AGENDA REVIEW MEETING
CHESTERFIELD CITY COUNCIL
Monday, March 5, 2018
6:30 PM

I. Planning and Public Works Committee – Chairperson Guy Tilman-Ward II

A. **Bill No. 3188 -** Arbors at Kehrs Mill, Plat 1 – Replacement Construction and Maintenance Escrows **(First & Second Readings)**

B. **Bill No. 3189 -** Arbors at Kehrs Mill, Plat 2 – Replacement Construction and Maintenance Escrows **(First & Second Readings)**

C. **Bill No. 3190 -** Riparian Trail - Transportation Alternative Funds Program Agreement **(First Reading)**

D. **Riparian Trail** – Contract with George Butler Associates, Incorporated (Roll Call Vote) **Planning & Public Works Committee recommends approval**

E. **Next Meeting – March 8, 2018 (5:45pm)**

II. Finance and Administration Committee – Chairperson Tom DeCampi-Ward IV

A. **Bill No. 3180** – City Administrator's Compensation **(Second Reading)**

B. **Bill No. 3186** – Repeals Ordinance 852 – Drug Abuse Coordinator **(Second Reading)**

C. **Bill No. 3187** – Eliminates the establishment of the Finance and Administration Committee as a Statutory Committee **(Second Reading)**

D. **Next Meeting – March 12, 2018** (5:30pm)

III. Parks, Recreation and Arts Committee – Chairperson Randy Logan-Ward III

IV. Public Health and Safety Committee – Chairperson Barry Flachsbart-Ward I

V. Report from the City Administrator – Mike Geisel

A. **2018 Selective Slab Replacement Project A (Roll Call Vote)**

B. **2018 Selective Slab Replacement Project B (Roll Call Vote)**

VI. Unfinished Business – Mayor Bob Nation

VII. New Business – Mayor Bob Nation

VIII. Adjourn –

NOTE: *City Council will consider and act upon the matters listed above and such other matters as may be presented at the meeting and determined to be appropriate for discussion at that time.*

Notice *is hereby given that the City Council may also hold a closed meeting for the purpose of dealing with matters relating to one or more of the following: legal actions, causes of action, litigation or privileged communications between the City's representatives and its attorneys (RSMo 610.021(1) 1994; lease, purchase or sale of real estate (RSMo 610.021(2) 1994; hiring, firing, disciplining or promoting employees with employee groups (RSMo 610.021(3)1994; Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups (RSMo 610.021(9) 1994; and/or bidding specification (RSMo 610.021(11) 1994.*

AGENDA
CHESTERFIELD CITY COUNCIL MEETING
Chesterfield City Hall
690 Chesterfield Parkway West
Monday, March 5, 2018
7:00PM

I. CALL TO ORDER – Mayor Bob Nation

II. PLEDGE OF ALLEGIANCE – Mayor Bob Nation

III. MOMENT OF SILENT PRAYER – Mayor Bob Nation

IV. ROLL CALL – City Clerk Vickie Hass

V. APPROVAL OF MINUTES – Mayor Bob Nation

A. **Executive Session Minutes** – January 17, 2018

B. **City Council Meeting Minutes** – February 21, 2018

VI. COMMUNICATIONS AND PETITIONS – Mayor Bob Nation

VII. INTRODUCTORY REMARKS – Mayor Bob Nation

A. **Thursday, March 8, 2018 –** Planning and Public Works (5:45 pm)

B. **Monday, March 12, 2018 –** Finance and Administration Committee (5:30 pm)

C. **Monday, March 12, 2018 –** Planning Commission (7 pm)

D. **Monday, March 19, 2018** – Next City Council Meeting (7 pm)

VIII. APPOINTMENTS – Mayor Bob Nation

IX. COUNCIL COMMITTEE REPORTS

A. Planning and Public Works Committee – Chairperson Guy Tilman, Ward II

1. **Bill No. 3188 -** Arbors at Kehrs Mill, Plat 1 – Replacement Construction and Maintenance Escrows **(First & Second Readings)**

2. **Bill No. 3189 -** Arbors at Kehrs Mill, Plat 2 – Replacement Construction and Maintenance Escrows **(First & Second Readings)**

3. **Bill No. 3190 -** Riparian Trail - Transportation Alternative Funds Program Agreement **(First Reading)**

4. **Riparian Trail** – Contract with George Butler Associates, Inc. and Fund Transfer **(Roll Call Vote) Planning & Public Works Committee recommends approval**

5. **Next Meeting – March 8, 2018** (5:45pm)

B. Finance and Administration Committee – Chairperson Tom DeCampi, Ward IV

1. **Bill No**. **3180** – City Administrator's Compensation **(Second Reading)**

2. **Bill No. 3186** – Repeals Ordinance 852 – Drug Abuse Coordinator **(Second Reading)**

3. **Bill No. 3187** – Eliminates the establishment of the Finance and Administration Committee as a Statutory Committee **(Second Reading)**

4. **Next Meeting – March 12, 2018** (5:30pm)

C. Parks, Recreation and Arts Committee – Chairperson Randy Logan, Ward III

D. Public Health and Safety Committee – Chairperson Barry Flachsbart, Ward I

X. REPORT FROM THE CITY ADMINISTRATOR – Mike Geisel

A. 2018 Selective Slab Replacement Project A (Roll Call Vote)

B. 2018 Selective Slab Replacement Project B (Roll Call Vote)

XI. UNFINISHED BUSINESS – Mayor Bob Nation

XII. NEW BUSINESS – Mayor Bob Nation

XIII. LEGISLATION

A. **Bill No. 3180 –** An ordinance Setting the 2018 Salary for the City Administrator. As considered and recommended by City Council in conjunction with the annual performance evaluation, the proposed bill establishes the annual compensation for the City Administrator as required by Statute. **(City Administrators Compensation) (Second Reading)**

B. **Bill No. 3186 –** Repeals Chapter 2, Article 5, Section 2-107, (Ordinance Number 582) of the City of Chesterfield Municipal Code, establishing the position of the Coordinator of Alcohol and Drug Abuse Prevention. **(Second Reading) F&A Committee recommends approval**

C. **Bill No. 3187 –** Repeals the establishment of the Finance and Administration Citizens Committee as a statutory committee. **(Second Reading)**

D. **Bill No. 3188 -** An ordinance amending Ordinance 2866 to authorize replacement construction and maintenance escrows for Arbors at Kehrs Mill Subdivision, Plat 1 **(First & Second Readings) Planning & Public Works Committee recommends approval**

E. **Bill No. 3189 -** An ordinance amending Ordinance 2867 to authorize replacement construction and maintenance escrows for Arbors at Kehrs Mill Subdivision, Plat 2 **(First & Second Readings) Planning & Public Works Committee recommends approval**

F. **Bill No. 3190 -** An ordinance authorizing the City Administrator to execute a Transportation Alternative Funds Program Agreement with the Missouri Highways and Transportation Commission for construction of the Riparian Trail from August Hill Drive to Old Chesterfield Road **(First Reading) Planning & Public Works Committee recommends approval**

XIV. LEGISLATION – PLANNING COMMISSION

XV. ADJOURNMENT

NOTE: *City Council will consider and act upon the matters listed above and such other matters as may be presented at the meeting and determined to be appropriate for discussion at that time.*
Notice *is hereby given that the City Council may also hold a closed meeting for the purpose of dealing with matters relating to one or more of the following: legal actions, causes of action, litigation or privileged communications between the City's representatives and its attorneys (RSMo 610.021(1) 1994; lease, purchase or sale of real estate (RSMo 610.021(2) 1994; hiring, firing, disciplining or promoting employees with employee groups (RSMo 610.021(3)1994; Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups (RSMo 610.021(9) 1994; and/or bidding specification (RSMo 610.021(11) 1994.*

RECORD OF PROCEEDING

MEETING OF THE CITY COUNCIL
OF THE CITY OF CHESTERFIELD
AT 690 CHESTERFIELD PARKWAY WEST

FEBRUARY 21, 2018

The meeting was called to order at 7 p.m.

Mayor Bob Nation led everyone in the Pledge of Allegiance and followed with a moment of silent prayer.

A roll call was taken with the following results:

PRESENT	ABSENT
Mayor Bob Nation	Councilmember Tom DeCampi
Councilmember Barbara McGuinness	Councilmember Barry Flachsbart
Councilmember Ben Keathley	
Councilmember Guy Tilman	
Councilmember Dan Hurt	
Councilmember Randy Logan	
Councilmember Michelle Ohley	

APPROVAL OF MINUTES

The minutes of the February 5, 2018 City Council meeting were submitted for approval. Councilmember Ohley made a motion, seconded by Councilmember Tilman, to approve the City Council minutes. A voice vote was taken with a unanimous affirmative result and the motion was declared passed.

COMMUNICATIONS AND PETITIONS

The Citizens Committee for the Environment recognized two individuals for their contributions to the community relative to sustainability and environmental preservation. Ms. Judy Smith was recognized as the 61st Green Team recipient. Ms. Elaine Collins was recognized as the 62nd Green Team recipient.

Mr. Stan McCurdy, 10411 Clayton Road, stated that he was available to answer any questions pertaining to Bill No. 3177 (P.Z. 19-2017 Downtown Chesterfield [Sachs Properties]) and Bill No. 3178 (P.Z. 17-2017 Aventura at Wild Horse Creek [Above All Development]).

Mr. Bryan Aston, 10411 Clayton Road, stated that he was available to answer any questions pertaining to Bill No. 3177 (P.Z. 19-2017 Downtown Chesterfield [Sachs Properties]) and Bill No. 3178 (P.Z. 17-2017 Aventura at Wild Horse Creek [Above All Development]).

Ms. Debbie Rowan, 16030 Meadow Oak Drive, spoke in opposition to the proposed Clarkson Wilson Center rezoning.

Ms. Antoinette Hodges, 16072 Meadow Oak Drive, spoke in opposition to the proposed Clarkson Wilson Center rezoning.

Mr. Paul Bostick, 2139 Heather Glen Drive, spoke in opposition to the proposed Clarkson Wilson Center rezoning.

INTRODUCTORY REMARKS

Mayor Nation announced that the next meeting of City Council has been scheduled for Monday, March 5, at 7 p.m. He also announced that the Finance and Administration meeting which had been scheduled for Monday, February 26 had been cancelled and not yet re-scheduled. The Planning Commission meeting originally scheduled for Monday, February 26 was also cancelled.

APPOINTMENTS

There were no appointments.

COUNCIL COMMITTEE REPORTS

Planning/Public Works Committee

Councilmember Guy Tilman, Chairperson of the Planning/Public Works Committee, reported that Bill No. 3175 (P.Z. 14-2017 Larry Enterprises-Lynch Hummer [17401 N

Outer 40 Rd]) Ordinance Amendment will be considered for adoption under the "Legislation – Planning Commission" portion of the agenda.

Councilmember Tilman reported that Bill No. 3176 (P.Z. 15-2017 MPD Investments [14781 N Outer 40 Rd]) Ordinance Amendment will be considered for adoption under the "Legislation – Planning Commission" portion of the agenda.

Councilmember Tilman reported that Bill No. 3177 (P.Z. 19-2017 Downtown Chesterfield [Sachs Properties] will be considered for adoption under the "Legislation – Planning Commission" portion of the agenda.

Councilmember Tilman reported that Bill No. 3178 (P.Z. 17-2017 Aventura at Wild Horse Creek [Above All Development]) will be considered for adoption under the "Legislation – Planning Commission" portion of the agenda.

Councilmember Tilman reported that Bill No. 3185 (Fire Hydrants at the Grand Reserve Subdivision) is scheduled for both first and second reading approval under the "Legislation" portion of the agenda.

Councilmember Tilman announced that the next meeting of this Committee has been scheduled for Thursday, February 22, at 5:45 p.m.

Finance and Administration Committee

Councilmember Barbara McGuinness, Vice-Chairperson of the Finance and Administration Committee, made a motion, seconded by Councilmember Tilman, to approve proposed Public Health and Safety Policy No. 22 (Chesterfield Alliance for Positive Youth). A voice vote was taken with a unanimous affirmative result and the motion was declared passed.

Councilmember McGuinness made a motion, seconded by Councilmember Logan, to approve proposed Parks, Recreation and Arts Policy No. 7 (Updating the Parks and Recreation Citizens Advisory Committee). A voice vote was taken with a unanimous affirmative result and the motion was declared passed.

Councilmember McGuinness made a motion, seconded by Councilmember Keathley, to approve proposed Parks, Recreation and Arts Policy No. 6 (Chesterfield Citizens Environmental Advisory Committee). A voice vote was taken with a unanimous affirmative result and the motion was declared passed.

Councilmember McGuinness made a motion, seconded by Councilmember Keathley, to approve the proposed Finance and Administration Citizens Advisory Committee policy to eliminate the reference in the City Code as a statutory committee. A voice vote was taken with a unanimous affirmative result and the motion was declared passed.

Councilmember McGuinness reported that Bill No. 3180 (City Administrator's Compensation) will be considered for adoption under the "Legislation" portion of the agenda. Councilmember Hurt made a motion, seconded by Councilmember Logan, to postpone the second reading of this bill until the March 5 City Council meeting. A voice vote was taken with an affirmative result (Councilmembers Ohley and Keathley voted "No"). Councilmember Keathley requested a roll call vote. A roll call vote was taken with the following results: Ayes – Hurt, Tilman, Logan and McGuinness. Nays – Ohley and Keathley. Whereupon the motion to postpone was declared passed.

Councilmember McGuinness reported that Bill No. 3181 (Victims' Rights Ordinance) will be considered for adoption under the "Legislation" portion of the agenda.

Councilmember McGuinness reported that Bill No. 3182 (Public Works Board of Variance) will be considered for adoption under the "Legislation" portion of the agenda.

Councilmember McGuinness reported that Bill No. 3187 (Eliminates the establishment of the Finance and Administration Committee as a Statutory Committee) will be read for the first time under the "Legislation" portion of the agenda.

Councilmember McGuinness reported that Bill No. 3186 (Repeals Ordinance No. 852 – Drug Abuse Coordinator) will be read for the first time under the "Legislation" portion of the agenda.

Councilmember McGuinness announced that the next meeting of this Committee, scheduled for Monday, February 26, at 5:30 p.m., has been postponed to a date not yet scheduled.

Parks, Recreation & Arts Committee

Councilmember Randy Logan, Chairperson of the Parks, Recreation & Arts Committee, indicated that the next meeting of this Committee has not been scheduled. He advised that the Creative Arts Alliance would be conducting their "Arts Draft" this coming weekend and the City had prepared its list of desired artwork to select.

Public Health & Safety Committee

Councilmember Michelle Ohley, Vice-Chairperson of the Public Health & Safety Committee, indicated that she had no report this evening.

REPORT FROM THE CITY ADMINISTRATOR

City Administrator Mike Geisel reported that Bill No. 3183 (Renewal of St. Louis County Communications Contract) will be considered for adoption under the "Legislation" portion of the agenda.

Mr. Geisel reported that Staff has sought proposals for construction inspection services related to the City's annual capital construction program. Based upon review of information provided by Public Works Director/City Engineer Jim Eckrich, Mr. Geisel joined with him in recommending authorization for the City Administrator to execute a contract for construction inspection services with TSI Geotechnical in an amount not to exceed the budgeted amount of $100,000. This work is fully funded through the Capital Projects fund. Councilmember Tilman made a motion, seconded by Councilmember Logan, to approve this recommendation. A roll call vote was taken with the following results: Ayes – Keathley, McGuinness, Tilman, Ohley, Hurt and Logan. Nays – None. Whereupon Mayor Nation declared the motion passed.

