNTY EXTENDS THEIR AGREEMENT WITH THE CITY OF ROELAND PARK THROUGH MAY 31, 2019. (MOTION FAILS 2-6 WITH CMBRS FAST, KELLERMAN, KELLY, MCNEIL, POPPA, AND THOMPSON VOTING NO.)

CMBR McNeil asked if they can agree to discuss at a later time with the county about extending the agreement, but get the heater ordered and installed now.

Mayor Marquardt said he believed CMBR Rhoades's intent for amending this now is that there will be no incentive to extend the agreement once the pool repairs have been completed. CMBR Rhoades concurred.

CMBR Fast mentioned previous conversations with Ms. Pollard where she stated that discussions will begin with future plans going forward with the pool. Ms. Fast asked CMBR McNeil to start a citizen committee on this and have the topic on a community forum in the next year to get input from the residents as this is a large issue for the City.

MOTION: CMBR THOMPSON MOVED AND CMBR KELLY SECONDED TO APPROVE THE ADDITIONAL EXPENDITURES FOR THE AQUATIC CENTER NOT TO EXCEED \$307,000.

MOTION: CMBR THOMPSON MOVED AND CMBR FAST SECONDED TO AMEND THE MOTION THAT THE CITY OF ROELAND PARK WILL PAY FOR ONE HALF OF THE HEATER/BLOWER REPLACEMENT FOR THE AQUATIC CENTER, THE AMOUNT TO BE DETERMINED AFTER A DONATION BY THE BLAZERS AND JOHNSON COUNTY PARKS AND REC PAYING THE REMAINING HALF. (MOTION PASSES 8-0).

IX. ORDINANCES AND RESOLUTIONS

A. Ordinance 931 Workshop Procedures

CMBR Poppa said the Governing Body has been in discussions for a Workshop structure for holding meetings outside of City Council meeting. It was last updated to include the flow chart. The attached ordinance reflects changes enacted at the 7/18 Council meeting and the 9/3 Governing Body Workshop.

Mayor Marquardt said the proposed inclusion is a reiteration of the flow chart listed in an alpha-numerical order that's consistent with existing City ordinances.

MOTION: CMBR THOMPSON MOVED AND CMBR POPPA SECONDED TO ADOPT ORDINANCE NO. 931 AN ORDINANCE RELATING TO THE ADMINISTRATION OF THE CITY OF ROELAND PARK, KANSAS; AMENDING AND REPEALING EXISTING SECTIONS 1-204, 1-207, 1-208, 1-212, 1-217 AND 1-315 OF THE CODE OF THE CITY OF ROELAND PARK, KANSAS. (MOTION PASSES 8-0)

B. Charter Ordinance 33

CMBR McNeil said that if Councilmembers are absent, it should not be considered as it is known in advance of when an election is to be held.

CMBR Rhoades said if someone is ill, it would not be an inconvenience to postpone the vote to the next meeting.

CMBR McNeil said in a true emergency, a request could be made, but leaving that language in could stretch out the process.

CMBR Thompson said she did not support the breaking of a tie by a coin flip, and does support CMBR McNeil's amendment.

MOTION: CMBR MCNEIL MOVED AND CMBR RHOADES SECONDED AMEND THE MOTION TO REMOVE THE NECESSITY OF HAVING ALL COUNCILMEMBERS PRESENT. (MOTION PASSES 7-1; WITH CMBR JANSSEN VOTING NO.)

City Attorney Shortlidge clarified that Paragraph 2 would be deleted.

Mayor Marquardt clarified that if there are two candidates that are similar it would be a coin flip for the top three, and then a re-vote. If there is a tie, it would be a coin flip.

City Clerk Bohon clarified the requested changes. Rhoades version of 33,

MOTION: CMBR THOMPSON MOVED AND CMBR KELLY SECONDED TO AMEND THE MOTION BY REMOVING SECTIONS 1-203(3) AND (4)(a).

CMBR Thompson withdrew her motion.

CMBR Poppa said if a majority vote of Councilmembers present cannot be met, if there are more than two nominations, the number of nominations shall be narrowed down.

Mayor Marquardt said it says if a majority isn't found by one in an initial vote, if there are multiple people not getting to five votes, then this process would kick in.

It was agreed to remove Section 1-203(3) and (4), and add to the end of Paragraph 1 stating if a tie exists between the top two candidates, then there will be a coin flip to determine the president of the Council.

Mayor Marquardt reiterated the language. If there is a tie in the vote of the final two, then the coin shall be flipped to determine President of the Council.

MOTION: CMBR POPPA MOVED AND CMBR RHOADES SECONDED TO MODIFY (?) IF THERE ARE MORE THAN TWO NOMINATIONS, THE NUMBER OF NOMINATIONS SHALL BE NARROWED DOWN TO TWO AND THE PROCESS REPEATED. THE TOP TWO VOTE GETTERS SHALL MOVE ON. IF THERE IS A TIE BETWEEN THE SECOND OR MORE VOTE GETTERS, A COIN FLIP SHALL DECIDE WHO IS IN THE TOP TWO. IF THERE IS A TIE IN THE VOTE OF THE FINAL TWO, A COIN SHALL FLIPPED TO DETERMINE THE PRESIDENT OF THE COUNCIL. (MOTION PASSES 8-0)

Poll the Council

Fast - Y McNeil - Y Janssen - Y Rhoades - Y Kellerman - Y Thompson - Y Kelly -Y Poppa - Y

CMBR Poppa said he did not approve of the coin flip and felt as adults they should be able to get to a decision without the use of a coin.

Mayor Marquardt said he has thought about this issue quite a bit. He has been reading *Team of Rivals: the Political Genius of Abraham Lincoln*. It's about getting opposing sides of an issue to work together, and this issue before the Council now is about setting agendas and running the meetings. He feels that it is important for the Mayor to be involved in setting the agenda even though they may have an opposing view of the Council President.

MOTION: CMBR RHOADES MOVED AND CMBR KELLERMAN SECONDED TO CHANGE CHARTER ORDINANCE NO. 33, (Rhoades Version) A CHARTER ORDINANCE AMENDING AND REPEALING CHARTER ORDINANCE NO. 26; ALSO AMENDING AND REPEALING EXISTING SECTIONS 1-203 AND 1-203.1 OF THE CODE OF THE CITY OF ROELAND PARK, KANSAS. (MOTION PASSES 6-3 WITH CMBRS THOMPSON, KELLY AND POPPA VOTING NO.)

Poll the Council

Fast - Y McNeil - Y Janssen - Y Rhoades - Y Kellerman - Y Thompson - N Kelly - N Poppa - N
Marquardt - Y

C. Charter Ordinance 34

Mayor Marquardt clarified the difference between the Poppa version and the Rhoades version, in that the Rhoades version makes an exception for the Mayor in not making a tie-breaking vote.

CMBR Poppa said Section 1-202(b) states they will have the tie-breaking vote on all questions when the members present are equally divided. The addition is, "except as set forth in Section 1-203(a)" just approved.

MOTION: CMBR POPPA MOVED AND CMBR RHOADES SECONDED TO APPROVE CHARTER NO. 34, A CHARTER ORDINANCE EXEMPTING THE CITY OF ROELAND PARK, KANSAS FROM THE PROVISIONS OF K.S.A. 14-301 AND 14-307, RELATING TO THE POWERS AND DUTIES OF THE MAYOR AND PROVIDING SUBSTITUTE PROVISIONS THEREFORE. (MOTION PASSES 6-3; WITH CMBRS THOMPSON, KELLY AND POPPA VOTING NO.)

Poll the Council

Fast - Y McNeil - Y Janssen - Y Rhoades - Y Kellerman - Y Thompson - N Kelly - N Poppa - N
Marquardt – Y

D. Ordinance 941

City Attorney Shortlidge said this proposed amendment to the sign regulations has been discussed by the Governing Body and the Planning Commission has recommended the amendments as proposed. The main item is the substitution of the concept of government signs. The amendments that were proposed to the Planning Commission and approved by them were primarily based upon the model sign code that was prepared by the International Municipal Lawyers Association.

CMBR Janssen asked for clarification what the changes will represent. City Attorney Shortlidge referred to the staff action item summary. It will:

- add the definition of the government sign and also the manner in which government signs are regulated
- update the definition of a sign to explain what a sign is not
- add a definition for a vehicle sign
- establish sign permit fees

Mr. Shortlidge also said there were some formatting changes.

CMBR Kellerman asked for further clarification on the definition of a sign and to explain what a sign is not.

City Attorney Shortlidge read into the record what a sign is not. "Provided, however, that the following shall not be considered to be signs: Signs located completely within a closed building and not exposed to view from a street, and bumper stickers that are no larger than 18 inches in length and five inches in height."

CMBR Kellerman asked if there is a distinction between a symbol and a sign. City Attorney Shortlidge said if it falls under the definition of a sign it is a sign.

CMBR Rhoades asked about political signs. City Attorney Shortlidge said they are addressed in the ordinance as temporary signs.

CMBR Rhoades also inquired as to the process of exempting schools and churches from the sign regulations.

Ms. Jones-Lacy said this can be discussed at a later time and it would not negate the ordinance proposed at this meeting.

MOTION: CMBR RHOADES MOVED AND CMBR JANSSEN SECONDED TO TABLE THE PASSING OF ORDINANCE NO. 941, AMENDING THE ZONING CODE ON SIGN REGULATIONS AS RECOMMENDED BY THE CITY PLANNING COMMISSION. (MOTION PASSES 5-2; WITH CMBRS THOMPSON AND POPPA VOTING NO AND CMBR FAST ABSTAINING)

Poll the Council

Fast - Abstain McNeil - Y Janssen - Y Rhoades - Y Kellerman - Y Thompson - N Kelly - Y Poppa - N

CMBR Kellerman asked if there is a time limit on passing this ordinance. City Attorney Shortlidge said there is an interest to have the City ordinances in compliance with the Constitution so as not to leave the City open to any legal challenges.

There was agreement to add this discussion to the next Special Call Council meeting. If not addressed at that time, then it will be moved to the next Governing Body Workshop.

MOTION: CMBR KELLY MOVED AND CMBR POPPA SECONDED TO APPROVE ORDINANCE NO. 941, AMENDING THE ZONING CODE ON SIGN REGULATIONS AS RECOMMENDED BY THE CITY PLANNING COMMISSION. (MOTION PASSES 8-0)

X. REPORTS OF CITY OFFICIALS

A. City Administrator Report – Review 2017 Quarterly Status Report on Objectives

City Administrator Moody provided a spreadsheet containing all pertinent project information including status and date completed. He has asked the department director or person responsible to be responsible for the updates and will share on a quarterly basis with the Council to stay current on the 2017 project status. The goal is to have 3/4 done and within budget for 2017, but there is no reason it cannot all get done.

City Attorney Shortlidge said he will attend the October 3rd meeting, but asked that the sign discussion will be handled first.

CMBR Kellerman wanted to finalize the committee for the selection of the city engineer. City Administrator Moody said the Public Works committee members will include Public Works Director Leon, City Administrator Moody, Mayor Marquardt and a guest engineer.

MOTION: CMBR KELLERMAN MOVED AND CMBR RHOADES SECONDED TO ADD TO THE AGENDA DISCUSSION FOR THE CITY ENGINEER COMMITTEE. (MOTION PASSES 6-2; WITH CMBRS THOMPSON AND KELLY VOTING NO.)

CMBR Thompson said the item has already been decided and supports the decision made.

MOTION: CMBR KELLERMAN MOVED TO APPOINT THE CITY ENGINEER SELECTION COMMITTEE TO CONSIST OF CMBR KELLERMAN, CMBR MCNEIL, PUBLIC WORKS DIRECTOR LEON, FINANCE DIRECTOR MS. JONES-LACY, CITY ADMINISTRATOR MOODY, MAYOR MARQUARDT, AND A GUEST ENGINEER. (MOTION PASSES 8-0)

CMBR McNeil recommended reconvening the Governing Body Workshop after Council meetings to finish their discussions versus incorporating it into the Council agenda. Mayor Marquardt said he likes the new process of working it into the City Council agenda.

CMBR Thompson suggested if someone does not want to discuss an item at Council, they can make their recommendation during Workshop to move it to the next Workshop. CMBR Thompson said she supports the current format.

XI. ADJOURNMENT

MOTION: CMBR JANSSEN MOVED AND CMBR POPPA SECONDED TO ADJOURN. (MOTION PASSES 8-0)

(Roeland Park City Council Meeting Adjourned)

Joel Marquardt, Mayor

Kelley Bohon, City Clerk

Item Number: Consent Agenda- II.-C.
Committee 10/17/2016
Meeting Date:



City of Roeland Park

Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **September 26, 2016**
Item Type:

Recommendation:

Details:

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description



September 26

Type

Cover Memo

**CITY COUNCIL MEETING MINUTES
CITY OF ROELAND PARK, KANSAS
Roeland Park City Hall
4600 W 51st Street, Roeland Park, KS 66205
Monday, September 26, 2016 6:00 P.M.**

- Joel Marquardt, Mayor
- Becky Fast, Council Member
- Tim Janssen, Council Member
- Ryan Kellerman, Council Member

- Teresa Kelly, Council Member
- Sheri McNeil, Council Member
- Michael Poppa, Council Member
- Michael Rhoades, Council Member
- Erin Thompson, Council Member

- Keith Moody, City Administrator
- Jennifer Jones-Lacy, Asst. Admin.
- Kelley Bohon, City Clerk
- John Morris, Police Chief
- Jose Leon, Public Works Director

Admin

Poppa
Fast

Finance

Kelly
Janssen

Safety

Thompson
Rhoades

Public Works

Kellerman
McNeil

PLEDGE OF ALLEGIANCE

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

ROLL CALL

City Clerk Bohon called the roll noting that everyone was present.

Public Comment:

Nancy Clark: Ms. Clark, a resident of Shawnee, has attended water aerobics classes at Roeland Park Aquatic Center since 2012. She likes the continuity of having the dome to allow for year-round classes and hopes the Governing Body will approve the funding for the dome repair.

I. DISCUSS FUNDING PARTICIPATION AND POTENTIAL APPROVAL OF AGREEMENT WITH JCPRD.

Rhonda Pollard, JCPRD, said the replacement is an unforeseen expenditure and that \$130,000 is a large investment. Before bringing this expense to the City, they looked to their partners to see if any could contribute towards the project. The Blazers said they will donate \$20,000 towards the repairs.

Mayor Marquardt clarified the purpose of the meeting was that there was an uncertainty of whether it was a requirement under the contract with JCPRD that the City or the county pay for this replacement. There were some clarifications made, so it was decided to revisit the question in general.

CMBR Thompson said the information she previously based her decision on was that the City had an obligation to contribute half for the blower/heater. She believes that information to be incorrect and that Council decisions should be made based on accurate information, but did state she still believes the City should contribute half of the replacement cost.

CMBR Rhoades quoted Section 2 of the agreement prepared by City Attorney Shortlidge to read, "The parties agree to allocate the cost of replacing the blower/heater unit as follows: Blazer Swim Association shall pay \$20,000; the City shall pay \$55,000, and the district shall pay the balance of the cost." Mr. Rhoades said these figures are based on an estimate and would be inaccurate if final figures differ. He recommended the language should read, "The City shall pay the remaining balance not to exceed \$55, 000," with the district paying the balance of the cost.

Additionally, CMBR Rhoades said he brought forward the idea at the last meeting of extending the current contract with the county to allow for the sharing of costs on the facility past the date of January 1, 2019. He believes the contract ends in the middle of a season cycle and for future planning purposes of keeping the dome they should make the extension request at this time.

Ms. Pollard said JCPRD did pass that with the Blazers' contribution of \$20,000, they are committed to splitting the difference with the City, and whatever that amount is. However, it is in on the next month's agenda for the Rec committee to begin discussions on what happens January 2019 and how the board foresees its role.

CMBR Fast believes following Mr. Rhoades' suggestion will delay the dome repairs another month to two months. It will already be problematic getting the dome up in November and if delayed further into the winter months, then there may be no winter session. Bishop Miede is relying on this repair and the use of the pool. If repairs are not done, then it will mean no swim team for the school year. She does not feel that Roeland Park's pool repairs should be delayed because of concerns of the Shawnee Mission School District pool adding that aquatics space is at a high demand. There is also no alternative space for the Blazers to even go. The site is a premium site that is already in demand and she does not see any problems filling the space in the future with the commitment of the Catholic schools, the Blazers, the Masters and water polo. Ms. Fast said this is a wanted commodity for the area and delaying another month or two would mean no winter season.

CMBR Rhoades reviewed the monetary aspect of the pool noting that in the summer months the pool loses \$100,000 and in the winter months it loses \$300,000. He reiterated that by not extending the contract another five months will result in a loss to the City of \$250,000 in 2019. To share the contract would save the City \$100,000 which more than pays for the City's portion of the heater/blower replacement. He said the information has shown that the City does not have to pay half and recommended that a good gesture on the part of the county would be for them to state they will stay committed to the Roeland Park community and extend their contract through May of 2020 in exchange for the City paying half of the repairs. He did not foresee the City being able to sustain the pool on its own without help from the county.

CMBR Kellerman said whatever decision is made tonight, he would like to see contract extension discussions presented to the JCPRD board.

Ms. Pollard said what the county will do depends on the Council's decision tonight. If the City goes with the decision they made at their last Council meeting to support the repairs, then things are good to move forward on behalf of the county. If other action is taken, then their next board meeting is October 10th, at which time they would be presented with a new proposal and then they would vote at that point. There is also the possibility that they would not reach a decision at that time.

CMBR Poppa recognized that there are losses at the Aquatic Center, but still has not been able to see the actual cost breakdown with allocations from when membership fees are purchased. He also was unsure how much more the City would lose by the dome not being up. He said that while the City is not obligated to pay for the blower, they do have an obligation to the users of the Roeland Park Aquatic Center in keeping it open. Also if the county and the Blazers are willing to pay for 60 percent of a product that has a useful life of 18 years that can be enjoyed after that, then he will vote to support that.

CMBR Fast disagreed with CMBR Rhoades' numbers as she said she had served on the Aquatic Center Advisory Committee for years. She questioned what is considered summer and winter season as the pool does not follow the public pool schedule for seasons. She also expressed support for CMBR Poppa's statement that this is a key center amenity of the community, and if an amendment is added there will be no winter pool session. She asked Coach Gardner to address the Governing Body.

Gardner Howland, Head Coach with the Kansas City Blazers, addressed the Governing Body. He is an employee of Johnson County Parks and Recreation and added that the Blazers have supported this agreement with Roeland Park from the beginning. He felt the loss figures were inexact and that Ms. Fast's perception is correct, adding that the losses vary year to year. He said one thing not being considered is the pool is under new leadership and new management. It remains to be seen, but he believes it will be more precise, more careful, and more efficient in its operation than it has ever been before. He believes that some of the losses are reflected by capital improvements

or repairs that were essential to maintaining the pool. He said he could not speak to the county's extension of the contract, but believes no one will remove the dome in 2019. He will be an advocate going forward, whether through Blazer parent association involvement or the county, adding it will be an ongoing discussion. He said it is troubling to see that this possible discussion could hold up the heater/blower replacement process and believes that everything the county has done has shown good faith adhering to the agreement. Moving forward with the replacement buys everyone the time and the flexibility to do the right thing two years from now. Mr. Howland said he feels by not putting the dome up now might jeopardize ever putting it up again.

Mr. Holland believed that with regards to demand, it is his belief that when the Shawnee Mission School District pool opens it will cause a greater demand for the Roeland Park pool and it will be an even more unique amenity. He said once opened, the Shawnee Mission School District pool will not be endlessly available for anybody and there will be other users seeking its time. This new pool will help to improve the culture of swimming resulting in the demand and usage of the Roeland Park Aquatic Center to stay the same or go up. He also spoke to the site of the campus on the hill as one of the coolest places to be, and it is owned by the City of Roeland Park.

CMBR Rhoades wanted to make certain everyone knew the numbers he quoted were not his numbers, but those received from Ms. Jones-Lacy at the previous meeting. He was told that 26 percent of the losses come in the summer months and 74 percent come in the winter months, with 65 percent of revenue in the summer and 35 percent in the winter months.

City Administrator Moody said the City received those numbers from the county in a spreadsheet that was compiled to show revenues and expenditures by month. It does not reflect a pro-rating out of annual memberships. It was designed to help determine the City's position through the end of 2016, which is going to be a bit unique, in that, not having the dome up, but still heating water in a colder period of time. He has asked for a more detailed analysis to be put together to determine revenue and expense appropriated to the pool for the summer versus the winter. They also want to know the difference between Roeland Park users and non-City users.

City Administrator Moody read into the record the section of the agreement that says, "The county has the sole discretion to decide whether the operation of the dome is economically feasible, and may operate it as a summer only pool."

CMBR Rhoades believes that the pool is an asset and a gem that the City has, which is something he is trying to keep and by extending the contract the City gets to keep the dome longer than they might be able to if they do not extend the contract. He is looking to extend the amount of time that Roeland Park gets to keep the pool open by extending the agreement and worries it will go away in 2019. Mr. Rhoades also stated he does not want to be forced into making a decision then and that is why he is asking for it now.

CMBR McNeil said everyone pays taxes on the pool, so they need to be serious about keeping it open and in good condition. They also need to show the county the City's commitment, work with them and not become adversaries and see this back and forth issue as a dead-end road not to go down. She did state the City and county should meet face to face to discuss thoroughly what happens at the end of the contract and offered to attend those meeting. She concluded by saying she thinks the county has been great.

CMBR Kellerman said he would vote yes to go forward with repair, but would like for the county to have their discussion on the extension of the contract.

CMBR Poppa said a contract extension contingency could be harmful if the county were to say. Also if negotiations continue this only further delays the pool opening. Mr. Poppa said the blower/heater replacement and contract negotiations are two totally separate issues. He said they can have contract extension negotiations, but not contingent on the dome. He said the county is asking for half of the cost and we it to the county, owe it to the relationship with the county, owe it to the residents, the users of the pool, and to the people that have signed

agreements, paid their memberships, and paid their dues to keep the pool and not have a long lapse of no dome. This is a challenge to the City and it needs to carry this burden for the residents, for the Aquatic Center.\

CMBR Rhoades said this is not the burden of the City, but belongs to the county as it is not the City's responsibility to pay it.

MOTION: CMBR THOMPSON MOVED AND CMBR FAST SECONDED TO APPROVE SPENDING \$55,000 TO PAY FOR HALF OF THE BLOWER/HEATER DOME REPLACEMENT.

MOTION: CMBR RHOADES MOVED AND CMBR POPPA SECONDED TO AMEND THE MOTION FOR THE CITY TO PAY ONE-HALF OF THE DOME BLOWER/HEATER REPLACEMENT UP TO \$55,000.

CMBR Thompson and CMBR Fast approved that amendment.

MOTION: CMBR RHOADES MOVED AND CMBR JANSSEN SECONDED TO AMEND THE MOTION ON THE FLOOR TO EXTEND THE CURRENT AGREEMENT WITH JOHNSON COUNTY TO MAY 31, 2019, IN DOING SO THE CITY WILL PAY A PORTION AS WRITTEN OF THE ORIGINAL MOTION. (MOTION FAILS 3-5; WITH CMBRS FAST, MCNEIL, KELLY, POPPA, AND THOMPSON VOTING NO.)

MOTION: CMBR THOMPSON MOVED AND CMBR FAST SECONDED TO AMEND THE MOTION TO APPROVE SPENDING BY THE CITY IN AN AMOUNT NOT TO EXCEED \$55,000 FOR A PORTION OF THE PURCHASE AND REPLACEMENT OF THE BLOWER/HEATER FOR THE ROELAND PARK AQUATIC CENTER DOME. (MOTION PASSED 7-1; WITH CMBR RHOADES VOTING NO.)

CMBR McNeil said accepting this amendment will result in this going back to the JCPRD board and delay the dome even longer.

CMBR Fast reiterated that the Bishop Miege Swim Team might not be able to have swim team practice this season.

Ms. Pollard said there is a possibility to call a special meeting before their committee of the whole but could not guarantee a decision would be reached.

CMBR Fast said if a decision is not reached, then it is unlikely the dome will be up this winter, which means no winter swimming. The residents and all the schools will be displaced and this will be a great disservice to its users. She added that the capital expenditures at the pool played a factor in the losses.

CMBR Janssen pointed out the blower should have been ordered a month ago as that was a decision to be made by the county and should have been ordered when it was broken.

CMBR Kelly added that regardless of contract, in looking at the history of repairs or capital improvements to the pool it has been common practice for the county to come to the City to inform them of what is going on and the City has the opportunity to know what funds are being spent on. She did agree if the blower should have been ordered, it should have been ordered. She also agreed with Ms. McNeil that this topic is becoming a bit adversarial. CMBR Kelly also said she believes everyone wants to pay for it, get it done and resolve the issue of extending the contract going forward. Ms. Kelly said that following the Olympics and the U.S. success in swimming this will spur an increase in people wanting to use the facility. Even though the Shawnee Mission School District will be building a pool, guest teams will be using the Roeland Park pool for their practices and the meets will be held at the district pool. She would like to see the City move forward, pay their share and then negotiate with the county as to the future contract.

CMBR Rhoades said he will be voting no on the amended motion though he is in support of the pool to the extent of wanting to extend the contract that is currently in place. He believes the City is giving up any negotiation that the

City has by approving this purchase and no longer has any negotiation position and wants to extend the contract as long as possible.

CMBR Fast disagreed they are giving any up negotiating power. She said the power is the aquatics space for which there is so much demand in the county. Johnson County population is looking to increase and there just is not enough aquatic space to handle that increase.

CMBR McNeil said she would not support a position of help me before I help you with regards to the repairs. She said the time for contract discussions is after the repair work has been done.

MOTION: (CMBR POPPA MOVED AND CMBR JANSSEN SECONDED TO ALL THE QUESTION. (MOTION PASSED 8-0.)

MOTION: CMBR THOMPSON MOVED AND CMBR FAST SECONDED TO APPROVE A NOT TO EXCEED AMOUNT OF \$55,000 FOR THE CITY OF ROELAND PARK'S PORTION OF THE REPLACEMENT FOR THE BLOWER/HEATER. (MOTION PASSED 7-1; WITH CMBR RHOADES VOTING NO.)

POLL THE COUNCIL

Fast - Y McNeil - Y Janssen - Y Rhoades - N Kellerman - Y Thompson - Y Kelly - Y Poppa – Y

II. ADJOURNMENT

MOTION: CMBR FAST MOVED AND CMBR JANSSEN SECONDED TO ADJOURN. (MOTION PASSED 8-0)

Joel Marquardt, Mayor

Kelley Bohon, City Clerk

Item Number: Consent Agenda- II.-D.
Committee 10/17/2016
Meeting Date:



City of Roeland Park

Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **October 3, 2016**
Item Type:

Recommendation:

Details:

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description



October 3

Type

Cover Memo

**CITY COUNCIL MEETING MINUTES
CITY OF ROELAND PARK, KANSAS
Roeland Park City Hall
4600 W 51st Street, Roeland Park, KS 66205
Monday, October 3, 2016 6:00 P.M.**

- Joel Marquardt, Mayor
- Becky Fast, Council Member
- Tim Janssen, Council Member
- Ryan Kellerman, Council Member

- Teresa Kelly, Council Member
- Sheri McNeil, Council Member
- Michael Poppa, Council Member
- Michael Rhoades, Council Member
- Erin Thompson, Council Member

- Keith Moody, City Administrator
- Jennifer Jones-Lacy, Asst. Admin.
- Kelley Bohon, City Clerk
- John Morris, Police Chief
- Jose Leon, Public Works Director

Admin

Poppa
Fast

Finance

Kelly
Janssen

Safety

Thompson
Rhoades

Public Works

Kellerman
McNeil

PLEDGE OF ALLEGIANCE

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

ROLL CALL

City Clerk Bohon called the roll noting that CMBR Kelly was absent.

Ms. Bohon announced upcoming dates for October.

October 4 – 4:00 to 7:00 p.m. National Night Out to be held at City Hall

October 5 – 7:30 a.m. Walk to School Day

October 8 – 11:00 a.m. to 3:00 p.m. Barktoberfest

October 15 – 9:00 to 11:00 Nall Park Ribbon Cutting

6:00 p.m. to 9:00 p.m. Chili and County Music Jamboree

~~October 26~~ – Community Forum will **not** be held with a future date to be determined.

December 6 – Tree Lighting at Sweany Park

December 9 – 6:00 p.m. Staff Holiday Party

I. EXECUTIVE SESSION

MOTION: CMBR POPPA MOVED AND CMBR THOMPSON SECONDED TO RECESS INTO EXECUTIVE SESSION PURSUANT TO THE PERSONNEL MATTERS OF NON-ELECTED PERSONNEL EXEMPTION TO THE OPEN MEETINGS ACT IN ORDER TO CONDUCT THE CITY ADMINISTRATOR’S ANNUAL EVALUATION WITH THE OPEN MEETING TO RESUME AT 6:32 P.M. (MOTION PASSED 7-0)

(City Council Meeting in Recess until 6:37 p.m.)

Mayor Marquardt reconvened the meeting to announce a further recess until 7:45 p.m. before resuming the executive session.

MOTION: CMBR POPPA MOVED AND CMBR THOMPSON SECONDED TO RECESS INTO EXECUTIVE SESSION PURSUANT TO THE PERSONNEL MATTERS OF NON-ELECTED PERSONNEL EXEMPTION TO THE OPEN MEETINGS ACT IN ORDER TO CONDUCT THE CITY ADMINISTRATOR’S ANNUAL EVALUATION WITH THE OPEN MEETING TO RESUME AT 7:45 P.M. (MOTION PASSED 7-0)

(City Council Meeting in Recess until 7:45 p.m.)

MOTION: CMBR POPPA MOVED AND CMBR MCNEIL SECONDED TO RECESS INTO EXECUTIVE SESSION PURSUANT TO THE PERSONNEL MATTERS OF NON-ELECTED PERSONNEL EXEMPTION TO THE OPEN MEETINGS ACT IN ORDER TO CONDUCT THE CITY ADMINISTRATOR'S ANNUAL EVALUATION WITH THE OPEN MEETING TO RESUME AT 8:20 P.M. (MOTION PASSED 7-0)

(City Council Meeting in Recess until 8:20 p.m.)

Mayor Marquardt said the Governing Body will take a 10-minute recess and then meet with the City Attorney at 8:30.

(City Council Meeting in Recess from 8:20 p.m. to 8:30 p.m.)

MOTION: CMBR POPPA MOVED AND CMBR RHOADES SECONDED TO RECESS INTO EXECUTIVE SESSION PURSUANT TO THE PERSONNEL MATTERS OF NON-ELECTED PERSONNEL EXEMPTION TO THE OPEN MEETINGS ACT IN ORDER TO CONDUCT THE CITY ADMINISTRATOR'S ANNUAL EVALUATION WITH THE OPEN MEETING TO RESUME AT 9:10 P.M. (MOTION PASSED 7-0)

(City Council Meeting in Recess until 9:10 p.m.)

MOTION: CMBR POPPA MOVED AND CMBR MCNEIL SECONDED TO RECESS INTO EXECUTIVE SESSION IN ORDER TO CONDUCT THE CITY ADMINISTRATOR'S ANNUAL EVALUATION WITH THE OPEN MEETING TO RESUME AT 9:32 P.M. (MOTION PASSED 7-0)

(City Council Meeting in Recess until 9:32 p.m.)

MOTION: CMBR POPPA AND CMBR MCNEIL SECONDED TO RECESS INTO EXECUTIVE SESSION PURSUANT TO THE PERSONNEL MATTERS OF NON-ELECTED PERSONNEL EXEMPTION TO THE OPEN MEETINGS ACT IN ORDER TO CONDUCT THE CITY ADMINISTRATOR'S ANNUAL EVALUATION WITH THE OPEN MEETING TO RESUME AT 9:55 P.M. (MOTION PASSED 7-0)

Mayor Marquardt said the Governing Body will return to Executive Session and will call for the City Administrator to join the meeting.

