



The City of Lee's Summit
Final Agenda
City Council - Regular Session

Thursday, February 1, 2018

6:15 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

REGULAR SESSION NO. 55

INVOCATION

PLEDGE OF ALLEGIANCE

CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

1. PUBLIC COMMENTS:

(NOTE: Total time for Public Comments will be limited to 10 minutes.)

2. COUNCIL COMMENTS:

(NOTE: Total time for Council Comments will be limited to 5 minutes.)

3. APPROVAL OF CONSENT AGENDA:

Items on the Consent Agenda are routine business matters; were previously discussed in a Council Committee and carry a recommendation for approval; or, proposed ordinances approved unanimously by the Council on First Reading. Consent agenda items may be removed by any Councilmember for discussion as part of the regular agenda.

A. [2018-1774](#) Approval of Action Letters from January 4, 11, and 18, 2018.

B. [2018-1787](#) Mayor's Appointments:

Livable Streets Advisory Board: Reappoint Justin Larson and Greg Hunsucker and appoint Yvonne Ventimiglia, terms to expire 02-17-21, and appoint Jan Nelson to replace James Ray, term to expire 2-17-20.

Planning Commission: Reappoint Jason Norbury and Jeff Sims, terms to expire 04-15-22.

University of Missouri Extension Council: Appoint Doug Hatridge to replace Gary Fruits, for a two-year term.

Water Utilities Advisory Board: Reappoint Glen Jones, and appoint Michael Mehrhoff terms to expire 03-01-21.

- C. [BILL NO. 18-10](#) AN ORDINANCE VACATING A CERTAIN EASEMENT LOCATED LOTS 217, 224, AND 291 OF THE SIENA AT LONGVIEW SUBDIVISION IN THE CITY OF LEE'S SUMMIT, MISSOURI.
(Note: First reading by Council on January 18, 2018 and approved by unanimous vote.)

4. PROPOSED ORDINANCES FORWARDED FROM COMMITTEE:

The following proposed ordinances were considered by a Council Committee and are presented to the Council for two readings and adoption.

- A. [BILL NO. 18-12](#) AN ORDINANCE AUTHORIZING THE CITY OF LEE'S SUMMIT TO PARTICIPATE IN THE GREATER KANSAS CITY CLEAN ENERGY DEVELOPMENT BOARD AND AUTHORIZING FURTHER ACTIONS AS MAY BE NECESSARY OR DESIRABLE TO CARRY OUT AND COMPLY WITH THE INTENT HEREOF. (F&BC 1-8-18)
- B. [BILL NO. 18-13](#) AN ORDINANCE AUTHORIZING EXECUTION OF A COOPERATIVE AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND JACKSON COUNTY MISSOURI FOR SHARED USE PATHWAY AND OTHER TRANSPORTATION IMPROVEMENTS IN THE VICINITY OF THE ROCK ISLAND CORRIDOR. (PWC 1-16-18)
- C. [BILL NO. 18-14](#) AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT FOR TRANSIT SERVICES BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) IN THE AMOUNT OF \$103,657 AND COMMITMENT OF \$330,073 OF FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS TO THE KCATA FOR TRANSIT SERVICE AND CAPITAL EXPENSES. (PWC 1-16-18)
- D. [BILL NO. 18-15](#) AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND THE MIDWEST DIVISION LSH LLC ("HCA MIDWEST") WHICH SERVES AS THE CONTROLLING ASSOCIATION OF PROPERTIES WITHIN HCA MIDWEST FOR UPGRADED STREET LIGHTING ON SE BLUE PARKWAY FROM SE TODD GEORGE PARKWAY TO APPROXIMATELY 2500 FEET EAST OF SE TODD GEORGE PARKWAY. (PWC 1-16-18)
- E. [BILL NO. 18-16](#) AN ORDINANCE AUTHORIZING THE EXECUTION OF MODIFICATION NO. 4 TO THE ON-CALL AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR WATER AND SANITARY SEWER WITH HDR ENGINEERING, INC. (RFQ NO. 2016-042-1), FOR A NOT TO EXCEED COST OF \$99,070.00, FOR THE DESIGN UPDATE OF CEDAR CREEK INTERCEPTOR SEGMENT 3. (PWC 1-16-18)

5. RESOLUTIONS:

- A. [RES. NO. 18-02](#) A RESOLUTION IN SUPPORT OF THE LEE'S SUMMIT POLICE DEPARTMENT'S APPLICATION FOR GRANT FUNDING IN THE MISSOURI HIGHWAY SAFETY PROGRAM FOR TRAFFIC ENFORCEMENT.

6. PRESENTATIONS:

- A. [2018-1812](#) Presentation of Long-Term Sustainable Solutions to Fund Wage Enhancements for City Employees.

7. PUBLIC HEARINGS:

Proposed ordinances considered after a public hearing will be read for the first time and forwarded to a future City Council meeting for second reading, unless deemed to be an emergency as defined in Sec. 3.13(f) of the Lee's Summit Charter. Five affirmative votes are required for approval of second reading.

- A. [2018-1796](#) Public Hearing - Appl. #PL2018-008 (previously numbered Appl. #PL2018-004) - PRELIMINARY DEVELOPMENT PLAN - Animal Control Facility solar installation, 1991 SE Hamblen Rd; City of Lee's Summit, applicant.

- 1) [BILL NO. 18-17](#) AN ORDINANCE APPROVING A PRELIMINARY DEVELOPMENT PLAN LOCATED AT 1991 SE HAMBLEN ROAD IN DISTRICT PI, PROPOSED ANIMAL CONTROL FACILITY SOLAR INSTALLATION IN ACCORDANCE WITH THE PROVISIONS OF UNIFIED DEVELOPMENT ORDINANCE, NO. 5209, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

8. PROPOSED ORDINANCES - FIRST READING:

The proposed ordinances presented for first reading may include items with a previous hearing; an item brought directly to the City Council without a recommendation from a Council Committee; or, items forwarded from citizen Boards or Commissions. Five affirmative votes are required for approval of second reading.

- A. [BILL NO. 18-18](#) AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN M-III LONGVIEW, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE FASCINATION AT NEW LONGVIEW DEVELOPMENT.
- B. [BILL NO. 18-19](#) AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 26, STREETS, SIDEWALKS AND OTHER PLACES, OF THE CITY CODE OF THE CITY OF LEE'S SUMMIT, MISSOURI TO PROVIDE FOR CONSISTENT MANAGEMENT WHILE PRESERVING THE CITY'S AUTHORITY OVER THE USE OF ITS RIGHTS-OF-WAYS.
- C. [BILL NO. 18-20](#) AN ORDINANCE APPROVING AMENDMENT NO. 9 TO THE BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2018, AS ADOPTED BY ORDINANCE NO. 8162, BY REVISING THE AUTHORIZED EXPENDITURES FOR THE CITY OF LEE'S SUMMIT, MISSOURI, AND ESTABLISHING A NEW PAY AND CLASSIFICATION PLAN FOR IMPLEMENTATION OF THE COMPENSATION AND BENEFIT STUDY.

9. COMMITTEE REPORTS (Committee chairs report on matters held in Committee):

10. COUNCIL ROUNDTABLE:

11. STAFF ROUNDTABLE:

12. ADJOURNMENT

Unless determined otherwise by the Mayor and City Council, no new agenda items shall be considered after 11:00 p.m.

For your convenience, City Council agendas, as well as videos of City Council and Council Committee meetings, may be viewed on the City's Internet site at "www.cityofls.net".

Packet Information

File #: 2018-1774, **Version:** 1

Approval of Action Letters from January 4, 11, and 18, 2018.



The City of Lee's Summit
Action Letter
City Council - Regular Session

Thursday, January 4, 2018

6:15 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

REGULAR SESSION NO. 52

INVOCATION

PLEDGE OF ALLEGIANCE

CALL TO ORDER

Mayor Rhoads called Regular Session No. 52 to order at 6:15 p.m.

ROLL CALL

Councilmember Faith was Absent during Roll Call but arrived at 6:29 p.m. during Council Comments.

Present: 8 - Councilmember Rob Binney
Councilmember Trish Carlyle
Councilmember Phyllis Edson
Councilmember Craig Faith
Councilmember Diane Forte
Councilmember Dave Mosby
Councilmember Diane Seif
Councilmember Fred DeMoro

APPROVAL OF AGENDA

ACTION: Mayor Rhoads advised Items 4.B. and 5.A. would be continued to January 18, 2018 per the applicant's request.

On motion of Councilmember Forte, second by Councilmember DeMoro, the Council voted unanimously (Councilmember Faith "Absent") to approve the Published Agenda as Amended.

Aye -

Councilmember Forte
Councilmember DeMoro
Councilmember Edson
Councilmember Carlyle

City Council - Regular Session

Action Letter

January 4, 2018

Councilmember Mosby
Councilmember Binney
Councilmember Seif

Absent-
Councilmember Faith

1. **PUBLIC COMMENTS:**

Ms. Geraldine Amoto spoke again on her opinions of the fall of the United States and the republic.

2. **COUNCIL COMMENTS:**

There were No Council Comments.

Councilmember Faith present at 6:29 p.m.

3. **APPROVAL OF CONSENT AGENDA:**

- A. [2017-1743](#) Approval of Action Letters from December 7, 14 and 21, 2017.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Edson, that the Action Letters from December 7, 14 and 21, 2017 be approved as part of the Consent Agenda. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Seif
Councilmember DeMoro

Nay: 1 - Councilmember Mosby

- B. [2017-1758](#) Approval of change in managing officer for Quik Trip Store #208 at 800 NE Woods Chapel Road, and Quik Trip Store #200 at 120 SW M150 Highway.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Edson, that this Liquor License be approved as part of the Consent Agenda. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Seif
Councilmember DeMoro

Nay: 1 - Councilmember Mosby

- C. [2017-1759](#) Approval of a Liquor License Type "N" for Ted's Escondido Cafe 636 NE 291 Highway.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Edson, that this Liquor License be approved as part of the Consent Agenda. The motion

City Council - Regular Session

Action Letter

January 4, 2018

carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Seif
Councilmember DeMoro

Nay: 1 - Councilmember Mosby

Recused: 1 - Mayor Rhoads

- D.** [BILL NO. 17-281](#) AN ORDINANCE ACCEPTING FINAL PLAT ENTITLED "THE MANOR AT STONEY CREEK, 2ND PLAT, LOTS 42-81 & TRACTS N-P", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.
(Note: This Bill was first read on December 21, 2017 and passed by unanimous vote.)

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Edson, that Bill No. 17-281 be adopted and numbered Ord. No. 8320 as part of the Consent Agenda. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Seif
Councilmember DeMoro

Nay: 1 - Councilmember Mosby

- E.** [BILL NO. 17-282](#) AN ORDINANCE APPROVING AN INTERGOVERNMENTAL FACILITY USE AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI FOR THE USE OF THE LONGVIEW RECREATION CENTER AQUATICS FACILITY FOR LIFEGUARD TRAINING AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME BY AND ON BEHALF OF THE CITY OF LEE'S SUMMIT.
(Note: This Bill was first read on December 21, 2017 and passed by unanimous vote.)

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Edson, that Bill No. 17-282 be adopted and numbered Ord. No. 8321 as part of the Consent Agenda. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Seif
Councilmember DeMoro

Nay: 1 - Councilmember Mosby

4. PRESENTATIONS:

- A. [2017-1750](#) Review of the General Fund Reserve Balance

Mr. Conrad Lamb, Director of Finance, provided an update on the General Fund Reserve Balance.

This Presentation was received and filed.

- B. [2017-1748](#) Paragon Star - Presentation of I-470 Western Gateway Transportation Development District proposal

NOTE: This item was CONTINUED to January 18, 2018 per the Applicant's request at the beginning of this meeting.

5. RESOLUTIONS:

- A. [RES. NO. 18-01](#) A RESOLUTION SUPPORTING THE FORMATION OF THE I-470 WESTERN GATEWAY TRANSPORTATION DEVELOPMENT DISTRICT.

NOTE: This item was CONTINUED to January 18, 2018 per the Applicant's request at the beginning of this meeting.

6. PUBLIC HEARINGS:

- A. [2017-1643](#) Continued PUBLIC HEARING - Application #PL2017-203 - REZONING from AG to CP-2 and PRELIMINARY DEVELOPMENT PLAN - approximately 4.3 acres abutting the property at 1850 NE US 40 Hwy; IAC Life, applicant.
(Note: The item was to be CONTINUED from December 21, 2017 per the applicant's request.)

This Public Hearing - Sworn was read into the record.

- 1) [BILL NO. 17-279](#) AN ORDINANCE GRANTING A CHANGE IN ZONING CLASSIFICATION FROM AG TO CP-2 AND APPROVING A PRELIMINARY DEVELOPMENT PLAN ON APPROXIMATELY 4.3 ACRES ABUTTING 1850 NE US 40 HIGHWAY, ALL IN ACCORDANCE WITH THE PROVISIONS OF UNIFIED DEVELOPMENT ORDINANCE NO. 5209 FOR THE CITY OF LEE'S SUMMIT, MISSOURI.
(Note: The item was to be CONTINUED from December 21, 2017 per the applicant's request.)

ACTION: A motion was made by Councilmember Mosby, seconded by Councilmember Seif, that Bill No. 17-279 be advanced to second reading. The motion failed by the following vote:

Aye: 3 - Councilmember Edson
Councilmember Mosby
Councilmember Seif

Nay: 5 - Councilmember Binney
Councilmember Carlyle
Councilmember Faith
Councilmember Forte
Councilmember DeMoro

- B. [2017-1575](#) Continued PUBLIC HEARING - Application #2017-217 - VACATION OF

City Council - Regular Session

Action Letter

January 4, 2018

RIGHT-OF-Way - a portion of NE Todd George Road located approximately 90 feet north of the intersection of NE Wall St and NE County Park Road; Darla Anderson, applicant

This Public Hearing - Sworn was read into the record.

- 1) [BILL NO. 18-01](#) AN ORDINANCE VACATING DEDICATED RIGHT-OF-WAY FOR A PORTION OF NE TODD GEORGE ROAD LOCATED APPROXIMATELY 90 FEET NORTH OF THE INTERSECTION OF NE WALL ST AND NE COUNTY PARK ROAD. WITHIN THE CITY OF LEE'S SUMMIT, MISSOURI.
(NOTE: First reading by City Council on January 4, 2018 and approved unanimously.)

ACTION: A motion was made by Councilmember Mosby, seconded by Councilmember Seif, that Bill No. 18-01 be advanced to second reading. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

- C. [2017-1498](#) Remanded PUBLIC HEARING - Appl. #PL2017-144 - PRELIMINARY DEVELOPMENT PLAN - Kessler Ridge at New Longview, 2nd Plat, Lots 56-87, Tracts E-G; Inspired Homes, LLC, applicant

NOTE: Councilmember Mosby Absent at 7:45 p.m.

- 1) [BILL NO. 18-02](#) AN ORDINANCE APPROVING A PRELIMINARY DEVELOPMENT PLAN ON LAND GENERALLY LOCATED AT THE NE CORNER OF SW LONGVIEW BOULEVARD AND SW LONGVIEW ROAD IN DISTRICT PMIX, PROPOSED KESSLER RIDGE AT NEW LONGVIEW, 2ND PLAT, LOTS 56-87, TRACTS E-G, ALL IN ACCORDANCE WITH THE PROVISIONS OF UNIFIED DEVELOPMENT ORDINANCE, NO. 5209, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.
(NOTE: First reading by City Council on January 4, 2018 and approved unanimously.)

ACTION: A motion was made by Councilmember Demoro, second by Councilmember Forte to advance Bill No. 18-02 for second reading.

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Forte, that Bill No. 18-02 be amended by adding a condition that "No additional fencing will be allowed except for split rail that is already used in that area". The motion carried by the following vote:

Aye: 6 - Councilmember Binney
Councilmember Carlyle
Councilmember Faith
Councilmember Forte
Councilmember Seif
Councilmember DeMoro

City Council - Regular Session

Action Letter

January 4, 2018

Nay: 1 - Councilmember Edson

Absent: 1 - Councilmember Mosby

ACTION: A motion was by Councilmember DeMoro, second by Councilmember Forte that Bill No. 18-02 be advanced for second reading as amended. The motion was carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Seif
Councilmember DeMoro

Absent: 1 - Councilmember Mosby

7. PROPOSED ORDINANCES - FIRST READING:

- A.** [BILL NO. 18-03](#) AN ORDINANCE APPROVING THE 2018 FACILITY USAGE AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI, THROUGH THE LEE'S SUMMIT PARKS AND RECREATION BOARD AND JACKSON COUNTY PARKS AND RECREATION FOR THE USE OF CITY FACILITIES AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME BY AND ON BEHALF OF THE CITY.

(NOTE: First reading by City Council on January 4, 2018 and approved unanimously.)

ACTION: A motion was made by Councilmember Edson, seconded by Councilmember Binney, that Bill No. 18-03 be advanced to second reading. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Seif
Councilmember DeMoro

Absent: 1 - Councilmember Mosby

- B.** [BILL NO. 18-04](#) AN ORDINANCE ACCEPTING FINAL PLAT ENTITLED "SIENA AT LONGVIEW, 4TH PLAT, LOTS 216A-218A, 224A & 320-328", AS A SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.

(NOTE: First reading by City Council on January 4, 2018 and approved unanimously.)

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Seif, that Bill No. 18-04 be advanced to second reading. The motion carried by the following vote:

City Council - Regular Session

Action Letter

January 4, 2018

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Seif
Councilmember DeMoro

Absent: 1 - Councilmember Mosby

8. PROPOSED ORDINANCES - SECOND READING:

- A. [BILL NO. 17-280](#)** AN ORDINANCE AMENDING THE ECONOMIC DEVELOPMENT INCENTIVE POLICY FOR THE CITY OF LEE'S SUMMIT.

(Note: This Bill was first read on December 21, 2017.)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Seif, that Bill No. 17-280 be adopted and numbered Ord. No. 8322. The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Seif
Councilmember DeMoro

Absent: 1 - Councilmember Mosby

9. COMMITTEE REPORTS (Committee chairs report on matters held in Committee):

Councilmember Forte stated the CEDC would be meeting on Wednesday, January 10, 2018 at 4:30 p.m. They have not yet scheduled the requests made by the gentelman from Cricket Wireless, but they would look at this at a future meeting.

Councilmember Binney advised there would be a Finance & Budget Committee meeting on Monday, January 8, 2018 at 5:30 p.m.

Councilmember Carlyle noted the Rules Committee meeting previously scheduled for January 2, 2018 has now been moved to January 25, 2018 at 5:30 p.m.

10. COUNCIL ROUNDTABLE:

Councilmember Forte complimented the Treasury staff for the great job they did during tax season. The lines moved very quickly and everything was handled very well. It was a great representation of our City.

Councilmember Binney appreciated citizens coming in to City Hall to pay their taxes as the City does receive 1% of those payments when paid in person at City Hall. He also wanted to be sure the only thing Council was considering for the two items continued for Paragon Star this evening to January 18, 2018 was the financial amendment to the TDD only. Mr. Steve

Arbo, City Manager, advised that was correct. They would give other information but the only thing being considered was the TDD amendment.

11. STAFF ROUNDTABLE:

Mr. Steve Arbo, City Manager, stated staff is working with the gentleman from Cricket Wireless on his concerns regarding signs and display to attract attention for sales. This is being done administratively with Mr. Bob McKay. Mr. McKay will get comments from this gentleman and advise of some things he can do within the city limits. He will bring these comments to CEDC at a later date.

Mr. Arbo also recognized the great efforts of Treasury and Finance staff during tax season. He asked Mr. Conrad Lamb, Finance Director, to provide more information.

Mr. Lamb advised the City did 10% more this year than in previous years due to Blue Springs and Raytown both not collection Jackson County payments this year. Most of the overflow came to Lee's Summit. The staff did a great job at getting people through the process quickly and professionally.

Councilmember Binney asked about the upcoming tax season and if the city was going to provide assistance with tax preparation as they had done in previous years.

Mr. Arbo advised the city would assist with tax preparation for those entitled to the Earned Income Credit.

Mrs. Jackie Heanue, Interim Director of Human Resources, advised they would be offering assistance with Earned Income Credit as well at Missouri Property Tax Credit (usually for citizens 65 years and older). The program would be held on February 6, 13, & 20, 2018. By appointment only from 3pm - 6pm and walk-ins would be welcome from 6pm - 8pm on those dates. Appointments are encouraged. She advised more information can be found at NextStepKC.org.

12. ADJOURNMENT

There being no further business, Mayor Rhoads adjourned Regular Session No. 52 at 8:21 p.m.

For your convenience, City Council agendas, as well as videos of City Council and Council Committee meetings, may be viewed on the City's Internet site at "www.cityofls.net".



The City of Lee's Summit
Action Letter
City Council - Regular Session

Thursday, January 11, 2018

5:45 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

REGULAR SESSION NO. 53

INVOCATION
PLEDGE OF ALLEGIANCE
CALL TO ORDER
ROLL CALL

Note: Councilmember Carlyle was absent at Roll Call but arrived at 6:03 p.m.

Present: 8 - Mayor Randy Rhoads
Councilmember Trish Carlyle
Councilmember Phyllis Edson
Councilmember Craig Faith
Councilmember Diane Forte
Councilmember Dave Mosby
Councilmember Diane Seif
Councilmember Fred DeMoro

Absent: 1 - Councilmember Rob Binney

APPROVAL OF AGENDA

ACTION: A motion was made by Councilmember Edson, seconded by Councilmember DeMoro, to approved the Published Agenda: The motion carried by the following vote:

Aye -
Councilmember Edson
Councilmember DeMoro
Councilmember Mosby
Councilmember Faith
Councilmember Seif
Councilmember Forte

Absent -

Councilmember Binney
Councilmember Carlyle

1. PUBLIC COMMENTS:

Mr. Rick Inglima, representative of the Fraternal Order of Police (FOP), spoke regarding the compensation philosophy and the 5 year model and budget projections of the City.

2. COUNCIL COMMENTS:

There were no Council Comments.

3. PRESENTATIONS:

- A. [2017-1755](#) Presentation from the Lee's Summit Human Relations Commission (HRC)

This Presentation was received and filed.

- B. [2017-1715](#) Presentation of the Compensation and Benefit Study.
(Note: This item was CONTINUED from December 7, 2017 per Council's request.)

This Presentation was received and filed.

- C. [2017-1762](#) Review of Financial Condition and Funding for Compensation Enhancements

This Presentation was received and filed.

4. RESOLUTIONS:

- A. [RES. NO. 17-17](#) A RESOLUTION ADOPTING THE CITY OF LEE'S SUMMIT, MISSOURI'S COMPENSATION PHILOSOPHY.
(Note: This item was CONTINUED from December 7, 2017 per Council's request.)

ACTION: A motion was made by Councilmember Mosby, seconded by Councilmember DeMoro, that this Resolution be amended as follows:

Compensation Philosophy
Adopted: _____

Purpose Statement
It is vital for Lee's Summit to competitively acquire, retain, and motivate capable, performance-driven employees who seek continuous improvement, foster technological self-sufficiency, and promote fiscal responsibility and accountability now and in the future.

Objectives
To that end, the Lee's Summit classification, compensation, and total rewards system should:
Allow employees to play a meaningful role in total compensation administration;
Establish a consistent, objective framework that recognizes job qualifications and the

City Council - Regular Session

Action Letter

January 11, 2018

numerous ways positions contribute to the City's mission, vision, and goals;
Provide total compensation offerings that are maintained at market level or above, competitive, while mindful of the City's need for responsible budgeting and sustainable revenue sources to fund the services provided to residents;
Afford flexibility in the definition of total rewards to reflect changing financial conditions and support the evolving needs of the workforce;
Promote the positive work culture and safe working environment valued by employees;
and
Incentivize individuals who exceed identified performance objectives.

Intent

To accomplish the objectives, the City will endeavor to achieve the following:

Solicit employee input to assist in evaluating all elements of compensation to include benefits during future compensation studies to ensure competitiveness, relevancy, and effectiveness of the total reward system.

Maintain a position classification system that recognizes the position's impact to the organization, qualifications, required skills and abilities, and other compensable factors.

Maintain a classification system where the approved pay plan of pay ranges is maintained at a market levels or above as determined by future compensation studies initiated by the City.

Maintain a merit based system for core employees and a step system for represented groups where all future compensation adjustments reflect the employee's performance to include their contribution to a positive work culture and safe working environment.

Make personnel and human resources decisions on merit; and remain subject to annual appropriation and periodic review.

Responsibilities

Our employees are the most important resource to achieve our mission:

Our mission is to create positive community relationships and a progressive organization delivering valued programs and services.

It is our shared responsibility to maintain a culture which supports those who have chosen public service for the City of Lee's Summit in a fiscally responsible manner that ensures sustainable quality services.

The motion carried by the following vote:

Aye: 5 - Councilmember Edson
Councilmember Faith
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

Absent: 1 - Councilmember Binney

Abstain: 2 - Councilmember Carlyle
Councilmember Forte

ACTION: A motion was made by Councilmember Mosby, seconded by Councilmember DeMoro, that Resolution No. 17-17 be adopted as amended. The motion carried by the following vote:

Aye: 5 - Councilmember Edson
Councilmember Faith
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

Absent: 1 - Councilmember Binney

Abstain: 2 - Councilmember Carlyle
Councilmember Forte

5. PROPOSED ORDINANCES - FIRST READING:

- A. [BILL NO. 17-264](#) AN ORDINANCE AMENDING THE CITY OF LEE'S SUMMIT CODE OF ORDINANCES SECTION 2-308 TO INCORPORATE PROVISIONS RELATED TO COMPENSATION PHILOSOPHY AND COMPENSATION STUDY AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTION AS IS NECESSARY TO ACHIEVE THE SAME.
(Note: This item was CONTINUED from December 7, 2017 per Council's request.)

ACTION: Councilmember Forte moved for second reading of Bill No. 17-264. Motion failed for lack of second.

- B. [BILL NO. 17-263](#) AN ORDINANCE APPROVING AMENDMENT NO. 7 TO THE BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2018, AS ADOPTED BY ORDINANCE NO. 8162, BY REVISING THE AUTHORIZED EXPENDITURES FOR THE CITY OF LEE'S SUMMIT, MISSOURI, AND ESTABLISHING A NEW PAY AND CLASSIFICATION PLAN FOR IMPLEMENTATION OF THE COMPENSATION AND BENEFIT STUDY.
(Note: This item was CONTINUED from December 7, 2017 per Council's request.)

ACTION: Bill failed for lack of motion for second reading.

This Ordinance was denied.

6. COMMITTEE REPORTS (Committee chairs report on matters held in Committee):

There were no Committee Reports.

7. COUNCIL ROUNDTABLE:

Councilmember Faith stated the Martin Luther King event held at John Knox Pavilion by the Human Relations Committee is a great event and he hopes everyone comes out to enjoy it.

Councilmember Mosby asked what Council and staff can do to resolve the apprehension to adopt ordinances for the Compensation and Benefits plan to move forward.

Mr. Steve Arbo, City Manager, stated staff has given the Council all the information it has from the study provided and he is not sure that anything else can be done by staff. It is up to the Council to find a resolution for this and staff would support the Council in their endeavors.

Councilmember Mosby asked if the Council could consider an ordinance to use the Reserve Balance to reach the \$4.9M needed to reach the minimum market

City Council - Regular Session

Action Letter

January 11, 2018

pay structure.

Councilmember Faith asked how we could reach that goal and solve the problem of compression as well and how could Council redirect money to wage pools to meet the demands of the market.

Mr. Arbo stated the Council could direct staff to prepare an ordinance to do so, and to look at a way to find a sustainable level of funding for the \$5M additional needed for each budget year.

After lengthy discussion, Councilmember Faith made a motion to direct staff to prepare an ordinance to use the Reserve Fund to fully implement the minimum market pay structure, solving for compression as it relates to the position employees are currently in. Second by Councilmember DeMoro.

Councilmember Mosby amended the motion by Councilmember Faith to implement the minimum market pay structure to 100% for core general employees solving for compression and to propose additional similar amounts for collective bargaining groups. Second by Councilmember DeMoro. Motion carried by the following vote:

Aye:

Councilmember Mosby
Councilmember DeMoro
Councilmember Faith
Councilmember Edson
Councilmember Carlyle
Councilmember Forte
Councilmember Seif

Absent:

Councilmember Binney

Councilmember Faith moved to approve his original motion as amended. Second by Councilmember DeMoro. Motion carried by the following vote:

Aye:

Councilmember Mosby
Councilmember DeMoro
Councilmember Faith
Councilmember Edson
Councilmember Carlyle
Councilmember Forte
Councilmember Seif

Absent:

Councilmember Binney

Councilmember Faith stated he was glad this was moving forward.

8. **STAFF ROUNDTABLE:**

There was no Staff Roundtable.

9. **ADJOURNMENT**

There being no further business, Mayor Rhoads adjourned Regular Session No. 53 at 9:15 p.m.

For your convenience, City Council agendas, as well as videos of City Council and Council Committee meetings, may be viewed on the City's Internet site at "www.cityofls.net".



The City of Lee's Summit
Action Letter
City Council - Regular Session

Thursday, January 18, 2018

6:15 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

(816) 969-1000

*****AMENDED*** REGULAR SESSION NO. 54**

INVOCATION

PLEDGE OF ALLEGIANCE

CALL TO ORDER

Mayor Rhoads called Regular Session No. 54 to order at 6:17 p.m.

ROLL CALL

Present: 9 - Mayor Randy Rhoads
Councilmember Rob Binney
Councilmember Trish Carlyle
Councilmember Phyllis Edson
Councilmember Craig Faith
Councilmember Diane Forte
Councilmember Dave Mosby
Councilmember Diane Seif
Councilmember Fred DeMoro

APPROVAL OF AGENDA

Mayor Rhoads amended the agenda by removing Item 4.E. as it was placed on the agenda in error.

ACTION: A motion was made by Councilmember Faith, seconded by Councilmember Binney, to approve the Published Amended Agenda with the amendment to remove Item 4.E. The motion carried by the following vote:

Aye:

Councilmember Faith
Councilmember Binney
Councilmember Edson
Councilmember Carlyle
Councilmember Mosby

Councilmember DeMoro
Councilmember Forte
Councilmember Seif

1. PUBLIC COMMENTS:

Ms. Geraldine Amato gave her opinion on the fall of the United States again.

Ms. Gladys Bratton thanked Council for not passing the Comp Study but she was concerned over the request to give \$5M to "fix" the issue. She feels the turn-over of employees is due to lack of leadership and direction. She stated she thinks more could be done inside the organization beyond increasing pay to retain employment.

2. COUNCIL COMMENTS:

Councilmember Binney advised the Finance and Budget Committee will have a Special Session on Wednesday, January 24, 2018 at 6:00 p.m. to discuss the financial model and sustainability of using \$5 from the Reserve Fund as directed by Council.

3. APPROVAL OF CONSENT AGENDA:

- A. [2018-1771](#) Approval of Liquor License Type "G1" and "S" for Pinot's Palette, 970 NW Blue Parkway, Ste. B.

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember DeMoro, that this Liquor License be approved as part of the Consent Agenda. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

- B. [BILL NO. 18-01](#) AN ORDINANCE VACATING DEDICATED RIGHT-OF-WAY FOR A PORTION OF NE TODD GEORGE ROAD LOCATED APPROXIMATELY 90 FEET NORTH OF THE INTERSECTION OF NE WALL ST AND NE COUNTY PARK ROAD. WITHIN THE CITY OF LEE'S SUMMIT, MISSOURI.

(NOTE: First reading by City Council on January 4, 2018 and approved unanimously.)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember DeMoro, that Bill No. 18-01 be adopted and numbered Ord. No. 8323 as part of the Consent Agenda. The motion carried by the following vote:

City Council - Regular Session

Action Letter

January 18, 2018

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

C. [BILL NO.](#)
[18-02](#)

AN ORDINANCE APPROVING A PRELIMINARY DEVELOPMENT PLAN ON LAND GENERALLY LOCATED AT THE NE CORNER OF SW LONGVIEW BOULEVARD AND SW LONGVIEW ROAD IN DISTRICT PMIX, PROPOSED KESSLER RIDGE AT NEW LONGVIEW, 2ND PLAT, LOTS 56-87, TRACTS E-G, ALL IN ACCORDANCE WITH THE PROVISIONS OF UNIFIED DEVELOPMENT ORDINANCE, NO. 5209, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.
(NOTE: First reading by City Council on January 4, 2018 and approved unanimously.)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember DeMoro, that Bill No. 18-02 be adopted and numbered Ord. No. 8324 as part of the Consent Agenda. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

D. [BILL NO.](#)
[18-03](#)

AN ORDINANCE APPROVING THE 2018 FACILITY USAGE AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI, THROUGH THE LEE'S SUMMIT PARKS AND RECREATION BOARD AND JACKSON COUNTY PARKS AND RECREATION FOR THE USE OF CITY FACILITIES AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME BY AND ON BEHALF OF THE CITY.
(NOTE: First reading by City Council on January 4, 2018 and approved unanimously.)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember DeMoro, that Bill No. 18-03 be adopted and numbered Ord. No. 8325 as part of the Consent Agenda. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

City Council - Regular Session

Action Letter

January 18, 2018

- E. [BILL NO.](#) AN ORDINANCE ACCEPTING FINAL PLAT ENTITLED "SIENA AT
[18-04](#) LONGVIEW, 4TH PLAT, LOTS 216A-218A, 224A & 320-328", AS A
SUBDIVISION TO THE CITY OF LEE'S SUMMIT, MISSOURI.
(NOTE: First reading by City Council on January 4, 2018 and approved
unanimously.)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember DeMoro, tha Bill No. 18-04 be adopted and numbered Ord. No. 8326 as part of the Consent Agenda. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

4. **PROPOSED ORDINANCES FORWARDED FROM COMMITTEE:**

- A. [BILL NO.](#) AN ORDINANCE APPROVING THE EXECUTION OF A PUBLIC SERVICE
[18-05](#) AGREEMENT BY AND BETWEEN VELOCITY LEE'S SUMMIT, INC. AND THE
CITY OF LEE'S SUMMIT, MISSOURI, FOR SERVICES TO BE PROVIDED TO
THE CITY. (F&BC 11-6-17)

ACTION: A motion was made by Councilmember Carlyle, seconded by Councilmember Binney, that Bill No. 18-05 be second read. The motion failed by the following vote:

Aye: 3 - Councilmember Binney
Councilmember Carlyle
Councilmember Faith

Nay: 4 - Councilmember Edson
Councilmember Forte
Councilmember Mosby
Councilmember DeMoro

Abstain: 1 - Councilmember Seif

- B. [BILL NO.](#) AN ORDINANCE APPROVING THE SCHEDULE OF FUEL DISCOUNTS FOR
[18-06](#) FUEL SALES AT THE LEE'S SUMMIT MUNICIPAL AIRPORT. (F&BC 1-8-18)

ACTION: A motion was made by Councilmember Edson, seconded by Councilmember Seif, that Bill No. 18-06 be second read. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

ACTION: A motion was made by Councilmember Edson, seconded by Councilmember DeMoro, that Bill No. 18-06 be adopted and numbered Ord. No. 8328. The motion carried by the following vote:

City Council - Regular Session

Action Letter

January 18, 2018

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

- C.** [BILL NO.](#) AN ORDINANCE APPROVING AMENDMENT TO FIRST AMENDED AND
[18-07](#) RESTATED COOPERATIVE AGREEMENT TO FACILITATE INSTALLATION OF
NEW STREETLIGHTS BY THE CITY OF LEE’S SUMMIT; AND AUTHORIZING
FURTHER ACTIONS RELATED THERETO. (F&BC 1-8-18)

ACTION: A motion was made by Councilmember Mosby, seconded by Councilmember Seif, that Bill No. 18-07 be second read. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

ACTION: A motion was made by Councilmember Mosby, seconded by Councilmember Seif, that Bill No. 18-07 be adopted and numbered Ord. No. 8329. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

- D.** [BILL NO.](#) AN ORDINANCE APPROVING THE AWARD OF RFP NO. 2018-034 FOR A
[18-08](#) YEARLY AGREEMENT WITH FOUR POSSIBLE ONE-YEAR RENEWALS FOR
FINANCIAL ADVISORY SERVICES WITH COLUMBIA CAPITAL
MANAGEMENT, LLC BASED ON AMOUNTS SPECIFIED IN THE FEE
SCHEDULE INCLUDED IN EXHIBIT A AND AUTHORIZING THE CITY
MANAGER TO EXECUTE THE SAME BY AND ON BEHALF OF THE CITY.
(F&BC 1-8-18)

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Seif, that Bill No. 18-08 be second read. The motion carried by the following vote:

City Council - Regular Session

Action Letter

January 18, 2018

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

ACTION: A motion was made by Councilmember Binney, seconded by Councilmember Seif, that Bill No. 18-08 be adopted and numbered Ord. No. 8330. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

- E.** [BILL NO. 18-09](#) AN ORDINANCE AUTHORIZING THE EXECUTION OF A COOPERATIVE AGREEMENT FOR FUNDING OPERATIONS OF OPERATION GREEN LIGHT TRAFFIC CONTROL SYSTEM BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI, AND THE MID-AMERICA REGIONAL COUNCIL. (PWC 11-21-17)

Note: This item was placed on the agenda in error. It has since been removed from the agenda and will not be considered.

This Ordinance was withdrawn.

5. EMERGENCY ORDINANCES:

- A.** [BILL NO. 18-11](#) AN ORDINANCE PROVIDING FOR AN ELECTION OF MUNICIPAL OFFICERS BY VOTERS IN THE CITY OF LEE'S SUMMIT, MISSOURI, AT THE GENERAL ELECTION TO BE HELD ON APRIL 3, 2018, AND PROVIDING THAT NOTICE OF SAID ELECTION BE GIVEN, CONTAINING AN EMERGENCY CLAUSE.

ACTION: A motion was made by Councilmember Faith, seconded by Councilmember Seif, that Bill No. 18-11 be second read. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

ACTION: A motion was made by Councilmember Faith, seconded by Councilmember DeMoro, that Bill No. 18-11 be adopted and numbered Ord. No. 8331. The motion carried by the following vote:

City Council - Regular Session

Action Letter

January 18, 2018

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

6. PRESENTATIONS:

- A.** [2018-1778](#) Presentation and consideration of an update to the City's Right-of-way Code

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Seif, to direct staff to prepare an ordinance updating the City's Right-Of-Way Code. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

- B.** [2017-1748](#) Paragon Star - Presentation of I-470 Western Gateway Transportation Development District proposal

This Presentation was received and filed.

7. RESOLUTIONS:

- A.** [RES. NO. 18-01](#) A RESOLUTION SUPPORTING THE FORMATION OF THE I-470 WESTERN GATEWAY TRANSPORTATION DEVELOPMENT DISTRICT.

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Seif, that Resolution No. 18-01 be approved as amended. The motion carried by the following vote:

Aye: 5 - Councilmember Binney
Councilmember Carlyle
Councilmember Faith
Councilmember Forte
Councilmember Seif

Nay: 3 - Councilmember Edson
Councilmember Mosby
Councilmember DeMoro

ACTION: A motion was made by Councilmember Forte, seconded by Councilmember Seif, that this Resolution be approved with the following amendment.

1. Delete references to Jackson County, Missouri

City Council - Regular Session

Action Letter

January 18, 2018

2. Regarding Exhibit A - Revise legal description to delete the legal description and inclusion of Parcel No. 51-900-03-06-00-0-00-000, Happy Valley Properties, LLC, owner, which is the 5.32 acres parcel with house off Chipman Road

3. Regarding Exhibit B – Revise boundary map to reflect deleted property

4. Regarding Exhibit C – Transportation Projects – delete shared trail, revise reference to parking lots, and revise related Exhibit C location map.

The motion carried by the following vote:

Aye: 7 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif

Abstain: 1 - Councilmember DeMoro

ACTION: A motion was made by Councilmember Mosby, seconded by Councilmember Edson, that Resolution No. 18-01 be approved as amended by the following:

1. Remove TDD funding for fill for floodplain on private property from the project list.
2. Remove TDD funding for landscaping on private property from the project list.
3. Remove TDD funding for parking lots on private property from the project list.
4. Remove TDD funding for parking garage on private property from the project list.
5. Remove TDD funding for architect and engineering cost for private property enhancements from the project list.

The motion failed by the following vote:

Aye: 3 - Councilmember Edson
Councilmember Mosby
Councilmember DeMoro

Nay: 5 - Councilmember Binney
Councilmember Carlyle
Councilmember Faith
Councilmember Forte
Councilmember Seif

8. PROPOSED ORDINANCES - FIRST READING:

- A. [BILL NO. 18-10](#) AN ORDINANCE VACATING A CERTAIN EASEMENT LOCATED LOTS 217, 224, AND 291 OF THE SIENA AT LONGVIEW SUBDIVISION IN THE CITY OF LEE'S SUMMIT, MISSOURI.

(Note: First reading by Council on January 18, 2018 and approved by unanimous vote.)

ACTION: A motion was made by Councilmember DeMoro, seconded by Councilmember Seif, that Bill No. 18-10 be advanced for second reading. The motion carried by the following vote:

Aye: 8 - Councilmember Binney
Councilmember Carlyle
Councilmember Edson
Councilmember Faith
Councilmember Forte
Councilmember Mosby
Councilmember Seif
Councilmember DeMoro

9. **COMMITTEE REPORTS (Committee chairs report on matters held in Committee):**

Councilmember Binney restated the Finance and Budget Committee will have a Special Meeting this Wednesday, January 24, 2018 at 6:00 p.m.

Councilmember Carlyle advised the Rules Committee will be meeting on Thursday, January 25, 2018 at 5:30 p.m. and they would be reviewing the proposed Ethics policy again and invited other Councilmember and the public to come to give some input into the process.

10. **COUNCIL ROUNDTABLE:**

Councilmember Binney asked what the reasons could be for abstaining on votes and if there were rules listed in Robert's Rules of Order regarding abstaining from a vote.

Mr. Brian Head, City Attorney, advised the most common reason to abstain is for legal reasons, but there are no rules established by this Council on abstaining from any vote.

Councilmember Binney stated he hoped the members of Velocity and other entrepreneurs do not feel the Council is opposed to these types of projects. He felt there should have been more discussion and he also hopes this can be reviewed and Velocity can come back with more support.

Councilmember Forte was disappointed that the Finance and Budget Committee did not provide more guidance to Velocity and discuss the amount they were asking for. She felt this should have been better vetted at the committee level.

11. **STAFF ROUNDTABLE:**

Mrs. Christal Kliewer Weber, Assistant City Manager, invited Council to come to the Meet and Greet of the new Citizen's Leadership Academy attendee's on Saturday, January 20, 2018 from 8:00 - 8:30 a.m. here at City Hall.

12. **ADJOURNMENT**

Hearing no further business, Mayor Rhoads adjourned Regular Session No. 54 at 8:43 p.m.

City Council - Regular Session

Action Letter

January 18, 2018

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Packet Information

File #: 2018-1787, **Version:** 1

Mayor's Appointments:

Livable Streets Advisory Board: Reappoint Justin Larson and Greg Hunsucker and appoint Yvonne Ventimiglia, terms to expire 02-17-21, and appoint Jan Nelson to replace James Ray, term to expire 2-17-20.

Planning Commission: Reappoint Jason Norbury and Jeff Sims, terms to expire 04-15-22.

University of Missouri Extension Council: Appoint Doug Hatridge to replace Gary Fruits, for a two-year term.

Water Utilities Advisory Board: Reappoint Glen Jones, and appoint Michael Mehrhoff terms to expire 03-01-21.

Issue/Request:

Due to term expirations and resignations, Mayor Rhoads is seeking City Council approval of his appointments to the above boards and commissions.



LEE'S SUMMIT
MISSOURI

Mayor Randall L. Rhoads

DATE: January 19, 2018
TO: City Council
FROM: Mayor Randall L. Rhoads
RE: Boards and Commissions Appointments

I am submitting the following appointments for the Council's approval:

Mayor's Appointments:

Planning Commission: Reappoint Jason Norbury and Jeff Sims, terms to expire 04-15-22.

Livable Streets Advisory Board: Reappoint Justin Larson and Greg Hunsucker and appoint Yvonne Ventimiglia, terms to expire 02-17-21, and appoint Jan Nelson to replace James Ray, term to expire 2-17-20.

University of Missouri Extension Council: Appoint Doug Hatridge to replace Gary Fruits, for a two-year term.

Water Utilities Advisory Board: Reappoint Glen Jones, and appoint Michael Mehrhoff terms to expire 03-01-21.

Julie Pryor

From: yventimiglia@kc.rr.com
Sent: Friday, July 21, 2017 11:16 AM
To: Julie Pryor
Subject: Committee Interest Form submission

***** This email is from an external source, use caution before clicking on links or opening attachments. *****

The following committee interest information was submitted through cityofls.

Name: Yvonne Ventimiglia

Address: 452 SE Youngston Ln
Lees Summit MO 64063

Email: yventimiglia@kc.rr.com

Phone: 816-665-4641

Council District: District 4

How many years a resident: +25

High School: Southwest High, KCMO

College: UMKC

Employment: Retired from Garmin International

Position: Purchasing Manager

Why interested: As a purchasing manager, my job touched just about every business imaginable. The industries I've worked in include automotive, the rail industry, geoengineering, retail, and aviation manufacturing. I've been involved in procuring everything from construction of a major building to office supplies, and have toured facilities from PCB board manufacturing to metal shops to communications centers. I've established programs to manage travel, communications, transportation, and company-wide use of credit cards. As my career developed, I became the Aviation Purchasing Manager and wrote most of our company's purchasing procedures, and managed audits by the FAA and our aviation customers. My education and initial background was in accounting, primarily practicing in the area of cost management and budget control. Because of my familiarity with so many different areas of business, I believe I could fit with just about any council. In my private life, I've spent over 40 years working for the rights of the disabled. I have a physically and intellectually disabled adult child. Every issue is important to me, from adaptability of parks to sensitivity training with emergency response personnel. In 1976, I was a delegate to the First White House Conference for the Disabled, a first step from which the ADA was born. I was a member of the Governors Council on the Disabled, and the KC Mayors Council on Employment for the Disabled. Since then, I've been involved in various boards and volunteer activities around the KC area.

Other participation: I attended the Citizens Leadership Academy in 2017. I'm active in various activities our fantastic Parks and Recreation offer, including our Community Garden. I also have a strong interest in anything of a historical nature.

Interested in serving on: Arts Council ,Board of Aeronautical Commission ,Building Board of Appeals ,Health Education Advisory ,Historic Preservation,Housing Authority ,Human Services Advisory Board,Industrial Development Authority ,LCRA ,Livable Streets Advisory Board,MoDESA,Parks and Recreation Board ,Planning Commission ,Public Safety Advisory ,Railroad Task Force ,Special Ad Hoc Committees ,Strategic Plan

Other interests:

Julie Pryor

From: jannelson5@gmail.com
Sent: Monday, January 15, 2018 4:04 PM
To: Julie Pryor
Subject: Committee Interest Form submission

***** This email is from an external source, use caution before clicking on links or opening attachments. *****

The following committee interest information was submitted through cityofls.

Name: Jan Nelson

Address: 2109 SW British Drive
Lee's Summit MO 64081

Email: jannelson5@gmail.com

Phone: 8165909558

Council District: District 2

How many years a resident: 7

High School: Truman High School

College: UCM AND UMKC

Employment:Retired

Position:

Why interested: I worked for Lee's Summit School District for 31 years. My last position there was a district administrator and I was charged with facilitating the District Diversity Team. After I retired, I continued to facilitate and train staff on Diversity as a private consultant. As my family is diverse, I have a passion for positive Human Relations. My skills are facilitation, communication, and organization. I also have a masters in Guidance and Counseling so have good people skills.

Other participation: Lee's Summit CARES, Health Advisory Board in early 2000's, Eastland Giving Circle, member of a 360 sub-committee on public safety

Interested in serving on: Human Relations Commission ,Livable Streets Advisory Board

Other interests:

Julie Pryor

From: dhatridge@att.net
Sent: Saturday, January 20, 2018 1:04 PM
To: Julie Pryor
Subject: Committee Interest Form submission

***** This email is from an external source, use caution before clicking on links or opening attachments. *****

The following committee interest information was submitted through cityofls.

Name: Douglas Hatridge

Address: 717 SW Wintergarden Dr
Lees Summit Missouri 640812685

Email: dhatridge@att.net

Phone: 8162467580

Council District: District 2

How many years a resident: 19

High School: Kirkwood (MO)

College: University of Missouri

Employment: University of Central Missouri (Retired)

Position: Part-time School Leadership Consultant

Why interested: I would like to continue serving the City of Lee's Summit as a way to express my support and appreciation for the community in which my wife and I reside. I have previously served on Lee's Summit Water Advisory Board as a member and the Lee's Summit Parks and Recreation Board of Directors as a member, Vice President and President. I am a native of the State of Missouri. My participation and leadership experiences for nearly fifty years in a variety of communities across the state within school, civic, faith, cultural, county, regional, and state arenas sustains my desire to do what I can while I can.

Other participation: I serve as President of the Lee's Summit Symphony Orchestra Board of Directors. My wife and I are members of the Lee's Summit United Methodist Church (Summit Church), Donor Members of the Truman Heartland Community Foundation, Donor Members of 1916 Club with Community Services League, Life Members of the Mizzou Alumni Association, and Family Members of the Friends of the Kansas City Zoo. In addition, we are season ticket holders for the Lee's Summit Symphony Orchestra, Mizzou Football, Kansas City Broadway Series (Theater League), Kansas City Repertory Theatre, and Kansas City Symphony Pops Concerts. We both volunteer as hosts at the Finish Line Food and Beverage Tent for the Tour de Lakes Bicycle event each June. I also participate in the Kansas City Metro Senior Softball League during spring and summer months.

Interested in serving on: Arts Council ,Parks and Recreation Board ,Public Safety Advisory

Other interests: University of Missouri Extension Council for Jackson Count, MO

Julie Pryor

From: Mcmehrhoff@hotmail.com
Sent: Tuesday, August 15, 2017 8:37 AM
To: Julie Pryor
Subject: Committee Interest Form submission

***** This email is from an external source, use caution before clicking on links or opening attachments. *****

The following committee interest information was submitted through cityofpls.

Name: Michael Mehrhoff

Address: 1405 sw Gulfport ave
Lees summit Mo. 64081

Email: Mcmehrhoff@hotmail.com

Phone: 8167867763

Council District: District 1

How many years a resident: 4

High School: Kearney

College: University of Phoenix

Employment: Union Pacific

Position: Conductor

Why interested: Want to learn and help improve the community using my various skills.

Other participation:

Interested in serving on: Board of Adjustments, Board of Equalization, Building Board of Appeals, Historic Preservation, Housing Authority, Human Relations Commission, License Tax Review Committee, Livable Streets Advisory Board, MoDESA, Parks and Recreation Board, Public Safety Advisory, Railroad Task Force, Special Ad Hoc Committees, Strategic Plan, Water Tap Fee Review Committee

Other interests:

Packet Information

File #: BILL NO. 18-10, **Version:** 1

AN ORDINANCE VACATING A CERTAIN EASEMENT LOCATED LOTS 217, 224, AND 291 OF THE SIENA AT LONGVIEW SUBDIVISION IN THE CITY OF LEE'S SUMMIT, MISSOURI.

(Note: First reading by Council on January 18, 2018 and approved by unanimous vote.)

Proposed City Council Motion:

I move for a second reading of AN ORDINANCE VACATING A CERTAIN EASEMENT LOCATED LOTS 217, 224, AND 291 OF THE SIENA AT LONGVIEW SUBDIVISION IN THE CITY OF LEE'S SUMMIT, MISSOURI.