Mr. Geisel next reported that Russell's Café & Bakery, located at 14888 Clayton Road (former location of Panera Bread), has requested a new liquor license, to sell all kinds of liquor by the drink, to be consumed on premise, and Sunday sales. Mr. Geisel reported that, per City policy, this application has been reviewed and is now recommended for approval by both the Police Department and Planning & Development Services. Councilmember Logan made a motion, seconded by Councilmember Ohley, to approve issuance of a new liquor license to Russell's Café & Bakery. A voice vote was taken with a unanimous affirmative result and the motion was declared passed.

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

There was no new business.

LEGISLATION

BILL NO. 3181 Amends Chapter 19 - Municipal Court of the Municipal Code of the City of Chesterfield, Missouri by adding Section 19-16 titled "Victim's Bill of Rights" **(Second Reading) F&A Committee recommends approval**

Councilmember McGuinness made a motion, seconded by Councilmember Keathley, for the second reading of Bill No. 3181. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 3181 was read for the

second time. A roll call vote was taken for the passage and approval of Bill No. 3181 with the following results: Ayes – Hurt, Ohley, McGuinness, Tilman, Logan and Keathley. Nays – None. Whereupon Mayor Nation declared Bill No. 3181 approved, passed it and it became **ORDINANCE NO. 2984.**

BILL NO. 3182 Authorizes the elimination of the Public Works Board of Variance **(Second Reading) F&A Committee recommends approval**

Councilmember McGuinness made a motion, seconded by Councilmember Logan, for the second reading of Bill No. 3182. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 3182 was read for the second time. A roll call vote was taken for the passage and approval of Bill No. 3182 with the following results: Ayes – Ohley, Hurt, Logan, Keathley, Tilman and McGuinness. Nays – None. Whereupon Mayor Nation declared Bill No. 3182 approved, passed it and it became **ORDINANCE NO. 2985.**

BILL NO. 3183 Authorizes the City Administrator of the City of Chesterfield to execute a renewal agreement with St. Louis County for the establishment of a communications agreement between the City of Chesterfield and St. Louis County **(Second Reading)**

Councilmember Hurt made a motion, seconded by Councilmember Logan, for the second reading of Bill No. 3183. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 3183 was read for the second time. A roll call vote was taken for the passage and approval of Bill No. 3183 with the following results: Ayes – Keathley, Tilman, McGuinness, Ohley, Logan and Hurt. Nays – None. Whereupon Mayor Nation declared Bill No. 3183 approved, passed it and it became **ORDINANCE NO. 2986.**

BILL NO. 3187 Repeals the establishment of the Finance and Administration Citizens Committee as a statutory committee **(First Reading)**

Councilmember McGuinness made a motion, seconded by Councilmember Logan, for the first reading of Bill No. 3187. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 3187 was read for the first time.

BILL NO. 3185 Approves the installation of five fire hydrants at the Grand Reserve Subdivision located within the City of Chesterfield **(First & Second Readings) Department of Public Works recommends approval**

Councilmember Tilman made a motion, seconded by Councilmember Ohley, for the first reading of Bill No. 3185. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 3185 was read for the first time.

Councilmember Tilman made a motion, seconded by Councilmember Hurt, for the second reading of Bill No. 3185. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 3185 was read for the second time. A roll call vote was taken for the passage and approval of Bill No. 3185 with the following results: Ayes – McGuinness, Tilman, Ohley, Logan, Keathley and Hurt. Nays – None. Whereupon Mayor Nation declared Bill No. 3185 approved, passed it and it became **ORDINANCE NO. 2987.**

BILL NO. 3186 Repeals Chapter 2, Article 5, Section 2-107, (Ordinance Number 582) of the City of Chesterfield Municipal Code, establishing the position of the coordinator of alcohol and drug abuse prevention **(First Reading) F&A Committee recommends approval**

Councilmember McGuinness made a motion, seconded by Councilmember Logan, for the first reading of Bill No. 3186. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 3186 was read for the first time.

LEGISLATION – PLANNING COMMISSION

BILL NO. 3175 Repeals City of Chesterfield Ordinance Number 2055 to amend the legal description and development conditions for a 15.4 acre tract of land, more or less, zoned "PI" Planned Industrial District located north of Highway 40/Interstate 64, west of Boone's Crossing (P.Z. 14-2017 Larry Enterprises-Lynch Hummer [17401 N Outer 40 Rd] 17U610139, 17U520258, 17U520269) **(Second Reading) Planning Commission recommends approval; Planning & Public Works Committee recommends approval, as amended**

Councilmember Tilman made a motion, seconded by Councilmember Logan, for the second reading of Bill No. 3175. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 3175 was read for the second time. A roll call vote was taken for the passage and approval of Bill No. 3175 with the following results: Ayes – Ohley, McGuinness, Hurt, Tilman, Keathley and Logan. Nays – None. Whereupon Mayor Nation declared Bill No. 3175 approved, passed it and it became **ORDINANCE NO. 2988.**

BILL NO. 3176 Repeals City of Chesterfield Ordinance Number 2411 to amend the legal description and development conditions for a 7.0 acre tract of land, more or less, zoned "PI" Planned Industrial District located north of Highway 40/Interstate 64, west of Boone's Crossing (P.Z. 15-2017 MPD Investments [14781 N Outer 40 Rd] 17U610139, 17U520258, 17U520269) **(Second Reading) Planning Commission recommends approval**

Councilmember Tilman made a motion, seconded by Councilmember Ohley, for the second reading of Bill No. 3176. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 3176 was read for the second time. A roll call vote was taken for the passage and approval of Bill No. 3176 with the following results: Ayes – Hurt, Tilman, Keathley, Ohley, Logan and McGuinness. Nays – None. Whereupon Mayor Nation declared Bill No. 3176 approved, passed it and it became **ORDINANCE NO. 2989.**

[Councilmember DeCampi arrived at 8:00 p.m.]

BILL NO. 3177 Amends City of Chesterfield Ordinance Number 2449 for a "PC&R" Planned Commercial and Residence District located at the southwest corner of the intersection of U.S. Highway 40/I-64 and Chesterfield Parkway West (P.Z. 19-2017 Downtown Chesterfield [Sachs Properties]) **(Second Reading) Planning Commission recommends approval. Blue Sheet amendment proposed to correct bearing provided in legal description at petitioner's request**

Councilmember Tilman made a motion, seconded by Councilmember Logan, for the second reading of Bill No. 3177.

Councilmember Hurt made a motion, seconded by Councilmember Logan, to approve the blue sheet amendment. A voice vote was taken with a unanimous affirmative result and the motion to amend was declared passed.

A voice vote was taken for the second reading of Bill No. 3177, with a unanimous affirmative result and the motion was declared passed. Bill No. 3177 was read for the second time. A roll call vote was taken for the passage and approval of Bill No. 3177, as amended, with the following results: Ayes – Ohley, Keathley, Logan, Tilman, McGuinness, DeCampi and Hurt. Nays – None. Whereupon Mayor Nation declared Bill No. 3177 approved, passed it and it became **ORDINANCE NO. 2990.**

BILL NO. 3178 Amends the Unified Development Code of the City of Chesterfield by changing the boundaries of a "PC&R" Planned Commercial and Residential District, the "C8" Planned Commercial District and the "LLR" Large Lot Residential District to an "R-6AA" Residence District for a 12.6 acre tract of land located on the south side of Old Chesterfield Road, northwest of the intersection with Wild Horse Creek Road (P.Z. 17-2017 Aventura at Wild Horse Creek [Above All Development] 17T310016, 18T630173, 18T630205, 18T640226) **(Second Reading) Planning Commission recommends approval**

Councilmember Tilman made a motion, seconded by Councilmember Logan, for the second reading of Bill No. 3178. A voice vote was taken with a unanimous affirmative result and the motion was declared passed. Bill No. 3178 was read for the second time. A roll call vote was taken for the passage and approval of Bill No. 3178 with the following results: Ayes – McGuinness, Hurt, Tilman, Keathley and Logan. Nays – Ohley and DeCampi. Whereupon Mayor Nation declared Bill No. 3178 approved, passed it and it became **ORDINANCE NO. 2991.**

ADJOURNMENT

There being no further business to discuss, Mayor Nation adjourned the meeting at 8:07 p.m.

_____
Mayor Bob Nation

ATTEST:

_____
Vickie J. Hass, City Clerk

APPROVED BY CITY COUNCIL: _____

AGENDA REVIEW – Monday, 3/5/2018 – 6:30 PM

An AGENDA REVIEW meeting has been scheduled to start at **6:30 pm, on Monday, March 5, 2018**.

Please let me know, ASAP, if you will be unable to attend this meeting.

UPCOMING MEETINGS/EVENTS

A. **Thursday, March 8, 2018 –** Planning and Public Works (5:45 pm)

B. **Monday, March 12, 2018 –** Finance and Administration Committee (5:30 pm)

C. **Monday, March 12, 2018 –** Planning Commission (7 pm)

D. **Monday, March 19, 2018** – Next City Council Meeting (7 pm)

APPOINTMENTS

There are no appointments proposed for this meeting.

If you have any questions, please contact me prior to Wednesday's meeting.

PLANNING AND PUBLIC WORKS COMMITTEE

The Planning and Public Works Committee has the following action items for the March 5th, 2018 City Council meeting.

LEGISLATION

Bill No. 3188 - Arbors at Kehrs Mill, Plat 1 – Replacement Construction and Maintenance Escrows (First & Second Readings) Planning & Public Works Committee recommends approval. An Ordinance amending Ordinance 2866 to authorize replacement construction and maintenance escrows for Arbors at Kehrs Mill Subdivision, Plat 1

Bill No. 3189 - Arbors at Kehrs Mill, Plat 2 – Replacement Construction and Maintenance Escrows (First & Second Readings) Planning & Public Works Committee recommends approval. An Ordinance amending Ordinance 2867 to authorize replacement construction and maintenance escrows for Arbors at Kehrs Mill Subdivision, Plat 2

Bill No. 3190 - Riparian Trail - Transportation Alternative Funds Program Agreement (First Reading) Planning & Public Works Committee recommends approval. An Ordinance authorizing the City Administrator to execute a Transportation Alternative Funds Program Agreement with the Missouri Highways and Transportation Commission for construction of the Riparian Trail from August Hill Drive to Old Chesterfield Road

RECOMMENDATIONS

Riparian Trail – Contract with George Butler Associates, Incorporated
(Roll Call Vote) Planning & Public Works Committee recommends approval
Recommendation that the City of Chesterfield enter into a contract with George Butler Associates, Incorporated for design and construction engineering services for construction of the Riparian Trail from August Hill Drive to Old Chesterfield Road in an amount not to exceed $284,200; and to transfer $284,200 from General Fund – Fund Reserves over the forty percent policy. This money will be returned to the General Fund – Fund Reserves from TAP grant funding or costs paid by the Chesterfield Valley TDD. There is no net cost, or loss of funds, to the General Fund – Fund Reserves associated with this project.

NEXT MEETING
The next meeting of the Planning & Public Works Committee is scheduled for Thursday, March 8, 2018 at 5:45 pm.

MEMORANDUM

TO: Mike Geisel, City Administrator

FROM: Justin Wyse, Director of Planning & Development Services
James Eckrich, Director of Public Works/City Engineer

SUBJECT: Planning & Public Works Committee Meeting Summary
Thursday, February 22, 2018

A meeting of the Planning and Public Works Committee of the Chesterfield City Council was held on Thursday, February 22, 2018 in Conference Room 101.

In attendance were: **Chair Guy Tilman** (Ward II), **Councilmember Barry Flachsbart** (Ward I), **Councilmember Dan Hurt** (Ward III), and **Councilmember Michelle Ohley (Ward IV).**

Also in attendance were: Mayor Bob Nation; Mike Geisel, City Administrator; Planning Commission Chair Merrell Hansen; Jim Eckrich, Director of Public Works/City Engineer; Tom McCarthy, Director of Parks, Recreation & Arts; Justin Wyse, Director of Planning & Development Services; Jessica Henry, Senior Planner; and Kathy Juergens, Recording Secretary.

The meeting was called to order at 5:45 p.m.

I. APPROVAL OF MEETING SUMMARY

A. Approval of the January 18, 2018 Committee Meeting Summary

Councilmember Ohley made a motion to approve the Meeting Summary of January 18, 2018. The motion was seconded by Councilmember Hurt and **passed by a voice vote of 4-0.**

II. UNFINISHED BUSINESS – None

III. NEW BUSINESS

A. Chesterfield Village/Chesterfield Mall Report (Ward 2)

STAFF REPORT

Justin Wyse, Director of Planning & Development Services, provided a brief overview of the report and stated that the report was prepared by the Planning Staff with input from other City Departments. The report begins with Louis Sachs' original vision as presented to St. Louis County. The report details milestones on how the area has developed over the years, includes the current zoning history, and future considerations for redevelopment of the mall area.

Councilmember Flachsbart inquired as to whether anyone from outside of the City was contacted during the preparation of the report. Mr. Wyse replied that it was solely compiled by

internal sources. Mike Geisel, City Administrator, stated that he, the Mayor and some of the Executive Staff have met with attorney Mike Doster, Sachs Properties, the mall management and developers and those conversations are independent of the report. The report is a factual history and depicts concerns and issues that need to be identified in the redevelopment of the mall.

Jessica Henry, Senior Planner, then gave a PowerPoint presentation depicting the following:

What is Chesterfield Village – The Chesterfield Village area is 1500 acres that is generally split into four quadrants with Chesterfield Parkway serving as the ring that binds them. The four quadrants are as follows:

Southeast quadrant – Mercy Health Systems is developing their campus at this location. Their Virtual Care Center will be located here with plans to develop the rest of the quadrant.

Northeast quadrant – This quadrant is known as the Herman Stemme development. It is essentially built out with MiTek being the most recently completed building.

Northwest quadrant – This quadrant is known as Hilltown Village. Most of the properties have been built out in this quadrant and include Monsanto, City Hall, the Doubletree Hotel, and RGA. The property across the street from RGA is still vacant.

Southwest quadrant – This is the largest quadrant with four main areas:

1. Downtown Chesterfield – Consists of 98 acres that are zoned Planned Commercial & Residential District. This area is intended to have an urban form unlike any that currently exists in Chesterfield. Given the geographical separation, ultimate development density is assigned by area. The amenities for this area are currently in place, but no one has presented a comprehensive development plan for this area.

2. Central Park Condominiums – In 2002, the City approved a final development plan for two 12-story condominium buildings comprised of 71 units in each building. However, no one has come forward to development the land.

3. Central Park Square – This consists of 16 acres which is partially built out. This area is considered a connection between the surrounding sites.

4. Chesterfield Mall – The mall opened in 1976 and is comprised of more than 1 million square feet of retail space with three anchor tenants.

What is the future of Chesterfield Mall – As redevelopment proposals are submitted, it is critical that the City be aware of the significant challenges to redevelopment and their impact on the City and surrounding areas. These challenges are listed below:

- Mall Utility Infrastructure
- Roads and Signals
- Traffic
- City Facilities

- Multimodal Connectivity
- Demographic Impacts
- Financing/Incentives
- City Revenues and Expenses
- Zoning Implications
- Chesterfield Village Inc. Parks Donation Agreement

DISCUSSION

Land Ownership

Councilmember Flachsbart inquired as to the land ownership of the mall area itself and specifically as to how many parcels the mall owns that can be treated separately. Mr. Geisel replied that each of the three major tenants own their ground, buildings and parking area. The mall is the connective tissue. Mr. Geisel also pointed out that zoning lines do not have to follow property lines. After further discussion related to ownership boundaries, the Committee asked Staff to prepare a color-coded exhibit that depicts ownership of the mall areas.

Deed Restrictions.

In response to Councilmember Flachsbart's request for the deed restrictions, Mike Doster, Doster Ullom & Boyle, stated the deed restrictions are available. They are very complicated, but with his client's permission, he offered to provide the summary to the City. Mr. Wyse stated he believes there may be side agreements between the anchor stores that are not on record.

