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MEETING AGENDA

*JCPRD Administration Building Boardroom
7900 Renner Road, Shawnee Mission, KS 66219*

*June 11, 2019
5:30 pm*

CALL TO ORDER/ROLL CALL

DISCUSSION & ACTION

- A. Amendment to the Roeland Park Aquatic Center Agreement – Rhonda Pollard, Superintendent of Recreation**
- B. Amendment to the Roeland Park Community Center Agreement – Rhonda Pollard, Superintendent of Recreation**

OTHER BUSINESS

ADJOURNMENT



**JOHNSON COUNTY PARK AND RECREATION DISTRICT
BOARD OF PARK AND RECREATION COMMISSIONERS**

BRIEFING SHEET

Presented to: Recreation Committee **Meeting Date:** 06/11/2019

Project Name/Identification: Amendment to the Roeland Park Aquatic Center Agreement

Contact: Rhonda Pollard, Superintendent of Recreation **Phone:** 913-826-3020
Name & Title

ISSUE: Consider changes to the Agreement between the City of Roeland Park, Kansas and Johnson County Park and Recreation District for the Roeland Park Pool Management Agreement.

BACKGROUND: Johnson County Park & Recreation District (JCPRD) operates and manages the Roeland Park Aquatic Center (RPAC) for the City of Roeland Park. All full-time and part-time staff at the center are currently hired and trained by JCPRD and are on the JCPRD payroll. The city has requested that the full-time maintenance supervisor and the part-time janitorial staff this maintenance supervisor hires, trains, and schedules become part of the city's staff, as this will allow the city to also utilize this personnel for other city buildings and projects. The remaining staff at the center, including lifeguards and concessions workers, will continue to be on JCPRD's payroll.

ANALYSIS: Currently, the full-time maintenance supervisor at RPCC also helps at the Roeland Park Aquatic Center for projects and daily maintenance operations. With the city taking ownership of the aquatic center, they see the need for this position to be more involved at the pool as well as to meet needs in other city buildings. Bringing this position under the city's umbrella of responsibility will give the city the flexibility they desire to meet these additional needs. Operations at the community center will not be affected, as this maintenance supervisor will continue to be responsible for room set-ups, overall facility cleanliness, helping with repairs and renovations, and scheduling part-time janitorial staff.

FUNDING REVIEW: Are there funding implications involved? No Yes *If Yes, explain:*

ALTERNATIVES:

Staff Recommendation

- Recommend consent approval as recommended by staff
- Recommend consent approval as determined/modified by committee
- Recommend discussion and action by the full Board at Board Meeting.....
- Recommend denial of request.....
- Table for additional consideration.....
- Take no action.....
- Other:.....

If other, explain:

Consequences or additional Information (if any):

LEGAL REVIEW: Is legal counsel review required? No Yes *If yes, explain:* Legal counsel has approved as to form.

SUGGESTED RECOMMENDATION/MOTION:

It was the consensus of the committee to recommend Board consent approval at the Regular Board Meeting on June 19, 2019, of the amendment to the Roeland Park Aquatic Center Agreement.

SUPPORTING DOCUMENTATION:

- Amendment to the Roeland Park Aquatic Center Agreement.

Pool Management Agreement

This AGREEMENT ("Agreement"), is made by and between the City of Roeland Park, Kansas (the "Owner") and the Johnson County Park and Recreation District (the "District"), (collectively may be referred to herein as the "Parties").

WHEREAS, Owner is the Owner of the Roeland Park Aquatic Facility located at 4843 Rosewood Drive, Roeland Park, Kansas (the "Facility"); and

WHEREAS, District is in the business of providing management, operation, marketing, programming and food and beverage services to similar facilities, and possesses the knowledge and expertise to manage and market the Facility; and

WHEREAS, Owner desires to engage District to perform certain management, operations, marketing, programming and food and beverage services of the Facility, and District desires to accept such engagement pursuant to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other consideration, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

Article 1: RETENTION OF DISTRICT

Owner hereby retains JCPRD as an independent contractor for performing the services described in this Agreement. Subject to the terms and conditions set forth herein, JCPRD agrees to provide management services in accordance with this Agreement, and consistent with policies approved by Owner. JCPRD agrees to use its best efforts to maximize revenues and minimize expenses from use of the Facility, including, without limitation, marketing and sales, programming and event production and promotion and otherwise managing the Facility in accordance with this Agreement. In providing these services, JCPRD shall manage the Facility in accordance with sound business practices and consistent with the standards and operations of similar and comparable facilities in Johnson County, Kansas. In conducting such services, JCPRD hereby acknowledges and agrees that it owes a fiduciary obligation to Owner.

The Parties acknowledge that Owner will retain title and ownership of the Facility and that JCPRD will not acquire title to, any security interest in, or any rights of any kind in or to the Facility.

Article 2: COMMENCEMENT DATE AND TERM

The term of this Agreement shall begin June July 1, 2019 and continue through December 31, 2019 ("Initial Term" or "Term") unless terminated earlier as set forth herein.

Article 3: MANAGEMENT AGREEMENT

- 3.1 Provision of Services. During the Term of this Agreement, JCPRD shall provide the services set forth in this Article 3. Owner and the JCPRD agree the JCPRD shall operate, manage, and oversee the Facility pursuant to the JCPRD's judgment, best practices, and industry standards, in accordance with the terms of this Agreement.
- 3.2 Grant to District. During the term of this Agreement, Owner grants to JCPRD the right to manage, market, program, promote and operate the Facility. All the proceeds of which shall accrue to Owner except as provided in the terms of this Agreement, subject to Owner's right to terminate this Agreement as provided below.
- 3.3 Opening and Closing. JCPRD shall make the Facility "ready to swim" ten (10) days prior to the start of the Swim Season (the Saturday before Memorial Day) and conduct a pre-season inventory as described in Article 3.6. "Ready to swim" means that:
- (a) There is water in all four pool basins of the Facility pools and the pool water has been treated, balanced and is filtering properly;
 - (b) The operating systems are properly functioning; and
 - (c) All necessary and known repairs within the Facility are completed.

Owner agrees to perform a post-Swim Season walk-through with JCPRD in September to address concerns, review Facility and equipment conditions, and relay maintenance considerations for the following Swim Season to the Owner. JCPRD will winterize and prepare the Facility for the off season at a time mutually agreed upon by both Owner and JCPRD.

- 3.4 JCPRD Responsibilities. JCPRD shall assume management responsibilities as set forth below. Where JCPRD is required to direct or arrange for services or material, JCPRD shall employ all persons performing such services or shall contract with a third party for the performance of such services. However, any such subcontract does not relieve JCPRD of its obligations to Owner to perform all the duties and responsibilities under this Agreement. JCPRD shall provide Owner with copies of all subcontracts under this Agreement upon request. All subcontracts entered into by JCPRD shall provide that in the event this Agreement is terminated, the Owner may assume JCPRD's rights and obligations under such subcontract by written notice to such subcontractor. For this Agreement "subcontract" includes ongoing, regular service.

3.4.1 Marketing and Promotions. JCPRD shall direct all marketing activities which shall be undertaken so as to maximize the use of the Facility by all persons, and accessibility for the community to the Facility. JCPRD will operate and update the Facebook pages for the Stingrays Swim Team and the Facility, and the Owner's website will link to the District's website.

3.4.2 Scheduling. JCPRD shall develop and maintain all schedules for operations and events at the Facility and scheduling shall be accomplished in accordance with applicable law, such as Federal and Kansas employment and child labor laws, per a recognized industry standard for a City aquatics center and/or pool to meet safety guidelines, and in a manner to maximize the use of the Facility so as to provide maximum revenue and

minimize expenses for the Facility and accessibility for the community to the Facility. The schedule shall be reviewed and approved by the Owner in writing. The Parties understand and agree that JCPRD is empowered to negotiate event agreements as Owner's agent, subject to Owner's written approval. JCPRD may deviate from standard rental rates when such negotiation is deemed by both Parties to be in the best interests of the Facility and approval by Owner is obtained in writing.

3.4.3 Operations Plan. JCPRD shall prepare and develop an annual Operations Plan, including an Annual Budget, as defined below, which shall be submitted to Owner for written approval. To the extent possible, the goals of the Operations Plan shall be reflected in the Annual Budget. JCPRD will cooperate and will work with Owner to ensure that the Operations Plan meets the requirements and expectations of Owner. The Parties will work together to identify and plan for capital investment in the Facility. The 2019 Operations Plan shall be attached to this Agreement as **Exhibit A**.

3.4.3.1 Facility Rules and Regulations. The Parties shall develop a formal set of rules and regulations for the Facility. The Facility Rules and Regulations shall be attached to this Agreement as **Exhibit B**.

3.4.4 Food & Beverage Services. JCPRD shall provide the food and beverage services at the Facility.

3.4.5 Facility Maintenance. Owner will be responsible for the performance and/or management of all Facility maintenance work. Maintenance for which the Owner is responsible shall be limited to ordinary maintenance and repairs of facilities inclusive of grounds maintenance and landscaping at the Facility inside the fence.

3.4.6 Custodial and Cleaning Services. JCPRD shall provide or cause to be provided all routine cleaning and janitorial services at the Facility, including, but not limited to, cleaning the Facility's changing areas, restrooms, showers, interior and exterior spaces, and Facility grounds and features. The pools and pool water will be kept clean and clear of debris and will be vacuumed on a regular basis by the JCPRD. Lounge chairs, deck space, office and guest spaces and equipment will also be cleaned by the JCPRD regularly.

3.4.7 Trash Removal. JCPRD shall remove all trash from the containers inside the Facility and deposit all such trash in waste disposal containers provided by Owner at the Facility daily.

3.4.8 Licenses and Permits. Owner shall obtain and maintain all licenses and permits necessary for management, operation, programming and food and beverage services of the Facility, subject to the local procedures for the granting of such licenses and permits. These include proper permits as applicable from Johnson County Health and Environment, Johnson County Wastewater, and a business license from Kansas Department of Agriculture. JCPRD will operate and maintain the Facility to meet the rules and regulations of those regulatory agencies listed above and the applicable nationally recognized lifeguard certification training agency.

3.4.9 Revenues: Bank Accounts and Reporting. JCPRD shall be responsible for the collection of all Revenues as defined in **Exhibit A**. As used herein, "Revenue" is defined as the total amount received by JCPRD or any other person or entity operating on JCPRD's behalf from third parties, directly or indirectly arising out of or connected with and on behalf of the Facility, including without limitation, transactions for cash, credit and credit card sales, less applicable sales taxes. All revenues derived from operations, programs and activities at Facility shall be deposited into JCPRD's bank account, and JCPRD shall provide a detailed weekly report showing activity volume and revenue totals by type (example: membership, day pass, program, concessions) as well as a monthly summary of revenue reports by type. See Article 7.21 and Exhibits for more information on reports.

3.4.10 Expenditures: Payment of Reimbursable Expenses. JCPRD shall be responsible for paying operating expenses. JCPRD shall submit monthly requests for reimbursement for operating expenses incurred per Article 6.2. Owner shall pay the Management Fee monthly pursuant to Article 6.1.

3.4.11 Cash Discrepancies. JCPRD will be responsible for any cash discrepancies resulting from errors made in making change at cash sale points which shall be reported on the Weekly Report Provided by JCPRD.

3.5 Staffing: Maintenance Supervisor. Owner shall be responsible for the recruitment, training, supervision and direction of the Maintenance Supervisor as identified in the Operations Plan incorporated herein as **Exhibit A**.

3.5.1. Staffing: JCPRD Employees. Facility staff other than the Maintenance Supervisor will be in the employment of JCPRD. Expenses associated with the hours worked at the Facility of non-exempt staff will be considered reimbursable operating expenses paid to JCPRD. Expenses associated with salaried employees of the JCPRD shall be included in the Management Fee. Owner agrees to permit the JCPRD to hire and staff employees at the Facility pursuant to best practices and in a manner that ensures safety and proper operation, for both exempt staff and non-exempt staff, pursuant to Section 3.5.2 and the Operations Plan incorporated herein as **Exhibit A**.