MOTION: CMBR POPPA AND CMBR MCNEIL SECONDED TO RECESS INTO EXECUTIVE SESSION TO DISCUSS PERSONNEL MATTERS OF THE CITY ADMINISTRATOR'S PERFORMANCE EVALUATION WITH THE OPEN MEETING TO RESUME AT 10:18 P.M. (MOTION PASSED 7-0)

(City Council Meeting in Recess until 10:18 p.m.)

MOTION: CMBR POPPA AND CMBR MCNEIL SECONDED TO RECESS INTO EXECUTIVE SESSION PURSUANT TO THE PERSONNEL MATTERS OF NON-ELECTED PERSONNEL EXEMPTION TO THE OPEN MEETINGS ACT IN ORDER TO CONDUCT THE CITY ADMINISTRATOR'S ANNUAL EVALUATION WITH THE OPEN MEETING TO RESUME AT 10:35 P.M. (MOTION PASSED 7-0)

(City Council Meeting in Recess until 10:35 p.m.)

MOTION: CMBR POPPA AND CMBR MCNEIL SECONDED TO RECESS INTO EXECUTIVE SESSION PURSUANT TO THE PERSONNEL MATTERS OF NON-ELECTED PERSONNEL EXEMPTION TO THE OPEN MEETINGS ACT IN ORDER TO CONDUCT THE CITY ADMINISTRATOR'S ANNUAL EVALUATION WITH THE OPEN MEETING TO RESUME AT 11:00 P.M. (MOTION PASSED 7-0)

(City Council Meeting in Recess until 11:00 p.m.)

Mayor Marquardt reconvened the open meeting.

CMBR Poppa reviewed the general changes made to the contract.

In Section 3(c), given a minimum of six months' severance, up to nine months' severance, and one additional month for every 12 full months served for termination without cause.

Added a clause that states the employee has 60 days to terminate a contract from a date of an event where the City wrongfully discusses something in public about the employee.

The City agrees to pay the employee \$102,000 annually, which is to be paid \$3,923.07 bi-weekly.

Moving expenses have been removed from the initial agreement. Residency has been changed to indicate that the employee must maintain his residency in Johnson County, Kansas through employment.

MOTION: CMBR POPPA MOVED AND CMBR THOMPSON SECONDED TO APPROVE THE EMPLOYMENT AGREEMENT MADE AND ENTERED INTO THIS THIRD DAY OF OCTOBER 2016, TO BE EFFECTIVE AS OF OCTOBER 7, 2016, BY AND BETWEEN THE CITY OF ROELAND PARK, KANSAS, A MUNICIPAL CORPORATION, HEREINAFTER REFERRED TO AS THE CITY, AND KEITH G. MOODY, HEREINAFTER REFERRED TO AS THE EMPLOYEE, CONTINGENT UPON LEGAL COUNSEL REVIEW. (MOTION PASSED 7-0)

II. ADJOURNMENT

MOTION: CMBR THOMPSON MOVED AND CMBR MCNEIL SECONDED TO ADJOURN. (MOTION PASSED 7-0)

Joel Marquardt, Mayor

Kelley Bohon, City Clerk

Item Number: Applications/Presentations- A.-1.
Committee 10/17/2016
Meeting Date:



City of Roeland Park

Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **Parks Update – Jennifer Provyn**
Item Type:

Recommendation:

Details:

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

Item Number: Applications/Presentations- A.-2.
Committee 10/17/2016
Meeting Date:



City of Roeland Park
Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **ETC – Citizen Satisfaction Survey**
Item Type:

Recommendation:

Details:

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description



Citizen Survey

Type

Cover Memo

2016 Community Survey

City of Roeland Park, Kansas

Presented by

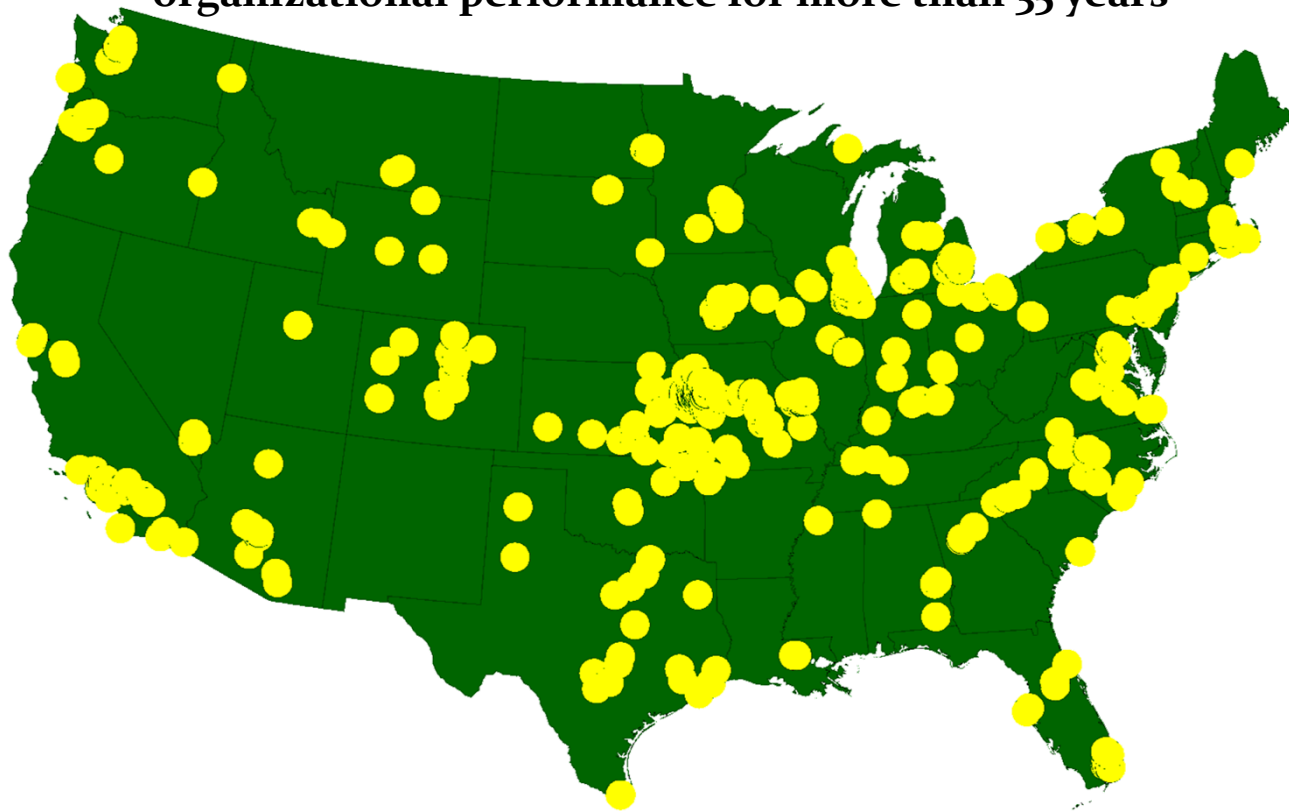


October 17, 2016

ETC Institute

A National Leader in Market Research for Local Governmental Organizations

...helping City and county governments gather and use survey data to enhance
organizational performance for more than 35 years



More than 2,100,000 Persons Surveyed Since 2006
for more than 800 cities in 49 States

Agenda

- **Purpose and Methodology**
- **Bottom Line Upfront**
- **Major Findings**
- **Summary**
- **Questions**

Purpose

- **To objectively assess citizen satisfaction with the delivery of major City services**
- **To measure trends from previous surveys**
- **To compare the City's performance with residents regionally and nationally**
- **To help determine priorities for the community**

Methodology

- **Survey Description**
 - ❑ third Community Survey conducted for the City
 - ❑ included many of the same questions that were asked in previous years
- **Method of Administration**
 - ❑ By mail, phone and online to all households in the City
 - ❑ each survey took approximately 15-20 minutes to complete
- **Sample Size:**
 - ❑ Goal: 400 surveys
 - ❑ Actual: 515 surveys
- **Confidence level:** 95⁰%
- **Margin of error:** +/- 4.3⁰% overall

Good representation throughout the City

©2015 CALIPER; ©2015 HERE

Roeland Park 2016 Community Survey

Bottom Line Up Front

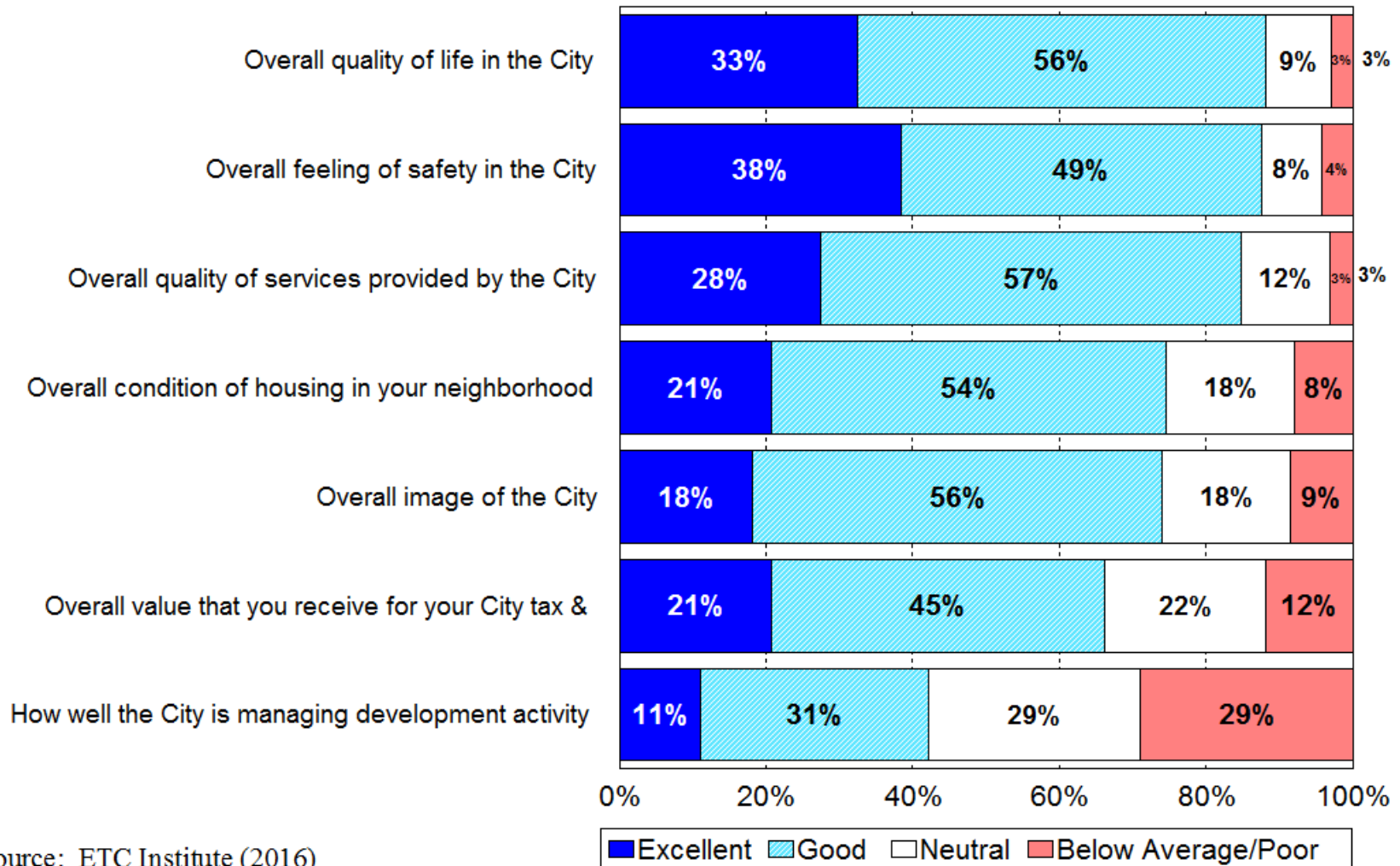
- **Residents Have a Very Positive Perception of the City**
 - ❑ 96% rated Roeland Park as an excellent or good place to live
 - ❑ 89% rated Roeland Park as an excellent or good place to raise children
- **The City Is Moving in the Right Direction**
 - ❑ The City's overall satisfaction index is higher than 2013 and 2008
- **Satisfaction with City Services is Much Higher in Roeland Park Than Other Communities**
 - ❑ The City rated 31% above the KC Metro Average and 30% above the U.S. Average in the overall quality of City services
 - ❑ The City rated above the KC Metro Average in 38 of 46 areas, and above the U.S. Average in 35 of 46 areas that were compared
- **Overall priorities for improvement over the next 2 years:**
 - ❑ Maintenance of streets, buildings and facilities
 - ❑ Parks and recreation programs and facilities
 - ❑ Enforcement of City codes and ordinances

Major Finding #1

Residents Have a Very Positive
Perception of the City

Q5. Rating Items that Influence your Perception of the City of Roeland Park

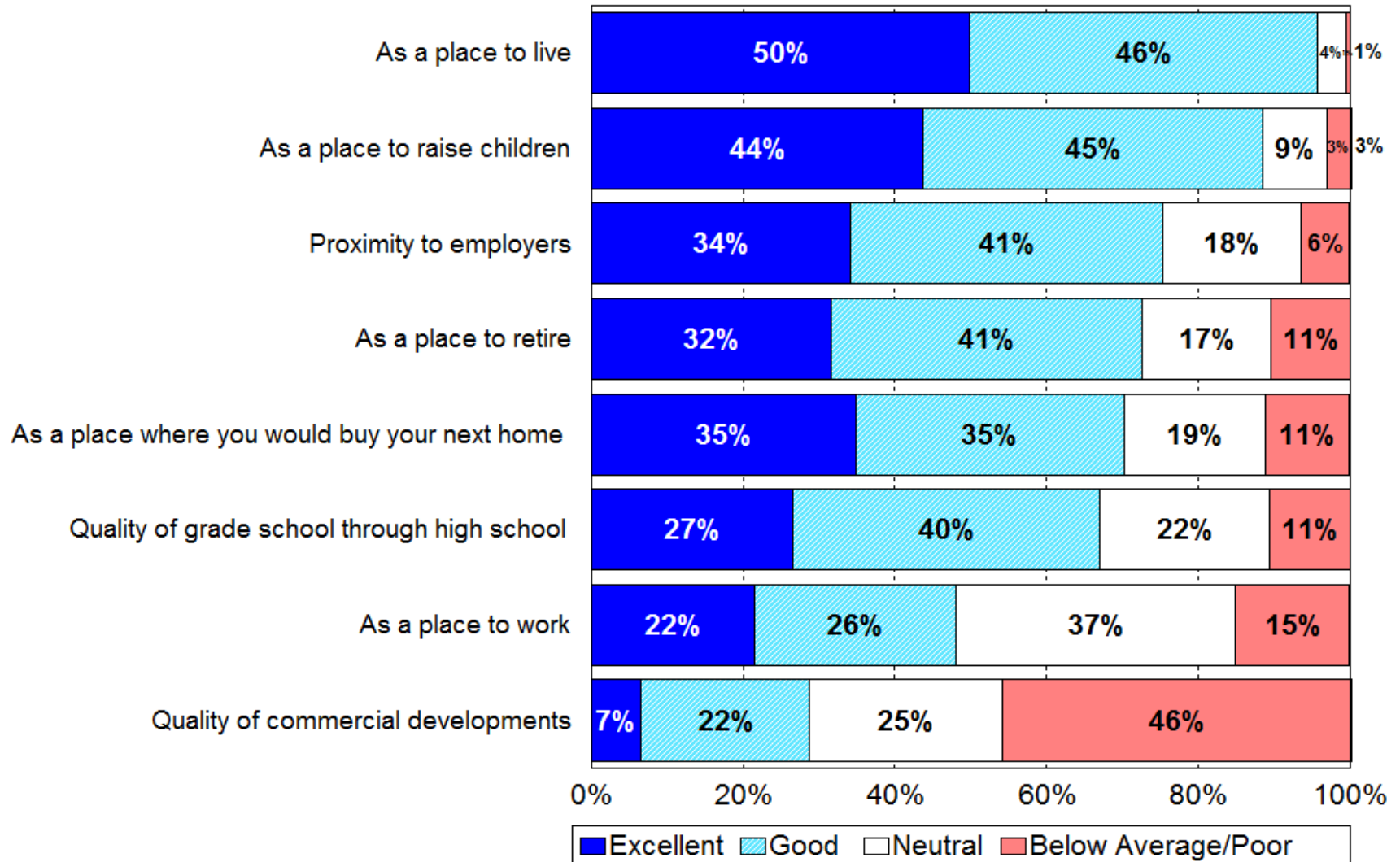
by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (Excluding "Don't Know")



Most Residents Gave Positive Ratings for the Overall Quality of Life, the Overall Feeling of Safety, and the Overall Quality of Services Provided by the City

Q3. Rating the Quality of Life in Roeland Park

by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (Excluding "Don't Know")

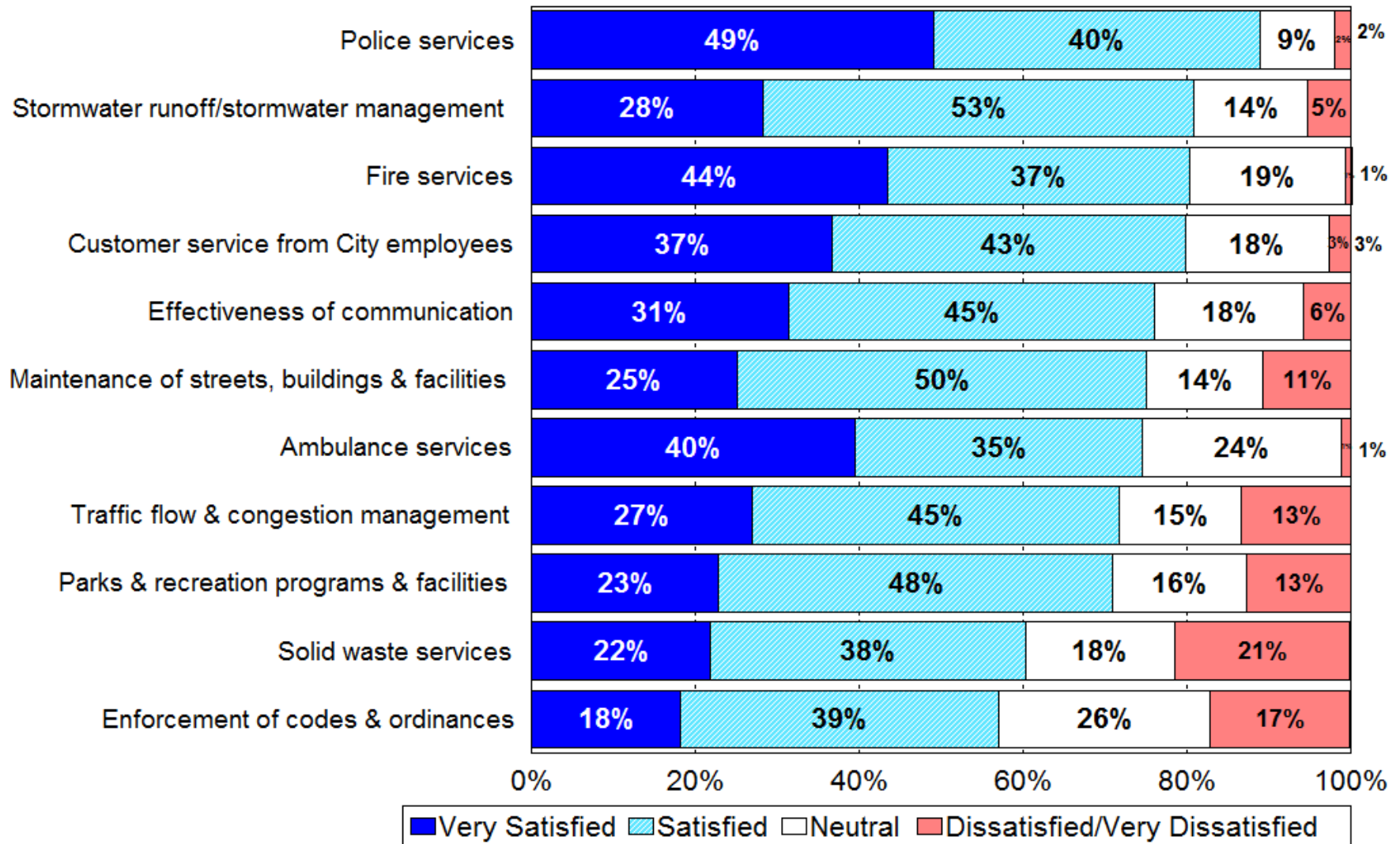


Source: ETC Institute (2016)

Most Residents Gave Positive Ratings for Roeland Park as a Place to Live and Raise Children

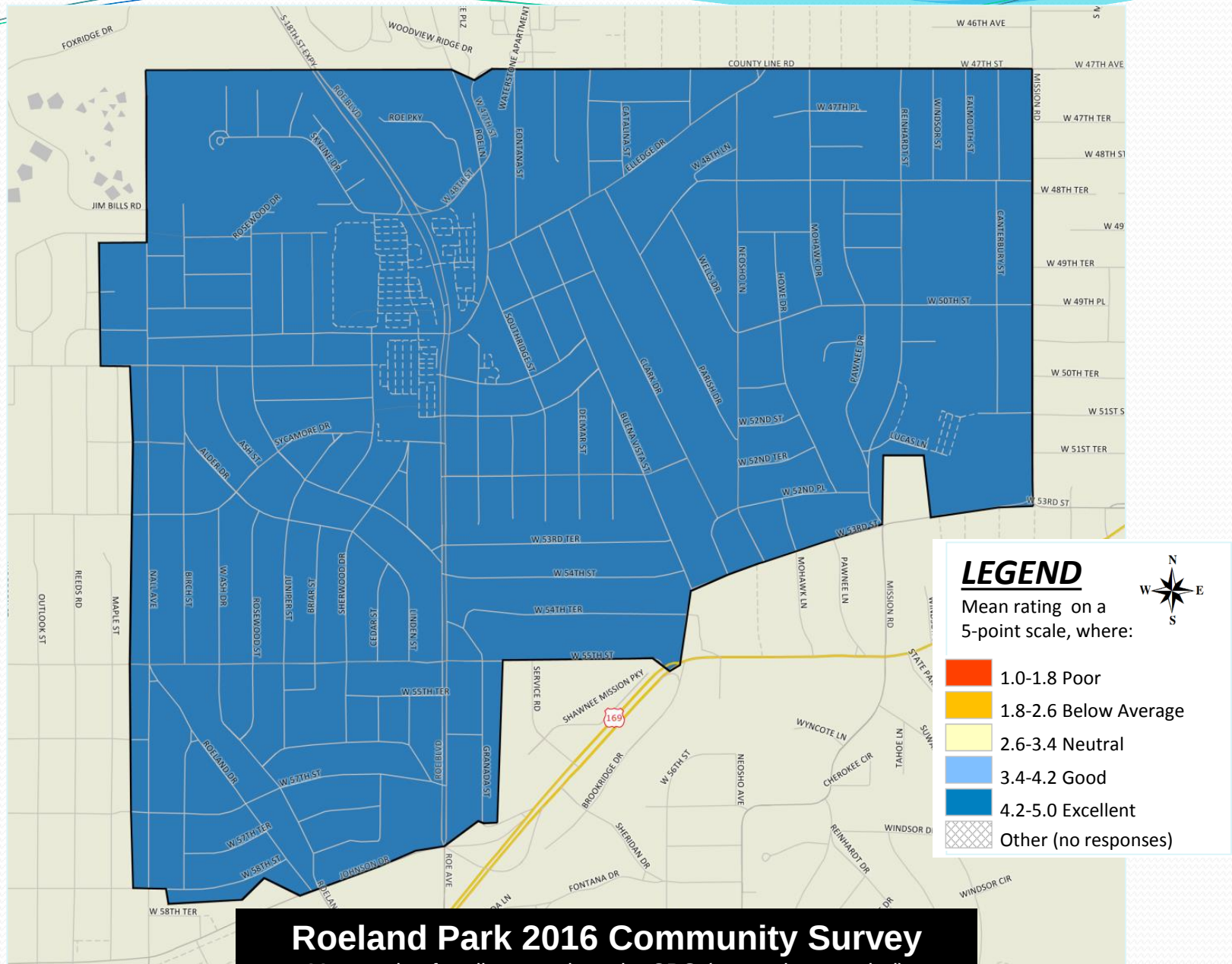
Q1. Overall Satisfaction with Major Categories of City Services

by percentage of respondents who rated the item as a 1 to 5 on a 5-point scale (Excluding "Don't Know")

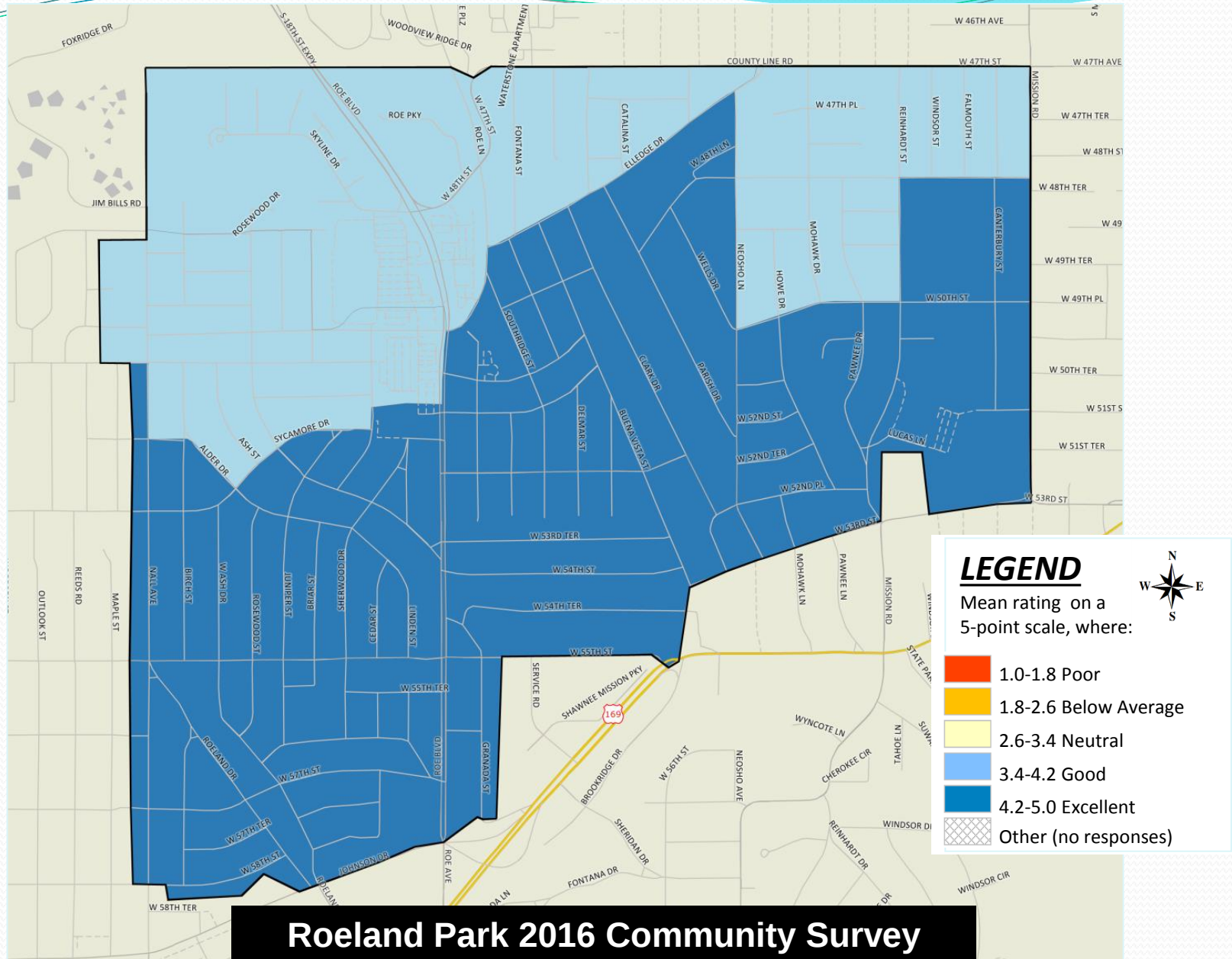


Dissatisfaction Is Low in All Areas That Were Rated

Rating the City as a Place to Live



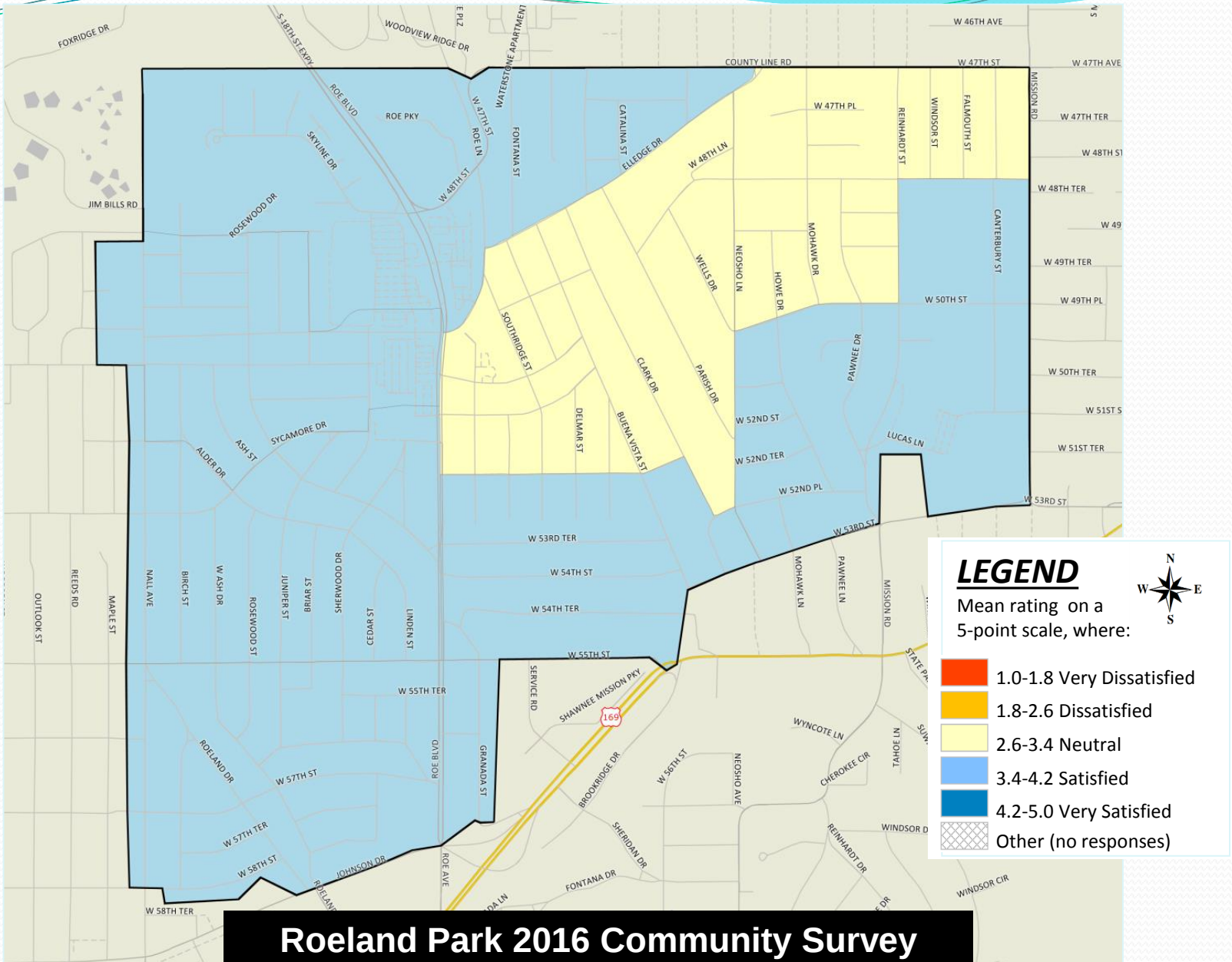
Overall Feeling of Safety in the City



Roeland Park 2016 Community Survey

Mean rating for all respondents by CBG (merged as needed)