Downtown Chesterfield Boundaries

The Committee discussed the nature of the original boundary and how it has evolved over the years. Councilmember Flachsbart stated he would like to see the current boundaries to see exactly what Sachs Properties owns today.

Future of the Mall

Mr. Geisel stated that the mall manager believes they will be requesting bids for the property by the end of February. He anticipates there will be a 60-day window to receive bids and 90 days to evaluate the bids. C-III Capital Partners is actively pursuing the offering and sale of the property on behalf of the bank owning the property. In response to Planning Commission Chair Hansen's question related to dividing the property up to sell, Mr. Geisel stated that he does not believe the mall intends to divide the property as they want to sell the property in its entirety. Mr. Doster stated that it is highly unlikely that the mall would be redeveloped piecemeal.

Mr. Wyse stated that when a proposal is submitted for review, the City will look to see how it will fit on that site, how it will fit into the overall area, and how it will impact the surrounding area.

No action was taken at this time.

B. Replacement Construction and Maintenance Escrows for Arbors at Kehrs Mill Subdivision, Plat 1 (Ward 4)

C. Replacement Construction and Maintenance Escrows for Arbors at Kehrs Mill Subdivision, Plat 2 (Ward 4)

STAFF REPORT

Jessica Henry, Senior Planner, stated that the development was approved in 2015 and construction began later that year. As required with the Record Plat, the developer submitted escrows for the construction and maintenance of the required improvements for the subdivision. The land developer has since completed their work and the lots have been purchased by home builders. The home builders would now like to take over the remaining escrow obligations and have submitted replacement escrows. Normally these types of agreements would go along with the Record Plat; however, in this case, they are not re-platting but simply replacing the agreement portion. The Unified Development Code specifically requires that these types of agreements be approved by City Council.

Councilmember Flachsbart made a motion to forward Replacement Construction and Maintenance Escrows for the Arbors at Kehrs Mill Subdivision, Plats 1 and 2, to City Council with a recommendation to approve. The motion was seconded by Councilmember Ohley and **passed by a voice vote of 4-0.**

Note: Two Bills, as recommended by the Planning & Public Works Committee, will be needed for the March 5, 2018 City Council Meeting.
See Bills #

[Please see the attached report prepared by Justin Wyse, Director of Planning and Development Services, for additional information on Replacement Construction and Maintenance Escrows for the Arbors at Kehrs Mill Subdivision Plats 1 and 2.]

D. Riparian Trail Grant-Transportation Alternative Program

STAFF REPORT
Jim Eckrich, Director of Public Works/City Engineer, gave a PowerPoint presentation depicting the following:

Phase I of the Riparian Trail – The Trail is a half-mile crushed stone and boardwalk trail meandering through the woods along Chesterfield Creek near Central Park. It was constructed by the City in 2011 using grant funding.

Riparian Trail Extension- The City has planned for some time to extend the Riparian Trail to the Levee Trail and this extension is included in the Chesterfield Bikeable Walkable Plan that was approved in 2010.

Impact of the Baxter Road Project – In 2016, St. Louis County resurfaced Baxter Road from Clarkson to Wild Horse Creek Road. At that time, the County planned to reduce traffic lanes from five to three to accommodate two dedicated bike lanes. City Staff and Officials questioned this decision and objected partially due to lack of public input. Ultimately a compromise was made whereby Baxter Road would remain five lanes, but the City would pursue the extension of the Trail from August Hill to Wild Horse Creek Road.

Funding for Riparian Trail Extension – The City applied for a Transportation Alternative Program (TAP) grant to fund the Trail extension from August Hill to Old Chesterfield Road. The project is estimated to cost $1.54 million, however it may differ once the design phase is completed. The City received the maximum grant funding allowed, $1 million. The remainder of the funding will be paid for by the Chesterfield Valley Transportation Development District (TDD) because the

Trail will ultimately be connected to the Levee Trail. Therefore, there will be no net cost to the City.

Land Acquisition – The City acquired 13.2 acres of land from Chesterfield Village, Inc (CVI) in 2010 for the construction of Phase I of the Trail, as well as construction of the August Hill Drive/Lydia Hill Drive connector. In return for the land, CVI received "credits" for open space, tree canopy, and floor area ratio that they can use when developing other properties in Chesterfield Village. The Trail extension will be located on property that is currently owned by CVI. Acquiring the property will necessitate an amendment to the current Agreement. It was noted that the amendment is not final as the details are still being negotiated.

Draft Amendment Summary – Under the amended Agreement, the City will acquire the following:

- Sixteen acres of park property adjacent to Chesterfield Creek for construction of the extension.
- One acre of park property adjacent to Veteran's Place Drive, which includes the Awakening,
- The Awakening sculpture.
- A portion of Chesterfield Ridge Center Drive, including the bridge, (currently a private roadway) which will be converted to public right of way.

CVI receives additional credits for open space, tree canopy, and floor area ratio to use when further developing Chesterfield Village.

Benefit to the City – The City will acquire property to construct the Trail extension. The Trail cannot be constructed without acquiring the property or an easement. The City will also acquire the one-acre property next to Veteran's Place Drive (used for Parks purposes) as well as the Awakening sculpture.

Benefit to CVI – Additional credits for open space, tree canopy, and floor area ratio that can be used when further developing Chesterfield Village. A portion of Chesterfield Ridge Center Drive, including the bridge, will be converted to public right of way. It was noted that the limits of the road transfer are still being negotiated and the City will NOT accept the bridge unless all current deficiencies are addressed.

Project Approval – The following steps need to be completed to approve the project:

- Recommend approval of the TAP grant and forward to City Council.

- Authorize the City Administrator to execute a contract with George Butler Associates as they have been chosen as the firm most qualified to perform design services. The scope and fee have been negotiated.

- Authorize a transfer of $284,200 from the General Fund-Fund Reserves over the 40% Policy which will all be fully reimbursed by the TAP grant and the TDD. Money has to be authorized to physically spend before it can be reimbursed.

- CVI Agreement Amendment – the Agreement will be forwarded to City Council for approval at a later date once the amendment is finalized.

Timing – The City must allocate funds for engineering services by April 30, 2018 or funding for the project will be removed from the TAP grant. Staff is recommending that this go to City Council in March since there is typically only one Council meeting in late April.

Staff believes this is beneficial to the City as it will allow the City to proceed with the extension of the Trail at no cost to the City.

DISCUSSION

In response to Chair Tilman's question regarding reimbursements from the TAP grant, Mr. Eckrich stated that the City will submit a request for reimbursement every two weeks from the time design work is started. Chair Tilman asked if the City could receive TAP funds even if the project was not constructed right away. Mr. Eckrich stated that this is correct, however, if the project is not constructed in accordance with the timeframe within the grant, the City could have to pay the money back.

Councilmember Ohley asked for proof of assurance that the TDD will reimburse the City for the remainder of the costs that are not covered by the TAP grant. Mr. Geisel stated that he has written confirmation from the TDD's legal counsel that the project is legal and eligible for reimbursement. The project is on the TDD list and scope of projects as the Levee Trail.

There was some discussion regarding the current condition of Chesterfield Ridge Center Drive and the properties it currently serves. Mr. Eckrich confirmed that the road currently meets City standards and that at some point in the future, it could be extended to serve future developments.

Councilmember Flachsbart stated that he likes the fact that the City will be able to complete the Riparian Trail as the trails are an important amenity for the residents. However, since the bridge is not up to City standards, he suggested that it be negotiated in the amendment to the Agreement that the City will take over the bridge maintenance WHEN another development starts utilizing it and AFTER all deficiencies have been brought up to City standards.

Councilmember Ohley questioned why the funds are being transferred from the General Fund-Fund Reserves account instead of from Parks. Mr. Eckrich stated that all City expenses are eligible through the General Fund-Fund Reserves account. In the past, this account has typically been used to finance projects outside the City's annual budget.

Councilmember Flachsbart made a motion to forward to City Council with a recommendation to approve the following:

1. **To authorize the City Administrator to execute the Transportation Alternative Program grant for the Riparian Trail Extension,**
2. **To authorize the City Administrator to execute a contract with George Butler Associates for engineering design services and construction engineering services in an amount not to exceed $270,632 with total funding not to exceed $284,200,**
3. **To authorize the transfer of $284,200 from General Fund-Fund Reserves over the 40% policy, and**
4. **To stipulate in the amendment to the Chesterfield Valley Inc. Agreement that Chesterfield Ridge Center Drive and bridge may not be accepted by the City**

until future development occurs within the area and all deficiencies have been corrected.

The motion was seconded by Councilmember Hurt and **passed by a voice vote of 3-1 with Councilmember Ohley voting no.**

Note: One Bill, as recommended by the Planning & Public Works Committee, will be needed for the March 5, 2018 City Council Meeting. See Bill #

[Please see the attached report prepared by Jim Eckrich, Director of Public Works/City Engineer, for additional information on Riparian Trail Grant-Transportation Alternative Program.]

IV. OTHER

V. ADJOURNMENT

The meeting adjourned at 6:59 p.m.

City Council Memorandum

Department of Planning & Development Services

To: Michael O. Geisel, City Administrator

From: Justin Wyse, Director of Planning and Development Services JW

Date: February 26, 2018 See Bill No. 3188

CC Date: **March 5, 2018**

RE: **REPLACEMENT CONSTRUCTION AND MAINTENANCE ESCROWS FOR ARBORS AT KEHRS MILL SUBDIVISION, PLAT 1**

Summary

On May 4th, 2015, the City of Chesterfield City Council approved Ordinance 2848 for the Arbors at Kehrs Mill subdivision Plat 1 with the associated escrow agreements; however, the plat was not recorded within 60 days as required by the Unified Development Code and therefore re-approval was required. On August 17th, 2015, City Council granted approval of the exact same Subdivision Plat 1 and agreements via Ordinance 2866.

Construction has been underway since late 2015 and the development team is now requesting to replace the original construction and maintenance escrows and agreements. The original escrows and agreements were provided by the land developer; however, now that the land development (site clearing and grading, infrastructure construction, etc.) has been completed, the land developer is seeking to replace the original escrows with new escrows from the home builders. While this is a typical request for residential subdivisions where construction takes place over several years, the City's Unified Development Code (UDC) states that "*The land subdivision bond or escrow agreement or other required surety shall be prepared and executed on forms furnished by the Department and shall be submitted to the City Council for approval or disapproval.*"

At the February 22, 2018 Planning and Public Works Committee meeting, a motion to forward the escrow agreements for Plat 1 of the Arbors at Kehrs Mill subdivision to City Council with a recommendation of approval was passed by a vote of 4-0.

Attached, please find a copy of the legislation and Escrow Agreements.

City Council Memorandum

Department of Planning & Development Services

To: Michael O. Geisel, City Administrator

From: Justin Wyse, Director of Planning and Development Services JW

Date: February 26, 2018 See Bill No.3189

CC Date: **March 5, 2018**

RE: **REPLACEMENT CONSTRUCTION AND MAINTENANCE ESCROWS FOR ARBORS AT KEHRS MILL SUBDIVISION, PLAT 2**

Summary

On May 4th, 2015, the City of Chesterfield City Council approved Ordinance 2849 for the Arbors at Kehrs Mill subdivision Plat 2 with the associated escrow agreements; however, the plat was not recorded within 60 days as required by the Unified Development Code and therefore re-approval was required. On August 17th, 2015, City Council granted approval of the exact same Subdivision Plat 2 and agreements via Ordinance 2867.

Construction has been underway since late 2015 and the development team is now requesting to replace the original construction and maintenance escrows and agreements. The original escrows and agreements were provided by the land developer; however, now that the land development (site clearing and grading, infrastructure construction, etc.) has been completed, the land developer is seeking to replace the original escrows with new escrows from the home builders. While this is a typical request for residential subdivisions where construction takes place over several years, the City's Unified Development Code (UDC) states that "*The land subdivision bond or escrow agreement or other required surety shall be prepared and executed on forms furnished by the Department and shall be submitted to the City Council for approval or disapproval.*"

At the February 22, 2018 Planning and Public Works Committee meeting, a motion to forward the escrow agreements for Plat 2 of the Arbors at Kehrs Mill subdivision to City Council with a recommendation of approval was passed by a vote of 4-0.

Attached, please find a copy of the legislation and Escrow Agreements.

III.D

Memorandum
Department of Public Works

TO: Michael O. Geisel, P.E.
City Administrator

FROM: James A. Eckrich, P.E.
Public Works Dir. / City Engineer

DATE: February 16, 2018

Please forward to PPW for review & recommendation
Filed 2/16/2018

RE: Riparian Trail Grant– Transportation Alternative Program

Earlier this year the Department of Public Works submitted a grant application through the Transportation Alternative Program (TAP) for design and construction of the Riparian Trail extension from August Hill to Old Chesterfield Road. This trail has been contemplated by the City for some time and was included in the City of Chesterfield Bikeable and Walkable Community Plan completed in 2010. The project became a higher priority after the construction of St. Louis County's Baxter Road Improvement Project. As you know, the City was successfully able to negotiate the removal of dedicated bicycle lanes as part of that project, which would have resulted in the elimination of two traffic lanes. In return, the City of Chesterfield agreed to pursue funding for the next section of the Riparian Trail, from August Hill to Old Chesterfield Road.

The City was notified in late 2017 that its grant application was successful, and that through the TAP the City would receive up to $998,175 in grant funding for the project, which is estimated to cost $1,535,655. **This will result in a net expenditure of only $537,480. However, there will be no net cost to the City of Chesterfield, as the entire local share will be funded via the Chesterfield Valley Transportation Development District (TDD), as the Riparian Trail will ultimately be connected to the Monarch Chesterfield Levee Trail.** The project is scheduled to be completed by December of 2020, with design commencing in the spring of 2018.

In order to proceed with this project, there are separate actions that need to be taken by the City of Chesterfield. These are as follows:

Execution of TAP Agreement

In order to accept grant funding for this project, the City of Chesterfield must enter into an Agreement with the Missouri Highways and Transportation Commission. A copy of the TAP Agreement is attached. This Agreement has been reviewed by the

City Attorney and is similar in form to many other agreements the City has executed in order to obtain grant funding.

Selection of an Engineering Consultant to Perform Design Services

In accordance with Missouri Department of Transportation requirements, the City of Chesterfield publicly advertised for qualification submittals for design and construction engineering services for this project in early 2018. A selection committee comprised of Public Works Staff reviewed each of the fifteen proposals submitted. Staff ultimately determined that George Butler Associates, Incorporated (GBA) was the firm most qualified to perform the required engineering services. Accordingly, we entered into contract negotiations with GBA, and both parties have come to an agreement which is within the parameters allowed by the grant, as detailed in the attached memorandum from Civil Engineer Dennis Welker.

Essentially the draft Contract provides for GBA to provide design and construction engineering services at a fee of $270,632. To allow for any change orders which may become necessary, Staff has requested that funding be allocated up to a not to exceed amount of $284,200. Through the TAP grant, up to 65 percent of this cost, or $184,730 will be reimbursed to the City of Chesterfield by MODOT. This will result in a net City (ultimately TDD) expenditure not to exceed $99,470. The breakdown in fees is described in detail within the attached memorandum from Civil Engineer Dennis Welker.

It is important to note that during the design of this phase of the Riparian Trail the trail will be located farther away from the creek than it was in the first phase. As you know, the first phase of the Riparian Trail was constructed in close proximity to Chesterfield Creek. While this created an aesthetically pleasing environment for trail users, Chesterfield Creek is actively incising in this area. Construction of the trail too close to the creek does not allow for the creek to naturally meander without erosion impacting the viability of the trail. Accordingly, adjustments will be made during this design to ensure the trail is located a sufficient distance away from Chesterfield Creek.