BILL NO. 18-10

AN ORDINANCE VACATING A CERTAIN EASEMENT LOCATED ON LOTS 217, 224, AND 291 OF THE SIENA AT LONGVIEW SUBDIVISION IN THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, Application #PL2017-247 was submitted by Engineering Solutions, requesting vacation of an existing 15' wide easement located on Lots 217, 224 and 291 in the Siena at Longview subdivision in Lee's Summit, Missouri; and,

WHEREAS, the easement was dedicated to the City on the final plat *Siena at Longview, 2nd Plat, Lots 200-291, Tracts A-2, D, E & F* which was recorded by Instrument # 2008E0039344 on April 11, 2008; and,

WHEREAS, the Planning Commission considered the request on January 9, 2018, and rendered a report to the City Council recommending that the vacation of easement be approved; and,

WHEREAS, the City Council for the City of Lee's Summit has determined that no damages are ascertainable by reason of such vacation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the following described easements are hereby and herewith vacated:

The north 7.5 feet of the east 471.93 feet, except the east 216.04 feet of Lot 291;

The south 7.5 feet of Lot 224; and

The south 7.5 feet of Lot 217.

All in Siena at Longview, 2nd Plat, Lots 200-291, Tracts A-2, D, E & F, a subdivision as recorded in the Office of the Recorder, Jackson County, Missouri.

SECTION 2. That upon the effective date of the vacation of the easements described in Section 1 above, the City releases all right, title and interest in and to the City owned infrastructure located within the easements.

SECTION 3. That the City Clerk be and is hereby authorized and directed to acknowledge a copy of this ordinance and to record same in the Office of the Recorder of Deeds of the County in which the property is located.

SECTION 4. That this ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

BILL NO. 18-10

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2018.

Mayor Randall L. Rhoads

ATTEST:

City Clerk Trisha Fowler Arcuri

APPROVED by the Mayor of said city this ____ day of _____, 2018.

Mayor Randall L. Rhoads

ATTEST:

City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:

City Attorney Brian W. Head

City of Lee's Summit

Development Services Department

January 5, 2018

TO: Planning Commission
PREPARED BY: C. Shannon McGuire, Planner
CHECKED BY: Josh Johnson, AICP, Assistant Director of Plan Services
RE: **Appl. #PL2017-247 – VACATION OF EASEMENT – a 15' utility easement located on Lots 217, 224 and 291 of Siena at Longview, 2nd Plat; Engineering Solutions, LLC, applicant**

Commentary

The applicant proposes to vacate a 15 foot utility easement on lots 217, 224, and 291 in the Siena at Longview subdivision. The easements conflict with the new lot configuration of the final phase for the subdivision.

Recommendation

Staff recommends **APPROVAL** of the vacation of a 15 foot utility easement located on lots 217, 224 and 291 of Siena at Longview

Zoning and Land Use Information

Location: SW 16th St. and SW Corinth Dr. - Siena at Longview, Lots 217, 224 and 291

Zoning: RP-3 (Planned Residential Mixed Use District)

Surrounding Zoning and Use:

North: RP-3 (Planned Residential Mixed Use District) — Siena at Longview subdivision

South: RP-3 (Planned Residential Mixed Use District) — Siena at Longview subdivision

East: RP-3 (Planned Residential Mixed Use District) — Siena at Longview subdivision

West: RP-3 (Planned Residential Mixed Use District) — Siena at Longview subdivision

Project Information

Current Use: single-family residence

Vacation of Easement: a 15 foot utility easement on lots 217, 224, and 291 in the Siena at Longview subdivision.

Unified Development Ordinance

Applicable Section(s)	Description
4.480, 4.490	Vacation of Easement

Process

Procedure: The Planning Commission makes a recommendation to the City Council on the vacation of easement. The City Council takes final action on the vacation of easement in the form of an ordinance.

Duration of Validity: Approval of the vacation of easement does not expire unless stated in the approval.

Background

- March 4, 1986 – The City Council approved the rezoning request (Appl. #1985-068 from R-1 to CP-2 and RP-3, as well as a concept plan for the Longview Farm property. This plan consisted of single family residential, apartments, office and retail spaces. Although approved, the concept plan was never constructed. The existing CP-2 zoning on the subject property was established as part of this rezoning.
- May 13, 1999 – The City Council approved the preliminary site plan (Appl. #1999-168) for the Carriage Homes development. This application was for 61 duplexes (122 units) on 27.44 acres of existing RP-3 zoned land located at the northeast corner of Sampson Rd and Scherer Rd.
- July 1, 1999 – The City Council approved the final site plan (Appl. #1999-164) for the Carriage Homes development. These units were never constructed.
- September 21, 2000 – The City Council approved the preliminary (Appl. #2000-168) and final (Appl. #2000-170) site plans for the Siena at Longview subdivision.
- September 26, 2000 – The Planning Commission approved the preliminary plat (Appl. #2000-169) for *Siena at Longview, Blocks 1-7 and Tracts A, B and C*.
- October 12, 2000 – The City Council approved the final plat (Appl. #2000-171) for *Siena at Longview, Blocks 1-7 and Tracts A, B and C* by Ordinance No. 5048.
- December 7, 2017 – The City Council approved the rezoning request (Appl. #PL2017-174 from CP-2 and RP-3 by Ordinance No. 8279.

Analysis of Vacation of Easement

The applicant proposes to vacate a 15 foot utility easement on lots 217, 224, and 291 in the Siena at Longview subdivision. The easements conflict with the new lot configuration of the final phase for the Siena at Longview subdivision.

Letters were sent to the utility companies (KCP&L, Spire, AT&T, Spectrum Cable, and Comcast Cable), as well as to the City's Public Works and Water Utilities Departments, for their input. No objections were received to the proposed vacation of easement.

Code and Ordinance Requirements

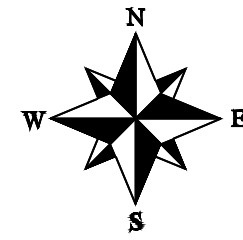
The items in the box below are specific to this development and must be satisfactorily addressed in order to bring it into compliance with the Codes and Ordinances of the City.

Planning

1. The vacation of easement shall be recorded prior to the issuance of a building permit.

Attachments:

1. Easement Vacation Exhibit, date stamped November 20, 2017 – 1 page
2. Location Map



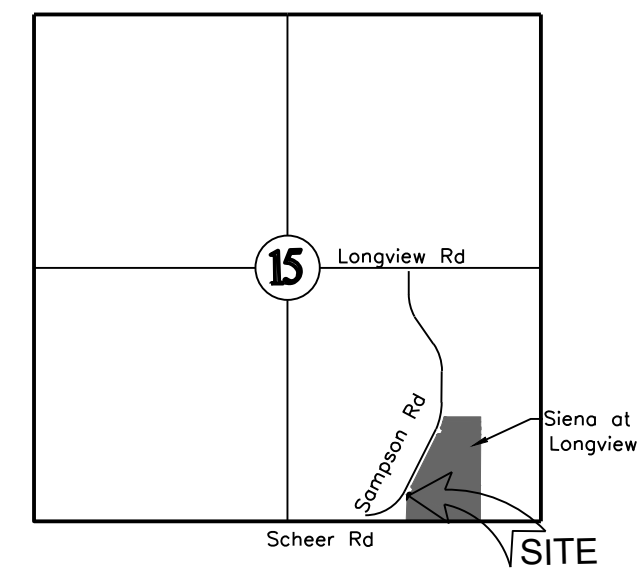
LEGEND

These standard symbols will be found in the drawing.

- Set 1/2" Rebar & Cap (LS-2005008319-D)
- ⊙ Found Survey Monument (As Noted)
- Ⓜ Exception Document Location
- - - - - Existing Fence Line - Chain Link
- - - - - Existing Water Line
- - - - - Existing Sanitary Sewer Main
- - - - - Existing Storm Sewer
- - - - - Existing Gas Line
- - - - - Existing Underground Telephone
- - - - - Existing Underground Electric

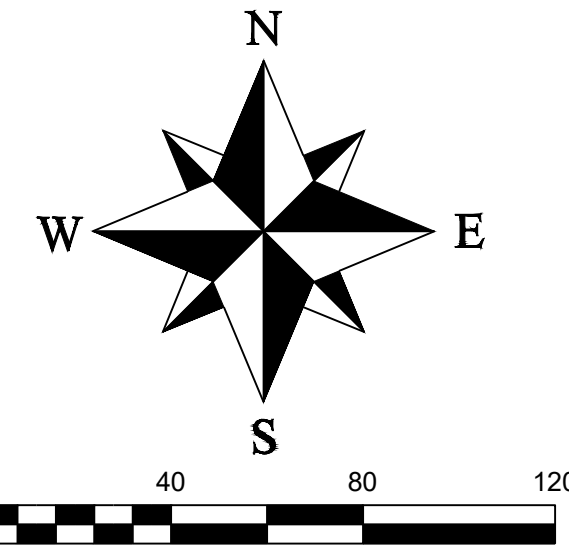
RESIDENTIAL BUILDING LINE:

- FRONT YARD 22'
- REAR YARD 20'
- SIDE YARD 5'



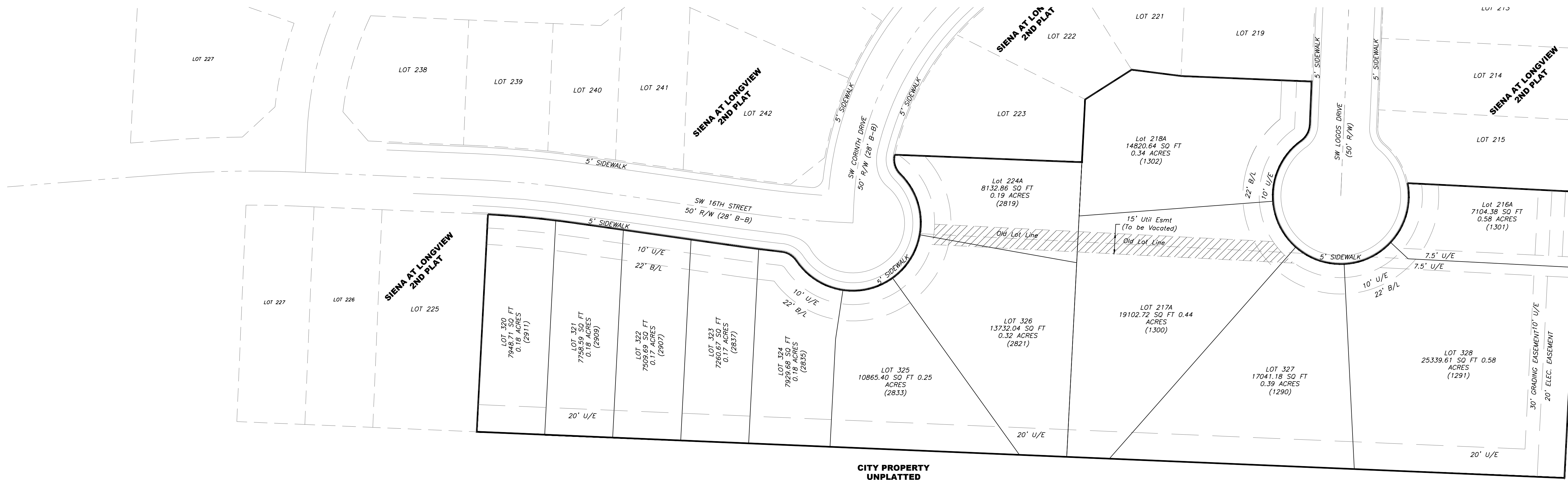
LOCATION MAP
SECTION 15-T.47-R.31
Not to Scale

SIENA AT LONGVIEW 2ND PLAT Lot 291 Easement Vacation Exhibit



EASEMENT VACATION DESCRIPTION

The north 7.5 feet of the east 471.93 feet, except the east 216.04 feet of lot 291.
The south 7.5 feet of lot 224.
The south 7.5 feet of lot 217.



PROPERTY RESERVE INC
PO BOX 511196
SALT LAKE CITY, UT 84151-1196
NO ADDRESS ASSIGNED BY CITY
LEE'S SUMMIT, MO 64081

CITY PROPERTY
UNPLATTED

S, R/W Line Proposed Scheer Parkway
Per Plat of "Sienna At Longview, Blocks 1 Thru 7 And Tracts A, B & C"

REVISIONS
DATE

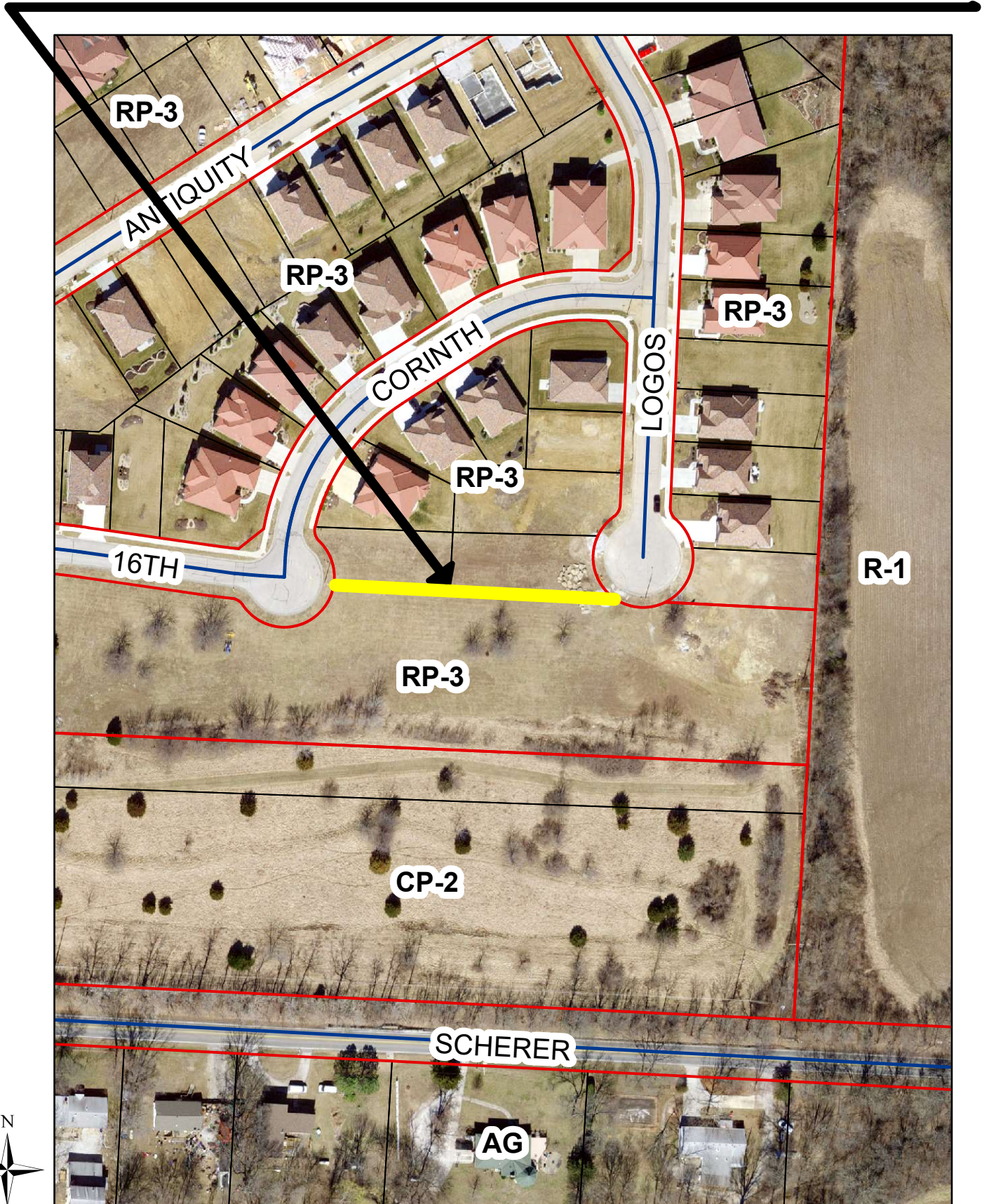
Sienna at Longview 2nd Plat
Lot 291
Section 15, Twp. 47, Rge 32
Lee's Summit, Jackson County, Missouri

Easement Vacation Exhibit					
Lot 291, SIENA AT LONGVIEW 2nd PLAT					
SHEET	SECTION	TOWNSHIP	RANGE	COUNTY	JOB NO.
1 OF 1	15	47	32	JACKSON	SIENA AT LONGVIEW
DATE OF PREPARATION	SCALE	DATE OF PREPARATION			
August 18, 2017	1"=40'	August 18, 2017			

PROFESSIONAL SEAL

ENGINEERING & SURVEYING SOLUTIONS
50 SE 30TH STREET
LEE'S SUMMIT, MO 64082
P: (616) 623-9888 F: (616) 623-9849

**Appl. #PL2017-247 – VACATION OF EASEMENT
Siena at Longview, Lots 217, 224 and 291
Engineering Solutions, applicant**



Packet Information

File #: BILL NO. 18-12, **Version:** 1

AN ORDINANCE AUTHORIZING THE CITY OF LEE'S SUMMIT TO PARTICIPATE IN THE GREATER KANSAS CITY CLEAN ENERGY DEVELOPMENT BOARD AND AUTHORIZING FURTHER ACTIONS AS MAY BE NECESSARY OR DESIRABLE TO CARRY OUT AND COMPLY WITH THE INTENT HEREOF. (F&BC 1-8-18)

Issue/Request:

AN ORDINANCE AUTHORIZING THE CITY OF LEE'S SUMMIT TO PARTICIPATE IN THE GREATER KANSAS CITY CLEAN ENERGY DEVELOPMENT BOARD AND AUTHORIZING FURTHER ACTIONS AS MAY BE NECESSARY OR DESIRABLE TO CARRY OUT AND COMPLY WITH THE INTENT HEREOF.

Key Issues:

The proposed ordinance would authorize the City of Lee's Summit to participate in a regional program designed to encourage development of clean energy alternatives.

Property Assessed Clean Energy or PACE programs, allow local government entities to raise money through the issuance of bonds or other sources of capital to fund energy efficiency and renewable energy projects to eligible property owners. Through the creation of financing districts, property owners can finance renewable onsite generation installations and energy efficiency improvements through a special assessment on their property tax bills that is repaid over a period up to 20 years.

This voluntary assessment is secured by a senior lien on the property and does not require upfront payment. The lien provides debt collateral in the event a property owner defaults on the assessment. In most cases, the assessment and the lien are transferred upon sale.

Missouri enacted PACE legislation in 2010 (HB 1692) that authorizes the formation of clean energy development boards by one or more municipalities for the purpose of establishing PACE programs (Sections 67.2800 - 67.2835, RSMo). Municipalities are defined as counties, cities or incorporated towns or villages in Missouri. Boards will establish application requirements and criteria for project approval, evaluate proposed projects and the credit-worthiness of property owners, enter into assessment contracts and administer the loans or use third party providers for financing origination.

The Missouri PACE legislation allows PACE to be used for energy efficiency improvements and renewable energy improvements.

Energy efficiency improvements include any acquisition, installation or modification on or of publicly- or privately-owned property which is designed to reduce the energy consumption of such property, including, but not limited to:

- Insulation in walls, roofs, attics, floors, foundations, and heating and cooling distribution systems
- Storm windows and doors, multi-glazed windows and doors, heat-absorbing or heat-reflective windows and

doors, and other window and door improvements designed to reduce energy consumption

- Automatic energy control systems
- Heating, ventilating, or air conditioning distribution system modifications and replacements;
- Caulking and weatherstripping
- Replacement or modification of lighting fixtures to increase energy efficiency of the lighting system without increasing the overall illumination of the building unless the increase in illumination is necessary to conform to applicable state or local building codes
- Energy recovery systems
- Daylighting systems

Renewable energy improvements include any acquisition and installation of a fixture, product, system, device, or combination thereof on publicly- or privately-owned property which produces energy from renewable resources, including, but not limited to:

- Photovoltaic systems
- Solar thermal systems
- Wind systems
- Biomass systems
- Geothermal systems

Proposed City Council Committee Motion:

I move to recommend to City Council approval of AN ORDINANCE AUTHORIZING THE CITY OF LEE'S SUMMIT TO PARTICIPATE IN THE GREATER KANSAS CITY CLEAN ENERGY DEVELOPMENT BOARD AND AUTHORIZING FURTHER ACTIONS AS MAY BE NECESSARY OR DESIRABLE TO CARRY OUT AND COMPLY WITH THE INTENT HEREOF.

Background:

Missouri Clean Energy District

The Missouri Clean Energy District (MCED) offers funding statewide to participating communities. It has contracted with the Missouri Clean Energy Fund, LLC as its PACE Administrator. Eligible properties and projects include residential, commercial, industrial, agricultural, multi-family, not-for-profit, and public facilities. Additional information about program eligibility, cost to participate, participating communities can be found at 'MCEDs website <<http://www.mced.mo.gov/>>.

The Kansas City Regional Clean Energy Development Board will adopt bylaws addressing the operations of the Kansas City Regional Clean Energy Development Board which are consistent with the PACE Act and this Ordinance, and which shall include: (1) provisions confirming that there will be no financial obligation to the participating jurisdictions; (2) provisions for selecting an administrator to assist in managing a PACE program pursuant to a competitive request for proposals ; (3) provisions confirming the right for a jurisdiction to withdraw from the Board and district at any time; and

(4) provisions for consumer protection policies.

The Kansas City Regional Clean Energy Development Board will provide for an annual audit that shall be presented annually to the governing body of each participating jurisdiction. Furthermore, the Board will collect and provide for inspection all data regarding projects to allow for analysis of outcomes and the efficacy of the program.

Presenter: Stephen Arbo | City Manager

Recommendation: Staff Recommends Approval

BILL NO. 18-12

AN ORDINANCE AUTHORIZING THE CITY OF LEE'S SUMMIT TO PARTICIPATE IN THE GREATER KANSAS CITY CLEAN ENERGY DEVELOPMENT BOARD AND AUTHORIZING FURTHER ACTIONS AS MAY BE NECESSARY OR DESIRABLE TO CARRY OUT AND COMPLY WITH THE INTENT HEREOF.

WHEREAS, it is in the best interests of the City of Lee's Summit, Missouri and its residents to encourage the development, production, and efficient use of clean energy and renewable energy, as well as the installation of energy efficiency improvements to publicly and privately owned real property; and,

WHEREAS, the State of Missouri has enacted the Property Assessment Clean Energy Act, Sections 67.2800 to 67.2835, Revised Statutes of Missouri (the "PACE Act"); and,

WHEREAS, the PACE Act authorizes one or more municipalities to establish a Clean Energy Development Board to initiate and administer a Property Assessed Clean Energy ("PACE") Program so that owners of qualifying property can access funding for energy efficiency improvements or renewable energy improvements to the properties located in such municipalities; and,

WHEREAS, PACE programs allow property owners to enter assessment contracts through a Clean Energy Development Board to finance energy efficiency and renewable energy improvements to their property and repay such assessments through their property tax bills; and,

WHEREAS, the City of Lee's Summit, desires to participate in the Greater Kansas City Clean Energy Development Board pursuant to Section 67.2810.1(2) of the PACE Act to create a clean energy district for the purposes of initiating and administering a PACE Program; and,

WHEREAS, the Cities of Independence, Missouri, Kansas City, Missouri, and Sugar Creek, Missouri also desire to participate in forming the Greater Kansas City Clean Energy Development Board pursuant to Section 67.2810.1(2) of the PACE Act to create a clean energy district for the purposes of initiating and administering a PACE Program whose geographic boundary includes all of the participating jurisdictions; and,

WHEREAS, it is in the best interests of the City and its residents to participate in the Greater Kansas City Clean Energy Development Board.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the participation in the Greater Kansas City Clean Energy Development Board is hereby authorized, pursuant and subject to the following:

- A. That the Cities of Independence, Missouri, Kansas City, Missouri, and Sugar Creek, Missouri shall also be considered initial forming members of the Greater Kansas City Clean Energy Development Board (the "Board") upon their passage of an ordinance or resolution that authorizes the establishment of the Board and that is

BILL NO. 18-12

substantially similar to this ordinance on or before December 31, 2017.

- B. The Greater Kansas City Clean Energy Development Board shall have all the powers of a clean energy development board set out in Section 67.2800 through 67.2835 RSMo (the "PACE Act").
- C. The mayor or, if there is no mayor, the chief executive officer of each jurisdiction joining in the initial formation of the Board shall appoint a board member to the Greater Kansas City Clean Energy Development Board to manage a PACE program within the jurisdictions' borders. The initial term of each board member shall be for four years.
- D. The Greater Kansas City Clean Energy Development Board shall adopt bylaws addressing the operations of the Greater Kansas City Clean Energy Development Board which are consistent with the PACE Act and this Ordinance, and which shall include provisions for selecting an administrator to assist in managing a PACE program pursuant to a competitive request for proposals, for a jurisdiction to withdraw from the Board, and for consumer protection policies.
- E. The Greater Kansas City Clean Energy Development Board shall provide for an annual audit that shall be presented annually to the governing body of each participating jurisdiction. Furthermore, the Board shall collect and provide for inspection all data regarding projects to allow for analysis of outcomes and the efficacy of the program.

SECTION 2. That the City hereby recognizes that the requirements of the PACE Act may, from time to time, be revised, and affirms that appropriate officials that may be directed to act by state law with respect thereto under the PACE Act in the future are hereby authorized to act in accordance with the PACE Act, as from time to time revised, so that at all times hereinafter, the Greater Kansas City Clean Energy Development Board shall be and remain legally authorized to exercise the powers of a Clean Energy Development Board under the PACE Act, without further action of the City.

SECTION 3. The Mayor and City Manager, or their designees, are hereby authorized to take such further actions and execute such documents as may be necessary or desirable to carry out and comply with the intent of this Ordinance and the conditions set out in Section 1 hereof, and to carry out, comply with and perform the duties of the City hereunder and under the PACE Act.

SECTION 4. That this ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

SECTION 5. That should any section, sentence, or clause of this ordinance be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences or clauses.

BILL NO. 18-12

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2018.

Mayor Randall L. Rhoads

ATTEST:

City Clerk Trisha Fowler Arcuri

APPROVED by the Mayor of said city this _____ day of _____, 2018.

Mayor Randall L. Rhoads

ATTEST:

City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:

Chief Counsel of Infrastructure and Planning
Nancy Yendes

Packet Information

File #: BILL NO. 18-13, **Version:** 1

AN ORDINANCE AUTHORIZING EXECUTION OF A COOPERATIVE AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND JACKSON COUNTY MISSOURI FOR SHARED USE PATHWAY AND OTHER TRANSPORTATION IMPROVEMENTS IN THE VICINITY OF THE ROCK ISLAND CORRIDOR. (PWC 1-16-18)

Issue/Request:

AN ORDINANCE AUTHORIZING EXECUTION OF A COOPERATIVE AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND JACKSON COUNTY MISSOURI FOR SHARED USE PATHWAY AND OTHER TRANSPORTATION IMPROVEMENTS IN THE VICINITY OF THE ROCK ISLAND CORRIDOR

Key Issues:

- o Improvements to Chipman Road from View High to Bent Tree were approved by voters as part of the 2007 CIP Sales Tax Renewal

- o Jackson County Rock Island Rail Corridor Authority (RIRCA) and the Kansas City Area Transit Authority (KCATA) purchased rights to construct and operate a trail and transit services along the inactive Rock Island rail corridor

- o Chipman Road and the Rock Island intersect in Lee's Summit and require mutual cooperation for both entities to construct improvements at various locations

- o This agreement authorizes mutual access to rights of way necessary for construction

- o This agreement authorizes payment from the City to RIRCA for bridge construction and establishes conditions of work in the City's jurisdiction

Proposed City Council Motion:

FIRST MOTION: I move for a second reading of AN ORDINANCE AUTHORIZING EXECUTION OF A COOPERATIVE AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND JACKSON COUNTY MISSOURI FOR SHARED USE PATHWAY AND OTHER TRANSPORTATION IMPROVEMENTS IN THE VICINITY OF THE ROCK ISLAND CORRIDOR

SECON MOTION: I move for adoption of AN ORDINANCE AUTHORIZING EXECUTION OF A COOPERATIVE AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND JACKSON COUNTY MISSOURI FOR SHARED USE PATHWAY AND OTHER TRANSPORTATION IMPROVEMENTS IN THE VICINITY OF THE ROCK ISLAND CORRIDOR

Background:

The improvements to NW Chipman Road corridor between View High and Bent Tree was recommended in the

City's 2006 Thoroughfare Master Plan. Funding for the project was approved by voters as part of the April 2007 Sales Tax Renewal election. This project includes re-constructing approximately 0.9 miles of existing roadway as a three-lane facility with sidewalk, a multi-use trail, and street lighting, as well as removal of the existing railroad tunnel. The work requires relocation of 4,700 feet of water main, 1,400 feet of sanitary sewer, and extensive relocation of fiber optic transmission lines in the rail right of way. The major purpose for the project is safety improvements that will eliminate the one-lane railroad tunnel, narrow pavement, areas with no shoulder, and several sharp curves along the corridor.

The project has been dormant since April of 2012 when the right of way plans were completed. At that time, the City had reached an impasse with the Union Pacific Railroad regarding right of access along the Rock Island rail corridor to remove the one-lane tunnel. In 2016, Jackson County, in partnership with KCATA, acquired the rights to manage and construct improvements in the Rock Island corridor for trail and transit. The City began negotiating access rights with the County and KCATA in September of 2016 after the County was awarded federal funds for purchasing right of way and constructing the trail.

Funding rules mandate that the County is still subject to the Surface Transportation Board "Common Carrier Obligations," which means the County has to maintain a continuous rail corridor. Corridor continuity prohibits simple removal of the bridge over Chipman Road. Provision had to be made to replace the bridge through either constructing a new bridge or securing funds to build a bridge. Because the City road project is causing the bridge to be removed, the City is responsible to either build the bridge or make payment to the County in an amount sufficient to construct a freight rail bridge.

The agreement stipulates that the County will construct any bridge build over Chipman Road. Initially, the County may opt to construct a trail bridge. In the future, the County may, as necessary, construct a freight rail bridge or a commuter rail bridge, depending on the classification status of the rail corridor. The City will be required to give the County a one-year notice before the bridge of Chipman Road can be removed. Also, as part of the Chipman Road work, the City will have to relocate major fiber optic transmission lines running the length of the rail corridor. This agreement give the City permission to remove the bridge, relocate the fiber optic line, and construct the Chipman Road improvements in the County rail corridor.

Constructing the trail through Lee's requires the County to cross through the City's right of way in 5 locations: Old Pryor Road access road to Hartman Park, Longview Road, Ward Road, Scherer Road and Jefferson Street. This works required the County to obtain right of way permits from the City or construction improvements in the City's right of way. Additionally, the County must obtain a flood plain development permit and land disturbance permit from the City. This agreement stipulates the County must obtain those permits. To ensure compliance, the permit requirements were also included in the construction contract documents for the trail construction.

The County has recently awarded a construction contract to Radmacher Brothers, Inc. to build the trail from Brickyard Road in Kansas City, MO southward through Lee's Summit to the project terminus near SW Jefferson Street and Scherer Road. The work is currently scheduled to take place from January through September of 2018. The County will be taking the lead in public communications, working with residents, and inspecting the work. City and County staff will continue to coordinate work for the trail project and the Chipman Road project.

Chipman Road design, right of way and utility relocation work will restart in 2018 with the goal of constructing Chipman Road in 2019. Contracts modification for design work and agreements utility relocation will be necessary proceed.

Approval of this agreement will allow work on both the Chipman Road and Rock Island Trail projects to proceed.

Impact/Analysis:

[Enter text here]

Timeline:

Start: January 2018

Finish: Upon completion of work (about December 2019)

Other Information/Unique Characteristics:

[Enter text here]

Presenter: George Binger, Deputy Director/City Engineer

Recommendation: Staff recommends approval of AN ORDINANCE AUTHORIZING EXECUTION OF A COOPERATIVE AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND JACKSON COUNTY MISSOURI FOR SHARED USE PATHWAY AND OTHER TRANSPORTATION IMPROVEMENTS IN THE VICINITY OF THE ROCK ISLAND CORRIDOR

Committee Recommendation: The Public Works Committee voted unanimously 4-0 to recommend to City Council approval of AN ORDINANCE AUTHORIZING EXECUTION OF A COOPERATIVE AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND JACKSON COUNTY MISSOURI FOR SHARED USE PATHWAY AND OTHER TRANSPORTATION IMPROVEMENTS IN THE VICINITY OF THE ROCK ISLAND CORRIDOR

BILL NO. 18-13

AN ORDINANCE AUTHORIZING EXECUTION OF A COOPERATIVE AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND JACKSON COUNTY MISSOURI FOR SHARED USE PATHWAY AND OTHER TRANSPORTATION IMPROVEMENTS IN THE VICINITY OF THE ROCK ISLAND CORRIDOR.

WHEREAS, Improvements to Chipman Road from View High to Bent Tree were approved by voters as part of the 2007 CIP Sales Tax Renewal; and,

WHEREAS, Jackson County Rock Island Rail Corridor Authority (RIRCA) and the Kansas City Area Transit Authority (KCATA) purchased rights to construct and operate a trail and transit services along the inactive Rock Island rail corridor; and,

WHEREAS, Chipman Road and the Rock Island intersect in Lee's Summit and require mutual cooperation for both entities to construct improvements at various locations; and,

WHEREAS, This agreement authorizes mutual access to rights-of-way necessary for construction; and,

WHEREAS, This agreement authorizes payment from the City to RIRCA for bridge construction and establishes conditions of work in the City's jurisdiction; and

WHEREAS, the City and Jackson County, Missouri desire to enter into a cooperative agreement granting mutual support for constructing the Rock Island Trail and Chipman Road Improvement within the City of Lee's Summit.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That a Cooperative Agreement by and between the City of Lee's Summit, Missouri and Jackson County, Missouri for Shared Use Pathway and Other Transportation Improvements in the Vicinity of the Rock Island Corridor, a true and accurate copy being attached hereto and incorporated herein by reference, be and the same is hereby approved.

SECTION 2. That the Mayor is hereby authorized to execute the same by and on behalf of the City of Lee's Summit, Missouri.

SECTION 3. That this Ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

BILL NO. 18-13

PASSED by the City Council of the City of Lee's Summit, Missouri, this ____ day of _____, 2018.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this _____ day of _____, 2018.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

Chief Counsel of Infrastructure and Planning
Nancy K. Yendes

**COOPERATIVE AGREEMENT FOR SHARED USE PATHWAY AND OTHER TRANSPORTATION
IMPROVEMENTS IN THE VICINITY OF THE ROCK ISLAND CORRIDOR**

This Cooperative Agreement for shared use pathway and other transportation improvements is made by and between the City of Lee’s Summit (the “**CITY**”) and Jackson County, Missouri (the “**COUNTY**”)

RECITALS

WHEREAS, the **COUNTY** did acquire the Rock Island Railroad Corridor, a 17.7-mile railroad corridor within the city limits of Lee’s Summit, Raytown, and Kansas City located between Mileposts 270.6 and 288.3 along the former Chicago, Rock Island and Pacific Railway Co. line (the “**CORRIDOR**”) from the Union Pacific Railroad (Exhibit A); and

WHEREAS, the Surface Transportation Board in 1998 determined that the **CORRIDOR** had not been abandoned; and

WHEREAS, the **COUNTY** is the owner of the Railroad Corridor and a “common carrier” under 49 U.S.C. 11101 subject to the jurisdiction of the Surface Transportation Board; and

WHEREAS, the **COUNTY** and the Kansas City Area Transportation Authority (the “**KCATA**”) have formed a regional partnership to enhance the condition, viability, and use of the **CORRIDOR**; and

WHEREAS, the **CITY** has committed to the development of useful transportation corridors including bicycle and accessory paths; and

WHEREAS, the **COUNTY** plans to construct a shared use pathway for the transportation, recreation, health, and economic betterment of the residents of Lee’s Summit; and

WHEREAS, the **COUNTY** and the **KCATA** did agree that the uses of the corridor be prioritized, in descending order, as follows: common carrier, multi-modal transit, and shared use pathway (Exhibit B); and

WHEREAS, the **KCATA** is a partner with the **COUNTY** on various **CORRIDOR** activities; and

WHEREAS, the design and construction of the shared use pathway will be consistent with the **COUNTY'S** common carrier status and the eventual implementation of multi-modal transit; and

WHEREAS, the **CITY** has planned a project called the Chipman Road Project which is in the immediate vicinity and adjacent to the **CORRIDOR**; and

WHEREAS, both the **CITY** and the **COUNTY** desire to provide safe bicycle and accessory crossings where the **CORRIDOR** crosses **CITY** streets at grade; and

WHEREAS, the **CITY** is desirous of having the opportunity to use some of its tax revenue to develop trailheads on or adjacent to the **CORRIDOR** at mutually agreeable locations and subject to the City Council's appropriation power; and

WHEREAS, both the **CITY** and the **COUNTY** wish to connect their system of trails and other bicycle and accessory infrastructure to the Rock Island Spur of the Katy Trail in Pleasant Hill, Missouri; and

WHEREAS, the **COUNTY** requires access and use of **CITY** rights-of-way to construct a shared use path within the **CORRIDOR** in accordance with its approved plans; and

WHEREAS, the **CITY** desires permission to remove a certain bridge and perform work within the **CORRIDOR** as a part of its Chipman Road Project; and

WHEREAS, both the **CITY** and **COUNTY** wish to cooperate to deliver their respective transportation improvements and promote economic development within the **CORRIDOR** to improve the quality of life of area residents;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein expressed, the parties agree as follows:

AGREEMENT PART 1: SPECIFIC TERMS AND CONDITIONS

1. Scope of Agreement. The purpose of this Agreement is to provide for a cooperative effort between Lee’s Summit and Jackson County for the implementation of Jackson County’s shared use pathway project in accordance with the terms and conditions set forth herein. The scope, purpose, and intent of this agreement is to provide for a shared use pathway for bicycle and accessory use to be built on the **CORRIDOR** within the City of Lee’s Summit, as well as the construction of other transportation improvements in and around the vicinity of the **CORRIDOR**. It is the intent of the parties that this Agreement is framed pursuant to Section 70.210, through 70.325, RSMo, relating to cooperative agreements between intergovernmental units or agencies to provide a common service to the public, in this instance, active transportation facilities.

2. At-grade shared use path crossing improvements

a. License to use City right-of-way. The **CITY** hereby grants to the **COUNTY**, its representatives, employees, engineers, consultants, and contractors a license to use a portion of public right-of-way for pavement, pavement markings, and signs within **CITY** right-of-way, for the modification of traffic signals, and for the installation of ADA Curb Ramps in the premises of the following **CITY** streets at the intersection of the **CORRIDOR**:

- i. Old Pryor Road
- ii. Longview Road

- iii. Ward Road
- iv. Persels Road
- v. Scherer Road
- vi. Jefferson Street
- vii. Other unanticipated grade crossings (to be reviewed at a later date)

The plans for the proposed at-grade crossing improvements are further described and delineated in Exhibit C.

- b. **Design review and inspection.** The **CITY** Engineer shall have the right to review the final design of all improvements in the **CITY** right-of-way prior to construction and shall have the right to inspect final improvements once constructed. All improvements shall be designed and constructed to MUTCD, APWA, and PROWAG standards, or **CITY** standards, whichever are more recent or appropriate to the existing context.
- c. **Fees.** The County or its Contractor shall pay all fees for permitting, review, inspection, and licensing fees for all at-grade shared use path crossing improvements when appropriate.
- d. **Underlying ownership.** The ownership of **CITY** or **COUNTY** land shall remain with either party. Permits, licenses, or easements granted by either party shall not negate the actual ownership of either party.
- e. **Maintenance and ownership of improvements.** The **CITY** shall be responsible for all maintenance of any improvements, signs or markings within the **CITY'S** right-of-way where it intersects the **CORRIDOR** that have been accepted in writing by the City Engineer and Director of Public Works .

3. Temporary Traffic Control Permits. The **CITY** shall have the right to review any plans and other supporting materials deemed necessary to grant temporary traffic control permits.

4. Chipman Road Bridge

- a. Right-of-way granted to CITY.** The **COUNTY** agrees to grant and convey to the **CITY** approximately 0.85± acres of temporary construction easement and approximately 0.47± acres of roadway easement for the purpose of public safety and roadway capacity expansion along Chipman Road at the **CORRIDOR**. These rights are further described in an Easement in Exhibit D, which shall be executed upon receipt by the **COUNTY** of certain considerations herein described. Said Easement shall not be exclusive to the **CITY**, and the **COUNTY** or the **KCATA** may use the Easement area for future improvements, maintenance activities, and other purposes.
- b. Notice.** The **CITY** shall provide a minimum of one year notice to the **COUNTY** prior to alteration to the Chipman Road Bridge and embankment within its Easement area.
- c. COUNTY responsibility for Railroad Bridge.** The **COUNTY**, as owner of the Railroad Corridor and a “common carrier” under 49 U.S.C. 11101 subject to the jurisdiction of the Surface Transportation Board, shall be responsible for the construction of a railroad bridge if rail service is restored. The **KCATA** may also construct a transit bridge, whether rail or some other mode.
- d. COUNTY to construct accessory bridge.** The **COUNTY** will design and construct a new accessory bridge spanning the expanded width of Chipman Road, which shall not preclude future rail or transit use.
- e. Payment.** In consideration of the easements granted to the **CITY** for additional property required for the roadway project, the existing value of the Chipman Road Bridge, permission to remove the Chipman Road Bridge as a part of **CITY’S** road project, and future

plans of the **COUNTY** and **KCATA** to accept full responsibility if any to construct an accessory and transit and/or railroad bridges including any replacement of the Chipman Road Bridge, the **CITY** shall pay to the **COUNTY** the sum of Two Million Dollars (\$2,000,000) on or before March 31, 2018. Upon such payment, the parties hereto agree that **CITY** has completely fulfilled any and all responsibility, obligation or duty it may have or had to replace the Chipman Road Bridge. The payment shall be deposited into a joint account held by the **COUNTY** and **KCATA**.

f. **Utility relocation.** The **CITY** shall have access to the **CORRIDOR** for the purpose of the relocation of existing utilities within the area of the **CITY'S** Chipman Road Project. The **COUNTY** and the **KCATA** shall have design review of all utility relocations of which **CITY** is aware and shall have approval authority in order to prevent utility conflicts with future improvements. The **COUNTY** shall not be responsible for any utility relocation related to the Chipman Road Project. However, the **COUNTY** may offer the use of its future rail, transit, or accessory bridge structures to assist in utility relocation efforts.

5. **Trailheads.** The **CITY** and the **COUNTY** shall work towards identifying mutually acceptable locations for Trailheads that the **CITY** wishes to construct so that they may be connected to the **CORRIDOR** shared use path. Such Trailheads will be constructed as the **CITY's** sales tax revenue becomes available and the City Council approves appropriations such revenue to a Trailhead project. Exhibit E contains conceptual plans and cost estimates for a trailhead.

6. **Trail connections and wayfinding.** Both parties agree to permit signs and wayfinding to other bicycle and accessory infrastructure and local points of interest. The design and location of these signs and wayfinding materials shall be subject to the review of either party.

PART 2: GENERAL TERMS AND CONDITIONS

1. **Entire Agreement.** This writing and any and all exhibits with dates certain on them as to the date of preparation and accepted by the governing body or the **CITY** or **COUNTY** or authorized representative of **COUNTY** are the complete agreement.
2. **Indemnification by Contractors.** Each party's contracts with its Contractors in connection with the construction of an accessory or shared use path in the **CORRIDOR** (Project) shall require such Contractors to defend, indemnify, and hold harmless the other party under the terms of this section. The obligations of each party and its Contractors under this section with respect to indemnification of the other party, its agencies, officials, officers, or employees shall be limited to the coverage and limits of insurance that the indemnifying party and its Contractor are required to procure and maintain under this Agreement. In no event shall any requirement for indemnification or insurance in this Agreement, whether set out in this paragraph or another, serve as a waiver of sovereign or any other immunity or defense available to any party, its Officers, Employees and Agents.
3. **Indemnification for Professional Negligence.** If either party hires any Design Professional in connection with the Project, then that party's contracts with its Contractors shall cause such Contractors to indemnify and hold harmless the other party and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, but only to the extent caused by the negligent acts, efforts, or omissions of such Contractors, its employees, agents or others for whom such Contractors are legally liable, in the performance of professional services for the construction of the Project under this Agreement. The indemnifying party and its Contractors are not obligated under this section to indemnify the other party for the negligent acts of the other party's agencies, officials, officers, or employees.
4. **Insurance.**

- a. Each party's Contractors shall procure and maintain in effect throughout the duration of this Agreement insurance coverage not less than the types and amounts specified below. An Owner's Controlled Insurance Program shall be acceptable to each party.
- i. Commercial General Liability Insurance: with limits of \$2,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - 1. Severability of Interests Coverage applying to additional Insureds
 - 2. Contractual Liability
 - 3. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - 4. No Contractual Liability Limitation Endorsement
 - 5. Additional Insured Endorsement, ISO form CG2010, current edition, or its equivalent.
 - ii. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:

Worker's Compensation	Statutory
Employers' Liability with limits of:	\$100,000 each accident
	\$500,000 disease – policy limit
	\$100,000 disease – each employee
 - iii. Commercial Automobile Liability Insurance: with a limit of \$2,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by the contracting party's Contractors.

- iv. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.
 - b. The policies listed above shall provide that they may not be canceled until after thirty (30) days written notice of cancellation to the insured party, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that the insured party and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insured's for the services performed under this Agreement. The contracting party's Contractor shall provide to the insured party prior to the performance of the Project a certificate of insurance showing all required endorsements and additional insured's. The certificate shall be in the insured party's furnished form or its equivalent.
 - c. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+ V" or better and are licensed or approved by the State of Missouri to do business in Missouri.
 - d. Regardless of any approval by the insured party, it is the responsibility of the contracting party to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of the contracting party's failure or the failure of its Contractors to maintain the required insurance in effect, the insured party may order the contracting party and its Contractors to immediately stop work and, upon ten (10) days' notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.
- 5. **Governing law.** This Agreement shall be construed and governed in accordance with the law of the State of Missouri. The parties submit to the jurisdiction of the courts of the State of Missouri and

venue shall be proper only in Jackson County. The corridor remains under the jurisdiction of the Surface Transportation Board.

6. **Compliance with Laws. COUNTY** and all its contractors shall comply with all federal, state and local laws, ordinances and regulations applicable to the project whether a public or private one.

COUNTY, at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Agreement. All references to "Code" shall mean **CITY's** Code of Ordinances, including any amendments thereto or recodification thereof.

7. **Waiver.** No consent or waiver, express or implied, by any party to this Agreement or of any breach or default by any other party in the performance by such other party of its obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any of the other parties or to declare any of the other parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. **COUNTY** and **CITY** reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing by the governing body and shall be deemed to constitute a waiver only as to the matter waived and the parties reserve the right to exercise any and all of its rights and remedies under this Agreement irrespective of any waiver granted.

8. **Modification.** This Agreement shall not be amended, modified or canceled without the written consent of the parties to this Agreement as required by law.

9. **Headings; Construction of Agreement.** The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other

number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

10. **Severability of Provisions.** Except as specifically provided in this Agreement and any provision that provides consideration for the performance of any act, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

11. **Assignment.** Neither **CITY** nor **COUNTY** shall sell, assign, transfer, or otherwise convey any of their rights under this Agreement without the prior and expressed written consent of the other party. Each party may, at its sole discretion, refuse to consent to any proposed sale, assignment, transfer, or other conveyance. Any attempted sale, assignment, transfer, or conveyance in violation of this paragraph shall be void and shall relieve the non-consenting party of any further liability under this Agreement, but shall not relieve the violating party of any liability. If a party consents in writing to a sale, assignment, transfer, or conveyance, unless specifically stated to the contrary in the consent, it shall not release or discharge the party receiving consent from any duty or responsibility set forth in the Agreement.

12. **Conflicts of Interest.** **COUNTY** and its Contractor shall certify that no officer or employee of **CITY** has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of **CITY**, or member of such officer's or employee's immediate family, either has

negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of **COUNTY** or its Contractor in this Agreement.

13. **No Partnership.** It is expressly understood that the parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in performance of this Agreement.

14. **Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest, provided neither party may assign this Agreement or the rights or obligations hereunder without the express written consent of the other party.

15. **Representations.** **COUNTY** and **CITY** certify that they have the power and authority to execute and deliver this Agreement, to use the funds as contemplated hereby and to perform this Agreement in accordance with its terms.

16. **Recording.** Upon the effective date of this Agreement, this Agreement shall be recorded by **CITY** in the Office of the Department of Records, Jackson County, Missouri and a copy hereof shall be sent to the Secretary of State of Missouri, in compliance with Section 70.300 R.S.Mo.

17. **Term.** This Cooperative Agreement shall become effective upon that date when both parties are by law bound thereby, and shall remain in full force and effect until terminated by either party or by mutual agreement in accordance with the provisions for termination hereafter.

18. **Termination.** This Cooperative Agreement may be terminated by either party upon giving not less than six months' notice to the other. If **COUNTY** elects to terminate this Agreement, **COUNTY** must remove its improvements from the **CITY's** rights-of-way within the time set out by the City Council or, at the City Council election, convey improvements to the **CITY**. Should City elect to terminate the

Agreement at any time, all improvements constructed by **CITY** within the CORRIDOR and not a part of any **CITY** roadway shall become **COUNTY** property with no cost to **COUNTY**.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument the day and year first above written.

[SIGNATURES BEGIN ON NEXT PAGE]

APPROVED by the Mayor of the City of Lee's Summit, Missouri
this _____ day of _____, 2018.

Mayor Randall L. Rhoads

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

Chief Counsel of Infrastructure and Planning
Nancy K. Yendes

Ordinance Number: _____

City of Lee's Summit Missouri
220 SE Green Street
Lee's Summit, MO 64063

IN WITNESS WHEREOF, the parties have hereunto set their respective hands as of the day and year first above written.

JACKSON COUNTY, MISSOURI

_____ Date

By: _____

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ____ day of _____ in the year 2016, before me, _____, a Notary Public in and for said state, personally appeared _____, the _____ of Jackson County, Missouri, a political subdivision of the State of Missouri, known to me to be the person who executed the foregoing Agreement on behalf of the County and acknowledged to me that (a) he is the _____ of Jackson County, Missouri, a political subdivision of the state of Missouri, (b) the foregoing Agreement was signed in behalf of said authority by him as its _____, and (c) that the execution of the foregoing Agreement was the free act and deed of him as the _____ of Jackson County, Missouri and that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in _____, _____, on the day and year last above written.