Overall Enforcement of Codes and Ordinances



Roeland Park 2016 Community Survey

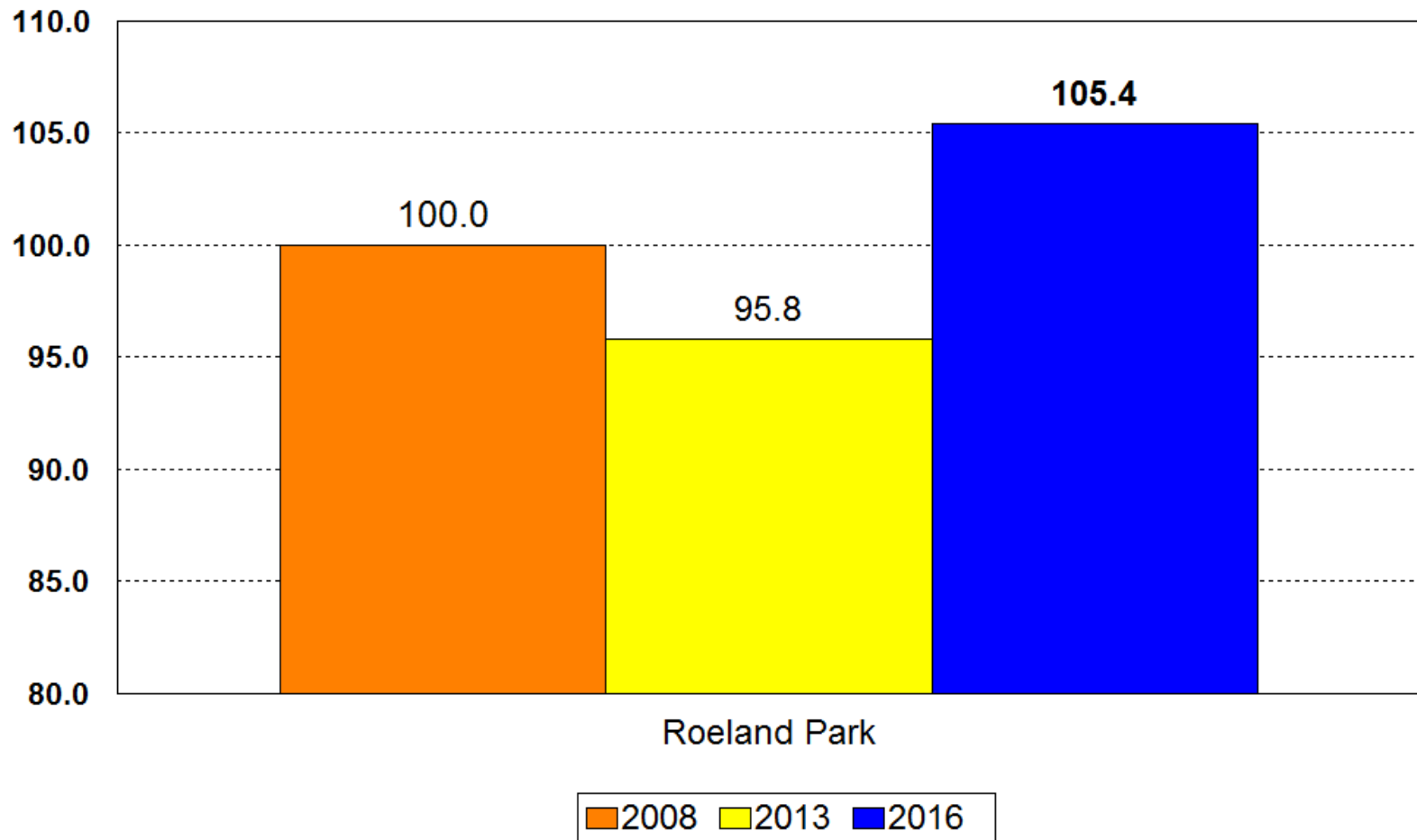
Mean rating for all respondents by CBG (merged as needed)

Major Finding #2

The City Is Moving in the
Right Direction

Overall Satisfaction Index 2008 thru 2016

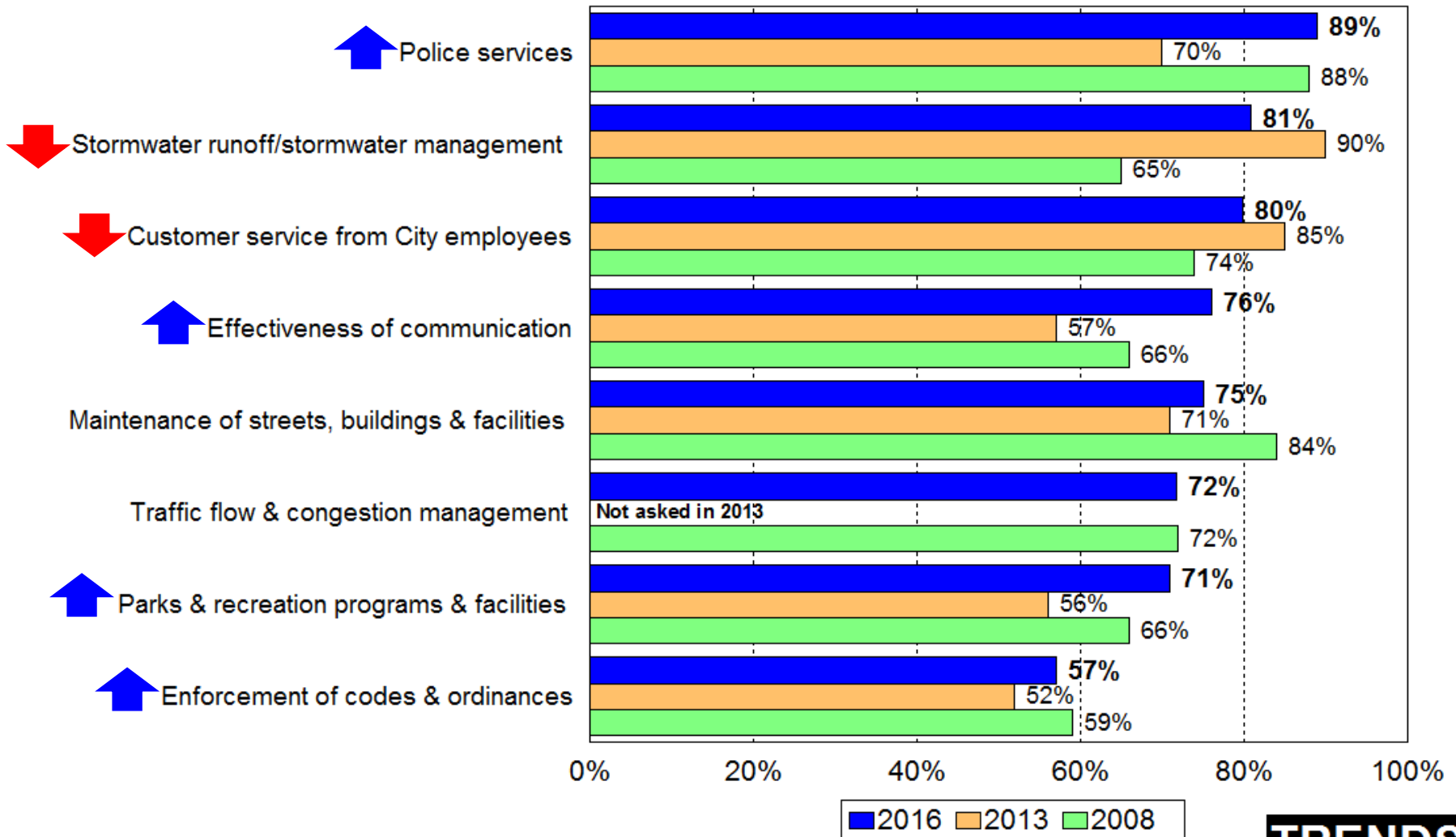
derived from the mean overall satisfaction rating provided by residents
Year 2008=100



**The Overall Satisfaction Index for Roeland Park is 9.6 Points Higher Than in 2013, and
5.4 Points Higher Than in 2008**

Overall Satisfaction with Major Categories of City Services **TRENDS: 2016 vs. 2013 vs. 2008**

by percentage of respondents who rated the item 4 or 5 on a 5-point scale
where 5 was "very satisfied" and 1 was "very dissatisfied"



Source: ETC Institute (2016)

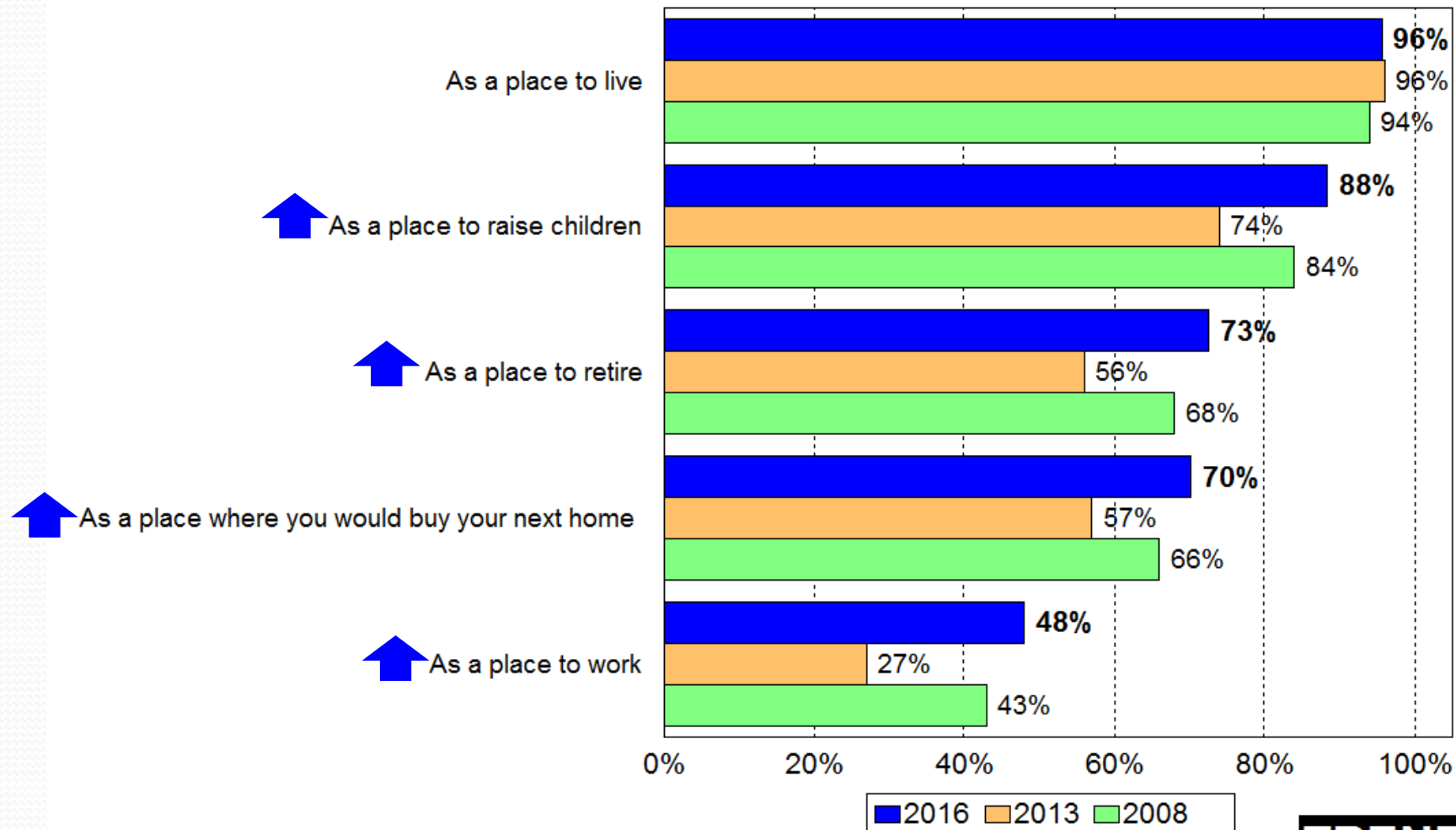
TRENDS

Significant Increases From 2013: ↑ **Significant Decreases From 2013:** ↓

Rating the Quality of Life in Roeland Park

TRENDS: 2016 vs. 2013 vs. 2008

by percentage of respondents who rated the item 4 or 5 on a 5-point scale
where 5 was "excellent" and 1 was "poor"



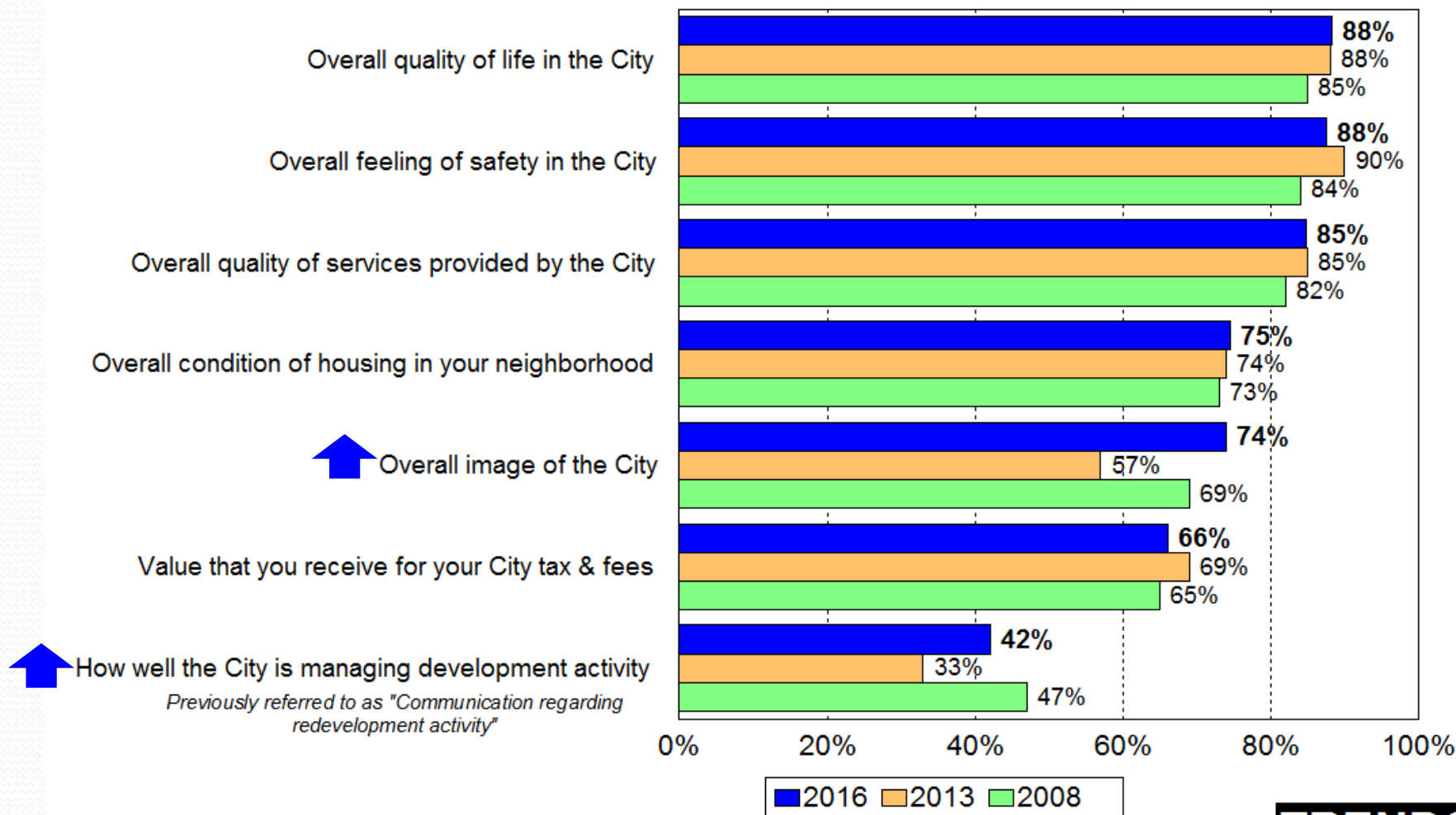
Source: ETC Institute (2016)

TRENDS

Significant Increases From 2013:  Significant Decreases From 2013: 

Rating Items that Influence your Perception of the City of Roeland Park TRENDS: 2016 vs. 2013 vs. 2008

by percentage of respondents who rated the item 4 or 5 on a 5-point scale
where 5 was "excellent" and 1 was "poor"



Source: ETC Institute (2016)

TRENDS

Significant Increases From 2013: ↑ Significant Decreases From 2013: ↓

Major Finding #3

Overall Satisfaction with City Services Is Higher in Roeland Park Than in Other Communities

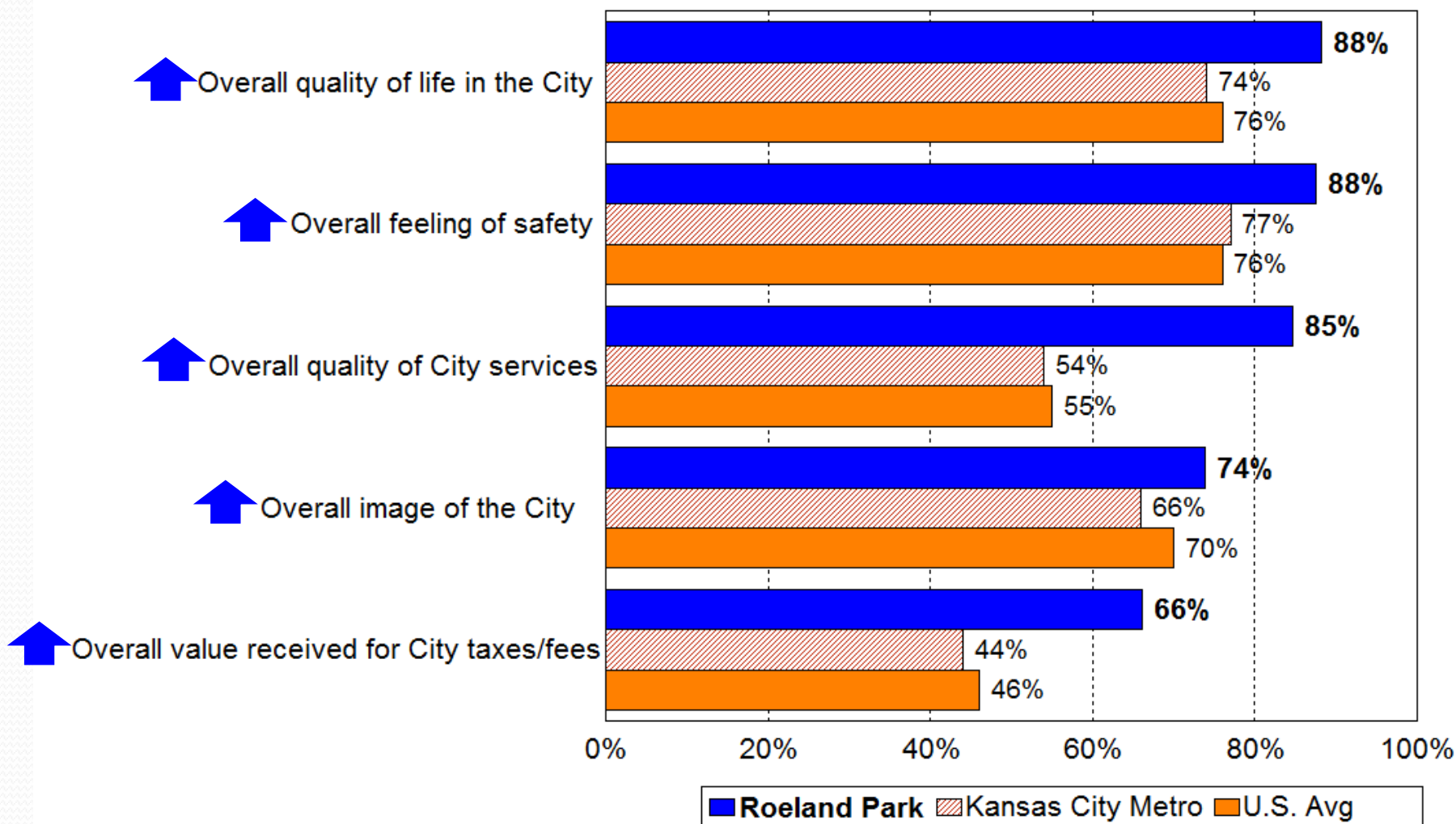
Benchmarking Comparisons

Key Areas Rated in the Top 25% in the K.C. Metro Area

- ☐ Overall Quality of Services Provided by the City
- ☐ Overall Quality of Life in the City
- ☐ City as a Place to Live
- ☐ City as a Place to Raise Children
- ☐ Customer Service from City Employees
- ☐ Effectiveness of Communication with the Public
- ☐ Overall Quality of Police Services
- ☐ Overall Maintenance of Streets/Buildings
- ☐ City's Stormwater Runoff System
- ☐ Traffic Flow and Congestion Management

Satisfaction with Issues that Influence Perceptions of the City: City of Roeland Park vs. Kansas City Metro vs. U.S.

by percentage of respondents who rated the item 4 or 5 on a 5-point scale
where 5 was "very satisfied" and 1 was "very dissatisfied"

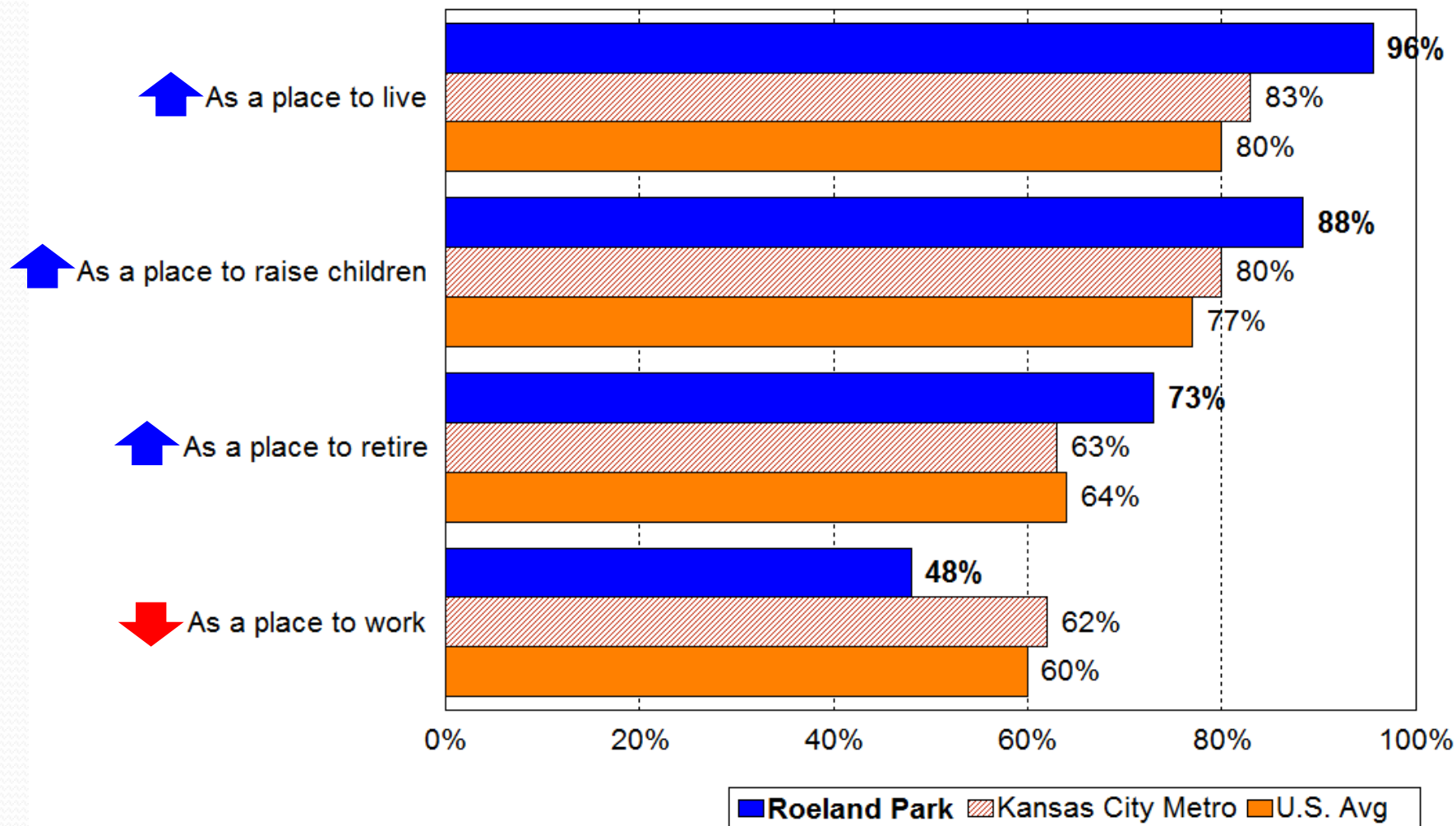


Significantly Higher: ↑

Significantly Lower: ↓

Rating of the Community Where Residents Live: Roeland Park vs. Kansas City Metro vs. U.S.

by percentage of respondents who rated the item as a 4 or 5 on a 5-point scale
where 5 was "excellent"



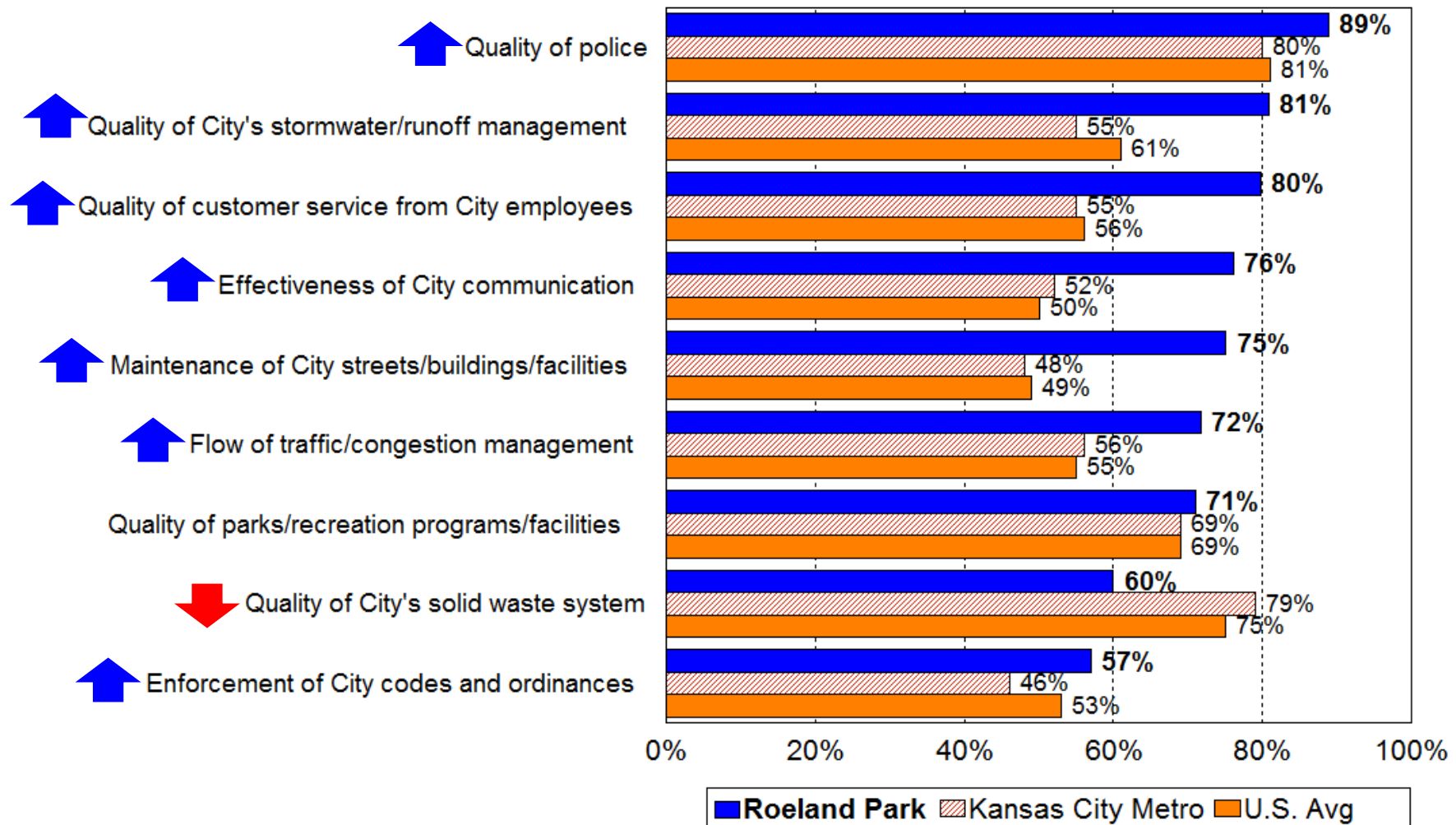
Source: ETC Institute (2016)

Significantly Higher: ↑

Significantly Lower: ↓

Overall Satisfaction with City Services: City of Roeland Park vs. Kansas City Metro vs. U.S.

by percentage of respondents who rated the item 4 or 5 on a 5-point scale
where 5 was "very satisfied" and 1 was "very dissatisfied"



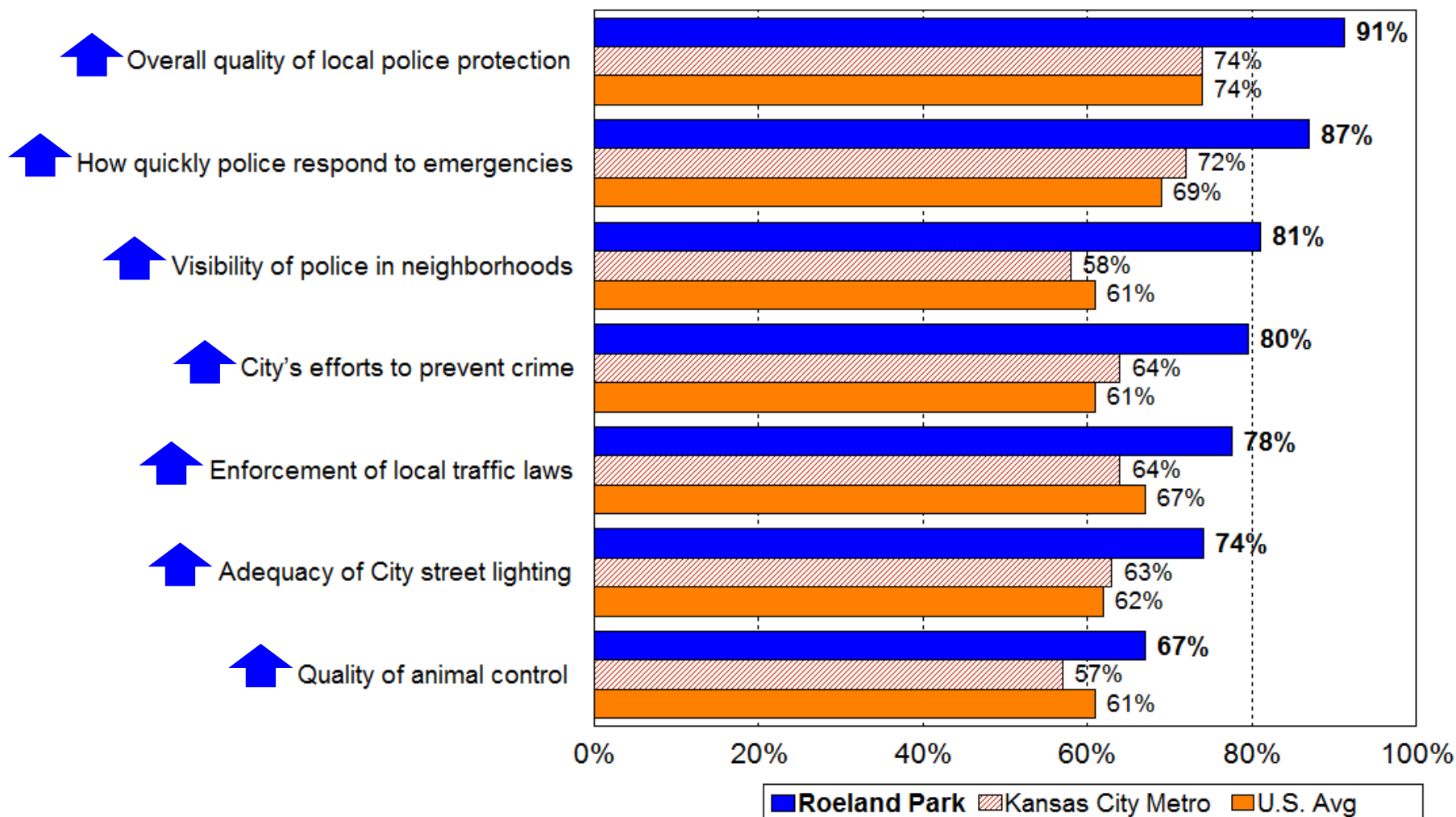
Source: ETC Institute (2016)