While the project costs will be initially paid by the City of Chesterfield, the majority of these costs will be reimbursed through the TAP grant. The remaining costs will be paid by the TDD. While the project will be administered by City Staff, it is anticipated that there will be no net cost to the City of Chesterfield for this project. However, a transfer from the General Fund – Fund Reserves over the forty percent policy will be required to execute the necessary payments prior to reimbursement through the TAP grant or the TDD.

Execution of an Agreement with Chesterfield Village Incorporated

As you can see from the attached "Riparian Trail Aerial" drawing, the proposed Riparian Trail will be mostly constructed on land current owned by Chesterfield Village Incorporated (CVI). In order to obtain the necessary land to construct the next phase of the Riparian Trail, CVI has proposed an amendment to the current *Agreement Regarding Contribution of Land to the City of Chesterfield Missouri for its Parks and Trails System* (Land Agreement). The original Land Agreement, a copy of which is attached, was adopted by the City of Chesterfield in May of 2010 via ordinance 2607. That Land Agreement allowed the City of Chesterfield to construct the Lydia Hill / August Hill connection and Phase 1 of the Riparian Trail. In return for the land donation, CVI received certain "credits" for open space, tree canopy, and floor area ratio that it can use when developing Chesterfield Village.

CVI is proposing a similar arrangement for the construction of the Riparian Trail extension. Essentially, via an Amendment to the Land Agreement (Amendment), CVI will convey to the City the property necessary to construct the Riparian Trail extension from August Hill to Wild Horse Creek Road. Additionally, as part of the Amendment, CVI will convey to the City the Awakening and the Chesterfield Ridge Center Drive bridge. **Please be advised that the details of this Amendment have not yet been finalized. I am only providing the information at this time so that the PPW Committee, and City Council, understand the full extent of what is contemplated as part of this project. No action regarding the Amendment is being requested at this time. Once all details have been finalized, the Amendment will be submitted to City Council for consideration.** The draft Amendment, including Exhibit A which shows the affected properties, is attached.

While no action is required on the Amendment at this time, it is an important part of the Riparian Trial project. Without the Land Acquisition Amendment, the City would not otherwise be able to construct the Riparian Trail as that property is privately owned by CVI.

Action Recommended

This matter should be forwarded to the Planning and Public Works Committee for consideration. Should the PPW Committee concur with Staff's recommendation, it should forward the matter to City Council for the following actions:

1) Adoption of the attached ordinance authorizing the City Administrator to execute a Transportation Alternative Funds Program Agreement with the Missouri Highways and Transportation Commission for the construction of the Riparian Trial from August Hill Drive to Old Chesterfield Road.

2) Authorize the City Administrator to execute a Contract with George Butler Associates in an amount of $270,632, (with total funding not to exceed $284,200) for engineering design services and construction engineering

services. Please note that this Contract must be approved by MODOT, after execution of the TAP Agreement, prior to being executed.

3) Authorize the transfer of $284,200 from General Fund – Fund Reserves over the forty percent policy. This money will be returned to the General Fund – Fund Reserves from TAP grant funding or costs ultimately paid by the Chesterfield Valley TDD. There is no net cost (or loss of funds) to the General Fund – Fund Reserves associated with this project.

Once the Land Agreement Amendment with CVI is finalized it will also be forwarded to full City Council for consideration.

Should there be any questions regarding this rather complicated project, I would be happy to address those.

BILL NO. _____ **ORDINANCE NO._____**

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A TRANSPORTATION ALTERNATIVE FUNDS PROGRAM AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR CONSTRUCTION OF THE RIPARIAN TRAIL FROM AUGUST HILL DRIVE TO OLD CHESTERFIELD ROAD.

WHEREAS, the City of Chesterfield was successful in obtaining a reimbursement grant for the construction of the Riparian Trail from August Hill Drive to Old Chesterfield Road; and,

WHEREAS, in order to proceed with the project, TAP-5410(630), the City needs to enter into a Transportation Alternatives Funds Program Agreement with the Missouri Highways and Transportation Commission;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The City Council of the City of Chesterfield hereby authorizes the City Administrator to act on behalf of the City of Chesterfield to enter into an Agreement with the Missouri Highways and Transportation Commission relative to the construction of Riparian Trail from August Hill Drive to Old Chesterfield Road, in form substantially similar to that attached in Exhibit A.

Section 2. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this _____ day of _____, 2018.

_____ _____

PRESIDING OFFICER Bob Nation, MAYOR

ATTEST:

_____

Vickie Hass, CITY CLERK

FIRST READING HELD:

Riparian Trail Aerial

Memorandum
Department of Public Works

TO: **Jim Eckrich, City Engineer/PW Director**

FROM: **Todd Ohmes, Civil Engineer** +MO

DATE: **October 30, 2017**

RE: **Riparian Trail – TAP-5410(630)**

As you are aware, the City of Chesterfield was recently awarded a Transportation Alternative Funding Grant (TAP) in an amount up to $998,175 for the construction of the Riparian Trail from August Hill Drive to Old Chesterfield Road. The total estimated project cost is $1,535,655 of which $537,480 will be locally funded. Design of the project is scheduled for 2018 and 2019 and construction in 2019 and 2020.

In order to officially obligate the federal funding for this project the City of Chesterfield needs to enter into a TAP Agreement with the Missouri Highways and Transportation Commission (MoDOT). The agreement is similar to previous federal grant agreements the City has previously entered, and must be authorized via ordinance.

I recommend presenting this matter to City Council for approval of the attached ordinance authorizing the TAP Agreement. Two (2) executed copies of the Agreement need to be forwarded to MoDOT. Accordingly, a packet containing two Agreements has been attached. Upon final execution, MoDOT will return one executed copy to the City for filing. Please note that the Agreement requires three signatures – the City Administrator, the City Clerk, and the City Attorney.

cc: File 2018-PW-06

CCO Form: FS25
Approved: 04/95 (MGB)
Revised: 03/17 (MWH)
Modified:

CFDA Number:	20.205
CFDA Title:	Highway Planning and Construction
Award name/number:	TAP – 5410(630)
Award Year:	2018
Federal Agency:	Federal Highway Administration, Department of Transportation

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION ALTERNATIVES FUNDS
PROGRAM AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Chesterfield (hereinafter, "City").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The United States Congress has authorized, in Fixing America's Surface Transportation Act (FAST); 23 U.S.C. §101, §106 and §213; SAFETEA-LU §1404 funds to be used for transportation alternatives activities. The purpose of this Agreement is to grant the use of such transportation alternatives funds to the City.

(2) LOCATION: The transportation alternatives funds which are the subject of this Agreement are for the project at the following location: The improvement contemplated by this agreement will extend the existing Riparian Trail an additional 0.9 miles and will pass through natural areas beginning at Old Chesterfield Road and extending to August Hill Drive, running parallel to Baxter Road. A pedestrian crossing, including crosswalks, curb ramps and pedestrian buttons and signals will be installed at Wild Horse Creek Road.

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and

incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City. The City may not be eligible for future Transportation Alternatives Funds if the City does not meet the reasonable progress policy.

(4) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(5) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(6) COMMISSION REPRESENTATIVE: The Commission's District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(7) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so

certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or

2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(8) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(9) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(11) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(13) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, City shall acquire any additional necessary right of way required for this project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act. However, upon written request by the City and written acceptance by the Commission, the Commission shall acquire right of way for the City. Upon approval of all agreements, plans and specifications by the Commission and by the FHWA, the Commission will file copies of said plans in the office of the County clerk: and proceed to acquire by negotiation and purchase or by condemnation any necessary right of way required for the construction of the improvement contemplated herein. All right of way acquired by negotiation and purchase will be acquired in the name of City, and the City will pay to grantors thereof the agreed upon purchase prices. All right of way acquired through condemnation proceedings will be acquired in the name of the State of Missouri and subsequently released to the City. The City shall pay into court all awards and final judgments in favor of any such condemnees. The City shall also reimburse the Commission for any expense incurred by the Commission in acquiring said right of way, including but not limited to the costs of surveying, appraisal, negotiation, condemnation, and relocation assistance benefits. Unless otherwise agreed to in writing the Commission shall have the final decision regarding the settlement amount in condemnation.

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalk or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalk or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalk or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City's failure to maintain the improvement.

If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 65 percent not to exceed $998,175. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. The City shall repay any progress payments which involve ineligible costs.

(18) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(19) PERMITS: The City shall secure any necessary approvals or permits from

any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(20) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the Transportation Alternatives Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(21) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(22) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(23) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(24) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(25) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(26) OMB AUDIT: If the City expend(s) seven hundred fifty thousand dollars ($750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars ($750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(27) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this ____ day of _____, 20__.

Executed by the Commission this ____ day of _____, 20___.

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

_____

Title _____

ATTEST:

_____
Secretary to the Commission

Approved as to Form:

_____
Commission Counsel

CITY OF CHESTERFIELD

By _____

Title _____

ATTEST:

By _____

Title _____

Approved as to Form:

_____

Title _____

Ordinance No _____

Exhibit A - Location of Project

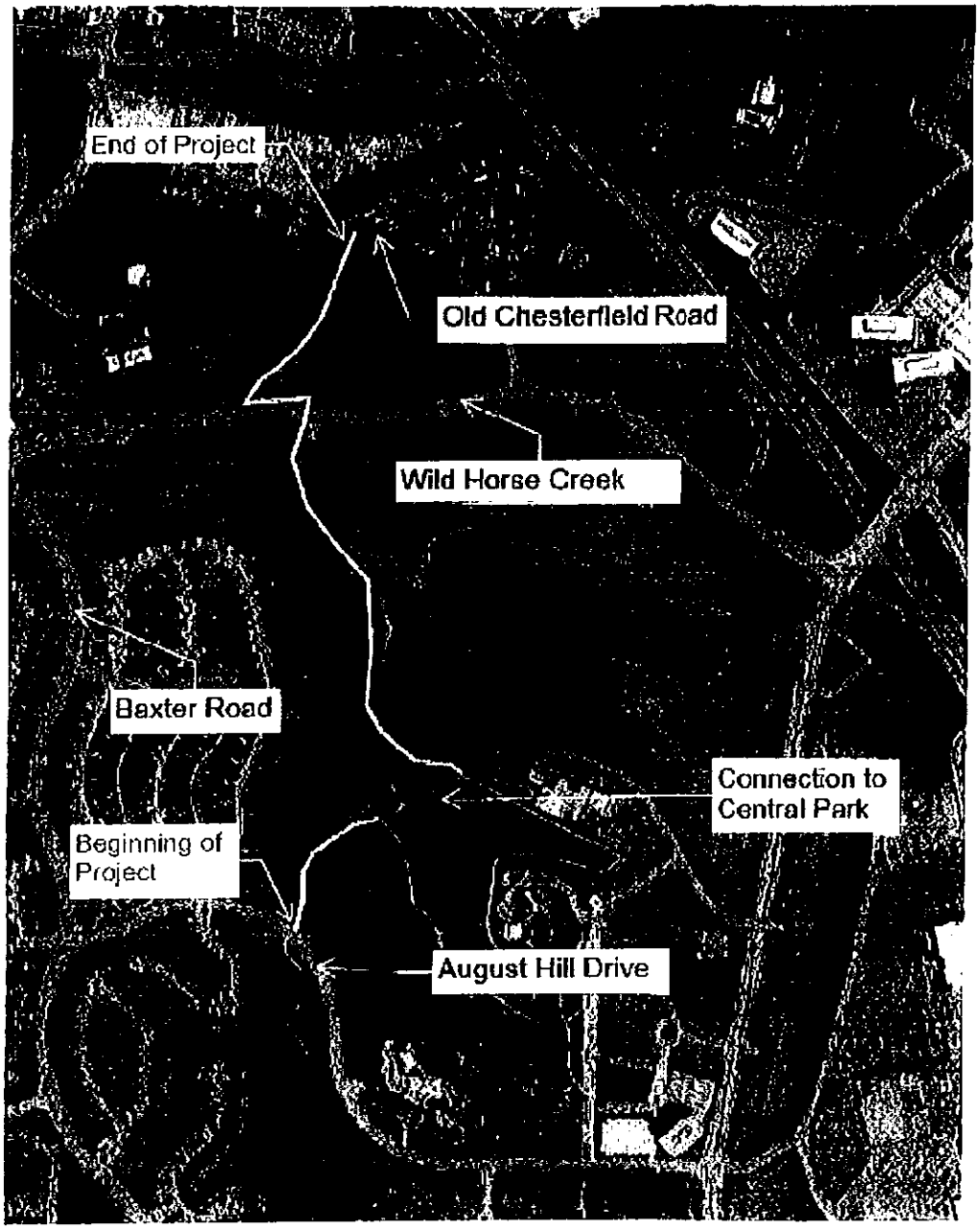

Exhibit B – Project Schedule

Project Description: TAP-5410(630)

The improvement contemplated by this agreement will extend the existing Riparian Trail an additional 0.9 miles and will pass through natural areas beginning at Old Chesterfield Road and extending to August Hill Drive, running parallel to Baxter Road. A pedestrian crossing, including crosswalks, curb ramps and pedestrian buttons and signals will be installed at Wild Horse Creek Road.

PROJECT DEVELOPMENT SCHEDULE **Many stages can occur concurrently.*

Activity Description	State Date (MM/YYYY)	Finish Date (MM/YYYY)	Time Frame (Months)
Receive notification letter	10/2017	10/2017	1
Execute agreement (project sponsor and DOT)	11/2017	1/2018	3
Engineering services contract submitted and approved*	3/2018	6/2018	3
Obtain environmental clearances (106, CE-2, etc.)	6/2018	8/2018	2
Public meeting/hearing	8/2018	9/2018	1
Develop and submit preliminary plans	7/2018	11/2018	5
Preliminary plans approved	11/2018	2/2019	3
Develop and submit right-of-way plans	6/2018	8/2018	2
Review and approval of right-of-way plans	8/2018	10/2018	2
Submit and receive approval for notice to proceed for right-of-way acquisition (A-Date)*	10/2018	12/2018	2
Right-of-way acquisition	1/2019	4/2019	4
Utility coordination	8/2018	12/2018	4
Develop and submit PS&E	2/2019	6/2019	5
District approval of PS&E/advertise for bids*	6/2019	11/2019	5
Submit and receive bids for review and approval	12/2019	2/2020	3
Project implementation/construction	2/2020	12/2020	10

* Finish date must match fiscal year for each milestone shown in **bold** text.

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and a Supplemental Agreement is required to modify this date.

Exhibit C - Required Contract Provisions
Federal-Aid Construction Contracts

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant

to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated

in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time

clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside

in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of

the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of

payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented,

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid

construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with

commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOI, wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

MEMORANDUM

DATE: February 15, 2018

TO: James A. Eckrich, PE – Public Works Director/City Engineer

FROM: Dennis Welker, PE – Civil Engineer

RE: Riparian Trail (August Hill Dr. to Old Chesterfield Rd.) – TAP-5410(630)

City Project No. 2018-PW-06

In June 2017, the City applied for grant funding from the Transportation Alternatives Program (TAP) for the engineering and construction associated with the Riparian Trail – August Hill Drive to Old Chesterfield Road. In September 2017 the City was notified that it had been awarded the grant and was provided a Program Agreement, which must be executed by the City and the Missouri Department of Transportation (MoDOT). It is anticipated that authorization to execute the Program Agreement will be approved by the City Council in March 2018. Per the Program Agreement, the federal share for the project will be up to $988,175.00. The total project cost, including design, right-of-way, and construction is estimated to be $1,535,655.00.

In December 2017, a Request for Qualifications (RFQ) was released to seek the services of a consulting engineering firm to perform professional engineering services for the project. The City received Letters of Interest and Statements of Qualifications from fifteen (15) firms. The submittals were evaluated based on criteria in the RFQ, which included experience, technical competence, capacity and capability, and past record of performance. The top scoring firm, George Butler Associates (GBA), was selected as the most qualified firm to provide the necessary professional engineering services.

