



AIA[®]

Document A312™ – 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

Gene Fritzel Construction Co., Inc.
643 Massachusetts, Ste. 300
Lawrence, KS 66044
Attn: Thomas Fritzel

SURETY:

(Name, legal status and principal place of business)

Old Republic Surety Company
P.O. Box 1635
Milwaukee, WI 53201-1635
262-797-2640

OWNER:

(Name, legal status and address)

The City of Lawrence, Kansas
P.O. Box 708
6 East 6th Street
Lawrence, KS 66044-0708
Attn: David L. Corliss, City Manager

CONSTRUCTION CONTRACT

Date: June 4, 2013

Amount: \$ 10,500,000.00 Ten Million Five Hundred Thousand and No/100 Dollars

Description:

(Name and location)

Construction of New City Recreation and Wellness Center
at Rock Chalk Park

BOND

Date:

(Not earlier than Construction Contract Date)

June 17, 2013

Amount: \$ 10,500,000.00 Ten Million Five Hundred Thousand and No/100Dollars

Modifications to this Bond: ☐ None ☒ See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Signature:

Name and Title: Thomas Fritzel

SURETY

Company: (Corporate Seal)

Signature:

Name and Title: Kathleen M. Coen, Attorney-in-Fact

Title: Kansas Resident Agent

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Kansas City Series of Lockton Companies, LLC
444 W. 47th Street, Suite 900
Kansas City, MO 64112-1906 (816) 960-9144

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)
Gould Evans Associates
706 Massachusetts Street
Lawrence, KS 66044

ADDITIONS AND DELETIONS:

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

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

Init.

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User Notes:

(1232554297)

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User Notes:

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

Init.

§ 16 Modifications to this bond are as follows:

| See Modified Section 11

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

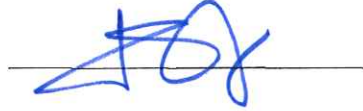
Company:

(Corporate Seal)

Signature:

Name and Title:

Address:



Signature:

Name and Title:

Address:



Int.

Additions and Deletions Report for AIA[®] Document A312[™] – 2010

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:57:18 on 06/26/2013.

PAGE 1

Gene Fritzel Construction Co., Inc.
643 Massachusetts, Ste. 300
Lawrence, KS 66044
Attn: Thomas Fritzel

Old Republic Surety Company
P.O. Box 1635
Milwaukee, WI 53201-1635
262-797-2640

...

The City of Lawrence, Kansas
P.O. Box 708
6 East 6th Street
Lawrence, KS 66044-0708
Attn: David L. Corliss, City Manager

...

Date: June 4, 2013
Amount: \$ 10,500,000.00

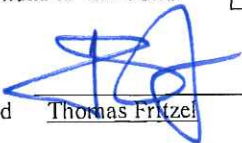

...

Construction of New City Recreation and Wellness Center
at Rock Chalk Park

...

Date:
(*Not earlier than Construction Contract Date*)
June 17, 2013
Amount: \$ 10,500,000.00
Modifications to this Bond: ☐ None ☒ See Section 16

...

Name and Title:	 <u>Thomas Fritzel</u>	Name and Title:	 <u>Kathleen M. Coen, Attorney-in-Fact</u> <u>Kansas Resident Agent</u>
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User Notes: (1232554297)

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted ~~within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.~~

PAGE 5

See Modified Section 11

STATUTORY BOND

KNOW ALL MEN BY THESE PRESENTS, that we Gene Fritzel
Construction Co., Inc. as Contractor, and
Old Republic Surety Company with General Office in the City of
Milwaukee, a Corporation organized under the laws of the State
of Wisconsin and authorized to transact business in the State of Kansas,
as Surety, are held and firmly bound into the State of Kansas, in the penal sum of _____
Ten Million Five Hundred Thousand and No/100 Dollars (\$10,500,000.00), lawful
money of the United States of America, for the payment of which sum, well and truly to be made,
we bind ourselves, and our heirs, executors, administrators, successors, and assigns, jointly and
severally, firmly by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the said Contractor has on the 4th day of June, 2013

Entered into a written contract with The City of Lawrence, Kansas

_____ for furnishing all tools, equipment, materials, and supplies,
performing all labor, and constructing public improvements consisting of _____

Construction of New City Recreation and Wellness Center at Rock Chalk Park

_____ in accordance with specifications and other

contract documents on file in the office of Gould Evans Associates

_____ of the said Architect

NOW THEREFORE, if the said Contractor shall pay all indebtedness incurred for supplies,
materials, or labor furnished, used, or consumed in connection with, or in or about the
construction or making of, the above described improvement, including gasoline, lubricating
oils, fuel oils, greases, coal, and similar items used or consumed directly in furtherance of such
public improvement, this obligation shall be void; otherwise, it shall remain in full force and
effect. The said Surety, for value received, hereby stipulates and agrees that no change, extension
of time, alteration or addition to the terms of the Contract or to the work to be performed
thereunder, or the specifications accompanying the same, shall in any wise affect its obligation on

this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the specifications.