Significantly Higher: ↑

Significantly Lower: ↓

Overall Satisfaction with Public Safety: City of Roeland Park vs. Kansas City Metro vs. U.S.

by percentage of respondents who rated the item 4 or 5 on a 5-point scale
where 5 was "very satisfied" and 1 was "very dissatisfied"



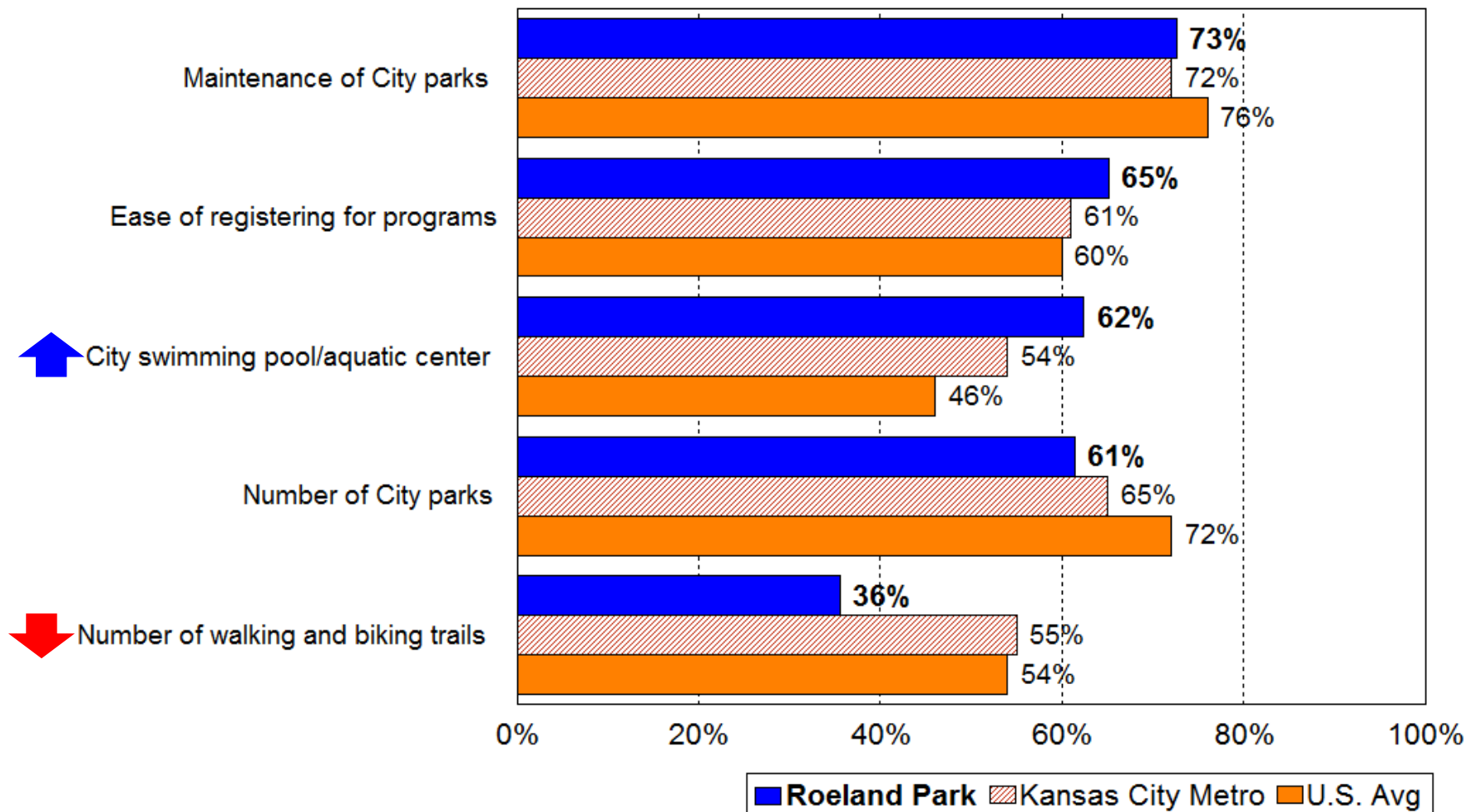
Source: ETC Institute (2016)

Significantly Higher: ↑

Significantly Lower: ↓

Overall Satisfaction with Parks and Recreation Services: City of Roeland Park vs. Kansas City Metro vs. U.S.

by percentage of respondents who rated the item 4 or 5 on a 5-point scale
where 5 was "very satisfied" and 1 was "very dissatisfied"

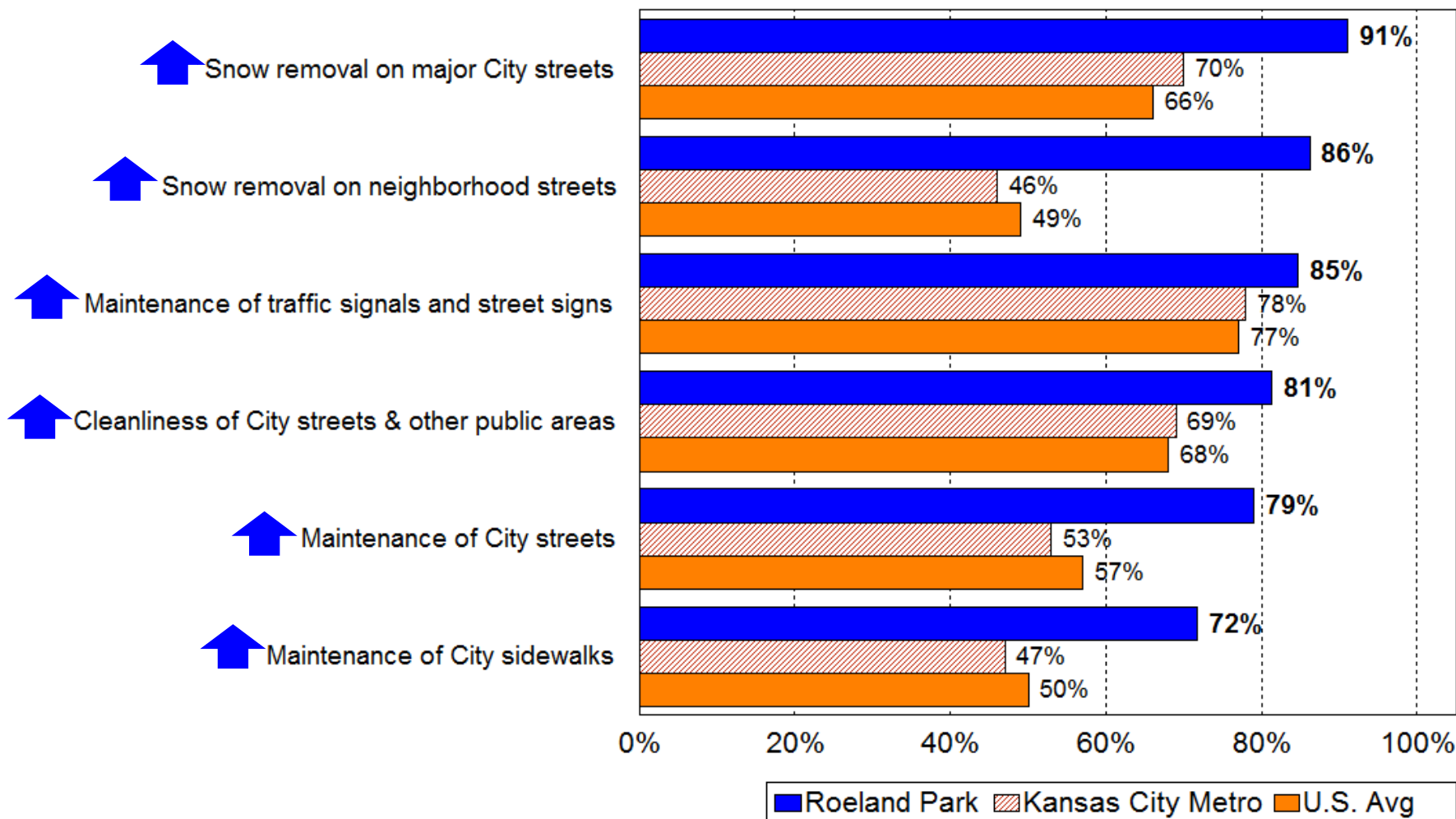


Significantly Higher: ↑

Significantly Lower: ↓

Overall Satisfaction with Maintenance Services: City of Roeland Park vs. Kansas City Metro vs. U.S

by percentage of respondents who rated the item 4 or 5 on a 5-point scale
where 5 was "very satisfied" and 1 was "very dissatisfied"



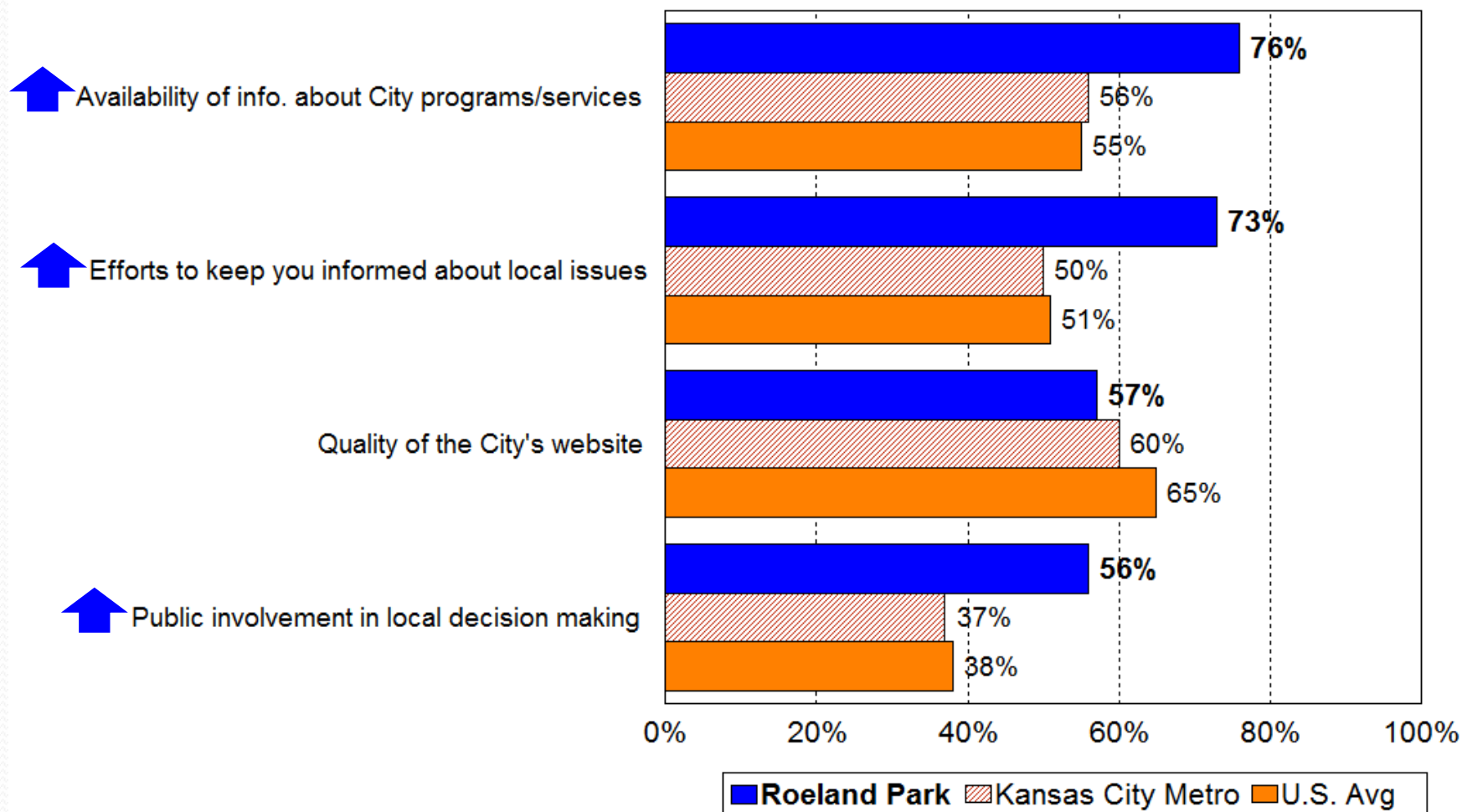
Source: ETC Institute (2016)

Significantly Higher: ↑

Significantly Lower: ↓

Overall Satisfaction with Communication: City of Roeland Park vs. Kansas City Metro vs. U.S.

by percentage of respondents who rated the item 4 or 5 on a 5-point scale
where 5 was "very satisfied" and 1 was "very dissatisfied"



Significantly Higher: ↑

Significantly Lower: ↓

Major Finding #4 Priorities for Investment

2016 Importance-Satisfaction Rating

City of Roeland Park

Major Categories of City Services

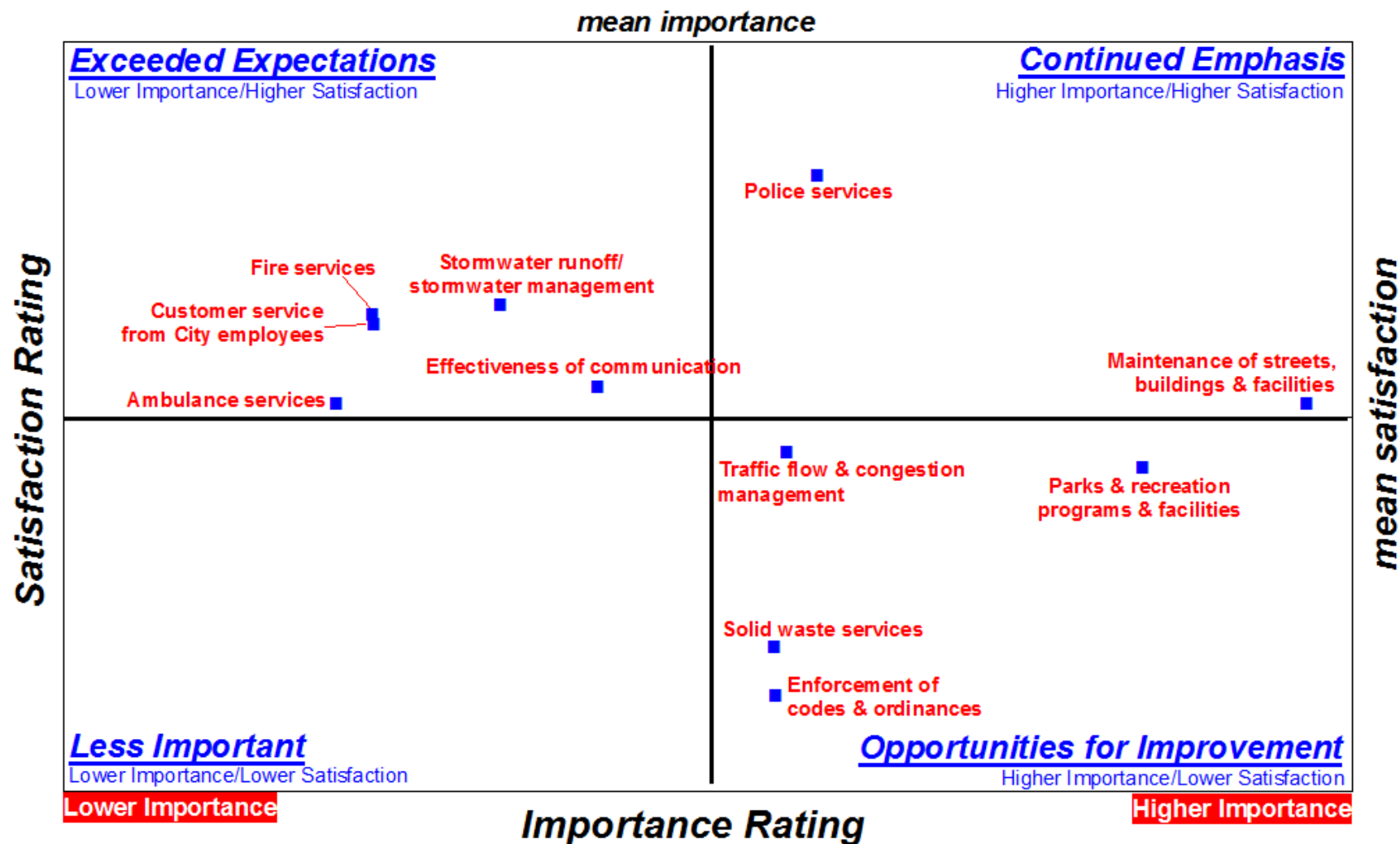
Category of Service	Most Important %	Most Important Rank	Satisfaction %	Satisfaction Rank	Importance-Satisfaction Rating	I-S Rating Rank
High Priority (IS .10-.20)						
Maintenance of streets, buildings & facilities	54%	1	75%	6	0.1355	1
Parks & recreation programs & facilities	46%	2	71%	9	0.1328	2
Enforcement of codes & ordinances	26%	5	57%	11	0.1135	3
Solid waste services	26%	6	60%	10	0.1044	4
Medium Priority (IS <.10)						
Traffic flow & congestion management	27%	4	72%	8	0.0761	5
Effectiveness of communication	17%	7	76%	5	0.0406	6
Police services	29%	3	89%	1	0.0317	7
Stormwater runoff/stormwater management	12%	8	81%	2	0.0228	8
Customer service from City employees	5%	9	80%	4	0.0105	9
Fire services	5%	10	80%	3	0.0100	10
Ambulance services	3%	11	75%	7	0.0081	11

Overall Priorities: 

City of Roeland Park Community Survey Importance-Satisfaction Assessment Matrix

-Major Categories of City Services-

(points on the graph show deviations from the mean importance and satisfaction ratings given by respondents to the survey)



2016 Importance-Satisfaction Rating

City of Roeland Park

Public Safety Services

Category of Service	Most Important %	Most Important Rank	Satisfaction %	Satisfaction Rank	Importance-Satisfaction Rating	I-S Rating Rank
<u>High Priority (IS .10-.20)</u>						
The City's efforts to prevent crime	51%	1	80%	4	0.1047	1
<u>Medium Priority (IS <.10)</u>						
Adequacy of City street lighting	38%	4	74%	6	0.0982	2
The visibility of police in neighborhoods	46%	2	81%	3	0.0882	3
Northeast Johnson County Animal Control	16%	7	67%	7	0.0530	4
Enforcement of local traffic laws	18%	6	78%	5	0.0392	5
Overall quality of local police protection	38%	3	91%	1	0.0338	6
How quickly police officers respond to emergencies	24%	5	87%	2	0.0317	7

Public Safety Priorities:

2016 Importance-Satisfaction Rating

City of Roeland Park

Parks and Recreation

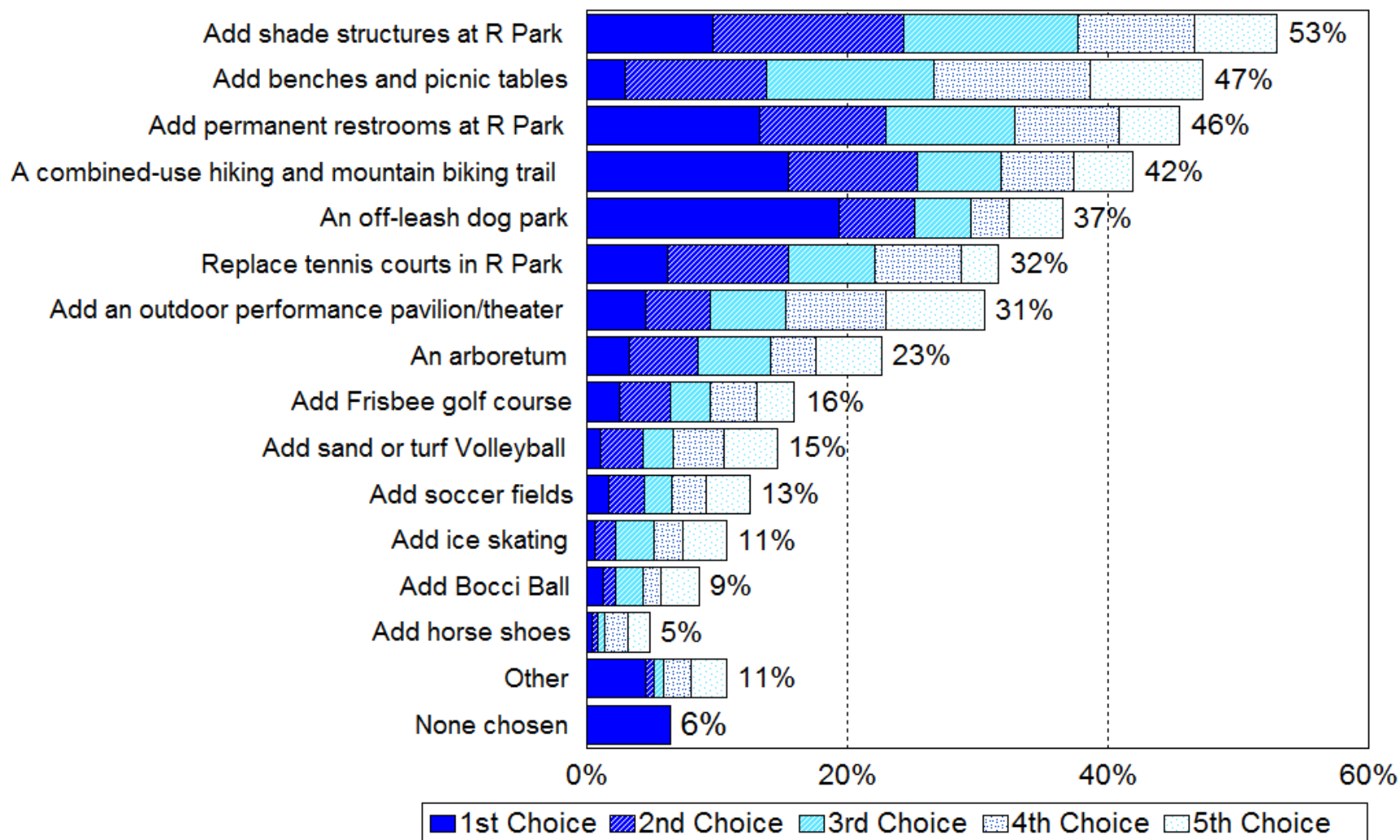
Category of Service	Most Important %	Most Important Rank	Satisfaction %	Satisfaction Rank	Importance-Satisfaction Rating	I-S Rating Rank
<u>Very High Priority (IS >.20)</u>						
Number of walking & biking trails	40%	1	36%	12	0.2548	1
<u>High Priority (IS .10-.20)</u>						
Quality of the Community Center	26%	4	53%	11	0.1222	2
Maintenance of City parks	39%	2	73%	1	0.1066	3
<u>Medium Priority (IS <.10)</u>						
Overall appearance of City parks	32%	3	70%	3	0.0948	4
Quality of the Aquatics Center	18%	5	62%	6	0.0681	5
Number of City parks	17%	6	61%	7	0.0656	6
Quality of Art in public places	15%	7	59%	9	0.0630	7
Fees charged for memberships, recreation programs & f	13%	9	56%	10	0.0556	8
City-sponsored special events	12%	10	61%	8	0.0453	9
Quality of playground equipment	14%	8	69%	4	0.0428	10
How close neighborhood parks are to your home	6%	11	71%	2	0.0159	11
Ease of registering for programs	4%	12	65%	5	0.0122	12

Parks and Recreation Priorities:

Other Findings

Q11. Top Five Most Important Improvements You Would Like to See Made to City Parks

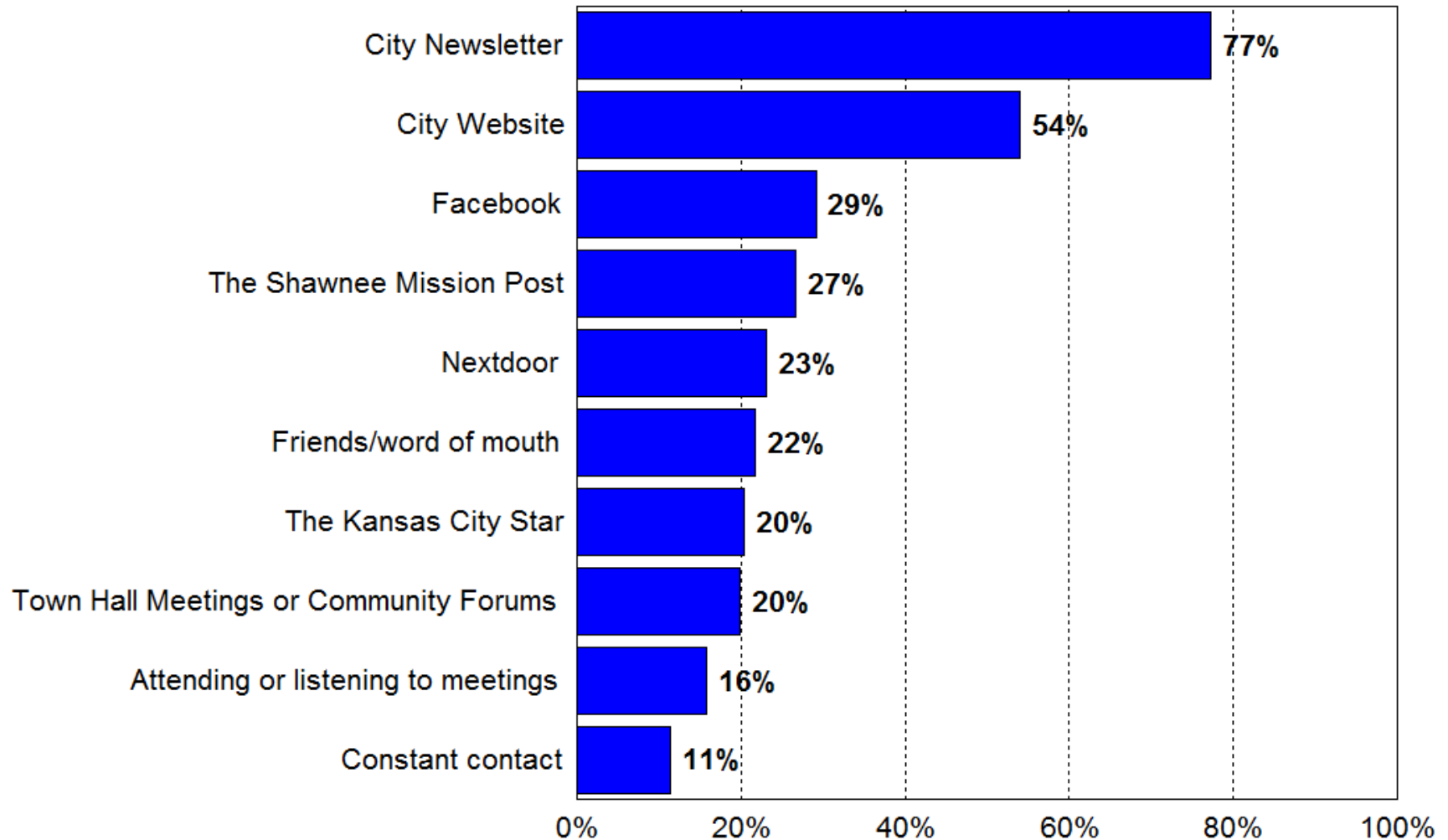
by percentage of respondents who selected the item as one of their top five choices



Source: ETC Institute (2016)

Q17. From What Sources Would You Most Like to Get Information About the City

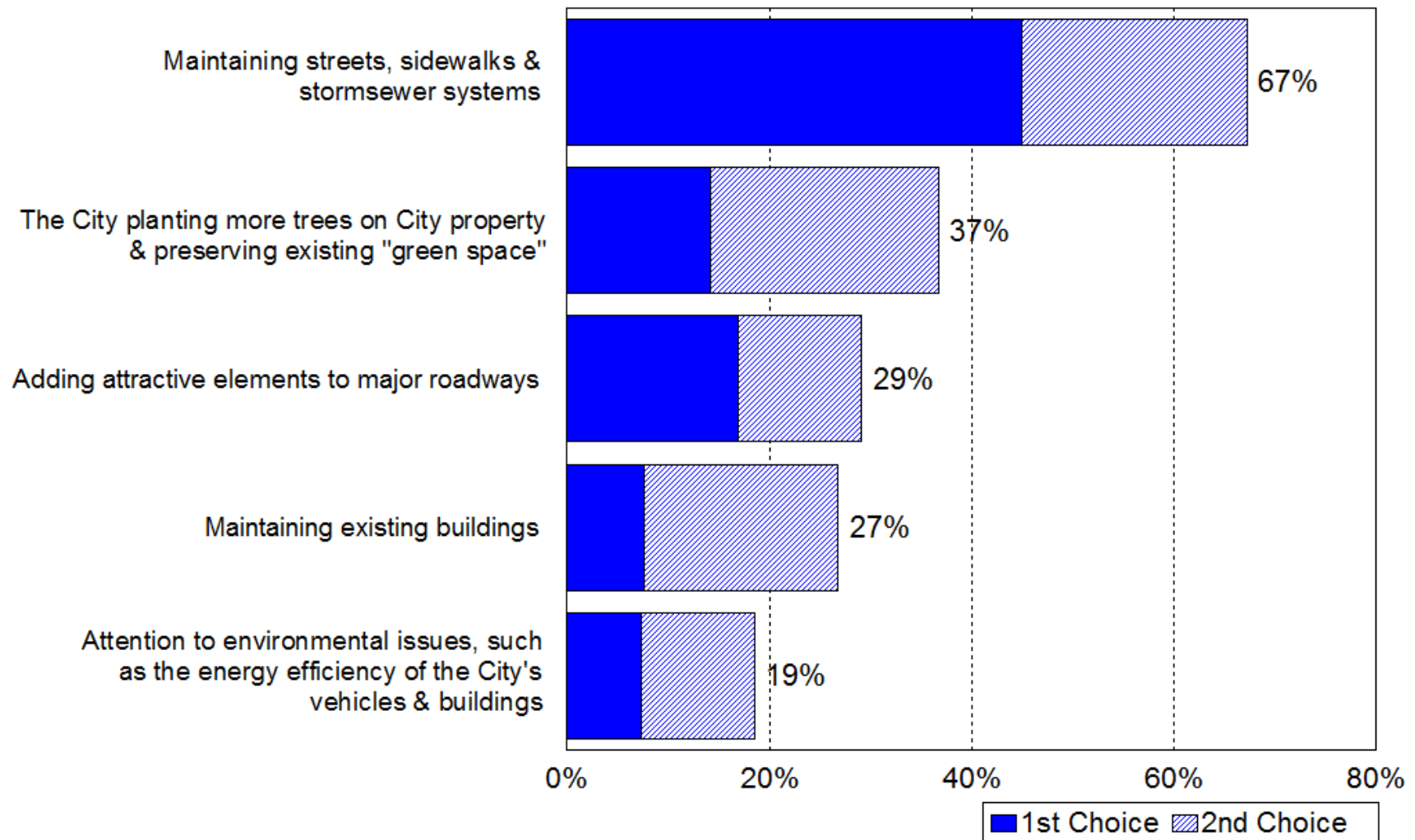
by percentage of respondents (multiple choices could be made)



The City Newsletter and City Website Are the Ways Residents Most Prefer to Get Information About the City

Q26. Which Two of the Community Investment Areas are Most Important for the City to Pursue

by percentage of respondents who selected the item as one of their top two choices



Source: ETC Institute (2016)

Summary

- **Residents Have a Very Positive Perception of the City**
 - ❑ 96% rated Roeland Park as an excellent or good place to live
 - ❑ 89% rated Roeland Park as an excellent or good place to raise children
- **The City Is Moving in the Right Direction**
 - ❑ The City's overall satisfaction index is higher than 2013 and 2008
- **Satisfaction with City Services is Much Higher in Roeland Park Than Other Communities**
 - ❑ The City rated 31% above the KC Metro Average and 30% above the U.S. Average in the overall quality of City services
 - ❑ The City rated above the KC Metro Average in 38 of 46 areas, and above the U.S. Average in 35 of 46 areas that were compared
- **Overall priorities for improvement over the next 2 years:**
 - ❑ Maintenance of streets, buildings and facilities
 - ❑ Parks and recreation programs and facilities
 - ❑ Enforcement of City codes and ordinances

Questions?

THANK YOU!!

Item Number: Mayor's Report- IV.-A.
Committee 10/17/2016
Meeting Date:



City of Roeland Park

Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **Announcements**
Item Type:

Recommendation:

Details:

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

Item Number: Mayor's Report- IV.-B.
Committee 10/17/2016
Meeting Date:



City of Roeland Park

Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **Ardie Davis Proclamation (Teresa Kelly, Erin Thompson and Michael Poppa)**
Item Type:

Recommendation:

Details:

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
 Ardie Davis Proclamation	Cover Memo



Proclamation

Ardie Davis Proclamation

On this day, October 17, 2016, we celebrate Roeland Park resident Ardie Davis' accomplishments in the realm of the international barbecue community.

Whereas, the Barbecue Hall of Fame is the American Royal's national recognition program;

Whereas, the Barbecue Hall of Fame inductees are chosen each year for their significant contributions to the barbecue community and demonstration of achievement in barbecue excellence in one of three categories: pit master, business/industry, and celebrity/humanitarian;

Whereas, in 2016, there will be 21 inductees total including two from Roeland Park;

Whereas, Ardie Davis earned nine separate nominations for the 2016 Barbecue Hall of Fame, more than twice as many as any other candidate;

Whereas, from humble beginnings on his back patio, he created the contest that has now become the American Royal Barbecue Sauce, Rub and Baste Contest, now in its 29th year, and boasting a record 450 sauce entries;

Whereas, Ardie Davis is a charter member of the National Barbecue News writing staff and the Kansas City Barbecue Society Bullshead;

Whereas for three years he has been the resident expert blogging about barbeque for the Kansas City Star's Chow Town blog, and traveled the country eating a lot of barbecue and doing research for his eleven books;

Whereas, as a charter member of the Kansas City Barbecue Society, proposed and developed the KCBS Certified Barbecue Judge program, creating a worldwide network of judges 20,000 strong; authored the official KCBS judges' oath that is recited before each KCBS contest;

Whereas he has been recognized by Jill Silva, *The Star's James Beard award-winning food editor* for "His folksy voice that has been the heart, soul and conscience of an American culinary art form that has nurtured a competitive barbecue circuit that seeks to celebrate one-upsmanship as much as it celebrates and encourages camaraderie"; and

Whereas, on October 29, 2016, Ardie Davis, aka Remus Power PhB (Doctor of Barbecue) will be inducted in the Celebrity/Humanitarian category joining fellow Roeland Park resident Paul Kirk, 2015 Hall of Fame Pitmaster and Mr. Davis's co-author on five books, among the ranks of the Hall of Fame.

NOW THEREFORE, I, Mayor Joel Marquardt do hereby proclaim Roeland Park's sincerest congratulations to Ardie Davis,

And I urge all citizens to recognize Roeland Park as the epicenter for barbecue, being home to Barbecue Hall of Famers Ardie Davis and Paul Kirk, and renowned barbeque entrepreneurs, Bob and Denise Palmgren owners of RJ's Barbeque, Todd Zimmer owner of Zim's Sauces and Spices, Duane Daugherty owner of Mr. Doggity Foods and the many home grown pit masters we call neighbors.

Seal here

JOEL MARQUARDT
Mayor

Item Number: Workshop Reports- V.-A.
Committee 10/17/2016
Meeting Date:



City of Roeland Park

Action Item Summary

Date: 10/17/2016
Submitted By: Jennifer Jones-Lacy, Asst. City Administrator/Finance Director
Committee/Department:
Title: **Committee and Council Report**
Item Type:

Recommendation:

For Informational Purposes Only

Details:

City Council Meeting – 10/10/2016

The developers from Commerce Bank and Embree Hospital provided an overview of their project and discussed details of their requests at the Northwest corner of Roe and Johnson Drive. The Planning Commission approved their proposal to rezone the property to MXD, a preliminary and final plat and a preliminary and final development plan. The City Council reviewed the plan and ultimately approved the dedication of public land for the final plat, they also approved the rezoning and development plan with the exception of the sheets outlining the hospital design. The Council requested that representatives from the bank work with the Ad Hoc Development Group to discuss alternative designs of the bank. The architects have met once with the Ad Hoc committee and are scheduled to meet again this week for further discussions.

Ad Hoc Development Committee 10/12/2016

The Committee discussed the design for Commerce Bank. Matt Masilionias with RMTA Architects provided an alternative design to the Committee. The Committee asked Mayor Marquardt to provide illustrations representing committee feedback.

The Committee continued discussions on filling the cave and the grading plan for the property. Pyramid is in the process of pricing a retaining wall.

The minutes are attached.

Branding Committee

Benedictine is in the process of completing the focus group interviews. The committee is also reviewing the Citizen Survey data associated with branding of the City.

The minutes are attached

Advocates for Strategic Planning (ASP) 10/6/2016

ASP met and discussed updates with the City. They emphasized that with all of the changes, such as Wal-Mart remaining in Roeland Park and the potential management change over the Aquatics Center, it is important to consider the strategic plan goals with the renovation to ensure the site is in alignment with the City's plans.

The minutes are attached

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

ATTACHMENTS:

Description	Type
 Ad Hoc Development Committee	Exhibit
 Branding Committee Minutes	Exhibit
 ASP Minutes - Draft	Exhibit

Minutes - DRAFT

Economic Development Ad-Hoc Committee
CITY of ROELAND
PARK
Wednesday, October 12, 2016; 8:00 a.m.
Roeland Park
City Hall

Committee Members:

Mayor Joel Marquardt
Michael Rhoades
Michael Poppa
Erin Thompson

Guests

Keith Moody
Jennifer Jones Lacey
Jose Leon
Jerry Johnson, SKW
Jason Glasrud, CBC
Brent Hall, Commerce Bank
Matt Masilionias, RMTA
Matthew Elsom, RMTA
Austin Herndon, RMTA
Kellee Madinger, White Goss

Meeting called to order at 8:02am.

- I. Approval of minutes
 - a. 10/03/16 Minutes - approved
- II. Commerce Bank Design – NW Roe & Johnson Drive
 - a. Committee followed up with RMTA re: Council request for alternative design ideas for Commerce Bank building façade
 - b. Additional recommendations by committee:
 - i. The tower clocks to be set off wall with color halo matching the other green lighting on the façade.
 - ii. Strong but not bulky sunshades above the windows (below the spandrel glass) on both sides of the clock tower.
 - iii. Clock tower to be moved out in both directions about 8" or more to make stronger and more pronounced.
 - c. The committee asked Mayor Marquardt to sketch up recommendations
 - d. RMTA to re-present at next Committee meeting
- III. Caves Fill Contract with Pyramid Update
 - a. SKW has been working with City Staff and City Attorneys on contract document for design-build
 - b. This version of agreement takes proposed price (\$942,000) and backs out fill materials (\$122,000) that will be driven by grading plan. Current price at \$820,000 plus a per-unit price for fill material brought on-site and per-unit price for wall.
 - c. Jerry Johnson with SKW gave overview of grading plan
 - i. Grading lower bowl at 4% slope up to retaining wall (12'), then 3:1 grade to existing jersey barriers
 - ii. Pyramid reviewed proposed grading plan and is in process of pricing wall.
 - d. Committee discussed retaining wall and grading options presented by SKW
 - e. Recommendation will be made to Council for approval

Meeting adjourned at 10:00am.

**Branding Committee Agenda
Roeland Park City Hall
4600 W 51st Street, Roeland Park, KS 66205
Monday, September 12, 2016 6:00 P.M.**

Michael Poppa
Michael Rhoades

Ryan Kellerman
Tom Madigan

Mike Hickey
Sarah Martin

Tony Marin
Susan Wellford

Commence: 6:10p

I. DISCUSSION ITEMS:

1. Approval of Minutes from 8-16-2016
2. Progress/Updates
 - a. Citizen Survey: Raw Data sets in excel file, sent by Mr. Moody to the committee/students for synthesis
 - b. Missing Ward Members Added: Mike R. to email Kevin with additional names (names have been added to the list within the Google Drive.
 - c. Media Assets Report- Kevin discusses "floating" document with committee.
3. Introduction of Project Management Document
 - Proposal for committee to submit additional names + mall intercept - approved.
 - Use of BC satellite campus, City Hall, Courtroom for focus groups- Check for availability (09/21/16) Time TBD.
 - Proposed "incentive" for Focus Groups - \$5 gift card to QT or other.

VOTES: Focus group approval- Decision Unanimous in favor

"Fill in the holes"/Additional names given by committee- Decision Unanimous in favor
4. Approval of Focus Groups and Sample Plan
 - a. First- Those Identified – 60 participant goal: Intercept at Library, Community Center. Include Realtor
 - b. "Fill in holes" – committee members submit additional names: 3 per member
 - c. How groups split – Change name of Group 5 to "other/non-residents"

II. If Time Allows:

1. Review Focus Group and Discussion Guide Questions
 - a. Clay will finalize and send out for approval.

ADJOURN- 6:56p

STRATEGIC PLANNING WORKSHOP AGENDA

Roeland Park City Hall – 4600 W 51st St

Thursday October 6, 2016 6:00 PM

Minutes-Draft

Present:

Marek Gliniecki Citizen

Mary Vrla-Mohr Citizen

Jennifer Jones-Lacy Staff

Tom Madigan Citizen

Janna Willhaus Citizen

Absent: Teresa Kelly, Council Member

I. MINUTES

- Adopt Minutes from July 14, 2016 Meeting – Approved by Mary and 2nd by Jana.

II. DISCUSSION ITEMS

1. Updated status of Strategic Plan Goals

- Jennifer provided a summary of the current Strategic Plan goals and updates.
- Tom asked Jennifer to keep the ASP Committee up to date on any updates on the interlocal agreement with Mission on NE Cloverleaf
- Citizen Survey - Final Document presented to Council on October 17th

2. Discuss branding updates –

- Tom shared the questions and answers from the Citizen Survey that were shared with the Branding Committee.
- Tom asked Jennifer to send the Rebranding Project Management Guide to the group. He said the focus groups were complete. Jana and Mary said they had not been contacted despite signing up for the interviews.

Other Items

- Mary suggested that ASP have a process of reporting to the Council.
- Jana asked about Wal-Mart's redevelopment and what changes would take place. Marek asked about how this would change our Strategic Plan goals. Tom said many residents will want refunds or a lowering of the mill levy. He said it's important for the Council to communicate the use of funds. Marek said the Aquatic Center operations will come into play as well as Johnson County is likely pulling out of the agreement of splitting the operating loss after the expiration of the agreement.
- Both the Wal-Mart and pool issue can throw the strategic plan off because those are major changes. There needs to be ongoing discussion to make sure we stay on target.
- Jana said we need to stay on top of the development of the Wal-Mart site so that it stays in alignment with Strategic Plan goals.

- Tom asked if there was anything else he should ask of the Branding Committee.
3. Schedule future meetings
 - Next meeting January – Jennifer will schedule using a doodle poll.

III. **ADJOURN**

Purpose – the committee would provide insight to the Council on the original intent of the strategic plan. Keeping the strategic plan alive while moving forward on policy and budget decisions.

Item Number: Reports of City Liaisons- VI.-A.
Committee 10/17/2016
Meeting Date:



City of Roeland Park

Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **NE Animal Control (Sheri McNeil and Ryan Kellerman)**
Item Type:

Recommendation:

Details:

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

Item Number: Reports of City Liaisons- VI.-B.
Committee 10/17/2016
Meeting Date:



City of Roeland Park

Action Item Summary

Date:
Submitted By:
Committee/Department:
Title: **Shawnee Indian Mission (Bill Art)**
Item Type:

Recommendation:

Details:

Financial Impact

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

Additional Information

How does item relate to Strategic Plan?

How does item benefit Community for all Ages?

Item Number: New Business- VIII.-A.
Committee 10/17/2016
Meeting Date:



City of Roeland Park

Action Item Summary

Date: 10/14/2016
Submitted By: Keith Moody
Committee/Department: Ad Hoc Development Committee
Title: **Discussion of Contract for Caves Stabilization and Grading with Pyramid Construction**
Item Type: Agreement

Recommendation:

The Ad Hoc Development Committee recommends entering into a contract for cave stabilization and site grading at the old pool site with Pyramid Construction.

Details:

The attached agreement is for work that would take down the old caves and fill that area back to roughly the same elevation as currently exists. The Committee solicited firms to submit qualifications, selecting 4 firms to then submit proposals on how they would go about stabilizing the caves. Pyramid's proposal is to take down the ceilings of the cave using back hoes with hydraulic hammers. The materials that have been hauled onto the site in the past both inside and outside of the cave will be placed in an engineered compacted fill using dozers and compaction equipment. This provides less uncertainty surrounding the potential movement/settlement of soils in the future which should yield higher land sale prices.

The three other firms that were selected to submit proposals all planned to fill the cave voids with flowable fill (a concrete type of material that would be pumped into the voids which sets up hard). The proposers were not able to provide as much certainty as to the stability of the site for constructing commercial buildings as Pyramid's approach.

Pyramid's price is also the lowest. The contract price reflects a lump sum amount of \$820,000, with three per unit items (Article 6 on Page 8 of the attached document- retaining wall, rock excavation and dirt brought into the site). The contract establishes a firm price on these per unit items, while preserving the City's flexibility to choose how much earth is brought on to the site

as well as how much retaining wall may be constructed. Per the current retaining wall grading plan the retaining wall cost an extra \$125,000. With the approval of the agreement Staff recommends Council authorizing up to \$1,150,00 to be spent under the contract. That will authorize \$330,000 in combined retaining wall and dirt fill. The retaining wall and dirt fill plans will continue to be refined as we work on site plans with the Hotel group and the Extreme Sports group. Approving the contract with this structure and flexibility will allow Pyramid to begin work this fall which is a requirement in order for them to complete the work at their submitted prices. The lump sum portion of the contract mitigates city exposure to change orders and the per unit prices are fixed which eliminates the City from negotiating for work with a contractor that has already been awarded the bulk of the work (a weak bargaining position).

Staff estimates the TIF3 fund will have \$1.3 million available to fund site improvements through February 2018. Thus leaving \$150,000 for other site improvements such as utility extensions.

The design build structure was employed because it takes advantage of the contractor's experience in how to best solve a unique problem which often results in less design expense, lower cost construction and a quicker timeline to completion (we have a February 2018 deadline to use the TIF3 funds).

The City's goal is to utilize the TIF3 funds by February 2013, investing those funds in a manner that brings the greatest market value to the property, while minimizing the development costs for the ultimate buyer/user. This is a challenge since the end users are not know at this point. Therefore the grading and retaining wall designs are intended to get the area close to what we anticipate the end user wanting, as we continue discussions with the Hotel and Extreme Sports prospects the grading plan may change from the plan attached. The contractor will work from the east side of the site to the west, this will afford us some addition time to finalize the location and size of the retaining wall which is on the west side of the site.

Financial Impact

Amount of Request: \$1,150,000	
Budgeted Item?	Budgeted Amount: \$1,086,000 between 2016 and 2017 budgets
Line Item Code/Description: 5244-510	

Additional Information

How does item relate to Strategic Plan?

The project will add new commercial development space enhancing the financial stability of the city and adding new employment opportunities and entertainment options in Roeland Park.

How does item benefit Community for all Ages?

Business variety is anticipated to expand, creating appeal to broader age groups.

ATTACHMENTS:

Description

Type

- ▣ Agreement for Caves Satbilization
- ▣ Recommendation from SKW
- ▣ Draft Grading Plan and Retaining Wall

Cover Memo
Backup Material
Backup Material

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - LUMP SUM

Edited from DBIA Document N0. 525
2nd Edition, 2010

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Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

This **AGREEMENT** is made as of the 17th day of October
in the year of 2016, by and between the following parties, for services in connection with the
Project identified below.

OWNER:

(Name and address)

City of Roeland Park, Kansas
4600 West 51st Street
Roeland Park, Kansas 66205

DESIGN-BUILDER:

(Name and address)

Pyramid Contractors, Inc.
901 W. Ironwood
Olathe, Kansas 66061

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

Roeland Park Swimming Pool Redevelopment – Mine Backfill

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder
agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract") as modified;

2.1.2 The Basis of Design Documents, including the Owner's Project Criteria (including Section 5.5 General Roeland Park Conditions of Contract for Construction) (Exhibit A) and Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria (Exhibit B);

2.1.3 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);

2.1.4 The General Conditions of Contract; and

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2

shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Limited License Upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligations to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below; and

4.3.2 Owner agrees to pay Design-Builder the additional sum of Zero _____ Dollars (\$ 0.00) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than one hundred thirty eight (138) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

None listed in Contract Documents.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner six hundred Dollars (\$ 600.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of Eight Hundred Twenty Thousand Dollars (\$820,000.00) plus unit price work for quantities actually installed on the following items:

Haul in Dirt for mix with rock excavation – Unit Price of \$15.25 per CY – potential quantity from 0 to 8,000 CY.

Grid Reinforced Big Block Retaining Wall – Unit Price of \$49.00 per SF – potential quantity from 0 to 2,500 SF based on REV7 grading plan.

Additional Rock Excavation and placement for on-site fills – Unit Price of \$18.75 per CY – potential quantity from 0 to 4,630 CY based on REV7 grading plan.

(“Contract Price”), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the eighth (8th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments.

7.2.1 Owner will retain ten percent (10 %) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining

or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of one and one-half percent (1.50 %) per month until paid.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

8.2 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Jose Leon
Director of Public Works
913-722-5435

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Jerry Johnson
City Engineer (SKW)
816-863-4040

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Gavin Barmby
President
913-764-6225

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Jeff Shoemaker
Project Manager
816-520-3338

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Exhibit C to this Agreement.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security See Exhibits D and E to this Agreement.

Performance Bond.

Payment Bond.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

11.1.1 Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

11.1.2 Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

11.1.3 This Agreement also includes by reference the following additional provisions:

Exhibit A	Basis of Design Documents, including Owner's criteria
Exhibit B	Design-Builder's Proposal dated Sept.1, 2016 (9 page) plus Price and Completion Day proposal (one page)
Exhibit C	Insurance Requirements
Exhibit D	Performance Bond form
Exhibit E	Payment (Statutory) Bond form
Exhibit F	Partial Waiver and Release of Claims (conditional) form
Exhibit G	Final Waiver and Release of Claims (conditional) form

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

CITY OF ROELAND PARK, KANSAS

(Name of Owner)

(Signature)

Keith Moody

(Printed Name)

City Administrator

(Title)

Date: October 17, 2016

DESIGN-BUILDER:

PYRAMID CONTRACTORS, INC.

(Name of Design-Builder)

(Signature)

Gavin Barmby

(Printed Name)

President

(Title)

Date: October 17, 2016

STANDARD FORM OF GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Edited from DBIA Document No. 535
2010

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Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum* (2010 Edition) as modified .

1.2.2 *Basis of Design Documents* are as follows: For DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum*, the Basis of Design Documents are the Owner's Project Criteria (Exhibit A), Design-Builder's Proposal and the Deviation List, if any (Exhibit B).

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.7 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.8 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) as modified.

1.2.10 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.11 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.12 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.13 *Site* is the land or premises on which the Project is located.

1.2.14 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.15 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.16 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.17 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

1.2.18 "City" shall mean the City of Roeland Park, Kansas.

1.2.19 "City Engineer" shall mean the individual, firm or entity designated in the Contract Documents which has been employed by the City for the performance of professional engineering services in connection with the project; or shall mean the City if the City acts as its own Engineer.

1.2.20 Whenever in these Contract Documents the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City and/or the City Engineer is intended.

1.2.21 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed," or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.

1.2.22 The words "approved," "reasonable," "suitable," "acceptable," "properly," "satisfactory," or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City and/or the City Engineer.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a weekly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.6.3 Design-Builder shall notify all affected utilities of the Work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the owner/operator of any affected underground facility. Any project delay, damages or increase in construction costs due to utility relocation delays shall be at the Contractor's risk.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.7.7 During the performance of this Contract, the Design-Builder shall maintain a suitable office at or near the site of the Work which shall be the headquarters of the superintendent authorized to receive drawings, instructions, or other communications or articles from the City Engineer, and any such communication given to the said superintendent or delivered at the Design-Builder's office at the site of the Work in his/her absence shall be deemed to have been given to the Design-Builder.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the

Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.8.4 Design-Builder shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials and equipment on the project site not yet incorporated in the Work, City's property and adjacent property.

2.8.5 Design-Builder shall comply with any and all instructions from the City Engineer regarding prevention of accidents, fires or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other, later revision) "Standards For Safeguarding Building Construction and Demolition Operations".

2.8.6 Design-Builder shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions. It shall designate a responsible member of its organization on the Project whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to the City Engineer by Design-Builder.

2.8.7 In an emergency affecting the safety of life, the Work, the City's property or of adjoining property, Design-Builder, without special instruction or authorization from the City Engineer, is hereby permitted to act, at its discretion, to prevent such threatened injury or loss. Any compensation claimed by Design-Builder on account of emergency work shall be determined by mutual agreement of City and Design-Builder.

2.8.8 Design-Builder shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc, which shall be in compliance with all federal, state and local laws and ordinances. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed work, buildings, equipment and the position of cranes. Design-Builder shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not City shall have reviewed said plan.

2.8.9 Design-Builder shall be solely liable for all damages to the City or the property of the City, to employees of the City or other contractors, to neighboring premises, or to any private or personal property, due to improper, illegal or negligent conduct of the Design-Builder, its Subcontractors, employees or agents in and about said Work, or in the execution of the Work. The Design-Builder shall be liable to the City for any damages, whether property damage or personal injury, occasioned by Design-Builder's use of any scaffolding, shoring, apparatus, ways, works, machinery, plant or any other process or thing that is required for the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of two (2) years from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 The two-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.11 Contractor's Employees

2.11.1 Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the work assigned to him.

2.11.2 Contractor shall be responsible for compliance with all state and federal laws, if applicable, pertaining to wages, hours and benefits for workers employed to carry out the Work.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

3.2.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.2.1.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.1.4 A legal description of the Site;

3.2.1.5 To the extent available, record drawings of any existing structures at the Site; and

3.2.1.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information (not used).

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.4.2 City Engineer shall at all times have access to the Work for the observation and inspection thereof wherever it is in preparation or progress, and Contractor shall provide proper facilities for such inspection. The Design-Builder shall furnish all reasonable aid and assistance required for any such inspection.

3.4.3 All work must be inspected, tested, or approved and the Design-Builder shall give the City Engineer timely notice of its readiness for such inspection, testing or approval and the date fixed for such inspection, testing or approval if the inspection, testing or approval is by an authority other than City Engineer. If any work should be covered up which is required by the above to be inspected, tested or approved and which, by virtue of being so covered up, is not susceptible to being properly inspected, tested or approved, Design-Builder shall, if requested by City Engineer, uncover such work and at Design-Builder's expense bear the cost of uncovering such work and redoing same after inspection, testing or approval and redoing such other work damaged as a result of having to uncover and redo same.

3.4.4 City Engineer reserves the right to inspect any and all work before it is covered up; and, accordingly, Design-Builder must notify City Engineer before covering any work.

3.4.5 City Engineer shall be given a reasonable time to make its inspection. Design-Builder shall not cover any work prior to City Engineer having a reasonable time to inspect. If work to be covered does not conform to the Contract Documents, City Engineer can withhold its consent to covering up work until such work is made to conform at Design-Builder's expense.

3.4.6 If any labor, supplies, materials or equipment are found not to be in accordance with the Contract Documents, Design-Builder shall at his own expense bear the cost of uncovering such labor, supplies, materials or equipment, the cost of removing same, as well as the cost of undoing and redoing the work and other work damaged by such nonconforming labor, supplies, materials or equipment.

3.4.7 The Design-Builder shall comply with the directions and instructions of the City Engineer.

3.4.8 The City, the City Engineer and all designated inspectors shall be free at all times to perform their duties, including the observation and inspection of the work, and intimidation or attempted intimidation of any one of them by the Design-Builder or by any of its employees shall be sufficient reason, if the City so desires, to terminate the contract.

3.4.9 Any inspection, by whomsoever conducted, shall not relieve the Design-Builder from any obligation to perform the Work strictly in accordance with the plans and specifications, and any of the Work not so constructed shall be removed and made good by the Design-Builder at its own expense.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide immediate verbal notice to the Owner's Representative followed by written notice to Owner of such condition, which written notice shall not be later than four (4) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement, Exhibit C. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.4 Bonds and Other Performance Security.

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement on the forms attached as Exhibits D and E.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof, including Waivers and Releases of Claims on the forms attached as Exhibit F.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that Design-Builder has furnished documentation acceptable to Owner to establish that (i) the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment on the form attached as Exhibit G;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Tax Claim Indemnification.

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 For purposes of indemnification requirements as set forth throughout the Agreement, the following terms shall have the meanings set forth below:

7.4.1.1 "The Design-Builder" means and includes the Design-Builder, all of its affiliates and subsidiaries, its Design Consultants, Subcontractors and materialmen and their respective servants, agents and employees.

7.4.1.2 "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, whether real or spurious, 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, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the Work required hereunder.

7.4.2 The Indemnity

For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract Documents, the Design-Builder hereby agrees to indemnify, defend and hold harmless the Owner from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Design-Builder, its employees, agents, subcontractors, and suppliers, but only to the extent of Design-Builder's actionable fault or negligence.

7.4.3 General Limitation

Nothing in this Section shall be deemed to impose liability on the Design-Builder to indemnify the Owner for Loss to the extent that the Owner's negligence or other actionable fault is the cause of Loss.

7.4.4 Waiver of Statutory Defenses

With respect to the Owner's rights as set forth herein, the Design-Builder expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purposes of this Section.

7.5 Owner's General Indemnification.

7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

8.3 Work Stoppages.

8.3.1 Design-Builder warrants to the City that there shall be no work stoppages or interruptions arising out of labor disputes, including, but not limited to, those due to the presence of both union and non-union workforces at the job site. The City may assign to Design-Builder a separate gate (e.g., union or non-union gate, as applicable). The gate assigned shall be used by Design-Builder and all Design-Builder's employees, Subcontractors, visitors, suppliers, vendors and materials deliveries, as applicable. Design-Builder agrees that Design-Builder's employees and its Subcontractor's employees will continue to work notwithstanding any dispute that may involve any other contractor or employer at the job site. Anything in this Contract to the contrary notwithstanding, in the event the Design-Builder fails to continue performance of the Work included herein without interruption or delay, because of such picket or other form of labor dispute, the City may terminate the services of said Design-Builder after giving 48 hours written notice to Design-Builder and its sureties of its intent to do so, or the City may invoke any of the rights set forth elsewhere in the Contract Documents.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Work Directives.

9.2.1 A Work Directive is a written order prepared and signed by Owner directing the Design-Builder to proceed in a specified manner prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s), if any may be appropriate.

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

10.3 Arbitration (not used).

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10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement

11.2.5 . In the event that this Agreement shall be terminated under the terms of this Section, the insurance, indemnification, warranty and other obligations that continue after termination shall continue to apply.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the “Bankrupt Party”), such event may impair or frustrate the Bankrupt Party’s ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.5.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively “Electronic Data”).

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 This Agreement shall be governed by, and construed in accordance with, the laws of the state of Kansas.

13.5 Venue.

13.5.1 Venue of any litigation arising in connection with this Agreement shall be the state courts of Johnson County, Kansas.

13.6 Severability.

13.6.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.7 No Waiver.

13.7.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.8 Headings.

13.8.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.9 Notice.

13.9.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

13.10 Amendments.

13.10.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

13.11 Owner Permit List.

13.11.1 NPDES Land Disturbance Permit from KDHE.

13.11.2 Northern Long Eared Bat Clearance from KS Department of Wildlife.

EXHIBIT A



August 8, 2016

To whom it may concern:

The City of Roeland Park is seeking professional design-build services in connection with the Swimming Pool Redevelopment – Mine Backfill. This City of Roeland Park project is funded entirely with local funds from the City of Roeland Park with a maximum budget of \$1,000,000. As one of the four shortlisted firms/teams we invite you to submit a proposal for consideration.

The scope of this project is to backfill the existing mined void and ancillary improvements to allow future development above the void.

Attachments to this proposal request letter are labeled Exhibit "A" through "B" and are attached herein. The following previous studies and survey are also available by email request:

- ALTA Survey – SKW – November 17, 2015
 - Survey also available as a Cadd file
- Geotechnical Report – BWR – June 3, 1994
- Geotechnical Report – Kleinfelder – March 27, 2013
- Technical Memorandum – Golder Associates – September 1, 2015 and November 4, 2015

The proposal will be evaluated with two primary components. One component will be rated based on the qualifications, approach, and understanding of the Design Bid Team (DBT). The other portion will be rated based on the price proposal and the project completion date. The scoring breakdown for these two components are detailed below and will be based on a total of 100 points.

I. DBT Proposal

DBT proposal to be limited to no more than 12 pages and shall address the following:

- 1) Firm/Team name, contact person, address and telephone number.
- 2) The organizations that make up the DBT. List each firm with their area of responsibility and the corresponding principle in charge. Include the design-build team's form of business, e.g., corporation, partnership, joint-venture, or sole proprietor.
- 3) Clear and descriptive organization outline of all DBT members including backgrounds and experience, along with their project roles, and responsibilities. Provide detailed information regarding similar projects that your key personnel have worked on. This information should also indicate the role key personnel played in the projects as well as reference contact information. Information should also include history in estimating accuracy and meeting project budgets and deadlines.
- 4) DBT understanding of the project and its requirements, including related experience of the design-build delivery model.
- 5) DBT approach to design and construction of the project.
- 6) DBT major material suppliers including grout, slurry, and backfill materials.