Staff met with GBA for an initial scoping meeting on February 8, 2018. After several days of negotiations, a scope of services was defined with a corresponding fee estimate of $270,631.54. The fee includes $182,835.14 for design services (2018) and $87,796.40 for construction engineering services (2020). The negotiated scope and fee, which are attached, will be included in an Engineering Services Contract. After execution by the City and GBA, the Engineering Services Contract and all supporting documentation will be reviewed by MoDOT.

I recommend requesting authorization to execute an Engineering Services Contract with GBA in an amount not to exceed $284,200.00 This includes $192,000.00 for design services and $92,200.00 for construction engineering services. Please note that both amounts include a modest approximate 5% allowance for contingency funding to account for any unforeseen conditions and/or additional work. The City will be responsible for up to $99,470.00, or 35% of the total fee.

Please let me know if you have any questions, or need additional information.

Attachments: Riparian Trail Project – Scope of Services and Fee Proposal

cc: File 2016-PW-05

ATTACHMENT A – SCOPE OF SERVICES
Chesterfield Riparian Trail (August Hill Drive to Old Chesterfield Road)
TAP-5410(630)

WHEREAS, the LOCAL AGENCY has been awarded Transportation Alternatives Program Funds (TAP) to offset the cost of the extension of the Chesterfield Riparian Trail from August Hill Drive to Old Chesterfield Road, which includes, but is not necessarily limited to, full topographic survey, geotechnical investigations, preparation of conceptual plans, preliminary plans, right of way plans, final plans, job special provisions, construction cost estimate, public involvement, environmental and historic preservation services/permits, right of way/easement exhibits, legal descriptions, bid documents, utility coordination/permits, drainage design and MSD permitting, limited landscape architecture, assisting with bid and award, and providing construction support and full-time construction inspection, for approximately 4,752 linear feet of trail construction, (the "Project"); and

ARTICLE I – BASIC PRELIMINARY ENGINEERING SERVICES

The ENGINEER shall provide professional engineering services for the Project, which shall include, but not be limited to, the following basic services:

TASK 1 – SURVEY: Completed by Civil Design Inc.

1.1 Conceptual Alignment Study Basemap:

A. Gather flown data and GIS from the LOCAL AGENCY to create a working basemap for the conceptual alignment study. The LOCAL AGENCY will provide a working surface in the form of a TIN or DTM, utility and property information in CAD, aerial photography for the project area, and contours in CAD.

1.2 Topographic Survey, as necessary for preliminary, right of way and final design plans, at a minimum will include:

A. All structures, including building structures, retaining walls, drainage structures, fences, guardrail, or any other physical objects that would be in conflict with the proposed trail improvements.
B. Existing pavements, type of pavement, top back of curb, flowline of curb, type of curb, driveway entrances, sidewalks, steps, or any other roadway items that would be in conflict with the proposed improvements.
C. Break lines, including top of slopes and toe of slopes.
D. Missouri One-Call request for utility locates.
E. Survey all visible and flagged utilities, and determine flow line elevations of all storm and sanitary sewer structures.
F. Order Title Reports for four (4) properties.
G. Property reconstruction strip map of all parcels or tracts adjacent to project limits.
H. Acquiring recorded deeds from the St. Louis County Recorder's Office.
I. Establishing horizontal and vertical control points (at a maximum interval of 1,000 feet) that can be used for construction of the project.
J. Tie vertical control to USGS, NGS, or MoDOT Benchmarks.

K. Cross section existing ground every fifty (50) feet with a cross section width necessary for the trail design and production of construction documents.
L. Survey all drainage ditches, creeks and channels upstream and downstream of the proposed trail crossing, a minimum of 100 feet each direction.
M. Tree masses and trees with a diameter greater than 6", including type of tree.
N. Survey basemap created in Microstation.
O. Prepare easement exhibits and legal descriptions for up to four (4) taking areas.
P. Staking for geotechnical boring locations.

TASK 2 – GEOTECHNICAL INVESTIGATION:

Scope provided in attached subconsultant agreement for TSI.

TASK 3 – DETAILED DESIGN:

Engineer shall undertake the following to develop the preliminary engineering phase:

3.1 **Conceptual Alignment Study** – this phase will evaluate alternative alignment locations for the trail before determining a preferred alignment to proceed with conceptual design plans, and will include, but not necessarily be limited to:

A. Project Kickoff meeting with the LOCAL AGENCY.
B. Design criteria memorandum. St. Louis County Department of Highways and Traffic design standards, details, and specifications will apply, except as modified by Chesterfield ordinance or policy. Trail will be designed in accordance with current ADA guidelines.
C. Coordinate concept basemapping with surveyor.
D. Gather developer data and incorporate into basemap.
E. The LOCAL AGENCY shall furnish GBA with available traffic information and accident data within the project limits, as necessary.
F. Concept alternatives study will be separated into three segments:
    a. August Hill Drive to Central Park spillway
    b. Central Park spillway to Wild Horse Creek Road
    c. Wild Horse Creek Road to Old Chesterfield Road
G. Study shall include up to two (2) alternatives for each segment.
H. Concepts will indicate potential locations of retaining walls, culvert crossings, bridge crossings, and/or raised boardwalk crossings.
I. Landscape Architect will identify areas of tree protection, new plantings and possible mitigation areas.
J. Landscape Architect will review City ordinances and conservation easement documents for applicable requirements.
K. Strip maps will be created for the alternatives to be presented and discussed with the LOCAL AGENCY at a project meeting. Strip maps will show alignments with corresponding existing ground profiles and existing contours.

L. One alternative shall be selected by the LOCAL AGENCY for conceptual design.
M. Field check will be arranged with the LOCAL AGENCY to discuss design features in the project area and to verify existing topography.

3.2 **Conceptual Design Plans** – this phase will develop a set of 30% plans for one preferred trail alignment.

A. Title sheet with location sketch, index of sheets, length of project, project description, MSD "P" reference number and base map number.
B. Typical sections with existing sections, station limits of each typical section, location of the design centerline, trail widths, cross slopes, and fill & cut slopes.
C. The plan view English scale shall be 1"= 20' horizontal and extend at least 100 feet beyond the project limits. The profile view English scale shall be 1"=20' horizontal, and 1"=5' vertical.
D. Conceptual storm sewer design with drainage area map, storm sewer improvement recommendations, conceptual construction cost estimate, and MSD review coordination.
E. Stormwater BMP evaluation with BMP drainage area maps, conceptual BMP design, conceptual construction cost estimate, and MSD review coordination.
F. Conceptual traffic signal layout and Wild Horse Creek Road crossing to be shown on plan/profile sheets.
G. Cross sections every 50 feet at a scale of 1" =10' will show existing ground, proposed features, and basic elevation labeling.
H. Prepare the construction cost estimate.
I. The 30% conceptual plans shall be submitted to the LOCAL AGENCY for review and approval.
J. Address LOCAL AGENCY comments and resubmit one time, if necessary.
K. Utility notification and request for facility maps.
L. A public meeting will be held after approval of the conceptual plans. The LOCAL AGENCY will advertise for the public meeting and will set a date, time and place. GBA's representative will attend the meeting. GBA shall provide exhibits and handouts as requested by the LOCAL AGENCY. The LOCAL AGENCY will be responsible for all other documents.
M. Quality control, project administration, and two status meetings.

3.3 **Preliminary Design Plans** – this phase will develop a set of 60% plans, including, but not necessarily limited to:

A. Update title sheet as needed.
B. Update typical sections as needed.
C. One alternative selected by the LOCAL AGENCY for conceptual design will be advanced with the preparation of plan sheets to show critical design items and labeling of existing improvements.
D. GBA may need to review preliminary cross sections sufficiently to make a cost comparison between using retaining walls versus acquiring additional right of way for proposed wall locations.

E. Type, Size, Location study for pedestrian bridge(s), as determined necessary for the preferred trail alignment. Up to three potential bridge locations will be evaluated during the conceptual alignment study.
F. Cross sections will be refined to include existing right of way, proposed takings, and earthwork quantities.
G. The preliminary plans shall also include the proposed easement and right of way taking limits, property lines and ownerships, a preliminary signal plan sheet, and critical design items.
H. Preliminary storm sewer design with storm sewer improvement recommendations, preliminary construction cost estimate, and MSD review coordination.
I. Preliminary plan sheets should indicate construction staging with regards to construction access points, material and equipment staging areas, stockpile locations, and any temporary easements necessary for such staging work.
J. Preliminary BMP design and MSD review coordination.
K. Preliminary Planting plan by the project landscape architect to include plant palette, planting areas and locations of plant material, planting plans and details.
L. Landscape Architect will develop project planting specifications.
M. GBA shall update the construction cost estimate. The LOCAL AGENCY shall prepare the right of way estimate based on the right of way requirements furnished by GBA.
N. The 60% preliminary plans shall be submitted to the LOCAL AGENCY for review and approval.
O. Address LOCAL AGENCY comments and resubmit one time, if necessary.
P. Submit plans to MoDOT LPA liaison, St. Louis County, and coordinate as needed.
Q. Utility plans will be sent to the various utilities with request for notice of conflicts. Coordinate with the various utilities, as needed, to determine conflicts, possible conflict avoidance measures, and to obtain plans of adjustment from affected utilities. Revise trail plans as necessary during this process.
R. Quality control, project administration, and two status meetings.

3.4 **Right of way Design Plans** – the main purpose of this phase is to develop a set of 70% plans indicating right of way taking necessary for construction of the project, to be used during right of way negotiations, and will include, but not necessarily be limited to:

A. Right of way plans shall show alignment, geometric design, removal of improvements, drainage facilities, property lines and ownership, other land survey information, street lines and existing right of way and easements.
B. Plans will also include any details which will require additional right of way or easements during the construction phase of the project such as bypasses, temporary construction access, temporary erosion control, etc.
C. Right of way plans include title sheet, typical sections, right of way taking table sheet, plan and profile sheets, and cross sections of the trail.
D. Areas of new right of way, permanent easements and/or temporary easements required from each individual property owner may be shown in tabular form on the respective sheets.

E. The LOCAL AGENCY will prepare right of way appraisals and secure the necessary right of way by negotiation or condemnation, if necessary, for construction of this project.
F. Prepare easement exhibits and legal descriptions for up to four (4) taking areas, per County standard.
G. The 70% right of way plans shall be submitted to the LOCAL AGENCY for review and approval.
H. Address LOCAL AGENCY comments and resubmit one time, if necessary.
I. Submit plans to MoDOT LPA liaison, St. Louis County, utilities, and coordinate as needed.
J. Quality control, project administration, and one status meeting.

3.5 **Final Design Plans** – this phase will develop a set of 100% plans, job special provisions, and engineers estimate (PS&E), including, but not necessarily limited to:

A. Prepare storm water drainage and hydraulic studies and detailed drainage plans, for review and approval by the LOCAL AGENCY and MSD before inclusion in the final design plans
B. Furnish design plans, which show approved right of way, drainage facilities, cross sections and trail design features, for coordination with the utility companies' existing facilities, and proposed plans of adjustments. GBA shall revise plans to adhere to all utility company standards and requirements, and make necessary utility plan revisions as become necessary during final plan design and approvals.
C. Prepare final plans and details for any required specialty items: traffic signals, lighting, signing, striping/markings, retaining walls, pedestrian bridge foundations, curb ramp details, furnishings, if warranted. After preliminary approval of the specialty items, final plans shall be submitted to the LOCAL AGENCY for final review and approval.
D. Structural engineering services for the pedestrian bridges will include foundation design for a prefabricated truss type bridge, with reactions to be provided by the manufacturer. It is assumed that no more than three pedestrian bridges will be required. For the purposes of this scope, individual pedestrian bridge design scope may be substituted for design of a raised, wooden plank boardwalk structure.
E. Final plans will include a retaining wall plan and profile for each wall, with general wall details and notes included. Retaining walls, if required, are assumed to be modular block with the design to be performed by others. Any cast in place concrete or other walls requiring structural design will be considered additional services.
F. Final plans will include a detailed traffic control staging plan with an outline for construction staging conforming to the requirements of the MUTCD. This plan will include details on construction access points, material and equipment staging areas, and stockpile locations.
G. Prepare detailed temporary erosion control plans for inclusion in the final design plans and Stormwater Pollution Prevention Plan for inclusion in the project specifications.

H. Final plans will include detailed planting plans, details and specifications addressing all planting areas and comments from preliminary plans.
I. Prepare computations for all design plan quantities. All plan quantities shall be shown on a summary of quantities sheet.
J. Prepare for review and approval by the LOCAL AGENCY all necessary Job Special Provisions (JSPs).
K. Perform Working Day Study.
L. A final design field check shall be held with GBA and the LOCAL AGENCY representatives prior to completing final design plan quantities. GBA shall make any necessary revisions to the final plans as determined by this design field check.
M. The 100% final plans, JSPs and engineer's estimate of construction costs shall be submitted to the LOCAL AGENCY for review and approval.
N. Address LOCAL AGENCY comments and resubmit up to two times, if necessary.
O. Submit plans to MoDOT LPA liaison, St. Louis County, utilities, and coordinate as needed.
P. The LOCAL AGENCY shall prepare front-end bid documents.
Q. Quality control, project administration, and two status meetings.

TASK 4 – FEDERAL, STATE, AND LOCAL PERMITS:

Engineer will correspond with those agencies responsible for issuing any permits, approval, or clearances, whether environmental or otherwise, that might be required. These agencies may include, but are not limited to, MoDOT, Metropolitan Sewer District of St. Louis (MSD), St. Louis County, the U.S. Army Corps of Engineers, and MoDNR. It is understood that if the project should require wetland mitigation or an in-depth environmental or archaeological study, it may be added to the contract by addendum. The initial investigation shall include, but not be limited to, securing the following permits, clearances, or other environmental tasks necessary for construction:

4.1 Submit MoDOT Request for Environmental Review (RER) through MoDOT's online system.
4.2 Agency coordination – US Fish & Wildlife Service (FWS), Missouri Department of Conservation (MDC), State Historic Preservation Office (SHPO), MSD
4.3 Section 106 of the National Historic Preservation Act of 1996.
4.4 Preliminary Jurisdictional Waters of the U.S. Delineation.
4.5 Corps of Engineers Section 404/401 Nationwide Permit.
4.6 Coordination with Corps starting as early as conceptual design.
4.7 Prepare Stormwater Pollution Prevention Plan (SWPPP), as necessary for NDPES Land Disturbance permit, to be included in project bid documents. Contractor will be responsible for obtaining NDPES Land Disturbance permit. LOCAL AGENCY will be responsible for submittal and fees to the Missouri Department of Natural Resources (MDNR).

TASK 5 – LIMITED BIDDING PERIOD SERVICES:

4.1 GBA shall be available to the LOCAL AGENCY to discuss and interpret the plans and specifications during the bidding phase for up to a total of 12 man-hours.
4.2 Attend Pre-Bid Meeting, administered by the LOCAL AGENCY.

ARTICLE II – BASIC CONSTRUCTION ENGINEERING AND INSPECTION SERVICES

The ENGINEER shall provide professional construction engineering and inspection services for the Project, which shall include, but not be limited to, the following basic services:

TASK 1 – CONSTRUCTION ADMINISTRATION AND INSPECTION:

1.1 Assist with MoDOT coordination and LPA paperwork.
1.2 Work with contractor on behalf of the LOCAL AGENCY.
1.3 Attend preconstruction conference.
1.4 Full-time inspection of construction activities will include:
   A. Perform daily site inspections.
   B. Be present for critical construction operations.
   C. Provide daily reporting for work performed and quantity tracking according to MoDOT LPA Guidelines for Construction Administration.
   D. Acceptance or rejection of work being performed according to scope of work in the plans, specifications and governing construction standards.
1.5 Prepare change orders.
1.6 Inspect and test construction materials according to MoDOT LPA Guidelines for Construction Administration.
1.7 Review shop drawings.
1.8 Adjust bridge foundation plans for alternate bridge manufacturer if needed.
1.9 Participate in final walk-through.
1.10 Assist with project close-out documentation.