JCPRD will be responsible for recruitment, training, supervision and direction of all personnel staffing at the Facility, with the exception of the Maintenance Supervisor as defined in **Exhibit A**, who shall be employed by the Owner. The Maintenance Supervisor will maintain and manage the upkeep of the Facility and will ensure all chemical operations and pump systems at the Facility are working effectively and efficiently. All other Facility staff will be in the employment of JCPRD. Expenses associated with the hours worked at the Facility of non-exempt staff, will be considered reimbursable operating expenses paid to JCPRD. Owner agrees to permit the JCPRD to hire and staff employees at the Facility pursuant to best practices and in a manner that ensures safety and proper operation, for both exempt staff and non-exempt staff, pursuant to Section 3.5.2 and the Operations Plan incorporated herein as Exhibit A.

3.5.2 Swim Season: JCPRD agrees to provide staffing and operations from the Saturday prior to Memorial Day through Labor Day (the "Swim Season"). JCPRD ensures

supervision by certified personnel for all hours of Facility operation. JCPRD shall schedule all necessary personnel to operate the Facility for public open swimming on the following schedule when the Shawnee Mission School District is not in session:

Monday thru Saturday	12:00 pm to 8 pm
Sunday	12:00 pm to 6 pm

JCPRD shall schedule all necessary personnel to operate the Facility for general public open swimming on the following schedule when the Shawnee Mission School District is in session:

Monday thru Thursday	Closed
Friday	4:00 pm to 7 pm
Saturday and Sunday	12:00 pm to 6 pm

A detailed facility schedule, including programs, activities and hours of operation above and beyond general public open swimming as noted above, will be identified in the Operations Plan.

3.5.2.1 Swim Season Modification: In the event of serious or safety related maintenance or malfunction at the Facility, JCPRD may issue temporary closure of an area or the Facility as is reasonable for up to one day. JCPRD will notify Owner of any such closure, and course of corrective action will be mutually agreed upon by both Owner and JCPRD for the re-opening of the area or Facility. JCPRD and Owner agree that modifications to the posted Shawnee Mission School District schedule may change the dates and or times of the defined swim season, and any swim season modification will be mutually agreed upon by both Parties.

3.5.3 Staffing Levels: Under normal operations and during public open swimming, JCPRD shall always provide the following staff on duty that the Facility is open to the public:

- One supervisor, defined as an: Aquatic Manager, Aquatic Specialist, Aquatic Leader and/or Head Guard;
- Nine lifeguards (if all Facility amenities are staffed, seven lifeguards will be actively guarding and two lifeguards will be off duty);
- One admissions attendant; and
- One concession attendant.

Staffing levels for Lifeguards and the Concession Attendant may be adjusted for cold or slow days to maintain efficiency, fiscal responsibility, and applicable safety guidelines. JCPRD may occasionally close sections of the Facility due to staffing shortages.

A Supervisor as defined above will be on duty and present during all hours of Facility operation. Staffing levels listed above will also be adjusted to accommodate programs and special events, such as swim practice and meets, swimming lessons, aquatic fitness, or parties; staffing levels will be identified in the Operations Plan.

3.5.4 Requirements: With the exception of the Maintenance Supervisor, any and all other persons who are employed at the Facility in fulfilling the terms of this Agreement, shall be employees of JCPRD. JCPRD agrees to pay the following for all of JCPRD's employees:

- (a) Wages;
- (b) Income Tax Withholdings;
- (c) Social Security Withholdings;
- (d) State Unemployment Insurance;
- (e) Federal Unemployment Insurance; and
- (f) Worker's Compensation Insurance.

Additionally, JCPRD warrants the following:

1. JCPRD shall train the JCPRD's personnel.
2. All staff members of the JCPRD will secure and maintain the appropriate level of certifications for each position.
3. At least one Supervisor, as defined above will possess an aquatic facility operator certification ("AFO") or certified pool operator certification ("CPO"). At least one Supervisor will also possess a lifeguard instructor certification.
4. Aquatic Manager — The Aquatic Manager shall supervise the JCPRD's employees, and possess an AFO, CPO and/or Lifeguard Instructor certification if required.
5. Aquatic Specialist — The Aquatic Specialist will possess an AFO, CPO and/or Lifeguard Instructor certification if required.
6. Aquatic Leader — The Aquatic Leader will possess an AFO, CPO and/or Lifeguard Instructor certification if required.
7. Head Guard — The Head Guard will possess Lifeguard, CPR and First Aid certifications, and possess a CPO, AFO and/or Lifeguard Instructor certification if required.
8. Swim Lesson Lead — The Swim Lesson Lead will possess CPR and First Aid certifications.
9. Lifeguard — All Lifeguards will be required to possess Lifeguard, CPR and First Aid certifications.
10. Admissions Attendant — No specific certifications will be required.
11. Concession Attendant — No specific certifications will be required.
12. Swim Lesson Instructors — All Swim Lesson Instructors are required to possess CPR and First Aid certifications and must attend training provided by the JCPRD.
13. Water Aerobics Instructors — All Water Aerobics Instructors will possess CPR and First Aid certifications, and trade specific certifications for the specific classes they will teach.
14. Stingray Head Coach — The Stingray Head Coach is required to possess First Aid certifications.
15. Stingray Assistant Coach — The Stingray Assistant Coach is required to possess First Aid certifications.
16. All JCPRD employees will be required to pass a background check prior to working at the Facility. Head Guards, Swim Lesson Lead, Lifeguards, Swim Lesson Instructors, and Stingray Coaches must successfully pass a drug screen.
17. Owner may bring concerns regarding personnel to the attention of JCPRD. JCPRD agrees to initiate immediate intervention if warranted and will follow the JCPRD's disciplinary and remediation policy regarding personnel. Personnel matters will be

addressed per the JCPRD's personnel policy, with action being brought forth and following that policy.

Owner agrees to pay the expenses for the Maintenance Supervisor as set forth above in Section 3.5.4. Owner will attempt to employ a Maintenance Supervisor with either an AFO or CPO designation.

3.5.5 Uniforms. JCPRD employees will be required to wear professional and clearly identifiable uniforms provided by JCPRD, for water and recreation-based positions.

3.5.6 Orientation. JCPRD employees will be required to successfully complete the JCPRD's orientation training, pre-season training, and/or review.