Notary Public

My Commission Expires:

Approved As To Form

County Counselor

Attest:

Mary Jo Spino, Clerk of the Legislature

Exhibit A – Corridor Overview Map

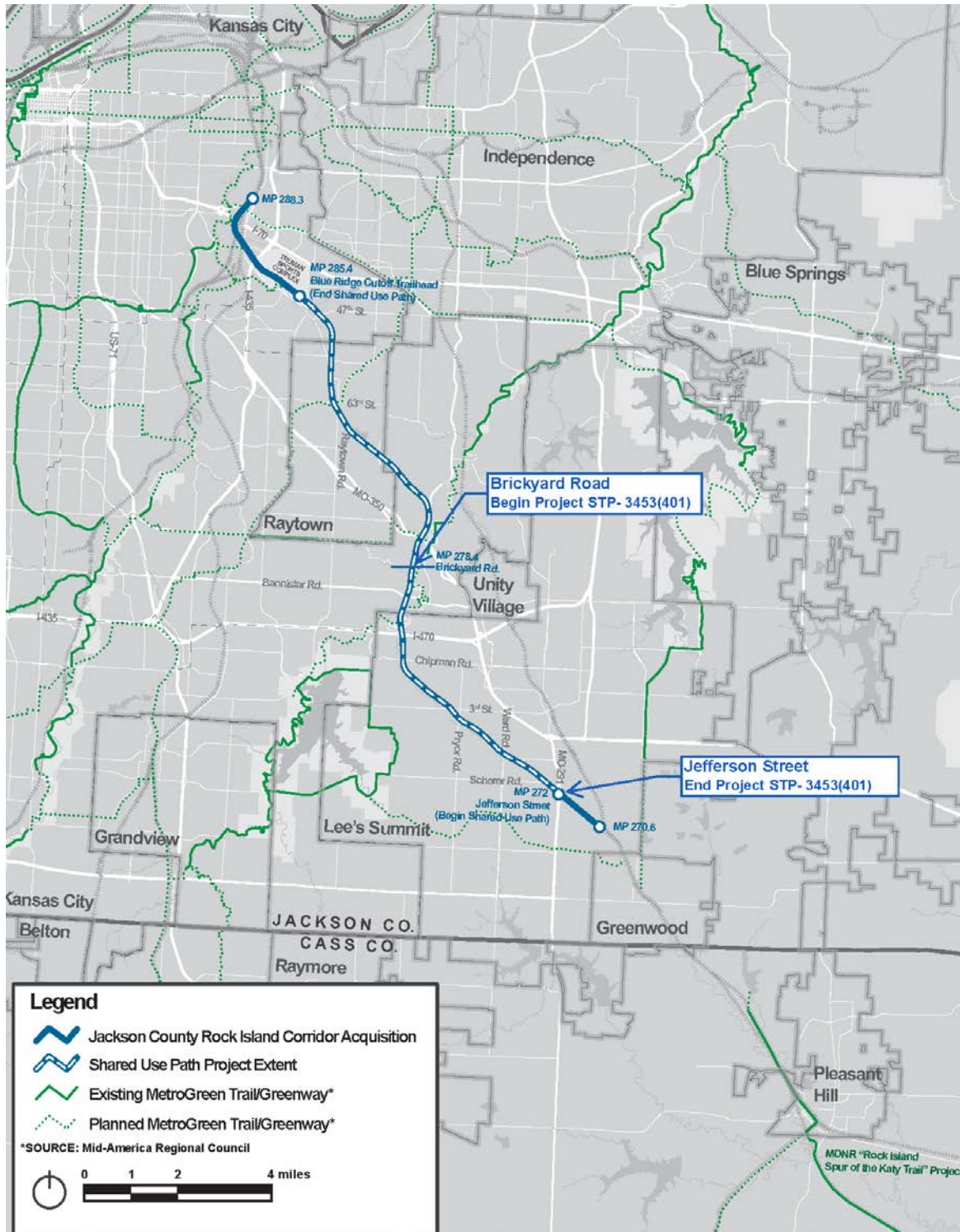


Exhibit B – Hierarchy Diagram

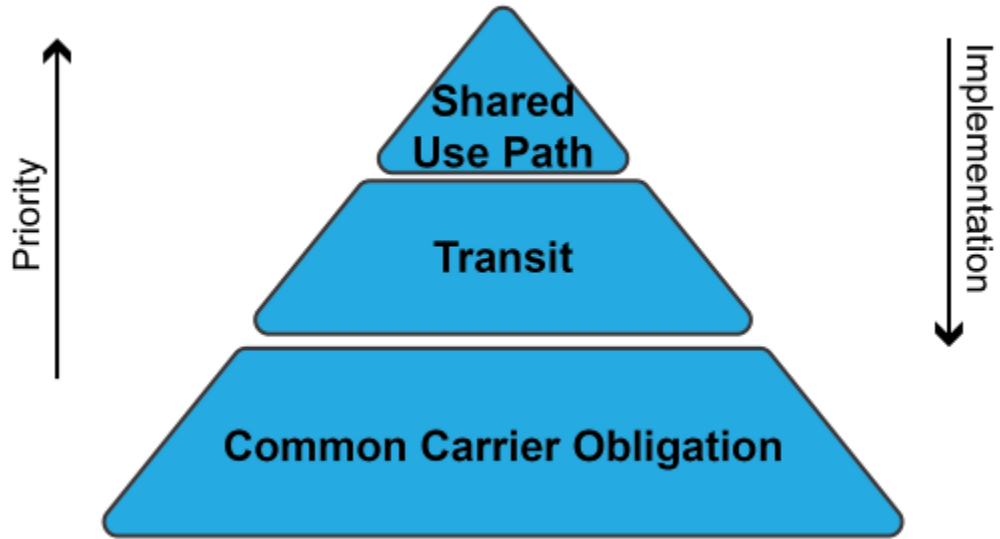
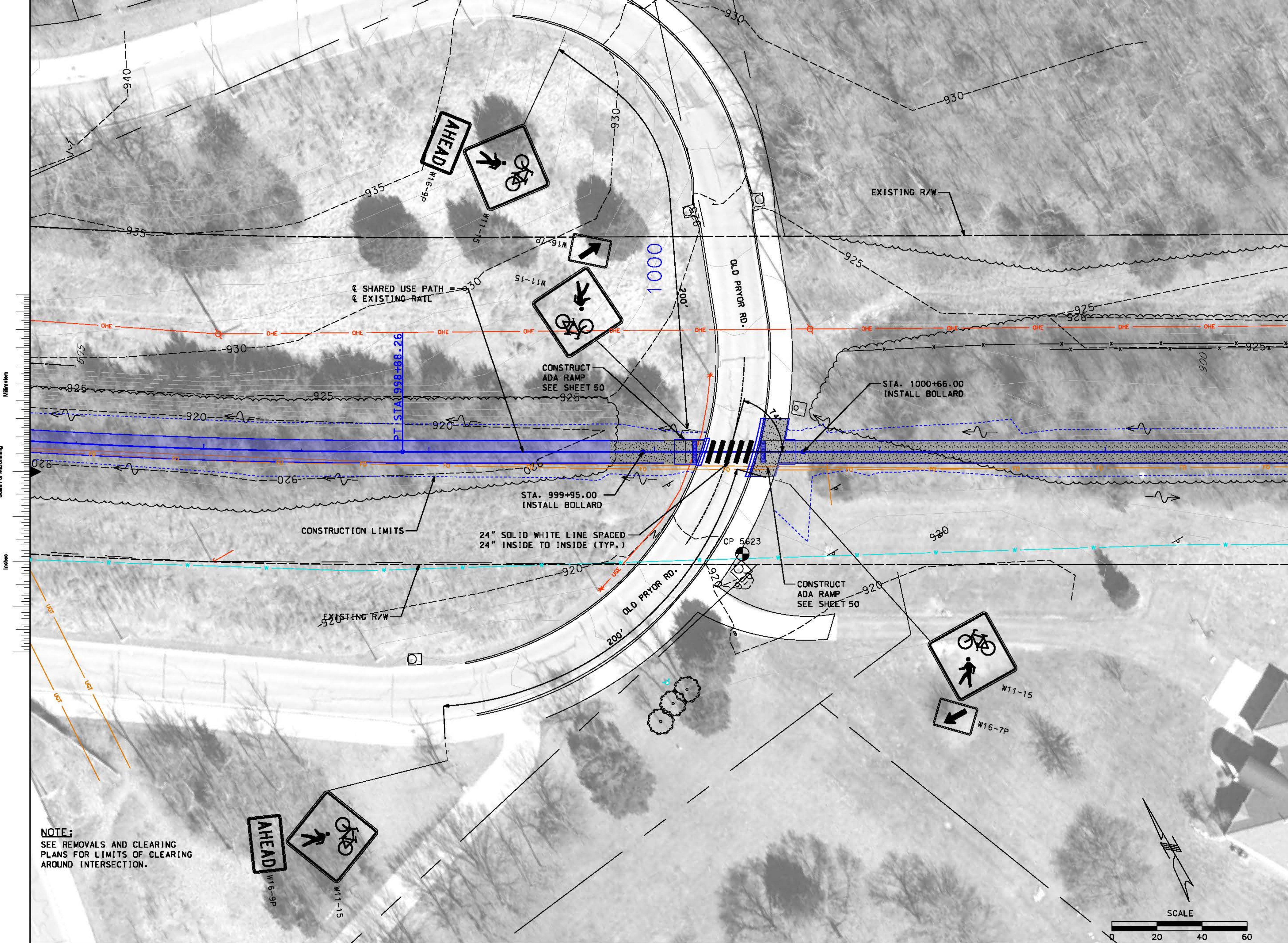


Exhibit C – At-Grade Crossing Details

1 2 3 4 5 6 7 8 9 10 11 12 13

no.	date	by	ckd	description



NOTE:
SEE REMOVALS AND CLEARING PLANS FOR LIMITS OF CLEARING AROUND INTERSECTION.



THIS SHEET HAS BEEN SIGNED, SEALED AND DATED ELECTRONICALLY

**BURNS
MCDONNELL**

9400 WARD PARKWAY
KANSAS CITY, MISSOURI 64114
816-333-9400
MO STATE CERTIFICATE OF AUTHORITY
000165 ENGINEERING

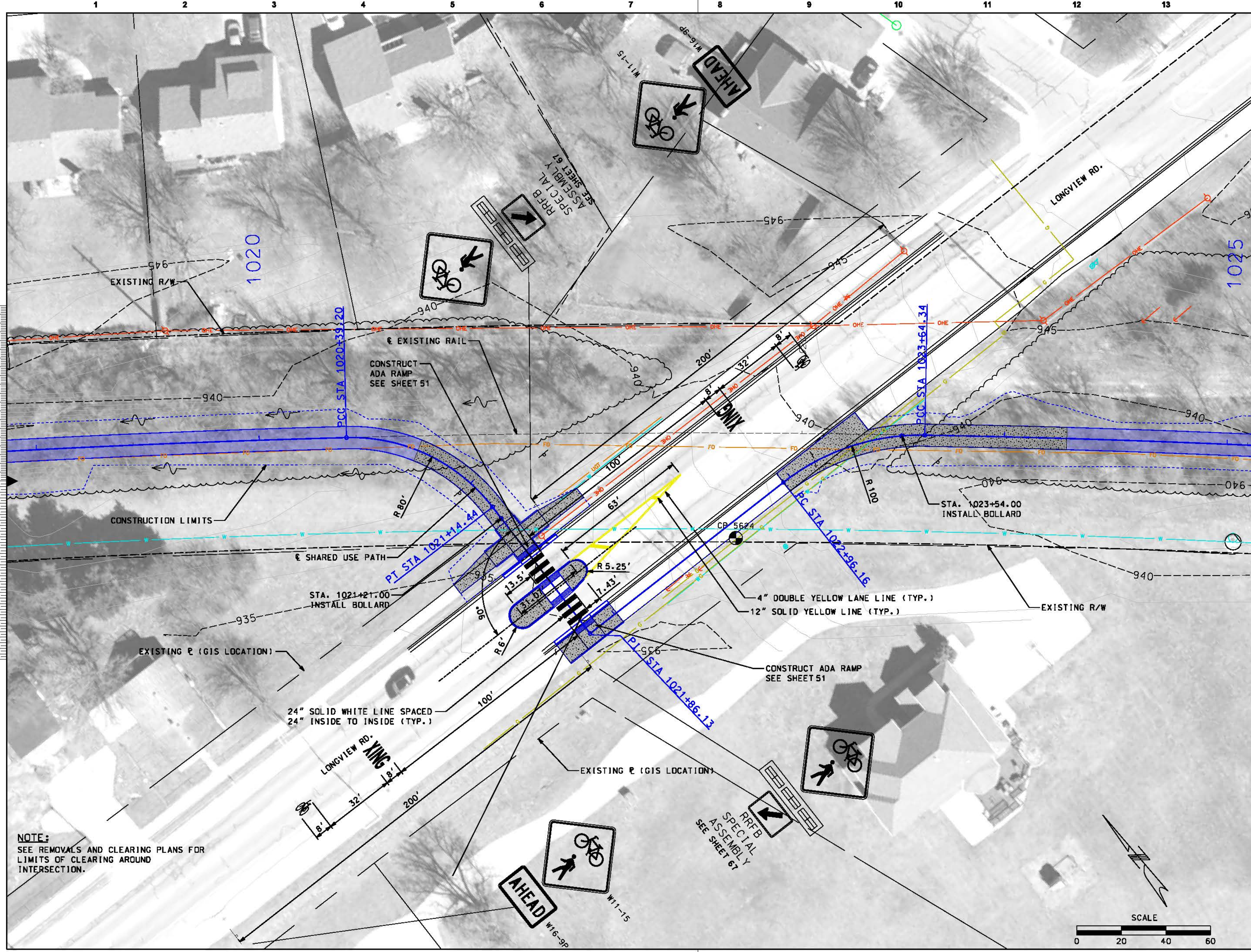
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designed	LAR	checked	JDM



JACKSON COUNTY, MISSOURI
ROCK ISLAND RAIL CORRIDOR
SHARED USE PATH PROJECT
AT GRADE CROSSING DETAILS
PRYOR RD.

project	95731	contract	PW-07-2017
drawing		rev.	

sheet 43 of 266 sheets
file 95731-INT10-003.dgn



no.	date	by	ckd	description
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THIS SHEET HAS BEEN SIGNED, SEALED AND DATED ELECTRONICALLY

BURNS MCDONNELL

9400 WARD PARKWAY
 KANSAS CITY, MISSOURI 64114
 816-333-9400
 MO STATE CERTIFICATE OF AUTHORITY
 # 000165 ENGINEERING

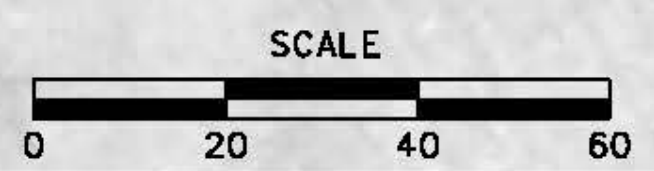
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designed	LAR	checked	JDM

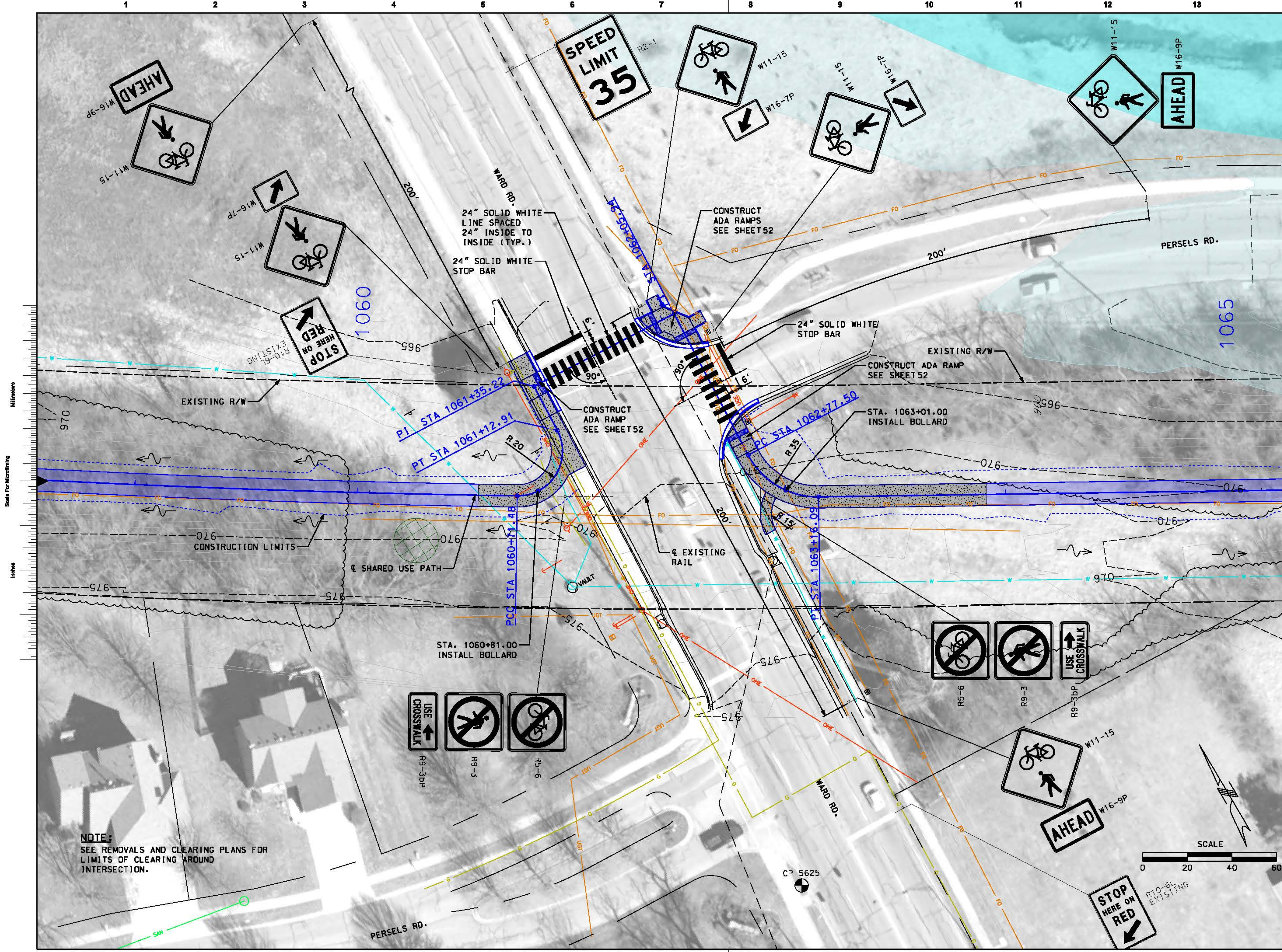


JACKSON COUNTY, MISSOURI
 ROCK ISLAND RAIL CORRIDOR
 SHARED USE PATH PROJECT
 AT GRADE CROSSING DETAILS
 LONGVIEW RD.

project	95731	contract	PW-07-2017
drawing		rev.	
sheet	44	of	266 sheets
file 95731-INT10-004.dgn			

NOTE:
 SEE REMOVALS AND CLEARING PLANS FOR LIMITS OF CLEARING AROUND INTERSECTION.





Millimeters
Scale For Microfitting
Inches

NOTE:
SEE REMOVALS AND CLEARING PLANS FOR LIMITS OF CLEARING AROUND INTERSECTION.

no.	date	by	ckd	description



THIS SHEET HAS BEEN SIGNED, SEALED AND DATED ELECTRONICALLY

BURNS MCDONNELL

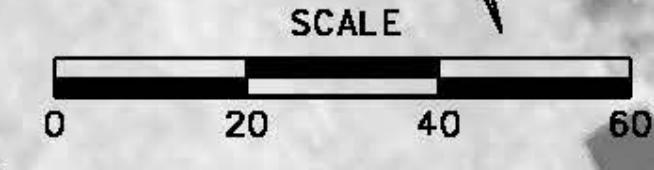
9400 WARD PARKWAY
KANSAS CITY, MISSOURI 64114
816-333-9400
MO STATE CERTIFICATE OF AUTHORITY
000165 ENGINEERING

date	8/3/2017	detailed	LAR
designed	LAR	checked	JDM

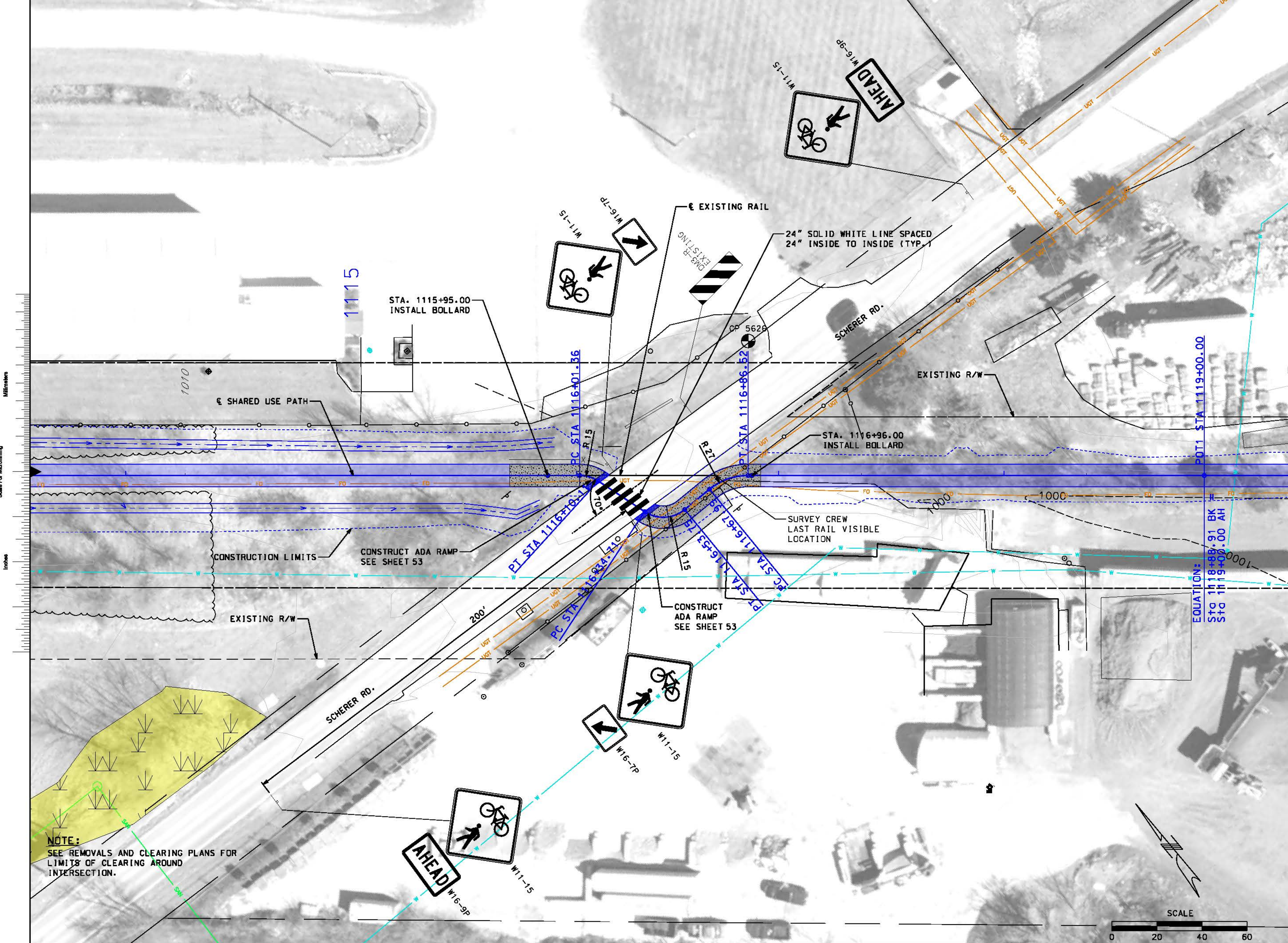


JACKSON COUNTY, MISSOURI
ROCK ISLAND RAIL CORRIDOR
SHARED USE PATH PROJECT
AT GRADE CROSSING DETAILS
WARD RD.

project	95731	contract	PW-07-2017
drawing		rev.	
sheet	45	of	266 sheets
file	95731-INT10-005.dgn		



1 2 3 4 5 6 7 8 9 10 11 12 13



Millimeters
Scale For Microfitting
Inches

NOTE:
SEE REMOVALS AND CLEARING PLANS FOR
LIMITS OF CLEARING AROUND
INTERSECTION.



no.	date	by	ckd	description



THIS SHEET HAS BEEN
SIGNED, SEALED AND DATED
ELECTRONICALLY

**BURNS
MCDONNELL**

9400 WARD PARKWAY
KANSAS CITY, MISSOURI 64114
816-333-9400
MO STATE CERTIFICATE OF AUTHORITY
000165 ENGINEERING

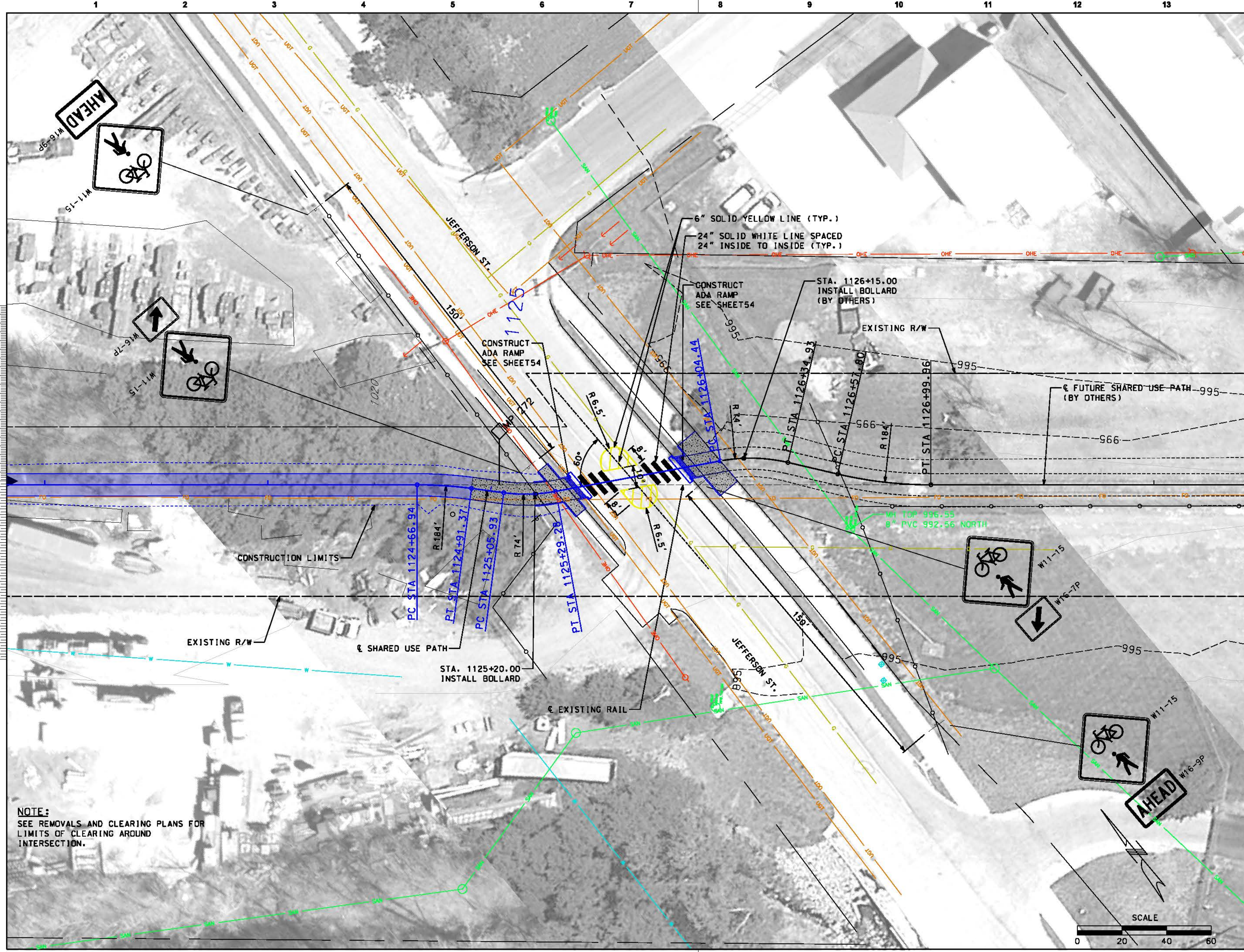
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designed	LAR	checked	JDM



JACKSON COUNTY, MISSOURI
**ROCK ISLAND RAIL CORRIDOR
SHARED USE PATH PROJECT**
AT GRADE CROSSING DETAILS
SCHERER RD.

project	95731	contract	PW-07-2017
drawing		rev.	

sheet 46 of 266 sheets
file 95731-INT10-006.dgn



no.	date	by	ckd	description
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THIS SHEET HAS BEEN SIGNED, SEALED AND DATED ELECTRONICALLY

BURNS MCDONNELL
 9400 WARD PARKWAY
 KANSAS CITY, MISSOURI 64114
 816-333-9400
 MO STATE CERTIFICATE OF AUTHORITY # 000165 ENGINEERING

date	8/3/2017	detailed	LAR
designed	LAR	checked	JDM



JACKSON COUNTY, MISSOURI
 ROCK ISLAND RAIL CORRIDOR
 SHARED USE PATH PROJECT
 AT GRADE CROSSING DETAILS
 JEFFERSON ST.

project	95731	contract	PW-07-2017
drawing		rev.	

sheet	47	of	266	sheets
file	95731-INT10-007.dgn			

NOTE:
 SEE REMOVALS AND CLEARING PLANS FOR LIMITS OF CLEARING AROUND INTERSECTION.

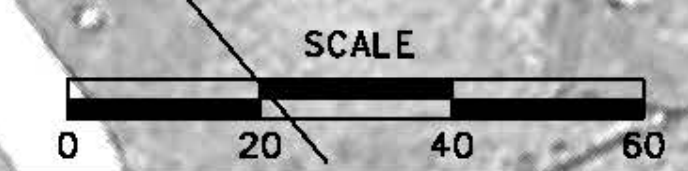
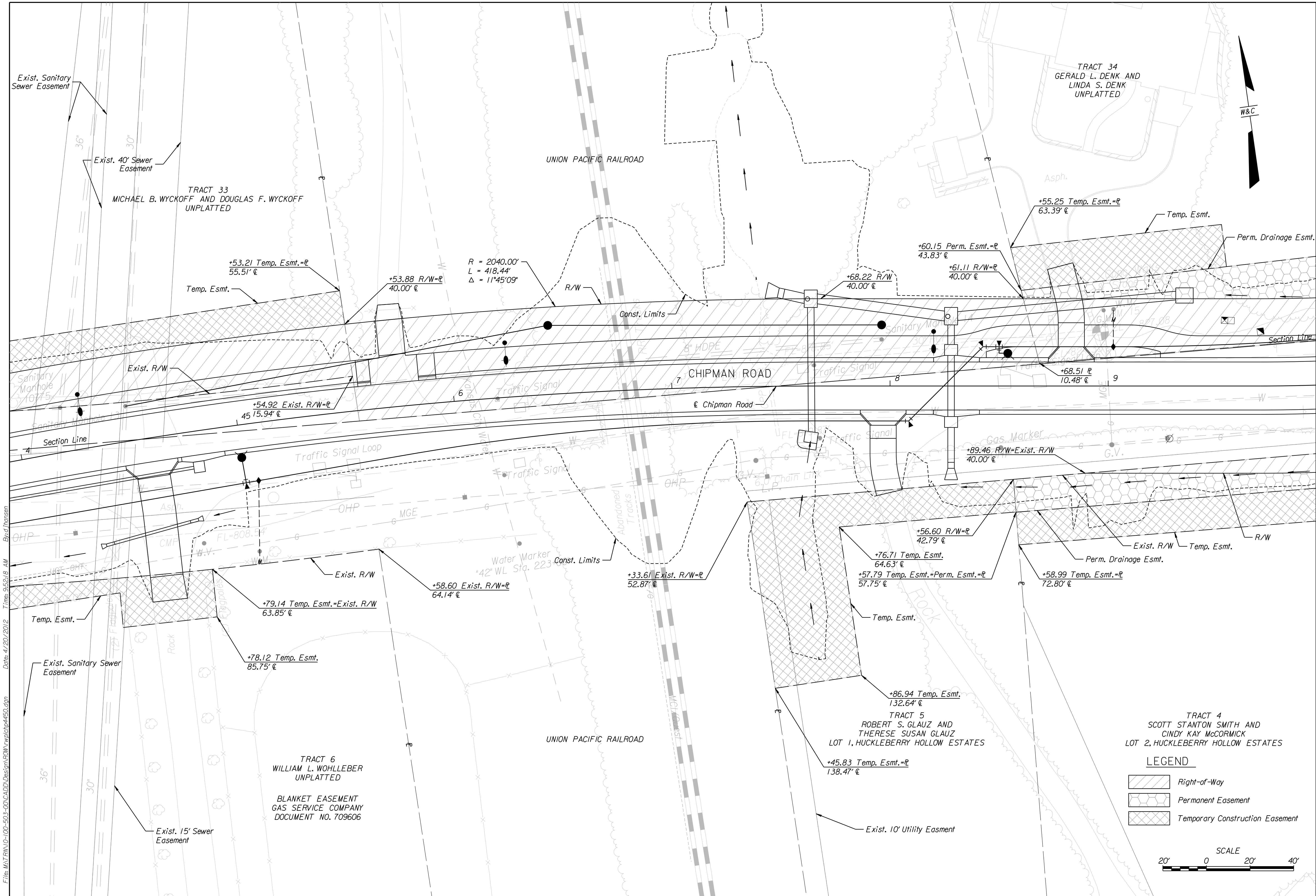


Exhibit D – Chipman Road Easement



File: M:\TFR\10-00-503-00-CADD\Design\RDW\wplchp4450.dgn
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REVISIONS

FINAL PLANS
FOR REVIEW ONLY
NOT FOR
CONSTRUCTION

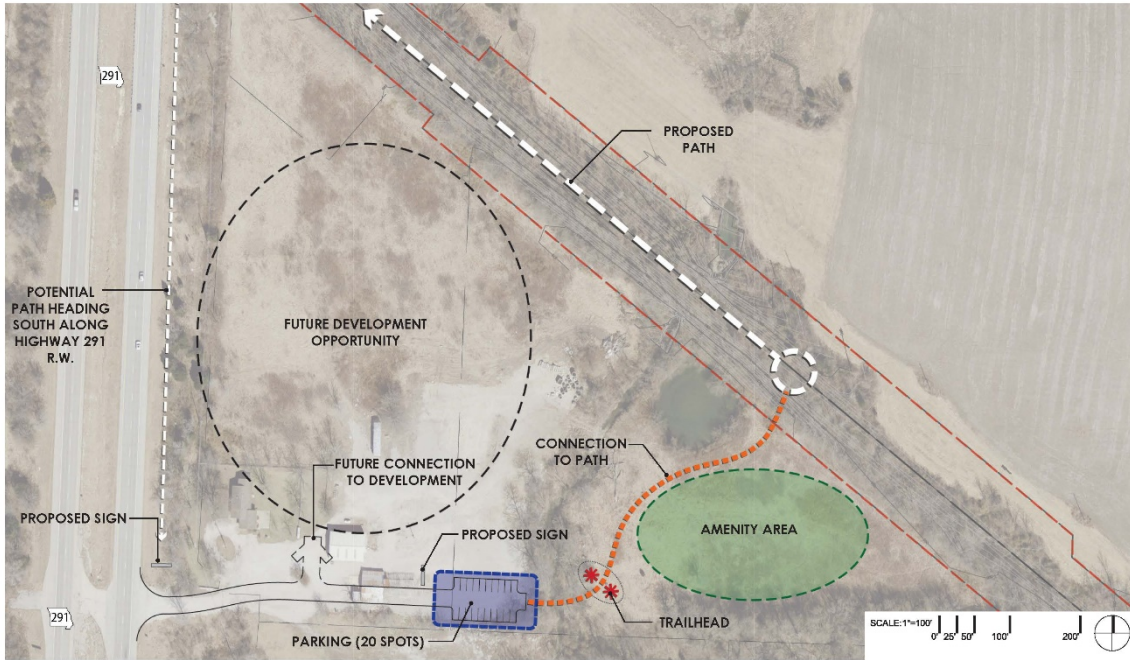
CITY PROJECT NO. 11001-D
CHIPMAN ROAD
IMPROVEMENTS
RIGHT-OF-WAY PLAN
STA 44+50 TO STA 49+50

city of **Lee's Summit** missouri
PUBLIC WORKS DEPARTMENT
 220 SE Green Street Lee's Summit, MO 64063
 PHONE: (816) 969-1800

DATE 4/20/2012
DESIGNED BY NT
DRAWN BY DJH
CHECKED BY JCK
SURVEY BOOK NO.
FILE NAME wplchp4450.dgn
SHEET 52 OF 276

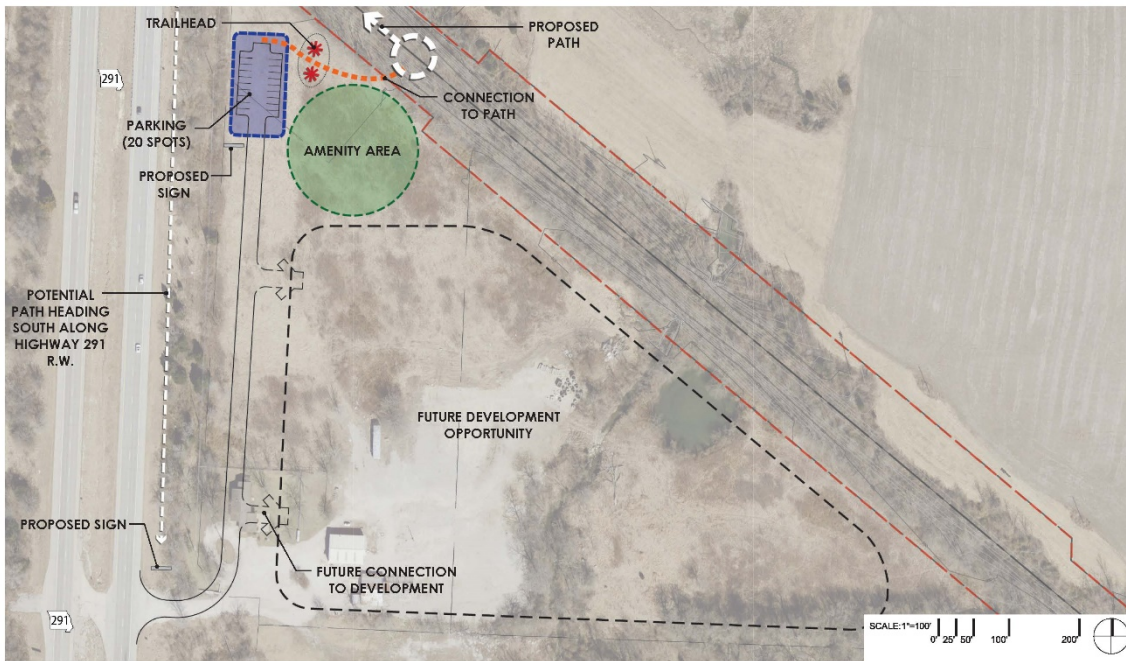
Exhibit E – MO-291 Trailhead Location Area

Estimated Cost: \$55,000 – \$240,000, not including land/ROW costs. Costs are scalable depending on preferred amenities.



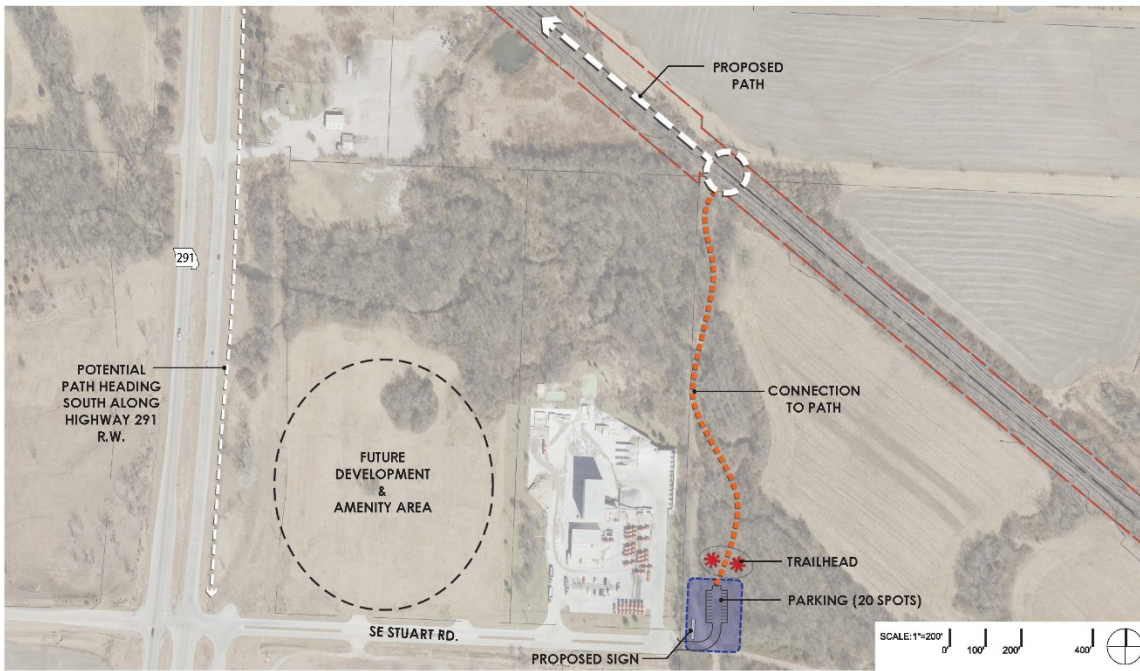
9 SITE LOCATION 9 - HIGHWAY 291 (LAYOUT A)
Rock Island Corridor | Jackson County, MO

Transit BURNS MEDONNELL CONFLUENCE
February 13, 2017

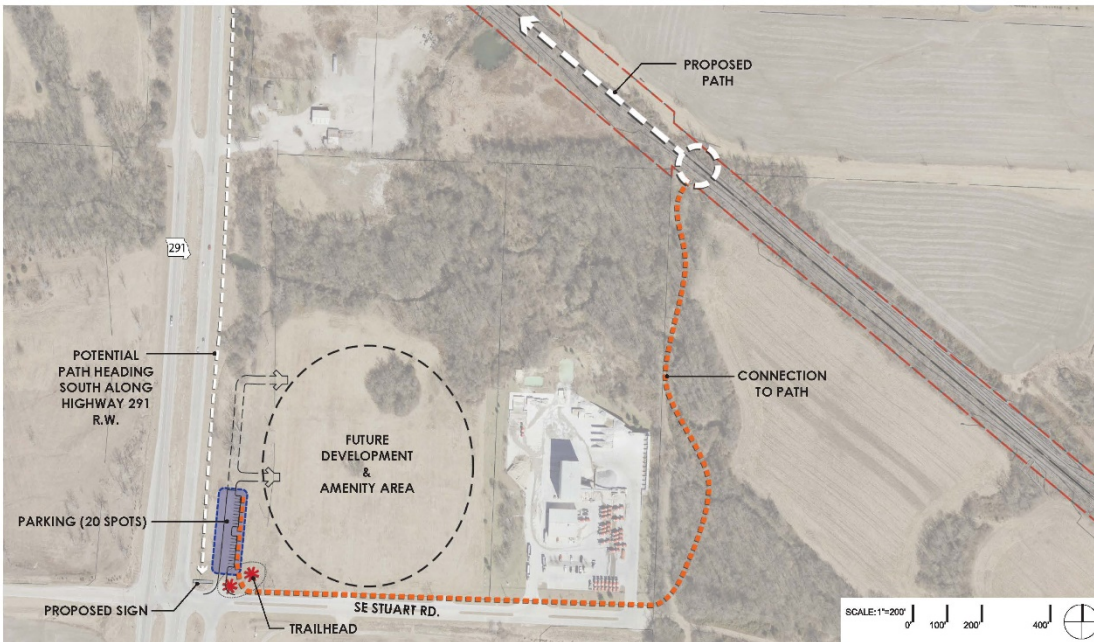


9 SITE LOCATION 9 - HIGHWAY 291 (LAYOUT B)
Rock Island Corridor | Jackson County, MO

Transit BURNS MEDONNELL CONFLUENCE
February 13, 2017



9 SITE LOCATION 9 - HIGHWAY 291 (LAYOUT C)
 Rock Island Corridor | Jackson County, MO



9 SITE LOCATION 9 - HIGHWAY 291 (LAYOUT D)
 Rock Island Corridor | Jackson County, MO

ROCK ISLAND RAIL CORRIDOR
415 E. 12TH STREET
FLOOR 4M
KANSAS CITY, MO 64106

Hello, Neighbor!

Our records show that your property is next to or near the Rock Island Corridor, the 17.7-mile railroad corridor recently acquired by Jackson County and the Kansas City Area Transportation Authority. While preserving the corridor for public use for future generations, Jackson County is planning a bicycle and pedestrian “shared use path” that will connect to the statewide Katy Trail. We are so excited to deliver this world-class asset to residents of Jackson County.

LINE 1
LINE 2
LINE 3
LINE 4
LINE 5
LINE 6

RideKC



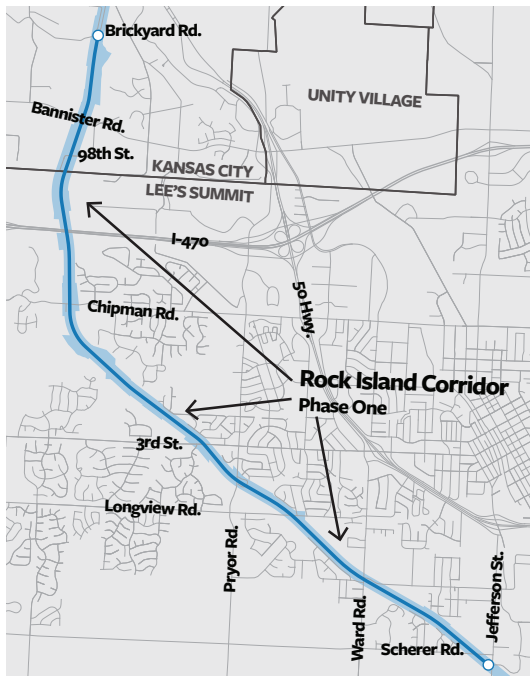
Construction on the first 6.4 miles of the Rock Island Corridor shared use path is set to begin in January 2018, and is expected to be complete in the late summer/early fall. Until that time, we ask that everyone please stay off the corridor premises. **We also ask that any personal property that has been placed on the corridor be removed as quickly as possible.**

If you believe that this message has reached you in error, please disregard it. If you have tenants, neighbors, or friends that live near the corridor, please extend our message to them. Thank you for your cooperation.

Contact Us:

web: www.RockIslandCorridor.org
email: info@RockIslandCorridor.org
phone: 816-503-4847

Project Location Map



INDEX OF SHEETS

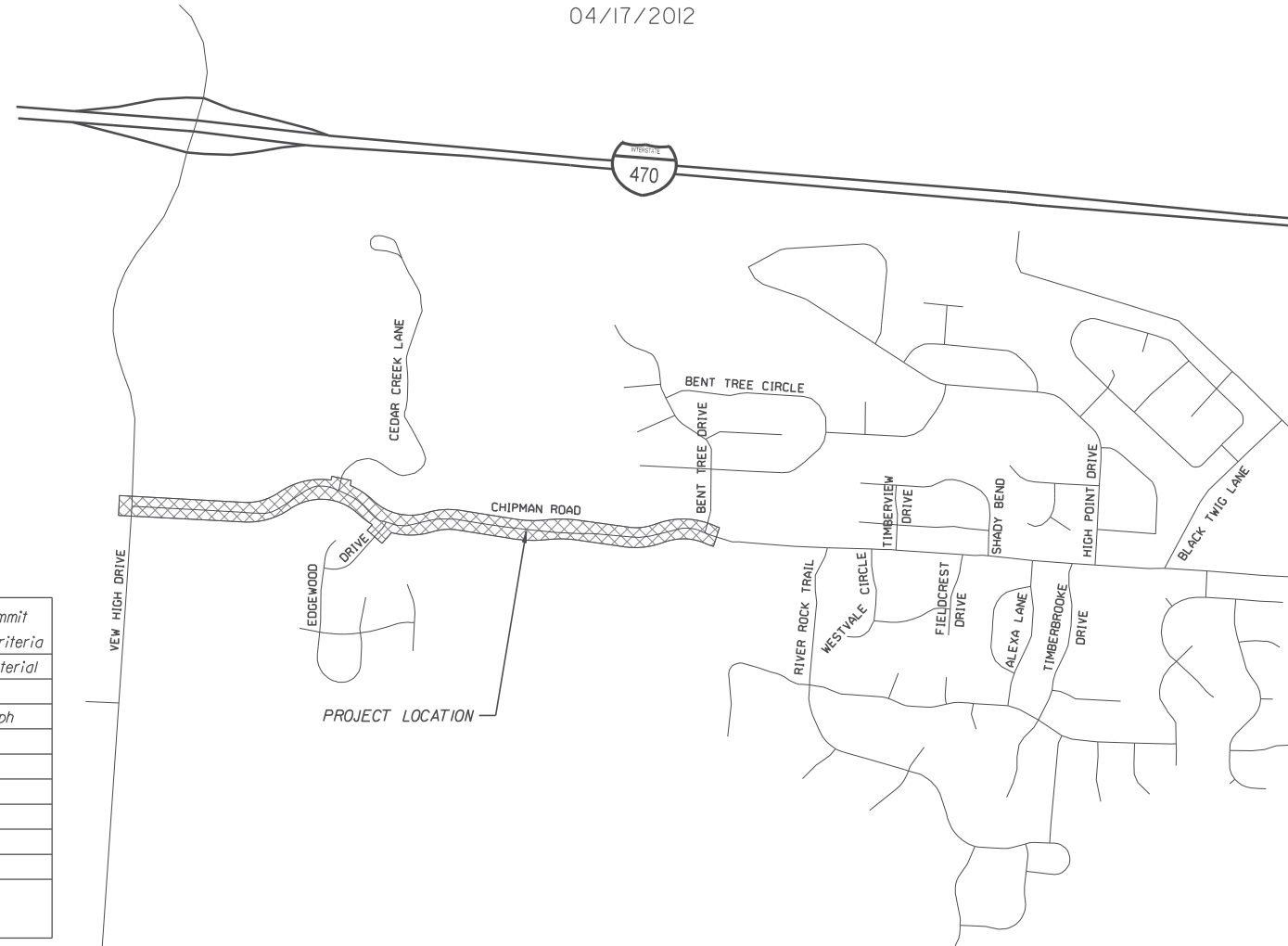
Sheet Number	Description
1	Title Sheet
2	Recapitulation of Quantities
3	General Layout & Notes
4-8	Geometric Layout Sheets
9-11	Typical Sections
12-14	Typical Sections (Concrete Pavement)
15-18	Demolition & Removal Plans
19-38	Chipman Road Plan & Profiles
39-40	Cedar Creek Lane Plan & Profiles
41-42	Edgewood Drive Plan & Profiles
43-44	Bent Tree Drive Plan & Profiles
45-57	Right-of-Way Plans
58-60	Driveway Profiles
61-63	Driveway Details
64-66	Storm Sewer Profiles
67-68	Drainage Data Sheets
69-70	Ditch Plan & Profiles
71-80	Storm Sewer Details
81-84	Intersection Details
85-87	Concrete Pavement Jointing Plans
88-89	Concrete Pavement Details
90	Miscellaneous Summary of Quantities
91	Guardrail & Barrier Plan
92-99	Guardrail Details
100-102	Bridge Modification Details
103-107	Retaining Wall Plan & Profiles
108	Retaining Wall Details
109-114	Street Lighting Plans
115-119	Street Lighting Details
120-123	Water Line Plan & Profiles
124-125	Water Line Details
126-128	Sanitary Sewer Plan & Profile
129	Sanitary Sewer Details
130-133	Temporary Erosion Control Plans
134-137	Permanent Erosion Control Plans
138-166	Erosion Control Details
167-170	Pavement Marking & Signing Plans
171-175	Pavement Marking & Signing Details
176-183	Construction Phasing Plan
184-190	Temporary Shoo-Fly Plan
191	Traffic Control Plan
192	Traffic Control Details
193-196	Miscellaneous Details
197	Drainage Area Map
198-276	Cross Sections



city of
Lee's Summit
missouri

VIEW HIGH DRIVE TO BENT TREE DRIVE FINAL PLANS

04/17/2012



UTILITIES

KCP&L
Attn: Heath Lenahan
1300 SE Hamblen Road
Lee's Summit, MO 64081
(816) 347-4317, Cell (816) 392-3272
heath.lenahan@kcp.com

AT&T
Attn: Steven Smith
215 N Spring Street
Independence, MO 64050
(816) 325-6527, Cell (816) 797-8730
ssl089@att.com

Missouri Gas & Energy
Attn: Becca Orr
3025 SE Clover Drive
Lee's Summit, MO 64082
(816) 969-2218, Cell (816) 591-1963
Rebecca.Orr@msug.com

Time Warner Cable
Attn: Roy Bellis
8221 W 119th Street
Overland Park, KS 66213
(913) 643-1914, Cell (913) 215-8934
roy.bellis@twcable.com

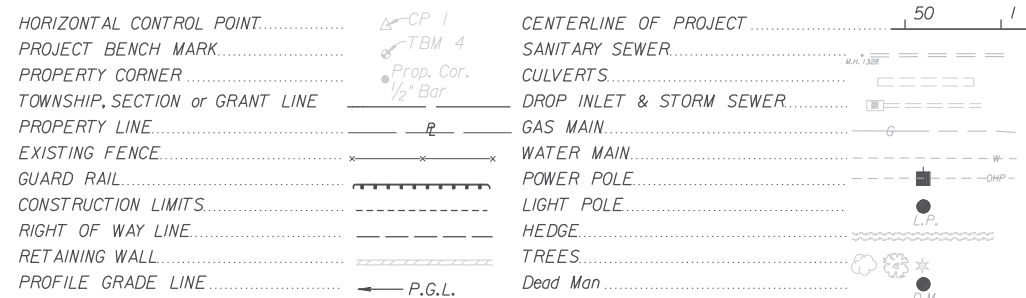
Kansas City, Missouri Water Services
Attn: Todd Hawes, P.E.
4800 E 63rd Street
Kansas City, MO 64130
(816) 513-0296
todd.hawes@kcmo.org

Lee's Summit Water Utilities
616 NE Douglas Street
Lee's Summit, MO 64064
(816) 969-1800

Design Exceptions	Approved Design Criteria	Lee's Summit Design Criteria
Functional Classification	Minor Arterial	Major Arterial
Minimum Lane Width	11.00'	12.00'
Design Speed	35 mph	40-50 mph
Side Road Design Speed	15 mph (Stop Condition)	25 mph
Horizontal Alignment	No Tangent Between Curves	300'
Max. Grade	10.00%	7.00%
Min. Grade	0.50%	1.00%
Min. Vertical Curve Length	100.00'	3V
Max. Grade Break	4.00% (Stop Condition)	
Street Lighting	Light Levels Reduced Across Bridge (Meets Min. Requirements)	

NET LENGTH OF ROAD 4,726.90 FT. 0.90 MILES

CONVENTIONAL SIGNS LEGEND



DESIGN DESIGNATION

AADT(2013)	4,500
AADT(2033)	9,600
Functional Class	Minor Arterial
Design Speed	35 mph



PREPARED & SUBMITTED BY:

WILSON & COMPANY, INC., ENGINEERS & ARCHITECTS
800 EAST 101ST TERRACE, SUITE 200
KANSAS CITY, MO 64131

(ENGINEER) _____ DATE _____

I CERTIFY THESE PLANS WERE PREPARED BY ME OR UNDER MY IMMEDIATE PERSONAL SUPERVISION.

