

December 10, 2021

City of Arkansas City  
118 W Central Ave  
Arkansas City, KS 67005

Re: Proposal for Jefferson Elementary Safety Study in Arkansas City, KS.

Thank you for the opportunity to provide professional engineering services to develop your Safety Study. Subject to your acceptance of this proposal, Kirkham Michael and Associates, Inc. will complete a Safety Study for the referenced site.

## Scope of Services

The study will include analysis of traffic/pedestrian conflicts at the referenced site. To complete this assignment, we anticipate that the following tasks will be required:

### Task 1 - Data Collection

Kirkham Michael will meet with school officials to discuss current drop off/pick-up practices and get bus/pedestrian/pick-up volumes from school officials for a typical school day. Collect updated aerial photography of the area. Collect aerial video of the current drop-off/pickup process. Work with USD 470 to collect data on the current transportation mode distribution.

### Task 2 - Traffic Safety Study

Kirkham Michael will develop concepts and cost estimates for up to three (3) different scenarios. These concepts will be included in a draft report and presented to the Client remotely via Microsoft Teams. Items to be addressed in the safety study include:

- Crosswalks
  - Current mid-block crossing
  - A Street Crosswalk
  - Raised Crosswalk (speed table)
  - Pedestrian access from the south
- Student Drop-off/Pickup
  - Parking
  - One-way street
  - Pickup/drop-off lane/bay
  - Bus pickup/drop-off
  - Canal driveway
  - Traffic circulation between Jefferson Elementary and Arkansas City Middle School
- Parking
  - Area parking issues
  - Angle Parking
  - Back-in Parking

Upon receiving comments on the draft report from the Client, a final report will be prepared and electronically submitted. Up to five (5) hard copies of the final report will be submitted to the Client.

The scope of services includes a site visit for data collection and/or field measurements. The scope of services does not include development of design plans for construction.

## Items to be Provided by the Client

Any existing traffic volume information shall be provided by the Client to Kirkham Michael in electronic format (if possible). Kirkham Michael should also be provided with any and all other information (i.e. zoning stipulations, development agreements, previous studies, etc.) that the Client would like Kirkham Michael to consider, in addition to the data and



research results that Kirkham Michael will collect as part of the agreed upon scope of services while completing this assignment. It should be noted, changes to the land use plan that occur subsequent to Kirkham Michael initiating the analysis process may generate the need for additional analysis and/or changes to the traffic impact study memo and illustrations. Such changes will constitute out of scope work.

### Schedule

Upon receipt of a signed copy of this agreement, Kirkham Michael will begin working on this assignment. Based on a review of our current staff's workload and our experience with similar projects, we anticipate the production of a draft report will take approximately twelve (12) weeks. Our time requirement includes the time for collecting the traffic data and is dependent upon the length of time it takes the Client and others to provide the information necessary to complete the assignment.

### Fee and Billing

The scope of this agreement will be completed for a **Lump Sum fee of \$25,000.00**. Should the need for additional services arise that are out of the scope, Kirkham Michael would be pleased to provide these services upon receipt of written authorization. All additional services will be billed at our standard hourly rates plus reimbursable expenses.

The Client will be invoiced for the entire fee once the draft study has been provided to the Client.

If this proposal is acceptable, please return a signed copy of this letter with attached Exhibit A, which describes the general terms and conditions of this agreement. Submission of a hard copy, FAX or an e-mail of a scanned copy are all acceptable. This letter, once signed by the Client, shall serve as a contract between the Client and Kirkham Michael. We sincerely appreciate your consideration of our firm and look forward to working with you on this project. If you have any questions, please feel free to call me at (785) 472-3163.

Sincerely,

**KIRKHAM, MICHAEL and ASSOCIATES, INC.**

Jon B. Halbgewachs, P.E.  
Sr. Vice President

Encl. Exhibit A – Kirkham Michael Standard Terms & Conditions (3 pages)

#### Agreed and Accepted:

**City of Arkansas City**  
**118 W Central Ave**  
**Arkansas City, KS 67005**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

# Exhibit A



## General Terms and Conditions

### 1. AUTHORIZATION TO PROCEED

Signing of the accompanying agreement for engineering and related services shall be authorization by the client for Kirkham Michael & Associates, Inc. (Kirkham Michael) to proceed with the professional services described, unless otherwise stated in the agreement form.

### 2. DEFINITION

These mutually agreed covenants which include as a minimum the attached written proposal (Proposal) including a Scope of Services and these General Terms and Conditions constitute the "Agreement." This Agreement defines the relationship between the Client as identified in the Proposal and Kirkham Michael for the Project as defined in the Proposal. The professional services of Kirkham Michael shall include services performed by employees of Kirkham Michael, its affiliates, subsidiaries, independent professional associates, consultants and subconsultants.