The said Surety further agrees that any person to whom there is due any sum for labor or material furnished, as hereinbefore stated, or said person's assigns, may bring an action on this bond for the recovery of said indebtedness: PROVIDED, that no action shall be brought on said bond after six (6) months from the completion of said public improvement.

IN TESTIMONY WHEREOF, said Contractor has hereunto set his hand, and the said Surety has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its attorney-in-fact duly authorized thereunto so to do, at Kansas City, MO / Lawrence, KS


_____ on this
17th day of June, 2013.

Gene Fritzel Construction Co., Inc.
643 Massachusetts St., Ste. 300, Lawrence, KS 66044
CONTRACTOR

BY  (Seal) _____

Old Republic Surety Company
P.O. Box 1635, Milwaukee, WI 53201-1635
262-797-2640 SURETY COMPANY

BY  (Seal) _____
Kathleen M. Coen Attorney-in-Fact


Kathleen M. Coen Kansas Agent

(Accompany this bond with Attorney-in-Fact's authority from Surety Company certified to include the date of the bond.)



OLD REPUBLIC SURETY COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That OLD REPUBLIC SURETY COMPANY, a Wisconsin stock insurance corporation, does make, constitute and appoint:

CHRISTY M. MCCART, DAVID M. LOCKTON, DEBRA J. SCARBOROUGH, JEFFREY C. CAREY, MARY T. FLANIGAN, PATRICK T. PRIBYL, RONALD J. LOCKTON, LAURA M. MURREN, KATHY L. FAGAN, EVAN D. SIZEMORE, CHARISSA D. LECUYER, KATHLEEN M. COEN, CHARLES R. TETER, III, MARK DUGGAN, OF KANSAS CITY, MO

its true and lawful Attorney(s)-in-Fact, with full power and authority, not exceeding \$20,000,000, for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, (other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, asbestos abatement contract bonds, waste management bonds, hazardous waste remediation bonds or black lung bonds), as follows:

ALL WRITTEN INSTRUMENTS IN AN AMOUNT NOT TO EXCEED AN AGGREGATE OF FIFTEEN MILLION DOLLARS (\$15,000,000) ----- FOR ANY SINGLE OBLIGATION, REGARDLESS OF THE NUMBER OF INSTRUMENTS ISSUED FOR THE OBLIGATION.

and to bind OLD REPUBLIC SURETY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This document is not valid unless printed on colored background and is multi-colored. This appointment is made under and by authority of the board of directors at a special meeting held on February 18, 1982. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC SURETY COMPANY on February 18, 1982.

RESOLVED that, the president, any vice-president, or assistant vice president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

- (i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
- (ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or
- (iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the company to such person or persons.

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC SURETY COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 27TH day of JUNE, 2013.

OLD REPUBLIC SURETY COMPANY

Phyllis M. Johnson
Assistant Secretary



Alan Pavlic
President

STATE OF WISCONSIN, COUNTY OF WAUKESHA-SS

On this 27TH day of JUNE, 2013, personally came before me, Alan Pavlic and Phyllis M. Johnson, to me known to be the individuals and officers of the OLD REPUBLIC SURETY COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say; that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.



Kathryn R. Pearson
Notary Public

My commission expires: 9/28/2014

CERTIFICATE

I, the undersigned, assistant secretary of the OLD REPUBLIC SURETY COMPANY, a Wisconsin corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

40-5654



Signed and sealed at the City of Brookfield, WI this 17 day of JUNE, 2013.

Jan E. Chorney
Assistant Secretary

LOCKTON COMPANIES, LLC

THIS DOCUMENT HAS A COLORED BACKGROUND AND IS MULTICOLORED ON THE FACE. THE COMPANY LOGO APPEARS ON THE BACK OF THIS DOCUMENT AS A WATERMARK. IF THESE FEATURES ARE ABSENT, THIS DOCUMENT IS VOID.