NOT FOR CONSTRUCTION

REVISIONS

FINAL PLANS
FOR REVIEW ONLY
NOT FOR
CONSTRUCTION

CITY PROJECT NO. 11001-D
CHIPMAN ROAD
IMPROVEMENTS
TITLE SHEET

Lee's Summit
PUBLIC WORKS DEPARTMENT
220 SE Green Street Lee's Summit, MO 64063
PHONE: (816) 969-1800

DATE	4/20/2012
DESIGNED BY	NT
DRAWN BY	DJH
CHECKED BY	JCK
SURVEY BOOK NO.	
FILE NAME	title.dgn
SHEET	1 OF 276

Date: 4/20/2012 Time: 9:47:39 AM By: dthansen File: M:\TFR\10-00-503-00-CADD\DD\Design\title.dgn

Packet Information

File #: BILL NO. 18-14, **Version:** 1

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT FOR TRANSIT SERVICES BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) IN THE AMOUNT OF \$103,657 AND COMMITMENT OF \$330,073 OF FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS TO THE KCATA FOR TRANSIT SERVICE AND CAPITAL EXPENSES. (PWC 1-16-18)

Issue/Request:

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT FOR TRANSIT SERVICES BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) IN THE AMOUNT OF \$103,657 AND COMMITMENT OF \$330,073 OF FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS TO THE KCATA FOR TRANSIT SERVICE AND CAPITAL EXPENSES.

Key Issues:

- The City of Lee's Summit has contracted with the Kansas City Area Transportation Authority (KCATA) since 1999 for a commuter bus service - #152 Lee's Summit Express - between Lee's Summit and downtown Kansas City.
- The service provides four morning trips departing from Lee's Summit to downtown Kansas City, and four afternoon return trips, for those that commute to Kansas City for work.
- The cost to Lee's Summit for the 2018 contract with the KCATA for the #152 Lee's Summit Express Commuter Service and KCATA administration of OATS operating contract for RideKC Lee's Summit demand response transit service on behalf of the City will be \$103,657. The local matching funds will be paid from the Transportation Sales Tax Fund as programmed in the City's Capital Improvements Plan and approved by City Council as part of the FY2018 budget.
- Lee's Summit will obligate \$330,073 of its Federal Transit Administration Funding allocation to the KCATA for eligible operating and capital costs associated with these transit services.

Proposed City Council Motion:

FIRST MOTION: I move for a second reading of AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT FOR TRANSIT SERVICES BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) IN THE AMOUNT OF \$103,657 AND COMMITMENT OF \$330,073 OF FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS TO

THE KCATA FOR TRANSIT SERVICE AND CAPITAL EXPENSES.

SECOND MOTION: I move for adoption of AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT FOR TRANSIT SERVICES BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) IN THE AMOUNT OF \$103,657 AND COMMITMENT OF \$330,073 OF FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS TO THE KCATA FOR TRANSIT SERVICE AND CAPITAL EXPENSES.

Background:

Since 1999, the City of Lee's Summit has contracted with the Kansas City Area Transportation Authority (KCATA) to provide a commuter bus service from the park-and-ride lot at Chipman Road and US50 Highway in Lee's Summit to various points in downtown Kansas City, Missouri. Originally this service provided three morning trips to downtown Kansas City and three afternoon return trips to Lee's Summit during the workweek (Monday through Friday). A fourth trip both ways was added in 2008 to address the increase in ridership.

The number of busses, days and hours of service for #152 Lee's Summit Express Commuter Service will be the same in 2018 as it was in 2017.

A portion of the City of Lee's Summit has been designated as an Urbanized Transit Area (UZA) by the Federal Transit Administration (FTA). This designation has allowed the City to take advantage of FTA funds to subsidize the annual cost of transit, including the contract with the KCATA for this service. In total, \$330,073 from the allocation of FTA funds to Lee's Summit will be obligated to the KCATA for the services provided under this Agreement, as well as matching funds for applicable transit services associated with the OATS operating contract by and between the City and OATS for the RideKC Lee's Summit demand response transit service that is managed by KCATA, to cover eligible transit capital and operating costs in 2018. The Lee's Summit FTA Section 5307 Fund allocation balance in 2017 was over \$1,000,000. In addition to FTA funding, state funding is utilized by the KCATA as well as revenue collected at the fare box to further reduce the cost. The City pays for the balance of the service from its Transportation Sales Tax fund.

The KCATA has submitted the proposed contract for the #152 Lee's Summit Commuter Express Service and administrative fees to the City. The cost for these services in 2018 would be \$95,932. The contracted cost for these services in 2017 was \$93,132. This represents approximately a 3% increase over last year's contract cost. Increased cost is associated with an increase in cost of service (e.g. staff, fuel, and maintenance).

The KCATA has also submitted a proposed management fee of \$7,725 for the administration of a contract between the City of Lee's Summit and OATS. As the designated administrator of Lee's Summit's FTA funds, the KCATA would apply available FTA funding and necessary administrative requirements of the FTA towards the OATS operation of transit services contracted by the City. This administrative fee facilitates the demand response transit services, RideKC Lee's Summit, under contract with OATS as the operator of such service. The 2018 fee has increased approximately 3% increase over last year's contract cost for KCATA administration of OATS services.

The total cost of proposed transit services by the KCATA in this agreement is \$103,657.00

A Lee's Summit transit study was completed in 2016. There were no recommended changes to KCATA Route

152 from that study. Additional KCATA fixed bus routes impacting Lee's Summit were considered in the study and/or recommended by other more recent transit studies conducted in the region (such as the Eastern Jackson County Transit Study). The recommendations for additional transit services, particularly fixed bus routes within and connecting Lee's Summit to the greater regional transit network, were reviewed by City Council within the last 3 months. The City Council decided no further action was to be pursued at that time in response to a lack of identified transit funds necessary to support such recommendation(s). Continued review of fixed route transit options and transit alternative enhancements will be presented to City Council upon request and periodically as funding and/or new options or alternatives are available. Any changes to transit service or new service would be addressed in separate contracts, as required. This proposed contract for KCATA Route 152 service in 2018 may be amended or discontinued if in conflict at any time.

Impact/Analysis:

The transit program budget (\$261,000) in the approved CIP for FY2018 is provided by the Transportation Sales Tax Fund and includes transit costs for KCATA Route #152, contracted RideKC Lee's Summit demand response transit operated by OATS, and KCATA administrative fees. The OATS transit operating contract was renewed according to approved contract renewal provisions at an estimated local annual cost to Lee's Summit of \$185,000 for the 2018 calendar year prior to its 2017 calendar year expiration. The total proposed 2018 (calendar year) transit program costs to the City of Lee's Summit for KCATA Route #152, contracted RideKC Lee's Summit demand response transit operated by OATS, and KCATA administrative fees would be approximately \$290,000. This contract for #152 Lee's Summit Commuter Express service and the KCATA administration fee for OATS contracted service by and between the City of Lee's Summit and OATS is \$103,657 of the estimated \$290,000 total transit program costs to the City in 2018. Any discrepancy between contract costs and program funding will be corrected in the next fiscal year budget proposals with appropriate amendments in the Capital Improvement Plan.

Transit ridership had slightly decreased on the express service (Route #152) and significantly increased on the demand response service (RideKC Lee's Summit/OATS) in Lee's Summit. The express transit service generally meets commuter needs and may be more effected by gas prices than demand transit service. Gas prices have declined and remained relatively low for much of 2017. The attached exhibits depict ridership trends for KCATA Route #152 and the demand response transit service operated by OATS under contract with the City (managed by KCATA). The demand response transit graph includes all ridership data combined from OATS and KCATA MetroFlex services.

Timeline:

Start: January 1, 2018

Finish: December 31, 2018

Other Information/Unique Characteristics:

[Enter text here]

Presenter: Michael Park, City Traffic Engineer

Recommendation: Staff recommends approval of AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT FOR TRANSIT SERVICES BY AND BETWEEN THE CITY OF LEE'S SUMMIT,

MISSOURI AND THE KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) IN THE AMOUNT OF \$103,657 AND COMMITMENT OF \$330,073 OF FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS TO THE KCATA FOR TRANSIT SERVICE AND CAPITAL EXPENSES.

Committee Recommendation: The Public Works Committee voted unanimously 4-0 to recommend to City Council approval of AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT FOR TRANSIT SERVICES BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) IN THE AMOUNT OF \$103,657 AND COMMITMENT OF \$330,073 OF FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS TO THE KCATA FOR TRANSIT SERVICE AND CAPITAL EXPENSES.

BILL NO. 18-14

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT FOR TRANSIT SERVICES BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI AND THE KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA) IN THE AMOUNT OF \$103,657 AND COMMITMENT OF \$330,073 OF FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA FUNDS TO THE KCATA FOR TRANSIT SERVICE AND CAPITAL EXPENSES.

WHEREAS, the Kansas City Area Transportation Authority ("KCATA") is a public agency authorized by law to plan, own, operate, have and generally deal with public transportation systems and facilities in the KCATA District; and,

WHEREAS, the City Council of the City of Lee's Summit, Missouri ("City") desires to promote the convenience, comfort, prosperity, general interests and welfare of its citizens by providing a sound, efficient and viable public transportation system to its citizens; and,

WHEREAS, since 1999 the City of Lee's Summit contracted with the KCATA for the #152 – Lee's Summit Commuter Express bus service between Lee's Summit and downtown Kansas City, Missouri; and,

WHEREAS, the #152 bus service provides fixed schedule trips departing from Lee's Summit to downtown Kansas City, Missouri in the morning, and four afternoon return trips; and,

WHEREAS, the City and the KCATA desire to enter into a cooperative agreement as set forth in the attached Contract for Transit Service for the #152 – Lee's Summit Commuter Express Service and Administration of Transit Services for the City of Lee's Summit associated with OATS Transit contracted by the City of Lee's Summit.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the Contract for Transit Service by and between the City of Lee's Summit, Missouri and the Kansas City Area Transit Authority in the amount of \$103,657 and commitment of \$330,073 of Federal Transit Administration Section 5307 formula funds to the KCATA for Transit Service and Capital Expenses, attached hereto and incorporated herein by reference, is hereby approved and the Mayor is authorized to execute the same on behalf of the City of Lee's Summit, Missouri.

SECTION 2. That this ordinance shall be in full force and effect from and after the date of its adoption, passage and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2018.

Mayor Randall L. Rhoads

BILL NO. 18-14

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this _____ day of _____, 2018.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

KANSAS CITY AREA TRANSPORTATION AUTHORITY

Contract for Transit Service and Management of OATS Contract and Vehicles

LEE'S SUMMIT, MISSOURI

THIS CONTRACT, entered into this ____ day of ____, 2018, by and between the **KANSAS CITY AREA TRANSPORTATION AUTHORITY** (hereinafter referred to as the "KCATA"), a body corporate and politic and a political subdivision of both the States of Missouri and Kansas, and **LEE'S SUMMIT, MISSOURI** (hereinafter referred to as the "Community").

WITNESSETH:

WHEREAS, a sound, efficient and viable public transportation system is essential to the socioeconomic well-being of the Kansas City Area Transportation District (hereinafter referred to as the "District"), including the Counties of Cass, Clay, Jackson, and Platte in Missouri, and the Counties of Johnson, Leavenworth, and Wyandotte in Kansas; and

WHEREAS, the KCATA is a public agency authorized by law to plan, own, operate, have and generally deal with public transportation systems and facilities in the District; and

WHEREAS, the Community desires to promote the convenience, comfort, prosperity, general interests and welfare of its citizens; and

WHEREAS, the public transportation facilities and services of most immediate concern are those estimated to be provided by the KCATA at a deficit, described generally in amounts and, more specifically, by formula set forth in Attachment "A" adopted in January, 1976, modified in August, 1977, revised in January, 1983, and December 1997; and,

WHEREAS, the Community entered into an agreement with OATS to provide public demand responsive service within the City of Lee's Summit and the Community desires for KCATA to manage this contract on behalf of the Community.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

A. Public Mass Transit Service

1. The Community requests public transportation services (hereinafter referred to as "Contract Service"), set forth in Attachment "B", be operated by the KCATA for the period January 1, 2018, through December 31, 2018, unless sooner terminated under Paragraph "8" , "9" and "10" of this Contract.
2. The level of service as generally set forth in Attachment "B" shall not be changed or be modified without the consent of the Community.
3. The computations and, more specifically, the formula contained in Attachment "A" attached hereto and made a part hereof, are the accepted methods for the determination of the estimated deficit of the Community.
4. The KCATA and the Community estimate the Community's total payment for the twelve-month service period (hereinafter referred to as "Local Share") to be **\$95,932**. This estimate is based on the following components of cost and revenue to applied to this Agreement:

Service Cost	\$ 387,963
Passenger Revenue	(\$65,800)
Estimated Total Deficit	\$ 322,163
Missouri State Funding	(\$ 3,258)
Lee's Summit 5307 Federal Funds	(\$244,393)
Local Operating Contribution	\$ 74,512
Local Capital Contribution	\$ 21,420
Total Local Share	\$ 95,932

5. It is the understanding of the parties that, notwithstanding any provision of this Agreement, the maximum obligation of the Community under this Contract shall be the sum of **\$95,932**. If the actual total deficit and other factors are such that the KCATA deems the full Local Share is not required, the KCATA may require payment of less than the total Local Share, or reimburse the Community for a portion of the Local Share previously paid.
6. It is the understanding of the parties that the community will obligate to the KCATA \$85,680 of its Federal Transit Administration section 5307 formula funds for the purpose of covering eligible capital expenses associated with the provision of public transportation services operated by KCATA. It is further agreed to by both parties that the KCATA will submit a grant application for the required Federal funding to the Federal Transit Administration and that, upon approval, the Federal Transit Administration will award the Federal 5307 funding required directly to the KCATA.

7. The method of payment of the Local Share provided for in Paragraph "4" is as follows:
 - a. The Community's monthly Local Share obligation will be one-twelfth of the Community's portion of the estimated total deficit amount.
 - b. The KCATA will invoice the Community for ninety percent (90%) of Community monthly Local Share. The Community is required to remit ninety percent (90%) of the monthly Local Share by the first of the month service will be provided.
 - c. By the 20th of the month following the month in which service was provided, the KCATA will provide the Community with reports showing service capital and operating costs and revenue for Contract Services. The report will also provide a reconciliation of subsidy amounts with the advance payment provided to in Sub-paragraph "b". The report will detail Local Share amounts used to cover the month's service deficit. Any balance of Local Share subsidy and/or federal formula funding obligation required by the reconciliation will be invoiced at this time, to be paid within ten days.
 - d. For the month of December, the monthly report and reconciliation provided for in Sub-paragraph "c", will not be prepared until the completion of the KCATA's annual audit. The invoice of November 15, provided for in Sub-paragraph "b" will require payment of the unexpended balance of the Community's Local Share.
8. When the estimated operating loss of \$322,163 is reached, KCATA's obligation to furnish services shall terminate. The Community and KCATA may mutually agree to amend this Contract to provide additional operating subsidy or to adjust the level of service so that the cost of such service will not exceed the contractual subsidy.
9. If for any reason the KCATA is unable to obtain Federal 5307 operating assistance, as provided for in Paragraph "4" of this Contract, the Community will be immediately notified and this contract will be amended to provide additional Local Share subsidy or to adjust the level of service. If a satisfactory amendment is not agreed to after a reasonable period, KCATA's obligation to furnish services will terminate.
10. This contract may be terminated prior to its expiration with a formal notice from the Community that is received by KCATA at least 75 days prior to the proposed termination date. The Community will be responsible for its share of all contract costs incurred by KCATA up to the termination date and for provision of Lee's

Summit UZA Section 5307 Funds. The Community will be responsible for public notice and customer notification and comment requirements of any service changes that result from the termination.

11. The KCATA shall indemnify, save and hold the Community harmless from any and all damage, loss or liability of any kind whatsoever arising out of this Contract, including, but not limited to, any loss occasioned by reason of any injury to property or third persons occasioned, in whole or in part, by any act, omission, neglect or wrongdoing of the KCATA, or any of its officers, agents, representatives or employees. At its own cost and expense, the KCATA will defend all losses arising there from.

12. The Community recognizes that the KCATA, as the principal public transportation operator in the region, is obligated to conform to various regulations and requirements of the Federal Transit Administration in order to maintain its eligibility for financial assistance pursuant to the Federal Transit Act. In this regard, the Community agrees to cooperate with the KCATA in meeting said regulations and requirements, and will not require the KCATA to violate said regulations and requirements. The Community will also cooperate with reasonable requests of the KCATA, and the KCATA agrees to make all such records available to the Community for the auditors upon reasonable request of the Community.

13. The Community, at its expense, shall have the right to cause an audit to be made of the books and records of the KCATA, and the KCATA agrees to make all such records available to the Community for the auditors upon reasonable request of the Community.

B. Americans with Disabilities Act of 1990 Special Service Provision

Whereas a contractual relationship with Lee's Summit requires that the Community not require the KCATA to provide public transit services that are in conflict with the American with Disabilities Act of 1990 and subsequent federal regulations regarding compliance with this law, it is agreed:

1. The nature of the transit service operated and/or managed within Lee's Summit by the KCATA precludes the requirement under the Americans with Disabilities Act to provide complementary paratransit service.

C. OATS Contract Management Services

1. KCATA will manage the City’s transportation services agreement with OATS (a separate agreement from this agreement) for provision of demand responsive service in the City of Lee’s Summit. This contract is expected to be effective January 1, 2018.
2. The City purchased and owns six vehicles which are currently being leased for this service to OATS. A separate agreement between the City and OATS contains the details of the lease agreement.
3. OATS will submit an original and one copy of the invoice including any supporting documentation to ATA at the address listed below. Invoice will be reviewed and accepted by ATA in conjunction with the CITY. ATA will invoice the CITY for local match. Upon receipt of local match, ATA will make payment within thirty days to OATS for 100% of eligible operating expenditures. OATS will submit a final billing within forty-five days of completion of the termination of the Agreement.

Kansas City Area Transportation Authority
1350 East 17th Street
Kansas City, Missouri 64108
Attention: Chuck Ferguson

KCATA will charge a management fee of \$7,725 annually for this service.

D. Summary of Community Share of Costs

1. Fixed Route Commuter Services	\$95,932
2. Management of OATS Contract	<u>\$7,725</u>
Total Community Share of Cost	\$103,657

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

KANSAS CITY AREA TRANSPORTATION AUTHORITY

By: _____
Daniel Serda, Chairman of the Board of Commissioners

ATTEST:

By: _____
Witness

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Name & Title:

ATTEST:

By: _____
City Clerk

ATTACHMENT "A"

REVENUE AND COST ALLOCATION PROCEDURES

The procedure to be used in determining passengers, direct operating expenses, indirect operating expenses, farebox revenue, and estimated loss for transit service shall be as follows:

- A. Passengers and Revenue** - The number of passengers and the amount of revenue reported will be derived from electronic farebox reports.
1. Revenue figures are computed as follows:
 - a. Total Fare Revenue is the total farebox revenue plus pass sales proration.
 - b. Pass Sales proration for a line is the Pass Sales Revenue multiplied by a pass utilization factor as determined by data from electronic fareboxes.
 2. Passenger types - definitions
 - a. Intra-city passenger - a passenger boarding and alighting in the same jurisdiction.
 - b. Inter-city passenger - a passenger who boards in one jurisdiction and alights in another.
 3. Computation of inter-city and intra-city passengers
 - a. Intra-city passengers for each subsidizing jurisdiction will be determined by multiplying total passengers by the appropriate intra-city passengers ratios as determined by periodic activity checks. An intra-city passenger ratio is the ratio of passengers who both board and alight a bus within that community to total route passengers on the line.
 - b. Inter-city passengers for the route will be determined by subtracting the intra-city passengers from the total route passengers.
- B. Direct Operating Expenses** - Each route shall be charged direct labor and benefits on the basis of scheduled pay hours (including allowances, spread, guarantee, and overtime) times the fully burdened operator cost per hour of service for each type of bus used (Large, Small,

or Metroflex). Each route shall be charged fuel and tire expense for the same type of bus used (Large, Small or Metroflex) in the proportion of route miles per type of bus to total system miles for the same type of bus.

C. Indirect Operating Expenses - Indirect operating expenses shall be allocated to each route on the ratio of route miles to total system miles for the same type of bus used (Large, Small, or Metroflex). Indirect operating expenses include all expenses except direct labor and fuel and tire expense, such as maintenance cost, vanpool operations, administrative and overhead expense, and a contribution to self-insured reserves for revenue vehicle and workers compensation.

D. Estimated Net Income or Loss - Intra-City Routes - Estimated net income or loss for each route shall be calculated by subtracting total fare revenue for each route from the total operating expenses for each route.

E. Allocation of Net Income or Loss on Inter-City Routes.

1. Suburban Express Routes

- a. A suburban express route is a route or portion of a route that is designed to serve inter-city passengers and suburban community intra-city passengers, and does not serve Kansas City, Missouri, intra-city passengers.
- b. Net income or net losses of inter-city routes shall be prorated among the subsidizing jurisdictions by calculating the net loss per passenger (total operating expense less total fare revenue) and then multiplying the net loss per passenger by the number of passengers boarding in each jurisdiction.

2. Local Service Inter-City Routes

- a. A local service inter-city route is a route designed to serve Kansas City, Missouri, intra-city passengers, as well as inter-city passengers and suburban community intra-city passengers.
- b. Revenue shall be credited among subsidizing jurisdictions by assigning intra-city passenger revenue to the jurisdiction in which the trips are made. Inter-city passenger revenue shall be assigned by calculating the revenue per inter-city passenger and then by multiplying the revenue per inter-city passenger by the number of inter-city passengers boarding in each jurisdiction.

- c. Operating costs shall be allocated among subsidizing jurisdictions as follows:
 - (1) Direct labor costs shall be allocated on the basis of operator cost per hour of service multiplied by the actual time operated in each jurisdiction.
 - (2) Fuel and tire expense in the proportion of miles in each jurisdiction to total system miles.
 - (3) Indirect operating expense in the proportion of miles in each jurisdiction to total system miles.
- d. The Net Income or Loss for each jurisdiction is calculated as the sum of direct labor cost, fuel and tire expense, and indirect operating expense, less passenger revenue credit.

F. Capital Expense - Each jurisdiction will be charged capital expense, prorated on community miles to system miles, to be used for the acquisition of buses, facilities and other equipment. The capital charge may be used for the purchase of vans for a vanpool operation that will facilitate in providing a regional transit system. Such vanpool operation must provide service to or from the Community that is reasonable when compared to the amount of the Community's capital contribution for the vans.

G. Enclave Communities - Local service inter-city routes operating from a part of Kansas City, Missouri, through another jurisdiction and into another portion of Kansas City, Missouri, will be treated differently for the allocation of Net Income or Loss. The Net Income or Loss for the intermediate (enclave) jurisdiction will be based on 50% of the calculated cost for that jurisdiction per Item "E". The remaining 50% of the calculated cost within the intermediate jurisdiction will be allocated to Kansas City, Missouri.

H. For Service Implemented After December 31, 1997 – Service implemented after December 31, 1997, that is above the service level that exists as of December 31, 1997, will be allocated costs as stated in other sections of this Attachment, except for Indirect Operating Expenses. Indirect Operating Expenses shall be allocated to such service based on 45 percent of the ratio of route miles to total system miles for each type of bus. Indirect Operating Expenses include all expenses except direct labor and fuel and tire expense; such as maintenance cost, vanpool operations, administrative and overhead expense, etc.

ATTACHMENT "B"

CITY OF LEE'S SUMMIT

CONTRACT SERVICE

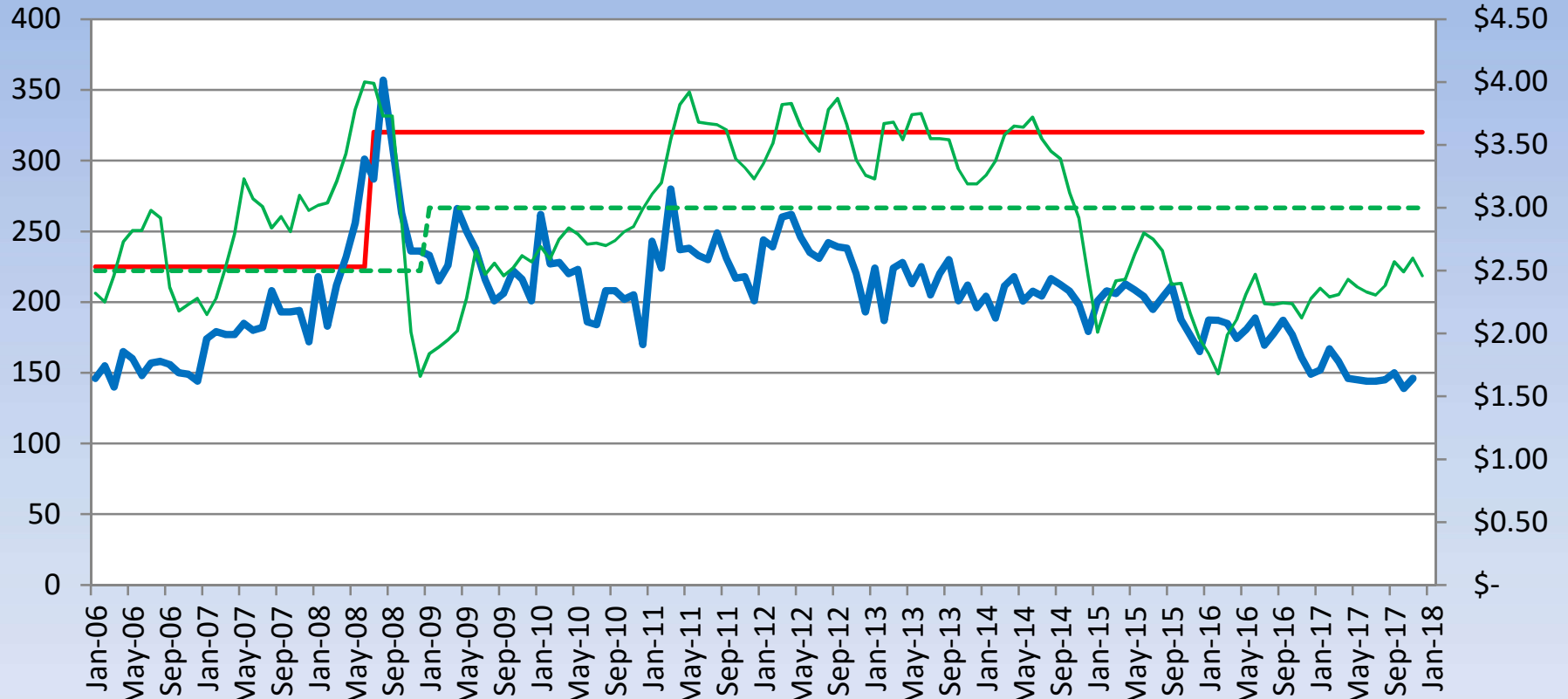
One route will provide commuter express service between Lee's Summit City and downtown Kansas City, Missouri. Service is as follows:

Route #152—Lee's Summit Express, This route will provide commuter express transit service during the A.M. and P.M. peak commute periods, using forty foot passenger buses. The service will consist of four A.M. inbound trips, all operated with forty foot passenger buses, originating at the commuter park & ride lot at Chipman Road and 50 Highway and terminating in downtown/Crown Center, Kansas City, Missouri and four P.M. outbound trips, operated with forty foot passenger buses, originating in downtown/Crown Center, Kansas City, Missouri and terminating at the commuter park & ride lot at Chipman Road and 350 Highway.

Full Fare: \$3.00

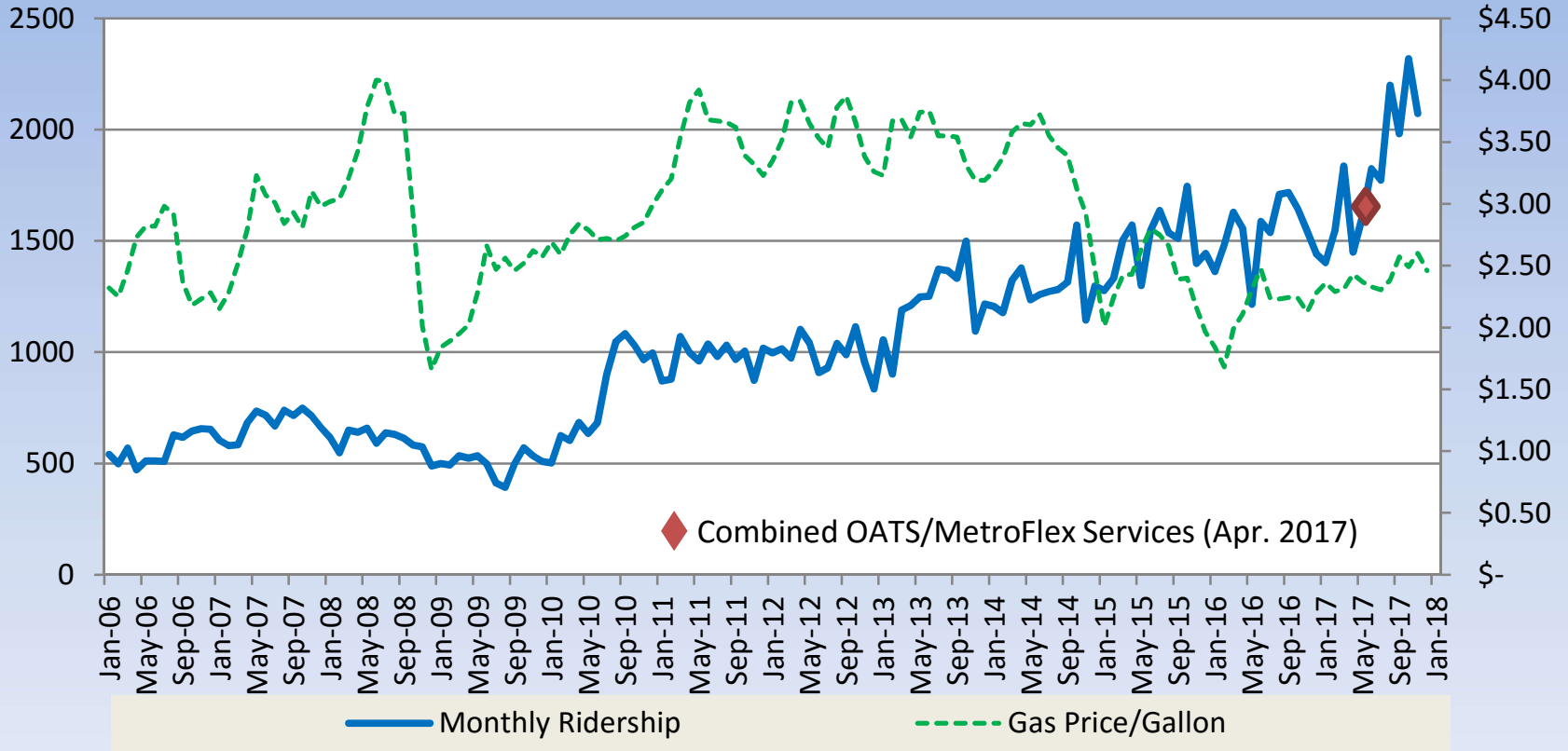
Reduced Fare: \$1.50

Express Transit Service



— Route 152 Capacity
 — Rotue 152 Daily Ridership
 - - - \$ Fare
 — Avg. Gas Price/Gallon

DEMAND RESPONSE TRANSIT



Packet Information

File #: BILL NO. 18-15, **Version:** 1

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND THE MIDWEST DIVISION LSH LLC ("HCA MIDWEST") WHICH SERVES AS THE CONTROLLING ASSOCIATION OF PROPERTIES WITHIN HCA MIDWEST FOR UPGRADED STREET LIGHTING ON SE BLUE PARKWAY FROM SE TODD GEORGE PARKWAY TO APPROXIMATELY 2500 FEET EAST OF SE TODD GEORGE PARKWAY. (PWC 1-16-18)

Issue/Request:

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND THE MIDWEST DIVISION LSH LLC ("HCA MIDWEST") WHICH SERVES AS THE CONTROLLING ASSOCIATION OF PROPERTIES WITHIN HCA MIDWEST FOR UPGRADED STREET LIGHTING ON SE BLUE PARKWAY FROM SE TODD GEORGE PARKWAY TO APPROXIMATELY 2500 FEET EAST OF SE TODD GEORGE PARKWAY.

Key Issues:

- Resolution 06-04 adopted standards for minimum street lighting requirements ("Standard Street Light Requirements").
- The proposed street lights are part of the street light system the City leases from Kansas City Power and Light and for which the City is billed monthly according to rates set by the Public Service Commission.
- The Midwest Divisions LSH LLC which serves as the controlling association of properties within HCA Midwest, desires to install four upgraded street lights in excess of the material permitted in the Standard Street Light Requirements.
- The City will incur no additional costs from the installation of the upgraded street lights.

Proposed City Council Motion:

FIRST MOTION: I move for a second reading of AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND THE MIDWEST DIVISION LSH LLC ("HCA MIDWEST") WHICH SERVES AS THE CONTROLLING ASSOCIATION OF PROPERTIES WITHIN HCA MIDWEST FOR UPGRADED STREET LIGHTING ON SE BLUE PARKWAY FROM SE TODD GEORGE PARKWAY TO APPROXIMATELY 2500 FEET EAST OF SE TODD GEORGE PARKWAY.

SECOND MOTION: I move for adoption of AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND THE MIDWEST DIVISION LSH LLC ("HCA MIDWEST") WHICH SERVES AS THE CONTROLLING ASSOCIATION OF PROPERTIES WITHIN HCA MIDWEST FOR UPGRADED STREET LIGHTING ON SE BLUE PARKWAY FROM SE TODD GEORGE PARKWAY TO APPROXIMATELY 2500 FEET EAST OF SE TODD GEORGE PARKWAY.

Background

- Resolution 06-04 adopted standards for public street lighting infrastructure, and these standards include the design criteria, the material requirements and the base levels of lighting according to street classification and requirements for where street lights are located.
- The proposed street lights fall under the leased lighting system, and the City is charged a monthly rate for each street light. This rate, which is based on the standards in Resolution 06-04, includes the capital cost of the street light, its installation, its maintenance and its energy costs. Upgraded street lights or additional street lights can be installed provided the costs for these lights are not paid for by the City.
- The HCA Midwest desires to install four upgraded street lights.

Impact/Analysis:

This Agreement will require HCA Midwest pay the City the the pro-rated actual difference in annual cost for four (4) upgraded street lights. The City will bill HCA Midwest at the current rates set by the Public Service Commission on or before July 1 of every fiscal year. Provisions within the Agreement insure there are no additional costs associated with the removal or changing of the street lights contained within this request.

Timeline:

Start: NA

Finish: NA

Other Information/Unique Characteristics:

None

Presenter: Scott Ward, Senior Staff Engineer

Recommendation: Staff recommends approval of AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND THE MIDWEST DIVISION LSH LLC ("HCA MIDWEST") WHICH SERVES AS THE CONTROLLING ASSOCIATION OF PROPERTIES WITHIN HCA MIDWEST FOR UPGRADED STREET LIGHTING ON SE BLUE PARKWAY FROM SE TODD GEORGE PARKWAY TO APPROXIMATELY 2500 FEET EAST OF SE TODD GEORGE PARKWAY.

Committee Recommendation: The Public Works Committee voted unanimously 4-0 to recommend to City Council approval of AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND THE MIDWEST DIVISION LSH LLC ("HCA MIDWEST") WHICH SERVES AS THE CONTROLLING ASSOCIATION OF PROPERTIES WITHIN HCA MIDWEST FOR UPGRADED STREET LIGHTING ON SE BLUE PARKWAY FROM SE TODD GEORGE PARKWAY TO APPROXIMATELY 2500 FEET EAST OF SE TODD GEORGE PARKWAY.

BILL NO. 18-15

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT AND THE MIDWEST DIVISION LSH LLC ("HCA MIDWEST") WHICH SERVES AS THE CONTROLLING ASSOCIATION OF PROPERTIES WITHIN HCA MIDWEST FOR UPGRADED STREET LIGHTING ON SE BLUE PARKWAY FROM SE TODD GEORGE PARKWAY TO APPROXIMATELY 2500 FEET EAST OF SE TODD GEORGE PARKWAY.

WHEREAS, Resolution No. 06-04 adopted standards for minimum street lighting requirements ("Standard Street Light Requirements"); and,

WHEREAS, the City leases this part of the street light system from Kansas City Power and Light and is billed monthly according to rates set by the Public Service Commission; and,

WHEREAS, the Midwest Division LSH LLC desires to install four upgraded street lights on SE Blue Parkway, from SE Todd George Parkway to approximately 2500 feet east of SE Todd George Parkway at its cost; and,

WHEREAS, the Midwest Division LSH LLC has agreed to reimburse the City any additional costs associated with the installation and operation of such street lights.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the City Council of the City of Lee's Summit, Missouri, hereby approves the agreement by and between the City of Lee's Summit and the Midwest Division LSH LLC, generally for upgraded street lighting on SE Blue Parkway, which is attached hereto and incorporated by reference as if fully set forth herein, and authorizes the execution of the same by the City Manager.

SECTION 2. That this Ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2018.

ATTEST:

Mayor Randall L. Rhoads

City Clerk *Trisha Fowler Arcuri*

BILL NO. 18-15

APPROVED by the Mayor of said city this _____ day of _____, 2018.

ATTEST:

Mayor *Randall L. Rhoads*

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

Chief Counsel, Infrastructure and Planning
Nancy K. Yendes

AGREEMENT FOR UPGRADED STREET LIGHTING CITY OF LEE'S SUMMIT, MISSOURI

THIS AGREEMENT is made this _____ day of _____, 20____ between The Midwest Division LSH LLC ("HCA Midwest"), controlling association of properties within HCA Midwest (the "Subdivision"), and the City of Lee's Summit, Missouri, ("City") a Missouri municipal corporation and home rule charter city.

WHEREAS, the City, by Resolution No. 06-04, adopted standards for minimum street lighting requirements ("Standard Street Light Requirements") within the City of Lee's Summit consisting of a 150-watt sodium vapor light on a steel pole; and

WHEREAS, the City leases the street light system from Kansas City Power & Light, its successors and assigns ("KCPL") and is billed monthly according to rates set by the Public Service Commission based on capital cost of the light, installation, maintenance, and energy costs; and

WHEREAS, street lights could be installed in compliance with applicable standards on the public right-of-way within the Subdivision and conforming to the Standard Street Light Requirements; and

WHEREAS, HCA Midwest desires to provide four upgraded street lights within the Subdivision, in excess of the Standard Street Light Requirements with regard to location but otherwise conforming to the Standard Street Light Requirements in all other respects, on the public right-of-way; and

WHEREAS, this agreement ensures the City will incur no additional costs from the installation of the proposed four upgraded street lights.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, HCA Midwest and City do hereby covenant and agree to the following terms and conditions:


1. HCA Midwest, in exchange for the obligations assumed under this Agreement, may request, and the City shall authorize, that KCPL install four (4) upgraded street lights, in the Subdivision. The street light shall comply in all respects with the Standard Street Light Requirements with exception of pole type and fixture type.
2. Upon installation of the upgraded street lights, HCA Midwest shall pay the City the pro-rated actual difference in cost incurred by the City from Standard Street Lights for each of the four (4) upgraded street lights being installed at the request of HCA Midwest.
3. On or before July 1, 2018, and July 1 of every subsequent fiscal year, HCA Midwest shall pay the City in advance, the full difference in annual cost, according to the rate schedule imposed by KCPL applicable to the City of Lee's Summit, in effect at that time for the four (4) upgraded street lights within the Subdivision.
4. In the event that payments are not made according to Paragraphs 2 and 3 of this Agreement, the City may at its option and upon 30 days written notice to HCA Midwest request that KCPL replace the four upgraded street lights with the Standard Street Light. HCA Midwest shall at all times have the obligation of providing the City with the address

upon which such written notice shall be sent. Failure to provide this address or any change in the address shall waive HCA Midwest's right to notice under this paragraph. In the event that the City makes such a request, and KCPL replaces the upgraded street lights, HCA Midwest shall be responsible for all costs associated with this removal and initial installation. In the event that KCPL fails or refuses to replace the upgraded street lights, then HCA Midwest's obligation under Paragraph 3 shall continue unabated.

5. HCA Midwest shall record a declaration with the Jackson County Recorder of Deeds containing provisions regarding the proposed upgraded street lights. These provisions shall be consistent with the terms of this Agreement and subject to the approval of the City.
6. This contract shall be in effect from the date of its execution by the parties and terminate upon the expiration of the current contract with KCPL and may be extended for additional terms upon extension or renewal of the contract with KCPL.
7. The provisions of this Agreement shall inure to the benefit and bind the successors and assigns of the parties hereto and nothing herein contained shall prevent assignment of this Agreement hereunder by HCA Midwest.
8. The individual signing on behalf of HCA Midwest hereby represents and warrants that he has the authority to execute this document and to bind The Midwest Division LSH LLC in the manner specified herein.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

HCA Midwest



By: Matt Sogard
Title: CEO

Attest:

By: _____

Title: _____

(Corporate Seal Affixed Here)

City of Lee's Summit

Stephen A. Arbo
City Manager

Attest:

Trisha Fowler Arcuri
City Clerk

Approved as to Form:

Nancy Yendes, Chief Counsel of Infrastructure and Planning
Office of the City Attorney

LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

ON THIS _____ day of _____, 200__, before me personally appeared _____, Member/Manager of _____. To me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I hereunto set my hand and affixed my official seal at my office in Jackson County, Missouri, the day and year firsts above written.

Notary Public Signature

Printed or Typed Name

My Commission Expires:

ASHTON AT
CHARLESTON
PARK

HCA
MIDWEST



Packet Information

File #: BILL NO. 18-16, **Version:** 1

AN ORDINANCE AUTHORIZING THE EXECUTION OF MODIFICATION NO. 4 TO THE ON-CALL AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR WATER AND SANITARY SEWER WITH HDR ENGINEERING, INC. (RFQ NO. 2016-042-1), FOR A NOT TO EXCEED COST OF \$99,070.00, FOR THE DESIGN UPDATE OF CEDAR CREEK INTERCEPTOR SEGMENT 3. (PWC 1-16-18)

Issue/Request:

AN ORDINANCE AUTHORIZING THE EXECUTION OF MODIFICATION NO. 4 TO THE ON-CALL AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR WATER AND SANITARY SEWER WITH HDR ENGINEERING, INC. (RFQ NO. 2016-042-1), FOR A NOT TO EXCEED COST OF \$99,070.00, FOR THE DESIGN UPDATE OF CEDAR CREEK INTERCEPTOR SEGMENT 3.

Key Issues:

- Approximately 2800 feet of Cedar Creek Interceptor was designed in 2014 by HDR Engineering, Inc. as part of Cedar Creek Interceptor 2-2, but not constructed due to project budget constraints.
- Sewer Tap Fee funds are now available to complete the project.
- There have been some changes to the area around the electric substation since the original design was completed.
- There are additional easements and access rights which will need to be aquired during this work.
- The existing sewer main does not have the capacity to convey the predicted wet weather flows nor meet the future needs of development in the watershed.
- This agreement will allow HDR Engineering, Inc. to update the plans and specifications so that they can be used to construct the remaining portion of the interceptor not rehabilitated.

Proposed City Council Motion:

FIRST MOTION: I move for a second reading of AN ORDINANCE AUTHORIZING THE EXECUTION OF MODIFICATION NO. 4 TO THE ON-CALL AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR WATER AND SANITARY SEWER WITH HDR ENGINEERING, INC. (RFQ NO. 2016-042-1), FOR A NOT TO EXCEED COST OF \$99,070.00, FOR THE DESIGN UPDATE OF CEDAR CREEK INTERCEPTOR SEGMENT 3.

SECOND MOTION: I move for adoption of AN ORDINANCE AUTHORIZING THE EXECUTION OF MODIFICATION NO. 4 TO THE ON-CALL AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR WATER AND SANITARY SEWER WITH HDR ENGINEERING, INC. (RFQ NO. 2016-042-1), FOR A NOT TO EXCEED COST OF \$99,070.00, FOR THE DESIGN UPDATE OF CEDAR CREEK INTERCEPTOR SEGMENT 3.

Background:

Engineering Services were contracted to HDR Engineering for the design of Cedar Creek Interceptor Segment 2 -2. The construction was bid with alternate sections identified. After receiving the bids, the City had funds available for the base bid and two alternates. The final 2800 feet were dropped from the construction due to

a lack of adequate funding. 7600 feet were constructed at that time.

Impact/Analysis:

Timeline:

Start Design: March, 2018

Start Construction: September, 2018

Other Information/Unique Characteristics:

Presenter: Dave Lohe, Supervisory Engineer

Recommendation: Staff recommends approval of AN ORDINANCE AUTHORIZING THE EXECUTION OF MODIFICATION NO. 4 TO THE ON-CALL AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR WATER AND SANITARY SEWER WITH HDR ENGINEERING, INC. (RFQ NO. 2016-042-1), FOR A NOT TO EXCEED COST OF \$99,070.00, FOR THE DESIGN UPDATE OF CEDAR CREEK INTERCEPTOR SEGMENT 3.

Committee Recommendation: The PUblic Works Committee voted unanimously 4-0 to recommend to City Council approval of AN ORDINANCE AUTHORIZING THE EXECUTION OF MODIFICATION NO. 4 TO THE ON-CALL AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR WATER AND SANITARY SEWER WITH HDR ENGINEERING, INC. (RFQ NO. 2016-042-1), FOR A NOT TO EXCEED COST OF \$99,070.00, FOR THE DESIGN UPDATE OF CEDAR CREEK INTERCEPTOR SEGMENT 3.

BILL NO. 18-16

AN ORDINANCE AUTHORIZING THE EXECUTION OF MODIFICATION NO. 4 TO THE ON-CALL AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR WATER AND SANITARY SEWER WITH HDR ENGINEERING, INC. (RFQ NO. 2016-042-1), FOR A NOT TO EXCEED COST OF \$99,070.00, FOR THE DESIGN UPDATE OF CEDAR CREEK INTERCEPTOR SEGMENT 3.

WHEREAS, City and Engineer entered into an Agreement dated January 17, 2017 (RFQ No. 2016-042-1) for professional engineering services for On-Call Professional Engineering Services (hereinafter "Base Agreement"); and,

WHEREAS, City desires to engage Engineer for a specific scope of engineering services which are covered by the On-Call Base Agreement; and,

WHEREAS, Engineer has submitted a proposal for the engineering services and an estimate of engineering costs to perform said services in compliance with the Base Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the agreement for professional engineering services by and between the City of Lee's Summit, Missouri and HDR Engineering, Inc., generally for the purpose of professional engineering services for Cedar Creek Interceptor 3 in the not-to-exceed amount of \$99,070.00, a true and accurate copy being attached hereto and incorporated herein by reference, is hereby approved and the City Manager is hereby authorized to execute the same on behalf of the City of Lee's Summit, Missouri.

SECTION 2. That this Ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this ____ day of _____, 2018.

ATTEST:

Mayor Randall L. Rhoads

City Clerk Trisha Fowler Arcuri

APPROVED by the Mayor of said City this _____ day of _____, 2018.

ATTEST:

Mayor Randall L. Rhoads

City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:

Chief Counsel of Infrastructure and Planning
Nancy K. Yendes

**ON-CALL AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES FOR WATER AND SANITARY SEWER (RFQ NO. 2016-042-1)**

THIS AGREEMENT made and entered into this 17th day of January, 2017, by and between the City of Lee's Summit, Missouri, a Missouri Constitutional Charter City, (hereinafter "City"), and HDR Engineering, Inc. (hereinafter "Service Provider").

WITNESSETH:

WHEREAS, City desires to have on-call services for Professional Engineering for Water and Sanitary Sewer; and

WHEREAS, Service Provider has submitted a proposal for the on-call Professional Engineering services and standard hourly rates and expenses to perform said services; and

WHEREAS, City desires to enter into an agreement with Service Provider to perform the services as aforementioned; and

WHEREAS, Service Provider represents that it is equipped, competent, and able to undertake such an assignment.

NOW THEREFORE, in consideration of the mutual covenants and considerations herein contained, **IT IS HEREBY AGREED** by the parties hereto as follows:

**ARTICLE I
SCOPE OF ON-CALL SERVICES TO BE PROVIDED BY SERVICE PROVIDER**

Service Provider shall provide the following professional engineering services to the City on an on-call basis ("On-Call Services"):

- Design of minor water distribution main projects including plans and specifications
- Design of minor sanitary sewer main projects including plans and specifications
- Modeling and predicting water demands of existing and/or proposed developments
- Modeling and predicting wastewater flows of existing and/or proposed developments
- Statistical analysis of water and/or wastewater usage or other data,
- Water and/or wastewater pumping station performance evaluations and troubleshooting
- Assistance with review of project, capital, or maintenance and repair plans
- Technical review of facility and/or infrastructure development
- Infrastructure inspections including system appurtenances, water storage tanks, and other facilities
- Evaluation of performance and suitability of equipment and materials
- Assistance during emergencies
- Assisting staff for public presentations
- Water and Sewer Flow Monitoring
- Water and Sewer Rate Planning and Evaluation
- General Engineering for facilities including electrical, mechanical and structural engineering
- Studies, design and implementation of System Control and Data Acquisition (SCADA) systems

ARTICLE II
SERVICES TO BE PROVIDED BY SERVICE PROVIDER BY MODIFICATION OR
MEMORANDUM OF AUTHORIZATION

By entering into this Agreement, City is not obligated to select Service Provider to provide professional engineering services beyond those services authorized in Article I above. In the event Service Provider is engaged to provide additional services, City and Service Provider shall enter into a written modification or memorandum of authorization describing (a) the scope of services to be provided by Service Provider and City, (b) compensation to the Service Provider for services to be provided, (c) required deliverables or products from the Service Provider to the City, and (d) completion times for said services. The compensation to be paid Service Provider pursuant to any supplemental agreement or memorandum of authorization shall be at the rates set forth in Exhibit A attached hereto and incorporated herein by reference. In no event is any work in excess of that described in Article I above authorized by this Agreement without City and Service Provider first entering into a written modification.