### 3. STANDARD OF PRACTICE AND ABSENCE OF WARRANTY

Services performed by Kirkham Michael under this agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in the agreement or in any report, opinion, document, or otherwise. All estimates, recommendations, opinions, and decisions of Kirkham Michael will be made upon the basis of the information available to Kirkham Michael and Kirkham Michael's experience, technical qualifications, and professional judgment. Kirkham Michael makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with Kirkham Michael's services.

Client expressly acknowledges that subsurface conditions may vary at locations other than at a particular location where borings, explorations, surveys and samplings are made, and that the data interpretations and recommendations of Kirkham Michael are based solely upon information available to Kirkham Michael. Client also acknowledges that Kirkham Michael shall not be responsible for interpretations by others of the information developed. All data obtained during investigative phases are subject to confirmation of conditions encountered during subsequent phases of the Project. Client recognizes that the scope of services under this Agreement is limited by Client's available budget and schedule and those additional services may yield more accurate and reliable information regarding conditions at or near the site.

### 4. PROJECT SITE AND RIGHT OF ENTRY

Client shall furnish or cause to be furnished to Kirkham Michael all documents and information known to CLIENT that relates to the identity, location, quantity, nature or characteristics of any hazardous waste at, on, or under the site. In addition, Client shall furnish and pay for such other reports, aerial photographs, data, studies, drawings, specifications, documents, and other information regarding surface and subsurface site conditions, which will be required by Kirkham Michael for performance of its services. Kirkham Michael shall be entitled to rely upon documents and information provided by Client in performing the services required under this Agreement; however, Kirkham Michael assumes no responsibility or liability for the accuracy or completeness of said documents and information. Client provided documents will remain the property of Client.

Kirkham Michael will not direct, supervise or control the work of contractors or their subcontractors. Kirkham Michael's services do not include a review or evaluation of a contractor's (subcontractor's) safety measures.

Kirkham Michael shall be responsible only for its activities and those of its employees on any site. Neither the professional activities nor the presence of Kirkham Michael, its employees, or its subconsultants on a site shall imply that Kirkham Michael controls the operations of others; nor shall this be construed to be an acceptance by Kirkham Michael of any responsibility for Project site safety.

Client shall provide right of entry for Kirkham Michael personnel, Kirkham Michael subconsultants and all equipment and vehicles necessary to perform services. Kirkham Michael will take reasonable measures to minimize damage to property; however, Client understands that some damage may occur and the cost of repair of such damage will be borne by the Client.

Client understands that Client will be responsible for designating the location of below grade structures, foundations, utilities and other subterranean obstacles. Kirkham Michael will take reasonable effort to avoid damage to these items. In the event these items cannot be located, Kirkham Michael, by Client written authorization, at Client's cost, will deploy feasible locating methods and employ specialty "dig up" crews to confirm locations. However, Client agrees to hold Kirkham Michael harmless for damages to or damages caused by any subsurface or subterranean utilities or structures which are not correctly located by Client or which Kirkham Michael could not locate using a reasonable standard of care.

### 5. INVOICING AND PAYMENT

The Client, recognizing that timely payment is a material part of the consideration of this agreement, shall promptly pay Kirkham Michael for services performed in accordance with the rates and charges set forth herein. Invoices will be submitted by Kirkham Michael on a monthly basis and shall be due and payable upon receipt. The Client shall pay an additional charge of one and one half percent (1.5%) (or the maximum percentage allowed by law, whichever is lower,) of the invoiced amount per month for any payment received by Kirkham Michael more than thirty (30) calendar days from the invoice date. Payment thereafter shall first be applied to accrued interest and then to principal unpaid amount.

If the Client for any reason fails to pay the undisputed portion of Kirkham Michael's invoices within thirty calendar days from the invoice date, Kirkham Michael may cease work on the project and the Client shall waive any claim against Kirkham Michael and shall defend and indemnify Kirkham Michael from and against any claims for injury or loss stemming from Kirkham Michael's cessation of services. Client shall also pay Kirkham Michael the cost associated with premature project demobilization. In the event the project is remobilized, Client shall also pay the cost of remobilization and shall renegotiate appropriate contract terms and conditions such as those associated with the budget, schedule or scope of services.