- 7) Indicate DBT approach to safety and a summary of a safety program. Indicate the individual responsible for implementing the program at the site along with qualifications.
- 8) Approach to regularly facilitate communication with the City on scope, cost, schedule, quality and safety to provide progress and address critical issues.
- 9) DBT approach to quality management during design and construction including means to limit risk in estimating and tracking material quantities.
- 10) Other pertinent information
- 11) A statement indicating that the DBT has reviewed the contract documents and supporting information including all exhibits provided. DBT shall also indicate any objections or clarifications for the use of sample contracts shown in Exhibit B, attached to this Request for Proposal.

DBT's will be evaluated based upon the following criteria for a total maximum DBT proposal score of 20 points.

- a. Organization and capabilities of design-build team and individuals assigned to this project.-10 Points Max
- b. Demonstrated successful past performance of the lead design and construction project management staff-10 Points Max
- c. Safety record and quality management programs-5 Points Max
- d. Overall project approach and design concepts, including Alternate technical concepts as described in scope of work.-5Points Max

II. Price and Construction Completion Day Proposal

1) Price proposed

Design-Build team shall refer to items 3.0 of Exhibit "A" for format and conditions of price proposed. Lump sum price proposed will be scored in reverse proportion to the total proposed price over that of the lowest proposed price. Example, a proposed price of 10% over the lowest price will be awarded 90% of the available points. The total maximum price proposed score is 70 points.

2) Construction completion date proposed

Design-Build team shall refer to items 2.6 Exhibit "A" for format and conditions of completion date proposed. Construction completion will be scored in reverse proportion of the total proposed days over that of the soonest completion date proposed. Example, proposed construction date of 10% over the soonest date proposed will be awarded 90% of the available points. The total maximum construction completion days score is 10 points.

August 8, 2016

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Note: Proposer shall include a statement indicating the number of addenda (if applicable) that have been received, acknowledged and incorporated into the Price and Construction Completion Days proposal.

Price and construction completion day proposal submittal of all proposers will be kept sealed and confidential until the selection committee has completed the scoring of all of the DBT submittals.

Interviews of all shortlisted teams will be conducted on September 2nd offer DBTs an opportunity to present their technical proposal directly to city of Roeland Park staff and for staff to ask questions and seek clarifications for the DBTs. Additionally, DBTs will have the opportunity for a single 1-on-1 meeting with city staff to gain a better understanding of the project and city goals and to propose any specific technical approaches.

The submittal should consist of one large envelope marked with the DBT Name, DBT Contact address, and DBT Contact phone/email. The large envelope should contain two smaller separate and sealed envelopes and a flash drive. One smaller internal envelope should contain six copies of the "DBT Proposal" and the other smaller internal envelope should contain six copies of the "Price and Construction Completion Date Proposal". Both internal envelopes should be sealed and individually marked with the DBT Name and Proposal type (i.e. DBT Proposal or Price and Construction Completion Day Proposal) on the outside of its respective envelope. The flash drive should contain an electronic file of the "DBT Proposal" and the "Price and Construction Completion day Proposal" (.pdf format).

Proposals shall be delivered to the following address and attention:

City of Roeland Park, Kansas
ATTN: Keith Moody, City Administrator
4600 West 51st Street
Roeland Park, Kansas 66205

Proposals will be received until 2:00 P.M. Friday, August 26, 2016. Proposals received after this time and date shall not be considered. The City anticipates final selection of the DBT by September 6th and a signed contract to proceed with construction by September 16th.

The City reserves the right to reject any and all proposals. The City will provide the three proposers that are not selected with a \$2,000 stipend for their efforts in preparing the proposal. The City accepts no additional financial responsibility for any costs or expenses incurred by any entity in responding to this Request for Proposal and invited to formally present. Additionally, the city reserves the right to utilize any of the technical concepts proposed by a team receiving the \$2,000 stipend.

August 8, 2016

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Any questions or additional information requested regarding the project must be submitted in writing via email to Gerald.Johnson@skw-inc.com.

Sincerely,

SHAFER, KLINE & WARREN, INC.

A handwritten signature in black ink, appearing to read 'H. D. Lubliner', written in a cursive style.

By: Howard D. Lubliner, Ph.D., P.E.
Acting City Engineer

Y:\GenCorrs\hdlC-3.docx

Attachments: Exhibit "A" through Exhibit "B"

Exhibit “A” – Owners Project Criteria

1. PROJECT DESCRIPTION

The city of Roeland Park owned property at 4800 Roe Parkway, Roeland Park, KS 66205 has a void left from previous mining operations. The void had interim use housing a swimming pool but has recently demonstrated some instability and the entryways have been filled to prevent access. The city is currently looking to develop the area above and adjacent to the mine with commercial buildings, parking and utility infrastructure. The city is seeking a design-build team to both perform the mine backfill and certify that once backfill is complete that area above the mine is stable and can be developed upon without need for major subsurface improvements. The project is funded entirely through city TIF funds.

1.1 Project Goals

The following goals have been established and prioritized for this design-build project:

- Design and construct mine backfill for redevelopment in the safest, most cost effective and timely manner
- Coordinate with City Public Works for site access and ongoing municipal operations.
- Post construction, provide Geotechnical recommendations and certifications for surface redevelopment for conventional construction means and methods that will have no special conditions due to previously mined space. Specifically, the site should be able to accommodate a hotel up to six stories tall without the need for deep foundations due to inadequate strength in the remediated mine area.
- Develop a project construction methodology and quality control plan that limits risk to both the design build team and the city.
- Completion and certification of the project in a timely manner that will facilitate development of the property. Mine remediation and certification for development is preferred to be complete by February 1, 2017.
- The project will include all construction, quality control and certifications under a **Lump Sum at a maximum of \$1,000,000.**

1.2 Anticipated Scope of Work

The scope of this project includes but is not necessarily limited to the following items, subject to meeting the project goals and working with the available funds.

- Design methodology for mine backfill. Material for backfill to be determined by design-build contractor.
- Placement of mine backfill in controlled environment that allows observation of the backfilling operation by down hole cameras or other methods.

- Monitoring of the mine backfill by design-build geotechnical team member in order to provide redevelopment earthwork, foundation and pavement recommendations in accordance with project goals.

1.3 Project Schedule

The schedule for the procurement and execution of services described here is shown below and is subject to change depending on City staff workload.

ACTIVITY	DATE
Select Design-Build Teams to Prepare Proposals	August 5, 2016
Individual Design-Build Team Informational Meetings	August 15, 2016
Design-Build Teams Prepare Proposals - submit by	August 26, 2016 @ 2 PM
Interviews (50 minutes each)	September 2, 2016
Select Design-Build Team	September 6, 2016
Execute Contract with Selected Design-Build Team by	September 16, 2016
Desired Project Substantially Completed By	February 1, 2017

The desired date for substantial completion and certification of the mine remediation is February 1, 2017 to accommodate current development inquiries and interests. However, proposals will be considered for proposals after this date if the project cost savings and benefit of the approach sufficiently compensate for the need to extend the project past February 1, 2017. Additionally, necessary site remediation, including any necessary seeding, may take place after the substantial completion date in accordance with the appropriate seed planting season. The contractor will be required to maintain the stormwater management and sediment control until final site stabilization is complete.

1.4 Anticipated Design and Construction Services

Design services shall address all items necessary for construction and certification of the completed project. Design services are anticipated to include but are not limited to: geotechnical engineering, surveying, environmental clearance, design of stormwater management facilities, water system design, materials analysis, and utility coordination.

Construction services are anticipated to include, but are not limited to: temporary mine demolition/backfill, earthwork, stormwater management, erosion and sediment control and all other commitments including those from the regulatory approvals and permits. DBTs will also be expected to provide construction engineering inspection and management, quality assurance and quality control.

No right-of-way services will be needed as the property with access is owned by the city of Roeland Park.

The DBT will be required to investigate and develop alternative concepts in order to maximize the extent of improvements that can be constructed within available funding as a part of the preliminary design services.

1.5 Anticipated Environmental Services

Environmental compliance with state and federal environmental regulations and permits will be required for the project. The DBT shall be responsible for obtaining environmental clearances, permits and compliance with pre-construction and construction-related environmental commitments and permit conditions. The DBT shall assume all obligations and costs incurred by complying with the terms and conditions of the permits and certifications. Any fines associated with environmental permit or regulatory violations shall be the responsibility of the DBT.

2.0 PROJECT TECHNICAL INFORMATION & REQUIREMENTS

2.1 Standards and Reference Documents

The design and construction work for the Project shall be performed in accordance with the applicable federal and state laws, American Public Works (APWA) Kansas City Metro Chapter plans and specifications, and general contract provisions as outlined in this Owners Project Criteria document. In the event of conflicting specifications, APWA Kansas City Metro Chapter plans and specifications as amended by the City's contract provisions will prevail. The DBT must verify and use the latest version of the documents referenced. The DBT must meet or exceed the minimum roadway and bridge design standards and criteria.

If during the course of the design, the DBT determines specific Standard Specification or Reference Documents required are not listed herein, it is the responsibility of the DBT to identify the pertinent Standard, Specification or Reference Document and submit to the City of Roeland Park for review and approval prior to inclusion in the Contract Documents.

2.2 Grading and Drainage

The DBT must return the site to its existing topography unless exceptions are permitted by the city of Roeland Park in coordination with the future development / grading needs. The drainage design work shall include the design of stormwater management facilities, and erosion and sediment control in compliance with the standards and reference documents listed previously in Section 2.1. The DBT will be responsible for the drainage design work and the design of stormwater management facilities and Best Management Practices (BMPs) within the project limits.

2.2.1 Stormwater Management Plan and Erosion and Sediment Control

Erosion and Sediment Control Plan and a Stormwater Management Plan must be prepared and implemented in compliance state and local regulations. The DBT will be responsible for compliance with construction-related permit conditions and shall assume all obligations and cost incurred by complying with the terms and conditions of the permit. Any fines associated with permit or regulatory violations shall be the responsibility of the DBT.

If the land disturbing activity is greater than one acre, coverage under the Kansas Department of Health and Environment construction stormwater program is necessary.

2.2.2 Stormwater Management Facilities

DBT must identify acceptable location(s) to meet the stormwater management requirements of the Project. The DBT, as part of their final design, shall develop a final design in accordance with the Standards and Reference Documents listed in Section 2.1.

2.3 Utilities

It is not anticipated that utility relocations are necessary to construct the project. However, any necessary utility relocation design requirements and field relocation shall be the sole responsibility of the DBT.

Existing utility information provided in Exhibits to this document are not a guarantee as to actual utility location. Field utility location to be determined by utilizing Kansas One Call and individual utilities, as needed.

Known utilities in the project area include but may not be limited to the following:

- Kansas City Power and Light
- WaterOne
- Johnson County Wastewater

2.4 Quality Assurance / Quality Control (QA/QC)

DBT shall submit its QA/QC Plan for both design and construction to the City for review and approval.

2.4.1 Design Management

The DBT is responsible for design quality. The Design Manager, assigned by the DBT, shall be responsible for overall management of the QA/QC programs for design. This individual shall report directly to the DBT's Project Manager and is responsible for all of the design QA/QC activities. The Design Manager shall maintain close communication with DBT's Project Manager and shall ensure the Project is completed in accordance with the requirements of the Contract Documents. The Design Manager shall perform all of the design oversight reviews, and the City, or the City's consultant, will participate in these reviews. Under this procedure, the Design Manager will provide the City with draft design plans for review and approval to confirm that the design work complies with the requirements of the Contract Documents, and the City Design Criteria.

Construction Plans and Specifications are to be submitted to the City of Roeland Park, or the City's consultant, for review and approval prior to construction. The DBT shall be

responsible for the design details and ensuring that the design and construction work are properly coordinated. The DBT shall be responsible for documenting any design exceptions or waivers that may be needed.

2.4.2 Construction Management

The plan requires that the DBT shall have the overall responsibility for both the Quality Control (“QC”) and Quality Assurance (“QA”) activities. The DBT shall be responsible for 100% QA work and QA sampling and testing for all materials used and work performed on the Project. The DBT will also be responsible for providing quality assurance and quality control testing for all materials manufactured off-site.

2.5 Record (As-Built) Plans

The final plan milestone is Record (As-Built) Plans. As-Built Plans shall be prepared, certified and submitted to the City of Roeland Park with the final application for payment. These plans will show all adjustments and revisions to the Construction Plans made during construction and serve as a permanent record of the actual location of all constructed elements. The DBT shall submit the Record (As-Built) Plans in both hard copy and electronic formats.

2.6 Period of Performance and Liquidated Damages

The work shall commence within five (5) days of DBTs receipt of Owner’s Notice to Proceed unless parties mutually agree otherwise in writing.

Design build proposer shall indicate the following in their submittal:

Substantial completion of the entire work shall be achieved no later than _____
[insert date]

The design-build firm/team agrees that, should the design-build firm/team fail to complete the work in the time specified or such additional time as may be allowed under the contract, the amount of liquidated damages to be recovered according to the contract.

3.0 SCHEDULE OF VALUES

This is an example of the schedule of values that shall identify the design and construction administration costs. These costs will also be used to determine engineering service payment milestones.

NO	ENGINEERING SERVICE	COST
1	Additional mine investigation necessary to develop formal backfill plan and quantities	
2	Development of backfill plan including environmental permitting	

3	Design services during construction including construction inspection and QC/QA	
4	As Built documents (Upon Receipt or 30 days following final completion of project whichever is later)	
	TOTAL ENGINEERING SERVICES	\$

This is an example of the format of the schedule of values the proposer should prepare to establish the material quantities and costs of each proposed work item. Payment will be made at 30% of construction completed, 60% construction completed, 90% construction completed, and at 100% completion.

CONSTRUCTION BID ITEMS					
NO	Description of Work Item	UNIT	QUANTITY	Unit Price (\$)	Scheduled Value (\$)
1					
2					
3					
4					
#					
	TOTAL OF CONSTRUCTION BID ITEMS				\$

Note-Total Engineering Services plus Total Construction Bid Items will make up the total Lump Sum bid and should not exceed \$1,000,000.

4.0 ALTERNATE TECHNICAL CONCEPTS

This project will allow design-build firm/teams the opportunity to submit Alternative Technical Concepts (ATC's) that differ from the Standards and Reference Documents listed in item 2. ATC's may address, but are not limited to, specifications, materials, products, design standards, design solutions, staging or traffic control.

Any ATC's received after the deadline for this Request for Proposal deadline date will not be considered for bidding purposes.

ATC's submitted after award will be approved by the City. ATC's savings will be shared by the City and the DBT. The savings to the City will be 50% and the design-build contractor will receive 50%.

Unless it is mutually agreed to by all parties, the time for the City to review ATC's after notice to proceed will not be added to the calendar days for completion of the project.

5.0 City of Roeland Park General Contract Requirements

5.1 Insurance Not Used – See Exhibit C of the Agreement

5.2 Bid Bond

The DBT shall submit a Bid Guaranty in the Price and Construction Completion Day proposal. The bidder shall submit a bid bond (including Power of Attorney) for 5.0% of the design and construction costs as indicated in the price proposed for the project as submitted in the Price and Construction Completion Day proposal.

5.3 Performance Bone - Not Used – See Exhibit D of the Agreement for Performance Bond.

5.4 Statutory Bond - Not Used – See Exhibit E to the Agreement for Labor and Material Bond

5.5 General Roeland Park Conditions of Contract for Construction – Edited for final Contract Documents

GC-1. CONTRACT DOCUMENTS/CONTRACT FOR CONSTRUCTION

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the Contract Documents is to include all construction, labor, materials, tools, equipment and transportation necessary for the workmanlike construction of the project in accordance with the Contract Documents.

The Contract Documents as enumerated herein form the Contract for construction. The Contract may not be amended or modified except by a modification as hereinabove defined. These Contract Document do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any subcontractor or remote tier subcontractor.

All limits stated in the Contract Documents are of the essence of the Contract.

GC-2. DEFINITIONS - Not Used

GC-3. DEFECTS IN CONTRACT DOCUMENTS

If Contractor has reasonable cause such that it should, in the exercise of ordinary care of someone in its position, know that any errors, omissions, discrepancies or inconsistencies (hereinafter "defects") appear in the Contract Documents, including but not limited to, the plans, specifications and other documents or the work, Contractor shall notify the City Engineer in writing of such defects. Contractor shall remedy any such defects whether or not disclosed to the City Engineer without any increase in the cost of the work. The Contract Documents shall be appended to all contracts between the Contractor and any subcontractor or any more remote tier subcontractor, and such subcontractors and remote tier subcontractors shall, likewise, notify the Contractor in writing of any defects therein, and it shall be the obligation of the Contractor to remedy same as if Contractor had discovered such defects itself. The Contractor will not be permitted to take advantage of any such defect.

GC-4. COPIES OF THE CONTRACT – Not Used.

GC-5. SCOPE, NATURE AND INTENT OF PLANS AND SPECIFICATIONS

The Plans and Specifications are intended to complement, but not necessarily duplicate each other. Together they shall constitute one complete set of the Plans and Specifications, and any work exhibited in one but not in the other shall be executed just as if it had been set forth in both in order that the Work shall be completed according to the complete design or designs as decided and determined by the City Engineer.

Should anything be omitted from the Plans and Specifications which is necessary to a clear understanding of the Work, or should it appear that various instructions are in conflict, or in the event the Plans and Specifications are silent as to any detail, then it shall be the duty of the Contractor to secure written instructions from the City Engineer before proceeding with the construction affected by such omissions, discrepancies or silence. In accordance with paragraph GC-3, Contractor's failure to bring any such matter to the attention of the City Engineer shall be at the Contractor's peril, and there shall be no compensation for extra work necessitated thereby.

Dimensions and elevations shown on the Plans shall be accurately followed, even though they may differ from scaled measurements. No work shown on the Plans, the dimensions of which are not indicated, shall be executed until the required dimensions have been obtained from the City Engineer. Contractor shall be responsible

for verification of all locations, dimensions and elevations in the field (including, but not limited to verification of location of underground facilities and utilities) and shall verify all field dimensions shown on the Contract Documents.

All work performed under this Contract shall be done to the lines, grades, and elevations shown on the Plans. The Contractor shall keep the City Engineer informed a reasonable time in advance of the times and places at which he wishes to do work, in order that lines and grades may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience and delay to the City Engineer and the Contractor.

Any work done without being properly located and established by base lines, offset stakes, bench marks, or other basic reference points may be ordered removed and replaced at the Contractor's cost and expense.

Contractor, together with his Subcontractors, shall carefully examine the Plans and Specifications for any interferences with the work and clearances that may be required. Contractor shall be responsible for the proper fitting of materials and equipment without substantial alterations. Contractor shall be responsible for eliminating interferences without additional cost to City. If departures from the Plans and Specifications, or other Contract Documents, are deemed necessary by Contractor, details of such departures and reasons therefor shall be submitted to City Engineer, with drawings (if City Engineer determines that drawings are necessary), for approval as soon as practical. No such departure shall be made except at the peril of the Contractor without the prior written approval of the City Engineer.

GC-6. BEGINNING, PROGRESS AND TIME OF COMPLETION OF WORK

The Contractor shall, within ten (10) days after being instructed to do so in the written "Notice to Proceed" from the City, commence the Work to be done under this Contract; and the rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract on or before the termination of the construction period contractually specified, subject to any extensions of such time made as hereinafter provided. The Contractor shall furnish the City Engineer with a schedule giving the dates on which it expects to start and to complete separate portions of the Work, which schedule shall be strictly adhered to unless agreed to in writing by all parties or modified by an extension of extension of time as hereinafter provided.

GC-7. SHOP DRAWINGS

Contractor shall submit, with such promptness as to cause no delay in his own work or in that of any Subcontractor or other contractor, three (3) copies of all shop, fabrication, assembly, foundation and other drawings and schedules required by the specifications, including, but not limited: (1) drawings of equipment and devices offered by the Contractor for approval of the City Engineer in sufficient detail to adequately show the construction and operation thereof; (2) drawings showing essential details of any change in design of construction proposed, for consideration by the City Engineer, by the contractor in lieu of the design or arrangement required by the Contract Documents, or any item of extra work thereunder; (3) all required wiring and piping layouts; and (4) structural and reinforcing fabrication drawings. The City Engineer shall review, respond to, accept or reject such submissions within a reasonable time after receipt thereof. Contractor shall make such revisions as deemed necessary. On Final Acceptance, the City Engineer shall be furnished with a total of not less than five (5) copies, and more when required, of each drawing as finally approved, such number to include any copies of preliminary or revised drawings which are approved as submitted. After due review by the City Engineer, all such drawings shall become a part of the Contract Documents, and the work or equipment shown by such drawings shall be in conformity with said drawings unless otherwise required by the City Engineer. No work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by the Contractor or its Subcontractors be purchased, until the drawing or drawings therefor have been approved as stipulated, except at the Contractor's own risk and responsibility.

Review for compliance by the City or the City Engineer of drawings or other items submitted by Contractor shall not relieve Contractor from responsibility for errors of any sort in shop drawings or other submittals.

GC-8. CONTRACTOR'S RESPONSIBILITIES AS TO AMBIGUITIES

If there is any ambiguity in City Engineer's drawings or instructions, Contractor shall ask the City Engineer for clarification. Upon written request of Contractor, the City Engineer shall furnish, with reasonable promptness, additional instructions by means of drawings, specifications, or other information necessary for the proper execution of the Work. The Work shall be executed in conformity therewith, and in accordance with paragraph GC-3, Contractor shall do no work without proper instructions except at his peril. Nothing herein to the contrary shall affect Contractor's responsibilities with regard to defects as set forth in paragraph GC-3.

GC-9. CONCEALED CONDITIONS

The Contractor understands that the City does not warrant that the various and sundry materials and information, including, for example, soil tests, bore reports, utility locations and other such data and as-builts in the case of renovation of or addition to existing facilities, reflect actual conditions. The Contractor warrants that it has

examined the site and conducted such tests and examinations as it deems necessary. That being the case, should concealed conditions encountered in the performance of the work below the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground, or should concealed or unknown conditions be encountered in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, there shall be no adjustment in the Contract Price for any extra work necessitated thereby, nor shall the Contract time be adjusted except as the City Engineer, after review and due consideration of all factors, may determine in his sole discretion. Any adjustment in contract time and/or price allowed by the City Engineer shall be set forth in a formal Change Order to the Contract.

GC-10. CONTRACTOR TO FURNISH STAKES AND HELP

The Contractor, unless otherwise instructed, shall stake the Work and shall furnish, without charge, competent people from its force and such tools, stakes, and other materials as required in properly staking out the Work, in making measurements and surveys and in establishing temporary or permanent reference marks in connection with said work. The stakes furnished for the staking of the Work shall be of such type, size and quality as to be acceptable to the City Engineer.

GC-11. PRESERVATION OF MONUMENTS AND STAKES

The Contractor shall carefully preserve all monuments, property corners, bench marks, reference points and stakes, and in case of destruction of the same, will be responsible for proper replacement and for any mistakes or loss of time that may be caused by their unnecessary loss or disturbance. In the event that the loss of stakes, etc., causes a delay in the Work, the Contractor shall have no claim for damages or extensions of time. In the case of any permanent monuments, property corners or bench marks which must of necessity be removed or disturbed in the construction of the Work, the Contractor shall carefully protect and preserve the same until they can be properly referenced for relocation. The Contractor shall furnish at its own expense such materials, surveyors and assistance as are necessary for the proper replacement of monuments, property corners or bench marks that have been moved or destroyed.

GC-12. PERMITS AND NOTICES

- (a) All permits and licenses shall be secured and paid for by Contractor, unless otherwise specified.
- (b) Contractor shall give all notices required by and all work shall be done in accordance with all applicable federal and state laws, City and County laws and ordinances, building codes and rules and regulations bearing on the conduct of the Work.

- (c) Contractor shall notify all affected utilities of the Work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the owner/operator of any affected underground facility. Any project delay, damages or increase in construction costs due to utility relocation delays shall be at the Contractor's risk.

GC-13. GENERAL ADMINISTRATION OF THE CONTRACT

- (a) Unless otherwise stipulated, Contractor shall provide and initially pay for all work (including labor, transportation, tools, equipment, machinery, plant and appliances) necessary in producing the results called for by the Contract Documents.
- (b) Unless otherwise specified, all supplies, materials, equipment and other facilities are guaranteed to be new and all work shall be of good quality and workmanship and free from defects or fault. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of the Work.
- (c) The Contractor shall be solely responsible for and have complete control and charge of construction means, methods, techniques, sequences and procedures, and for safety precautions and programs in connection with the Work. The City shall not be responsible for nor have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the work.
- (d) The Contractor shall, in addition to the schedule required by paragraph GC-6, give to the City Engineer full information in advance as to its plans for carrying on any part of the Work. If at any time before the beginning or during the progress of the Work, any part of the Contractor's plant or equipment or any of its methods of executing the work, appear to the City Engineer to be unsafe, inefficient or inadequate to ensure the required quality or rate of progress of the Work, the City Engineer may order the Contractor to increase or improve its facilities or methods, and the Contractor shall promptly comply with such orders; but neither compliance with such orders nor failure of the City Engineer to issue such orders shall relieve the Contractor from its obligation to secure the degree of safety, the quality of work and the rate of progress required by the Contract.
- (e) The approval by the City Engineer of any plan, schedule or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefor, and such approval shall not be considered as an assumption by the City, or any officer, agent or employee thereof, of any

risk or liability, and the Constructor shall have no claim under this Contract on account the of failure or inefficiency of any plan or method so approved. Such approval shall be considered and shall mean that the City Engineer has no objection to the Contractor's use or adoption, at the Contractor's own risk and responsibility, of the plan or method so proposed by the Contractor.

- (f) Any plan or method of work suggested by the City Engineer or the City to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the City Engineer and the City will assume no responsibility therefor.

GC-14. CONTRACTOR'S EMPLOYEES

- (a) Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the work assigned to him.
- (b) Contractor shall be responsible for compliance with all state and federal laws, if applicable, pertaining to wages, hours and benefits for workers employed to carry out the Work.

GC-15. SAMPLES

Contractor shall furnish samples for approval if directed by the City Engineer or the Contract Documents. The Work shall be in accordance with approved samples.

GC-16. PROTECTION OF WORK AND PROPERTY

- (a) Contractor shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials and equipment on the project site not yet incorporated in the Work, City's property and adjacent property.
- (b) Contractor shall comply with any and all instructions from the City Engineer regarding prevention of accidents, fires or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other, later revision) "Standards For Safeguarding Building Construction and Demolition Operations".
- (c) Contractor shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling

materials, open trenches, other excavations, obstructions and similar conditions. It shall designate a responsible member of its organization on the Project whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to the City Engineer by Contractor.

- (d) In an emergency affecting the safety of life, the Work, the City's property or of adjoining property, Contractor, without special instruction or authorization from the City Engineer, is hereby permitted to act, at its discretion, to prevent such threatened injury or loss. Any compensation claimed by Contractor on account of emergency work shall be determined by mutual agreement of City and Contractor.
- (e) Contractor shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc, which shall be in compliance with all federal, state and local laws and ordinances. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed work, buildings, equipment and the position of cranes. Contractor shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not City shall have reviewed said plan.
- (f) Contractor shall be solely liable for all damages to the City or the property of the City, to employees of the City or other contractors, to neighboring premises, or to any private or personal property, due to improper, illegal or negligent conduct of the Contractor, its Subcontractors, employees or agents in and about said Work, or in the execution of the Work. The Contractor shall be liable to the City for any damages, whether property damage or personal injury, occasioned by Contractor's use of any scaffolding, shoring, apparatus, ways, works, machinery, plant or any other process or thing that is required for the Work.

GC-17. WORK IN OR ACROSS STREET OR HIGHWAY RIGHT-OF-WAY

All work performed and all preparations of the Contractor or his employees, and Subcontractors, if any, within the limits of street or highway rights-of-way shall be in conformity with the requirements, and be under the control, through the City, of the street or highway authority owning or having jurisdiction and control over such rights-of-way in each case. Any costs incurred to comply with such requirements are the responsibility of the Contractor.

GC-18. MAINTENANCE OF TRAFFIC

Local traffic on all streets shall be carried through construction whenever possible. Detours of traffic will be permitted when necessary and with the prior

permission of the City. Streets may be closed for short periods of time under authority of proper permit issued by the City or authority having jurisdiction. However, the Contractor shall conduct its work so as to interfere as little as possible with public travel, whether vehicular or pedestrian, on such streets. Proper notification to County and City police units and to Fire Districts shall be given by the Contractor before closing any public thoroughfare.

Where construction operations require the closing of private driveways, the Contractor shall give adequate notice to the owner or owners thereof and where necessary shall provide temporary access to given property.

GC-19. BARRICADES AND LIGHTS

All streets, roads, highways and other public thoroughfares which are closed to traffic, under the authority of a proper permit shall be protected, at Contractor's expense, by means of effective barricades on which shall be placed proper warning signs; such barricades being located at the nearest intersecting public highway or street on each side of the blocked section of such public thoroughfare.

All open trenches and other excavations shall be provided with suitable barriers, signs and lights, at Contractor's expense, such that adequate protection is provided to the public against accident by reason of such open construction. Obstructions such as material piles and equipment shall be provided with similar warning lights and signs.

All barricades and obstructions shall be illuminated by means of amber lights at night and all lights used for this purpose shall be at Contractor's expense and shall be kept burning from sunset to sunrise. Materials stored upon or along side public streets and highways shall be so placed, and the Work at all times shall be so conducted, as to cause the minimum obstruction and inconvenience to the traveling public.

All barricades, signs, lights and other protective devices in public rights-of-way shall be installed and maintained in conformity with applicable statutory requirements and as required by the Manual on Uniform Traffic Control Devices, as amended, or any other applicable statutes or ordinances.

GC-20. INSPECTION OF WORK – Not Used.

GC-21. SUPERINTENDENCE AND SUPERVISION

Contractor shall provide all necessary supervision to the Work using its best skill, care, judgment and attention and shall keep on the Work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to City Engineer. The superintendent shall not be changed except with the consent of the City Engineer unless the superintendent proves to be unsatisfactory to the Contractor and/or ceases to be in its employ; provided however, that the City Engineer retains the right to

require that the Contractor replace the superintendent at any time, such right not to be arbitrarily exercised.

GC-22. CONTRACTOR'S OFFICE AT SITE OF WORK – Not Used.

GC-23. CHANGES IN THE WORK – Not Used.

GC-24. DEDUCTIONS FOR UNCORRECTED WORK – Not Used.

GC-25. DELAYS AND EXTENSION OF TIME – Not Used.

GC-26. WORK STOPPAGES – Not Used.

GC-27. PATENT LIABILITY CLAUSE

Contractor agrees to defend any claim, action or suit that may be brought against City, its governing body, officers, agents or employees for infringement of any patents arising out of the performance of this Contract or out of the use or disposal by or for the account of City of supplies furnished or construction work performed hereunder, and also to indemnify and hold harmless City, its governing body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them sustained by it or them on account of any such actual or alleged infringement.

It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment used in or furnished for the Work shall be included in the Contract Price. Final payment to the Contractor by the City shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled.

GC-28. INDEPENDENT CONTRACTOR

The right of general supervision of the City and/or the City Engineer shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms and corporations arising from the Contractor's execution of the Work shall not be lessened because of such general supervision, but as to all such

person, firms and corporations, and the damages, if any, to them or their property, the contractor herein is an independent contractor in respect to the Work.

GC-29. SEPARATE CONTRACTS

- (a) City reserves the right to perform by itself or let other contracts in connection with the Work. Contractor shall afford reasonable opportunity for the introduction and storage of materials and the execution of work by City or others and shall properly connect and coordinate its work with the work of City or others.
- (b) If any part of Contractor's work depends upon the work of the City or others, Contractor shall inspect and promptly report to City any defects in any such work that renders it unsuitable for proper execution or results. Its failure to so inspect and report shall constitute an acceptance by it of such other work as fit and proper for the reception of its work.