3.5.7 Training. JCPRD shall implement any nationally recognized lifeguard certification training program and conduct ongoing training that maintains emergency and rescue preparedness, as specified by the affiliated lifeguard certification training agency.

3.6 Use of Owner Equipment. JCPRD will use equipment at the Facility in performance of its obligations hereunder. Prior to opening the Facility, Owner and JCPRD will conduct an inventory of Facility equipment, including its condition, to be used by the JCPRD during this Agreement. JCPRD shall ensure equipment is properly used and maintained.

3.7 Use of JCPRD Equipment: Technology, equipment and supplies owned by JCPRD will remain under the ownership of JCPRD and will be included in the Management Fee. Such items include, but are not limited to, computers, computing equipment, phones, registration software, and auxiliary systems.

3.8 Written Powers Reserved to Owner. Owner has the right of prior written approval in connection with, but not limited to, the following:

- (a) The Annual Budget (**Exhibit C**);
- (b) The Operations Plan (**Exhibit A**);
- (c) Any expenditure for personnel or equipment more than budget; and
- (d) Any booking of events involving risk of Owner funds.

Owner, at its discretion, may delegate a specific person, or an advisory board or committee to act on behalf of Owner regarding this Agreement.

3.9 Relationship of Parties. This Agreement does not constitute a joint venture between the Parties. JCPRD is an independent contractor of Owner and shall not be deemed to be an Employee or partner of Owner, except for any matters specifically addressed in this Agreement.

3.10 Relationship with Owner. JCPRD shall provide its management services in full compliance with the requirements of Owner.

3.11 Communications. Owner and JCPRD agree to communicate any comments, suggestions, or complaints concerning the Facility, Facility employees, or Facility management services

during the monthly status meeting between the Parties, or by sending notice to the other Party per this Agreement's notice requirements. A response to any such communication shall be made by either the Owner or JCPRD at the best ability of Owner or JCPRD.

- 3.12 Compliance with Standards. JCPRD and Owner shall comply with all relevant national, state and local health and safety standards for aquatics facilities in their respective ownership, management, and operation of the Facility pursuant to this Agreement. If any fecal matter, vomit, or blood should contaminate one of the pools at the Facility, the JCPRD shall close and treat the swimming pools in accordance with the prescribed standards of The Johnson County Health and Environment.
- 3.13 Additional Operations. If additional or extended operations are needed, and would fall outside of the agreed upon Swim Season as approved in the Operations Plan, the Parties may agree to provide such additional operations. The decision to provide such operations and any associated fee if applicable must be agreed upon in writing by Owner.

Article 4: ANNUAL BUDGET

- 4.1 Delivery of Operating Plan and Budget. JCPRD shall submit to Owner for approval the Operating Plan with a proposed Budget for the period covered by the term of this Agreement (6/1/19 through 12/31/19), listing all projected Revenues and Operating Expenses by category with explanations and assumptions for each Revenue and Operating Expense line item. Only costs unique and specifically attributable to the Facility shall be reflected in budget line items. Shared costs that are allocated to this Agreement by JCPRD shall be reflected in the Management Fee. A detail of staff hours by job classification shall be included in the budget as well as the assumed hourly rate. The proposed annual budget shall include a proposed rent structure for events anticipated to take place in the Facility as well as a fee schedule for all revenue categories. The Operating Plan and Budget will be implemented upon written consent of Owner.

4.1.1 Capital Improvements. JCPRD shall include in the Annual Budget and in a post-Swim Season Report a list of capital improvements (defined as purchases exceeding \$2,000 and having a useful life of five years or more) at the Facility that JCPRD has identified as reasonably necessary to the operations and maintenance of the Facility, for the purpose of allowing Owner to consider for inclusion such improvements in its upcoming budget and to prepare and update a long-range capital improvement budget. Immediate, unscheduled or unplanned improvements that exceed \$2,000 or that exceed the approved budget shall be approved by the Owner in writing. Capital improvements do not include ongoing maintenance or replacement of known, typical costs of operation (for example, chemical deliveries). Owner shall be responsible for costs associated with capital improvements for the Facility, including the JCPRD's management of capital improvement projects approved by the Owner in the Annual Budget.

Article 5: THE MANAGEMENT FEES

- 5.1 Management Fee. JCPRD shall perform the work and services set forth above for a management fee of One Hundred Six Thousand Thirty-One dollars and Seventy-Eight Cents (\$106,031.78) (the "Management Fee") for the term prescribed. The Management Fee includes all personnel costs for the JCPRD's salaried employees (wages and benefits), insurance, marketing, information technology, payroll processing, human resources services, administrative services, registration services and software, technology equipment and supplies, profit and overhead costs associated with operating the Facility and providing programming. The Management Fee does not include the hourly operational rate described in Article 6.3 and reimbursable expenses calculated in Article 6.2. JCPRD will be entitled to certain qualifying reimbursable expenses aside from and in addition to the Management Fee, see Article 6 for details.

Article 6: PAYMENT OF MANAGEMENT FEES, REIMBURSABLE EXPENSES, and SHARED REVENUES

- 6.1 Management Fee. The Management Fee will be paid on the following schedule and at the following amounts:
- \$15,147.40 due June 1
 - \$15,147.40 due July 1
 - \$15,147.40 due August 1
 - \$15,147.40 due September 1
 - \$15,147.40 due October 1
 - \$15,147.40 due November 1
 - \$15,147.40 due December 1
- 6.2 Reimbursable Expenses. Any reimbursable expenses aside from, and in addition to, the Management Fee must be approved by Owner in writing. Reimbursable expenses are included in the approved annual budget, and may include, for example, non-exempt personnel costs of JCPRD employees, chemicals, utilities, and supplies that are within the parameters of the approved budget. A detailed report reflecting the vendor, cost, quantity, and description of purchase on a per line item (expense account) basis shall accompany a monthly Reimbursable Expense request, less the monthly revenue as defined in Article 6.5. JCPRD shall secure written approval from Owner prior to purchase of capital items as defined in Article 4.1.1.
- 6.3 Hourly Operational Rate. The hourly operational rate includes the work and services identified in the Management Fee in Article 5.1, but does not include costs that are eligible for reimbursement under Article 6.2. The hourly operational rate will be an additional fee agreed upon in writing by Owner. JCPRD will charge Owner this hourly rate for extending Facility operations per Section 3.12 of this Agreement. As an example, if the hours of the Facility are set from 12:00 p.m. to 8:00 p.m., and Owner requests the hours of operating being changed to 11:00 a.m. to 8:00 p.m., JCPRD will charge one hour x \$10 = \$100 for the day's operation.

- 6.4 Revenue. All revenue will be deposited into JCPRD's bank account daily, with monthly revenues being applied to cover the monthly Reimbursable Expenses and Management Fee.
- 6.5 Monthly Meetings. JCPRD and Owner shall meet each month to review performance for the prior calendar month including on-site operations, updates and budget review.

Article 7: GENERAL TERMS AND CONDITIONS

- 7.1 Representation of Owner. Owner hereby represents and warrants to JCPRD that it possesses the resources to ensure the on-going financial support and maintenance of the Facility.
- 7.2 Representation of JCPRD. JCPRD hereby represents and warrants to Owner on its own behalf and on behalf of its Board and employees, that JCPRD is capable of providing the services outlined in this Agreement. JCPRD represents that it has taken all necessary and/or appropriate action to authorize it to execute, deliver and perform this Agreement. JCPRD warrants and represents that it is authorized to enter into this Agreement by the laws of the State of Kansas. In the event of unexpected or major facility capital improvements or projects above and beyond the scope of services in this Agreement, the City may seek advisory consultation from JCPRD; JCPRD is not expected to conduct project management.
- 7.3 Standard of Operation. JCPRD represents and warrants to Owner that it will maintain efficient and high-quality operations at the Facility, comparable to other similar facilities in Johnson County, Kansas.
- 7.4 Accounting Records, Reports and Practices.
- 7.4.1 Maintain Records. District shall maintain accounting records relating to the Facility using accounting practices in accordance with generally accepted accounting principles consistently applied.
- 7.4.2 Internal Financial Controls. JCPRD shall establish internal financial control policies and practices which are in accordance with generally accepted standards in the industry and reasonably acceptable to Owner.
- 7.4.3 Owner Access. Owner shall have unlimited access to all records relating to the Facility during the Term of this Agreement and for a period of one (1) year thereafter.
- 7.5 Default, Right to Cure. It shall be an event of default ("Event of Default") hereunder if either Party hereto:
- (a) fails to pay or deposit sums due by one party to the other within three days after written notice by the other of such failure, or

(b) fails to perform or comply with any other obligation of such Party hereunder within seven days after written notice by the other of such failure (which notice shall specify, in sufficient detail, the specific circumstances so as to give the defaulting party adequate notice and the opportunity to cure the same); provided however, that if the default is of a nature that it cannot be cured within seven days, then the defaulting party shall not be deemed in default hereunder if it commences to cure the default within three (3) days after the effective date of the notice of such default and diligently proceeds to cure such default within fifteen (15) days after the effective date of notice.

7.6 Jurisdiction. The Parties agree that any court proceeding related to any claim or proceeding arising out of or related to this Agreement shall be brought in the District Court of Johnson County, Kansas. The Parties submit to the personal and subject matter jurisdiction of said court.

7.7 Insurance.

7.7.1 Employment Matters. In connection with the employment of its employees, JCPRD shall pay all applicable social security, re-employment, worker's compensation or other employment taxes or contributions of insurance and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, re-employment insurance and workers' compensation. JCPRD shall indemnify and hold harmless the Owner from all costs, expenses, claims or damages resulting from any failure of JCPRD to comply with this Section.

7.7.2 Insurance Requirements.

7.7.2.1 Workers Compensation Insurance. JCPRD will provide all required workers compensation and employer's liability insurance as specified by Kansas law with limits not less than \$1 million per event.

7.7.2.2 General Liability Insurance. JCPRD and Owner shall purchase and maintain during this contract, commercial general liability insurance including liquor liability insurance (if available) on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence /\$2,000,000 in aggregate for Bodily Injury, Personal Injury, and Property Damage. Policy coverage shall include Premises and Operations, Products and Completed Operations, less inclusive and no more restrictive than the coverage provided by a standard Commercial General Liability Policy form (ISO CG 00 01 96) with standard Bodily Injury and Property Damage exclusions, and standard Personal and Advertising Injury exclusions. Any additional exclusion shall be clearly identified on the Certificate of Insurance and shall be subject to the approval of Owner and JCPRD. The insurance required by this Agreement shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the State of Kansas and currently rated "A" or better by the A.M. Best Company.

7.7.2.3 Automobile Liability Insurance. During this Agreement Term, District shall purchase and maintain automobile liability insurance on a per occurrence basis with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage. Coverage shall include any owned, all hired and non-owned motor vehicles used in the performance of this Agreement by JCPRD or its employees. The insurance required by this Agreement shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the State of Kansas and currently rated "A" or better by the A.M. Best Company.

7.7.2.4 Umbrella and Excess Liability Insurance. JCPRD shall purchase and maintain during this Agreement an umbrella and excess insurance policy on a per occurrence basis with limits of liability of not less than \$2,000,000 per occurrence / \$2,000,000 in aggregate. Any umbrella and excess insurance shall be written on a per occurrence basis on a pay on behalf form providing the same coverage and endorsements required of the primary policies.

7.7.2.5 Property Insurance. Owner will maintain property insurance coverage on the Facility itself. JCPRD shall assume all risks for loss of or damage to its own property at the Facility and JCPRD may maintain such insurance, at its sole expense, as it deems necessary to protect its own property.

7.7.2.6 Subcontractors. JCPRD shall require all its subcontractors who perform work and/or services under this Agreement to meet appropriate insurance requirements as required by Owner.

7.7.2.7 Deductibles and Self-Insured Retention. Any policy deductible or self-insured retention must be declared on the Certificate of Insurance and shall be subject to the approval of the Owner.

7.7.2.8 Professional Liability Insurance. JCPRD shall purchase and maintain professional liability insurance coverage, at its expense, throughout the Term of this Agreement and any Renewal Terms, and for twelve (12) months after termination of this Agreement, in the minimum amount of \$1,000,000.