Unless the specific provisions of Proposal provide otherwise or the Current Year Schedule of Fees is not incorporated, then payment under this Agreement is based upon cost reimbursement (e.g., hourly rate, time and materials, direct personnel expense or per diem), and the provisions of the following sub-paragraphs shall apply:

a. The minimum time segment for billing field work is four (4) hours. The minimum time segment for billing work performed at an office is one-half (1/2) hour.

b. Project subcontracts (e.g. drilling, trenching, special testing, surveying, etc.) will be billed at cost plus 15% for handling and administration.

c. Other direct costs, excluding travel and subsistence, are payable at actual documented cost plus 10% for handling and administration. This shall include such items as shipping, communication, printing and reproduction, computer services, supplies and equipment, and equipment items rented from commercial sources. Travel and subsistence expenses of personnel when on business connected with the Project are reimbursable at cost plus 10%. The use of reusable field and support equipment owned by Kirkham Michael will be billed at negotiated rates. In the event that equipment does not have a current rate, a daily rate of 2% of purchase price of equipment will be used.

d. When applicable, rental charges will be applied to cover the cost of pilot-scale facilities or equipment, apparatus, instrumentation, or other technical machinery. When such charges are applicable, Client will be advised at the start of an assignment, task or phase. Analyses performed in Kirkham Michael or Kirkham Michael's subconsultants' laboratories will be billed on a unit-cost-per-analysis basis, unless specified otherwise in the accompanying Proposal (Scope of Services).

# Exhibit A



## General Terms and Conditions

e. Invoices based upon cost reimbursement will be submitted showing labor (hours worked) and total expense, but not actual documentation. If requested by Client, documentation will be supplied at the cost of providing such documentation, including labor and copying costs.

### 6. CHANGES OR DELAYS

Unless the accompanying Proposal provides otherwise, the proposed fees constitute Kirkham Michael's estimate to perform the services required to complete the Project as Kirkham Michael understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the Project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. Kirkham Michael will inform CLIENT of such situations so that negotiation and compensation can be accomplished as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, whether or not changed by any order, an equitable adjustment shall be made, and the Agreement modified accordingly. Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of either party's obligations results from any cause beyond either party's reasonable control and without either party's negligence.

### 7. LIMITATION OF LIABILITY

Kirkham Michael's liability is limited to amount of Kirkham Michael's compensation or the amount of fifty thousand dollars (\$50,000) whichever is less. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Kirkham Michael and Kirkham Michael's directors, officers, principals, managers, employees, agents and Kirkham Michael's consultants and subconsultants, and any of them, to Client and anyone claiming, by, through, or under Client for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Kirkham Michael or Kirkham Michael's directors, officers, principals, managers, employees, agents and Kirkham Michael's consultants and subconsultants, or any of them, shall not exceed the total compensation received by Kirkham Michael under this Agreement.

### 8. INSURANCE

Kirkham Michael agrees to purchase, at its own expense, Workers' Compensation Insurance and Comprehensive General Liability Insurance and will upon request, furnish insurance certificates to Client. Kirkham Michael agrees to indemnify Client for the claims covered by Kirkham Michael's insurance subject to the limitation of liability contained in Section 7. Kirkham Michael agrees to purchase additional insurance if requested by Client (presuming such insurance is reasonably available from carriers acceptable to Kirkham Michael), provided the costs for additional insurance are reimbursed by Client.

### 9. INDEMNIFICATION

Client and Kirkham Michael each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Kirkham Michael, they shall be borne by each party in proportion to its negligence.

### 10. CONSEQUENTIAL DAMAGES

The Client shall not be liable to Kirkham Michael and Kirkham Michael shall not be liable to the Client for any consequential damages incurred by either party due to the fault of the other, regardless of the nature of

Revised: 09-02-11

this fault or whether it was committed by the Client or Kirkham Michael, their employees, agents, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

### 11. TERMINATION

Either party may terminate the Agreement, in whole or in part, fourteen (14) days after giving written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where method of payment is "lump sum," the final invoice will include all services and expenses associated with the Project up to the effective date of termination. Where method of payment is based upon cost reimbursement, the final invoice will include all services and expenses associated with the Project up to the effective date of termination. In any event, an equitable adjustment shall be made to provide for termination settlement costs Kirkham Michael incurs relating to commitments that had become firm before termination, and for a reasonable profit for services performed.

### 12. GOVERNING LAW

This Agreement is to be governed by and construed in accordance with the laws of the State of Kansas, unless mutually agreed in writing by Client and Kirkham Michael to be in accordance with the laws of the state where the Project is located.

### 13. DISPUTE RESOLUTION

Client and Kirkham Michael agree that as a prerequisite to the filing of a lawsuit or a demand for arbitration, they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of the date of this Agreement.