GC-30. RELATIONS WITH OTHER CONTRACTORS

The Contractor shall cooperate with all other contractors or workers who may be performing work on behalf of the City or any other entity on any work in the vicinity of the Work to be done under this Contract, and it shall so conduct its operations as to interfere to the least possible extent with the work of such contractors or workers. Contractor shall be responsible for any injury or damages that may be sustained by other contractors, workers or their work because of any fault or negligence on Contractor's part, and shall at its own expense repair or pay for such injury or damage. Any difference or conflict which may arise between the Contractor and contractors or between the Contractor and the workers of the City, or any other entity in regard to their work, shall be adjusted and determined by the City Engineer. If the work of the contractor is delayed or damaged because of any acts or missions of any other contractor or contractors, the City may, in its discretion, grant an extension of time and/or an adjustment in the Contract Price as may be appropriate in the circumstances.

When two or more contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City Engineer shall decide which contractor shall cease work and which shall continue, whether the work on both contracts shall progress at the same time, and in what manner the work is to proceed.

When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men/women, materials or appliances required for the execution of another contract, such privileges of access or any other responsible privilege may be granted by City Engineer to the contractor so desiring to the extent which may be reasonably necessary.

In the event that Contractor is performing work at a site or on a project involving City and one or more other private or governmental entities, which have their own

contractors on site as well, Contractor shall advise City Engineer when it anticipates that there may be interference with the Contractor's work or with the work of any other contractor. City Engineer shall, to the best of its ability, with input from Contractor as to coordination of the work, seek to schedule work of the various contractors so as to avoid as much inconvenience and delay as possible; provided, however, that in the event Contractor experiences a delay or damage to the Contractor's work as a result of the presence of other such contractors the City may, in its discretion, grant an extension of time and/or an adjustment in the Contract Price as may be appropriate in the circumstances.

GC-31. INDEMNITY – Not Used.

GC-32. PROTECTION OF PROPERTY/LIABILITY

Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers and utilities, both above the ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connections therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.

The Contractor shall give reasonable notice to the affected owner or owners when any such property is liable to injury or damage through the performance of the Work and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property and/or utilities.

The Contractor shall satisfactorily shore, support and protect any and all structures and all excavations, pipes, sewers, drains, conduits and other facilities and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any additional time on account of any postponement, interference or delay caused by any such structures and facilities being on the line of the Work, whether they are shown on the plans or not.

GC-33. PROVISION FOR EMERGENCIES – Not Used.

GC-34. ASSIGNMENT AND SUBLETTING OF CONTRACT – Not Used.

GC-35. DISPUTE RESOLUTION – Not Used.

GC-36. INSURANCE – Not Used – See Exhibit C to the Agreement.

GC-37. AUTHORITY AND DUTY OF THE CITY ENGINEER – Not Used.

GC-38. CORRECTION OF LABOR, ETC.- BEFORE FINAL PAYMENT

At City Engineer's request, Contractor shall, at Contractor's expense, promptly remove from the job site all labor, supplies, materials, equipment and/or other facilities condemned by City Engineer as not in accordance with the Contract Documents, whether incorporated or not; and the Contractor shall, at Contractor's expense, promptly replace and re-execute all labor, supplies, materials, equipment and/or other facilities in accordance therewith and, at Contractor's expense, restore all work of other contractors and subcontractors destroyed or damaged as a result of such removal, replacement and re-execution.

GC-39 . CORRECTION OF LABOR, ETC.-AFTER FINAL PAYMENT

- (a) Contractor guarantees to City that all work performed under this Contract shall be free from defects in material or workmanship for a period of not less than two (2) full years from the date of final payment by City; provided, however, that whenever any provision of the Contract Documents requires a guarantee for a period in excess of two (2) years to be furnished by Contractor, Contractor shall promptly execute same in writing and shall promptly deliver same to City.
- (b) Contractor shall promptly procure from each Subcontractor a written guarantee that all work performed by such Subcontractor shall be free from defects in material or workmanship for a period of not less than two full (2) years from the date of final payment by City to Contractor and shall promptly deliver same to City; provided, however, that wherever any provision of the Contract Documents requires a guarantee for a period in excess of two (2) years to be furnished by a Subcontractor, Contractor shall promptly procure same in writing from the appropriate Subcontractor and shall promptly deliver same to City.
- (c) Whenever any provision of the Contract Documents requires a guarantee for a period in excess of two (2) years but does not specify who is to give

such a guarantee, it shall be given by the Contractor regardless of who is performing the work for which the guarantee is required. All such guarantees shall be in writing and shall be promptly delivered to City.

- (d) The furnishing of guarantees by Subcontractors and materialmen shall not relieve Contractor of his obligations under guarantees required of Contractor under the Contract Documents. In addition to the above guarantees, Contractor will (1) obtain and assign to City all available manufacturer and supplier warranties; and (2) at City's sole option, assign to City any rights Contractor may have against any Subcontractor and/or supplier for defective work, materials or equipment.
- (e) Any provision of the Contract Documents to the contrary notwithstanding, all guarantees provided for in the Contract Documents shall begin to run from the date of final payment by City to Contractor.
- (f) Neither the issuance of the final certificate, payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for work determined by City not to be in accordance with the Contract Documents. If, within two (2) years of the date of final payment to Contractor or within any longer period of time as may be prescribed by applicable law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found by City to be defective or not in conformance with the Contract Documents then, at City's request, Contractor shall, at Contractor's expense, promptly remove from the premises all work determined by the City to be defective or not in accordance with the Contract Documents; and Contractor shall, at Contractor's expense, promptly replace and re-execute all work in accordance therewith and, at Contractor's expense, restore all Subcontractors' work and work of other contractors and subcontractors damaged as a result of such removal, replacement and re-execution. City shall with reasonable promptness give notice of any work condemned by City as not in accordance with the Contract Documents. If, within ten (10) days after the mailing of such notice, the Contractor shall fail or neglect to make, or undertake to make, with due diligence any required repairs or corrections, the City may make such repairs at Contractor's expense; provided, however, that, in case of an emergency which, in the judgment of City, would cause serious loss, hazard or damage if not corrected immediately, such repairs may be made without prior notice being sent to the Contractor, and Contractor shall nevertheless be liable to the City for the cost thereof.

GC-40. RIGHT OF CITY TO TERMINATE CONTRACT – Not Used.

GC-41. CITY'S RIGHT TO DO WORK

Without otherwise limiting City's rights under the Contract Documents, if Contractor should neglect to prosecute the work properly or fail to perform any provision of the Contract Documents, City, after three (3) days' written notice to Contractor may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due Contractor.

GC-42. PAYMENTS – Not Used.

GC-43. PAYMENTS WITHHELD – Not Used.

GC-44. LIQUIDATED DAMAGES

It is mutually understood and agreed by and between the parties to this Contract that time is of the essence of this Contract, and that in the event that the Contractor shall fail in the performance of the Work specified and required to be performed within the period of time stipulated therefor in the Contract, after due allowance for any extension or extensions of time which may be granted under the Contract, the said Contractor shall pay to City, as stipulated liquidated damages and not as a penalty, the sum stipulated herein for each and every day that the Contractor shall be in default.

In the case of joint responsibility for any delay in the final completion of the Work covered by this Contract, where two or more separate contracts are in force at the same time and cover work on the same project and at the same site, the total amount of liquidated damages assessed against all contractors under such contracts, for any one day of delay in the final completion of the Work will not be greater than the approximate total of the damages sustained by the City by reason of such delay in completion of the work as set forth in the table below, and the amount assessed against any one contractor for such one day of delay will be based upon the individual responsibility of such contractor for the aforesaid delay as determined by, and in the judgment of, the City.

In case of failure on the part of the Contractor to effect completion within the time specified the City shall have the right to deduct from the total compensation otherwise due the Contractor as liquidated damages, fixed and agreed to in advance, an amount according to the following schedule:

<u>Contract Amount</u>		<u>Liquidated Damages</u>	
\$0	to	\$25,000	\$75.00
\$25,000	to	\$50,000	\$125.00
\$50,000	to	\$100,000	\$200.00

\$100,000 to	\$500,000	\$400.00
\$500,000 to	\$1,000,000	\$600.00
\$1,000,000 to	\$2,000,000	\$925.00
\$2,000,000 to	\$5,000,000	\$1,375.00
\$5,000,000 to	\$10,000,000	\$2,000.00
\$10,000,000 and up		\$3,000.00

for each 24-hour calendar day, including weekends and holidays, the work remains incomplete over the specified completion time. **(THE CITY RESERVES THE RIGHT TO ADJUST THE SCHEDULE OF LIQUIDATED DAMAGES, PRIOR TO ADVERTISING FOR BIDS, BASED ON THE SCOPE AND URGENCY OF THE PROJECT.)**

The City shall have the right to deduct said liquidated damages from any moneys in its hands, otherwise due or to come due, to the Contractor, or to sue for and recover compensation for damages for nonperformance of this Contract.

GC-45. BONDS – Not Used.

GC-46. EASEMENTS AND RIGHTS-OF-WAY

Permanent and temporary (construction) easements and rights-of-way will be provided by the City as shown on the plans. The Contractor shall confine its operations to the easements provided and shall carefully note where buildings, structures or other obstructions will limit its working space. In the event that easements and rights-of-way are not available or if they have not been secured, or if entry to property is denied by court order, injunction, litigation or any other reason, the Contractor shall cease operations in such area and confine its work to other area approved by the City. In the event of any delay arising from delays in securing easements and rights-of-way, the Contractor may request an extension of time under paragraph GC-25.

GC-47. USE OF PREMISES

- (a) Contractor shall confine its operations to limits indicated by law, ordinances, rules, regulations, and permits of City or directions of City Engineer and shall not unreasonably encumber the premises and/or site.
- (b) Contractor shall not load or permit any part of any structure, street or highways to be loaded with a weight that exceeds load limits which that will endanger their safety.
- (c) Contractor shall comply with federal, state and local laws and ordinances, as well as any specific instructions regarding signs, advertisements, fires and smoking from City Engineer.

- (d) A laydown area or staging area will be provided at the site and shall be chosen by City Engineer. Contractor will furnish its own weather protection if required.
- (e) No City equipment will be taken out of service or put into service without approval of City.

GC-48. ALLOWANCES – Not Used.

GC-49. CUTTING, PATCHING AND DIGGING

- (a) Contractor shall do all cutting, fitting or patching of its work that may be required to make its several parts come together properly and fit it to receive or be received by work of others shown upon or reasonably implied by the Contract Documents.
- (b) Contractor shall not endanger any property of City or any other individual or entity, or the work by cutting, digging or otherwise and shall not cut or alter the work others except with the written consent of City.
- (c) Contractor shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by work under this Contract.
- (d) Contractor shall comply with all local ordinances dealing with cutting, patching and digging and shall obtain all necessary permits.

GC-50. CLEANING UP

Contractor shall at all times keep the premises/site free from accumulations of waste material or rubbish caused by its employee or work; and at the completion of the daily work it shall remove all its rubbish from and about the premises/site and all its tools, scaffolding and surplus materials, and shall leave its work "broom clean" or its equivalent unless more exactly specified. In case of dispute, City may remove the rubbish and charge the cost to Contractor.

GC-51. TEMPORARY FACILITIES

- (a) Except where special permission has been granted by City to use existing toilet facilities belonging to the City, Contractor shall provide and maintain sanitary temporary toilet facilities located where directed by City Engineer for accommodation of all persons engaged on the Work. Temporary toilets shall be enclosed and weatherproof and kept in sanitary and an approved condition at all times. After use for same has ceased,

Contractor shall remove the temporary toilet facilities from City's premises and disinfect and fill any vaults. All temporary toilet facilities shall comply with paragraph GC-52.

- (b) Contractor shall provide and maintain any necessary temporary offices, storerooms, roadways, etc., as may be required for its work. Same shall be located and constructed in an approved manner acceptable to City Engineer. Upon completion of work or when requested by City Engineer, Contractor shall remove same from City's premises and leave the area in a clean and orderly condition.
- (c) Contractor shall provide and maintain temporary heat as required to protect all work and material against injury from dampness and/or cold to the satisfaction of City Engineer.
- (d) Unless otherwise specified in the Contract Documents, Contractor shall provide, at its cost and expense, temporary power, wiring and lights from City's provided source as may be required for its operations.

GC-52. SANITARY REGULATIONS AND WATER

The operations of the Contractor shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Contractor shall supply safe and sufficient drinking water to all of its employees. The Contractor shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious diseases and the spread of same.

All water used in the course of the Work shall be hauled in or purchased from the local Water Company's distribution system at the Contractor's own cost and expense.

GC-53. LAWS AND ORDINANCES

The Contractor shall be fully familiar with all City, County, State and Federal laws, ordinances or regulations which would in any way control the actions or operations of those engaged in the Work under this Contract or which would affect the materials supplied to or by them. It shall at all times observe and comply with all ordinances, laws and regulations and shall protect and indemnify and defend the City and the City's officers and agents against any claims or liability arising from or based on any violation of same.

GC-54. UNFAVORABLE CONSTRUCTION CONDITIONS

During unfavorable weather, or other unfavorable conditions for construction operations, the Contractor shall pursue only such portions of the Work as will not be damaged thereby. No portions of the Work, the satisfactory quality or efficiency of which will be affected by any unfavorable conditions, shall be constructed while these

conditions exist, unless, by special means or precautions approved by the City Engineer, the Contractor shall be able to perform the Work in a proper and satisfactory manner.

GC-55. CONTRACTOR'S RISK

The Contractor shall assume full responsibility for the Work and shall bear any loss and repair any damage at his/her own cost occasioned by neglect, accident, vandalism or natural cause, whether foreseen or unforeseen, during the progress of the Work and until the Work is completed and accepted by the City.

GC-56. SAFETY RULES – Not Used.

GC-57. WEEKENDS, HOLIDAY AND NIGHT WORK

No work shall be done between the hours of 6:00 p.m. and 8:00 a.m., nor on weekends or City holidays, without the written approval or permission of the City Engineer 48 hours in advance in each case, except such work as may be necessary for the proper care, maintenance and protection of work already done or of equipment, or in the case of an emergency.

Night work may be established by the Contractor, as a regular procedure, with the written permission of the City Engineer; such permission, however, may be revoked at any time by the City Engineer.

GC-58. APPROVAL OF EQUALS – Not Used.

GC-59. TEST OF MATERIALS OFFERED BY CONTRACTOR – Not Used.

GC-60. TESTING OF COMPLETED WORK – Not Used.

GC-61. BORROW AND WASTE AREAS

All borrow materials shall be obtained by the Contractor at its own cost and expense. The borrow area and materials shall be approved by the City Engineer and shall be friable material suitable for compaction.

All waste areas shall be located off the site and arrangements and payment for use for such areas shall be the sole responsibility of the Contractor. All waste disposal shall be in compliance with federal, state, and local laws, ordinances and regulations.

GC-62. PARKING AREAS, DRIVES AND WALKS

All existing parking areas, drives and walks within the Project limits shall be adjusted to conform to the lines and grades shown on the plans. Any of the above structures that are removed or damaged during construction shall be reconstructed, at Contractor's expense, of materials that will create a quality equal to or better than the condition of the existing facility prior to construction operation.

GC-63. STREET SIGNS AND TRAFFIC AIDS

The Contractor shall be responsible for all preexisting traffic control devices at the Project site, including installation, maintenance, removal and storage of such devices. All temporary and permanent traffic control devices supplied by the Contractor shall comply with and be installed in accordance with the Manual on Uniform Traffic Control Devices, current edition as revised, and the Traffic Control Devices Handbook.

GC-64. PLACING WORK IN SERVICE/PARTIAL UTILIZATION

If desired by the City, portions of the Work may be placed in service when completed for partial utilization by the City, and the Contractor shall give proper access to the Work for this purpose; but such use and operation shall not constitute an acceptance of the Work, and the Contractor shall be liable for defects due to faulty construction until the entire Work under this contract is finally accepted and for such periods of time as designated in the Contract Documents or otherwise permitted by law.

GC-65. NON-DISCRIMINATION/OTHER LAWS

The Contractor agrees that:

- (1) The Contractor shall observe the provisions of the Kansas Act Against Discrimination, the Kansas Age Discrimination in Employment Act and Chapter V, Article 12 of the Code of the City of Roeland Park, Kansas, and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry, age, sexual orientation or gender identity;
- (2) In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- (3) If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the

provisions of K.S.A 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

- (4) If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination or the Kansas Age Discrimination in Employment Act under a decision or order of the Commission which has become final, or of Chapter V, Article 12 of the Code of the City of Roeland Park, Kansas, the Contractor shall be deemed to have breached the present Contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
- (5) The Contractor shall include the provisions of subsections (1) through (4) 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 a Contractor: (a) who employs fewer than four employees during the term of such contract; or (b) whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

GC-66. FEDERAL LOBBYING ACTIVITIES

31 U.S.C.S. Section 1352 requires all subgrantees, contractors, subcontractors and consultants who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements.

In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the City Engineer and must be returned to the City with other contract documents. It is the responsibility of the Contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

GC-67. RECORDS

Contractor shall maintain copies of records pertaining to the Construction of this project for a period of five (5) years from the date of final payment. Such records shall be made available to the City for audit and review purposes upon written request

therefor from City or its authorized agent(s) during the construction period and the five (5) year period following final payment.

GC-68. TITLES AND SUBHEADS – Not Used.

GC-69. NO WAIVER OF RIGHTS – Not Used.

GC-70. SEVERABILITY – Not Used.

GC-71. GOVERNING LAW – Not Used.

GC-72. VENUE – Not Used.

5.6 City Design and Construction Practice Requirements

5.6.1 Testing

The DBT shall employ and pay for all testing as required by the Director of Public Works.

All laboratory testing shall be performed by a testing laboratory under the direction of a professional engineer. Field testing shall be performed by certified engineering technicians, certified for the test being performed, employed either by the Contractor or a third party testing laboratory.

Field testing is any test performed on a material at its location of incorporation into the final product. Laboratory testing is any test where a sample is removed from its present location to a building where the actual test is performed.

5.6.2 Construction Staking

The construction staking necessary to construct this project shall be performed by or under the direction of a registered professional engineer/surveyor, who shall be employed by the DBT, and approved by the Owner.

A copy of construction staking notes and grade sheets, etc., shall be furnished to the Owner and/or their authorized representative.

Unless specifically identified as a pay item in the proposal, payment for construction staking shall be considered subsidiary to other items in the proposal.

5.6.3 Sod and Seed Season

Sod will not be placed between June 1 and September 1. Permanent Seed and Mulch will not be placed between April 15 and August 15. Temporary seeding as part of erosion control is not confined to any date. The Contractor shall request in writing any request for deviation from the above dates.

5.6.4 Blasting

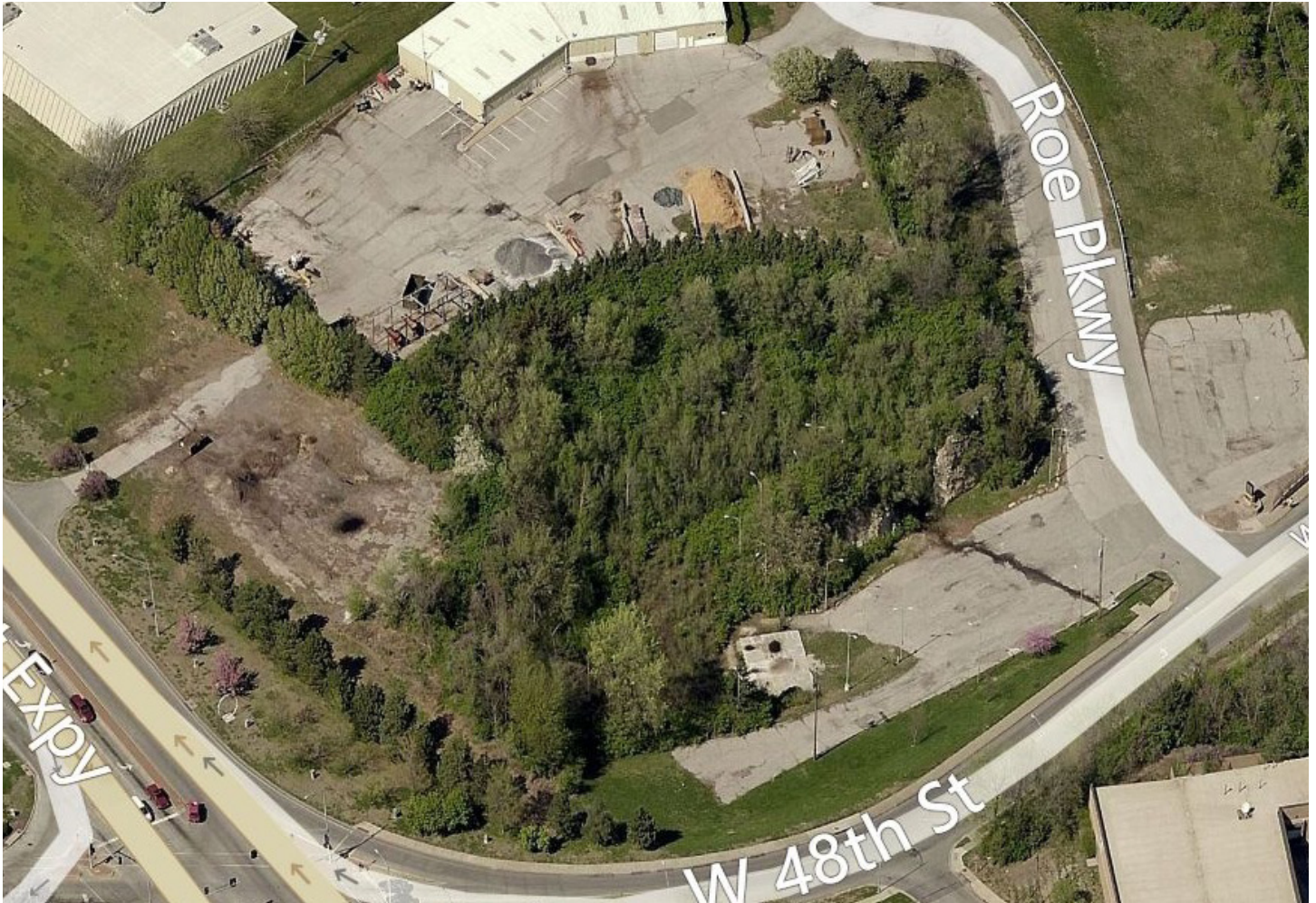
If required a Blasting Permit obtained through the Roeland Park Fire Department is required.

EXHIBIT B

DBT Proposal
Design-Build Services
Swimming Pool Redevelopment - Mine Backfill
September 1, 2016

Pyramid Contractors, Inc.
901 W. Ironwood
Olathe, KS 66061

Contact: Jeff Shoemaker
Phone: (816) 520-3338
E-mail: jeffs@pyramidcontractorsinc.com



ATTN: Keith Moody
City Administrator

City of Roeland Park, Kansas
4600 West 51st Street
Roeland Park, Kansas 66205

DATE: 09/01/2016

RE: DBT Proposal - Swimming Pool Redevelopment - Mine Backfill

Dear Mr. Moody:

Pyramid Contractors, Inc. (Pyramid) is excited to submit our DBT Proposal, with our teaming partner, Terracon Consultants, Inc. (Terracon), to share our recommendations for the project.

PRIMARY POINT OF CONTACT:

Jeff Shoemaker
Project Manager/Design Manager
jeffs@pyramidcontractorsinc.com
816-520-3338

Pyramid Contractors, Inc
901 W. Ironwood
Olathe, KS 66061

We are confident that we will provide the City of Roeland Park with the most qualified team and best solution for the project. We look forward to working with you and your staff on this project. Thank you for your time and consideration.

Sincerely,

Jeff Shoemaker
Project Manager/Design Manager



ORGANIZATIONS THAT MAKE UP THE DBT

PYRAMID CONTRACTORS, INC.

Corporation: Kansas
Principal-In-Charge: Gavin Barmby President

Pyramid Contractors will be responsible for and construct with their own forces and equipment all construction activities.

CONSTRUCTION

Pyramid has a long track record of taking on difficult and unique projects and delivering them on time or early and on budget. Key team members from Pyramid that will be assigned to this project average 30 plus years in the industry. They have experience in a multitude of site construction projects of varied size, scope and complexity. In addition team members have experience in mine construction and remediation methods including complete deconstruction. Pyramid has an extensive fleet of owned equipment to self-perform a wide range of construction work. Pyramid also services all of their equipment in house in order to insure that on site work activities are allowed to proceed in a timely manner.

TERRACON CONSULTANTS, INC.

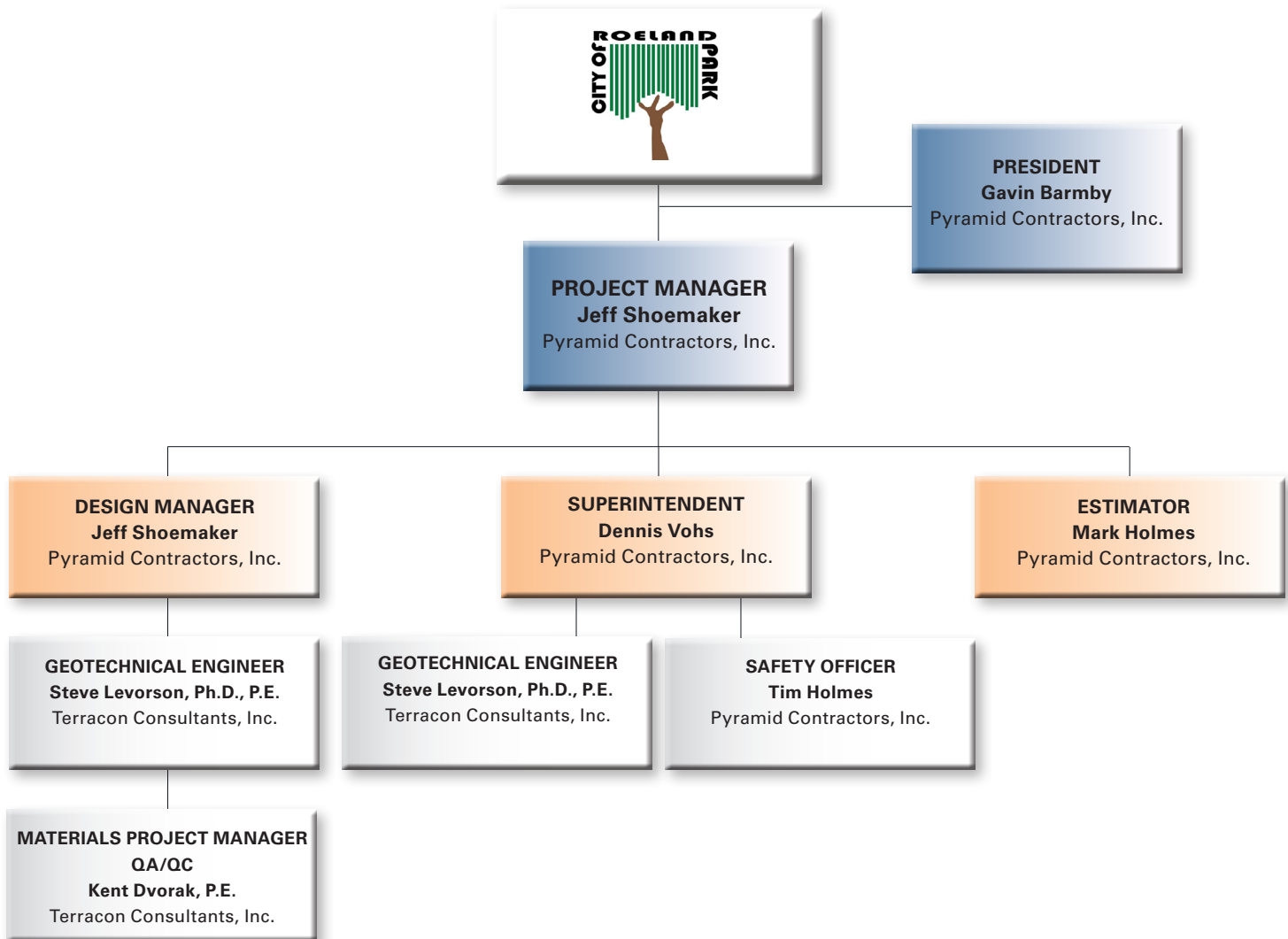
Corporation: Delaware
Principal-In-Charge: Steven Levorson, Geotechnical Engineer/Senior Consultant/Senior Principal

Terracon will be responsible for development of construction specifications for placement of a controlled fill suitable for future development similar to the information provided in Addendum 2. Terracon will provide QC/QA services during the construction phase to document the construction adherence of those specifications.

ENGINEERING

Terracon’s Lenexa office, with approximately 80 employees, has provided geotechnical engineering services in the Kansas City metro area for more than 30 years. Our professionals are extremely knowledgeable about local geologic conditions. Terracon has 9 Geotechnical Engineers on staff in our Lenexa, Kansas office location. Their experience ranges from 6-45 years in the industry. We also have a fully equipped, AASHTO and USACE certified laboratory, and the largest field technician staff and equipment fleet in the Kansas City metropolitan area.

KEY STAFF & ORGANIZATIONAL CHART



Mr. Shoemaker will serve as the Point-of-Contact/Project Manager/Design Manager. He will oversee the work of each subsequent member of the team to ensure the projects schedule and budget are adhered to. He has over 30 years in the industry, and will be readily available for the duration of the project. He will also the project design is completed and all design requirements are met. Mr. Levorson provide geotechnical engineering services for the project. He will investigate the current condition of the void and will design a solution to backfill the mine area so future surface development will not be impacted. Mr. Levorson has more than 25 years in the industry and is well-respected in his field. He serves as a senior consultant in Terracon's Lenexa office. Mr. Vohs will serve as superintendent and will ensure the project is constructed according to the project plans and specifications, project contract, and uses construction methods that meet current sustainability best practices. Mr. Vohs has over 28 years of experience in the construction industry, with much of that time spent as a superintendent.



PROJECT UNDERSTANDING & MAJOR SUPPLIERS

PROJECT UNDERSTANDING

The City currently owns a 7.3 acre site at 4800 Roe Parkway that it is looking to develop into one of several commercial ventures. The site currently houses the City Municipal Services Building and formerly the City Pool. In addition the site is the location of a former open pit and underground mining operation.

The roof and pillars of the underground mine are unstable and require remediation in order to facilitate the future land uses. In addition considerable uncontrolled fill, building debris, mine subsidence and surface infiltration have been deposited on the mine floor. There have been multiple dome outs and some complete mine failure which is the most prevalent at the eastern portion of the mine. The mine appears to gradually become more stable as it moves to the west, but even the western most ceiling is exhibiting signs of failure.

Outside the scope of the original DBT Proposal are additional site challenges. Uncontrolled fill comprised of a rock soil mix has been placed at the southern face of the mine in order to close off the portals to unauthorized access. In addition undocumented fill has been placed in the old pool area.

MAJOR SUPPLIERS

This approach requires no special suppliers or materials.



PROJECT APPROACH & COST-BENEFIT

PROJECT APPROACH

The proposed filling of the mine with slurry was reviewed and evaluated by the Pyramid/Terracon team. Based on this review and consideration of alternate methods to achieve the desired end product the Pyramid/Terracon team is proposing an alternate methodology of removing the overburden and limestone ceiling and placing a controlled fill.

The team has chosen a complete deconstruction of the mine area and reworking the site materials into a controlled fill as the option for this proposal. The mine area will be excavated from the surface down to the mine floor with the materials remixed into an observed controlled fill per the Design Build recommendations from Terracon. Concrete Barriers will be placed at the excavation limits in the City Service Center area. Access to the building will be continuous. The staging areas to the south will be impacted during the grading operation and the surface areas restored immediately after fill operations in that area are completed. See attached plan for approximate disturbance limits.

Terracon will provide recommendations for construction of the fill to support typical surface improvements such as pavements, parking lots, and drives, green areas such as parks and foundation elements for structures such as up to 3 story hotels or office buildings. Placement of future structures should avoid the buildings being supported on both native and fill materials.