ARTICLE III
LIMITATIONS AND PROCEDURES RELATED TO ON CALL SERVICES

On-call services shall only be provided after written approval of the requested services is provided by the Department Director (or designee) of the Department requesting the services. Such approval shall only be given when sufficient budgeted amounts are available to cover the cost of the services. The Service Provider shall provide a monthly written statement of all On-Call Services provided in the preceding month to the Assistant Director of Engineering and the Finance Department.

ARTICLE IV
PAYMENTS TO THE SERVICE PROVIDER

For the services performed by Service Provider pursuant to this Agreement, or any modifications thereto, and as full compensation therefore, and for all expenditures made and all expenses incurred by Service Provider in connection with this Agreement, or any modifications thereto, except as otherwise expressly provided herein, subject to and in conformance with all provisions of this Agreement, City will pay Service Provider according to the following provisions:

- A. The cost of all on-call services covered under Article I shall be billed at the rates set forth in Exhibit A attached hereto and incorporated herein by reference. Expenses incurred to provide the on-call services shall be billed as set forth in Exhibit A.
- B. Compensation for services to be provided by Service Provider through a modification pursuant to Article II above shall be set forth in said modification, and shall be at the rates set forth in the attached Exhibit A.
- C. If so requested by Service Provider, City will make payment monthly for on-call services that have been satisfactorily completed. The City shall make payment to Service Provider within a period not to exceed thirty (30) days from the date an invoice is received by City. All invoices shall contain the following information:
 - 1. Name or Description of Agreement/RFQ Number/Project and/or Task Name
 - 2. Invoice Number and Date.
 - 3. Itemized statement for the previous month of labor (including personnel description, title or classification for each person on the project, hours worked, hourly rate, and amount), itemized reimbursable expenses, and invoice total.
 - 4. Report of monthly progress describing the services completed to date and projected completion time for the work.

5. If applicable, project billing summary containing the agreed fee amount, cumulative amount previously billed, billing amount this invoice, agreed amount remaining, and percent of fee billed to date.

All moneys not paid when due as provided herein shall bear interest at a per annum rate equal to one percent (1%) plus the average *Consumer Price Index for All Urban Consumers (CPI-U)-U.S. City Average* for the time period in which payment is past due; provided, however, that in no event will the amount of interest to be paid by the City exceed 9% per annum.

ARTICLE V
TERM

The term of this Agreement shall be a one (1) year period from 1/17/17 through 1/17/18. The agreement will automatically renew unless the City or the engineer at their discretion chose to terminate, for two (2) additional one-year periods. Three (3) months prior to expiration of the initial term or the first renewal term of this Agreement, Service Provider shall submit to City a proposal for increases in its billing rates and expenses to be in effect for the following one (1) year term. Service Provider shall not be permitted to increase billing rates in any one (1) year renewal period in excess of the Employment Cost Index, Wages and Salaries, published by the U.S. Department of Labor, Bureau of Labor Statistics.

ARTICLE VI
INSURANCE

A. CERTIFICATE OF INSURANCE

The Service Provider shall secure and maintain, throughout the duration of this contract, insurance of such types and in at least the amounts that are required herein. Service Provider shall provide certificate(s) of insurance confirming the required protection on an ACORD 25 (or equivalent form). The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the certificate(s). The City reserves the right to require formal copies of any Additional Insured endorsement, as well as the right to require completed copies of all insuring policies applicable to the project. The cost of such insurance shall be included in the Service Provider's contract price.

B. NOTICE OF CLAIM

The Service Provider shall upon receipt of notice of any claim in connection with this contract promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Service Provider shall also promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in excess of \$10,000.00, whether or not such impairment came about as a result of this contract. If the City shall subsequently determine that the Service Provider's aggregate limits of protection shall have been impaired or reduced to such extent that they are inadequate for the balance of the project, the Service Provider shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

C. INDUSTRY RATING

The City will only accept coverage from an insurance carrier who offers proof that it is licensed to do business in the State of Missouri; carries a Best's policyholder rating of "A" or better; carries at least a Class VII financial rating or is a company mutually agreed upon by the City and the Service Provider.

D. SUB-CONSULTANT'S INSURANCE

If any part of the contract is to be sublet, the Service Provider shall either:

Cover all sub-consultants in the Service Provider's liability insurance policy or,

Require each sub-consultant not so covered to secure insurance in the minimum amounts required of the Service Provider and submit such certificates to the City as outlined herein.

E. SELF-INSURED RETENTIONS / DEDUCTIBLES

Any Service Provider that maintains a Self-Insured Retention or Deductible (in excess of \$50,000) must be declared on the Certificates provided the City, such amounts shall be the sole responsibility of the Service Provider. The City reserves the right to approve such self-insured retentions/deductibles and may require guarantees from the Service Provider for such assumed limits.

F. PROFESSIONAL LIABILITY

Professional Liability, or Errors and Omissions Insurance protection must be carried by Service Provider in the minimum amount of \$1,000,000.

G. COMMERCIAL GENERAL LIABILITY POLICY

Limits:

Each occurrence:	\$1,000,000
Personal & Advertising Injury:	\$1,000,000
Products/Completed Operations Aggregate:	\$1,000,000
General Aggregate:	\$1,000,000

Policy must include the following conditions:

- Bodily Injury and Property Damage
- Insured Contract's Contractual Liability
- Explosion, Collapse & Underground (if risk is present)
- Additional Insured: City of Lee's Summit, Missouri

H. AUTOMOBILE LIABILITY

Policy shall protect the Service Provider against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for either:

1. Any Auto
2. or all Owned Autos; Hired Autos; and Non-Owned Autos

Limits:

Each Accident, Combined Single Limits,
Bodily Injury and Property Damage: \$500,000
City of Lee's Summit, Missouri does NOT need to be named as additional insured on Automobile Liability

I. WORKERS' COMPENSATION

This insurance shall protect the Service Provider against all claims under applicable state Workers' Compensation laws. The Service Provider shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law and contain a waiver of subrogation against the City. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident:	\$100,000 Each Accident
Bodily Injury by Disease:	\$500,000 Policy Limit
Bodily Injury by Disease:	\$100,000 Each Employee

J. GENERAL INSURANCE PROVISIONS

1. The insurance limits outlined above represent the minimum coverage limit and do not infer or place a limit of liability of the Service Provider nor has the City assessed the risk that may be applicable to the Service Provider.
2. The Service Provider's liability program will be Primary and any insurance maintained by the City (including self-insurance) will not contribute with the coverage maintained by the Service Provider.
3. Coverage limits outlined above may be met by a combination of primary and excess liability insurance programs.
4. Any coverage provided on a Claims Made policy form must contain a 3-year tail option (extended reporting period) or the program must be maintained for 3-years subsequent to completion of the Contract.
5. Any failure on the part of the Service Provider with any policy reporting provision shall not affect the coverage provided to the City.
6. When "City" is utilized, this includes its officers, employees and volunteers in respect to their duties for the City.

**ARTICLE VII
MISCELLANEOUS PROVISIONS**

The following miscellaneous provisions are agreed to by both parties to this Agreement:

- A. **COVENANT AGAINST CONTINGENT FEES:** Service Provider warrants that Service Provider has not employed or retained any company or person, other than a bona fide employee working for the Service Provider, to solicit or secure this Agreement, and that Service Provider has not paid or agreed to pay any company or person, other than bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- B. **OWNERSHIP OF DOCUMENTS:** Payment by City to Service Provider as aforesaid in Article IV shall vest in City title to all drawings, sketches, studies, analyses, reports, models, and other paper, documents, computer files, and material produced by Service Provider exclusively for the services performed pursuant to this Agreement up to the time of such payments, and the right to use the same without other or further compensation, provided that any use for another purpose shall be without liability to the Service Provider.
- C. **MODIFICATIONS TO AGREEMENT:** In the event of any changes in the scope of services contained in this Agreement, prior to commencing the services City and Service Provider shall enter into a modification of this Agreement or a Memorandum of Authorization describing the services to be provided by Service Provider and City, and the compensation and completion times for said services.

- D. **TERMINATION:** In the event of termination by City, if there are any services hereunder in progress but not completed as of the date of termination, then said Agreement may be extended upon written approval of the City until said services are completed and accepted.
1. **Termination for Convenience:** The services called for by this Agreement or any supplements thereto may be terminated upon request and for the convenience of City upon thirty (30) days advance written notice. City shall pay Service Provider for all services rendered up to the date of termination.
 2. **Termination for Cause:** This Agreement may also be terminated for cause by City or Service Provider. Termination for cause shall be preceded by a fourteen-(14) day correction period effective upon delivery of written notice. City shall pay Service Provider for all services rendered up to the date of termination. In the event of termination for cause by City, compensation for services rendered by Service Provider up to the date of termination shall be offset by City's reasonable cost to mitigate or correct the effects of such termination.
 3. **Termination Due to Unavailability of Funds in Succeeding Fiscal Years:** When funds are not appropriated or otherwise made available to support continuation of the Project in a subsequent fiscal year, this Agreement shall be terminated and Service Provider shall be reimbursed for the services rendered up to the date of termination plus the reasonable value of any nonrecurring costs incurred by Service Provider but not amortized in the price of the services delivered under this Agreement.
- E. **COMPLIANCE WITH LAWS:** Service Provider shall comply with all Federal, State, and local laws, ordinances, and regulations applicable to the services. Service Provider shall secure all licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement.
- F. **SUBLETTING ASSIGNMENT OR TRANSFER:** Service Provider shall not sublet, assign, or transfer any interest in the services covered by this Agreement, except as provided for herein and except with the prior written consent of City. The use of subcontractors shall in no way relieve Service Provider of his/her primary responsibility for the services. No approval will be necessary for non-professional services such as reproductions, printing, materials, and other services normally performed or provided by others.
- G. **CONFERENCES, VISITS TO SITE, INSPECTION OF SERVICES:** Upon reasonable advance notice and during normal business hours at Service Provider's place of business, representatives of City shall have the privilege of inspecting and reviewing the services being performed by Service Provider and consulting with him/her at such time. Conferences are to be held at the request of City or Service Provider.
- H. **SERVICE PROVIDER'S ENDORSEMENT:** Service Provider shall endorse all plans, specifications, estimates, and data furnished by him/her.
- I. **INSPECTION OF DOCUMENTS:** Service Provider shall maintain all records pertaining to its services hereunder for inspection, upon reasonable advance notice and during normal business hours at Service Provider's place of business, by a City representative during the contract period and for three (3) years from the date of final payment for each individual project performed pursuant to this Agreement.
- J. **INDEMNIFICATION AND HOLD HARMLESS:** Service Provider shall indemnify and hold harmless City and its officers, employees, elected officials, and attorneys, each in their official and individual capacities, from and against judgments, damages, losses, expenses, including reasonable attorneys' fees, to the extent caused by the negligent acts, errors, omissions, or willful misconduct of Service Provider, or its employees, or sub consultants, in the performance of Service Provider's duties under this Agreement, or any supplements or amendments thereto to the extent permitted by the Constitution and the Laws of the State of Missouri.
- K. **LIMITATION OF LIABILITY:** In no event will City be liable to Service Provider for indirect or consequential damages, and in no event will City's liability under this Agreement exceed the amount to be paid to Service Provider pursuant to Article IV of this Agreement.
- L. **PROFESSIONAL RESPONSIBILITY:** Service Provider will exercise reasonable skill, care, and diligence in the performance of its services in accordance with customarily accepted professional practices. If Service Provider fails to meet the foregoing standard, Service Provider will perform at its own cost, and without reimbursement from City, the

professional services necessary to correct errors and omissions that are caused by Service Provider's failure to comply with above standard, and that are reported to Service Provider within one year from the completion of Service Provider's services for each individual project performed pursuant to this Agreement.

- M. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and any prior agreements, understandings, or other matters, whether oral or written, are of no further force or effect. This Agreement may be amended, changed, or supplemented only by written agreement executed by both of the parties hereto.
- N. **CONFLICT:** In the event of any conflict, ambiguity, or inconsistency between this Agreement and any other document that may be annexed hereto, the terms of this Agreement shall govern.
- O. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.
- P. **OPINION OF PROBABLE CONSTRUCTION COST AND SCHEDULE:** Since Service Provider has no control over the cost of labor, materials, or equipment, or over contractor's(s') methods of determining prices, or over competitive bidding or market conditions, the estimate of construction cost and schedule provided for herein is to be made on the basis of Service Provider's experience and qualifications and represents Service Provider's best judgment as a professional Service Provider familiar with the construction industry, but Service Provider cannot and does not guarantee that the bids or the Project construction cost or schedule will not vary from the opinion of probable construction cost and schedule prepared by Service Provider.
- Q. **TAX EXEMPT:** City and its agencies are exempt from State and local sales taxes. Sites of all transactions derived from this Agreement shall be deemed to have been accomplished within the State of Missouri.
- R. **SAFETY:** In the performance of its services, Service Provider shall comply with the applicable provisions of the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental codes.
- S. **ANTI-DISCRIMINATION CLAUSE:** Service Provider and its agents, employees, or subcontractors shall not in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.
- T. **DELAY IN PERFORMANCE:** Neither City nor Service Provider shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, floods, earthquakes, fire, epidemics, war, riots, and other civil disturbances, strikes, lockouts, work slowdowns, and other labor disturbances, sabotage, judicial restraint, and delay in or inability to procure permits, licenses, or authorizations from any local, State, or Federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Service Provider under this Agreement. Service Provider and City shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances. Should such circumstances occur, the nonperforming party shall within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement.
- U. **NO THIRD-PARTY RIGHTS:** The services provided for in this Agreement are for the sole use and benefit of City and Service Provider. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Service Provider.

V. NOTICE: Whenever any notice is required by this Agreement to be made, given or transmitted to any party, it shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, first class, with notices to City addressed to:

Lee's Summit Water Utilities
Jeff Thorn, Assistant Director
City of Lee's Summit
220 SE Green Street
Lee's Summit, MO 64063

and notices to Service Provider shall be addressed to:

HDR Engineering, Inc.
Patrick Young, P.E.
3741 NE Troon DR.
Lee's Summit, MO 64064

or such place as either party shall designate by written notice to the other. Said notices may also be personally hand delivered by each party to the other, at the respective addresses listed above. If hand delivered, the date of actual completion of delivery shall be considered the date of receipt. If mailed, the notice shall be considered received the third day after the date of postage.



ARTICLE VIII
ALL OTHER TERMS REMAIN IN EFFECT

THIS AGREEMENT shall be binding on the parties thereto only after it has been duly executed and approved by City and Service Provider.

January, 2017. IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the 17th day of

CITY OF LEE'S SUMMIT

Stephen A. Arbo
Stephen A. Arbo, City Manager

APPROVED AS TO FORM:

[Signature]
OFFICE OF THE CITY ATTORNEY

HOR Engineering INC
Service Provider

[Signature]
Signature

Joseph E. Drimmel, P.E.

Print Name

Vice President

Title

COMMISSION # 1282550
MY APPOINTMENT EXPIRES 1-18-2018
CASS COUNTY
STATE OF MISSOURI
NOTARY PUBLIC-NOTARY SEAL
JILLIAN L. WALKER

WORK AUTHORIZATION AND E-VERIFY:

Section 285.530, RSMo, affects all services provided in excess of \$5,000.00. This Section refers to the prohibition of employment of unauthorized aliens and requires participation in a Federal work authorization program. This law went into effect on January 1, 2009.

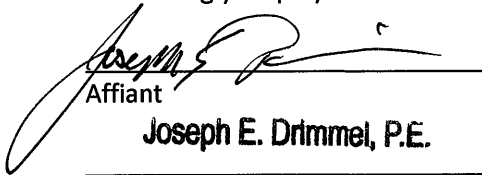
You are required to fill out and return with your submittal of qualifications the enclosed Work Authorization Affidavit and provide documentation evidencing current enrollment in a federal work authorization Program, e.g., the electronic signature page from the E-Verify program's Memorandum of Understanding, The required documentation must be from the federal work authorization program provider. Letters from contractors reciting compliance is not sufficient. E-verify, <http://www.dhs.gov/everify>, is a FREE Internet-based federal work authorization program operated by the Department of Homeland Security, U.S. Citizenship and Immigration Services that allows employers to verify the employment eligibility of their employees, regardless of citizenship. Based on information provided by employees on their Form I-9, E-Verify checks the information electronically against records contained in DHS and Social Security Administration databases. There are penalties for employing an unauthorized alien, including suspension of the contractor's business license, termination of the contract, debarment from City and State work for a period of three years or permanently, and withholding 25% of the total amount due the Contractor.

Project No.
CITY OF LEE'S SUMMIT, MISSOURI
WORK AUTHORIZATION AFFIDAVIT PURSUANT TO SECTION 285.530, RSMo
(FOR ALL BIDS IN EXCESS OF \$5,000.00)
Effective 1/1/2009

County of Jackson)
) ss.
State of Missouri)

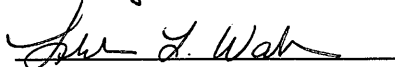
My name is Joseph Drimmel I am an authorized agent of HDR Engineering, Inc. ("Bidder"). Bidder is enrolled and participates in a federal work authorization program for all employees working in connection with services provided to the City of Lee's Summit, Missouri. Bidder does not knowingly employ any person who is an unauthorized alien in connection with the services being provided.

Bidder shall not knowingly employ or contract with an illegal alien to perform work for the City of Lee's Summit, Missouri or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien.

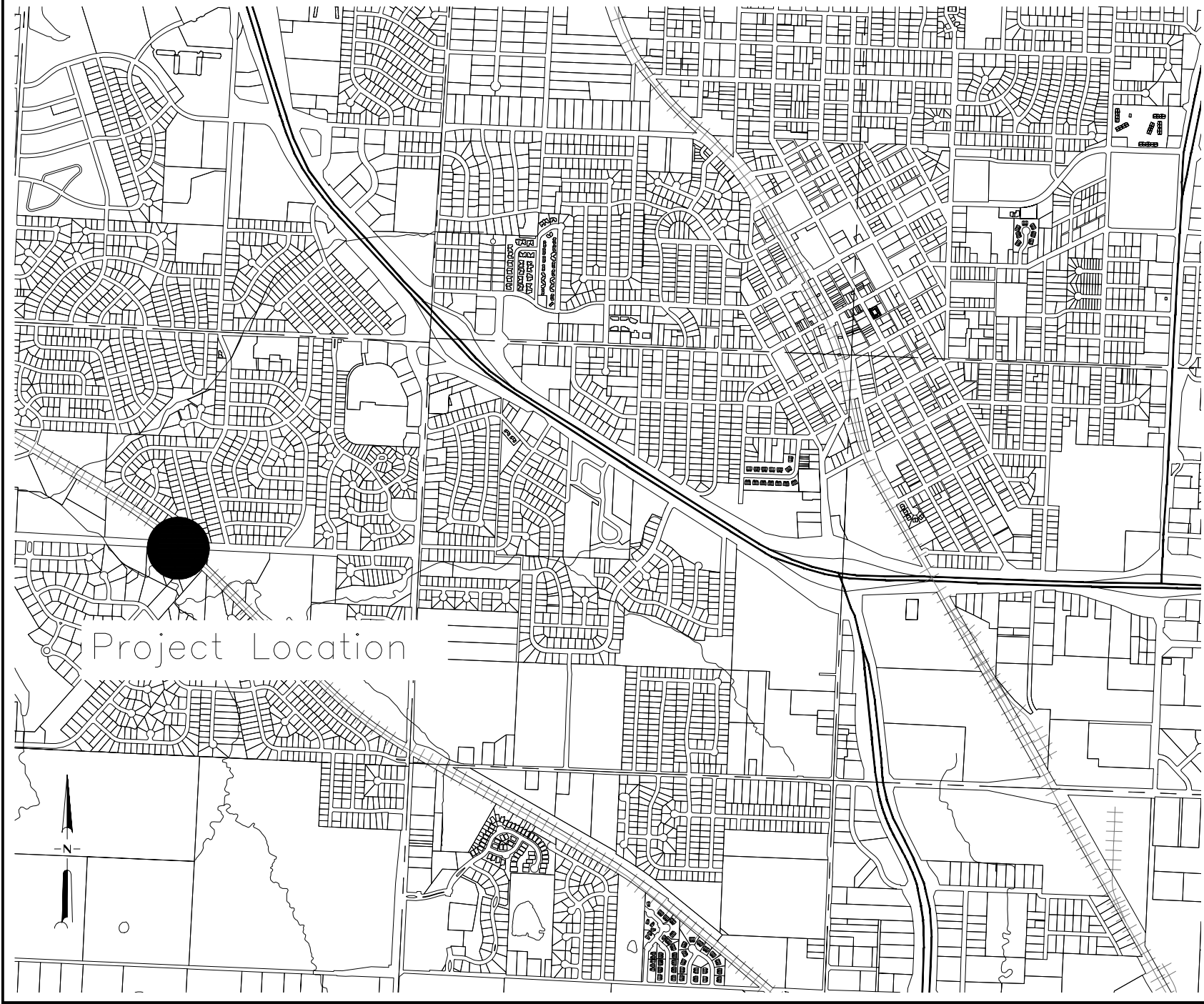

Affiant
Joseph E. Drimmel, P.E.
Printed Name

Subscribed and sworn to before me this 12th day of January, 2017.

LILLIAN L. WALKER
NOTARY PUBLIC-NOTARY SEAL
STATE OF MISSOURI
CASS COUNTY
MY APPOINTMENT EXPIRES 1-19-2019
COMMISSION # 15424990


Notary Public

SEAL



Project Location

Date: 12/27/2017

Drawn By: JHP

LEE'S SUMMIT MISSOURI

PUBLIC WORKS ENGINEERING DIVISION | 220 SE GREEN STREET | LEE'S SUMMIT, MO 64063

Project Map



Packet Information

File #: RES. NO. 18-02, **Version:** 2

A RESOLUTION IN SUPPORT OF THE LEE'S SUMMIT POLICE DEPARTMENT'S APPLICATION FOR GRANT FUNDING IN THE MISSOURI HIGHWAY SAFETY PROGRAM FOR TRAFFIC ENFORCEMENT.

Issue/Request:

A RESOLUTION IN SUPPORT OF THE LEE'S SUMMIT POLICE DEPARTMENT'S APPLICATION FOR GRANT FUNDING IN THE MISSOURI HIGHWAY SAFETY PROGRAM FOR TRAFFIC ENFORCEMENT.

Key Issues:

This is a resolution in support of the Lee's Summit Police Department's grant application to the Missouri Department of Transportation (MoDOT). As part of the grant application, the MoDOT requests that the City of Lee's Summit agree to participate in the Missouri Highway Safety Program for traffic enforcement and direct the Chief of Police to implement any grant funded projects of the program in an effort to reduce the number and severity of traffic crashes, fatalities, and injuries occurring on Lee's Summit roadways.

Proposed City Council Motion:

I move for approval of proposed resolution in support of the Lee's Summit Police Department's application for grant funding in the Missouri Highway Safety Program for traffic enforcement.

Background:

For over 20 years the Lee's Summit Police Department has worked with the Missouri Department of Public Safety (DPS) on the DPS highway safety campaigns. Some of the past campaigns have included:

- Click it or Ticket
- You Drink, You Drive, You Lose
- Operation Safe Teen
- Hazardous moving enforcement
- DWI enforcement/check points
- Aggressive driver enforcement

Grants through MoDOT have funded these past initiatives.

The Lee's Summit Police Department is applying for continued grant funding from MoDOT's Highway Safety Program for traffic enforcement in the amount of \$83,484.70 for the upcoming 2018-2019 grant year. The grant funding will pay for overtime, training, and equipment to execute a hazardous moving violation project and a DWI enforcement project. The passage of this resolution will demonstrate support for the grant application and authorize the police department to implement the above listed projects upon receipt of the grant awards.

File #: RES. NO. 18-02, **Version:** 2

Impact/Analysis:

[Enter text here]

Timeline:

Start: October 1, 2018

Finish: September 30, 2019

Other Information/Unique Characteristics:

(Enter text here)

Presenter: Chief Forbes

Recommendation: Staff recommends support for the resolution.

Committee Recommendation:

RESOLUTION 18-02

A RESOLUTION IN SUPPORT OF THE LEE'S SUMMIT POLICE DEPARTMENT'S APPLICATION FOR GRANT FUNDING IN THE MISSOURI HIGHWAY SAFETY PROGRAM FOR TRAFFIC ENFORCEMENT.

WHEREAS, for over twenty years (20) years, the Missouri Highway Safety Program has offered grants to cities and counties in Missouri to reduce the number and severity of traffic crashes occurring on Missouri roadways and reduce traffic fatalities and injuries; and,

WHEREAS, the Lee's Summit Police Department has applied for a grant by the Missouri Department of Transportation, Traffic and Highway Safety Division in the amount of \$52,984.70 to participate in a Hazardous Moving Violation project; and,

WHEREAS, the Lee's Summit Police Department has applied for a grant by the Missouri Department of Transportation, Traffic and Highway Safety Division in the amount of \$30,500.00 to participate in an Impaired Driving Enforcement project; and,

WHEREAS, The Lee's Summit Police Department has plans to implement the above listed projects within the city upon an award of the grant funding.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT AS FOLLOWS:

SECTION 1. That the City of Lee's Summit hereby supports the Lee's Summit Police Departments application for grant funding in the Missouri Highway Safety Program for Traffic Enforcement.

SECTION 2. That, upon an award of grant funding, the City of Lee's Summit hereby agrees to participate in the Missouri Highway Safety Program.

SECTION 3. That the City of Lee's Summit hereby directs the Chief of Police to implement the grant funded projects in an effort to reduce the number and severity of traffic crashes, fatalities, and injuries occurring on the roadways of Lee's Summit.

SECTION 4. That the Chief of Police will investigate the financial assistance available under the Missouri Highway Safety Program for Traffic Enforcement and report back to the Council his recommendations.

SECTION 5. If and when funding through the Highway Safety Division is no longer available, the City of Lee's Summit agrees to make a dedicated attempt to continue support for this traffic safety effort.

RESOLUTION 18-02

SECTION 6. This resolution shall be in full force and effect from the date of its approval.

PASSED and ADOPTED by the City Council for the City of Lee's Summit, Missouri, this _____ day of _____, 2018.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

Chief Counsel of Public Safety *Beth Murano*



Highway Safety and Traffic Division
P.O. Box 270
Jefferson City, MO 65102
1-800-800-2358 or 573-751-4161

CITY COUNCIL AUTHORIZATION

On _____, 20__ the Council of _____
_____ held a meeting and discussed the City's participation
in Missouri's Highway Safety Program.

It is agreed by the Council that the City of _____
will participate in Missouri's Highway Safety Program.

It is further agreed by the Council that the Chief of Police will investigate the
financial assistance available under the Missouri Highway Safety Program for
Traffic Enforcement and report back to the Council his/her recommendations.
When funding through the Highway Safety Division is no longer available, the
local government entity agrees to make a dedicated attempt to continue support
for this traffic safety effort.

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

Mayor

Packet Information

File #: 2018-1812, **Version:** 1

Presentation of Long-Term Sustainable Solutions to Fund Wage Enhancements for City Employees.

Issue/Request:

Presentation of Long-Term Sustainable Solutions to Fund Wage Enhancements for City Employees.

Key Issues:

Mayor Rhoads has requested that the Chairman report out on the Wednesday, January 24, 2018 Special Finance and Budget Committee meeting prior to action on Budget Amendment 9.

Title

Presentation of long-term sustainable solutions to fund wage enhancements for City employees

..Body

Issue/Request:

Presentation of long-term sustainable solutions to fund wage enhancements for City employees

Key Issues:

Mayor Rhoads has requested that the Finance and Budget Committee prepare a recommendation that creates a long term sustainable solution for the Council to consider. To assist the Finance and Budget Committee with this assignment, staff has prepared options for the Committee's consideration. Staff focused efforts on new revenue sources to fund the proposed January 11 motion by the City Council regarding wage enhancements for City employees.

The Mayor has also requested that the committee's recommendation(s) be presented in conjunction at the February 1 consideration of the compensation ordinance.

Proposed City Council Motion:

[Enter text here]

Background:

This request is part of the City Council's continued dialogue regarding wages and benefits for City employees. Specifically, this material was provided to address questions, comments, or concerns from the January 11, 2018 City Council meeting.

..Presenter

Presenter: Conrad Lamb | Finance Director

General Fund: 5-Year Revenue/Expense Model

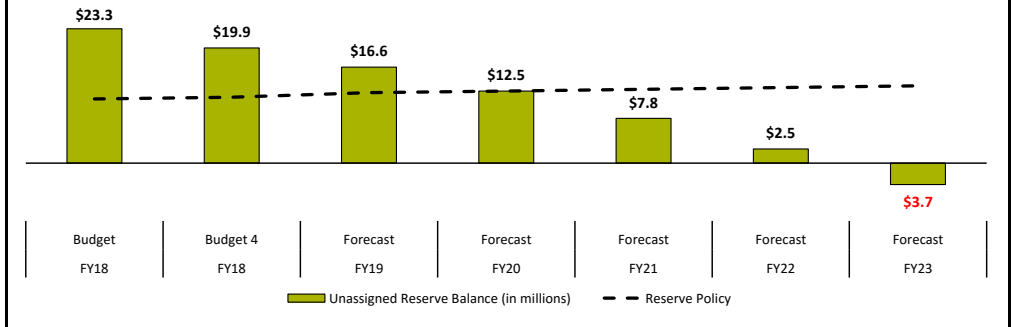
	FY18 Budget	FY18 Budget 4	FY19 Forecast	FY20 Forecast	FY21 Forecast	FY22 Forecast	FY23 Forecast
Revenues:							
Property Tax	20,508,192	20,508,192	21,032,055	21,566,395	22,111,422	22,667,349	23,120,696
Sales Tax	16,825,437	16,825,437	17,330,200	17,850,106	18,385,609	18,937,178	19,410,607
EATS	(628,013)	(628,013)	(652,371)	(964,386)	(993,318)	(1,023,117)	(1,053,811)
Franchise Tax	13,037,427	13,037,427	12,776,678	12,521,145	12,270,722	12,025,308	11,784,801
Motor Vehicle Tax	3,671,162	3,671,162	3,762,941	3,857,015	3,953,440	4,052,276	4,153,583
Other Taxes	324,597	324,597	321,351	318,138	314,956	311,807	308,689
Fines and forfeitures	1,405,838	1,405,838	1,412,867	1,419,932	1,427,031	1,434,166	1,441,337
Licenses and permits	2,411,880	2,411,880	2,472,177	2,533,981	2,597,331	2,662,264	2,728,821
Intergovernmental	1,008,067	1,008,067	1,028,228	1,048,793	1,069,769	1,091,164	1,112,987
Charges for services	7,570,459	7,570,459	7,721,868	7,876,306	8,033,832	8,194,508	8,358,398
Investment Earnings	56,845	56,845	57,271	57,701	58,134	58,570	59,009
Other	1,659,600	1,659,600	1,667,898	1,676,237	1,684,619	1,693,042	1,701,507
Transfers in	1,004,515	1,004,515	1,009,538	1,014,585	1,019,658	1,024,756	1,029,880
Total operating revenues	68,856,006	68,856,006	69,940,702	70,775,947	71,933,205	73,129,271	74,156,505
Percent Change	2.96%	2.96%	1.58%	1.19%	1.64%	1.66%	1.40%

	FY18 Budget	FY18 Budget 4	FY19 Forecast	FY20 Forecast	FY21 Forecast	FY22 Forecast	FY23 Forecast
Expenditures:							
Salaries	33,259,040	33,261,810	33,927,046	34,605,587	35,297,699	36,003,653	36,723,726
Vacancy (2.36%)	(788,559)	(788,559)	(800,678)	(816,692)	(833,026)	(849,686)	(866,680)
Benefits calc on Salary	5,908,152	5,973,210	6,032,942	6,093,272	6,154,204	6,215,746	6,277,904
Health/Dental	6,273,194	6,273,194	6,837,781	7,453,182	8,123,968	8,855,125	9,652,087
Other Benefits	1,154,818	1,089,759	961,554	980,785	1,000,401	1,020,409	1,040,817
Supplies for Resale	245,000	245,000	249,900	254,898	259,996	265,196	270,500
Other Supplies, Service, & Charges	10,031,400	10,031,399	10,131,713	10,233,030	10,335,360	10,438,714	10,543,101
Repairs and Maintenance	1,485,895	1,485,895	1,500,754	1,515,761	1,530,919	1,546,228	1,561,691
Utilities	1,734,766	1,734,766	1,752,114	1,769,635	1,787,331	1,805,204	1,823,257
Fuel & Lubricants	556,097	556,097	561,658	567,275	572,947	578,677	584,464
Miscellaneous & Interest	236,825	206,412	208,476	210,561	212,666	214,793	216,941
Capital outlay							
Interdepartmental Charges	6,314,969	6,314,969	6,346,544	6,378,277	6,410,168	6,442,219	6,474,430
Transfers out	268,496	268,496	269,838	271,188	272,544	273,906	275,276
FY18 Budget Amendment 3 (COLA)		222,530	347,147	354,090	361,172	368,395	375,763
Full RP Implementation Cost		1,649,510	4,948,530	5,047,501	5,148,451	5,251,420	5,356,448
Notes		March 1 Impl.	Full Year Imp.	+2%	+2%	+2%	+2%
Total operating expenditures	66,680,093	68,524,488	73,275,319	74,918,348	76,634,801	78,429,999	80,309,723
Percent Change	4.05%	6.92%	6.93%	2.24%	2.29%	2.34%	2.40%

Net Operating Rev - Exp	\$ 2,175,913	\$ 331,518	\$ (3,334,617)	\$ (4,142,401)	\$ (4,701,596)	\$ (5,300,729)	\$ (6,153,217)
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One-Time:							
PW Vehicle Expansion	(54,902)	(54,902)					
UDO Recodification	(150,000)	(150,000)					
EMS Ambulance Expansion							
ITS Software Projects	(305,465)	(305,465)					
Environmental Outreach							
Compensation Study							
Fuel Site							
Budget Amendment 11 (Airport)							
FY18 Amendment 1 (Health Ins)		(1,410,378)					
FY18 Amendment 4 (Recycling)		(62,555)					
Rev - Exp (after one-time)	\$ 1,665,546	\$ (1,651,782)	\$ (3,334,617)	\$ (4,142,401)	\$ (4,701,596)	\$ (5,300,729)	\$ (6,153,217)
Exp (with one-time)	\$ 67,190,460	\$ 70,507,788	\$ 73,275,319	\$ 74,918,348	\$ 76,634,801	\$ 78,429,999	\$ 80,309,723

Net change in fund balance including one-time							
Fund balance—beg.	\$ 21,591,323	\$ 21,591,323	\$ 19,939,541	\$ 16,604,924	\$ 12,462,522	\$ 7,760,927	\$ 2,460,198
Fund balance—end.	\$ 23,256,869	\$ 19,939,541	\$ 16,604,924	\$ 12,462,522	\$ 7,760,927	\$ 2,460,198	\$ (3,693,020)
GF Reserve Balance Fund Policy	\$ 11,113,349	\$ 11,420,748	\$ 12,212,553	\$ 12,486,391	\$ 12,772,467	\$ 13,071,667	\$ 13,384,954
ending fund balance as a % of expenditures (exc one-time)	34.88%	29.10%	22.66%	16.63%	10.13%	3.14%	-4.60%



Potential Revenues

SOURCE	TYPE	CURRENT LEVEL	INCREMENTS/ MAXIMUM	STACKABLE	Voter Approval Required	REVENUE PER UNIT/ TOTAL ADDITIONAL REVENUE
GENERAL SALES TAX	Sales	1.0 cent	1/2, 7/8 or 1.0 cent	Yes	Yes	1/2/cent: \$7,863,320
						7/8 cent: 13,760,811
						1.0 cent: \$15,726,641
USE TAX	Sales	City	Same as Current Sales Taxes		Yes	
		.01	General Operating			\$ 634,939
		.005	Transportation			285,723
		.005	Capital Improvement			317,470
		.0025	Parks & Soils			158,735
		2.25%	Combined City Sales Tax			
		7.85%	Combined Sales Tax Rate All			
GENERAL PROPERTY TAX LEVY	Ad Valorem Property	89 cents	\$1.00 Max 11 cents available	Yes with vote every four years	Yes	\$196,327 per cent \$2,159,597 for 11 cents

Packet Information

File #: 2018-1796, Version: 1

Public Hearing - Appl. #PL2018-008 (previously numbered Appl. #PL2018-004) - PRELIMINARY DEVELOPMENT PLAN - Animal Control Facility solar installation, 1991 SE Hamblen Rd; City of Lee's Summit, applicant.

Recommendation: Staff recommends APPROVAL of the preliminary development plan, subject to the following:

1. A modification shall be granted to the requirement that the ground mounted solar array be located in the rear yard, to allow the ground mounted solar array to be located within a side yard.
2. A modification shall be granted to the minimum 12 foot setback for the ground mounted solar array, to allow a minimum 10 foot setback from the side property line.
3. Development shall be in accordance with the preliminary development plan date stamped January 5, 2018.

Committee Recommendation: PLANNING COMMISSION ACTION: On motion of Mr. Funk and seconded by Mr. Lopez, the Planning Commission voted unanimously by voice vote to Recommend APPROVAL of Appl. #PL2018-008 (previously numbered Appl. #PL2018-004) - PRELIMINARY DEVELOPMENT PLAN - Animal Control Facility solar installation, 1991 SE Hamblen Rd; City of Lee's Summit, applicant, subject to staff's letter dated January 19, 2018.

LEE'S SUMMIT PLANNING COMMISSION ACTION LETTER

Tuesday, January 23, 2018

OPENING ROLL CALL:

Mr. Jason Norbury, Chair	Present	Mr. Jeff Sims	Present
Ms. Colene Roberts	Present	Mr. Herman Watson	Absent
Mr. Beto Lopez	Present	Ms. Dana Arth	Present
Mr. Donnie Funk, Vice Chair	Present	Ms. Carla Dial	Present
Mr. Don Gustafson	Present		

Also present were: Troy Thompson, Development Technician; Shannon McGuire, Planner; Jennifer Thompson, Planner; Ryan Elam, Director of Development Services; Josh Johnson, Assistant Director of Development Services; Dawn Bell, Project Manager; Kent Monter, Development Engineering Manager; Nancy Yendes, Chief Council of Infrastructure; Hector Soto, Manager Current Planning; Jeanne Nixon, Development Services Secretary and Jim Eden, Assistant Fire Chief.

1. APPROVAL OF AGENDA:

PLANNING COMMISSION ACTION: On motion of Mr. Funk and seconded by Mr. Lopez the Planning Commission voted unanimously by voice vote to **APPROVE** the agenda as published.

PUBLIC COMMENTS - None

CONSENT AGENDA

- A. **Appl. #PL2017-261 – SIGN APPLICATION** – Hush Lash Studio, 602 NE M-291 Hwy; A to Z Sign & Custom Neon, applicant
- B. **Minutes** of the January 9, 2018, Planning Commission meeting

PLANNING COMMISSION ACTION: On motion of Mr. Funk and seconded by Mr. Sims, the Planning Commission voted unanimously by voice vote to **APPROVE** the Consent Agenda as published.

PUBLIC HEARINGS:

- 2. **Appl. #PL2017-254 – SPECIAL USE PERMIT for in-home massage therapy** – 751 SW Old Pryor Rd; Delane Reed, applicant

PLANNING COMMISSION ACTION: On motion of Mr. Funk and seconded by Ms. Roberts, the Planning Commission voted unanimously by voice vote to **RECOMMEND APPROVAL** of **Appl. #PL2017-254 – SPECIAL USE PERMIT for in-home massage therapy** – 751 SW Old Pryor Rd; Delane Reed, applicant, subject to staff's letter dated January 19, 2018 and item 1.

3. **Appl. #PL2017-260 – UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT #64** – Article 2 Definitions, Article 9 Uses Permitted with Conditions and Article 10 Special Use Permits, establishing regulations for short-term rentals; City of Lee’s Summit, applicant

PLANNING COMMISSION ACTION: On motion of Mr. Funk and seconded by Mr. Lopez, the Planning Commission voted unanimously by voice vote to **RECOMMEND APPROVAL WITH AMENDMENTS** of **Appl. #PL2017-260 – UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT #64** – Article 2 Definitions, Article 9 Uses Permitted with Conditions and Article 10 Special Use Permits, establishing regulations for short-term rentals; City of Lee’s Summit, applicant, subject to staff’s letter dated January 19, 2018.

4. **Appl. #PL2018-008 (previously numbered Appl. #PL2018-004) – PRELIMINARY DEVELOPMENT PLAN** – Animal Control Facility solar installation, 1991 SE Hamblen Rd; City of Lee’s Summit, applicant

PLANNING COMMISSION ACTION: On motion of Mr. Funk and seconded by Mr. Lopez, the Planning Commission voted unanimously by voice vote to **RECOMMEND APPROVAL** of **Appl. #PL2018-008 – PRELIMINARY DEVELOPMENT PLAN** – Animal Control Facility solar installation, 1991 SE Hamblen Rd; City of Lee’s Summit, applicant, subject to staff’s letter dated January 19, 2018 and items 1-3.

OTHER AGENDA ITEMS - None

ROUNTABLE - None

ADJOURNMENT - Meeting adjourned at 5:45 pm

City of Lee's Summit

Development Services Department

January 19, 2018

TO: Planning Commission
PREPARED BY: Jennifer Thompson, Planner
CHECKED BY: Josh Johnson, AICP, Assistant Director of Plan Services
RE: **PUBLIC HEARING – Appl. #PL2018-008 – PRELIMINARY DEVELOPMENT PLAN – Animal Control Facility solar installation, 1991 SE Hamblen Rd; City of Lee's Summit, applicant**

Commentary

This application is to request approval for the installation of two ground-mounted solar collectors (arrays) at the Animal Control Facility located at 1991 SE Hamblen Rd. The solar arrays are proposed within the north side yard of the property and within ten (10) feet of the property line. The UDO states that ground-mounted solar arrays are to be located within a rear yard and at least twelve (12) feet inside the property line. The proposed location of the solar arrays requires modifications to the Unified Development Ordinance (UDO), Article 8. Accessory Uses and Structures. Staff supports the requested modifications.

Recommendation

Staff recommends **APPROVAL** of the preliminary development plan, subject to the following:

1. A modification shall be granted to the requirement that the ground mounted solar array be located in the rear yard, to allow the ground mounted solar array to be located within a side yard.
2. A modification shall be granted to the minimum 12 foot setback for the ground mounted solar array, to allow a minimum 10 foot setback from the side property line.
3. Development shall be in accordance with the preliminary development plan date stamped January 5, 2018.

Zoning and Land Use Information

Location: 1991 SE Hamblen Rd; Animal Control Facility

Current Zoning: PI (Planned Industrial)

Surrounding zoning and use:

North: PI (Planned Industrial) — City of Lee's Summit Maintenance Facility

South: PI (Planned Industrial) — City of Lee's Summit Resource Recovery Park

East: PI (Planned Industrial) — City of Lee's Summit Resource Recovery Park

West (across SE Hamblen Rd): PI (Planned Industrial) — vacant ground and industrial uses

Site Characteristics. The subject property is the site of the City of Lee’s Summit Animal Control Facility. There are two six (6) foot, chain link fenced areas both on the north and south sides of the facility. The south fenced area accommodates animals; the north fenced area is the location of the proposed solar arrays.

Description and Character of Surrounding Area. The subject property is located at 1991 SE Hamblen Rd., east of SE Hamblen Rd and south of SE Bailey Rd. The areas to the north, south and east are developed as the City’s Public Works Maintenance Facility (north) and the City’s Resource Recovery Park (south and east). The area west of SE Hamblen Rd is largely vacant with some industrial uses.

Project Information

Current Use: City of Lee’s Summit Animal Control Facility
Proposed Use: installation of two (2) ground mounted solar arrays
Land Area: 217,800 sq. ft.; five (5) acres

Public Notification

Neighborhood meeting conducted: n/a
Newspaper notification published: January 6, 2018
Radius notices mailed to properties within 185 feet: January 5, 2018

Process

Procedure: The Planning Commission makes a recommendation to the City Council on the proposed preliminary development plan. The City Council takes final action on the preliminary development plan application.
Duration of Validity: Preliminary development plan approval by the City Council shall not be valid for a period longer than twenty-four (24) months from the date of such approval, unless within such period a final development plan application is submitted. The City Council may grant one extension not exceeding twelve (12) months upon written request.

Unified Development Ordinance

Applicable Section(s)	Description
4.300, 4.310, 4.320	Preliminary Development Plan
8.150	Accessory Uses and Structures. Solar Collectors

Background

On June 15, 2017, a Lee’s Summit High School Student, Zach Burton, addressed the City Council in regards to a solar panel project he had been researching. He made a presentation and proposal to the City Council giving details on where the solar array should be placed and gave estimates on costs. The City Council directed staff to work with Mr. Burton to explore the project’s feasibility within the City’s budget. Staff then pursued an RFP process for a ‘design-build’ of the solar array. The bid was awarded to MC Power, who gave lease option for the equipment. The City entered into a lease agreement to commence the project.

Analysis of the Preliminary Development Plan

Ground-mounted solar arrays. Modification requested. Staff supports the requested modifications.

- Required – Ground-mounted solar arrays shall not exceed eight (8) feet in total height; shall be located within the rear yard at least twelve (12) feet inside the property line; and all lines serving the ground-mounted solar arrays shall be located underground.
- Proposed – The applicant requests to install two ground-mounted solar arrays that are eight (8) feet in height and are located within the north side yard approximately ten (10) feet from the property line. All lines serving the solar arrays will be located underground.
- Recommendation – Staff supports the modification requests. The ten (10) foot setback will provide additional spacing and clearance to make adjustments as needed between the two arrays and help ensure that the arrays will be able to fit in the desired location so as not to create and/or limit any possible shading concerns.

The proposed location of the solar arrays in the north “side yard” versus the rear yard is ideal because the north area is already enclosed by existing six (6) foot security fencing and is in relative close proximity to the existing electrical service where the solar arrays will tie into.

Code and Ordinance Requirements

The items in the box below are specific to this development and must be satisfactorily addressed in order to bring the plan into compliance with the Codes and Ordinances of the City.

Fire

1. IFC 605.11.4 Ground-mounted photovoltaic arrays. Ground-mounted photovoltaic arrays shall comply with Sections 605.11 through 605.11.2 and this section. Setback requirements shall not apply to ground-mounted, free-standing photovoltaic arrays. A clear, brush-free area of 10 feet (3048 mm) shall be required for ground-mounted photovoltaic arrays.

Planning

2. A building permit shall be obtained prior to the installation of the ground-mounted solar arrays.

Attachments:

1. Site Plan, date stamped January 5, 2018 – 1 page
2. Ground mounted unit specification sheet, date stamped January 5, 2018 – 1 page
3. Request for Modification, by applicant, date stamped January 5, 2018 – 1 page
4. Location Map

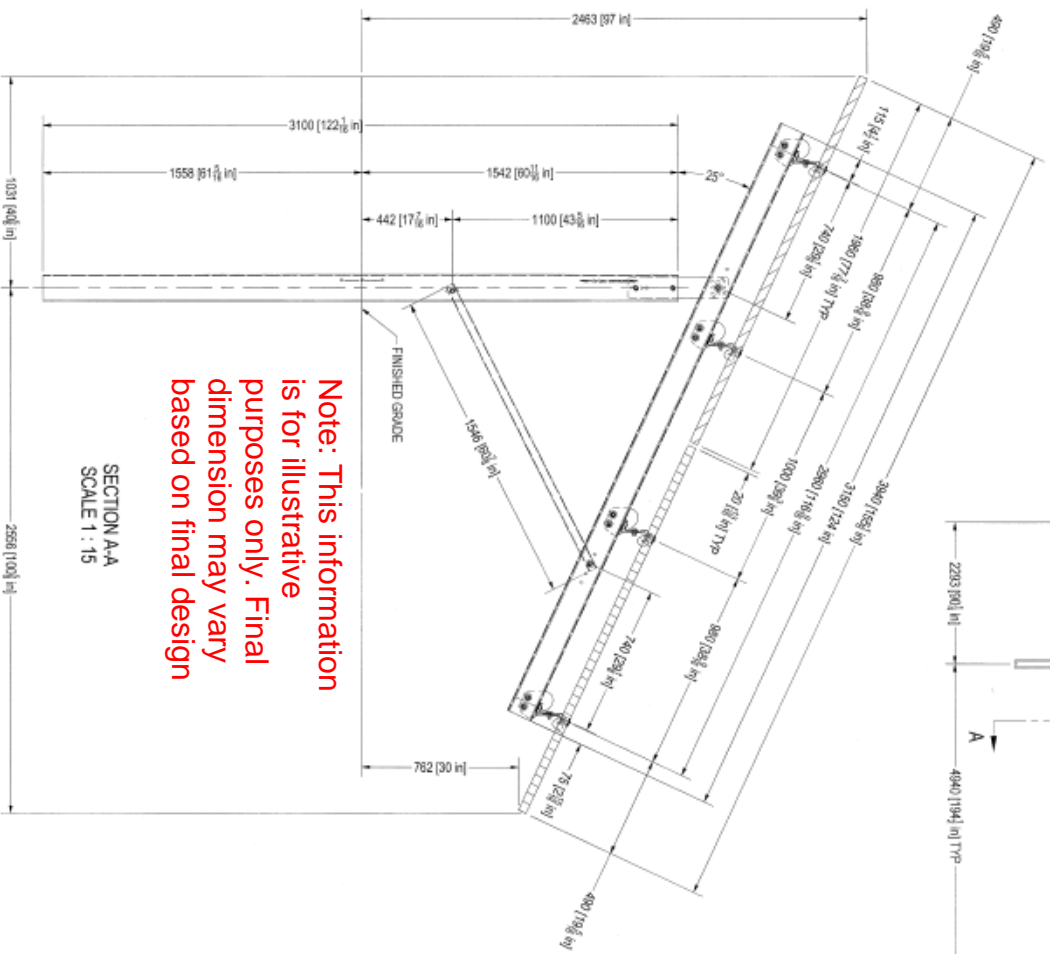
South array approx 10' from existing fence on west and 18' from existing fence on east. Approx 20' from existing drive to the south.
Approx 72' x 12' x 8' tall at highest point



North array approx 10' from existing fence all sides - approx 80' x 12' x 8' tall at highest point

Note: All measurements are estimates only and are subject to change based on site conditions and final design

AREA OF MINIMAL FLOOD HAZ



Note: This information is for illustrative purposes only. Final dimension may vary based on final design

SECTION A-A
 SCALE 1 : 15



January 12th, 2018

Dawn Bell
Project Manager, Development Center
City of Lee's Summit MO

Dear Mrs. Bell,

As requested I'm sending you the following letter to outline why we need to maintain the 10' setback and keep the solar array located to the north of the animal shelter in the "side yard" as originally proposed.

Maintaining the 10' setback will provide additional spacing and clearance to make adjustments as needed between the two arrays and help ensure that the arrays will be able to fit in the desired location and not create and/or limit any possible shading concerns.

The proposed location of the solar arrays in the north "side yard" is ideal because the area is already enclosed by security fencing and is in relative close proximity to the existing building electrical service location where the solar arrays will be tied into. Alternate locations, if available, could result in increased costs if additional security fencing were to be required and would increase costs to extend the service tie in line in relation to any increase in distance from the current proposed location.

If you have any additional questions or concerns regarding these items please don't hesitate to contact me.

