



## **WORKFORCE PROTECTIONS POLICY**

### **CHAPTER 68 BOND FINANCED SALE-LEASEBACK PROJECTS**

Port KC periodically issues its bonds for the purposes of sponsoring and financing port improvement projects consisting of improvements to property owned by Port KC and leased to a developer (“Developer”), with such improvements being performed by contractors under contracts let by Developer. As these projects are constructed for the benefit of the public community and are funded by public bond proceeds, it is the policy of Port KC that Developer comply with certain policies for the public’s benefit. The policies established herein shall be applicable to the entirety of any bond-financed project.

#### **A. Payment Bond**

Property owned by Port KC (both real and personal) is not subject to having mechanics’ liens placed upon it, and to the extent any such lien is recorded, it is of no legal force or effect. Port KC is committed to ensuring that those entitled to compensation have recourse and that no party is unjustly enriched as a result of its contractual relationship with Port KC.

Developer shall obtain and deliver to Port KC a payment bond naming Port KC as obligee, in an amount not less than the total projected development budget set forth in the agreement or contract, however denominated, to which the provisions of this Workforce Protections Policy shall be attached or incorporated by reference. Such payment bond shall be in a form consistent with **Appendix I**, attached hereto and incorporated herein, or such other form as Port KC and Developer may mutually agree to utilize.

Developer may elect to fulfill its obligation with respect to the payment bond by having its general contractor secure such bond (as principal) in favor of Developer (as owner) using AIA® Document A312™ - 2010 (or the most recent version thereof). In such event, Port KC shall be added as an additional obligee pursuant to a rider thereto. Developer and Port KC’s execution of the payment bond, rider, or both, and the terms thereof, shall not be construed or applied in a manner as to modify, amend, waive, relinquish or otherwise alter their respective rights and obligations under the terms of the Transaction Documents as such term is defined within the agreement to which this policy is attached.

#### **B. Prompt Pay**

Developer shall pay to its general contractor within fifteen (15) days after each disbursement of bond proceeds to Developer (or such shorter time as their respective contract(s) might provide for), those sums due the same under the terms of their respective contract(s), except that any retention shall not exceed five percent (5%). In the event that a payment is not timely made by Developer, in whole or in part, on the grounds that the work, or any portion thereof, was not deemed suitable

for payment, Developer shall provide the general contractor with a written explanation for the withholding or deductions. If Developer shall fail to make a payment in full within the time allotted herein, without reasonable cause, Developer shall pay its general contractor, in addition to any payment due them, interest in the amount of not less than one and one-half percent per month (or such greater interest as their respective contract(s) might provide for), calculated from the date payment was due.

While Port KC does not require that Developer routinely submit documentation establishing its compliance with this provision, Port KC may elect to require that Developer do so in the event Port KC has reasonable cause to believe that Developer is not fulfilling its obligations with respect to such matters.

Developer shall contractually require its general contractor to adhere to the requirements of this paragraph B with respect to their respective subcontractor(s) and material supplier(s), of every tier.

### **C. OSHA 10-Hour**

Developer shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their On-Site Employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the State of Missouri's Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program, unless such On-Site Employees have previously completed the required program. All On-Site Employees who have not previously completed the program are required to complete the program within sixty (60) days of beginning work on the Project. Any On-Site Employee found on a work site subject to this paragraph without documentation of the successful completion of the required course shall be afforded twenty (20) days to produce such documentation and Developer shall cause those failing to do so to be removed from the work site until such time as they shall be in compliance.

The failure to comply with the requirements of this paragraph C may subject Developer to the payment of statutory penalties to Port KC. Developer shall incur a statutory penalty of two thousand five hundred dollars (\$2,500) plus one hundred dollars (\$100) for each On-Site Employee employed by Developer, for each calendar day, or portion thereof, such employee is employed without the required training within the time limits allotted herein. In the event that Port KC shall become entitled to statutory penalties, Port KC shall be entitled to collect the same in any manner authorized by the provisions of any agreement or contract, however denominated, to which the provisions of this Workforce Protections Policy shall be attached or incorporated by reference. Any statutory penalties shall be imposed and collected, if due, consistent with the procedures established by Section 292.675, RSMo.

For purposes of this paragraph C, the following definitions shall be applicable:

"Directly engaged in construction" shall mean work performed in the actual erection of the structure or completion of the Project. In addition, employees working at a nearby or adjacent facility used by Developer or its contractor(s) and subcontractor(s) for construction of the Project shall be deemed on-site employees. Persons engaged solely in the transportation of materials, fuel, or equipment to the site of the Project shall not be deemed to be directly engaged in construction.

"On-site employee", laborers, workmen, drivers, equipment operators, and craftsmen employed by Developer or its contractor(s) and subcontractor(s) to be directly engaged in construction at the site of the Project.

"Project" shall mean the improvements to real property owned by Port KC pursuant to any agreement or contract, however denominated, to which the provisions of this Workforce Protections Policy shall be attached or incorporated by reference.

While Port KC does not require that Developer routinely submit documentation establishing its compliance with this provision, Port KC may elect to require that Developer do so in the event Port KC has reasonable cause to believe that Developer is not fulfilling its obligations with respect to such matters.

Developer shall contractually require its contractor(s) and subcontractor(s) to adhere to the requirements of this paragraph C in every regard.

#### **D. E-Verify**

Developer shall not employ any person on the Project who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3). Developer shall execute the "Employee Eligibility Verification Affidavit" attached hereto and incorporated herein as **Appendix II**, and shall attach thereto documentation sufficient to establish Developer's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program authorized by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. For those Developers enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Developer will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this paragraph D. Developer shall submit the affidavit and attachments to Port KC prior to commencement of the Project, or at any point during the term of the Project if requested by Port KC.