ASSUMPTIONS / ADDITIONAL DESIGN SERVICES:

1. Construction staking for the contractor and/or utility companies are not included in the base scope of work.
2. The project is anticipated to qualify for an MoDOT Programmatic Categorical Exclusion (CE). If necessary, GBA can prepare more detailed NEPA-related documents (e.g., letter CE, CE2, EA) as an Additional Service.

3. The project is anticipated to qualify for a Corps Section 404 Nationwide Permit (NWP). If necessary, GBA can prepare and submit an Section 404 Individual Permit application as an Additional Service.
4. If necessary, GBA can perform detailed endangered species and archaeological surveys as an Additional Service.
5. The LOCAL AGENCY will be responsible for submittal and fees to MDNR, along with any subsequent annual renewal fees.
6. Wetland Mitigation is not anticipated or included in the base scope. Mitigation credits may be necessary for disturbance within the Conservation Easement, per Corps requirements.
7. Floodplain development permits and no-rise certification are not anticipated, but can be added as additional services.
8. Design of raised boardwalk systems are not specifically included in the base scope, but may be substituted for pedestrian bridge design on an individual basis.
9. Subsurface utility exploration is not included in the base scope.
10. Structural retaining wall design is not included in the base scope.

GBA
architects
engineers

City of Chesterfield, Missouri
Riparian Trail
Design Fee for Engineering Services

	CLASSIFICATION	PRI	SRA	ASC	LEAD	SRE	AES1	AES2	AES3	SRT	TEC1	PLS	2MN	GPS	CLI	TOTAL	EXPENSES	TOTAL
	BASIC DESIGN SERVICES																	
	CONCEPTUAL PLANS																	
1	Project Kickoff Meeting and Scoping	1		2		4										7		$1,264.00
2	Design criteria & memorandum			1		2										3		$498.00
3	Basemap review			1		2										3		$498.00
4	Data gathering from City, developer plans, etc.					4			4							8		$1,028.00
5	Concept alternatives (up to 2 alt's for 3 trail segments)			3		12		12	48							75		$8,640.00
6	Stripmap Development for each trail segment			1		3			12							16		$1,877.00
7	Meet w/ City to discuss Alt's and develop preferred option			2		4										6		$996.00
8	Field check			2		4			4							10		$1,404.00
9	Title sheet					2			4							6		$718.00
10	Typical sections					1			4							5		$563.00
11	Vertical Alignment generation			2		2			8							12		$1,502.00
12	Plan sheets			2		4		10	56							72		$7,808.00
13	Cross sections			2		8			20							30		$3,656.00
14	Drainage																	
15	Drainage Area Map					1	5									6		$805.00
16	Drainage Design					1	5									6		$805.00
17	Review of Drainage Plans					1	2									3		$415.00
18	Geotechnical report coordination					2										2		$310.00
19	Conceptual construction cost estimate					4			8							12		$1,436.00
20	Concepual Plan Submittal					2			2							4		$514.00
21	Comment Response and Resubmittal					4			8							12		$1,436.00
22	Coordination w/ Utilities, St. Louis County, MoDOT LPA			1		8			4							13		$1,836.00
23	Public meeting (one only)			4		4			8							16		$2,188.00
24	Quality control / project administration / monthly meetings	1		4		8									2	15		$2,394.00
																0		$0.00
	TASK SUBTOTAL	**2**	**0**	**27**	**0**	**87**	**12**	**22**	**190**	**0**	**0**	**0**	**0**	**0**	**2**	**342**	**$0.00**	**$42,591.00**

2/15/2018

GBA
architects
engineers

City of Chesterfield, Missouri
Riparian Trail
Design Fee for Engineering Services

	CLASSIFICATION	PRI	SRA	ASC	LEAD	SRE	AES1	AES2	AES3	SRT	TEC1	PLS	2MN	GPS	CLI	TOTAL	EXPENSES	TOTAL
PRELIMINARY PLANS																		
1	Title sheet					1			1							2		$257.00
2	Typical sections					1			2							3		$359.00
3	Plan sheets - labels, critical design features			2		4		8	40							54		$5,956.00
4	Preliminary signal plan			1			14		8							23		$2,824.00
5	Drainage																	
6	Drainage Design					2	4									6		$830.00
7	Review of Drainage Plans					1	2									3		$415.00
##	MSD Review Coordination					2	6									8		$1,090.00
##	Type, Size, Location study for pedestrian bridge #1 (w/ hydro coordination)					6	2									8		$1,190.00
##	Type, Size, Location study for pedestrian bridge #2 (w/ hydro coordination)					6	2									8		$1,190.00
##	Type, Size, Location study for pedestrian bridge #3					4	2									6		$880.00
##	Cross Sections			2		4			12							18		$2,220.00
##	Preliminary right-of-way takings					4			4							8		$1,028.00
##	Preliminary construction cost estimate			1		4			8							13		$1,624.00
##	Preliminary Plan Submittal					2			2							4		$514.00
##	Comment Response and Resubmittal					4			8							12		$1,436.00
##	Coordination w/ Utilities, St. Louis County, MoDOT LPA			4		6			8							18		$2,498.00
##	Quality control / project administration / monthly meetings	1		4		8									2	15		$2,394.00
	TASK SUBTOTAL	**1**	**0**	**14**	**0**	**59**	**32**	**8**	**93**	**0**	**0**	**0**	**0**	**0**	**2**	**209**	**$0.00**	**$26,705.00**
FEDERAL, STATE & LOCAL PERMITS																		
1	Submit MoDOT RER				2		10									12		$1,630.00
2	Agency coordination (FWS, MDC, SHPO Section 106)				4											4		$660.00
3	Preliminary Jurisdictional Waters of US Delineation				20					8						28		$4,340.00
4	Corps of Engineers Section 404/401 Nationwide Permit				18					2						20		$3,230.00
5	Corps Coordination				8				4							12		$1,728.00
6	NDPES Land Disturbance permit through MDNR / SWPPP				4		12									16		$2,220.00
	TASK SUBTOTAL	**0**	**0**	**0**	**56**	**0**	**22**	**0**	**4**	**10**	**0**	**0**	**0**	**0**	**0**	**92**	**$0.00**	**$13,808.00**
RIGHT OF WAY PLANS																		
1	*Right of way and taking information shown on plan sheets w/ call labels*			2					8							10		$1,192.00
2	Right of way taking table								2							2		$204.00
3	Right of way construction cost estimate			1		1			3							5		$649.00
4	Right of way Plan Submittal					2			2							4		$514.00
5	Comment Response and Resubmittal					2			4							6		$718.00
6	Coordination w/ Utilities, St. Louis County, MoDOT LPA			2		4			4							10		$1,404.00
7	Quality control / project administration / monthly meetings	1		2		4									2	9		$1,398.00
	TASK SUBTOTAL	**1**	**0**	**7**	**0**	**13**	**0**	**0**	**23**	**0**	**0**	**0**	**0**	**0**	**2**	**46**	**$0.00**	**$6,079.00**

GBA
architects
engineers

City of Chesterfield, Missouri
Riparian Trail
Design Fee for Engineering Services

	CLASSIFICATION	PRI	SRA	ASC	LEAD	SRE	AES1	AES2	AES3	SRT	TEC1	PLS	2MN	GPS	CLI	TOTAL	EXPENSES	TOTAL
FINAL PLANS																		
1	Title Sheet					1			2							3		$359.00
2	Typical Sections					1			2							3		$359.00
3	Plan Sheets - calls, notes, details, ADA details & calls			2		8			16							26		$3,248.00
4	Final signal plans and quantities			1			8		12							21		$2,452.00
5	Bridge Design #1 (w/ hydro coordination)					8	14				7					29		$3,725.00
6	Bridge Design #2 (w/ hydro coordination)					8	14				7					29		$3,725.00
7	Bridge Design #3					6	14				7					27		$3,415.00
8	Signing, striping, trail appurtances plan			2		2			12							16		$1,910.00
9	Retaining wall plan/profile and detail plan			2		2			16							20		$2,318.00
10	Erosion Control plan			1		1			6							8		$955.00
11	Construction Details / ADA Ramp Details			1		1			8							10		$1,159.00
12	Geometric and project control sheets			0		1			4							5		$563.00
13	Traffic Control Plan			1		1			4							6		$751.00
14	Drainage - storm sewers																	
15	Drainage Details					2	4									6		$830.00
16	Drainage Profiles					1	4									5		$675.00
17	MSD Review Coordination					2	6									8		$1,090.00
18	Final Quantities and Quantity Sheets			2		6			24							32		$3,754.00
19	Cross Sections			2		2			8							12		$1,502.00
20	Final construction cost estimate			1		2			2							5		$702.00
21	Job Secial Provisions			2		8										10		$1,616.00
22	Working Day Study			1		2										3		$498.00
23	Final Plan Submittal			1		2			2							5		$702.00
24	Comment Response and Resubmittal					6			14							20		$2,358.00
25	Coordination w/ Utilities, St. Louis County, MoDOT LPA			4		8			8							20		$2,808.00
26	Quality control / project administration / monthly meetings	2		4		12									2	20		$3,282.00
	TASK SUBTOTAL	**2**	**0**	**27**	**0**	**93**	**64**	**0**	**140**	**0**	**21**	**0**	**0**	**0**	**2**	**349**	**$0.00**	**$44,756.00**
LIMITED BIDDING & CONSTRUCTION PERIOD SERVICES FOR DESIGN STAFF																		
1	Answer Bidder questions			2		10										12		$1,926.00
2	Attend Pre-Bid Meeting			2		2										4		$686.00
	TASK SUBTOTAL	**0**	**0**	**4**	**0**	**12**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**16**	**$0.00**	**$2,612.00**
SUBCONSULTANTS																		
1	Surveying (plus mileage)															0	$27,638.36	$27,638.36
2	Title Reports (4 properties)															0	$2,400.00	$2,400.00
3	Water Quality Assessment															0	$0.00	$0.00
4	Landscaping by a certified L.A.															0	$3,955.78	$3,955.78
5	Peer Review of Trail Design															0	$0.00	$0.00
6	Geotechnical															0	$12,290.00	$12,290.00
	TASK SUBTOTAL	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**$46,284.14**	**$46,284.14**
	DESIGN SERVICES TOTAL	**6**	**0**	**79**	**56**	**264**	**130**	**30**	**450**	**10**	**21**	**0**	**0**	**0**	**8**	**1,054**	**46,284**	**$182,835.14**

2/15/2018

GBA
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engineers

City of Chesterfield, Missouri
Riparian Trail
Fee for Full-Time Construction Inspection Services

	CLASSIFICATION	PRI	SRA	ASC	LEAD	SRE	AES1	AES2	AES3	SRT	CO3	PLS	2MN	GPS	CLI	TOTAL	EXPENSES	TOTAL
	BASIC DESIGN SERVICES																	
	FULL-TIME CONSTRUCTION INSPECTION															0		$0.00
1	Full-time inspection and documentation										24					24		$2,400.00
	SWPPP Weekly Inspection			4	40						476					520		$54,952.00
	Site Construction Indspections	2			24						120					146		$16,496.00
	Reporting and coordination				2	2										4		$640.00
2	Attend Pre-Construction Meeting			1	4	8										13		$2,088.00
2	Contractor RFI			1	2	6										9		$1,448.00
3	Shop Drawing Review					4	8									12		$1,660.00
1	Bridge Shop Drawing Review and foundation adjustments					1	1									2		$285.00
2	Bridge Contractor RFI																	
	TASK SUBTOTAL	**2**	**0**	**6**	**72**	**21**	**9**	**0**	**0**	**0**	**620**	**0**	**0**	**0**	**0**	**730**	**$0.00**	**$79,969.00**
	SUBCONSULTANTS															0		$0.00
1	Geotechnical															0	$7,827.40	$7,827.40
2	Construction Materials Testing																	
	TASK SUBTOTAL	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**$7,827.40**	**$7,827.40**
	CONSTRUCTION SERVICES TOTAL	**2**	**0**	**6**	**72**	**21**	**9**	**0**	**0**	**0**	**620**	**0**	**0**	**0**	**0**	**730**	**7,827**	**$87,796.40**

2/15/2018

FIRST AMENDMENT TO
AGREEMENT RE: CONTRIBUTION OF LAND TO THE CITY OF CHESTERFIELD, MISSOURI
FOR ITS PARKS AND TRAILS SYSTEM

FIRST AMENDMENT ("Amendment") made as of this ___ day of _____, 2017, by and between the CITY OF CHESTERFIELD, MISSOURI, a municipal corporation ("City"), and CHESTERFIELD VILLAGE INC., a Missouri corporation ("CVI"). Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement (as that term is defined below):

RECITALS

A. City and CVI entered into that certain Agreement Re: Contribution of Land to the City of Chesterfield, Missouri for its Parks and Trail System dated August 2, 2010 ("Agreement"), whereby CVI agreed to contribute certain tracts of land to the City to become part of the City's parks and trails system, and for the City to connect Lydia Hill Drive to August Hill Drive;

B. CVI completed and City accepted such contributions;

C. City has since completed the connection of Lydia Hill Drive to August Hill Drive;

D. CVI now desires to contribute to the City additional tracts of land and a bridge not included in the Agreement;

E. CVI further desires to contribute the Sculpture (as that term is defined in Section 1) to the City; and

F. The parties now wish to amend the Agreement.

AGREEMENT

NOW, THEREFORE, the Agreement is hereby amended as follows:

1. Definitions. As used in this Amendment, the following terms shall have the following meanings.

   A. "Additional Park and Trail Properties" means the following tracts of land, each depicted on Exhibit A attached hereto and incorporated herein by reference:

      i. Parcel C121 Lot 2, containing approximately 1.0 acres, as described in Exhibit A-3.

      ii. Parcel C220A, containing approximately 8.3 acres, as described in Exhibit A-5.

      iii. A portion of Parcel C252W, containing approximately 3.3 acres, as described in Exhibit A-6.

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iv. A portion of Parcel C254W, containing approximately 2.5 acres, as described in Exhibit A-7.

v. Parcel C148-C, containing approximately 0.5 acres, as described in Exhibit A-8.

vi. Parcel C254CS, containing approximately 1.4 acres, as described in Exhibit A-9.

B. "Bridge Property" means that certain portion of Chesterfield Ridge Center Drive, including its existing bridge, containing approximately 0.7 acres and as described in Exhibit A-15 and depicted on Exhibit A.

C. "Contributed Property" means the Additional Park and Trail Properties, the Bridge Property, and the Sculpture.

D. "Sculpture" means the sculpture located on Parcel C121 Lot 2, known as The Awakening.

2. Amendments to the Agreement. Recital F of the Agreement is hereby amended by adding the Additional Park and Trail Properties to the definition of "Trail Property," "Park Sites," and "Park and Trail Properties."

3. Additional Properties to be Contributed.

A. CVI shall at Closing (as defined below) convey the Contributed Property to the City.

B. Upon execution of this Amendment, CVI shall order a title insurance commitment from St. Louis Title, LLC (the "Title Company") covering the Additional Park and Trail Properties and the Bridge Property, which commitment(s) shall be sent to City and to CVI upon issuance. Within fifteen (15) days following the receipt of the commitment by City, City shall notify CVI in writing of any objections it has to the titles, and CVI shall have fifteen (15) days thereafter to remove or otherwise satisfy City as to the objections raised. City will take title to the Additional Park and Trail Properties and the Bridge Property subject to the Conservation Easement encumbering all or portions of the Additional Park and Trail Properties and the Bridge Property as shown on and described in that certain instrument recorded in Plat Book 352, Pages 93 through 95 of the St. Louis County Records (the "Conservation Easement"). If City's other objections are not satisfied within said fifteen (15) day period, City may refuse to accept all of the Additional Park and Trail Properties and the Bridge Property or any individual property, or waive its objections and accept all or any of the Additional Park and Trail Properties and the Bridge Property subject to the title exceptions, including the Conservation Easement ("Permitted Exceptions"). CVI will exercise commercially reasonable efforts (but shall not be obligated to expend any funds) to satisfy City's objections.