7.7.2.9 Proof of Insurance. JCPRD shall furnish Owner with Certificates of Insurance and a copy of the policies if requested by Owner. The name of the project or contract shall be listed on the certificates of insurance along with any deductible or self-insured retention. Before commencing any performance under this Agreement, JCPRD shall deliver all the Certificates of Insurance to Owner certifying that the policies stipulated above are in full force and effect. All insurance shall remain in effect during the life of this Agreement.

7.7.3 Insurance Cancellation or Material Change Notice. The certificates of insurance shall state that the insurance company will provide thirty (30) days written notice prior to cancellations, non-renewal, or material change including reduction of insurance coverage or limits. The notice will be sent to Owner, via certified mail.

7.7.4 Cooperation. The Parties agree to cooperate fully with the other in promptly providing such insurance underwriting and other information as may be necessary or appropriate to obtaining and maintaining the insurance described herein. The Parties further agree to cooperate with the insurance companies and agents by responding promptly to their reasonable requests.

7.7.5 Releases. JCPRD and Owner expressly waive all rights and claims they may have against the other, their subsidiaries and affiliates for loss or damage arising or resulting from the operation at the Facility caused by fire or other perils, but only to the extent covered by insurance. Each insurance policy procured by JCPRD and Owner shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any party prior to the occurrence of a loss.

7.7.6 Insurance Cost. The cost of providing insurance hereunder shall be an expense to the JCPRD covered in part by the Management Fee.

7.7.7 Insurance Terms. Insurance terms not otherwise defined in this Agreement shall be interpreted consistent with insurance industry usage.

7.7.8 Named Insureds in Insurance Policies. Insurance referenced in this Agreement, except Workers Compensation/Employers Liability, shall list both JCPRD and Owner as named insureds.

7.8 Hold Harmless.

7.8.1 JCPRD Indemnification. JCPRD shall indemnify and save harmless Owner, their officers, directors, trustees, its agents, representatives and any affiliated or related entities, from all liability arising out of the negligent acts or omissions of JCPRD.

7.8.2 Owner Indemnification. Owner shall indemnify and save harmless JCPRD, their officers, directors, trustees, its agents, representatives and any affiliated or related entities, from all liability arising out of the negligent acts or omissions of Owner.

7.9 Damage to and Destruction of the Facility. If all or part of the Facility are rendered unusable by damage from fire and/or other casualty which, in the opinion of Owner, cannot be substantially repaired under applicable laws and governmental regulations within thirty (30) days from the date of such casualty (employing normal construction methods without overtime or other premium), then Owner shall notify JCPRD thereof. In such case, Owner may elect to terminate this Agreement as of the date of such casualty by written notice delivered to JCPRD not more than thirty (30) days after receipt by JCPRD of Owner's notice concerning the reconstruction.

7.10 Availability of Facility. JCPRD agrees that, except as a result of full or partial destruction of the Facility, the Facility will be made available for all events scheduled therein and JCPRD agrees to defend, indemnify and save Owner harmless from and against any and all claims, causes of action, expenses (including attorney fees) losses, costs and damages

arising from the failure of the Facility to be available in the condition necessary for the conduct of such events for scheduled events due to the negligence or willful misconduct of JCPRD, its agents, servants, employees or contractors of any tier, and in such case, JCPRD shall pay to Owner the estimated Revenues, less Operating Expenses, for such event within five days after the event was to have taken place. This Section 7.10 does not pertain to capital improvements or Facility capital projects that fail or are rendered inoperable at no fault of the JCPRD. Owner shall hold the District harmless for any claims or damages related to Facility capital improvements or systems, which do not include JCPRD's maintenance and normal operations as provided in Section 4.1.1, that cause the Facility to be unavailable in normal condition.

- 7.11 Termination for Cause. Either Party may terminate this Agreement if the other is in default, and has not met the deadlines for curing, or undertaking steps to cure the default, as described in Section 7.5 of this Agreement. In the event of default, the non-defaulting party shall provide the defaulting party with seven business days' notice of its intention to terminate this Agreement due to the uncured default. In the event of early termination for any reason, Owner shall pay to JCPRD all amounts owing hereunder and accrued through the date of termination.
- 7.12 Compliance with Laws. JCPRD will comply with all federal, state and local ordinances, statutes, rules and regulations as they relate to the operation of the Facility. JCPRD's failure to comply with such shall be an Event of Default under this Agreement and shall entitle Owner to terminate this Agreement pursuant to the provisions of Section 7.5 hereof.
- 7.13 Non-waiver. The failure of either Party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such Party thereafter to enforce each provision hereof.
- 7.14 Amendment. The Agreement must be executed by the Parties and be approved by all required governing bodies.
- 7.15 Choice of Law. The laws of the State of Kansas shall govern the rights and obligations of the Parties under this Agreement.
- 7.16 Severability. Any provision of this Agreement decreed invalid by a court of competent jurisdiction will not invalidate the remaining provisions of this Agreement.
- 7.17 Notices. Any notice required herein must be in writing and will be deemed effective and received (a) upon personal delivery; or (b) five days after deposit in the United States mail, certified mail, return-receipt requested, postage prepaid; or (c) one business day after deposit with a national overnight air courier, fees prepaid, to District or Owner at the following addresses:

- Exhibit D: Example of Detailed Reimbursement Request Report Provided by District
- Exhibit E: Example of Weekly Report Provided by JCPRD
- Exhibit F: Example of Monthly Revenue and Expense Report Provided by JCPRD
- Exhibit G: Inventory List

If the terms of this Agreement and any exhibit are inconsistent, the terms of this Agreement shall control.

7.22 Section Headings. Section headings in this Agreement are for convenience only and shall have no effect on the interpretation of this Agreement.