For purposes of this paragraph D, the following definitions shall be applicable

"Project" shall mean the improvements to real property owned by Port KC pursuant to any agreement or contract, however denominated, to which the provisions of this Workforce Protections Policy shall be attached or incorporated by reference.

Developer shall contractually require its general contractor and subcontractor(s) of every tier to adhere to the requirements of this paragraph D in every regard.

The provisions of this Workforce Protections Policy shall survive the termination or expiration of any agreement or contract, however denominated, to which they shall be attached or incorporated by reference.



APPENDIX I

**PAYMENT BOND**

Project Title \_\_\_\_\_  
(PROJECT)

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_,  
as PRINCIPAL (DEVELOPER), and \_\_\_\_\_, (SURETY), licensed to do  
business as such in the State of Missouri, hereby bind themselves and their respective heirs,  
executors, administrators, successors, and assigns unto the Port Authority of Kansas City, Missouri,  
(OWNER), as obligee, in the penal sum of \_\_\_\_\_  
Dollars (\$ \_\_\_\_\_) for the payment whereof DEVELOPER and SURETY bind themselves, their  
heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these  
presents.

WHEREAS,

DEVELOPER has entered into a contract with OWNER for \_\_\_\_\_,  
which contract, including any present or future amendment thereto, is incorporated herein by  
reference and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if in connection with the  
Contract, including all duly authorized modifications thereto, prompt payment shall be made to all  
laborers, contractors, subcontractors, teamsters, truck drivers, owners or other suppliers or for  
equipment employed on the job, and other claimants, for all labor performed in such work whether  
done for DEVELOPER, a contractor, a subcontractor, SURETY, a completion contractor or otherwise  
(at the full wage rates required by any law of the United States or of the State of Missouri, where  
applicable), for services furnished and consumed, for repairs on machinery, for equipment, tools,  
materials, lubricants, oil, gasoline, water, gas, power, light, heat, oil, telephone service, grain, hay,  
feed, coal, coke, groceries and foodstuffs, either consumed, rented, used or reasonably required for  
use in connection with the construction of the work or in the performance of the Contract and all  
insurance premiums, both for compensation and for all other kinds of insurance on the work, for sales  
taxes and for royalties in connection with, or incidental to, the completion of the Contract, in all  
instances whether the claim be directly against DEVELOPER, against SURETY or its completion  
contractor, through a contractor, subcontractor or otherwise, and, further, if DEVELOPER shall  
defend, indemnify and hold harmless OWNER from all such claims, demands or suits by any such  
person or entity, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Any conditions legally required to be included in a Payment Bond on this Contract, including but not  
limited to those set out in §107.170 RSMo are included herein by reference.

SURETY agrees that, in the event that DEVELOPER fails to make payment of the obligations covered  
by this Bond, it will do so and, further, that within forty-five (45) days of receiving, at the address given  
below, a claim hereunder stating the amount claimed and the basis for the claim in reasonable detail,  
it (a) will send an answer to the claimant, with a copy to OWNER stating the amounts that are  
undisputed and the basis for challenging any amounts that are disputed, and (b) will pay any amounts  
that are undisputed. The amount of this Bond shall be reduced by and to the extent of any payment  
or payments made in good faith hereunder.

While this Bond is in force, it may be sued on at the instance of any party to whom any such payment is due, in the name of OWNER to the use for such party. OWNER shall not be liable for the payment of any costs or expenses of any such suit.

No suit shall be commenced or pursued hereunder other than in a state court of competent jurisdiction in Jackson, Clay or Platte County, Missouri, or in the United States District Court for the Western District of Missouri.

WAIVER. That SURETY, for value received, hereby expressly agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder, shall in any way affect the obligations of this Bond; and it does hereby waive notice of any such change, extension of time, or alteration or addition to the terms of the Contract or the Work to be performed thereunder.

IN WITNESS WHEREOF, the above parties have executed this instrument the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**DEVELOPER**

Name, address and facsimile number of Developer

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that I have authority to execute this document on behalf of Developer.

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

(Attach corporate seal if applicable)

**SURETY**

Name, address and facsimile number of Surety:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that (1) I have authority to execute this document on behalf of Surety; (2) Surety has an A.M. Best rating of A- or better; (3) Surety is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (most current revision) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury; and (4) Surety is duly licensed to issue bonds in the State of Missouri and in the jurisdiction in which the Project is located.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

(Attach seal and Power of Attorney)



APPENDIX II

EMPLOYEE ELIGIBILITY VERIFICATION AFFIDAVIT

Project Title \_\_\_\_\_

On this day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ (name) \_\_\_\_\_, being duly sworn, states as follows:

I am the \_\_\_\_\_ (title) \_\_\_\_\_ of \_\_\_\_\_ (business entity) \_\_\_\_\_ and I am duly authorized, directed or empowered to act with full authority on behalf of the business entity in making this affidavit.

I hereby swear or affirm that the business entity does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. § 1324a(h)(3).

I hereby additionally swear or affirm that the business entity is enrolled in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986, and that the business entity will participate in said program with respect to any person hired by the business entity to perform any work in connection with the contracted services. I have attached hereto documentation sufficient to establish the business entity's enrollment and participation in the required electronic verification of work program.

I am aware and recognize that unless certain contractual requirements are satisfied and affidavits obtained as provided in Section 285.530, RSMo, the business entity may face liability for violations committed by its subcontractors, notwithstanding the fact that the business entity may itself be compliant.

The matters stated herein are true to the best of my information, knowledge and belief.

\_\_\_\_\_  
Affiant's signature

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: