

Construction and Use Agreement

The Insurance Institute for Business and Home Safety, hereafter identified as "IBHS", and the City of Foley, hereafter identified as "City" agree to the following:

IBHS desires constructing two structures hereafter identified as "Pavilions" for the purpose of monitoring and testing various components of roofing materials for strength, durability, and longevity. The City desires Pavilions at the Graham Creek Nature Preserve facility for the use and enjoyment of the public using the facility.

IBHS agrees to construct and reasonably maintain these Pavilions and any measurement devices or components related to their research at no cost to the City for a period of 16 years, after which the Pavilions will become solely owned and maintained by the City. At the expiration of the agreement period the parties may determine, in consultation with one another, whether to modify or extend terms of the agreement.

The City agrees to provide IBHS full access to the property where the Pavilions will be located (see attached map) for the period of time identified above. IBHS shall have full access to the sites to construct, maintain, collect, sample, and test the roofing materials that they wish to study for this entire time period. This full and complete access refers to the physical locations of the Pavilions and the reasonable access points to the Pavilions necessary to perform their construction, maintenance, and testing. Access routes may change over time depending upon the development plans of the Graham Creek Nature Preserve, but in no way shall reasonable access to the structures be denied.

IBHS holds the City harmless for any injury to any of their employees, consultants, or contractors that might be used by IBHS in the construction, maintenance, or testing of the Pavilions while on City property. The City holds IBHS harmless for any injury to any citizen or city employee while using the Pavilions. This clause does not relieve either party to claims due to improper workmanship or maintenance of said facilities.

IBHS is responsible for reasonable repairs and maintenance to the Pavilions. The City is responsible for repair and maintenance of the land and facilities owned by the City, including picnic tables and trash cans located adjacent to the Pavilions. The City is responsible for repairs to the Pavilions that occur from acts of vandalism or activities that fall outside the scope of reasonable maintenance and normal wear and weathering, however, this repair responsibility does not include any repair or maintenance of any test or monitoring equipment left on premise by IBHS.

In circumstances where maintenance or testing may require the closing of one or both Pavilion(s) to the public for a certain period of time, IBHS shall coordinate with the City to implement that closing. If extraordinary circumstances arise making the continuation of the project unfeasible, the parties will give 30 days written notice and work collaboratively to develop a decommissioning plan. If the City sells, develops, transfers or otherwise makes unusable the real property in Graham Creek Nature Preserve where the Pavilions are located, the City shall make a reasonable attempt to relocate the Pavilions to a location agreed on by IBHS and the City, and be responsible for the associated cost of such relocation.

This agreement is the entire agreement and goes into effect on this date, _____.

Mayor – City of Foley

Insurance Institute for Business and Home Safety