C. Title to the Additional Park and Trail Properties and the Bridge Property shall be marketable in fact, shall be conveyed by special warranty deed free of all liens and

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encumbrances, and shall be insured in a mutually agreeable amount by the Title Company, at CVI's expense, subject only to existing utility easements, rights of way of record and Permitted Exceptions.

D. Title to the Sculpture shall be conveyed to the City by a bill of sale in a form satisfactory to the parties.

4. Limitation on Sculpture Relocation. The contribution of the Sculpture shall be subject to the condition that the Sculpture shall not, at any time, be sold, transferred, exchanged, loaned, disposed of, or moved from Parcel C121 Lot 2. If the City sells, transfers, exchanges, loans, disposes of, or proposes to move the Sculpture from Parcel C121 Lot 2, then all of City's right, title and interest in and to the Sculpture and Parcel C121 Lot 2 will automatically revert to CVI. The terms and conditions of this Section will be incorporated in the bill of sale for the sculpture and deed for Parcel C121 Lot 2 and expressly survive Closing.

5. Conditions Precedent to Closing. Closing of the transactions described herein and the attendant rights and obligations of the parties hereto shall be conditioned upon the occurrence of each of the following events:

   A. CVI's execution of a special warranty deed(s) conveying the Additional Park and Trail Properties and the Bridge Property to City, and City's acceptance of the conveyance provided therein;

   B. CVI's execution of a bill of sale conveying the Sculpture to City, and City's acceptance of the conveyance provided therein.

6. Closing. Closing ("Closing") of the transactions described in this Amendment by and between CVI and the City shall take place at the office of the Title Company at 10:00 a.m. on the thirtieth (30th) day following the date on which the City approves in writing the title insurance commitments ordered pursuant to Section 3.

7. Charitable Donation. The parties agree that an amount equal to the fair market value of the Contributed Property shall be characterized as a charitable contribution from CVI to City, and that CVI may, in its discretion, deduct the value of the Contributed Property on its income tax returns in accordance with federal statutes and regulations. In furtherance thereof, CVI shall, at its sole cost and expense, order an appraisal (the "Appraisal") from an appraiser (the "Appraiser") of CVI's choosing certified and/or licensed by the State of Missouri to determine the current fair market value of the Contributed Property (the "Appraised Value"), and upon receipt of a copy of the Appraisal, City shall provide CVI an acknowledgement (the "Donee Acknowledgement") on Form 8283 (Rev. December 2006) – Noncash Charitable Contributions of the Department of Treasury, Internal Revenue Service ("Form 8283"). City shall not be required to sign and deliver the Donee Acknowledgement unless (i) Form 8283 has been fully completed and signed by both CVI and the Appraiser, and (ii) City is reasonably satisfied that the Donee Acknowledgement is in compliance with federal statutes and regulations.

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8. As-Is. City has or, prior to Closing, will conduct its own independent inspection of the Contributed Property. CVI disclaims and City acknowledges that no warranties or representations of any kind or character, either express or implied, have been or are being made by CVI or relied upon by City with respect to the maintenance, repair, condition, design or marketability of the Contributed Property, or any portion thereof, including, without limitation, (a) any implied or express warranty of fitness for a particular purpose, (b) the compliance of the Contributed Property with governmental regulations, and (c) any environmental matter, it being the express intention of CVI and City that the Contributed Property will be transferred to and accepted by City in its present condition and state of repair, "as is" and "where is", with all faults. City represents that it is relying solely on its own expertise and that of City's consultants in accepting the Contributed Property. Further, City, for City and City's successors and assigns, hereby releases CVI from and waives any and all claims and liabilities against CVI for, related to, or in connection with, any environmental or physical condition at the Contributed Property, including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous substances (as defined in applicable federal, state and/or local statutes, laws, ordinances, rules and regulations) in, at, about or under the Contributed Property.

9. Acknowledgement of Waivers. City acknowledges and agrees that the waivers, releases and other provisions contained in this Section were a material factor in CVI's agreement to contribute the Contributed Property to City, and that CVI is unwilling to contribute the Contributed Property to City unless CVI is released as expressly set forth above. City, with City's counsel, has fully reviewed the disclaimers and waivers set forth in this Amendment, and understands their significance and effect thereof. The terms and conditions of this Section will expressly survive Closing.

10. Ratification. City and CVI hereby ratify and confirm the Agreement as modified hereby and affirm that the Agreement remains in full force and effect.

11. Conflicting Provisions. If there is any conflict between the terms of this Amendment and the terms of the Agreement, this Amendment shall control.

12. Execution. This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. For purposes of this Amendment, a facsimile or email signature shall be deemed an original signature.

13. Authority. CVI represents to the City that execution of this Amendment has been duly authorized by its board of directors, and City represents to CVI that execution of this Amendment has been duly authorized by an ordinance passed by the City Council of the City.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

CVI:

CHESTERFIELD VILLAGE INC., a Missouri corporation

By:_____
Ami E. Kutz, Vice President

Date:_____

CITY:

CITY OF CHESTERFIELD, MISSOURI, a municipal corporation

By:_____

Name: _____

Title:_____

Date:_____

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STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2017, before me appeared Ami E. Kutz, to me personally known, who, being duly sworn did say that she is the Vice President of CHESTERFIELD VILLAGE INC., a corporation of the State of Missouri, and that said instrument was signed in behalf of said corporation, by authority of its Board of Directors; and said Ami E. Kutz acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____
Notary Public

My Commission Expires:

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2017, before me appeared _____, to me personally known, who, being duly sworn did say that she/he is the _____ of the CITY OF CHESTERFIELD in the State of Missouri, a municipal corporation, and that said instrument was signed in behalf of said City, by authority of its City Counsel; and said _____ acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____
Notary Public

My Commission Expires:

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EXHIBIT A

DEPICTION OF PROPERTIES

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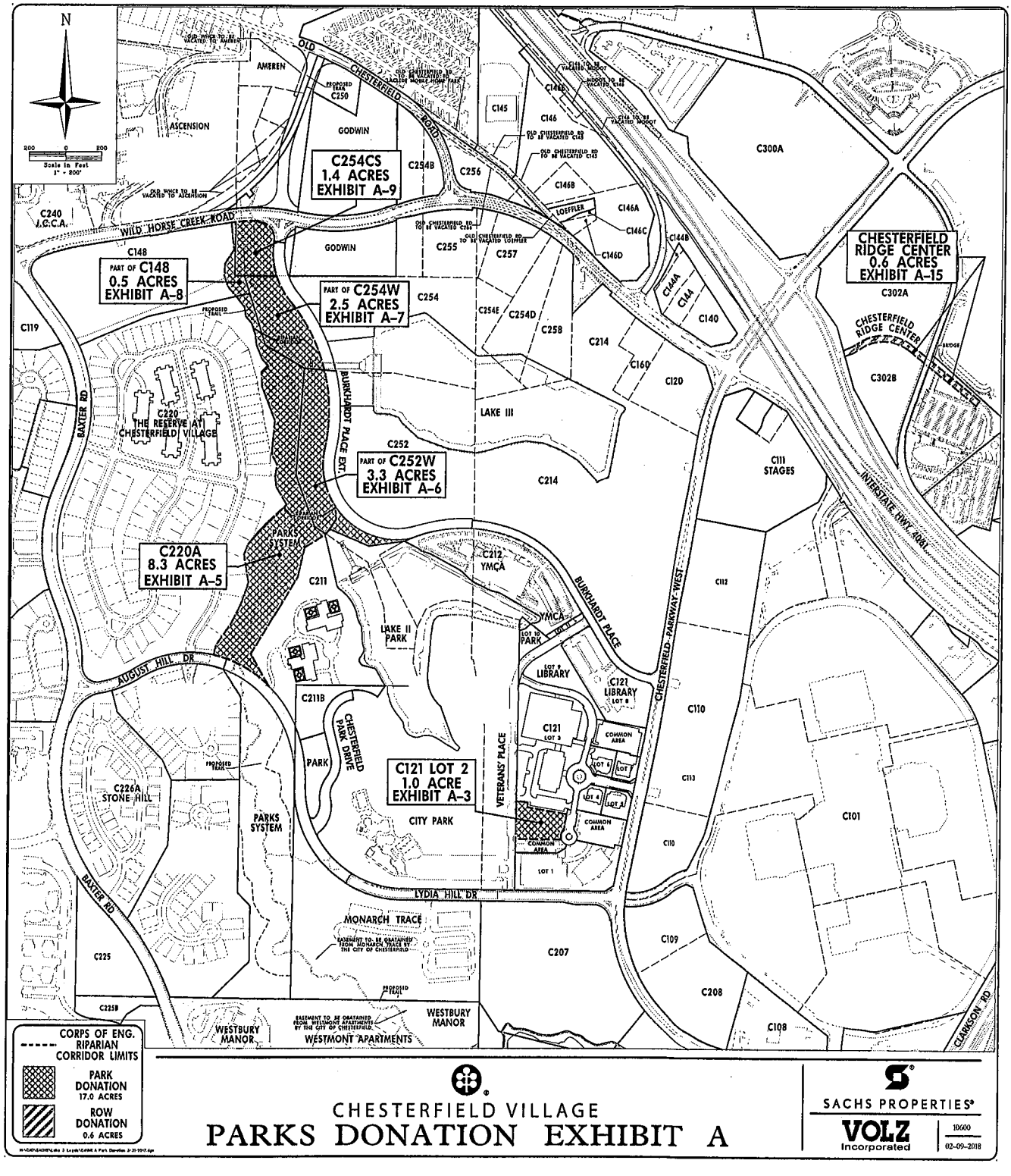

CHESTERFIELD VILLAGE

PARKS DONATION EXHIBIT A

SACHS PROPERTIES®

VOLZ Incorporated

10600

02-09-2018

EXHIBIT A-3

PARCEL C121 LOT 2 LEGAL DESCRIPTION

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EXHIBIT A-5

PARCEL C220A LEGAL DESCRIPTION

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EXHIBIT A-6

PARCEL C252W LEGAL DESCRIPTION

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EXHIBIT A-7

PARCEL C254W LEGAL DESCRIPTION

DRAFT

EXHIBIT A-8

PARCEL C148 LEGAL DESCRIPTION

DRAFT

EXHIBIT A-9

PARCEL C254CS LEGAL DESCRIPTION

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EXHIBIT A-15

BRIDGE PROPERTY LEGAL DESCRIPTION

DRAFT

City of Chesterfield

690 Chesterfield Pkwy W ◦ Chesterfield MO 63017-0760
Phone: 636-537-4000 ◦ Fax 636-537-4798 ◦ www.chesterfield.mo.us

I, Judith A. Naggiar, City Clerk for the City of Chesterfield, do hereby certify that the document attached hereto is a full, true and correct copy of Ordinance No. 2607 adopted by City Council on May 17, 2010, at an official meeting of said City Council. I further certify that the signatures contained therein are genuine signatures of persons authorized to act on behalf of the City of Chesterfield.

In witness whereof, I have hereunto set my hand as City Clerk this 24th day of May, 2010.

Judith A. Naggiar

Judith A. Naggiar, City Clerk

BILL NO. 2791 ORDINANCE NO. 2607

AN ORDINANCE APPROVING AN AGREEMENT TO ACCEPT THE DONATION OF LAND FOR THE RIPARIAN TRAIL AND PARKS, TO AUTHORIZE THE EXPENDITURE OF FUNDS TO BUILD A ROAD TO CONNECT LYDIA HILL DRIVE AND AUGUST HILL DRIVE AND TO PROVIDE DEVELOPMENT CREDITS FOR THE DONATED LAND

WHEREAS, the City of Chesterfield wishes to provide recreational, trail and park facilities for the use of the residents, and is desirous of entering into an agreement, to accept the donation of land for the construction of the Riparian Trail and to add land to the City's Parks; and

WHEREAS, the City of Chesterfield desires to connect Lydia Hill Drive and August Hill Drive in order to improve the flow of traffic within the City of Chesterfield; and

WHEREAS, Proposition P Bond proceeds are available to pay for the City's costs to connect Lydia Hill Drive and August Hill Drive; and

WHEREAS, the City can modify certain definitions in its ordinances to provide development credits for the donated lands.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The Mayor of the City of Chesterfield is hereby authorized to sign an Agreement Re: Contribution of Land to the City of Chesterfield, Missouri for its Parks and Trails System, in a form similar to that which is attached hereto and marked Exhibit 1 and undertake all other actions, including connecting Lydia Hill Drive and August Hill Drive, as are needed to fulfill the City's obligations under the agreement.

Section 2. City Staff is authorized to expend up to One Million Two Hundred Ninety-Two Thousand Dollars ($ 1,292,000.00) from funds remaining within the Parks Construction Fund to pay for the City's cost to connect Lydia Hill Drive and August Hill Drive.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 17th day of March, 2010.

MAYOR

ATTEST:

CITY CLERK

FIRST READING HELD: 3/1/

AGREEMENT RE: CONTRIBUTION OF LAND TO THE CITY OF CHESTERFIELD, MISSOURI FOR ITS PARKS AND TRAILS SYSTEM

AGREEMENT made as of this ____ day of _____, 2010, by and between THE CITY OF CHESTERFIELD, MISSOURI, a municipal corporation ("City"), and CHESTERFIELD VILLAGE INC., a Missouri corporation ("CVI").

RECITALS:

A. CVI and its affiliates (collectively, "CVI") has and is continuing to develop a large mixed-use urban area known as Chesterfield Village located wholly within the limits of City. CVI currently owns properties identified on Exhibit B and may hereafter acquire properties (collectively, the "CVI Properties").

B. City's parks and trails system includes City's existing Central Park and Lake No. 2.

C. CVI desires to contribute properties identified herein to the City to become part of City's evolving parks and trails system (sometimes referred to herein as "Park Sites").

D. It is contemplated but not required that other properties will subsequently be contributed to the City's parks and trails system by CVI. Those other properties shall be contributed in accordance with the terms and conditions set forth in amendments to this Agreement.

E. CVI is prepared to contribute the following tract of land to the City for the purpose of building a road and necessary improvement abutting the road (the "Road Property"):

> Parcel consisting of approximately 0.8 acre designated as the road connecting Lydia Hill Drive to August Hill Drive, as described in Exhibit A-1 and as shown on Exhibit A.

F. CVI is prepared to contribute the following tract of land to the City to become part of City's parks and trails system (collectively, the "Trail Property"):

(i) Parcel C226B containing approximately 10.5 acres, as described in Exhibit A-2 and as shown on Exhibit A;

(ii) Parcel C204 containing approximately 1.0 acres, as described in Exhibit A-3 and as shown on Exhibit A; and

(iii) Parcel C207 containing approximately 0.9 acres, as described in Exhibit A-4 and as shown on Exhibit A.

The above-referenced Parcels are sometimes collectively referred to herein as the Park Sites or "Park and Trails Properties."

NOW, THEREFORE, it is agreed as follows:

1. The Recitals are incorporated herein by this reference.

2. Properties to Be Contributed Currently. CVI shall at Closing (as defined below) convey to the City the Trail Property and the Road Property.