7.23 Assignment. This Agreement may not be assigned by JCPRD without the prior written consent of Owner. This Agreement may be assigned by the Owner at any time for any reason.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF ROELAND PARK, KANSAS

Keith Moody, City Administrator

ATTEST:

Kelley Nielson, City Clerk

APPROVED AS TO FORM:

Steven Mauer, City Attorney

**BOARD OF PARK AND RECREATION COMMISSIONERS
JOHNSON COUNTY PARK AND RECREATION DISTRICT**

Steven Baru, Board Chair

APPROVED AS TO FORM:

Fred J. Logan, Jr, JCPRD Legal Counsel

Exhibit A:
Operations Plan

Exhibit B:
Facility Rules and Regulations

Exhibit C:
Facility Budget

Exhibit D:
Example of Detailed Reimbursement Request Report Provided by JCPRD

Exhibit E:
Example of Weekly Report Provided by JCPRD

Exhibit F:
Example of Monthly Revenue and Expense Report Provided by JCPRD

Exhibit G:
Inventory List



**JOHNSON COUNTY PARK AND RECREATION DISTRICT
BOARD OF PARK AND RECREATION COMMISSIONERS**

BRIEFING SHEET

Presented to: Recreation Committee **Meeting Date:** 06/11/2019

Project Name/Identification: Amendment to the Roeland Park Community Center Agreement

Contact: Rhonda Pollard, Superintendent of Recreation **Phone:** 913-826-3020
Name & Title

ISSUE: Consider changes to the Agreement between the City of Roeland Park, Kansas and Johnson County Park and Recreation District for the Joint Use and Operation of the Roeland Park Community Center.

BACKGROUND: Johnson County Park & Recreation District (JCPRD) operates and manages the Roeland Park Community Center (RPCC) for the City of Roeland Park. All full-time and part-time staff at the center are currently hired and trained by JCPRD and are on the JCPRD payroll. The city has requested that the full-time maintenance supervisor and the part-time janitorial staff this maintenance supervisor hires, trains, and schedules become part of the city's staff, as this will allow the city to also utilize this personnel for other city buildings and projects. The remaining staff at the center, such as 50 Plus and Children's Services, will continue to be on JCPRD's payroll.

ANALYSIS: Currently, the full-time maintenance supervisor at RPCC also helps at the Roeland Park Aquatic Center for projects and daily maintenance operations. With the city taking ownership of the aquatic center, they see the need for this position to be more involved at the pool as well as to meet needs in other city buildings. Bringing this position under the city's umbrella of responsibility will give the city the flexibility they desire to meet these additional needs. Operations at the community center will not be affected, as this maintenance supervisor will continue to be responsible for room set-ups, overall facility cleanliness, helping with repairs and renovations, and scheduling part-time janitorial staff.

FUNDING REVIEW: Are there funding implications involved? No Yes *If Yes, explain:*

ALTERNATIVES:

Staff Recommendation

- Recommend consent approval as recommended by staff
- Recommend consent approval as determined/modified by committee
- Recommend discussion and action by the full Board at Board Meeting.....
- Recommend denial of request.....
- Table for additional consideration.....
- Take no action.....
- Other:.....

If other, explain:

Consequences or additional Information (if any):

LEGAL REVIEW: Is legal counsel review required? No Yes *If yes, explain:* Legal counsel has approved as to form.

SUGGESTED RECOMMENDATION/MOTION:

It was the consensus of the committee to recommend Board consent approval at the Regular Board Meeting on June 19, 2019, of the amendment to the Roeland Park Community Center Agreement.

SUPPORTING DOCUMENTATION:

- Amendment to the Roeland Park Community Center Agreement.

**Agreement between the City of Roeland Park, Kansas
and
Johnson County Park and Recreation District
for the Joint Use and Operation of the Roeland Park Community Center**

THIS AGREEMENT, made and entered into this ____ day of _____, 2019, by and between the City of Roeland Park, Kansas, (hereinafter referred to as “City”), and Johnson County Park and Recreation District, (hereinafter referred to as “JCPRD”), each party having been duly organized and now existing under the laws of the State of Kansas.

RECITALS

WHEREAS, pursuant to KSA 12-2908, the parties mutually agree that it is in the best interest of the public health, safety and welfare to jointly use and operate, as a recreational, educational and service facility, the Roeland Park Community Center, 4850 Rosewood Drive, Roeland Park, Kansas 66205 (hereinafter the “Facility”); and

WHEREAS, the Park District did approve and authorize its Board Chair to execute this Agreement by official vote of said body on the ____ day of _____, 2019; and

WHEREAS, the governing of the City did approve and authorize its Mayor to execute this Agreement by official vote of said body on the ____ day of _____, 2019; and

WHEREAS, to comply with the Kansas Interlocal Cooperation Act (“Act”), certain matters are required to be set forth with specificity and those matters are set forth below.

NOW THEREFORE, in consideration of the above and foregoing recitals, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. Compliance with Act. This Agreement is intended to and shall be interpreted to comply with the provisions of the Act.
2. Duration. This Agreement shall take effect for the period beginning _____, 2019 and shall remain continuously in effect, subject to the terms and conditions hereinafter contained. Each party is obligated to express to the other party in writing on or before September 15 of the Contract Year, if there is intent not to renew the agreement. No modifications to this Agreement shall be effective unless and until separately made in writing and duly executed by both parties.
3. No Separate Entity Created. No separate legal entity is created under this Agreement.
4. Purpose of Agreement. The parties are entering into this Agreement for the purpose of setting forth the terms and conditions concerning their joint use and operation of the Facility as a community center for educational, recreational and service purposes.
5. Financing and Budget. This Agreement does not require that either party undertake any special financing arrangements or the preparation of a separate budget. The costs and expenses of providing services under this Agreement are set forth in a separate section below.
6. Termination. This Agreement may be terminated by either party upon not less than three (3) months’ notice to the other. No property is to be jointly acquired under this Agreement and, therefore, no disposition of such property upon termination is contemplated or required.

7. JCPRD as Administrator. For purposes of the Act, JCPRD shall be deemed the administrator of this Agreement.
8. Real and Personal Property. No real or personal property is to be acquired jointly under this Agreement.
9. Allocation of Costs Between the Parties. The cost involved in the joint use and operation of the Facility and programs and services provided and administered therein shall be distributed as follows:

- a. The City shall furnish and pay any costs associated with the acquisition of the Facility, including paying all taxes and fees as may be required by law.

- b. The City shall maintain the roof and all exterior surfaces of the Facility and shall continue common landlord responsibilities with regard to maintenance of the heating, air conditioning, plumbing and electrical systems of the Facility subject to the provisions of Subparagraph 9.f. herein below. In addition, the City shall be responsible for all interior building or maintenance repairs which exceed Three Hundred Dollars (\$300.00) per repair.