The advantages to this are as follows:

- The ability to visibly demonstrate the condition of the site materials placed in a controlled and verifiable manner allowing for common design parameters for building footings, slabs and pavements.
- The elimination of the having a failed mine under future development.

- The remediation of uncontrolled fill materials inside the failed mine.
- Future grading and rock excavation above the old mine completed.
- Ability to work with the City and its future stakeholders to shape and grade this project in the most advantageous way to minimize future site costs and maximize post project land values.

We also propose to remediate the existing fill at the face of the mine and the fill in the pool area which will leave the site in a condition ready for the next developer or user to start site work with only the need to complete grading to the desired plan elevations.

COST-BENEFIT FOR THIS APPROACH

This approach will result in saving of future expense for development of the site. The team estimates these cost savings for future development will be on the order of \$900,000.

These saving are as follows:

- Mobilization \$20,000
- Clearing \$12,000
- Soil Grading Above Mine Area 6,000 CY @ \$10.25 \$61,500
- Limestone Excavation Above Mine Area 5,000 CY @ \$18.75 \$93,750
- Remove and Recompact Uncontrolled Fills 8,500 CY @ \$12.50 \$106,250
- Added Land Value with deconstructed mine 7.3 acres @ \$2.00 SF \$635,976



SAFETY

The personal safety and health of each employee is also of primary importance. The prevention of occupationally induced injuries and illnesses is of such consequence that it will be given precedence over operational productivity whenever necessary. To the greatest extent possible, management will provide mechanical and physical facilities required for personal safety and health in keeping with the highest standards.

We will maintain a safety and health program conforming to the best practices. To be successful, such a program must embody the proper attitudes toward injury and illness prevention on the part of both supervisors and employees. It also requires cooperation in all safety and health matters, not only between supervisor and employee, but also between each employee and fellow workers. Only through such a cooperative effort can a safety record in the best interest of all be established and preserved.

- Providing mechanical and physical safeguards to the maximum extent possible.
- Conducting a program of safety and health inspections to find and get rid of unsafe working conditions or practices; to control health hazards; and to comply with safety and health standards for every job.
- Training for all employees by regular safety meetings and letters in good safety practices.
- Providing necessary personal protective equipment and instruction for its use and care.
- Developing and enforcing safety and health rules; requiring that employees cooperate with these rules as a condition of employment.

Pyramid was presented with the 2011 Annual Safety Award by The Heavy Constructors Association of the Greater Kansas City Area in recognition of good practice toward encouragement and promotion of Safety in the Construction Industry.

Safety is one of Terracon's core values and our commitment to an "Incident and Injury-Free (IIF)" philosophy is one of the pillars of our culture. Successful execution and delivery includes the need to work safely and keep our employees and the public safe every day. Terracon is very much a safety-oriented company. We strive to build health and safety into all aspects of our business and into the thinking of our employees. The culture is continued further in our everyday work culture, with all meetings beginning with an IIF moment and safety discussion.

IIF is about care and concern for people. It is our personal and organizational commitment at all levels of the company to everyone going home safe to their family every day. It is where safety is held as a core value as well as an operational priority. Working safely is an inseparable part of working correctly, just as much as other operational priorities, in particular quality, budget and schedule. IIF is our commitment to our people, who we value for who they are and what they do.





COMMUNICATION, MANAGEMENT & CONTRACT REVIEW

COMMUNICATION

Communication is a key for the stakeholders in any project. Pyramid and Terracon have a long history of managing difficult projects involving unique construction challenges. We will hold bi-weekly progress meetings with the City personnel to discuss updated project progress, schedules and construction techniques. Additional meetings may be held if there become changing needs or requirements that may be desired by the City and their long term desires for the property.

MANAGEMENT

Quality management starts with early planning, reliance on proven construction techniques and staffing the project with experienced personnel. Pyramid has a proven record of bringing difficult projects in on budget and on or ahead of schedule. Pyramid’s ability to bring the optimum equipment resources to the project and service those resources in house provides the ability to keep a project moving on schedule and on budget. Pyramid will provide the required equipment and personnel to meet the design recommendations delivering a high quality end product to the City.

OTHER PERTINENT INFORMATION

We Have received the following addendum:

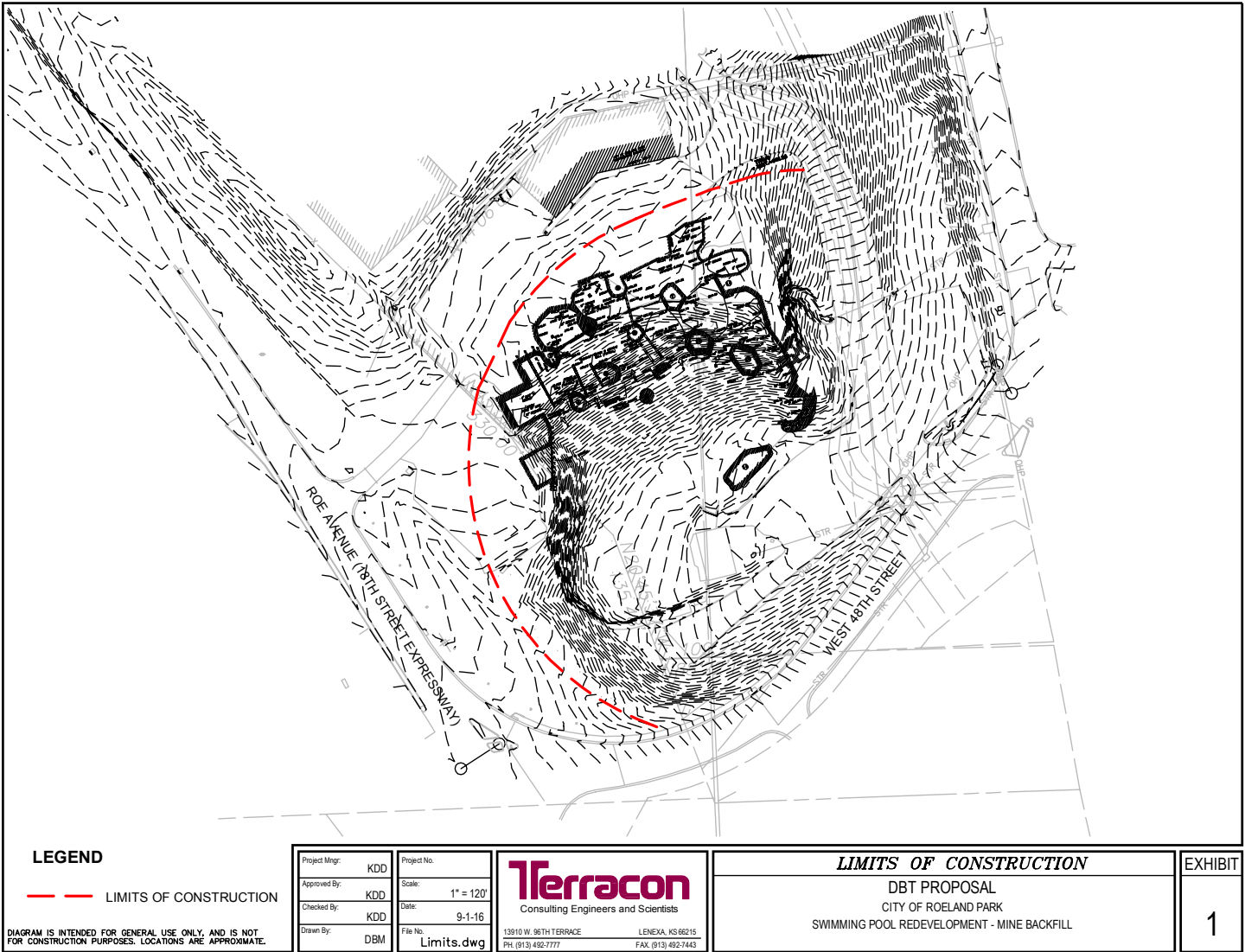
- Addendum #1
- Addendum #2

CONTRACT REVIEW

Pyramid and Terracon have reviewed the contract documents and all supporting information closely in preparing this proposal. There are no objections or clarifications outside of this proposal.



SITE MAP - LIMITS OF CONSTRUCTION





PRICE AND CONSTRUCTION COMPLETION DAY PROPOSAL - PYRAMID CONTRACTORS, INC.

ENGINEERING SERVICE

NO	Description of Service	COST
1	Development of plan for mine deconstruction	\$15,000.00
2	Design services for placement of controlled fill including construction inspection and QC/QA	\$60,000.00
3	As Built documents	\$5,000.00
TOTAL ENGINEERING SERVICES		\$80,000.00

CONSTRUCTION BID ITEMS

NO	Description of Work Item	UNIT	QUANTITY	Unit Price	Scheduled Value
1	Mobilization	Lump Sum	1	\$67,500.00	\$67,500.00
2	Clearing	Lump Sum	1	\$18,500.00	\$18,500.00
3	Soil overburden mine area	CY	6000	\$10.25	\$61,500.00
4	Farley limestone mine area	CY	15000	\$18.75	\$281,250.00
5	Existing mine fill remediation	CY	6000	\$13.50	\$81,000.00
6	Haul off trash in mine space	CY	1000	\$45.00	\$45,000.00
7	Haul in dirt for mix with rock excavation	CY	8000	\$15.25	\$122,000.00
8	Remove and replace uncontrolled site fills	CY	8500	\$12.50	\$106,250.00
9	Erosion Control	Lump Sum	1	\$23,500.00	\$23,500.00
10	Seeding	Lump Sum	1	\$6,500.00	\$6,500.00
11	Restore City Service Center staging area	Lump Sum	1	\$28,000.00	\$28,000.00
12	Temporary site perimeter protection	Lump Sum	1	\$20,000.00	\$20,000.00
13	Staking	Lump Sum	1	\$5,000.00	\$5,000.00
TOTAL CONSTRUCTION BID ITEMS COST					\$866,000.00

TOTAL PRICE PROPOSAL COST \$942,000.00

Substantial completion of the entire work shall be achieved no later that February 1, 2017 based on unobstructed access to the site by September 16, 2016.

EXHIBIT "C"

INSURANCE REQUIREMENTS

1. Design-Builder agrees to procure and carry, at its sole cost, until completion of this Agreement and all applicable warranty periods, including the statute of repose for claims, all insurance as set forth below; provided, however:

1.1 All insurance is to be issued by companies authorized to do business in the State of Kansas, and with liability limits acceptable to the City. Insurers shall have A.M. Best rating of no less than A- or higher, and at least a Class VIII financial rating.

1.2 The City reserves the right to review certified copies of any and all insurance policies to which this Agreement is applicable.

2. Such insurance shall include the following terms and conditions:

2.1 All coverages obtained by Design-Builder, except professional liability if applicable, shall be on an occurrence policy form and not on a claims'-made policy form.

2.2 The cost of defense of claims shall not erode the limits of coverage furnished.

2.3 Advance notice of cancellation. All insurance certificates will state that all coverages are in effect and will not be canceled without thirty (30) days' prior written notice ("endeavor to notify" language is not acceptable), to the City and other required additional insureds, and Design-Builder shall submit to the City, prior to commencing any Work on the Project, an endorsement to the policy confirming that such notice shall be given. All policies of liability insurance shall contain an endorsement stating the insurers agreement to provide such notice, using CNA form G-140327-B (Ed. 07/11), Travelers Form IL T4 00 (12/09) or other equivalent carrier forms, such as ACORD forms. Allied form IL 70 03 09 11 is acceptable as well, if supplemented by an endorsement stating that in the event of non-payment of premium, notice shall be given at least ten (10) days in advance of cancellation.

2.4 Advance notice of claims/reduction of policy limits. The Design-Builder, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Design-Builder shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate (or otherwise required by the Contract Documents) if the Design-Builder's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Design-Builder shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

2.5 Severability of Interest. All insurance carried shall be endorsed to provide that, inasmuch as this policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

2.6 Comprehensive Automobile Liability Insurance. Design-Builder shall maintain comprehensive automobile insurance, including contractual liabilities insuring the indemnities set forth in this Agreement covering all owned, non-owned and hired automobiles used in connection with the services or other work hereunder, whether on or off the site, and shall have minimum bodily injury and property damage limits of \$1,000,000.00 combined single limit per occurrence. An MCS-90 endorsement shall be procured when applicable.

2.7 Workers' Compensation and Employer's Liability Insurance. Design-Builder shall maintain Worker's Compensation Insurance to cover the statutory limits of the Workers' Compensation laws of the state in which any work is to be performed and when applicable to Federal Laws, Voluntary Compensation and Employer's Liability (including occupational disease) coverage with limits not less than \$500,000.00 per occurrence/aggregate for all workers on site, \$100,000 each employee/\$500,000 policy limit for Bodily Injury by Disease, \$100,000 per accident for Bodily Injury by Accident, regardless of whether a worker is also an employee of Design-Builder.

2.8 Commercial General Liability Insurance. Design-Builder shall obtain and maintain comprehensive Commercial General Liability Insurance, on an occurrence form for the hazards of (i) construction operations; (ii) subcontractors and sub-subcontractors; (iii) interruption of the City's business; (iv) independent Contractors; (v) products and completed operations (with completed operations to remain in force for two years following project completion); (vi) explosion, collapse and underground, and (vii) Design-Builder's protective and contractual liability insuring the indemnities set forth in the Agreement, including personal injury, death and property damage.

2.8.1 Each Project shall maintain minimum limits of \$2,000,000.00 per occurrence, \$1,000,000 Personal and Advertising Injury, and \$2,000,000.00 general and completed operations/aggregate.

2.8.2 Each Policy MUST include Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)

2.9 Owner's Protective Liability (to be submitted with Change Order No. 1). The Design-Builder shall take out, pay for and deliver to the City, an Owner's Protective Liability insurance policy written on an occurrence basis and naming the City as named insured. The policy shall be maintained during the life of this Agreement. Limits of protection shall be at least **\$1,000,000** Combined Single Limits, Bodily Injury and Property Damage, and shall contain no exclusion relative to any function performed by the City or its employees and agents in connection with the Project.

2.10 Excess Liability. Design-Builder shall maintain Excess Liability coverage on an umbrella form with minimum limits of \$2,000,000.00 per occurrence and \$2,000,000.00 aggregate.

2.11 Waiver of Subrogation. All insurance policies supplied (except professional liability and workers' compensation) shall include a waiver of any right of subrogation of the insurers thereunder against the City and all its assigns, subsidiaries, affiliates, employees, insurers and underwriters. 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 has an insurable interest in the property damaged.

2.12 Additional Insureds. The City, and any other person or entity required by the Agreement, and all their assigns, subsidiaries and affiliates shall be included as additional insureds under Design-Builder's furnished insurance (except Workers' Compensation Insurance), for ongoing and completed operations, using ISO Additional Insured Endorsement (CG 20 10), edition date 11/85, or an equivalent (e.g., CG 20 10, edition date 10/93, plus CG 20 37, edition date 04/13 or other carrier form), or CG 72 46 02 12 under the commercial general liability policy. Said insurance shall be written on an OCCURRENCE basis, and shall be PRIMARY and NON-CONTRIBUTING.

3. No Limitation of Liability. The required coverages referred to and set forth herein shall in no way affect, nor are they intended as a limitation on, Design-Builder's liability with respect to its performance of the Contract.

4. Subcontractors Insurance. Design-Builder shall require all those Subcontractors providing equipment, materials or services directly to Design-Builder in connection with this Agreement to obtain, maintain and keep in force coverages in accordance with the insurance requirements set forth herein during the time they are involved in performance of services or other work hereunder. Design-Builder shall obtain certificates of insurance and additional insured endorsements evidencing such coverage and provide the City with such certificates and endorsements. Design-Builder shall not be excused from its obligations to cause such subcontractors to meet the insurance coverage requirements set forth under this section unless Design-Builder shall have obtained in writing from the City a waiver, which shall be effective only as to such requirements and for such subcontractor specifically identified therein.

5. Patent Liability. Design-Builder shall protect, defend and save the City harmless from any liability, including costs and expenses, for, or on account of, any patented or unpatented invention, article or appliance manufactured or used in the performance of this Agreement selected by Design-Builder, and further agrees to pay all loss and expense incurred by the City by reason of any such claims or suits, including attorneys' fees.

6. Professional Liability. If any design or other professional services are included in the Agreement, Design-Builder shall purchase, and maintain for a period of three years after the date of Final Completion, insurance covering claims arising out of the performance or furnishing of Design or Professional Services and for claims arising out of allegations of errors, omissions or negligent acts in connection with the Agreement. The policy shall be at least as broad as the coverage provided in City' Design Liability Policy, Member Companies of CNA Insurance, Form G-115692-A (Ed 02/96), with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.

6.1 With respect to any Professional Liability insurance, Design-Builder agrees as follows:

6.1.1 upon receipt of notice of any claim in connection with the Agreement, to promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

6.1.2 promptly notify the City of any reduction of limits or protection afforded under any policy provided, whether or not such impairment came about as a result of events connected to this Agreement.

7. In the event that the City shall determine that the Contractor's aggregate limits of protection shall have been impaired or reduced to such extent that they are deemed inadequate for the balance of the project, Design-Builder shall upon notice promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

8. Builder's Risk Property Insurance. (submitted with Change Order No. 1)

8.1 Unless otherwise provided in the Contract Documents, Design-Builder shall procure and maintain property insurance from insurance companies authorized to do business in the State of Kansas upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Design-Builder shall include as additional insured's the interests of the City, Design-Builder, Design Consultants, Subcontractors and sub-subcontractors, and shall insure against the risk of direct physical loss including but not limited to fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by the City. All deductibles are the responsibility of the Design-Builder.

8.2 Unless the Contract Documents provide otherwise, Design-Builder shall procure and maintain boiler and machinery insurance that will include the interests of the City, Design-Builder, Design Consultants, Subcontractors and sub-subcontractors.

8.3 Any loss covered under Design-Builder's property insurance shall be adjusted with the City and Design-Builder and made payable to both of them as trustees for the insured's as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with the Disputes Resolution Section of the Agreement.

9. Minimum Requirements. The insurance specified herein is the minimum requirement. In the event Design-Builder or any subcontractor has or obtains insurance coverage in amounts in excess of those required herein, such additional insurance coverage shall also inure to the benefit of the City.

10. **Design-Builder shall not be permitted to commence any work on site until satisfactory copies of the Certificates evidencing insurance written on a standard ACORD form; Notice of Cancellation Endorsement; and Additional Insured Endorsement, have all been received and approved by City. Delay in commencement due to failure to provide such documentation shall constitute an unexcused delay.**

Exhibit "D"

CITY OF ROELAND PARK, KANSAS

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned
_____,
of _____ as principal, hereinafter referred to as the
"Contractor," and
_____,
a corporation organized under the laws of the State of _____ and authorized to
transact business in the State of Kansas, as surety, are held and firmly bound unto the City of
Roeland Park, Kansas, hereinafter referred to as "City," in the penal sum of _____
Dollars
(\$ _____),
lawful money of the United States of America, for the payment of which sum well and truly to be
made we bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly
and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor, has on the ____ day of _____,
20____,
executed a written Agreement with the aforesaid City for furnishing in a good, substantial and
workmanlike manner all construction, labor, materials, equipment, tools, transportation,
superintendence and other facilities and accessories for _____
designated, defined and described in the
Agreement and in accordance with the Contract Documents to include the General Conditions,
Project Special Provisions, Specifications, Plans and other Contract Documents therefor; a copy
of the Agreement being attached hereto and made a part hereof.

NOW, THEREFORE, if said Contractor shall in all particulars promptly and faithfully perform each
and every covenant, condition, and part of the Agreement, according to the true intent and
meaning in each case, then this obligation shall be and become null and void.

PROVIDED, that said Surety, for value received, hereby stipulates and agrees that no change,
extension of time, alteration or addition to the terms of the Agreement or the Work to be performed
thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of
any such change, extension of time, alteration or addition to the terms of the Agreement or to the
Work.

PROVIDED, FURTHER, that it is expressly agreed that the bond shall be deemed amended
automatically and immediately, without formal and separate amendments hereto, so as to bind
the Contractor and the Surety to the full and faithful performance of the Agreement so amended.
The term "amendment," wherever used in this bond, and whether referring to this bond or the
Agreement, shall include any alteration, addition, extension, or modification of any character
whatsoever.

Whenever Contractor is declared by City to be in default under the Contract Documents, the
Surety may promptly remedy the default or shall within fourteen (14) days from the date of notice
from the City:

1. Commence completing the Work of the Agreement in accordance with its terms and conditions. However, Surety may not use the defaulting Contractor, or any legal reformation of the defaulting Contractor, to complete the Work and the Surety may not use any of the subcontractors of the defaulting Contractor to complete the Work without the written consent of the City; or
2. Commence the process of obtaining a bid or bids for completing the Work of the Agreement in accordance with its terms and conditions, and upon determination by the City and the surety jointly of the lowest and best responsive, responsible bidder, arrange for an Agreement between such bidder and the City, and make available as work progresses sufficient funds to pay the cost of completion less the balance of the Contract Price, including other costs and damages for which the surety may be liable hereunder, which sum shall not exceed the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by City to Contractor under the Agreement and any amendments thereto, less the amount properly paid by City to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the City or successors of the City.

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_____.

ATTEST:

Secretary

Contractor/Principal

By _____(SEAL)

Title

Surety Company

By _____(SEAL)
Attorney-in-Fact

Surety claim address:

NOTE:

1. Date of bond must not be prior to date of contract.
2. If Contractor is partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
4. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.

Exhibit "E"

LABOR AND MATERIAL PAYMENT BOND
(pursuant to K.S.A. 60-1111)

KNOW ALL MEN BY THESE PRESENTS, that
_____ (hereinafter called the "Principal"), as Principal, and
_____, a corporation organized and
existing under the laws of the State of _____ (hereinafter called the "Surety"),
as Surety, are held and firmly bound unto The City of Roeland Park Kansas. (hereinafter called the
"Obligee"), as Obligee, in the sum of
_____ Dollars (\$_____) for
the payment of which sum well and truly to be made, the said Principal and Surety bind themselves, and
their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by
these presents.

WHEREAS, the Principal has entered into a written Contract with the Obligee, dated
_____ to perform public improvements described in said Contract, dated _____,
which Contract is hereby referred to and made a part hereof.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if the said
Principal shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies, used or
consumed in connection with or in or about the construction of such public building or in making such public
improvements provided for in said Contract and any and all modifications of said Contract that may
hereafter be made, and shall defend, indemnify and save harmless the Obligee from any and all claims,
costs, damages, penalties, including attorney's fees and expenses, for all taxes, insurance premiums, any
and all contributions, allowances, deductions or other payments, however termed, required by statute or
union labor agreements, including voluntary payments made thereof by the Obligee to insure the orderly
prosecution of work, then this obligation shall be null and void; otherwise it shall remain in full force and
effect.

The said Surety agrees that no change, extension of time, alteration, addition, omission, or other
modification of the terms of said Contract, or in the scope of the work to be performed or in the method of
performance, or in the manner, time or amount of payments as provided therein, assented to by Obligee,
whether made under expressed agreement or not, shall in anywise affect the said Surety's obligation on
this Bond, and it does hereby waive notice and consents to any such change, alteration, modification or
amendment.

Subject to the benefit of the Obligee, the Principal and Surety agree that this Bond shall insure to
the benefit of all persons performing labor or furnishing materials, supplies and equipment in the
prosecution of the work provided for in said Contract, as well as to the Obligee, and that such persons may
maintain independent actions upon this Bond in their own names, as may be required by K.S.A. 60-1111(a).

IN WITNESS WHEREOF, the said Principal and Surety have hereunder set their hands and seals,
this _____ day of _____, _____.

(Principal)

(Surety)

(Business Address)

(Business Address)

By: _____

By:

(Signature and Title)

(Signature and Title)

Witness: _____

Witness:

Surety claim address:

1. *This bond must be accompanied by a current fully executed Power of Attorney authorizing an agent to execute this bond form on behalf of a surety, certified to include the date of the bond.*
2. *Date of bond must not be prior to date of Contract.*
3. *If contractor is a partnership, all partners must execute bond*
4. *Surety must appear on U.S.Treasury Dept. Circular 570 and be authorized to do business in the State of Kansas.*

EXHIBIT "F"

AFFIDAVIT OF PARTIAL PAYMENT AND CONDITIONAL RELEASE AND WAIVER OF CLAIMS

To: The City of Roeland Park, Kansas, the owner of the real estate (the "Property") identified below and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property": _____

Description of the "Project": _____

The undersigned hereby applies for payment, certifies and waives and releases all claims of entitlement to compensation for work performed through the last date covered by the accompanying request for payment, except as noted below.

Payment Request Amount: \$_____

Date of last work covered by payment request:_____

Certificate

The undersigned, contingent upon the issuance, final clearance and payment of a valuable consideration of the sum stated above, and being familiar with the penalties for false certification, does hereby certify to the Beneficiaries that:

1. The amount requested for labor performed and equipment and material supplied on this Project or in connection with the Property reference above, represent the actual value of work accomplished under the terms of the undersigned's agreement and all authorized changes thereto concerning work to be performed on the Property (hereinafter the "Contract").

2. No labor, equipment or materials have been supplied by the undersigned to the Project which have not been included in the applications for payment submitted to date, under any agreement, verbal or written, or any arrangements of any type whatsoever, except as specifically noted here:

3. Payment in full, less retainage and other claims documented as required by the Contract (if any), has been made by the undersigned through the period covered by all prior payments (a) to all of the undersigned's subcontractors, equipment providers, materialmen and laborers, and (b) for all materials and labor used or furnished by the undersigned in connection with the performance of the Contract. The undersigned represents and warrants that it owes no monies or other things of value to any subcontractor, materialman, person or entity for work performed or material supplied through the date of the most recent payment by the City, except as identified below:

4. The undersigned has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Fringe Benefits owed pursuant to collective bargaining agreements, Social Security, Unemployment Compensation and

Worker's Compensation laws, insofar as applicable to the performance of the contract. Specifically, the undersigned has paid, or out of the proceeds of this payment will promptly pay, all sales or use tax due and owing.

5. The undersigned acknowledges and agrees that it is receiving the funds paid in consideration of this Application as a trustee, and said funds will be held in trust for the benefit of all subcontractors, materialmen, suppliers and laborers who supplied work for which the Beneficiaries or their property might be liable, and that the undersigned shall have no interest in such funds until all these obligations have been satisfied in full.

Partial Release of Claims

NOW, THEREFORE, contingent upon the issuance, final clearance and payment of \$_____, the undersigned irrevocably and unconditionally releases and waives any and all right to claim against the City, except as pertains to unpaid retainage, identified pending change orders and claims, documented as required by the Contract, through the date of last work covered by the payment application stated above. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with the materials, labor, and everything else in connection with this Contract for which payment has been made.

Dated _____, 20__.

CONTRACTOR:_____

By:_____

Name: _____

Title: _____

State of _____)

County of _____)

On this _____ day of _____, 20____, before me, the undersigned, personally appeared _____, _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public in and for said County and State

Commission Expires

EXHIBIT "G"

AFFIDAVIT OF FINAL PAYMENT AND CONDITIONAL WAIVER AND RELEASE OF CLAIMS

To: The City of Roeland Park, Kansas, the Owner of the real estate (the "Property") identified below, any Lender(s) having any loans secured by the Property, and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property": _____

Description of the "Project": _____

The undersigned hereby applies for payment, certifies and waives and releases all claims of entitlement to compensation for work performed, except as noted below.

Payment Request Amount: \$ _____

Certificate

The undersigned, contingent upon the issuance, final clearance and payment of a valuable consideration of the amount stated above, and being familiar with the penalties for false certification, does hereby certify to the Beneficiaries that:

1. The amount requested for labor performed and equipment and material supplied on this Project or in connection with the Property reference above, represent the actual value of work accomplished under the terms of the undersigned's agreement and all authorized changes thereto concerning work to be performed on the Property (hereinafter the "Contract").

2. No labor, equipment or materials have been supplied by the undersigned to the Project which have not been included in the applications for payment submitted to date, under any agreement, verbal or written, or any arrangements of any type whatsoever, except as specifically noted here:

3. Payment in full has been made, or with the funds requested hereby will be made, by the undersigned (a) to all of the undersigned's subcontractors, equipment providers, materialmen and laborers, and (b) for all materials and labor used or furnished by the undersigned in connection with the performance of the Contract. The undersigned represents and warrants that it owes no monies or other things of value to any subcontractor, materialman, person or entity for work performed or material supplied through the date of the most recent payment by Owner, and that the payments that have been or will be made out of this final payment to such persons or firms will fully and completely compensate them for all work in connection with the Project.

4. The undersigned has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Fringe Benefits owed pursuant to collective bargaining agreements, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the contract.

5. The undersigned acknowledges and agrees that it is receiving the funds paid in consideration of this Application as a trustee, and said funds will be held in trust for the benefit of all subcontractors, materialmen, suppliers and laborers who supplied work for which the Beneficiaries or their property might be liable, and that the undersigned shall have no interest in such funds until all these obligations have been satisfied in full.

Final Waiver and Release of Claims

NOW, THEREFORE, the undersigned , contingent upon the issuance, final clearance and payment of \$_____, which the undersigned irrevocably and unconditionally releases and waives any and all claims against the City, or any other claims of any kind whatsoever in connection with this Contract and with the Property. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with the materials, labor, and everything else in connection with this Contract.

Dated _____, 20__.

CONTRACTOR: _____

By: _____

Name: _____

Title: _____

State of _____)

County of _____)

On this _____ day of _____, 20____, before me, the undersigned, personally appeared _____, _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public in and for said County and State

Commission Expires

MEMORANDUM

Date: September 12, 2016
To: Roeland Park Development Committee
From: Howard Lubliner, Ph.D., P.E. – On-Call City Engineer
Subject: Recommendation for Award of Mine Remediation Contract

On July 14, 2016, the city posted a Request for Qualifications (RFQ) for design-build teams (DBTs) to propose qualifications based on project experience and project staffing to remediate the existing mine void in a manner suitable for future development. Six different DBTs responded to the RFQ and four were shortlisted to continue with the design-build procurement process. The four shortlisted DBTs were:

- Golder
- Pyramid
- TerraFirm
- USC

These four responded to the subsequent Request for Proposal (RFP); represented a diversity of means to remediate the mines; and included most of the major geotechnical and mine void specialists in the region. Each of the four shortlisted DBTs submitted a formal proposal that included and was scored based on the following criteria:

- Cost
- Schedule
- Team organization and capabilities
- Demonstrated successful past performance
- Safety record and quality management
- Overall project approach and design concept

Based on preset scoring criteria for these six items plus clarifications provided with both one-on-one meetings and proposal interviews with each team, a single score was developed for each team. The highest scoring team was Pyramid and is the team we recommend to proceed to the final negotiation and contracting phase.

During the review and selection process it became clear that the dome out areas and existing random mine fill within the mine present great risk and uncertainty for teams looking to fill the mine. Most teams either required expensive remediation techniques or recommended that part of the area above the existing mine not be utilized. However, Pyramid proposed to use traditional mechanical means to physically remove the existing mine roof and excavate out all the material to the mine floor. An engineered fill is then proposed to be placed up from the mine floor to restore the site to the current ground elevations. In addition to eliminating the risk associated with the random fill, the Pyramid proposal also brings value added in that they are able to grade the pool area and prepare the site to the most development ready state possible. They were also the lowest cost proposal (\$942,000), they assumed all risk of quantity overruns, and provided the quickest schedule completion of any team.

Date: September 12, 2016
To: Roeland Park Development Committee
Subject: Recommendation for Award of Mine Remediation Contract
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In conclusion, based on cost, schedule, risk reduction and value addition, we recommend selection of the Pyramid team to move forward to the final negotiation and contracting phase. SKW staff will be at the committee meeting September 14, 2016 to answer any additional questions regarding the proposals, our scoring, or the recommended action.