### 14. HAZARDOUS ENVIRONMENTAL CONDITIONS AND DISPOSAL OF CONTAMINATED MATERIAL

It is understood and agreed that Kirkham Michael is not, and has no responsibility as a handler, generator, treater, or storer, transporter, or disposer of hazardous or toxic substances found or identified at the Project site. It is acknowledged by both parties that Kirkham Michael's scope of services does not include any services related to the presence or discovery at the site of asbestos, PCBs, petroleum, hazardous waste, radioactive materials or any other hazardous material or toxic substance. Client acknowledges that Kirkham Michael is performing professional services for Client and Kirkham Michael is not and shall not be required to become an "arranger," "operator," "generator" or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA). CLIENT shall undertake or arrange for the handling, removal, treatment, storage, transportation, and disposal of hazardous substances or constituents found or identified at the Project site.

### 15. CONFIDENTIALITY

Kirkham Michael shall maintain as confidential and not disclose to others without Client's prior written consent all information obtained from Client that was not otherwise previously known to Kirkham Michael or in the public domain and is expressly designated by Client in writing to be "CONFIDENTIAL." The provisions of this paragraph shall not apply to information in whatever form that (1) is published or comes into the public domain through no fault of Kirkham Michael, (2) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (3) is required to be disclosed by law on order of a court, administrative agency, or other authority with proper jurisdiction.

Client agrees that Kirkham Michael may use and publish Client's name and a general description of Kirkham Michael's services with respect to the Project in describing Kirkham Michael's experience and qualifications to other Clients or potential Clients.

# Exhibit A



## General Terms and Conditions

### 16. OWNERSHIP OF DOCUMENTS, RE-USE OF DOCUMENTS AND USE OF ELECTRONIC MEDIA

All documents including drawings and specifications prepared or furnished by Kirkham Michael (and Kirkham Michael's affiliates, subsidiaries, independent professional associates, consultants, and subconsultants) pursuant to this Agreement are instruments of service in respect of the Project, and Kirkham Michael shall retain an ownership and property interest therein, whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for re-use by Client or others as extensions of the Project or on any other project. Any Client re-use without written verification or adaptation by Kirkham Michael for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Kirkham Michael or Kirkham Michael's affiliates, subsidiaries, independent professional associates, consultants, and subconsultants with respect to any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting there from. Any such verification or adaptation will entitle Kirkham Michael to further compensation at rates to be agreed upon by Client and Kirkham Michael.

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Kirkham Michael. Files in electronic media format or text, data, graphic or other types that are furnished by Kirkham Michael to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Kirkham Michael makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Kirkham Michael at the time electronic files were furnished to the Client.

### 17. CONTROLLING AGREEMENT

These General Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document regarding Kirkham Michael's services. If any of these General Terms and Conditions are determined to be invalid or unenforceable in whole or part by a court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that as closely as possible expresses the intention of the stricken provision.

These General Terms and Conditions shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause. This Agreement between Client and Kirkham Michael shall pertain only to the benefit of the parties hereto, and no third party shall have rights hereunder.

### 18. OPINIONS OF PROBABLE COST

Opinions of probable cost, cost estimates, and construction cost estimates provided herein are made based upon Kirkham Michael's experience and qualifications as professional engineers. However, since Kirkham Michael has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or other market conditions, any opinions of cost shall be accepted by Client subject to Paragraph 3 of these General Terms and Conditions.

In the event Client desires a level of accuracy of an estimate which establishes cost ceilings or detailed cost component analyses, Kirkham Michael will upon written authorization from Client secure the services of a specialized cost estimating and analyzing firm acceptable to Client. The Client shall agree to the payment of additional compensation as required.

### 19. CONSTRUCTION PHASE SERVICES

If this Agreement provides for any construction phase services by Kirkham Michael, it is understood that the Contractor, not Kirkham Michael is responsible for the construction of the project, and that Kirkham Michael is not responsible for the acts or omissions of any contractor, subcontractor or material supplier; for safety precautions, programs or enforcement; or for construction means, methods, techniques, sequences and procedures employed by the Contractor.

Kirkham Michael understands that the Client has sole right to decide whether to engage Kirkham Michael for Construction Phase Services. In the event the Client chooses to not include Kirkham Michael in Construction Phase Services, the Client shall be solely responsible for interpreting the Contract Documents and observing the Work of the Contractor to discover, correct or mitigate errors, inconsistencies or omissions. If the Client authorizes deviations, recorded or unrecorded, from the documents prepared by Kirkham Michael, the Client shall not bring any claim against Kirkham Michael and shall indemnify and hold Kirkham Michael, its agents and employees harmless from and against any claims, losses, damages and expenses, including but limited to defense costs and time of Kirkham Michael professionals, to the extent such claim, loss, damage or expense arises out such deviations.

### 20. PROPRIETARY DATA

The technical and pricing information contained in the accompanying Proposal or this Agreement is to be considered Confidential and Proprietary, and is not to be disclosed or otherwise made available to third parties without the express written consent of Kirkham Michael.