- c. The City shall maintain the nine (9) acres of lawn and the parking lot surrounding the Facility. Such maintenance shall include weed control, mowing and snow removal. The City shall maintain ownership of all its tools and equipment (i.e., floor buffer, brooms, mops, tables and chairs, etc.) in place at the Facility; provided, that the City shall make available to JCPRD for use of the Facility such tools and equipment.

- d. During the term of this Agreement, the City shall pay JCPRD in the amount of 50% of the projected expenses associated with Facility operations, as identified in JCPRD's Roeland Park Community Center's projected budget for the given year (Cost Center 4253420.) JCPRD will invoice the City for payment to be made in equal quarterly installments beginning on January 2 of the given year, and will follow on the second day of each quarter thereafter for the purpose of reimbursing JCPRD for utility, janitorial services and operating expenses associated with the Facility based on the given year's projections. For planning purposes, JCPRD shall make the future year's projected budget in its entirety available for City review no later than February 1 each year and the City shall provide comment and/or approval of budget in writing to JCPRD no later than March 1 each year. JCPRD and the City shall share equally the net profit or loss of the facility post reimbursement with JCPRD billing the City for 50% of the total loss or paying the City 50% of the net profit at year end.

- e. The City will provide property insurance insuring the Facility against physical loss and general liability insurance covering the City's interest in the Facility. JCPRD will provide and pay the costs of liability insurance covering its operations in the Facility. Such insurance coverage by JCPRD coverage shall show the City as an additional named insured. JCPRD shall submit a certificate of insurance to the City to verify JCPRD's liability insurance covering JCPRD and the City. JCPRD may also elect to provide contents coverage for its property located on the premises.

- f. JCPRD will provide personnel and material necessary for all JCPRD programs and public services at the Facility. JCPRD shall provide its own office furniture, supplies, telephone service, pest

control, pay all utility costs and will be responsible for minor interior building repairs which do not exceed Three Hundred Dollars (\$300.00) per repair. Such repairs shall include, but not be limited to, glass replacement, window repair, touch-up painting, ceiling and floor tile repairs, lights bulbs and lighting fixtures, locks and window treatments. Notwithstanding anything to the contrary herein contained, JCPRD shall not be responsible for repairs to the air conditioning, plumbing and electrical systems of the Facility which exceed Three Hundred Dollars (\$300.00) per repair. Further, JCPRD shall not be responsible for any repairs to the heating system, regardless of cost of the repair. Repairs which are not delineated as being the financial responsibility of JCPRD shall be the sole responsibility of and cost to the City. The City shall promptly notify JCPRD of any repairs which the City believes are the responsibility of JCPRD. The City will employ the custodians/attendants and building maintenance supervisor to perform the routine care and maintenance of the Facility. These personnel will work at the direction of the Facility Administrator and Public Works Director jointly. Purchases for supplies and services related to Facility maintenance will be procured and processed through JCPRD's established systems with the maintenance staff employed by the City following these procedures and processes at the direction of the Facility Administrator.

10. Facility Administrator. JCPRD designates the 50 Plus Program Specialist (hereinafter "Program Specialist") as the representative of JCPRD responsible for the day-to-day operations of the programs and services provided at the Facility. The Program Specialist shall serve as manager of the Facility and shall cause the making of all contracts necessary to carry out the programs and services to be provided at the Facility.

11. Programs and Services Provided. The City grants a non-exclusive use of the Facility to JCPRD for the purpose of providing a center for educational, recreational and other services to the residents of Johnson County, Kansas. Program Specialist shall develop appropriate programs to maximize the utilization of the Facility and notify the City of said programs; provided, however, the City reserves the right to disapprove said programs. JCPRD will schedule and organize room usage for all individuals and groups requesting use of the Facility subject to the rules and procedures set by JCPRD. Facility fees and charges for room usage will be set by and follow JCPRD's fees and charges. JCPRD shall notify the City when changes are made to the rules and procedures or fees and charges regarding room usage for all individuals and groups requesting use. JCPRD shall, upon request, provide the City with a monthly report on the participation usage of the Facility for the previous month. The City and City affiliated groups (Committees, Citizen Fundraising Group, etc.) shall have the right to use the parts of the Facility which are utilized for public programs and services for programs, functions or services which the City wishes to make available to residents of the City or their guests; provided, however, such use would not interfere with the programs or service provide by JCPRD and provided that the space needs can be accommodated. Use of the facility by said groups contingent on inclement weather shall be made available two weeks prior to the event date; provided, space needs can be accommodated. Employees of the City are eligible to use the Facility at the City Resident rate. In some instances, the Facility may be used by other non-profit, county government agencies or community service groups, at no charge, as long as they do not interfere with programs or services provided by JCPRD, and provided that space need are accommodated. The Facility may be used for in-kind programming use or for services

and programs co-sponsored by the Facility. The Program Specialist will determine if space is appropriate for co-sponsored or payment in kind.

12. Facility Billing and Rentals. JCPRD shall maintain a billing and bookkeeping system for tenant rentals, long distance charges, and copier use. JCPRD shall process, collect and retain all tenant, long distance and copier use revenues generated monthly by the Facility. This accounting shall be available for review by the City upon request.

13. Amendment. The services provided under this Agreement may, from time to time, be modified by agreement of JCPRD and the City, and any such modification shall be memorialized in writing signed by the appropriate representative of JCPRD and the City.

14. Governing Law. This Agreement shall be governed by, enforced and construed in accordance with the laws of the State of Kansas.

15. Severability. All agreements, covenants and clauses contained herein are severable, and in the event any part of this Agreement shall be deemed or held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid or unenforceable agreements, clauses and covenants were not contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in triplicate by their duly authorized representatives and made effective the day and year first above written.

CITY OF ROELAND PARK, KANSAS

Keith Moody, City Administrator

ATTEST:

Kelley Nielson, City Clerk

APPROVED AS TO FORM:

Steven Mauer, City Attorney

**BOARD OF PARK AND RECREATION COMMISSIONERS
JOHNSON COUNTY PARK AND RECREATION DISTRICT**

Steven Baru, Board Chair

APPROVED AS TO FORM:

Fred J. Logan, Jr, JCPRD Legal Counsel