Regards,

A handwritten signature in black ink, appearing to read "J. Merz", with a long horizontal line extending to the right.

Jeremy Merz
Project Manager
MC Power
816-251-4700

PL#2018-008-PRELIMINARY DEV PLAN GROUND MOUNTED SOLAR ARRAYS CITY OF LEE'S SUMMIT, APPLICANT



Packet Information

File #: BILL NO. 18-17, **Version:** 1

AN ORDINANCE APPROVING A PRELIMINARY DEVELOPMENT PLAN LOCATED AT 1991 SE HAMBLÉN ROAD IN DISTRICT PI, PROPOSED ANIMAL CONTROL FACILITY SOLAR INSTALLATION IN ACCORDANCE WITH THE PROVISIONS OF UNIFIED DEVELOPMENT ORDINANCE, NO. 5209, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

Proposed City Council Motion:

I move for a second reading of AN ORDINANCE APPROVING A PRELIMINARY DEVELOPMENT PLAN LOCATED AT 1991 SE HAMBLÉN ROAD IN DISTRICT PI, PROPOSED ANIMAL CONTROL FACILITY SOLAR INSTALLATION IN ACCORDANCE WITH THE PROVISIONS OF UNIFIED DEVELOPMENT ORDINANCE, NO. 5209, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

Committee Recommendation:

PLANNING COMMISSION ACTION: On motion of Mr. Funk and seconded by Ms. Roberts, the Planning Commission voted unanimously by voice vote to Recommend APPROVAL of Appl. #PL2018-008 (previously numbered Appl. #PL2018-004) - PRELIMINARY DEVELOPMENT PLAN - Animal Control Facility solar installation, 1991 SE Hamblén Rd; City of Lee's Summit, applicant, subject to staff's letter dated January 19, 2018.

BILL NO. 18-17

AN ORDINANCE APPROVING A PRELIMINARY DEVELOPMENT PLAN LOCATED AT 1991 SE HAMBLEN ROAD IN DISTRICT PI, PROPOSED ANIMAL CONTROL FACILITY SOLAR INSTALLATION IN ACCORDANCE WITH THE PROVISIONS OF UNIFIED DEVELOPMENT ORDINANCE, NO. 5209, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, Application #PL2018-008 submitted by The City of Lee's Summit, requesting approval of a preliminary development plan in District PI (Planned Industrial) on land located at 1991 SE Hamblen Road was referred to the Planning Commission to hold a public hearing; and,

WHEREAS, the Unified Development Ordinance provides for the approval of a preliminary development plan by the City following public hearings by the Planning Commission and City Council, and,

WHEREAS, after due public notice in the manner prescribed by law, the Planning Commission held a public hearing for the consideration of the preliminary development plan on January 23, 2018, and rendered a report to the City Council recommending that the preliminary development plan be approved; and,

WHEREAS, after due public notice in the manner prescribed by law, the City Council held a public hearing on February 1, 2018, and rendered a decision to approve the preliminary development plan for said property.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That a preliminary development plan is hereby approved in District PI on the following described property:

Section 16, Township 47 North, Range 31 West, in Lee's Summit, Jackson County, Missouri, being described as follows:

*ANIMAL CONTROL FACILITY, LOT 1, A SUBDIVISION IN LEE'S SUMMIT,
JACKSON COUNTY, MISSOURI.*

SECTION 2. That the following conditions of approval apply:

1. Development shall be in accordance with the preliminary development plan date stamped January 5, 2018.
2. A modification shall be granted to the requirement that the ground mounted solar array be located in the rear yard, to allow the ground mounted solar array to be located within a side yard.
3. A modification shall be granted to the minimum 12 foot setback for the ground mounted solar array, to allow a minimum 10 foot setback from the side property line.

BILL NO. 18-17

SECTION 3. That development shall be in accordance with the preliminary development plan, date stamped January 5, 2018, appended hereto and made a part hereof.

SECTION 4. Nonseverability. All provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, each other that no such provision would be enacted without all others. If a court of competent jurisdiction enters a final judgment on the merits that is not subject to appeal and that declares any provision or part of this ordinance void, unconstitutional, or unenforceable, then this ordinance, in its collective entirety, is invalid and shall have no legal effect as of the date of such judgment.

SECTION 5. That failure to comply with all of the provisions contained in this ordinance shall constitute violations of both this ordinance and the City's Unified Development Ordinance, enacted by Ordinance No. 5209 and amended from time to time.

SECTION 6. That this ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2018.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this ____ day of _____, 2018.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

South array approx 10' from existing fence on west and 18' from existing fence on east. Approx 20' from existing drive to the south.
Approx 72' x 12' x 8' tall at highest point

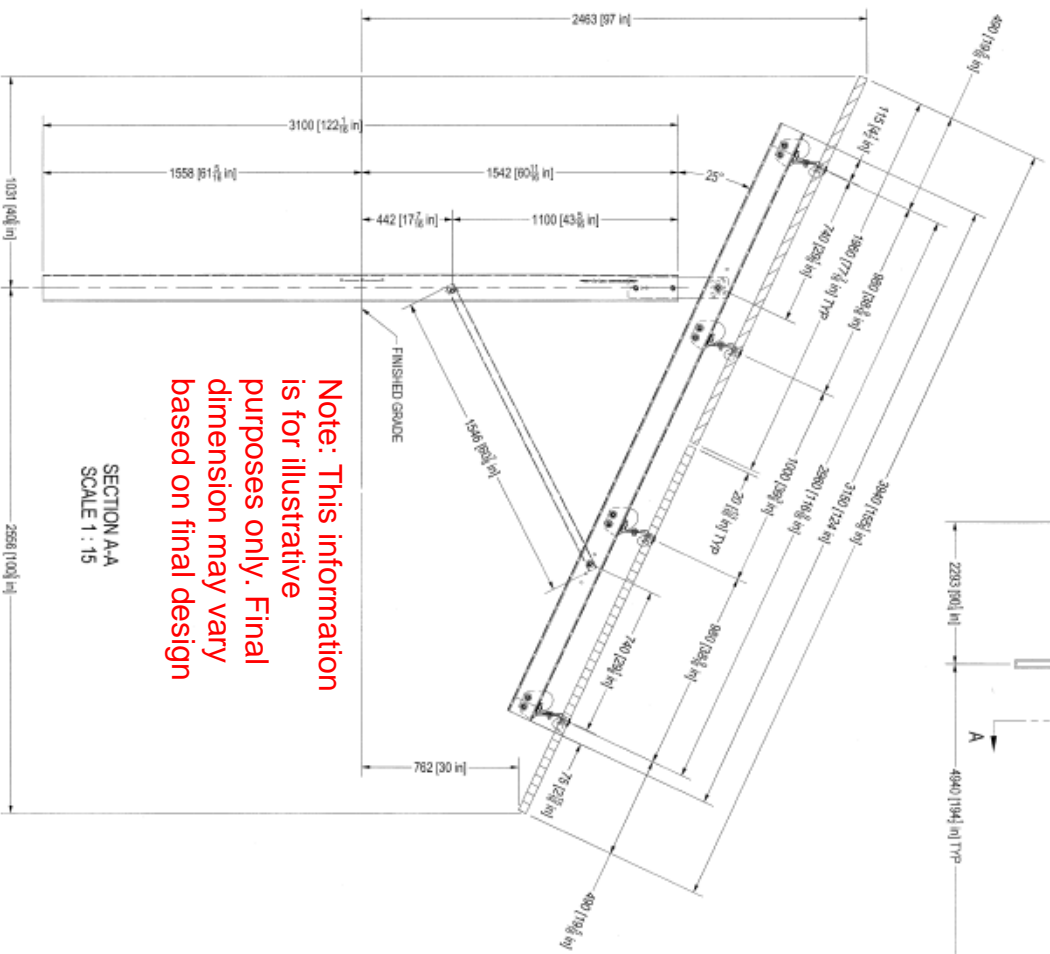


North array approx 10' from existing fence all sides - approx 80' x 12' x 8' tall at highest point

Note: All measurements are estimates only and are subject to change based on site conditions and final design

AREA OF MINIMAL FLOOD HAZ

774



PL#2018-008-PRELIMINARY DEV PLAN GROUND MOUNTED SOLAR ARRAYS CITY OF LEE'S SUMMIT, APPLICANT



Packet Information

File #: BILL NO. 18-18, **Version:** 2

AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN M-III LONGVIEW, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE FASCINATION AT NEW LONGVIEW DEVELOPMENT.

Issue/Request:

AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN M-III LONGVIEW LLC AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE FASCINATION AT NEW LONGVIEW DEVELOPMENT.

Key Issues:

n/a

Proposed City Council Motion:

I move for adoption of AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN M-III LONGVIEW LLC AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE FASCINATION AT NEW LONGVIEW DEVELOPMENT as part of the Consent Agenda.

Background:

On December 15, 2016, the City Council concluded a public hearing for Application #PL2016167, for Preliminary Development Plan, of approximately 13.2 acres of land generally lying between SW Longview Blvd., SW Fascination Dr., and SW Kessler Dr. titled "New Longview Commercial Phase II" also known as "Fascination at New Longview".

Impact/Analysis:

The approval of the Preliminary Development Plan required that the Developer enter into a Development Agreement with the City for road improvements required in the Traffic Impact Assessment (TIA). This agreement will meet the above stated requirement.

Timeline:

Start: ____

Finish: ____

Other Information/Unique Characteristics:

n/a

Presenter: Christopher Hughey, Project Manager

Recommendation: Staff recommends approval

Committee Recommendation: n/a

BILL NO. 18-18

AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN M-III LONGVIEW, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR VILLAGE AT VIEW HIGH DEVELOPMENT

WHEREAS, on December 15, 2016, the City Council concluded a public hearing for Application # PL2016167, for Preliminary Development Plan, of approximately 13.2 acres of land generally lying between SW Longview Blvd., SW Fascination Dr., and SW Kessler Dr., M-III Longview, LLC, a Delaware limited liability company ("Developer"), which will be developed as New Longview Commercial, Phase II (also referred to as Fascination at New Longview) ("Development"); and,

WHEREAS, following the public meetings for the Development, the City Council voted to approve the application for the Development subject to the Developer entering into a development agreement with the City to provide for certain Improvements, as defined within said agreement, necessary for the Development; and,

WHEREAS, in satisfaction of the City Council's condition of approval, the Developer and the City now desire to enter into this Agreement; and,

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the development agreement between M-III Longview, LLC, a Delaware limited liability company, and the City of Lee's Summit, Missouri, attached hereto and incorporated herein by reference, is hereby approved by the City Council and the City Manager is authorized to execute the same on behalf of the City of Lee's Summit, Missouri.

SECTION 2. That this ordinance shall be in full force and effect from and after the date of its adoption, passage and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2018.

ATTEST:

Mayor Randall L. Rhoads

City Clerk Trisha Fowler Arcuri

APPROVED by the Mayor of said city this ____ day of _____, 2017.

ATTEST:

Mayor Randall L. Rhoads

City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:

City Attorney Brian W. Head

**DEVELOPMENT AGREEMENT BETWEEN
M-III LONGVIEW, LLC AND THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE
NEW LONGVIEW COMMERCIAL, PHASE II DEVELOPMENT**

THIS AGREEMENT (“Agreement”) is made this ____ day of January, 2018, by and between **M-III Longview, LLC**, a Delaware limited liability company (the “Developer”), and the **City of Lee’s Summit, Missouri**, a municipal corporation (“City”).

WHEREAS, on December 15, 2016, the City Council concluded a public hearing for Application #PL2016167, for Preliminary Development Plan, of approximately 13.2 acres of land generally lying between SW Longview Blvd., SW Fascination Dr., and SW Kessler Dr., on property legally described in **Exhibit A** (“Property”), comprised of the “Developer Property” and the “Yarco Property” (each as defined below), which will be developed as the New Longview Commercial, Phase II (“Development”) as shown in **Exhibit B**, a map of the Preliminary Development Plan;

WHEREAS, following the public hearing for the Development, the Council voted to approve the application for the Development, subject to the Developer entering into a development agreement with the City to provide for the certain “Improvements” (as defined below) necessary for the Development;

WHEREAS, in satisfaction of the City Council's condition of approval, the Developer and the City now desire to enter into this Agreement;

WHEREAS, the parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Development on the public services provided by the City and other public jurisdictions and on facilities that are constructed and maintained by the City and other public jurisdictions; and

WHEREAS, the parties have freely negotiated in good faith and this Agreement reflects the desires of the parties.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** Words or terms not defined elsewhere in this Agreement shall have the following definitions:
 - A. “**Certificate of Final Acceptance**” as defined in the Design and Construction manual as adopted by the City of Lee’s Summit.
 - B. “**Certificate of Occupancy**” as defined in Chapter 7, Lee’s Summit Building Code, as adopted by the City of Lee’s Summit.
 - C. “**Certificate of Substantial Completion**” as defined in the Design and Construction manual as adopted by the City of Lee’s Summit

- D. **“City Engineer”** shall mean the City Engineer or their designated representative.
- E. **"Developer"** shall mean M-III Longview, LLC or its successors and assigns in the Property.
- F. **“Developer Property”** shall mean and refer to the portion of the Development land owned by Developer as of the date of this Agreement.
- G. **“Improvements”** shall mean, collectively, the Road Improvements, Sanitary Sewer Improvements, Sidewalk Improvements and Water Line Improvements (each as defined below).
- (1) **“Road Improvements”** shall mean and refer to the construction of a traffic signal at the intersection of 3rd Street and Kessler Drive with interconnect to the adjacent traffic signal at Longview Boulevard.
 - (2) **“Sanitary Sewer Improvements”** shall mean the sanitary sewer infrastructure improvements serving the Developer Property to be constructed by Developer in the location(s) shown on **Exhibit B**.
 - (3) **“Sidewalk Improvements”** shall mean and refer to the sidewalk improvements to be constructed by Developer in the location(s) shown on **Exhibit B**.
 - (4) **“Water Line Improvements”** shall mean and refer to the water line infrastructure improvements serving the Developer Property to be constructed by Developer in the location(s) shown on **Exhibit B**.
- H. **"Phasing of Development"** shall mean any and all development that occurs within the Development.
- (1) Phase I shall consist of the B&B Theater New Longview 7, to be constructed on the Developer Property, and the Yarco Development Senior Multi-Family of 172 dwelling units, to be constructed by Yarco on the Yarco Property.
 - (2) Phase II shall consist of any development beyond the specific developments listed in Phase I and generally includes retail and office uses, restaurant uses, medical office, outdoor performance area, and a commercial parking deck (if constructed).
- I. **"Preliminary Development Plan"** shall mean the preliminary development plan for the Development approved by Ordinance No. 8034 on December 15, 2016.
- J. **“Roadway Improvement, Sidewalk and Utility Easement Agreement”** shall mean and refer to the agreement pursuant to which Developer shall dedicate the Improvements to the City, and the City shall thereafter maintain such Improvements, as contemplated under **Section 2.J, "Dedication"** of this Agreement.

- K. “**Staff**” shall mean employees of the City of Lee’s Summit.
- L. “**Temporary Certificate of Occupancy**” as defined in Chapter 7, Lee’s Summit Building Code, as adopted by the City of Lee’s Summit.
- M. “**Yarco**” shall mean Yarco-Devco, L.L.C., a Missouri limited liability company.
- N. “**Yarco Property**” shall mean and refer to the portion of the Development land owned by Yarco as of the date of this Agreement.

2. **Requirements for Improvements.** Unless otherwise specified herein, the provisions set forth in this Section 2, “Requirements for Improvements” shall be applicable to the financing, design, engineering and construction of the Improvements to be constructed by the Developer as required by this Agreement.

- A. Requirement to design, engineer and construct. The Developer, at its sole cost and expense, shall design, engineer and construct the Improvements. The City shall issue certificates of occupancy for structures in the Development pursuant to the schedule set forth in Section 3, “Timing of Issuance of Certificate of Occupancy” below.
- B. Construction Costs. All costs associated with designing, engineering and constructing of the Improvements shall be paid by the Developer. No cost shall be paid by the City for designing, engineering, constructing or managing the construction of any of the Improvements.
- C. Applicable Standards and Approvals. The Improvements shall be designed, engineered, constructed, placed into service and dedicated to the City in accordance with the ordinances of the City, including, but not limited to, the City’s Design and Construction Manual then in effect at the time the Improvements are constructed, and any other applicable rules, requirements and standards established by the City, and as provided in the Road Improvement, Sidewalk and Utility Easement Agreement. All such work shall be done in good and workmanlike manner. The Developer shall be responsible for obtaining approval for any portion of the Improvements that require approval of another jurisdiction. The City agrees to cooperate in good faith with the Developer in obtaining said required approvals from other jurisdictions for the Improvements.
- D. Project Schedule. Prior to the construction of the Improvements the Developer shall submit to the City Engineer a proposed Project Schedule for the Improvements to be constructed by the Developer. No permits will be issued for the Developer Property until the schedule has been reviewed by the City Engineer and staff of departments directly impacted by the timing of the Improvements. If conflicts with the schedule are determined, Staff shall return the schedule with comments, to be resubmitted by the Developer. The Developer shall be notified once it is determined that no conflicts exist with the schedule. The Project schedule shall be incorporated into this Agreement by addendum, and no action of the City Council will be required to incorporate the schedule.

E. Design Phase. The Developer shall submit all preliminary design documents to the City for approval before proceeding with the construction of the Improvements. On the basis of such approved preliminary design documents, the Developer shall:

- (1) Prepare detailed drawings, plans, design data, and estimates to show the character and scope of the work to be performed by contractors for all Improvements ("**Plans**").
- (2) Furnish to the City Engineer copies of such Plans and other documents and design data as may be required to secure approval of such governmental authorities as may have jurisdiction over design criteria applicable to the Improvements.
- (3) Furnish the number of approval copies of the final Plans for the Improvements as the City may require.
- (4) Ensure that the Plans conform to federal and state laws and City ordinances and regulations.

All final Plans shall be presented to the City Engineer for approval, and no action of the City Council will be required to incorporate the final Plans into this Agreement.

F. Construction. The Developer will construct all the Improvements according to the approved Plans. The Developer shall maintain, at its sole cost and expense, the Improvements, until such time as said Improvements are accepted by the City Engineer pursuant to Section 2.J, "Dedication" of this Agreement. The Developer shall not do or permit others under it to do any work related to the construction of the Improvements, until the Developer has paid for all required City and other governmental required permits and authorizations.

G. Right of Way Acquisition.

- (1) The Developer shall be responsible for acquiring or negotiating for the donation of any right-of-way or easements that are needed to construct the Improvements, including any necessary temporary construction easements.
- (2) In the event that the Developer is unable, after good faith negotiations, to acquire some or all of the right-of-way or easements necessary for those Improvements over which the City exercises jurisdiction, the Developer may submit a request to the City in the manner prescribed by Section 26, "Notice" below requesting that the City use its authority to acquire the property interests necessary for the Improvements. The City will respond to such a request within thirty (30) days of receipt of same, and in such response the City will indicate whether it agrees to enter into good faith negotiations or exercise its power of eminent domain to acquire the right-of-way or easements necessary for Improvements over which the City

exercises jurisdiction. The City is not obligated to use its authority to assist in the acquisition of property interests necessary for the Improvements.

- (3) In the event the City agrees to enter into good faith negotiations or exercise its power of eminent domain to acquire the right-of-way or easements necessary for Improvements over which the City exercises jurisdiction, prior to beginning any work to acquire said right-of-way or easements, the Developer shall first execute an Acquisition Funding Agreement with the City which provides for the terms and conditions under which the Developer will place all estimated Acquisition Costs in escrow with the City prior to commencement of condemnation for right-of-way or easements. The Acquisitions Costs shall include, but shall not be limited to: the actual price paid for all right-of-way or easements, whether determined by negotiation or eminent domain; expenses related to the establishment of acquisition values of right-of-way or easements, including appraisals; legal fees, other expenses paid to third parties, and expenses incurred by the City related to acquisition of right-of-way or easements, whether through negotiation or eminent domain; and any other reasonable and necessary costs or expenses related to acquisition of the right-of-way or easements. The Acquisition Funding Agreement shall obligate the Developer to reimburse the City in full for all Acquisition Costs that result from the City's use of its authority to acquire any portion of the Improvements.
- (4) The Developer shall dedicate or convey, as applicable, to the City, at no cost to the City, all property interests owned by the Developer which are necessary for the Improvements.

- H. Utility Relocation. The parties agree that all costs associated with relocating any existing utilities from any existing public or private easement, as a result of construction of the Improvements, shall be paid by the Developer, and are not the responsibility of the City. The parties agree that all costs associated with relocating any existing utilities from any existing right-of-way as a result of construction of the Improvements, which are not paid by a utility company, shall be paid by the Developer and are not the responsibility of the City.
- I. Inspections and Revisions. The Developer agrees to permit City employees, agents and contractors to inspect, observe, and oversee the construction of all Improvements in order to ascertain and determine that the standards of the City have been met. The Developer shall obtain the City Engineer's approval of all revisions materially altering the design or specifications of the Improvements.
- J. Dedication. Upon completion, inspection and approval of the Improvements by the City, the Developer will dedicate the Improvements to the City, for its use, operation and maintenance pursuant to the Roadway Improvements, Sidewalk and Easement Agreement in form reasonably acceptable to the City and Developer. The City shall be under no obligation to accept the dedication or conveyance of any Improvements constructed pursuant to this Agreement until it has been inspected

and approved to the satisfaction of the City Engineer and the parties have approved the form of Roadway Improvements, Sidewalk and Utility Easement Agreement. Upon written notice of the inspection and approval of the City Engineer, the Developer agrees to convey all the Improvements to the City free and clear of all liens and encumbrances or other obligations. Said conveyance shall be pursuant to the Roadway Improvements, Sidewalk and Utility Easement Agreement, and shall be sufficient, in the reasonable opinion of the City Attorney, to convey easement and other rights of record, with respect to the Improvements as set forth in Title Standard 4 of the Missouri Bar and as contemplated in this Agreement.

3. **Timing of Issuance of Certificates of Occupancy.**

- A. A Certificate of Occupancy for development within Phase I will not be issued until:
- a. The Developer and City have entered into the Roadway Improvements, Sidewalk and Easement Agreement and the same has been recorded in the real property records of Jackson County, Missouri; and
 - b. A recorded conveyance of private tracts along Longview Boulevard and other locations along or within the subdivision(s) generally described or in association with New Longview, Tower Park and Kessler; also generally identified as Tracts C, D, E, F, G, H, J of Tower Park Commercial Phase 1, Tract J of Tower Park Commercial Phase 2, and Tracts J, K, L, M, N, O, P, Q, R, S, U of New Longview Roadway Plat, to the City as public right-of-way. The City hereby acknowledges and agrees that the condition set forth in this subsection 3.A.b has been satisfied prior to the date of this Agreement.
 - c. The Developer shall create a property owners association that will hold title to, and maintain, all common areas within the Developer's Property at the time of the execution of this Agreement and have the same restrictions, duties, powers and responsibilities as a property owners association under Sections 5.340, 5.350, 5.360 and 16.150.E of the City's Unified Development Ordinance.
- B. A Temporary Certificate of Occupancy will not be issued for development within Phase II until either a Certificate of Substantial Completion or a Certificate of Final Acceptance has been issued for the Road Improvements as outlined in Section 1., "Definitions". An escrow deposit for full cost of the Road Improvements may be provided in lieu of construction thereof if no more than one traffic "Signal Warrant" (as defined in the Manual on Uniform Traffic Control Devices and determined by the City Traffic Engineer) is satisfied at the time development within Phase II commences.

3. **Indemnification.**

- A. General Indemnity. The Developer shall indemnify, release, defend, be responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and

against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any act, error, or omission of the Developer or its officers, agents, employees, or subcontractors, to the extent such loss or injury arises out of or is related to the performance of this Agreement; provided, however, that the Developer need not save harmless the City from claims, demands, losses and expenses arising out or to the extent caused by the sole negligence of the City, its employees or agents. This indemnification obligation shall survive the termination or expiration of this Agreement.

- B. No Limitations or Waiver. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement, or by a limitation of the amount or type of damages or compensation payable by or for the Developer under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by the Developer. The City does not, and shall not, waive any rights against the Developer which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by the Developer, of any of the insurance policies described in this Agreement. In addition, the parties agree that this indemnification by the Developer shall not be limited by reason of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- C. Notification of Claims. With respect to any claims which are subject to indemnity hereunder, the Developer shall immediately notify the City of any and all claims filed against the Developer or the Developer and the City jointly, and shall provide the City with a copy of the same. Such notice shall be given in the manner prescribed by Section 26, "Notice" of the Agreement.
- D. Use of Independent Contractors. The fact that the Developer carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, the Developer's duty of defense and indemnification under this section.

5. **Insurance**.

- A. General Provisions. Prior to commencing construction of the Improvements, the Developer shall file with the City evidence of liability insurance that is consistent with the requirements of the City's Design and Construction Manual and in the amounts set forth below.
- B. Limits and Coverage. Bodily Injury and Property Damage, Commercial General Liability Coverage – Occurrence Form unless otherwise agreed by the City:

- (1) Commercial General Liability: Minimum \$2,000,000 each occurrence limit for bodily injury and property damage; \$2,000,000 policy aggregate; \$2,000,000 products and completed operations aggregate.
- (2) Automobile Liability: Minimum \$2,000,000 combined single limit for bodily injury and property damage; applicable to owned, non-owned and hired automobiles.
- (3) Workers' Compensation: As required by state statute; if exempt, must submit letter stating the exemption; employer's liability \$1,000,000 each occurrence.
- (4) Umbrella/Excess Liability: An umbrella or excess liability policy in the minimum amount of \$2,000,000 each occurrence and aggregate; at least as broad as the underlying general liability, automobile liability and employer's liability.

The following endorsements shall attach to the policy:

- (1) The policy shall cover personal injury as well as bodily injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad form property damage liability shall be afforded.
- (4) The City shall be listed as an additional insured.
- (5) Standard form of cross-liability shall be afforded.
- (6) The policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity.

- C. Use of Contractors and Subcontractors. The Developer shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Section and the City's Design and Construction Manual. Said insurance shall be maintained in full force and effect until the completion of construction of the Improvements, and issuance of a Certificate of Substantial Completion by the City or MoDOT, as appropriate.

- D. Workers' Compensation. The Developer shall ensure that all contractors or subcontractors performing work for the Developer obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, the Developer shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with State laws, and to fully protect the City from any and all claims arising out of occurrences during construction of the Improvements. The Developer agrees to hold harmless, indemnify and reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City as a result of the failure of either the Developer or any contractor or subcontractor of the Developer to obtain and maintain such insurance. The Developer further waives its rights to subrogation with respect to any claim against the City for injury arising out of performance under this Agreement. The Developer shall provide the City with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the Improvements.
6. Bonds. The Developer shall, or shall ensure that its contractors shall, provide for the following bonds for the Improvements and all other public infrastructure improvements that are constructed by the Developer and dedicated to the City.
- A. Performance Bond. Prior to commencement of construction and ending upon acceptance of the Improvements by the City, the Developer shall, or shall ensure that its contractors shall, maintain a Performance Bond in a form approved by the City Attorney, in an amount equal to the cost of the Improvements covered by such bond, as determined by the City Engineer, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The Performance Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.
- B. Payment Bonds. Prior to commencement of construction and ending upon acceptance of the Improvements by the City, the Developer shall, or shall ensure that its contractors shall, maintain a Payment Bond in a form approved by the City Attorney, in an amount equal to the cost of the Improvements covered by such bond, as determined by the City Engineer, conditioned upon the faithful payment of the provisions, terms and conditions of the construction contract. The Payment Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.
- C. Maintenance Bonds. Prior to acceptance and dedication of the Improvements, the Developer shall, or shall ensure that its contractors shall, provide a Maintenance Bond in a form approved by the City Attorney, in an amount equal to fifty percent (50%) of the cost of the Improvements as approved by the City Engineer, which shall be in effect for a term of three (3) years from the date that the City issues a Certificate of Substantial Completion for such Improvements covered by the bond, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The Maintenance Bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.

- D. **Indemnity for Failure to Provide Bonds.** The Developer shall indemnify the City and its officers and employees for any damage or loss incurred or sustained by the City, its officers or employees, as a result of the failure of the Developer or its contractors to provide the bonds set forth in this Section.
7. **Prevailing Wage.** To the extent required by law, the Developer, and all contractors and subcontractors performing work for or on behalf of the Developer with respect to the Improvements, shall pay wages in accordance with, and in all respects comply with, Missouri's Prevailing Wage Law (Sections 290.210 – 290.340, RSMo.) and all other laws relating to the payment of wages. The Developer agrees to hold harmless, indemnify and reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City with regard to the failure of the Developer or any contractor or subcontractor to pay prevailing wages as required by law or this Agreement. The Developer shall submit sufficient information to the City's Director of Finance to allow City staff to verify that the Developer, and its contractors and subcontractors, have complied with prevailing wage laws and regulations.
8. **Remedies.** Each party to this Agreement agrees that if it fails to perform when due any act required by this Agreement to be performed, then, in addition to whatever other remedies are available to the non-defaulting parties hereto, the non-defaulting party shall have the right to enforce specific performance of this Agreement against the defaulting party, and such non-defaulting party shall, to the extent permitted by law, be entitled to its reasonable costs, attorneys' fees and court costs in connection with such enforcement.
9. **Rights and Remedies Non-Exclusive.** No right or remedy conferred upon or reserved to any party in this Agreement is intended to be exclusive of any rights or remedies, and each and every right and remedy shall be cumulative and shall be in addition to every right and remedy given now or hereafter existing at law or in equity.
10. **Non-Waiver.** No waiver of any condition or covenant contained in this Agreement or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
11. **Applicable Law.** This Agreement shall be governed by and construed according to the laws of the State of Missouri.
12. **Venue.** In the event this Agreement is litigated, venue shall be proper only in the Circuit Court of Jackson County, and the parties expressly waive any rights to venue inconsistent therewith.
13. **City Requirements and Prior Approval.** The Developer agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's Unified Development Ordinance, the Design and Construction Manual, and all planning or infrastructure requirements related to the development of the Property. The Developer acknowledges and agrees that the City is not, and shall not be, in any way liable for damages, losses or injuries that may be sustained as a result of the City's review and

approval of any Plans or Plats of or relating to the Development, the Property or the Improvements, or as a result of the issuance of any approvals, permits, certificates or acceptances for the development or use of any portion of the Development, the Property or the Improvements. The Developer further acknowledges and agrees that the City's review and approval of any such Plans or Plats and the issuance of any such approvals, permits, certificates or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its successors, assigns, tenants, licensees or any third party, against damage or injury of any kind at any time. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which the Developer must comply and does not in any way constitute prior approval of any future proposal for development.

14. **Recording and Binding Effect.** No building permits shall be issued for any structure in the development until the agreement has been fully executed. The City shall file a copy of this Agreement or a memorandum of this Agreement in the office of the Recorder of Deeds for Jackson County, Missouri ("Office"). This Agreement shall run with the land and be binding on and inure to the benefit of the parties and their respective legal representatives, successors in interest, successors and assigns. Upon certification by the City Engineer of the completion of the Developer's obligations under this Agreement, the City Manager, in his sole discretion, may execute, on behalf of the City, a document suitable for recording in the Office, in such form as is approved by the City Attorney that acknowledges the completion of the Developer's obligations under the Agreement.
15. **Time of Essence.** Time is of the essence with respect to the duties and obligations set forth herein.
16. **Estoppel Letter.** Within 10 business days after any request by Developer from time to time, the City shall prepare and deliver to Developer an executed estoppel letter confirming for the benefit of any purchaser, lender and/or tenant whether the Developer is or is not in default under this Agreement and verifying the status of Developer's performance of its obligations under this Agreement.
17. **Representations.** The Developer represents that it owns the property described in **Exhibit A** on the date that this Agreement is executed. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions; and (d) has not assigned or transferred any claim against the other party that is the subject of this Agreement. The parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Development on the public services provided by the City and other public jurisdictions and on facilities that are constructed and maintained by the City and other public jurisdictions.
18. **No Waiver of Breach.** No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

19. **Rules of Construction.** Each party to this Agreement has received independent legal advice from its attorneys of choice with respect to entering this Agreement and the advisability of agreeing to the provisions herein. Because each party has had its respective legal counsel review the terms of this Agreement, the normal rules of construction to the effect that any ambiguities in its terms be resolved against the drafting party shall not be employed with regard to issues of its validity, interpretation, performance or enforcement.
20. **Assignment.** The Agreement may not be assigned or transferred, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the other parties, which consent shall not be unreasonably withheld; provided, however, notwithstanding the foregoing, Developer may assign this Agreement to any entity that controls, is controlled by, or is under common control with the Developer entity hereunder without the City's approval (provided that no such assignment shall release Developer from its obligations under this Agreement). Subject to the foregoing, Developer shall request the consent of the City to any assignment of this Agreement to any person, firm, corporation, or entity to which any ownership interest in the Developer Property is transferred after the date of execution of this Agreement.
21. **Development of Yarco Property.** The City and Developer hereby acknowledge and agree that, except as otherwise expressly set forth in this Agreement, (i) Developer shall have no obligation to perform any work or construct any improvements on or with respect to the Yarco Property as a condition to its right to develop the Developer Property as contemplated herein, and (ii) the City shall not require the performance of any work or construction of any improvements (or satisfaction of any other conditions) on or with respect to the Yarco Property as a condition to the issuance of any permits, certificates of occupancy or other approvals necessary for the development of the Developer Property.
22. **Entire Agreement.** This Agreement and the acts provided for herein is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all parties.
23. **Exhibits.** All Exhibits referenced in this Agreement are incorporated into this Agreement by such reference as if set forth in full in the text of this Agreement.
24. **Headings.** The paragraph headings contained herein are for convenience in reference and are not intended to modify, expand or limit the scope of any provision of the Agreement.
25. **Severability.** Any provision of this Agreement which is not enforceable according to law will be severed herefrom, and the remaining provisions shall be enforced to the fullest extent permitted by law.
26. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

27. **Notice.** Any notice required by this Agreement shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, and addressed as hereinafter specified.

Any notice to the City shall be addressed to:

City Manager
City Hall
220 SE Green Street
Lee's Summit, Missouri 64063

With a copy to:

City Attorney
City Hall
220 SE Green Street
Lee's Summit, Missouri 64063

Notices to Developer shall be addressed to:

Corey Walker, Senior
Platform Ventures
4220 Shawnee Mission Parkway, Suite 200-B
Fairway, Kansas 66205

With a copy to:

Sean D. Ervin
Rouse Frets Gentile Rhodes
5250 W. 116th Place, Suite 400
Leawood, Kansas 66211

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days' written notice thereof.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date first above written.

CITY:

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Stephen A. Arbo, *City Manager*

Attest:

Trisha Fowler Arcuri, *City Clerk*

Approved as to form:

Brian W. Head, *City Attorney*

DEVELOPER:

M-III LONGVIEW, LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

Notary for City of Lee's Summit

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. Arbo, the City Manager of the City of Lee's Summit, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who are personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

Notary for M-III Longview, LLC

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, the _____ of _____, who is personally known to me to be the same person who executed the within instrument on behalf of _____, and such person duly acknowledged the execution of the same to be the act and deed of _____.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

END OF DOCUMENT

EXHIBIT A

LEGAL DESCRIPTION FOR PROPERTY

DEVELOPER PROPERTY

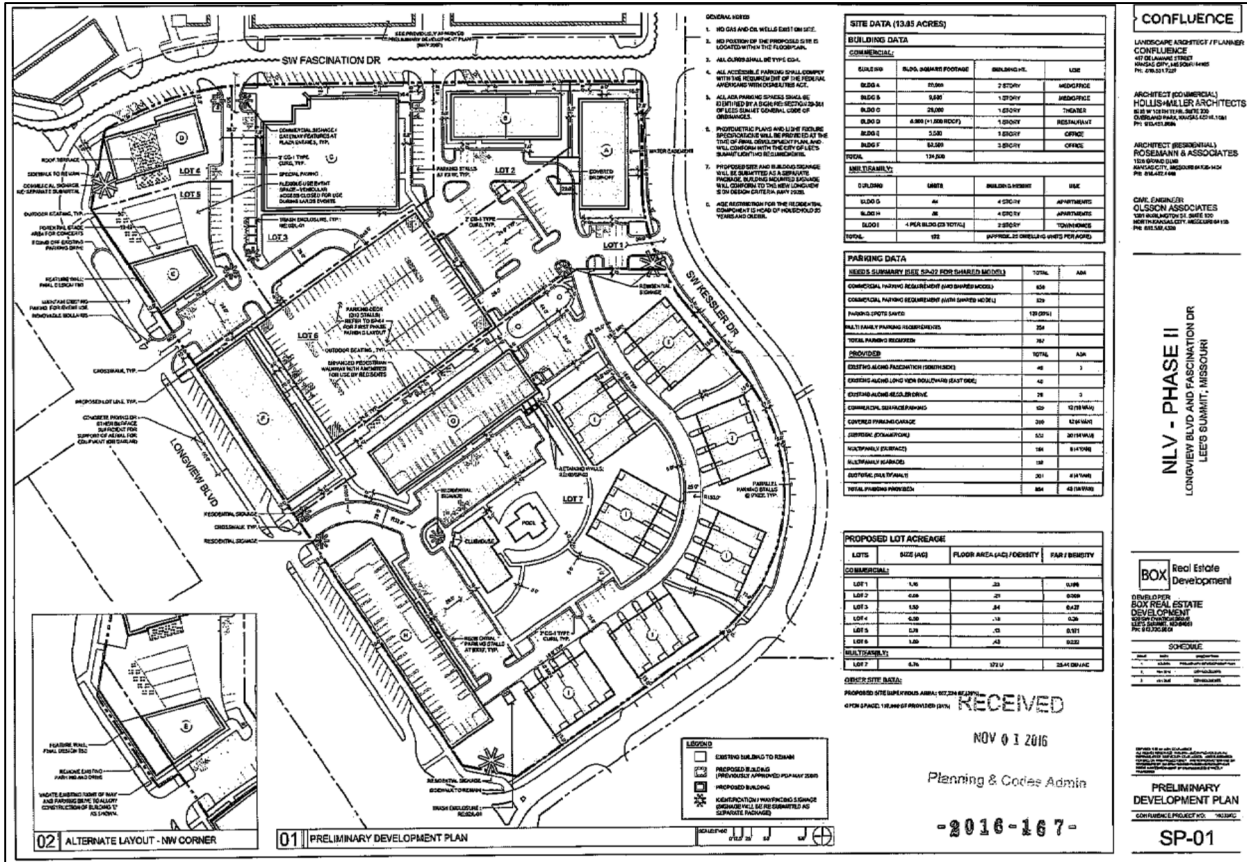
“Fascination at New Longview, Lot 1”

YARCO PROPERTY

“Fascination at New Longview, Lot 2”

EXHIBIT B

MAP OF THE PRELIMINARY DEVELOPMENT PLAN



Packet Information

File #: BILL NO. 18-19, **Version:** 1

AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 26, STREETS, SIDEWALKS AND OTHER PLACES, OF THE CITY CODE OF THE CITY OF LEE'S SUMMIT, MISSOURI TO PROVIDE FOR CONSISTENT MANAGEMENT WHILE PRESERVING THE CITY'S AUTHORITY OVER THE USE OF ITS RIGHTS-OF-WAYS.

Proposed City Council Motions:

FIRST MOTION: I move for second reading of AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 26, STREETS, SIDEWALKS AND OTHER PLACES, OF THE CITY CODE OF THE CITY OF LEE'S SUMMIT, MISSOURI TO PROVIDE FOR CONSISTENT MANAGEMENT WHILE PRESERVING THE CITY'S AUTHORITY OVER THE USE OF ITS RIGHTS-OF-WAYS.

SECOND MOTION: I move for adoption of AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 26, STREETS, SIDEWALKS AND OTHER PLACES, OF THE CITY CODE OF THE CITY OF LEE'S SUMMIT, MISSOURI TO PROVIDE FOR CONSISTENT MANAGEMENT WHILE PRESERVING THE CITY'S AUTHORITY OVER THE USE OF ITS RIGHTS-OF-WAYS.

Issue/Request

Consideration and adoption of AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 26, STREETS, SIDEWALKS AND OTHER PLACES, OF THE CITY CODE OF THE CITY OF LEE'S SUMMIT, MISSOURI TO PROVIDE FOR CONSISTENT MANAGEMENT WHILE PRESERVING THE CITY'S AUTHORITY OVER THE USE OF ITS RIGHTS-OF-WAYS.

Key Issues:

- The City has the primary responsibility for the maintenance and managing uses of the City's rights-of-way under State and federal law
- The last major update of Chapter 26 to deal with managing the right-of-way occurred in 2009 with passage of Ordinance No. 6869
- Federal and State law changes have occurred since 2009 and staff recommends updating Article III to reflect those changes
- The entities seeking to use the rights-of-way and the technologies that would be installed or constructed in the rights-of-way have also changed since 2009
- The City has authority to manage its rights-of-way in a manner that treats similarly situated competitors in a competitively neutral and nondiscriminatory way

- Adoption of the Ordinance will provide a framework to treat all users of the rights-of-way in a consistent manner while recognizing private property rights

Background:

Cities “own” rights-of-way in trust for the public and have a nondelegable duty to maintain them in a safe condition for the travelling public. Utility users of the right-of-way are required to obtain consent from the City to install facilities and equipment within the rights-of-way. The right-of-way is a finite resource that the City invests millions of dollars in to construct and maintain it for its intended uses. As the entity entrusted with management and the “owner” of the right-of-way, it falls to the City within its resources and as allowed or required by law to balance the needs and uses of the entire community including adjacent landowners when acting. The City does not have in place any telecommunications franchises. This Ordinance will allow users to obtain a “license” agreement when applying for and accepting a permit for work on the right-of-way. A user may also file an acknowledgement on a form approved by the City Attorney. This proposed Ordinance will permit the City to exercise the greatest amount of authority to carry out its responsibilities with respect to the right-of-way. The PowerPoint which was presented at the Council’s meeting of January 18, 2018, is attached to provide additional background information.

At the January 18, 2018 meeting, Council requested that staff bring back an ordinance as discussed in the presentation for its consideration and possible adoption. The attached ordinance is presented in response to that direction.

Presenter: Nancy K. Yendes, Chief Counsel, Infrastructure and Planning

Recommendation: Staff recommends adoption of the proposed ordinance in Council’s packet.

BILL NO. 18-19

AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 26, STREETS, SIDEWALKS AND OTHER PLACES, OF THE CITY CODE OF THE CITY OF LEE'S SUMMIT, MISSOURI TO PROVIDE FOR CONSISTENT MANAGEMENT WHILE PRESERVING THE CITY'S AUTHORITY OVER THE USE OF ITS RIGHTS-OF-WAYS.

WHEREAS, the City of Lee's Summit owns rights-of-ways and is responsible for the management and care of this finite resource; and,

WHEREAS, the City is desirous of allowing use and consistent access of the rights-of-way to vehicular and pedestrian traffic and use by utility service companies under State and federal law; and

WHEREAS, new technologies, users and service providers seek access and use of this finite resource in number and space not requested previously; and

WHEREAS, the City is desirous of adopting Code provisions which preserves its authority while permitting appropriate use of the rights-of-way for its original intended use and by utility service providers that is consistent, safe, appropriate, nondiscriminatory and competitively neutral.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That Article III, Right-of-Way Management, of Chapter 26, Streets, Sidewalks and Other Public Places, is here by amended to read as set out on Exhibit "A" to this Ordinance, wherein deletions and additions of language are shown, and said Exhibit "A" is hereby incorporated by reference as if fully set forth herein.

SECTION 2. Nothing in this ordinance shall be construed to affect any suit or proceeding now pending in any court or any rights acquired or liability incurred nor any cause or causes of action occurred or existing, under any language, act or ordinance repealed hereby. Nor shall any existing right or remedy of any character be lost, impaired, or affected by this ordinance.

SECTION 3. That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 4. That should any section, sentence or clause of this ordinance be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences, or clauses.

SECTION 5. That it is the intention of the City Council, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of the Code of Ordinances for the City of Lee's Summit, Missouri and shall be numbered as set out on Exhibit "A" or as the Codifier of the City's Code shall assign that are consistent with the intent of this Ordinance.

BILL NO. 18-19

SECTION 6. That this ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2018.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said City this _____ day of _____, 2018.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

Chief Counsel of Infrastructure and Planning
Nancy K. Yendes

EXHIBIT A

NOTE: Language to be added is shown as underscored. Language to be removed is shown as ~~stricken~~.

CHAPTER 26 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE III. - RIGHT-OF-WAY MANAGEMENT

DIVISION 1. - GENERALLY

Sec. 26-101. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings given to them in this section, except where context clearly indicates a different meaning:

Abandoned equipment or facilities means any equipment, materials, apparatuses, devices or facilities that are:

- A. Declared abandoned by the owner of such equipment or facilities;
- B. No longer in active use, physically disconnected from a portion of the operating facility or any other facility that is in use or in service; or
- C. ~~Facility that is in use or in service, and no~~ No longer capable of being used for the same or similar purpose for which the equipment, apparatuses or facilities were installed;
- D. A facility or equipment which appears to no longer be in use and the owner or last owner of record maintained by the City fails to respond within thirty days of written notice that said facility or equipment is still in use.; or
- E. Or as otherwise may be defined by applicable law.

Abutting or adjoining property and land owner means a person owning or legally occupying any land abutting a public right-of-way.

Aggrieved means any person directly impacted by an action or decision of the City such that the person would have standing in a court of law to challenge the action.

Antenna means any device that transmits and/or receives electromagnetic wireless radio waves or signals for voice, data or video communications purposes including, but not limited to, television, text, AM/FM radio, microwave, cellular telephone, communications service, or otherwise.

Applicant means any person requesting permission to occupy or operate facilities using the right-of-way, or to work, excavate, or locate facilities in the right-of-way.

Attachment agreement means the written document showing the consent of the owner of the land, facility, structure or equipment housing device for the applicant seeking to use the right-of-way under this Article including the terms and conditions which shall include rent, term and notice requirements.

Charter means the Charter of the City of Lee's Summit, Missouri.

City means the City of Lee's Summit, Missouri, a municipal corporation and any duly authorized by City Council or Charter provision representative.

City Council means the City Council of the City of Lee's Summit, Missouri.

City Engineer means the City Engineer of Lee's Summit, Missouri, or an authorized representative.

Code means the Code of Ordinances of the City of Lee's Summit, Missouri.

Commission means the Missouri Public Service Commission.

Communications Service means the transmission via facilities, in whole or in part, of any writings, signs, signals, pictures, sounds, or other forms of intelligence through wire, wireless, or other means, including, but not limited to, any telecommunications service, enhanced service, information service, or internet service, as such terms are now, or may in the future, be defined under applicable law, and including all instrumentalities, facilities, apparatus (Communications Facilities), and services (among other things, the receipt, forwarding, and deliver of telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include "video services" as defined in § 67.2677 RSMo. The term "Communications Service" does not include the rental of conduit or physical facilities.

Construct means and includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.

Day means calendar day unless otherwise specified.

Design Standards shall mean those reasonable standards as approved by the Director of Public Works and on file in the Office of the City Engineer for any installations within the right-of-way which may, but are not required, to include all or any portion of the following or similar codes, standards or guidelines:

building codes and Uniform Development ordinances, Outside Plant (OSP), utility and contractor industry standards, any federal, State or local government agency guidelines and standards such as MoDOT, IDOT or MARC, the Federal Energy Regulatory Commission (FERC) and the National Telecommunications & Information Administration (NTIA of USDC), any standards or guidelines developed by the Missouri Association of Municipal Utilities or other State counterparts, the American Public Works Association, the American Public Power Association or their International counterparts, private utility associations such as CTIA (wireless industry). These Design Standards shall be in addition to the Design and Construction Manual of the City.

Emergency includes, but is not limited to, the following:

- A. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a ROW-user facility that prevents or significantly jeopardizes the ability of a ROW-user to provide service to customers;
- B. An unexpected or unplanned outage, cut, rupture, leak or any other failure of a ROW-user facility that results or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak or any other such failure of ROW-user facilities is not immediately repaired, controlled, stabilized or rectified; or
- C. Any occurrence involving a ROW-user facility that a reasonable person could conclude under the circumstances that immediate and undelayed action by the ROW-user is necessary and warranted.

Excavate, excavating or excavation means any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed, tunneled into, bored into, graded, or otherwise displaced, by means of any tools, equipment or explosives, except that the following shall not be deemed excavation:

- A. Any de minimis displacement or movement of ground caused by pedestrian or vehicular traffic;
- B. The replacement of utility poles and related equipment at the existing general location that does not involve either a street or sidewalk cut; or
- C. Any other activity which does not disturb or displace surface conditions of the earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground.

FCC means Federal Communications Commission.

Facility or facilities means lines, pipes, irrigation systems, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters of any kind, gates, meters, appurtenances, duct, culvert, tube, , satellite dish, micro cell, Pico cell, repeater, amplifier, other device

capable of assisting in the transmission or distribution of a service or commodity, or other equipment used for or related to providing service whether used privately or made available to the public.

Facility based service provider means a service provider owning or possessing facilities in the right-of-way.

Franchise Agreement means a negotiated and formal contract setting out the rights and responsibilities of the ROW user which is for a set amount of time and includes a franchise fee payable to the City and approved by the City Council of Lee's Summit as provided for in in the City's Charter at Section 12.1.

Governmental entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Missouri or of any other state of the United States and any agency or instrumentality of the State of Missouri or of any other state of the United States or of the United States.

License means the rights and obligations extended by City to a ROW-user to own, construct, maintain and operate its structures, equipment and facilities within the ROW granted to a ROW-user by the City upon application for and the granting of a ROW permit.

Missouri One Call means the procedural requirements for excavation and utility safety established by RSMo 319.010, et seq.

Parkway means the area between a property line and the street curb or the edge of pavement, sometimes called boulevards, tree-shelves or snow-shelves.

Pavement means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material.

Person means any natural or corporate person, business association or business entity including, but not limited to, a corporation, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Public improvement means any project undertaken by the City, or its agents, contractors, or subcontractors, for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands; provided that projects undertaken by the City for the construction, reconstruction, maintenance, or repair of any public infrastructure funded by, or substantially by, user fees imposed upon those using the public infrastructure shall not be deemed "public improvements" and shall not be exempt from the permit requirements of this article.

Public lands means any real property of the City that is not right-of-way.

Public works committee means the committee of the City Council appointed by the Mayor Pro Tempore, with the advice and consent of the City Council, according to the Charter and Code, to conduct routine business for the Public Works Department of the City of Lee's Summit, Missouri.

Reseller service provider means a right-of-way (ROW) user providing service within the city that does not have its own facilities in the right-of-way, but instead uses the right-of-way by interconnecting with or using the network elements of another ROW-user utilizing the right-of-way, and/or by leasing excess capacity from a facility based service provider.

Restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition that existed before the commencement of the excavation or work.

Right-of-way or ROW means generally public property vested in the City in trust for the citizens, in fee or easement, to which the public has a right to access and use for the purpose intended by the

dedication, including but not limited to, the area on, below or above a public sidewalk, roadway, highway, street or alleyway in which the City has an ownership interest or right of management, but not including:

- A. The airwaves above a public right-of-way with regard to cellular or other non-wire telecommunications or broadcast service;
- B. Easements obtained by utilities or private easements in platted subdivisions or tracts;
- C. Railroad rights-of-way and ground utilized or acquired for railroad facilities unless the land or interest therein has been dedicated to public use; or
- D. Poles, pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses utilized by a utility owned or operated by a governmental entity pursuant to RSMo Ch. 91, or pursuant to a charter form of government.

Right-of-way permit means the authorization to work, excavate, or locate facilities in the right-of-way.

Routine service operation means excavation or work that makes no material change to the facilities and does not disrupt traffic.

Right-of-Way-User or ROW-user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities, equipment, or structures thereon or adjacent to for use by another identified entity or person, for which a right-of-way permit and/or a temporary traffic control permit is required, including but not limited to landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic.

Security means a financial guarantee sufficient as determined by the City Engineer or designee of the Director of Public Works and in a form approved by the City Attorney to guarantee that the right-of-way or other public property will be returned to a condition which is the same or better than at the time any excavation, construction, modification, alteration, repair or use takes places or commences.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.

Service provider means any person that is a provider of a service for or without a fee that has the requisite certifications and authorizations from applicable governmental entities, including the FCC, to provide such service, including, but not limited to, every cable television service provider, pipeline corporation, gas corporation, electrical corporation, rural electric cooperative, telecommunications company, water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction of the public service commission; every municipally owned or operated utility pursuant to RSMo Ch. 91, or pursuant to a charter form of government or cooperatively owned or operated utility pursuant to RSMo Ch. 394; every street light maintenance district; every privately owned utility; and every other entity, regardless of its form of organization or governance, whether for profit or not, which in providing a public utility type of service for members of the general public, utilizes pipes, cables, conduits, wires, optical cables, poles, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses, in the collection, exchange or dissemination of its product or services through the public rights-of-way. Service provider includes both facility based service providers and reseller service providers.

Street means the pavement and sub-grade of a City access, local, collector or arterial roadway.

Temporary traffic control means the temporary management of motorized and non-motorized traffic through the use of official traffic control devices, including but not limited to signs, markings, fence, barricades, lights, delineators, and channelizers, as necessary when the construction, repair, removal, excavation, work, events, or other activity, whether within or adjacent to the public right-of-way, impacts normal traffic conditions.

Temporary traffic control permit means the written authorization for a ROW-user to act in a manner that narrows, closes, or otherwise impacts the normal flow of vehicular traffic or pedestrian traffic on any public street or sidewalk.

Unlawful means any act or omission in violation of any applicable law or action that are not authorized by any applicable law including this Article.

Work or working means the construction, installation, repair or maintenance of any type of facility within the right-of-way, or alteration of the right-of-way in any fashion that is not performed by the City or one of its contractors unless an exemption as provided in this article applies to the routine maintenance of the facility or alteration.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-102. - Purpose and declaration of policy.

This article is enacted to define the authority of the City and its officers and employees with regard to public ownership, control and management of the right-of-way. The right-of-way is a finite valuable public resource that has required and will continue to require substantial investment by the City and whose use by third parties or the City is not unfettered with other restrictions imposed by law. In particular, this article is enacted to:

- A. Manage the right-of-way (ROW) to allow efficient location of facilities and maximize services to the citizens of the city and maintain a uniform design standard on the ROW.
- B. Allow for the maximum utilization of the City's right-of-way to meet the increasing demands due to technological innovations.
- C. Maintain a competitively-neutral and non-discriminatory policy to ROW-users and allow the citizens of the city to receive the benefits of market competition.
- D. Facilitate orderly construction and maintenance of facilities in the right-of-way, reduce damage to the facilities of ROW-users, and minimize disruption of service to the citizens of the city.
- E. Encourage responsible construction and maintenance practices in the City right-of-way.
- F. Ensure proper restoration of the City right-of-way ~~pursuant to~~ following construction and maintenance of right-of-way facilities.
- G. Minimize the physical disruption of the right-of-way and maintain the aesthetic quality throughout the city.
- H. Minimize any impact to vehicular or pedestrian traffic within the right-of-way.
- I. Maintain the property rights of abutting and adjoining land and property owners as recognized in Barfield v. Sho-Me Power Electric Coop, 852 F.3d 795 (8th Cir. 2017), and avoid any enlargement of right-of-way user rights in right-of-way easement areas over those that were granted or obtained at the time of acquisition as interpreted by the City Engineer or Director of Public Works or a competent court of jurisdiction in a final decision.
- J. Minimize physical disruption of the rights-of-way for other users, the City, and travelers while maintaining aesthetic quality throughout the City while also recognizing the rights of abutting or adjoining land and property owners including but not limited to landscaping, uninterrupted use of and undamaged private sewer laterals and waterlines, irrigation systems and storm pipes
- K. Acknowledge the limit on the use of easements or right-of-way to the purpose for which they were obtained as required by case law, Section 523.283, RSMo, and to the extent permitted by law, prohibit or not affirmatively permit different or new burdens not identified or compensated for at the time of acquisition.

- L. To the extent permitted or required by law, protect land dedicated or obtained for a particular purpose or with specific restrictions of use from encroachments that are unwanted or unauthorized within the easement or right-of-way or rights of the City as an owner from utility uses purportedly mandated by regulations, administrative decisions or legislation that are invalid or which have yet to be determined to be lawful by a Court of final jurisdiction but are in dispute.
- M. Protect the authority of City in a manner consistent with federal and state law including, but not limited to, statutory grants of authority, Section 14.4 of the Lee's Summit City Charter, and Article VI, Section 19 of the Missouri Constitution as amended 1971, and as required by Article III, Section 38(a)(prohibition on gifts or grants of property to private entities), as well as Article VI, Sections 23 and 25 (no grant or aid to corporations of public property), Article X, Section 16 and 21 of the Missouri Constitution and as recognized by various State and federal courts.
- N. Protect the health, safety and welfare of the citizens of the city by ensuring all installations and users to the greatest extent possible are constructed and maintained in accordance with quality engineering, industry and government standards.
- O. Ensure that attachment agreements are used to establish consent of entities or persons using the facilities, structures or equipment housing of others for such entity or person's use of the right-of-way.
- P. Maintain the City and the public's right to charge compensation for the privilege to use the public and City's property for private for-profit activities in the future.
- Q. Avoid speculative construction and excavation use, or continued occupation after use ceases, for a structure, facility or equipment, of the limited, finite right-of-way asset of the City.
- R. Provide for a License for those who are granted a ROW permit under this Article and Chapter setting out rights and responsibilities when there is no separate valid and enforceable franchise granted by the City for use of the ROW.
- S. Ensure that use of the ROW does not impede or violate the City's zoning ordinances.

Sec. 26-103. Applicability, Preemption, Enforcement and Eminent Domain.

- A. *Applicability.* Except as provided for herein, and where limited by applicable law, this Article shall apply to all Excavations and all use, construction, operation, and Maintenance of Facilities or structures in the Rights-of-Way of the City. No Person shall commence or continue with the operation of any Facilities or structures in the Rights-of-Way except as provided and in compliance with this Chapter. Because numerous types of users and uses of the Rights-of-Way may be subject to various or changing regulatory schemes under federal or state law, any such limitation or qualification that may be applicable to less than all users and uses of the Rights-of-Way are not duplicated herein, but are nevertheless incorporated herein, whenever application is so required by law, including but not limited to applicable provisions of Chapter 67 RSMo. and other applicable state and federal law.
- B. *Preemption.* No provision of this Article shall apply to any circumstance in which such application shall be unlawful under valid superseding federal or state law and furthermore, if any Section, Subsection, sentence, clause, phrase, or portion of this Chapter is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by valid law.
- C. *Enforcement.* The City may enforce any provision of this Article or Chapter by any lawful means available to it including but not limited to a municipal court citation or Circuit Court action and shall not be limited in any fashion as well as utilizing any bond or security provided to the City to ensure compliance with this Article or Chapter. Should the City need to file an enforcement action before any Court or administrative body, then the ROW-User or entity whose actions, inactions, or omissions caused the City to enforce this Article or Chapter shall pay to the City its

full costs including attorneys' fees for such enforcement action.

- D. Eminent Domain. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, any right the City may have to acquire the property of the ROW-user through the exercise of the power of eminent domain, and nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, any power of eminent domain the City may have with respect to any facility, system or property, or to alter in any way the interest the City may have in any ROW, easements or other property over which a structure(s), facilities or equipment may be placed.

Secs. 26-104. Acceptance of License Upon acknowledgment or submitting an application and acceptance of a ROW Permit.

Acceptance of the terms and conditions of this Article and Chapter may be acknowledged by the filing of a certificate of acceptance on a form approved by the City Attorney's Office and filing same with the City Clerk or applying for, and being granted, a permit to construct, install, repair, replace maintain or otherwise work in the City's ROW for the purpose of constructing, installing, repairing, replacing, or maintaining any structure, equipment or facility for any service as defined herein regardless of the technology used. Upon such acceptance, the ROW-user shall be bound to the terms and conditions set out herein and as amended from time to time provided no substantive or material rights are altered or restricted by such amendments. The granting and acceptance of a franchise or license notwithstanding, any and all ROW-users are subject to the City's Codes including but not limited to this Article and its zoning ordinances, state and federal law, and holding of a franchise or license shall not excuse such compliance.

26-105—26-110. - Reserved.

DIVISION 2. - ADMINISTRATION AND AUTHORITY

Sec. 26-111. - City Engineer.

The City Engineer is the principal city official responsible for administration of the right-of-way registration and permitting processes. The City Engineer may delegate any and all duties under this article consistent with the Charter.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-112. - Public Works Committee.

The Public Works Committee may hear appeals as provided under this article and make recommendations to the City Council for actions on appeals.

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-113—26-120. - Reserved.

DIVISION 3. - REGISTRATION

Sec. 26-121. - Row-user registration.

- A. All existing ROW-users must register within thirty (30) days of the effective date of this article.

- B. Any person who is not a ROW-user prior to the effective date of this article and who wishes to become a ROW-user must first register with the City before commencing any use of the right-of-way.
- C. No ROW-user shall be authorized to use the right-of-way in any capacity or manner without registering with the city and obtaining any necessary right-of-way permit or temporary traffic control permit from the City Engineer.
- D. The ROW-user shall be responsible for all costs incurred by the City due to the failure to provide any information to the City required for registration including all costs of enforcement to obtain such information which includes, but is not limited to, attorneys' fees.
- E. No ROW-user may attach to a City owned facility, structure or use equipment housing facilities without an attachment agreement approved by City Council. An attachment agreement approved by City Council may be used for all attachments within the City on City owned property provided the terms and conditions apply to all locations individually including any charge for use of the property to which the ROW-user is attaching.
- F. Any ROW-user who has failed to register prior to the passage of this Section and who continues to fail to register in accordance with Subsection A of this Section after passage shall be in deemed in noncompliance of this Article and may be subjected to a requirement for posting higher security in the form of bonds or insurance as well as any other remedy available to City including ouster.
- H. The City reserves the right to grant at any time such additional agreements, permits or other rights to use the right-of-way for any purpose and to any other person including itself, as it deems appropriate, subject to all valid and applicable laws. The granting of a permit shall in no manner create a property interest in any ROW or public lands. All agreements to use the ROW shall be deemed to incorporate the terms and conditions of this Article.
- I. Unless otherwise provided, use or installation of any utility facilities or other structure in or over non-right-of-way public property or public lands shall be permitted without a lease agreement or separate written agreement that is negotiated and approved by the City Council and on such reasonable terms, including compensation, as the City may require.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-122. - Registration changes.

A ROW-user shall report any changes in its registration within sixty (60) days of the change or upon application for a right-of-way permit or temporary traffic control permit, whichever occurs first. Failure to report any change shall be a violation of this article.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-123. - Registration form.

The valid registration shall be on the form provided by the City and at a minimum shall include the following:

- A. Identity and legal status of the ROW-user.
- B. Name, address, telephone number, fax number and email address of each officer, agent, or employee responsible for the accuracy of the registration statement. Each officer, agent or employee shall be familiar with the local facilities of the ROW-user, shall be the person(s) to whom notices shall be sent, and shall be responsible for facilitating all necessary communications.
- C. Name, address, telephone number, fax number and email address of the local representative of the ROW-user who shall be available at all times to act on behalf of the ROW-user in the event of an emergency.

- D. Proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the FCC or the Commission.
- E. Description of the ROW-user's intended or proposed use of the right-of-way.
- F. Information which identifies reseller service providers as provided hereinafter.
- G. A list of authorized agents, contractors or subcontractors eligible to obtain permits on behalf of the ROW-user. A registration may be updated to add such person at the time of permit application if the updated registration is submitted by an authorized representative of the ROW-user.
- H. Information sufficient to determine the amount of net assets of the ROW-user.
- I. Proposed means of security to be provided to the City which is consistent with, or functionally equivalent to, the same type of security provided by law or by similar development owners within the State of Missouri and the City of Lee's Summit which may include a bond, cash deposit or a deed granting the City rights to property on which the City may execute for payment of any costs to abate any nuisance or pay for costs to remove infrastructure or restore the right-of-way to the same pre-use condition.
- J. Proof of permission to use any structure in the right-of-way not owned by the applicant including an Attachment agreement setting out the terms and conditions of use.
- K. Documentation to the satisfaction of the City Engineer that applicable Design Standards for the right-of-way installation use and maintenance of all structures, facilities and equipment will be met or for those users not the applicant, shall not be interfered with. If City owned structures are to be replaced that the City's preferred vendor, specifications and design standards are being met and no City use, current or planned, will be interfered with.
- L. Proof through engineering studies or similar professionally prepared and sealed document indicating that whatever structure or facility a ROW-user intends to use is sufficient structurally and will support what is to be attached under whatever circumstances identified by the City Engineer related to structural integrity such as wind and ice loading.
- M. Proof to the satisfaction of the City Engineer that the ROW-user (or its tenant) is authorized to provide the service the excavation, structure, facility or equipment or has a tenant that is authorized to do so.
- N. Proof to the satisfaction of the City Engineer and Development Services Director that use of the ROW is consistent and in compliance with the zoning regulations applicable to the ROW and the abutting property.
- O. Information sufficient to the satisfaction of the City Attorney to determine if the ROW-user is subject under applicable law to franchising, service regulation, payment of compensation for the use of the ROW, taxation or other requirements of the City.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-124. - Transferability.

Except as provided in this article, or as otherwise required by law, no registration may be transferred without the written consent of the City. Any person not named on a valid registration, including any affiliates or successors in interest to a registered ROW-user, must register in accordance with this article or receive written authorization to transfer the registration. Written authorization to transfer a registration shall be granted according to the same standards for a registration. The City shall not unreasonably withhold its consent to transfer as provided herein. In the event the City shall grant consent to a transfer, the transferee shall be subject to the terms and conditions of this Chapter.

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-125—26-130. - Reserved.

DIVISION 4. - PERMITS

Sec. 26-131. - Permits required.

- A. Except as otherwise provided herein, no person, service provider, or row-user shall perform excavation or work, as those terms are defined in Section 26-101 hereof, in the right-of-way without a right-of-way permit.
- B. No adjoining property owner shall construct, maintain, or permit in or on the portion of the public right-of-way to which such land is adjacent, any fixed structure, material or object without having obtained the appropriate right-of-way permit.
- C. The application for a right-of-way permit shall be submitted to the City Engineer either by the registered ROW-user or an authorized agent of the ROW-user who will do the work and/or excavation in the right-of-way.
- D. If the City Engineer determines that the applicant has satisfied the requirements of this article, the City Engineer shall issue a right-of-way permit.
- E. Any person who is found to be working or excavating in the public right-of-way without a right-of-way permit will be directed to stop the excavation or work until a right-of-way permit is acquired and available at the excavation or work site.
- F. Except as otherwise provided herein, no person, service provider, or ROW-user shall narrow, close, alter, affect, or otherwise impact the normal flow of vehicular traffic or pedestrian traffic in the right-of-way without a temporary traffic control permit.
- G. The application for a temporary traffic control permit shall be submitted to the City Engineer either by the registered ROW-user or an authorized agent of the ROW-user who will do the temporary traffic control.
- H. If the City Engineer determines that the applicant has satisfied the requirements of this article, the City Engineer shall issue a temporary traffic control permit.
- I. Any person who is found narrowing, closing, altering, affecting or otherwise impacting the normal flow of vehicular traffic or pedestrian traffic in the right-of-way without a temporary traffic control permit will be directed to stop the cause for temporary traffic control, remove all temporary traffic control devices, restore normal traffic conditions and leave the site until a temporary traffic control permit is acquired and available at the site.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-132. - Permit form.

- A. The right-of-way permit application shall be on the form provided by the City Engineer and at a minimum shall include the following:
 - 1. Compliance with all of the necessary registration requirements of this article, including:
 - a. If the applicant is a person other than the registered ROW-user, proof that the applicant is an agent of the registered ROW-user, authorized to do the excavation or work in the permit request; or
 - b. If the applicant is not performing excavation or work related to facilities in the right-of-way, proof that they are the adjoining property owner or an agent of the adjoining property owner, authorized to do the excavation or work in the permit request.

2. Attachments, including engineering drawings, construction plans, profiles, specifications, and as-builts, in the form maintained by the ROW-user, showing the location and area of the proposed project, that the structures or facilities planned to be used meet generally accepted engineering standards for support and soundness for the use intended including wind and ice loading, and the location of all existing and proposed facilities at such location and certification that the proposed project complies with the Design Standards on file in the Office of the City Engineer; which documents shall be confidential and not disclosed to third parties to the extent permitted by law;
 3. A temporary traffic control permit, if applicable;
 4. An excavation or work plan including a schedule indicating the extent and duration of such plan, including a proposed start and end date;
 5. All applicable right-of-way permit fees as provided in this article;
 6. Payment of all money due to the City for right-of-way permit fees, for prior excavation or work costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavation or work in the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter; ~~and~~,
 7. Performance and maintenance bonds as provided in this article; and
 8. Attachments, studies or other documents that establish to the City Engineer's satisfaction that use of the right-of-way will not interfere in any manner with the City's use of communication devices or with other users of the right-of-way for communication services.
 9. Documentation that the applicant (or its proposed tenant) is authorized, and obtained all necessary government approvals, to provide service using the structure or excavation being proposed.
- B. The temporary traffic control permit application shall be on the form provided by the City Engineer and at a minimum shall include the following:
1. Compliance with all of the necessary registration requirements of this article, including, if the applicant is a person other than the registered ROW-user, proof that the applicant is an agent of the registered ROW-user authorized to do temporary traffic control;
 2. Attachments, including engineering drawings, construction plans, traffic control plans, and specifications, in a form acceptable to the City, showing the location and area of the proposed project and the location of all existing and proposed traffic control at such location;
 3. A right-of-way permit, if applicable;
 4. A schedule indicating the extent and duration of such plan, including a proposed start and end date;
 5. All applicable temporary traffic control permit fees as provided in this article;
 6. Payment of all money due to the City for temporary traffic control permit fees, for prior temporary traffic control costs, for any loss, damage or expense suffered by the City because of the applicant's prior temporary traffic control in the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter.
- C. The right-of-way permits issued under this Article shall only be good for the area specified in the application and the permit itself. No work may take place outside the permit boundaries without a separate right-of-way permit.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-133. - Permit fees.

- A. The right-of-way permit fee and temporary traffic control permit fee shall be recommended by the City Engineer, approved by the City Council and listed in the Schedule of Fees and Charges maintained in the City Clerk's office.
- B. Right-of-way permit fees and temporary traffic control permit fees shall be:
 - 1. Based on the actual, substantiated costs reasonably incurred by the City in managing the right-of-way;
 - 2. Based on an allocation among all users of the right-of-way, including the City, which shall reflect the proportionate costs imposed on the City by each of the various types of uses of the right-of-way;
 - 3. Imposed on a competitively neutral and nondiscriminatory basis; ~~and~~
 - 4. Imposed in a manner so that aboveground uses of the right-of-way do not bear costs incurred by the City to regulate underground uses of the right-of-way; and
 - 5. Shall not be offset or construed to replace any business license or other tax the ROW-user is subject to under applicable ordinance, Charter Provision, Code or state law.
- C. In determining the actual costs reasonably incurred by the City in managing the right-of-way, the City may include the following:
 - 1. The cost of issuing, processing and verifying right-of-way permit and temporary traffic control permit applications;
 - 2. The cost of inspecting job sites, traffic control installations and conditions, and restoration projects;
 - 3. The cost of protecting or moving ROW-user construction equipment and materials after reasonable notification to the ROW-user;
 - 4. The cost of determining the adequacy of public right-of-way restoration;
 - 5. The cost of restoring temporary traffic control, excavation or work inadequately performed after providing notice and the opportunity to correct the temporary traffic control, excavation or work, including re-inspection fees; ~~and~~
 - 6. The cost of revoking right-of-way permits or temporary traffic control permits.
- D. Fees paid for a right-of-way permit or a temporary traffic control permit, which is subsequently revoked by the City Engineer, are not refundable.
- E. The right-of-way permit fee shall be imposed based on a per City block basis, but not to exceed continuous linear work of more than six hundred sixty (660) feet in length.
- F. The temporary traffic control permit fee shall be imposed based on a per City block, but not to exceed six hundred sixty (660) feet in length, per week basis or per intersection per week basis, whichever is greater.
- G. In the event the scope of the project is revised during the course of the excavation or work, the City Engineer may recalculate the fee based on the actual size of the excavation or work, and may require an additional right-of-way permit fee.
- H. In the event the scope of the project changes such that temporary traffic control is revised, the City Engineer may recalculate the fee based on the actual impact, and may require an additional temporary traffic control permit fee but in no event shall the City grant credits or refunds based on an overpayment of the permit fee.
- I. The City Engineer may establish, with the approval of the City Council, a system providing for payment of right-of-way permit fees by ROW-users in bulk.

Sec. 26-134. - Permit conditions.

- A. Right-of-way permit conditions include the following:
1. The City Engineer may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the ROW-user in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the general public. Such permits shall be deemed to be subject to, and anyone obtaining such a permit shall be deemed to have consented to, the following conditions:
 - a. Compliance with MissouriOne Call statutes, regulations and policies;
 - b. Compliance with the City's Code of Ordinances including its Right-of-way Ordinances, and Unified Development Code, zoning and subdivision regulations, and any restrictions contained in any documents relating to the acquisition nor limit of use of the area the permit is being obtained for;
 - c. Agreement to pay just compensation charged in an Attachment agreement or to pay just compensation should the City charge for the use of its rights-of-way in the future;
 - d. Agreement to indemnify and hold the City harmless from the ROW-user's use of the right-of-way which shall include defense and payment of money for attorneys' fees and all costs provided such condition provides that it is not to be deemed a waiver of sovereign or other immunities or defenses available to the City, its officials, employees and agents;
 - e. Compliance with all Design Standards of the City and on file with the City Engineer;
 - f. At all times any structure or facility used to support any ROW-user's equipment shall be structurally sound and not subject to failure for defects in design, maintenance, wear and tear, or weather conditions as identified by the City Engineer; and
 - g. All notices may be provided to the address of record for the facility with the Public Service Commission, the Jackson County Assessor, the registered agent as shown at the Secretary of State of Missouri, or any entity granting the ROW-user permission to operate within the State of Missouri.
 2. When a right-of-way permit is requested for purposes of installing additional facilities and the performance and maintenance bonds for additional facilities is reasonably determined to be insufficient, the posting of an additional or larger performance or maintenance bond for the additional facilities may be required by the City Engineer, except as otherwise provided in Division 10 hereof.
 3. A ROW-user shall perform all excavation or work in full accord with any and all applicable engineering codes and Design Standards adopted or approved by the City and in accordance with applicable statutes of the State of Missouri, and the rules and regulations of the commission or any other local, state or federal agency having jurisdiction over the parties. A ROW-user shall perform all excavation or work in conformance with all applicable codes and established rules and regulations and shall be responsible for all excavation or work done in the right-of-way pursuant to its right-of-way permit, regardless of by whom the excavation or work is done.
 4. Except in cases of an emergency or with approval of the City Engineer, no right-of-way excavation or work may be done in violation of a stop work order issued by the City Engineer if in his or her determination conditions are unreasonable for such excavation or work based on standard engineering and construction practices.
 5. A ROW-user shall not disrupt a right-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with. No person may park private vehicles within or next to the work or excavation area, except for such areas which may be designated and marked as safe areas for vehicle parking in accordance with an approved temporary traffic control permit.

6. If excavation or work is being done for the ROW-user by another person, a subcontractor or otherwise, the ROW-user shall be responsible for ensuring that the excavation or work of said person is performed consistent with its right-of-way permit and applicable law and shall be responsible for promptly correcting acts or omissions by said person.
7. The City Engineer may establish in the right-of-way permit limitations on the amount of excavation or work which may occur at one (1) time and the amount of right-of-way which may be obstructed during construction.
8. The ROW-user shall, in the performance of any excavation or work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavation or work to that necessary for efficient operation.
9. The ROW-user shall not permit excavation or work to remain open longer than is necessary to complete the repair or installation, and in no event may excavation or work remain open beyond the expiration of the right-of-way permit or any approved extension.
10. The ROW-user shall perform excavation or work on the right-of-way at such times that will allow the least interference with the peace and quiet of the neighborhood, and shall not work between the hours of 10:00 p.m. and 7:00 a.m.
11. The City Engineer may limit the number of conduits that may be installed by each ROW-user based on the reasonable needs to ensure that no one ROW-user may unreasonably consume a disproportionate amount of the available right-of-way to deter competition.

B. Restrictions on poles, facilities, similar structures and certain equipment in the right-of-way in addition to Design Standards on file:

When a pole, other facility or supporting equipment is not a part of a designed or constructed portion of an electrical, natural gas or communication distribution system made up of mostly wires, pipes and poles which serve the community and which are designed to be physically connected to each other, the following restrictions shall apply to pole and facility placement unless a different location is approved by the Director of Public Works upon a showing of the (a) location being necessary to the provision of services, (b) that the ability to use the right-of-way by others including abutting landowners, utility users, the City, pedestrians and vehicles will not be impeded nor thwarted from the original purpose of the right-of-way, and (c) that the public and adjacent property safety may be maintained.

1. To the greatest extent possible a pole shall be located adjacent to what would be a side yard area of a property outside of any driveway or sight triangle or in the area of the front yard of any structure drawing parallel lines from the edges of the structure to the right-of-way line;
2. The placement of a pole or similar facility and supporting equipment may not occupy the entire available right-of-way area between the curb and edge of the sidewalk closest to the curb;
3. The pedestrian and vehicular paths may not be blocked, impeded or rendered out of compliance with any state, federal or local law dealing with pedestrian or vehicular passage or use such as, but not limited to, Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq;
4. A pole may not be placed closer to any structure on abutting property than its natural fall path in the event it structurally fails or is struck by a vehicle, but in no event less than a 1:1 ratio for single material/piece construction such as a wood pole;
5. A pole may not block the view of or from the primary structure on any lot, parcel or tract; an
6. A pole may not be taller than ten (10) feet above (i) the top of the tree canopy in the same city block where the pole is to be installed or (ii) a pole that is part of a distribution system within one block of the proposed placement;

7. To demonstrate at any time reasonably requested by the City Engineer that the structure or facility being used to support any equipment or that is remaining in the right-of-way is structurally sound and does not present a threat to the public, other right-of-way users or abutting or adjoining property and land owner safety or to property that is lawfully in place in the immediate vicinity of the structure or facility; and
8. Security in a form acceptable to the City Attorney's Office shall be deposited with the City Finance Director for the purpose of ensuring that should a pole's placement, existence, code violation or structural failure cause harm or injury of any kind to a user of the right-of-way or abutting property, or property located in the right-of-way or other property not located in the right-of-way, that any damages or costs may be recovered. Such security may include but not be limited to an agreement for indemnification and hold harmless of the City and abutting landowner and a pledge of assets to support such agreement, a pledge of assets, a lien on property owned by the pole provider or user that may be enforced, sufficient assets of at least 25 Million Dollars that are not pledged to another, insurance renewable annually naming the City as an additional insured, and such insurer shall owe the City a duty of defense, a bond or similar document so that this security functions in the same manner as other security for operations and structure issues of similar development in the event of harm, failure or code violations.

A violation of any of the restrictions set out in this subsection in the actual placement, or subsequent to placement, of the equipment, facility or pole may result in the permit for occupancy of or use of the right-of-way being revoked and the facility or pole ordered removed at applicant's sole cost by order of the City Engineer. All costs of the City in enforcing this Article including but not limited to revocation shall be paid by applicant including attorney's fees upon written demand by the City Manager, to the name and address last on file at the City. If the applicant for the placement of, or any transferee of ownership interests in, the pole, equipment or facility does not agree with the decision of the City Engineer, such applicant may seek review or an appeal in the same manner as provided for in Division 9 of this Article.

C. Temporary traffic control permit conditions include the following:

1. The City Engineer may impose reasonable conditions upon the issuance of a temporary traffic control permit and the activities of the ROW-user in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.
2. A ROW-user shall comply with all laws, ordinances, codes, regulations and all applicable engineering codes adopted or approved by the City. A ROW-user shall be responsible for all traffic control in the right-of-way pursuant to its Temporary Traffic Control Permit, regardless of who performs the temporary traffic control.
3. The City Engineer may order the cessation of temporary traffic control approved by such permit if in the opinion of the City Engineer, based on standard engineering and construction practice, conditions are unreasonable for the continuation of such temporary traffic control. Except in cases of an emergency or with the approval of the City Engineer, there shall be no interruption of normal traffic in violation of a stop work order issued by the City Engineer.
4. No person may park private vehicles within or next to the temporary traffic control area, except for such areas which may be designated and marked as safe areas for vehicle parking in accordance with an approved plan and areas where parking is legally permitted under normal conditions.
5. If temporary traffic control is being done for the ROW-user by a third person, such as a subcontractor, the ROW-user shall be responsible for ensuring that the temporary traffic control

of said third person is performed consistent with the temporary traffic control permit and applicable law and the permit holder shall be responsible for promptly correcting any wrongful or erroneous acts or omissions by said third person.

6. The City Engineer may establish in the temporary traffic control permit limitations the extent to which of traffic may be impacted at any one (1) time.
7. The ROW-user shall limit all temporary traffic control to that which is approved through the permit.
8. The ROW-user shall not impact normal traffic flow longer than is necessary to complete the project, and in no event may the impact to traffic exceed the expiration of the temporary traffic control permit or any approved extension.
9. Non-emergency temporary traffic control on arterial and collector streets may not be performed before 9:00 a.m. and after 4:00 p.m. Monday thru Friday, nor anytime on Saturday, Sunday or public holidays observed by the City of Lee's Summit. The City Engineer may grant exception to this condition in the temporary traffic control permit.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-135. - Permit non-transferable.

Issued right-of-way permits and temporary traffic control permits are not transferable without prior written consent of the City Engineer. The City Engineer shall not unreasonably withhold consent for transfer of a right-of-way permit or a temporary traffic control permit.

Sec. 26-136. - Permit validity.

- A. A right-of-way permit and a temporary traffic control permit shall only be valid for the area specified within such permit.
 1. No ROW-user may cause any excavation or work to be done outside the area specified in the right-of-way permit, except as provided herein.
 2. No ROW-user may cause temporary traffic control to be done outside the area specified in the temporary traffic control permit, except as provided herein.
 3. Any ROW-user who determines that an area greater than that which is specified in the right-of-way permit must be excavated must do the following prior to the commencement of excavation or work in that greater area:
 - a. Make application for a right-of-way permit amendment describing the area in which the excavation or work will occur; and
 - b. Pay any additional fees required thereby.
 4. Any ROW-user who determines that temporary traffic control is necessary for an area greater than that which is specified in the temporary traffic control permit must do the following prior to the commencement of temporary traffic control in that greater area:
 - a. Make application for a temporary traffic control permit amendment describing the area in which the temporary traffic control will occur; and
 - b. Pay all additional fees required thereby.
- B. A right-of-way permit and a temporary traffic control permit shall be valid for sixty (60) days.
 1. No ROW-user may commence excavation or work before the right-of-way permit start date or, except as provided herein, may continue excavation or work after the end date. If a ROW-user does not complete the excavation or work by the right-of-way permit end date, the ROW-user

must apply for and receive a new right-of-way permit or a right-of-way permit extension for additional time.

2. No ROW-user may perform temporary traffic control before the temporary traffic control permit start date or, except as provided herein, continue temporary traffic control after the end date specified in the permit. If a ROW-user requires temporary traffic control beyond the temporary traffic control permit end date, the ROW-user must apply for and receive a new temporary traffic control permit or a temporary traffic control permit extension for additional time.
 3. One extension of up to sixty (60) days may be granted for a right-of-way permit or a temporary traffic control permit upon request and may be granted without payment by the ROW-user of additional right-of-way permit or temporary traffic control permit fees. To qualify for an extension, a supplementary application must be submitted to the City prior to the permit end date.
- C. A right-of-way permit and a temporary traffic control permit will only be valid for those persons indicated on the approved permit and may only be transferred with prior written consent of the City Engineer.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-137. - Inspection.

- A. The City Engineer may choose to inspect the ongoing permitted temporary traffic control, excavation, or work in the right-of-way at any time to ensure that all requirements of the approved right-of-way permit or temporary traffic control permit are being met by the ROW-user.
- B. At the time of any inspection, the City Engineer may order the immediate cessation, through a stop work order, of any temporary traffic control, excavation or work which poses a serious threat to the life, health, safety, or wellbeing of the public.
 1. The City Engineer may issue a citation to the ROW-user for any temporary traffic control, excavation or work which does not conform to the applicable standards, conditions, Code or terms of the right-of-way permit or temporary traffic control permit.
 2. An officer of the Police Department may also issue a citation to the ROW-user for any temporary traffic control which does not conform to the applicable standards, conditions, Code or terms of the temporary traffic control permit, as determined by the City Engineer.
 3. The citation shall include notice that failure to correct the violation within the time specified in the citation will be cause for revocation of the applicable right-of-way permit or temporary traffic control permit.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-138. - Permit displayed.

Issued right-of-way permits and temporary traffic control permits shall be available by the ROW-user at all times at the indicated project site and shall be available for inspection by the City Engineer, other City employees and the public.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-139. - Completed work.

The ROW-user shall notify the office of the City Engineer upon completion of the temporary traffic control, excavation or work authorized by the applicable right-of-way permit or temporary traffic control permit.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-140. - Permit denial.

The City Engineer may deny an application for a right-of-way permit or a temporary traffic control permit if:

- A. The ROW-user, or any persons acting on the behalf of the ROW-user, fails to provide all the necessary information requested by the City for managing the public right-of-way.
- B. The ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has a history of noncompliance or permitting noncompliance within the City. For purposes of this Section, "history of noncompliance, or permitting noncompliance, within the city", shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public right-of-way to its previous condition under a previous right-of-way permit or temporary traffic control permit.
- C. The City has provided the ROW-user with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the temporary traffic control, excavation or work identified in the respective right-of-way permit or temporary traffic control permit application or a reasonable alternative route that will result in neither additional installation expense up to ten (10) percent to the ROW-user nor a declination of service quality.
- D. The City determines that the denial is necessary to protect the public health and safety, provided that the authority of the City does not extend to those items under the jurisdiction of the public service commission, such denial shall not interfere with a ROW-user's right of eminent domain of private property, and such denials shall only be imposed on a competitively neutral and nondiscriminatory basis. In determining whether denial of a right-of-way permit or a temporary traffic control permit application is necessary to protect the public health and safety, the City Engineer may consider one (1) or more of the following factors:
 1. The extent to which the right-of-way space where the right-of-way permit or temporary traffic control permit is sought is available, including the consideration of competing demands for the particular space in the right-of-way as well as capacity for planned future uses, or other general conditions of the right-of-way.
 2. The applicability of any ordinance, Code provision, or other regulations that affect the location of facilities and public travel in the right-of-way.
 3. The degree of disruption or impact to surrounding communities and businesses that will result from the multiple excavations and/or use of that part of the right-of-way, including whether the issuance of a right-of-way permit or a temporary traffic control permit for the particular dates and/or times requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event.
- E. The area is environmentally sensitive as defined by state statute or federal law or is a historic district defined by local ordinance, or contains restrictions on use related to environmental concerns such as, but not limited to, preservation of wetlands, and the applicant has not shown how it will comply with any restrictions or mitigate the presence of the structure, pole, equipment or excavation so as to preserve the environment or historic character of the area, in accordance with local, state and federal law.

- F. An inability of the ROW-user to establish the financial capabilities and guaranteed commitment to provide or have access to the necessary investments or monetary assets to erect, maintain, and operate the proposed facilities.
- G. Compliance of the planned use or facilities with City Codes, ordinances or restrictions, or the applicability of same.
- H. Any other consideration based on the interest of the public safety and welfare or the property rights of itself or others.
- I. The proposed equipment or facility will incommode the public, diminish the rights of use of abutting landowners or impede or interfere with the use of other ROW-users, the travelling public or the City.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-141. - Emergency work.

A right-of-way permit and temporary traffic control permit are required for emergency situations that are not the result of a declared emergency or disaster by the state, federal or local agencies empowered to enter such declarations. If, however, due to an such emergency that is not the result of a declaration of disaster or emergency, and it is necessary for the ROW-user to immediately perform temporary traffic control, excavation or work in the right-of-way, and it is impractical for the ROW-user to first get a right-of-way permit or a temporary traffic control permit, the temporary traffic control, excavation or work may be performed, and the required permit shall be obtained as soon as reasonably possible, but not later than five (5) business days after the temporary traffic control, excavation or work is begun. The ROW-user shall notify the City's Public Works Department if emergency temporary traffic control, excavation or work is necessary.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-142. - Permit exemptions.

- A. ROW-users performing routine maintenance which does not require excavation or work in the right-of-way, which does not disrupt traffic, and which does not require more than two (2) hours to complete, shall be exempt from the requirement of a right-of-way permit provided that at a minimum two (2) hours' notice is proved to the City during normal business hours.
- B. A ROW-user shall not be required to obtain a right-of-way permit or a temporary traffic control permit for temporary traffic control, excavation or work which is necessary because of an emergency, and that emergency is declared by a proper governmental authority with jurisdiction over the emergency to be a "disaster" or "state of emergency" under federal, state or local law until thirty (30) days following the effective date of the emergency declaration. In the event that temporary traffic control, excavation or work is necessary during a disaster or state of emergency, the ROW-user performing temporary traffic control, excavation or work in the right-of-way shall notify the Public Works Department of the nature and scope of the temporary traffic control, excavation or work to be performed in the right-of-way, along with the location of the temporary traffic control, excavation or work, and the estimated time of the temporary traffic control, excavation or work.

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-143—26-150. - Reserved.

DIVISION 5. - RIGHT-OF-WAY USE AND FACILITY LOCATIONS

Sec. 26-151. - Use of right-of-way—Generally.

- A. The ROW-user shall coordinate the placement of facilities in a manner that minimizes adverse impact on any public improvement, the use of the ROW by others including abutting landowners and travelers, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the City's Design and Construction Manual.
- B. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems or other structures or public improvements already installed and in compliance with the Design Standards. In addition, the ROW-user shall, in doing excavation or work in connection with its facilities, avoid disrupting or interfering with the lawful use of the streets, alleys, sidewalks or other public lands of the City except as may be specifically authorized by a temporary traffic control permit.
- C. All facilities of the ROW-user shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its City Engineer, shall have the right to consult and review the location, design and nature of the facility prior to installation.
- D. The ROW-user shall not interfere with the facilities and structures of the other ROW-users without their permission. If and when the City requires or negotiates to have a ROW-USER cease using its existing poles and to relocate its facilities underground, all other ROW-users using the same poles shall also relocate their facilities underground at the same time. The cost of such relocation shall be borne in accordance with this article and the Commission approved applicable tariff governing that ROW-user.
- E. All facilities and other appurtenances laid, constructed and maintained by the ROW-user shall be laid, constructed and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted or approved by the City, the Uniform Development Code, the City's Design and Construction Manual, applicable statutes of the State of Missouri, and rules and regulations of the FCC, the Commission, or any other local, state or federal agency having jurisdiction over the ROW-user. Height, spacing, size or other physical restrictions contained in any other law which are more restrictive than set out herein shall control including the placement of vaults or other facilities or equipment. If such other restriction is believed by the ROW-user to have the effect of prohibiting competition or provision of services, it shall have the right of appeal to the Public Works Committee and the opportunity to establish to the satisfaction of said Committee of its claim of the prohibition of competition or services.
- F. The ROW-user shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and location of its facilities within the right-of-way, both underground and overhead, when requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the City, its employees, agents, or authorized contractors.
- G. Unless otherwise agreed to by the City and the ROW-user by license, agreement or permit, the City shall not be liable for any damage to or loss of any of the ROW-users' facilities within the right-of-way unless the damage is the result of the sole negligence, or willful, intentional, or malicious acts or omissions of the City.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-152. - Sale, transfer, lease or sublease of facilities.

- A. In the event that the ROW-user shall sell, lease, assign, sublet or dispose of its facilities, or any portion thereof, that are located in the right-of-way, or any right, title or interest in the same, or transfer any rights granted by the City to any person either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, the ROW-user shall notify the City of the same. In such case, the buyer, transferee, lessee or assignee shall be subject to all provisions of this article, including the requirement to register. This provision shall not apply to the sale of property or

equipment in the normal course of business or to the sale or lease of facilities to reseller ROW-users. No notice to the City shall be required for a transfer in trust, mortgage, or other similar instrument, in whole or in part, to secure indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by or under common control with the ROW-user.

- B. A ROW-user may permit and has the authority to sell, sublet, or lease any use of excess capacity and sell services for resale to any reseller service provider providing service within the City, including the ROW-user's subsidiary or affiliate. The reseller service provider shall first register and obtain any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Commission. The ROW-user shall also provide the City, on at least a semi-annual basis, the identity of entities with which the ROW-user has entered into an interconnection and/or resale agreement within the City. This notice will not relieve the reseller service provider from its own obligation to register and obtain any necessary franchise with the City. Nothing in this article shall prevent a facility based service provider from providing to any reseller service provider the use of the facility based service provider's facilities in the right-of-way as authorized by federal or state law.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-153. - Facility corridors.

The City Engineer may designate specific utility corridors by assigning specific locations for each type of facility that is currently, or that the City Engineer expects will someday be, located within the right-of-way. All right-of-way permits issued by the City Engineer shall indicate the proper location for the ROW-user's facilities. Specific locations shall be specified in the City's Design and Construction Manual and can include reservation of space for any planned or future anticipated uses of the City, in its sole discretion.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-154. - Conduits.

If, in the preparation and planning of a public improvement, the City Engineer deems it appropriate for a conduit to be constructed by the City along, across or under the right-of-way, the City Engineer shall contact all appropriate ROW-users for their input on the planning and design of such conduit. If a ROW-user desires to construct, maintain or operate facilities along such right-of-way concurrently, the City Engineer may allow the ROW-user to use such conduit if the ROW-user agrees to contribute to the expense of such conduit.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-155. - Coordination.

- A. Applicants may apply jointly for right-of-way permits to excavate the right-of-way at the same time and place. Applicants who apply jointly for a right-of-way permit may share in the payment of the right-of-way permit fee. Applicants must agree among themselves as to the portion each shall pay.
- B. The ROW-user shall participate in any joint planning, construction and advance notification of excavation or work, including coordination and consolidation of excavation or work as required by the City Engineer. In addition, the ROW-user shall cooperate with other ROW-users and the City for the best, most efficient, most aesthetic, and least obtrusive use of the right-of-way.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-156. - Facility relocation.

- A. A ROW-user shall promptly relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement. The ROW-user shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City which create a threat to public safety. Such removal, relocation or adjustment shall be performed by the ROW-user at the ROW-user's sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The ROW-user shall proceed with the removal, relocation, or adjustment of facilities with due diligence upon notice by the City to begin removal, relocation, or adjustment.
- B. The ROW-user shall promptly relocate or adjust any facilities located in private easements for the construction of a public improvement at the cost of the row-user if:
 - 1. The City has condemned the private easement or the City has purchased from the ROW-user the portion of the private easement necessary for the public improvement; and
 - 2. The City has compensated the ROW-user, through the condemnation, purchase process, or other means of compensation, for the cost of relocation of the ROW-user's facilities.
- C. As soon as City prepared working drawings are available for public improvements that will require the ROW-user to relocate or adjust its facilities, the City shall provide the ROW-user with written notice of required relocations or adjustments, the anticipated bid letting date of the public improvement, and notice of the deadline for completion of the relocations or adjustments. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days, subject to approval by the City Engineer.
- D. Following delivery of final design plans for such public improvements, the ROW-user shall relocate or adjust its facilities and/or equipment in accordance with the schedule set by the City Engineer, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted in accordance with project plans provided by the City so as to allow the City, and its contractors, to proceed with the public improvement.
- E. If any facilities and/or equipment are not relocated in accordance with this section, the City or its contractors may relocate the facilities. The ROW-user and its surety shall be liable to the City for any and all costs incurred by the City in relocating said facilities including attorneys' fees and costs of litigation to collect such costs of relocation. The City shall not be liable to the ROW-user for any damage to its facilities or equipment or for any loss of business caused or experienced as a result of the City or its contractors relocating facilities or equipment.
- F. In the event the ROW-user is required to move its facilities and/or equipment in accordance with this section, any ordinary right-of-way permit fee shall be waived.
- G. It is the intent of this section for both the City and the ROW-user to cooperate with one another so that the need for facility or equipment relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.
- H. Failure to comply with the relocation schedule set by the City Engineer will subject the ROW-user to penalties as provided in Division 11 hereof and any other remedy available to the City including ouster.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-157. - Unused and abandoned facilities.

- A. A ROW-user owning abandoned facilities in the right-of-way must notify the City of its intent to abandon the facilities and must either:
 - 1. Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The City Engineer may allow underground facilities, or portions thereof, to remain in place if the City Engineer determines that it is in the best interest of public safety to do

so. At such time, the City may take ownership and responsibility of such abandoned facilities left in place;

2. Provide information satisfactory to the City that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or
 3. Submit to the City a proposal and instruments for transferring ownership of its facilities to the City. If the ROW-user proceeds under this subsection, the City may, at its option, purchase the equipment, require the ROW-user, at its own expense, to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities, except as otherwise provided herein.
 4. Permit the City to satisfy the costs of removing such facilities, including any other structure such as a pole or equipment, and restoring the right-of-way to as good a condition as existed at the time of installation or construction of such facilities out of a security posted at the time of abandonment unless security was posted under Section 26-134.B
- B. If the City discovers abandoned facilities in its right-of-way and the owner of the abandoned facilities fails to respond within thirty (30) days to a written notice sent by the City stating that the City considers the facilities abandoned, or the City is unable to locate the owner of the abandoned facilities after reasonable attempts, the City shall deem the facilities to be abandoned, unless the City receives confirmation that the ROW-user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to,
1. Abating the nuisance;
 2. Taking possession and ownership of the facility and restoring it to a useable function; ~~or~~
 3. Requiring the removal of the facility by the ROW-user; or
 4. Removing the abandoned facilities and recovering its costs in any manner permitted by law including using any security posted at the time of construction or installation or any time thereafter.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-158. - Vacation of right-of-way.

If the City vacates a right-of-way which contains the facilities of a ROW-user,

- A. The City, at its sole discretion, may reserve a utility easement or other easements necessary in the City's name to allow the existing facilities to remain.
- B. If the vacation requires the relocation of facilities, then:
 1. If vacation proceedings are initiated by the ROW-user, then the ROW-user must pay the relocation costs; or
 2. If vacation proceedings are initiated by the City, then the ROW-user must pay the relocation costs unless otherwise agreed to by the City and the ROW-user; or
 3. If vacation proceedings are initiated by a person other than the ROW-user or the City, then such other person must pay the relocation costs, unless otherwise agreed to.
- C. In no event does the obtaining of a right-of-way permit guarantee the privilege of a ROW-user to remain in such location(s) approved past the vacation of the right-of-way or change in needs of the City for the location where facilities or equipment have been installed.

(Ord. No. 6869, § 1, 12-17-2009; Ord. No. 7724, § 1, 10-1-2015)

Secs. 26-159—26-165. - Reserved.

DIVISION 6. - TRAFFIC CONTROL AND STREET CLOSURES

Sec. 26-166. - Traffic control.

All traffic control, permanent and temporary, shall be properly installed and maintained at the ROW-user's expense. All traffic control materials and methods shall be in conformance with the latest edition of the manual on Uniform Traffic Control Devices.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-167. - Notice of closure.

The ROW-user shall notify the City no less than ten (10) working days in advance of any temporary traffic control that results in the full closure of any direction of vehicle travel along any street. Any other person doing temporary traffic control that will disrupt vehicular or pedestrian traffic shall notify the City no less than two (2) days in advance of any temporary traffic control. Except in the event of an emergency as reasonably determined by the ROW-user and City Engineer, no such closure shall take place without notice and prior authorization from the City.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-168. - Coordination.

- A. An applicant may apply jointly for a right-of-way permit and temporary traffic control permit to perform temporary traffic control, excavate or work in the right-of-way at the same time and place.
- B. Applicants may apply jointly for temporary traffic control permit for temporary traffic control at the same time and place. Applicants who apply jointly for a temporary traffic control permit may share in the payment of the temporary traffic control permit fee. Applicants must agree among themselves as to the portion each shall pay.
- C. The ROW-user shall participate in any joint planning, construction and advance notification of temporary traffic control, including coordination and consolidation of temporary traffic control as required by the City Engineer. In addition, the ROW-user shall cooperate with other ROW-users and the City for the best, most efficient, most aesthetic, and least obtrusive use of the right-of-way.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-169. - Traffic control plan.

All safety and traffic control measures must be implemented according to any approved traffic control plan required by the temporary traffic control permit.

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-170—26-175. - Reserved.

DIVISION 7. - EXCAVATION PROCEDURES

Sec. 26-176. - Location of existing facilities.

- A. The ROW-user shall identify and locate any underground facilities in conformance with the "Missouri One Call" system prior to any excavation. Failure to do so may result in future permits being denied or the revocation of current permits and a requirement to remove or relocate existing facilities, equipment, poles or structures.
- B. Prior to the commencement of any placement or expansion of facilities that are greater than fifteen (15) feet in height and/or larger than five (5) cubic feet in volume, the ROW-user shall provide at least twenty (20) days written notice to all property owners within fifty (50) foot or twice the height of the proposed facility or equipment radius of the proposed location to abutting landowners in a form approved by the Director of Public Works of the City and during the time of any excavation or construction of facilities or placement of equipment shall post a telephone number of a person to whom the abutting landowner may speak about complaints or conditions on the ROW adjacent to said landowner's property or interference with the enjoyment of the owner's land. All complaints must be acknowledged by the ROW-user and reported to the City on a form approved by the City Engineer. The form of notice shall include at least the following:
 - a. Vertical and horizontal dimension of the facility or equipment
 - b. Sketch of the general location of the activity and placement of the facility or equipment including adjacent buildings
 - c. The construction schedule
 - d. Any other pertinent information as determined by the Director and approved
- C. All excavations shall be made in accordance with the City's Construction and Design Manual other regulations, policies or Codes of the City.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-177. - Row-user responsibilities.

- A. The ROW-user shall be liable for any damages to facilities due to excavation or work performed prior to obtaining the location of all facilities in the area in which the excavation or work is to be performed, or for any damage to facilities that have been properly identified prior to excavation or work. The ROW-user shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed facilities without the approval of the owner of the facilities.
- B. Whenever there is excavation or work by the ROW-user, the ROW-user shall be responsible for acquiring all necessary temporary traffic control permits and providing adequate temporary traffic control to the surrounding area as provided in this article. In the event the excavation or work is not completed in a reasonable period of time, the ROW-user may be liable for actual damages to the City for delay caused by the ROW-user pursuant to Division 10 hereof.
- C. The ROW-user responsible for the excavation or work who leaves any debris in the right-of-way shall be responsible for providing all necessary temporary traffic control and safety protection in accordance with the temporary traffic control permit and any applicable federal or state requirement. The ROW-user shall also be responsible for removing said debris from the right-of-way. If the ROW-user fails to comply with the temporary traffic control permit or fails to remove debris from the right-of-way, the ROW-user shall be responsible for damages to the City, or its contractors, resulting from said failures and shall indemnify the City and its contractors as provided in Division 10 hereof.
- D. In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user shall be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, the City Engineer, in his or her discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.
- E. The ROW-user shall be solely responsible for the costs of moving any facilities or any kind within the right-of-way to accommodate the City or any other governmental entity's project as designed by the

City or such governmental entity, and if the ROW-user does not move or remove such facilities and additional cost or delay results to the City, the City may select its own contractor to move or remove such facilities and may seek full reimbursement, and ROW-user shall reimburse City, any and all costs of such move or removal including increased costs to the City's public works project, attorneys' fees to obtain reimbursement and any and all court costs and expert witness fees. City may exercise such right to obtain its own contractor upon written notice to the ROW-user at the address provided in the permit application form or as updated from time to time by the ROW-user.

- F. The ROW-user shall make certain at all times that sufficient security exists in a form acceptable to the City Attorney and City Engineer to assure that the obligations of the ROW-user shall be met which may include sufficient assets, letter of credit, bond, or a pledge of other property.
- G. The ROW-user shall at all times maintain proper registration with the Missouri Secretary of State and have a registered agent within this State who may accept notices required to be served under this Article and service of process while using, occupying or engaged in construction activities within the City's right-of-way.
- H. The ROW-user shall at all times maintain facilities and any other equipment or structures in compliance with the City's Design Standards.
- I. The ROW-user agrees and acknowledges by acceptance of any permit after adoption of this Article as amended and including this Paragraph, that its use of the ROW is a license only unless it already has in place a franchise agreement with City, and by accepting and using a permit agrees to be bound by the terms and conditions of such license set out in this Article and Chapter and that such license is enforceable by City in the same manner as any license to use property under Missouri and federal law.
- J. The ROW-user will maintain and comply with or promptly apply for and obtain any franchise the City requires at the time of the permit application or, if none is required by the City at such time for the services or structures/equipment being installed, in the future should the City decide to require franchise agreements for ROW-users if none are required for the services being provided by the ROW-user at the time of application and installation or commencing use of any structure, equipment or excavation.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-178. - Standard of work.

All temporary traffic control, excavation or work performed in the right-of-way shall be done in conformance with the City's Design and Construction Manual and Design Standards on file in the Office of the City Engineer. The interpretation of such Manuals and Design Standards, in the sole discretion of the City Engineer or Public Works Director, shall be binding on all ROW-users and such interpretation is a condition of any right to excavate, work or use the right-of-way for any purpose whatsoever.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-179. - Temporary traffic control, excavation or work restoration.

- A. After any temporary traffic control, excavation or work, the ROW-user shall, at its expense, restore all portions of the right-of-way to the same condition or better condition than it was prior to the temporary traffic control, excavation or work.
- B. If excavation or work cannot be back-filled immediately and is left unattended, the ROW-user shall securely and adequately cover and mark the unfilled excavation or work. The ROW-user has sole responsibility for maintaining proper temporary traffic control, barriers, safety fencing, signage, and/or lights as required, from the time of the opening of the excavation or work until the excavation or work is surfaced and opened for travel.

- C. In addition to repairing its own street cuts, the ROW-user must restore any area within five (5) feet of the new street cut that has previously been excavated, including the paving and its aggregate foundations.
- D. All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City Engineer. However, a ROW-user shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed facilities without the approval of the owner of the facilities.
 - 1. The City Engineer has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to do additional and necessary excavation or work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the ROW-user and a reasonable time not to exceed fifteen (15) days will be provided to allow for the deficiencies to be corrected.
 - 2. Any deficiencies not corrected shall be considered a "failure to restore" and the City shall proceed according to this article. Upon determination by the City Engineer that the failure to repair or replace creates a threat to public safety, all such repair or replacement shall be corrected within twenty-four (24) hours of notice from the City, or the City Engineer may direct the City to make such repair or replacement at the ROW-user's expense.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-180. - Failure to restore.

If the ROW-user fails to restore the right-of-way in the manner and to the condition required by the City Engineer, or fails to satisfactorily and timely complete all restoration, the City may, at its option, serve written notice upon the ROW-user and its surety that, unless within ten (10) days after serving of such notice, a satisfactory arrangement is made for the proper restoration of the right-of-way, the City shall immediately serve notice of failure to comply upon the surety and the ROW-user, and the surety shall have the right to arrange for and complete the restoration excavation or work; provided, however, that if the surety does not commence performance thereof within fourteen (14) days from the date of notice, the City may perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.

- A. Upon determination by the City Engineer that the failure to repair, replace or restore creates a threat to public safety, all such repair or replacement shall be corrected within twenty-four (24) hours of notice from the City, or the City will perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.
- B. Upon determination by the City Engineer that the failure to repair, replace or restore creates an immediate threat to public safety, all such repair or replacement shall be corrected within one (1) hour of notice from the City, or the City will perform its own restoration excavation or work and prosecute same to completion, by contract or otherwise.
- C. The ROW-user and its surety shall be liable to the City for its actual costs of such restoration, including the value of any time or overtime incurred through the labor of City employees, the value of the use of City equipment, and the cost of City materials used in the restoration project.

The ROW-user shall also restore any special uses of the adjoining landowner including driveway approaches.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-181. - Guarantee of restoration.

- A. In restoring the right-of-way, the ROW-user shall guarantee its excavation or work and shall maintain it for a period of forty-eight (48) months, or for the maximum period of time allowed by law, whichever is greater, following its completion.
 - 1. During said guarantee period the ROW-user shall, upon notification from the City Engineer, correct all restoration excavation or work to the extent necessary, using any method as required by the City Engineer.
 - 2. Said excavation or work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the City Engineer.
 - 3. In the event the ROW-user is required to perform new restoration pursuant to the foregoing guarantee, the City Engineer shall have the authority to extend the guarantee period for such new restoration for up to an additional forty-eight (48) months, or other greater period allowed by law, from the date of the new restoration, if the City Engineer determines there was action by the ROW-user not to comply with the conditions of the right-of-way permit and any restoration requirements.
- B. When any required corrective actions have been completed and inspected to the City Engineer's satisfaction, the guarantee period will begin.
- C. The guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-182. - Restoration marker.

All excavation or work shall have a metal or plastic marker, of a color, size, and shape approved by the City Engineer, inserted into the restored pavement which shall identify the ROW-user.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-183. - Notice and inspection.

Upon completion of all right-of-way restoration activities, the ROW-user shall notify the City's Public Works Department, which shall then schedule a closeout inspection.

Secs. 26-184—26-190. - Reserved.

DIVISION 8. - MAPPING REQUIREMENTS

Secs. 26-191—26-200. - Reserved.

DIVISION 9. - APPEALS OR WAIVERS

Sec. 26-201. - Appeals.

Whenever a person has been denied a right-of-way permit or a temporary traffic control permit, had its right-of-way permit or temporary traffic control permit revoked by the City Engineer, believes that the fees imposed on the person by the City do not conform to the requirements of valid and applicable portions of RSMo 67.1840, asserts any issues related to the use of the right-of-way, or deems themselves otherwise aggrieved by any decision or action taken by the City or the City Engineer under this article, the person may file an appeal to the City Manager or his/her designee by filing written notice of such appeal with the City Clerk's office within ten (10) calendar days of the date of notice of such decision or action.

- A. The City Manager or his/her designee shall schedule an informal meeting with the aggrieved person and shall have the power to overrule such decision or action taken by the City or the City

Engineer, may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of this article.

- B. The City Manager or his/her designee shall issue their decision in writing. After the decision of the City Manager or his/her designee is rendered, the aggrieved person may appeal the decision of the City Manager or his/her designee to the Public Works Committee by filing written notice of such appeal with the City Clerk's office within ten (10) calendar days of the date of notice of such decision or action.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-202. - Actions on appeal to City Council.

- A. Such appeals to the Public Works Committee as provided for in Section 26-201 hereof shall be heard by the Public Works Committee on the record with evidence and testimony as a contested hearing pursuant to RSMo Ch. 536.
 - 1. The Public Works Committee shall deliver a transcript of the written record and exhibits along with its written recommendation for action to the City Council.
 - 2. The City Council may overrule such decision or action taken by the City or the City Engineer, may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of this article.
 - 3. Any decision by the City Council affirming the denial, revocation, fee imposition or dispute resolution shall be in writing and supported by written findings establishing the reasonableness of the decision.
- B. Pending a decision by the City Council, the order of the City Engineer shall be stayed, unless the City Engineer determines that such action will pose a threat to public safety or the integrity of the public infrastructure.
- C. In the event the City Council affirms the prior decision of the City or the City Engineer, in addition to all other remedies and if both parties agree, the aggrieved person shall have the right to have the matter resolved by mediation or binding arbitration.
 - 1. Binding arbitration shall be before an arbitrator agreed to by both the City and the aggrieved person.
 - 2. The costs and fees of a single arbitrator shall be borne equally by the City and the aggrieved person.
 - 3. If the parties cannot agree on an arbitrator, the matter shall be resolved by a three-person arbitration panel consisting of one (1) arbitrator selected by the City, one (1) arbitrator selected by the aggrieved person, and one (1) arbitrator selected by the other two (2) arbitrators. In the event that a three-person arbitrator panel is necessary, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.
 - 4. Each party to the arbitration shall pay its own costs, disbursements and attorney fees.

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-203—26-210. - Reserved.

DIVISION 10. - INSURANCE, BONDING AND LIABILITY

Sec. 26-211. - Insurance.

- A. Unless a ROW-user has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of noncompliance, or permitting noncompliance, within the City, then the ROW-user shall file with the City evidence of liability insurance with an insurance company licensed to do business in Missouri.
1. The ROW-user shall provide all information to the City necessary to determine the amount of net assets of the ROW-user.
 2. The amount of insurance shall be in amounts sufficient to protect the City against all liabilities not protected by the State of Missouri's sovereign immunity statute and the City shall be an additional named insured. The City shall not have a deductible for its coverage, the intent being that the City shall not pay any amounts towards its defense or damages arising out the ROW-user's use of the ROW and any condition the ROW-user creates or contributes to create on the ROW or on abutting property. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage arising out of or alleged to have arisen out of the negligent or willful acts or omissions of the ROW-user. The ROW-user agrees it does not have a cause of action or claim against the City for any action that such insurance would provide coverage for.
 3. If the ROW-user is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts, but self-insurance shall only be permitted by consent of the City Council and the execution of an agreement separate from any agreement created under this Article which shall be in full force and effect until such time as the ROW-user's facilities, structures and use are removed or cease from or on the ROW.
 4. A copy of the Liability Insurance Certificate must be on file with the City Clerk.
- B. No liability insurance will be required of any residential property owner excavating or working in the right-of-way adjacent to his/her residence who does not utilize a contractor to perform the excavation or work and who does not require a temporary traffic control permit. However, said residential property owner shall be required to demonstrate proof of a homeowner's policy with coverage and limits acceptable to the City Engineer.
- C. For purposes of this section, "history of noncompliance, or permitting noncompliance, within the City", shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public right-of-way to its previous condition under a previous right-of-way permit or temporary traffic control permit.
- D. ROW-users who are installing facilities that are not a part of a distribution system as outlined in Section 26-134.B shall also comply with the security provisions in said Section.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-212. - Bonding.

- A. If a ROW-user has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of noncompliance, or permitting noncompliance, as determined by the City Engineer, within the City, then the ROW-user shall not be required to maintain a performance or maintenance bond. The burden of requesting and proving any exemption from bonding requirements under this Article shall be on the ROW-user to the satisfaction of the City, and upon request from time to time by the City Engineer the ROW-user shall establish a continued right to exemption from a bonding requirement whether the exemption exists under r local, state or federal law.

1. The ROW-user shall provide all information to the City necessary to determine the amount of net assets of the ROW-user.
 2. For purposes of this section, "history of noncompliance, or permitting noncompliance, within the City," shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public right-of-way to its previous condition under a previous right-of-way permit or temporary traffic control permit on at least one occasion as determined by the City Engineer.
- B. If it is determined pursuant to subsection A of this section that a ROW-user does not have twenty-five million dollars (\$25,000,000.00) in net assets or does have a history of noncompliance, or permitting noncompliance, or is installing any facility that individually would require more than Ten Thousand Dollars (\$10,000.00) to remove and return the right-of-way to its previous condition within the City, then the ROW-user shall:
1. Maintain a performance bond in a form approved by the City Attorney. The amount of the bond will be five thousand dollars (\$5,000.00) or the value of the restoration, whichever is greater, as determined by the City Engineer, for a term consistent with the term of the applicable right-of-way permit or temporary traffic control permit, conditioned upon the ROW-user's faithful performance of the provisions, terms and conditions conferred by this article.
 2. Maintain a maintenance bond in a form approved by the City Attorney. The amount of the bond will be five thousand dollars (\$5,000.00) or the value of the restoration, whichever is greater, as determined by the City Engineer, for a term consistent with the term of the applicable right-of-way permit or temporary traffic control permit plus four (4) additional years, conditioned upon the ROW-user's faithful performance of the provisions, terms and conditions conferred by this article.
 3. For facilities that extend above and below the ground and are permanent in nature and would require demolition similar in nature to a building or monopole tower to remove, the ROW-user shall provide to the City a bond in the amount of the then cost to demolish such a facility or the right through a recordable document to execute on a piece of real estate in a fashion similar to the manner in which the City may place a lien on property when a structure is removed by the City.
- C. In the event the City shall exercise its right to revoke the right-of-way permit or the temporary traffic control permit as permitted herein, then the City shall be entitled to recover under the terms of said bonds or against any real estate under B.3 of this Section the full amount of any loss occasioned. A copy of the maintenance and performance bonds or recorded instrument must be on file with the City Clerk. No maintenance or performance bond will be required of any residential property owner excavating or working in the right-of-way adjacent to his/her residence, who does not utilize a contractor to perform the excavation or work and who does not require a temporary traffic control permit. Because such work is done by a private property owner against whose property the City may place a lien under the law, no recorded instrument giving the City additional rights to place a lien and foreclose on such lien shall be required.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-213. - Indemnification.

- A. Any person operating under the provisions of this article or performing any temporary traffic control, excavation or work in the right-of-way shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity as municipal officials, employees, elected officials, attorneys, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, to the extent caused by acts or omissions of the person, or its agents, contractors, or subcontractors, in the performance of the permitted temporary traffic control,

excavation or work. Nothing in this Article shall be construed to waive the City's sovereign or any other immunity or defense available to it, its officers, employees and agents.

- B. Nothing herein shall be deemed to prevent the City, or any agent, from participating in the defense of any litigation by its own counsel at their own expense. Such participation shall not under any circumstances relieve the person from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.
- C. All ROW-users shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor performing permitted temporary traffic control, excavation or work for such ROW-user hereunder. Failure to do so within the time set by the City Engineer shall be cause to revoke any ROW permit and to eject the ROW-user from the City's rights-of-way by any means available including seeking a declaratory judgment action, injunction or in the event of emergency self-help.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-214. - Indemnification for contractual or economic loss damages.

Any person operating under the provisions of this article or performing any temporary traffic control, excavation or work in the right-of-way shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity as municipal officials, employees, elected officials, attorneys, contractors, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for contractual or economic losses, damages, losses, costs, and expenses, including attorney fees, to the extent caused by failure of a ROW-user, or its agents, contractors, or subcontractors, to relocate or adjust its facilities pursuant to the provisions of this article.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-215. - Indemnification for damage to facilities.

- A. Any person operating under the provisions of this article or performing any excavation or work in the right-of-way shall be liable for any damages to facilities due to excavation or work performed by the person, including damage to underground facilities that have been properly identified prior to commencement of excavation or work.
- B. Any person operating under the provisions of this article or performing any excavation or work in the right-of-way shall fully indemnify, release, defend and hold harmless the City and agents of the City when acting in their capacity as municipal officials, employees, elected officials, attorneys, contractors, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, associated with damage to the facilities of other ROW-users by a person, or its agents, contractors, or subcontractors.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-216. - Other agreements—Satisfaction of this article.

- A. Any ROW-user may satisfy the insurance, bonding, and indemnification provisions of this article through a valid franchise agreement with the City provided such insurance, bonding and indemnification equals or exceeds those requires under this Article and Chapter. Any requirements thus satisfied shall be indicated on the ROW-user's registration and shall not be required for each right-of-way permit and temporary traffic control permit.
- B. This section shall not apply to an applicant acting on behalf of a ROW-user, unless the applicant is listed as an additional insured on the ROW-user's insurance policy and is covered by the surety. The

applicant must submit evidence of the satisfaction of these requirements prior to issuance of a right-of-way permit or a temporary traffic control permit.

(Ord. No. 6869, § 1, 12-17-2009)

Secs. 26-217—26-220. - Reserved.

DIVISION 11. - VIOLATIONS AND PENALTIES

Sec. 26-221. - Violation.

- A. No Person shall perform temporary traffic control, excavate or work in the right-of-way in violation of Section 26-131.A. or Section 26-131.F. of this article. Any violation of Section 26-131.A. or Section 26-131.F. shall result in the immediate issuance of a citation to the person and enforcement action pursuant to Section 26-223 hereof.
- B. Except as provided in subsection A. of this section, if the City Engineer determines that a ROW-user has committed a violation of this article, any law or ordinance, or a condition placed on the right-of-way permit or the temporary traffic control permit, the City Engineer shall make a written demand upon the ROW-user to remedy such violation, which may include the issuance of a stop work order. The demand shall state that the continued violation may be cause for revocation of the right-of-way permit or the temporary traffic control permit as provided for herein, or legal action if applicable.
- C. A violation will allow the City Engineer, at his or her discretion, to place additional or revised conditions on the right-of-way permit or the temporary traffic control permit, specifically related to the manner in which the violation is cured by the ROW-user.
 1. Within fourteen (14) calendar days of receiving notification of the violation, the ROW-user shall contact the City Engineer with a plan, acceptable to the City Engineer, for correction of the violation.
 2. Upon determination by the City Engineer that the violation creates a threat to public safety, the ROW-user shall within twenty-four (24) hours of notice from the City contact the City Engineer with a plan, acceptable to the City Engineer, for correction of the violation.
 3. Upon determination by the City Engineer that the violation creates an immediate threat to public safety, the ROW-user shall within one (1) hour of notice from the City contact the City Engineer with a plan, acceptable to the City Engineer, for correction of the violation.
 4. A ROW-user's failure to contact the City Engineer, ROW-users failure to submit an acceptable plan, or ROW-user's failure to reasonably implement the approved plan shall be cause for immediate revocation of the right-of-way permit or the temporary traffic control permit.
 5. In the event a ROW-user's performance of any of the terms, conditions or obligations required by this Article or Chapter or a Franchise or License is prevented by a cause or event not within a ROW-user's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a ROW-user shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-222. - Revocation of permits.

- A. The City Engineer may, after reasonable notice and an opportunity to cure, revoke a right-of-way permit or a temporary traffic control permit granted to a ROW-user, without a fee refund, if one (1) or more of the following occurs:

1. A material violation of a provision of the right-of-way permit or temporary traffic control permit;
 2. An evasion or attempt to evade any material provision of the right-of-way permit or temporary traffic control permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the political subdivision or its citizens;
 3. A material misrepresentation of fact in the right-of-way permit or temporary traffic control permit application;
 4. A failure to complete temporary traffic control, excavation or work by the date specified in the associated right-of-way permit or temporary traffic control permit, unless a right-of-way permit or temporary traffic control permit extension is obtained or unless the failure to complete the temporary traffic control, excavation or work is due to reasons beyond the ROW-user's control;
 5. A failure to correct, within the time specified by the City, temporary traffic control, excavation or work that does not conform to applicable engineering standards, specifications, national safety codes, industry construction standards, or applicable City Code provisions or safety codes that are no more stringent than national safety codes or provisions, upon inspection and notification by the City of the faulty condition, or allowing a condition to exist which in the City Engineer's opinion creates a danger to the public, abutting landowners or other users of the right-of-way; or
 6. A failure to remove facilities or equipment that have been deemed "abandoned" by the City Engineer.
 7. Permitting a condition to exist regardless of actual notice that causes harm to property of another or the City, or injury to any person.
 8. Failure of insurance company or a surety to pay damages or perform as set out in the insurance policy or surety document upon written demand by the City Manager of thirty (30) days to the last address on file at the City for any notice to be given.
 9. Failure to provide written notice to adjacent property owners as required in Section 26-176.
- B. If a right-of-way permit or temporary traffic control permit is revoked, the ROW-user shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-223. - Penalty.

Any person violating any provision of this article is guilty of a public offense, and upon conviction thereof shall be fined in a sum of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00). Every day that this article is violated shall constitute a separate offense. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this article. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate actions or proceedings to prevent violations of this article.

Secs. 26-224—26-230. - Reserved.

DIVISION 12. - OTHER RIGHTS AND LAWS

Sec. 26-231. - Federal, State and City Jurisdiction.

- A. This article shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this article to the contrary, the construction, operation and maintenance of the ROW-user's facilities shall be in accordance with all laws and regulations of the United States, the state and any political subdivision thereof, or any administrative agency thereof, having jurisdiction.

- B. In addition, the ROW-user shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction.
- C. The ROW-user's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. The ROW-user shall comply with all applicable laws and ordinances enacted pursuant to that power.
- D. ~~Finally, F~~ failure of the ROW-user to comply with any applicable law or regulation may result in a forfeiture of any permit, registration or authorization granted in accordance with this article.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-232. - City's failure to enforce.

The City's failure to enforce or remedy any noncompliance of the terms and conditions of this article or of any right-of-way permit or temporary traffic control permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any person's obligation as herein provided.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-233. - Reservation of rights.

- A. In addition to any rights specifically reserved to the City by this article, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, permit or other authorization granted under this article.
- B. The City shall have the right to waive any provision of this article or any registration, permit or other authorization granted thereunder, except those required by federal or state law, if the City Council determines as follows:
 - 1. That it is in the public interest to do so; and,
 - 2. That the enforcement of such provision will impose an undue hardship on the person.
- C. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.
- D. The City reserves unto itself always the right to charge for the use of the right-of-way as permitted by valid Missouri law and only restricted by valid and applicable law found to be applicable and valid by a Court of last resort.
- D.E. Notwithstanding anything to the contrary set forth herein, the provisions of this article shall not infringe upon the rights of any person pursuant to any valid and applicable state or federal statutes, including, but not limited to the right to occupy the right-of-way.

(Ord. No. 6869, § 1, 12-17-2009)

Sec. 26-234. Conflicts.

In the event of any conflict between a franchise or license entered into following adoption of this Article or any of its amendments, this Article shall control.

26-235. Separability.

If any provision of this Article, or any franchise or license issued hereunder, is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any valid and applicable

federal or state statutes, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the Ordinance provisions in question are exhausted, City Council shall determine whether or not said section shall be considered a separate, distinct, and independent part of this Article, franchise or license, and such holding shall determine the validity and enforceability of all other provisions thereof and any rights or privileges granted hereunder. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on City and any ROW-user without further action of the City Council, provided that the City Engineer shall give the ROW-user sixty (60) days, or a longer period of time as may be reasonably required for an ROW-user to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

Secs. 26-237—26-299. - Reserved.



PROPOSED UPDATE OF CITY OF LEE'S SUMMIT RIGHT-OF-WAY MANAGEMENT CODE

PROPOSED AMENDMENT OF ARTICLE III
CHAPTER 26, STREETS, SIDEWALKS AND
OTHER PUBLIC PLACES

January 18, 2018

WHAT IS THE RIGHT-OF-WAY (ROW)?

- Streets and alleyways
- “Owned” by a city, county or state
- May be easement or fee simple title
- If an easement, held in trust for the public
- Nondelegable duty of government to maintain in a safe manner for its intended purpose
- Purpose is for pedestrian or vehicular traffic and utility use, entitled to unobstructed path of travel
- State has no property interest in a City street

WHY NOW?

- Preserve authority commensurate with responsibilities imposed by state law
- Protect other users of ROW including travelers
- Protect abutting landowners from infringement of rights and harm to property
- Protect restrictions on uses (wetlands)
- Protect contractual rights (City and others)
- Acknowledge changing landscape with new bills introduced attempting to restrict all the above and the City's ability to deal with them

HISTORY FOR COMMON LAW

- Concept of public ROW is thousands of years old
- “Kings Highway” – public roads for use of the King and all his subjects
- Peace Treaty of Paris, 1783 – relinquished title to all roads which passed to colonies
- U.S. Constitution recognized importance, Art I, Section 8 – allows Congress to create postal roads and post office
- States legislated on their own rights-of-way as the sovereign
- Landowner has a common law right to dedicate rights-of-way for public use, but has to be accepted

Pre-2000 legislation

- 1851 – telephone and telegraph could construct on public roads, city can tell how and where to build
- 1866 – must have city's consent which is a "franchise" or writing as required by the statute of frauds for cities (means can charge rent to use) – *Plattsburg v. Peoples' Co.*, 88 Mo.App. 306 (1901)
- 1877 – certain classes of cities had to have election on franchises for all utility users
- Pre-1903 Plats may dedicate streets to cities

AFTER 2000 ON STATE LEVEL

- SB 369 2001 EFFECTIVE DATE
 - State wanted to preempt local consent methods (franchise, license, rental payments, required voting)
 - Provided for limited grandfathering and some revenues
 - Defined Public Utility very broadly
 - Limited to those owning or controlling a facility in the ROW

AFTER 2000

- 2007 Video Services Providers Act
 - Statewide cable franchise
 - Set terms to use the City ROW
 - Reduced revenue to 5% net
 - Prohibited in-kind services
 - Left in place PEG channels
 - Give a City 10 days notice going to start providing services
 - No local mandatory buildout requirement

AFTER 2000

- HB 331 IN 2013 (Uniform Wireless Communications Infrastructure Deployment Act)
- 22 new sections on telecommunications
 - Reduced costs could include in fees
 - Shot clock for review of ROW permits (31 days)
 - Grandfather ROW users who were there before August 28, 2001
 - Force through zoning approvals on towers
 - Removed poles from exception to definition of ROW
 - “Encourage” use of public lands for wireless deployment

AFTER 2000

- 2014 SB 649 AND SB 653
 - Reenacted 2013 law as there was a Court challenge pending

CURRENT MISSOURI STATUTORY DEFINITION ON WHAT IS THE ROW FOR PUBLIC UTILITIES

- Current statutory definition:

Section 67.1830 for utility use defines it as:

“Public right-of-way”, the area on, below or above a public roadway, highway, street or alleyway in which the political subdivision has an ownership interest, **but not** including:

- (a) The airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcast service;
- (b) Easements obtained by utilities or private easements in platted subdivisions or tracts;
- (c) Railroad rights-of-way and ground utilized or acquired for railroad facilities; or
- (d) Poles, pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses utilized by a municipally owned or operated utility pursuant to chapter 91 or pursuant to a charter form of government;

PROPOSED STATE CHANGES FOR “SMALL” WIRELESS DEPLOYMENT

- For “small” wireless deployment
 - SB837
 - 67.5111 new statute applicable only to “small” wireless facilities and the utility poles attached to:
 - (19) “Right-of-way”, the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including federal interstate highway;
NOTE: Exceptions are out and “similar property” not defined

SB 837

- Limit application fees and total of what charge
- Allow large multi-applications to be combined and shot clock of ten days
- Allow “outside the ROW” in areas not exclusively zoned for single-family residential use
- Allow ROW users to change out City poles
- Allow ROW users to change out poles that are decorative
- Give the right to use City owned property to wireless providers

WHAT WOULD PROPOSED CITY CODE UPDATE DO?

- Amend Chapter 26, Article III
- Assert the City's authority as broadly as possible
- Treat all similarly situated ROW users in a competitively-neutral and nondiscriminatory fashion including "vertical landlords"
- Standardize for all ROW users how they obtain consent
- Create a "license" with enforceable requirements such as bonding, insurance, notice to the City, and information to be submitted

- Update definitions
- Allow the Director of Public Works to adopt reasonable standards for design and installation within the ROW
- Require adequate security for users and define what that is (bond, insurance, lien)
- Give the City the opportunity to protect the rights of abutting landowners, the City's property and restricted use property
- Place requirements on ROW users including compliance with zoning regulations

- Require an attachment agreement if entity is using City poles
- Avoid speculative construction in the ROW which takes up a finite space
- Make sure structures meet engineering standards for our location (weather and fall path)
- Create restrictions for poles that are not a part of a system of poles that are physically connected to each other as a distribution system (new subsection)



Proposed Update

Questions?

Packet Information

File #: BILL NO. 18-20, **Version:** 1

AN ORDINANCE APPROVING AMENDMENT NO. 9 TO THE BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2018, AS ADOPTED BY ORDINANCE NO. 8162, BY REVISING THE AUTHORIZED EXPENDITURES FOR THE CITY OF LEE'S SUMMIT, MISSOURI, AND ESTABLISHING A NEW PAY AND CLASSIFICATION PLAN FOR IMPLEMENTATION OF THE COMPENSATION AND BENEFIT STUDY.

Proposed City Council Motion:

FIRST MOTION: I move for second reading of AN ORDINANCE APPROVING AMENDMENT NO. 9 TO THE BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2018, AS ADOPTED BY ORDINANCE NO. 8162, BY REVISING THE AUTHORIZED EXPENDITURES FOR THE CITY OF LEE'S SUMMIT, MISSOURI, AND ESTABLISHING A NEW PAY AND CLASSIFICATION PLAN FOR IMPLEMENTATION OF THE COMPENSATION AND BENEFIT STUDY.

Background:

At the January 11, 2018 Regular Session Council directed staff to prepare an ordinance to use to use the Reserve Fund to implement the minimum market pay structure to 100% for core general employees solving for compression and to propose additional similar amounts for collective bargaining groups.

BILL NO. 18-20

AN ORDINANCE APPROVING AMENDMENT NO. 9 TO THE BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2018, AS ADOPTED BY ORDINANCE NO. 8162, BY REVISING THE AUTHORIZED EXPENDITURES FOR THE CITY OF LEE'S SUMMIT, MISSOURI, AND ESTABLISHING A NEW PAY AND CLASSIFICATION PLAN FOR IMPLEMENTATION OF THE COMPENSATION AND BENEFIT STUDY.

WHEREAS, Ordinance No. 8162, passed by the City Council on June 1, 2017, adopted the City's Budget for the Fiscal Year ending June 30, 2018; and,

WHEREAS, Exhibit A to Ordinance No. 8162 establishes the pay and classification plan that contains the authorized list of positions; and,

WHEREAS, on December 7, 2017, the Mayor and City Council was presented the Compensation and Benefit Study by Springsted, Inc.; and,

WHEREAS, the Compensation and Benefit Study included recommendations to reclassify and create positions in order to maintain internal equity and external market competitiveness; and,

WHEREAS, it is necessary to adjust the pay of unrepresented employees to maintain their current range penetration within their respective new pay ranges as established by the compensation and benefit study; and,

WHEREAS, in order to provide for equity among employee groups the Council wishes to make substantially similar pay available to represented groups.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the Fiscal Year 2017-2018 Pay and Classification Plan, as adopted by Ordinance No. 8162, is hereby repealed and replaced by Exhibit A.

SECTION 2. That the authorized expenditures for the Fiscal Year 2017-2018 of the City of Lee's Summit, Missouri, are amended in the manner shown in Exhibit B.

SECTION 3. All other provisions of Ordinance No. 8162 shall remain in full force and effect, subject to Amendment No. 1 (Ordinance No. 8203), Amendment No. 2 (Ordinance No. 8240), and Amendment No. 3 (Ordinance No. 8244), Amendment No. 4 (Ordinance No. 8254), Amendment No. 5 (Ordinance No. 8284), Amendment No. 6 (Ordinance No. 8286), and Amendment No. 8 (Ordinance No. 8285).

SECTION 4. That the City Manager is hereby directed to offer an annualized sum for salary adjustments, utilizing the same methodology as for unrepresented employees, to represented employee groups more specifically: 1. The Fraternal Order of Police - \$282,173; 2. International Association of Fire Fighters - \$1,991,644; and, 3. International Association of Machinists - \$364,760.

SECTION 5. That this ordinance shall be in full force and effect from and after the date of its passage and adoption, and approval by the Mayor.

BILL NO. 18-20

SECTION 6. That should any section, sentence, or clause of this ordinance be declared invalid or unconstitutional, such declaration shall not affect the validity of the remaining sections, sentences or clauses.

PASSED by the City Council of the City of Lee's Summit, Missouri, this _____ day of _____, 2018.

Mayor Randall L. Rhoads

ATTEST:

City Clerk Trisha Fowler Arcuri

APPROVED by the Mayor of said city this _____ day of _____, 2018.

Mayor Randall L. Rhoads

ATTEST:

City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:

City Attorney Brian W. Head

BILL NO. 18-20

EXHIBIT A:

Pay and Classification Plan

Exempt Structure					
Title	Grade	Min	Mid	Max	
Assistant City Manager, Operations	E18	95,718.48	122,519.65	149,320.83	
Assistant City Manager, Development Services & Comm.	E18	95,718.48	122,519.65	149,320.83	
Finance Director	E18	95,718.48	122,519.65	149,320.83	
Fire Chief	E18	95,718.48	122,519.65	149,320.83	
Police Chief	E18	95,718.48	122,519.65	149,320.83	
Director of Development Services	E17	90,300.45	115,584.58	140,868.71	
Director of Public Works	E17	90,300.45	115,584.58	140,868.71	
Director of Water Utilities	E17	90,300.45	115,584.58	140,868.71	
Assistant Director of Engineering Services	E16	85,189.11	109,042.06	132,895.01	
Chief Technology Officer	E16	85,189.11	109,042.06	132,895.01	
Deputy Director of Public Works/City Engineer	E16	85,189.11	109,042.06	132,895.01	
Assistant City Manager, Administrative Services	E16	85,189.11	109,042.06	132,895.01	
Director of Human Resources	E16	85,189.11	109,042.06	132,895.01	
Assistant Director of Support Services	E15	80,367.08	102,869.86	125,372.65	
Assistant Director of Application Management Services	E15	80,367.08	102,869.86	125,372.65	
Assistant Director of Operations	E15	80,367.08	102,869.86	125,372.65	
Chief Counsel of Infrastructure and Planning	E15	80,367.08	102,869.86	125,372.65	
Chief Counsel of Management and Operations	E15	80,367.08	102,869.86	125,372.65	
Chief Counsel of Public Safety	E15	80,367.08	102,869.86	125,372.65	
Chief of Litigation	E15	80,367.08	102,869.86	125,372.65	
Deputy Director of Public Works, Administration	E15	80,367.08	102,869.86	125,372.65	
Deputy Director of Finance	E15	80,367.08	102,869.86	125,372.65	
Director of Planning & Special Projects	E15	80,367.08	102,869.86	125,372.65	
Assistant Director of Field Services	E14	75,818.00	97,047.04	118,276.08	
Assistant Director of Plan Services	E14	75,818.00	97,047.04	118,276.08	
Assistant Administrator of Parks and Rec	E14	75,818.00	97,047.04	118,276.08	
Assistant Director of Planning & Special Projects	E13	71,526.42	91,553.81	111,581.21	
Assistant Director of Public Works Operations	E13	71,526.42	91,553.81	111,581.21	
Assistant Prosecuting Attorney PTR	E13	71,526.42	91,553.81	111,581.21	
City Architect	E13	71,526.42	91,553.81	111,581.21	
City Traffic Engineer	E13	71,526.42	91,553.81	111,581.21	
Controller	E13	71,526.42	91,553.81	111,581.21	
Development Engineering Manager	E13	71,526.42	91,553.81	111,581.21	

BILL NO. 18-20

Manager, Enterprise Technology Services	E13	71,526.42	91,553.81	111,581.21
Supervisory Engineer	E13	71,526.42	91,553.81	111,581.21
Codes Administration Manager	E12	67,477.75	86,371.52	105,265.29
Construction Manager	E12	67,477.75	86,371.52	105,265.29
Planning Division Manager	E12	67,477.75	86,371.52	105,265.29
Public Works Operations Manager	E12	67,477.75	86,371.52	105,265.29
Staff Attorney	E12	67,477.75	86,371.52	105,265.29
Administrative Supervisor	E11	63,658.26	81,482.57	99,306.88
Airport Manager	E11	63,658.26	81,482.57	99,306.88
IT Operations Supervisor	E11	63,658.26	81,482.57	99,306.88
Management Analyst III	E11	63,658.26	81,482.57	99,306.88
Network Administrator	E11	63,658.26	81,482.57	99,306.88
Procurement & Contract Services Manager	E11	63,658.26	81,482.57	99,306.88
Senior Staff Engineer II	E11	63,658.26	81,482.57	99,306.88
Solid Waste Superintendent	E11	63,658.26	81,482.57	99,306.88
Superintendent II, Administration	E11	63,658.26	81,482.57	99,306.88
Superintendent of Recreation II	E11	63,658.26	81,482.57	99,306.88
Systems Analyst	E11	63,658.26	81,482.57	99,306.88
Utility Engineer	E11	63,658.26	81,482.57	99,306.88
Utility Operations and Maintenance Manager	E11	63,658.26	81,482.57	99,306.88
Account Services Manager	E10	60,054.96	76,870.35	93,685.73
Animal Control Manager	E10	60,054.96	76,870.35	93,685.73
Applications Administrator	E10	60,054.96	76,870.35	93,685.73
Court Administrator	E10	60,054.96	76,870.35	93,685.73
Creative Services Manager	E10	60,054.96	76,870.35	93,685.73
Database Administrator	E10	60,054.96	76,870.35	93,685.73
Fleet Manager	E10	60,054.96	76,870.35	93,685.73
ITS Project Manager	E10	60,054.96	76,870.35	93,685.73
Project Manager - Development Center	E10	60,054.96	76,870.35	93,685.73
Safety & Wellness Specialist	E10	60,054.96	76,870.35	93,685.73
Senior Staff Engineer I	E10	60,054.96	76,870.35	93,685.73
Staff Engineer II	E10	60,054.96	76,870.35	93,685.73
Superintendent of Park Operations	E10	60,054.96	76,870.35	93,685.73
Superintendent of Recreation Services	E10	60,054.96	76,870.35	93,685.73
Superintendent of Park Planning & Construction	E10	60,054.96	76,870.35	93,685.73
Cultural Arts Manager	E09	56,655.62	72,519.19	88,382.77
ITS Support Services Supervisor	E09	56,655.62	72,519.19	88,382.77
Manager of Accreditation and Information Management	E09	56,655.62	72,519.19	88,382.77
Senior Planner	E09	56,655.62	72,519.19	88,382.77

BILL NO. 18-20

Web Administrator	E09	56,655.62	72,519.19	88,382.77
Assistant Airport Manager	E08	53,448.70	68,414.33	83,379.97
Assistant Superintendent of Park Construction	E08	53,448.70	68,414.33	83,379.97
Central Building Services Supervisor	E08	53,448.70	68,414.33	83,379.97
GIS Coordinator	E08	53,448.70	68,414.33	83,379.97
LPCC Manager II	E08	53,448.70	68,414.33	83,379.97
Senior Field Building Inspector	E08	53,448.70	68,414.33	83,379.97
Aquatics Manager	E07	50,423.30	64,541.83	78,660.35
City Clerk	E07	50,423.30	64,541.83	78,660.35
Environmental Specialist	E07	50,423.30	64,541.83	78,660.35
Gamber Center Manager	E07	50,423.30	64,541.83	78,660.35
Harris Park Community Center Manager	E07	50,423.30	64,541.83	78,660.35
Strategic Communications & Administration Manager	E07	50,423.30	64,541.83	78,660.35
Planner	E06	47,569.15	60,888.51	74,207.88
Staff Engineer I	E06	47,569.15	60,888.51	74,207.88
Cash Management Officer	E05	44,876.56	57,441.99	70,007.43
Legacy Park Supervisor II	E05	44,876.56	57,441.99	70,007.43
Financial Analyst	E04	42,336.38	54,190.56	66,044.75
LPCC Assistant Manager	E04	42,336.38	54,190.56	66,044.75
LPCC Maintenance Supervisor	E04	42,336.38	54,190.56	66,044.75
Park Maintenance Supervisor	E04	42,336.38	54,190.56	66,044.75
Recreation Supervisor II	E04	42,336.38	54,190.56	66,044.75
Recreation Supervisor I	E03	39,939.98	51,123.17	62,306.36
Recreation Coordinator	E02	37,679.22	48,229.41	58,779.59
Recreation Specialist	E01	35,546.44	45,499.44	55,452.44

BILL NO. 18-20

Non-Exempt Structure					
Title	Grade	Min	Mid	Max	
Construction Project Manager	N15	61,743.56	76,870.73	91,997.91	
Control System Supervisor	N15	61,743.56	76,870.73	91,997.91	
Project Manager	N15	61,743.56	76,870.73	91,997.91	
Applications Analyst	N14	58,248.64	72,519.56	86,790.48	
Communications Systems Admin.	N14	58,248.64	72,519.56	86,790.48	
Communications Supervisor - Police	N13	54,951.55	68,414.68	81,877.81	
Plans Examiner	N13	54,951.55	68,414.68	81,877.81	
Right-of-Way Agent	N13	54,951.55	68,414.68	81,877.81	
Senior Procurement Officer	N13	54,951.55	68,414.68	81,877.81	
Utility System Manager	N13	54,951.55	68,414.68	81,877.81	
Communications Supervisor - Fire	N12	51,841.09	64,542.15	77,243.22	
Lead Engineering Technician	N12	51,841.09	64,542.15	77,243.22	
Lead Traffic Operations Technician	N12	51,841.09	64,542.15	77,243.22	
Street Operations Supervisor	N12	51,841.09	64,542.15	77,243.22	
Utility System Supervisor	N12	51,841.09	64,542.15	77,243.22	
Accounts Payable Supervisor	N11	48,906.68	60,888.82	72,870.96	
Community Relations Specialist	N11	48,906.68	60,888.82	72,870.96	
Creative Services Specialist	N11	48,906.68	60,888.82	72,870.96	
Maintenance Shop Supervisor	N11	48,906.68	60,888.82	72,870.96	
Management Analyst II	N11	48,906.68	60,888.82	72,870.96	
Marketing Specialist	N11	48,906.68	60,888.82	72,870.96	
Media Services Supervisor	N11	48,906.68	60,888.82	72,870.96	
Public Communications Coord.	N11	48,906.68	60,888.82	72,870.96	
Senior GIS Technician	N11	48,906.68	60,888.82	72,870.96	
Senior Traffic Operations Technician	N11	48,906.68	60,888.82	72,870.96	
System Support Specialist	N11	48,906.68	60,888.82	72,870.96	
Animal Control Field Supervisor	N10	46,138.38	57,442.28	68,746.19	
CIP Resident Inspector	N10	46,138.38	57,442.28	68,746.19	
Customer Service Supervisor	N10	46,138.38	57,442.28	68,746.19	
Recruitment Specialist	N10	46,138.38	57,442.28	68,746.19	
Classification & Compensation Specialist	N10	46,138.38	57,442.28	68,746.19	
Workforce Development Specialist	N10	46,138.38	57,442.28	68,746.19	
Lead Communication Specialist - Police	N10	46,138.38	57,442.28	68,746.19	
Lead Detention Officer	N10	46,138.38	57,442.28	68,746.19	
Metered Services Supervisor	N10	46,138.38	57,442.28	68,746.19	
Public Works Inspector	N10	46,138.38	57,442.28	68,746.19	

BILL NO. 18-20

Senior Engineering Technician	N10	46,138.38	57,442.28	68,746.19
Technical Services Specialist	N10	46,138.38	57,442.28	68,746.19
Executive Assistant	N09	43,526.77	54,190.83	64,854.89
Field Engineering Inspector	N09	43,526.77	54,190.83	64,854.89
GIS Technician	N09	43,526.77	54,190.83	64,854.89
Operations Technician	N09	43,526.77	54,190.83	64,854.89
Procurement Officer II	N09	43,526.77	54,190.83	64,854.89
Purchasing and Supply Officer	N09	43,526.77	54,190.83	64,854.89
Signs and Markings Technician	N09	43,526.77	54,190.83	64,854.89
Web Specialist	N09	43,526.77	54,190.83	64,854.89
Accountant	N08	41,063.00	51,123.43	61,183.86
Administrative Assistant III	N08	41,063.00	51,123.43	61,183.86
Benefits Specialist	N08	41,063.00	51,123.43	61,183.86
Contract Compliance Coordinator/Paralegal	N08	41,063.00	51,123.43	61,183.86
Court Security Officer	N08	41,063.00	51,123.43	61,183.86
Detention Officer	N08	41,063.00	51,123.43	61,183.86
Engineering Technician II	N08	41,063.00	51,123.43	61,183.86
Field Building Inspector	N08	41,063.00	51,123.43	61,183.86
Human Resources Assistant	N08	41,063.00	51,123.43	61,183.86
Instrumentation & Controls Technician	N08	41,063.00	51,123.43	61,183.86
Legal Assistant	N08	41,063.00	51,123.43	61,183.86
Office Manager/Paralegal	N08	41,063.00	51,123.43	61,183.86
Probation/Compliance Officer	N08	41,063.00	51,123.43	61,183.86
System Support Analyst	N08	41,063.00	51,123.43	61,183.86
Traffic Operations Technician II	N08	41,063.00	51,123.43	61,183.86
Water Utilities Analyst	N08	41,063.00	51,123.43	61,183.86
Communications Specialist - Police	N07	38,738.67	48,229.65	57,720.63
Deputy City Clerk	N07	38,738.67	48,229.65	57,720.63
Engineering Technician I	N07	38,738.67	48,229.65	57,720.63
Equipment Technician	N07	38,738.67	48,229.65	57,720.63
Facilities Maintenance Worker II	N07	38,738.67	48,229.65	57,720.63
ITS Help Desk Support Specialist	N07	38,738.67	48,229.65	57,720.63
Management Analyst I	N07	38,738.67	48,229.65	57,720.63
Marketing Coordinator	N07	38,738.67	48,229.65	57,720.63
Master Park Specialist	N07	38,738.67	48,229.65	57,720.63
Traffic Operations Technician I	N07	38,738.67	48,229.65	57,720.63
Community Standards Officer	N06	36,545.92	45,499.67	54,453.42
Development Technician	N06	36,545.92	45,499.67	54,453.42
Neighborhood Services Officer	N06	36,545.92	45,499.67	54,453.42

BILL NO. 18-20

Payroll Specialist	N06	36,545.92	45,499.67	54,453.42
Permit Technician	N06	36,545.92	45,499.67	54,453.42
Senior Park Specialist	N06	36,545.92	45,499.67	54,453.42
Utility Technician	N06	36,545.92	45,499.67	54,453.42
Account Technician	N05	34,477.28	42,924.22	51,371.15
Administrative Assistant II	N05	34,477.28	42,924.22	51,371.15
Airport Attendant	N05	34,477.28	42,924.22	51,371.15
Animal Control Officer	N05	34,477.28	42,924.22	51,371.15
Crime Scene Technician	N05	34,477.28	42,924.22	51,371.15
Customer Service Representative	N05	34,477.28	42,924.22	51,371.15
Facilities Maintenance Worker	N05	34,477.28	42,924.22	51,371.15
ITS Support PTT	N05	34,477.28	42,924.22	51,371.15
Skilled Park Specialist	N05	34,477.28	42,924.22	51,371.15
Bond Clerk	N04	32,525.74	40,494.54	48,463.35
Evidence & Property Technician	N04	32,525.74	40,494.54	48,463.35
Facility Maintenance Specialist	N04	32,525.74	40,494.54	48,463.35
Park Specialist	N04	32,525.74	40,494.54	48,463.35
Police Services Officer	N04	32,525.74	40,494.54	48,463.35
Records Management Clerk	N04	32,525.74	40,494.54	48,463.35
Warrant Clerk	N04	32,525.74	40,494.54	48,463.35
Police Records Clerk	N03	30,684.66	38,202.40	45,720.14
Procurement Officer I	N03	30,684.66	38,202.40	45,720.14
Shelter Attendant	N03	30,684.66	38,202.40	45,720.14
Treasury Cashier	N03	30,684.66	38,202.40	45,720.14
Deputy Court Clerk	N02	28,947.79	36,040.00	43,132.21
Parking Control Officer	N02	28,947.79	36,040.00	43,132.21
Service Attendant	N02	28,947.79	36,040.00	43,132.21
Accounting Clerk	N01	27,309.24	34,000.00	40,690.76
Administrative Assistant I	N01	27,309.24	34,000.00	40,690.76
Audio Visual Evening	N01	27,309.24	34,000.00	40,690.76
Cash Receipts Clerk	N01	27,309.24	34,000.00	40,690.76
EMS Billing Specialist	N01	27,309.24	34,000.00	40,690.76
Payroll Support	N01	27,309.24	34,000.00	40,690.76
Service Representative I	N01	27,309.24	34,000.00	40,690.76

BILL NO. 18-20

Public Safety, Non-represented					
Title	Grade	Min	Mid	Max	
Battalion Chief	F07	86,933.44	103,609.05	120,284.65	
Assistant Fire Chief	F08	89,307.84	107,525.99	125,744.14	
Police Captain	P07	80,794.03	93,246.27	105,012.90	
Police Major	P08	82,250.20	103,800.03	125,349.86	

Represented Employees					
Job Title	Grade	Min	Mid	Max	
Firefighter	F1	37,626.54	44,982.53	52,338.51	
Firefighter Paramedic	F1P	43,626.54	50,982.53	58,338.51	
Fire Engineer	F2	40,941.09	48,617.55	56,294.00	
Fire Engineer Paramedic	F2P	46,941.09	54,617.55	62,294.00	
Fire Specialist	F3	44,605.37	55,779.02	66,952.67	
Fire Specialist Paramedic	F3P	50,605.37	61,779.02	72,952.67	
Fire Captain I	F4	53,153.26	63,597.88	74,042.49	
Fire Captain I Paramedic	F4P	59,153.26	69,597.88	80,042.49	
Fire Captain II	F5	58,134.06	71,940.59	85,747.12	
Fire Captain II Paramedic	F5P	64,134.06	77,940.59	91,747.12	
Communications Specialist	F11	36,587.64	47,929.75	59,271.85	
Lead Communications Specialist	F12	39,764.52	50,864.49	61,964.45	
Police Officer I	P1	38,629.42	46,077.33	53,778.27	
Police Officer II	P2	42,032.31	49,798.30	57,826.85	
Master Police Officer I	P3	45,794.26	57,400.16	69,006.06	
Master Police Officer II	P4	57,201.54	63,103.80	69,006.06	
Police Sergeant I	P5	57,500.00	72,073.54	86,647.08	
Police Sergeant II	P6	72,073.00	79,360.00	86,647.00	
Mechanic	UN0	33,473.65	41,713.36	49,953.07	
Custodian	UN1	28,268.71	36,904.80	45,540.98	
Maintenance Worker	UN2	28,443.17	36,418.62	44,394.06	
Equipment Operator	UN4	35,075.25	42,514.16	49,953.07	
Equipment Operator Sewer	UN4	35,075.25	42,514.16	49,953.07	
Equipment Operator Water	UN4	35,075.25	42,514.16	49,953.07	
Meter Service Technician	UN6	26,111.70	37,815.86	49,520.22	
Metered Services Specialist	UN7	33,261.49	43,572.46	53,883.44	

BILL NO. 18-20**EXHIBIT B**

Amended Fund	Amended Department	Added/ (Reduced)	New Amended budget
F100 General Fund	Administration	\$66,653	\$5,426,491
F100 General Fund	Development Services	\$101,555	\$3,731,612
F100 General Fund	Finance	\$44,352	\$8,648,207
F100 General Fund	Fire	\$63,387	\$17,846,969
F100 General Fund	Law	\$30,351	\$1,442,622
F100 General Fund	Municipal Court	\$17,350	\$899,753
F100 General Fund	Planning & Special Projects	\$10,511	\$650,559
F100 General Fund	Police	\$191,940	\$20,263,000
F100 General Fund	Public Works Engineering	\$145,922	\$5,779,524
F100 General Fund	Public Works Operations	\$16,864	\$4,961,427
F200 Parks & Recreation		\$26,807	\$3,366,832
F201 Gamber Center		\$2,992	\$497,717
F202 Legacy Park		\$16,931	\$1,953,484

BILL NO. 18-20

F203 Summit Waves	\$1,253	\$640,755
F204 Cemetery Trust Fund	\$830	\$227,306
F500 Water/Sewer Fund	\$71,689	\$40,956,570
F510 Airport	\$20,371	\$11,487,098
F520 Solid Waste	\$2,957	\$2,177,983
F530 Harris Park	\$11,552	\$1,569,068
F600 CBS	\$3,561	\$1,744,023
F610 Fleet	\$6,823	\$5,173,284
F620 ITS Fund	\$103,777	\$4,212,305