A. Upon execution of this Agreement, CVI shall order a title insurance commitment from a title company mutually acceptable to City and CVI (the "Title Company") covering the Park and Trails Properties and the Road Property, which commitment(s) shall be sent to City and to CVI upon issuance. Within fifteen (15) days following the receipt of the commitment by City, City shall notify CVI in writing of any objections it has to the titles, and CVI shall have fifteen (15) days thereafter to remove or otherwise satisfy City as to the objections raised; provided, however, that City agrees to take title subject to the Conservation Easement encumbering all or portions of the Park and Trails Properties and the Road Property as shown on and described in that certain instrument recorded in Plat Book 352, Pages 93 through 95 of the St. Louis County Records (the "Conservation Easement"). If City's other objections are not satisfied within said 15 day period, City may refuse to accept all of the Park and Trails Properties and the Road Property or any individual property, or waive its objections, or accept all or any of the Park and Trails Properties and the Road Property subject to the title exceptions, including the Conservation Easement ("Permitted Exceptions"). CVI will exercise its commercially reasonable efforts to satisfy City's objections.

B. Title to the Park and Trails Properties and the Road Property shall be marketable in fact, shall be conveyed by special warranty deeds free of all liens and encumbrances, and shall be title insured by the Title Company, at CVI's expense, subject only to existing utility easements, rights of way of record, and Permitted Exceptions.

3. City's Obligations and Undertakings Relative to These and Future Contributions of Land by CVI to the City's Parks and Trails System and Construction of Roads.

A. City will, as the need arises, grant utility easements on and over Park Sites to or for the benefit of all properties abutting Park Sites contributed to City by CVI and to and for the benefit of properties in the vicinity of such Park Sites which require such utility easements. Such easements shall meet the requirements of the purpose for

which they are intended and shall further provide that any damage done to Park Sites during the installation, maintenance or replacement of the affected utility be repaired to its prior condition at no cost to City.

B. City acknowledges that Park Sites contributed by CVI to City create desirable open spaces which benefit City and its citizens and which enhance and add value to properties within the City. City will develop plans for the parks and trails and any such plans including the Park and Trail Properties shall be approved by CVI, which approval shall not be unreasonably denied or delayed. In consideration for such contributions by CVI, City will create three (3) development accounts for the benefit of CVI and its successors and assigns with respect to CVI Properties as follows:

(i) City will place the aggregate of the acres contained in all Park Sites contributed by CVI to City (including, for these purposes, 3.75 acres of Chesterfield Lake No. 2) in a space account ("Space Account"), the purpose of which is to provide credits to be used by CVI to comply with green or open space requirements, whichever is applicable, for commercial or mixed use developments or redevelopments of either on CVI Properties.

Currently, "Greenspace Percentage" is calculated for any proposed preliminary, site development, site development concept or site development section plan pursuant to Section 1003.020 (79.1) of the City's Zoning Ordinance. Acreage in the Space Account may be withdrawn at the petitioner's/developer's discretion and added to the numerator in Section 1003.020 (79.1) to effectively increase the greenspace percentage for any such plan in order to comply with the greenspace percentage requirement applicable to the proposed development reflected by such plan. Such increase shall be limited to fifty percent (50%) of the greenspace percentage requirement. This procedure shall apply to any calculation of greenspace percentage whether pursuant to Section 1003.020 (79.1) or any revised, successor or similar provision in the City's Zoning Ordinance.

Currently, "Openspace" is defined in the City's Tree Preservation and Landscape Requirements. Openspace percentage is calculated pursuant to this definition for any proposed preliminary, site development, site development concept or site development section plan. Acreage in the Space Account may be withdrawn at the petitioner's/developer's discretion and added to the numerator to effectively increase the openspace percentage for any such plan in order to comply with the openspace percentage requirement applicable to the proposed development reflected by such plan. Such increase shall be limited to fifty percent (50%) of the openspace percentage requirement. This procedure shall apply to any calculation of openspace percentage whether pursuant to the "Openspace" definition in the City's Tree Preservation and Landscape Requirements or any revised, successor or similar provision in the City's Zoning Ordinance.

Notwithstanding the foregoing limitation on increase in percentage, a petitioner/developer may, in addition, request and obtain from the Planning Commission a modification or elimination of the foregoing fifty percent (50%) limitation upon a showing of good planning and design with respect to a specific proposed development, and/or request a reduction in the greenspace or openspace requirement pursuant to applicable procedures in the City Code.

(ii) City will place the aggregate of the acres contained in all Park Sites contributed by CVI to City (including for these purposes, 3.75 acres of Chesterfield Lake No. 2) in a floor area ratio account ("F.A.R. Account"), the purpose of which is to provide credits to be used by CVI for commercial or mixed use developments or redevelopments of either on CVI Properties. Currently, "Floor area ratio" is defined in Section 1003.020 (72.1). A specific "floor area ratio" ("F.A.R.") may be required with respect to a proposed development. Acreage in the F.A.R. Account may be withdrawn at the petitioner's/developer's discretion and added to the total lot area in Section 1003.020 (72.1) to effectively decrease the F.A.R. for such proposed development as reflected by the preliminary, site development, site concept or site section plan in order to comply with the required F.A.R. This procedure shall apply to any calculation of F.A.R. whether pursuant to Section 1003.020 (72.1) or any revised, successor or similar provision in the City's Zoning Ordinance.

(iii) City will place seventy percent (70%) of any tree canopy contained in all Park Sites contributed by CVI to City in a canopy account ("Canopy Account"), the purpose of which is to provide credits to be used by CVI for any developments or redevelopments on CVI Properties. Currently, the Tree Preservation and Landscape Requirements require that a Tree Preservation Plan ("TPP") show that "A minimum 30% of any wooded area shall be maintained as protected wooded area . . . " ("protected area"). Tree canopy in the Canopy Account may be withdrawn at the petitioner's/developer's discretion to add to the protected area shown on the TPP in order to comply with the 30% protected area requirement. This procedure shall apply to any TPP whether pursuant to the codified Tree Preservation and Landscape Requirements or any revised, successor or similar provision in the City's Zoning Ordinance

C. Notwithstanding any ordinance of the City to the contrary, there shall be no setback requirements greater than ten (10) feet from any contributed Park Site required for any new developments by CVI on any property abutting any Park Site contributed by CVI to City for its parks and trails system.

D. Notwithstanding any ordinance of the City to the contrary, City will not require a special review process for any development on property abutting any Park Site contributed by CVI to City under this Agreement.

E. City will construct, at its cost, the road connecting Lydia Hill Road to August Hill Road ("Hill Road Extension") as shown on Exhibit A. To the extent necessary, City will, at its cost, (i) remove any part of the existing road which is necessary to construct the Hill Road Extension, and (ii) build the road in compliance with Exhibit A. Lydia Hill Road will afford means of ingress and egress to and from the City's parks and Parcels C211, C220 and C226.

F. As a condition to and in consideration for the undertakings of CVI under this Agreement, the City Council of City must pass an ordinance approving execution of this Agreement by City.

4. Insurance.

A. During construction of any work, if any, by CVI on the City's parks and trail systems (the "Work"), CVI will cause its contractors to carry, at no cost to City, Builders' Risk Insurance with limits of no less than $3,000,000 per occurrence, naming City as additional insured. In addition, CVI will cause its contractors to carry workers' compensation insurance as required by law.

5. Representations. CVI represents to City that execution of this Agreement has been duly authorized by its board of directors, and City represents to CVI that this Agreement has been duly authorized by ordinances of the City Council of City.

6. Closing. Closing of the conveyance of properties by CVI to City under this Agreement shall take place at the office of the Title Company, at 10:00 a.m. on the thirtieth (30th) day following the date on which City approves in writing the surveys and title insurance commitments on the properties.

7. Notices. Any notice required or permitted to be given hereunder shall be deemed given (i) on the date when it is personally delivered; or (ii) on the date when it is sent by facsimile transmission with confirmation of receipt of transmission; or (iii) when deposited with the United States Postal Service, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to CVI: Chesterfield Village, Inc.
c/o Sachs Properties, Inc.
Attn: Kathleen Higgins, Vice President
400 Chesterfield Center, Suite 600
Chesterfield, Missouri 63017-4890
Telecopier or facsimile: (636) 537-0718
Email: khiggins@sachsproperties.com

If to City: City of Chesterfield, Missouri

Attn: Michael Herring, City Administrator
690 Chesterfield Parkway West
Chesterfield, Missouri 63017-0760
Telecopier or facsimile: (636) 537-4798
Email: mherring@chesterfield.mo.us

or to such other address as contained in a notice to the other party.

8. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of City and of CVI and its successors and assigns. Provisions in this Agreement for the benefit of the CVI Properties abutting Park Sites shall follow the land.

9. Construction and Interpretation. This Agreement has been made and entered into in the County of St. Louis, State of Missouri, and shall be governed and construed by and in accordance with the laws of the State of Missouri without giving effect to conflict of laws principles.

10. Computation of Time. If the last day for the giving of notice or performance of any obligation or condition hereunder is a Saturday, Sunday or legal holiday in the State of Missouri, then such last day shall be extended to the next succeeding business day thereafter.

11. Paragraph Headings. The headings of the paragraphs in this Agreement are inserted solely for convenience of reference and are not intended to govern, limit, or aid the construction of any term or provision hereof.

12. Waiver. Except as otherwise provided herein, no claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be made against any party hereto except on the basis of a written instrument executed by or on behalf of such party.

13. Further Actions. CVI and City agree to execute such further documents and take such further actions as may reasonably be required to carry out the provisions and intent of this Agreement or any agreement or document related hereto or entered into in connection herewith.

14. Counterparts. This Agreement may be signed in any number of counterparts and signature to any one counterpart shall be deemed signature to all counterparts, which when taken together shall constitute one contract.

15. Exhibits. All Exhibits attached hereto are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

CVI: Chesterfield Village Inc.

By:_____

Name:_____

Title:_____

Date:_____

City: City of Chesterfield, Missouri

By:

Name:

Title:

Date:

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2010, before me appeared _____, to me personally known, who, being duly sworn did say that she/he is the _____ of CHESTERFIELD VILLAGE INC., a corporation of the State of Missouri, and that said instrument was signed in behalf of said corporation, by authority of its Board of Directors; and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____
Notary Public

My Commission Expires:

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 5th day of July, 2010, before me appeared Peter Herzog, to me personally known, who, being duly sworn did say that she/he is the Mayor of the CITY OF CHESTERFIELD in the State of Missouri, a municipal corporation, and that said instrument was signed in behalf of said City, by authority of its City Counsel; and said Mayor acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____
Notary Public

My Commission Expires: 3/16/11

JUDITH A. MARQUART
NOTARY PUBLIC
NOTARY SEAL
COMMISSION #08533167
MY COMMISSION EXPIRES
ST. LOUIS COUNTY
STATE OF MISSOURI

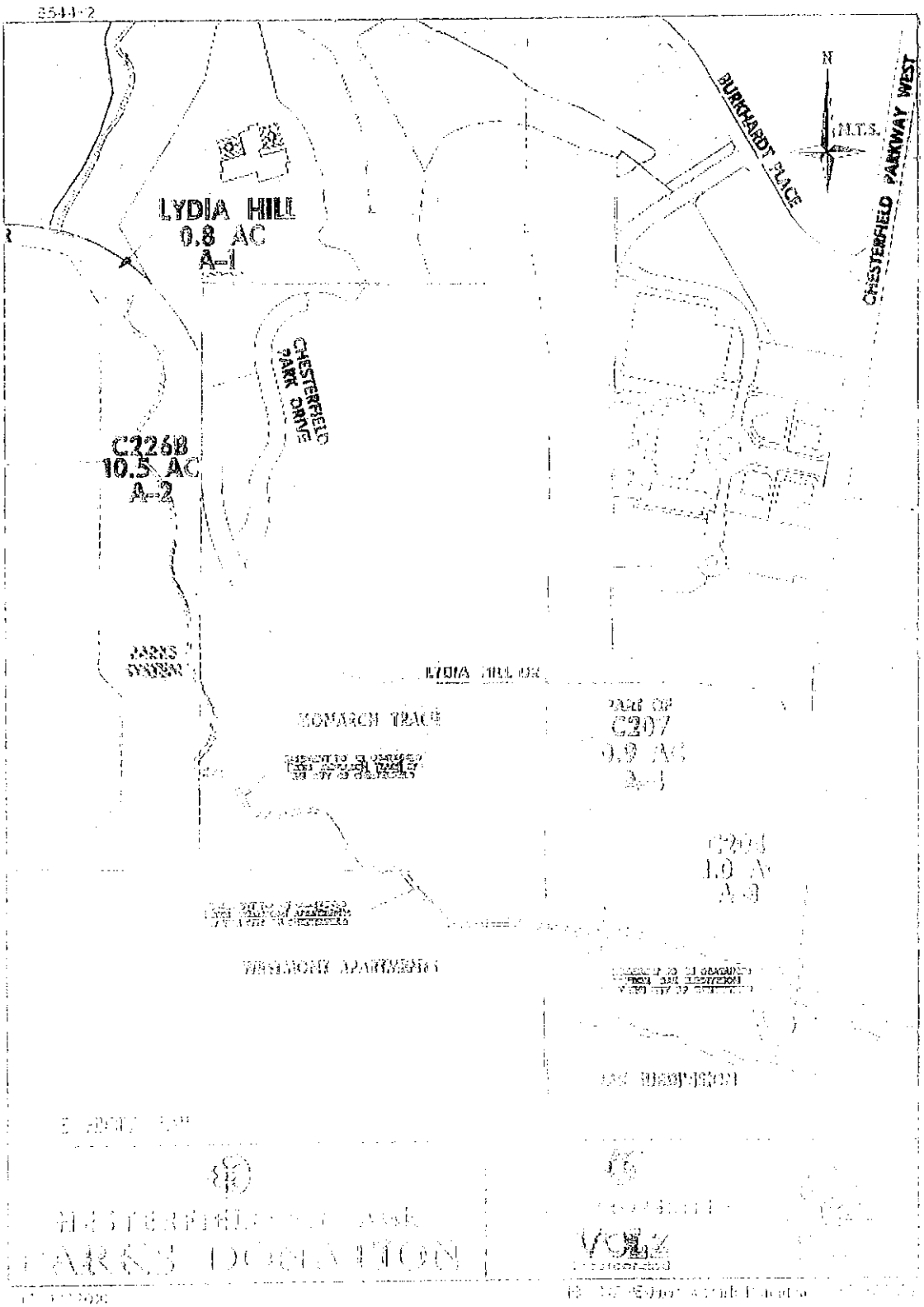
LYDIA HILL
0.8 AC
A-1
C226B
10.5 AC
A-2
CHESTERFIELD PARK DRIVE
BURKHARDT PLACE
CHESTERFIELD PARKWAY WEST
N
(N.T.S.)
MONARCH TRACE
PART OF
C207
0.9 AC
A-1
C201
1.0 AC
A-3

EXHIBIT
A

August 20, 2009 BET Re: Lydia Hill Drive Extension
9516-0

A strip of land 60 feet wide being part of Tract C262 of the plat "C148, C220 & C226 Boundary Adjustment Plat" according to the plat as recorded in Plat Book 354 page 1044 of the St. Louis County Records, being in Part of Lot 7 of Thomas K. Humphrey's Estate, Part of Lots 1, 3 & 4 of the John Long Estate, in Fractional Section 9 and in U.S. Survey 415, Township 45 North – Range 4 East, City of Chesterfield, St. Louis County, Missouri and being more particularly described as follows:

Beginning at the Northeastern corner of Lot 36C of "Stonehill Village C," according to the plat thereof recorded in Plat Book 347 page 511 of the St. Louis County Records, said point also being the Southeast corner of August Hill Drive, 60 feet wide, as shown on the plat of "August Hill Drive, Road Dedication and Easement Plat" according to the plat thereof recorded in Plat Book 344 pages 365-366 of the St. Louis County Records; thence North 19 degrees 23 minutes 58 seconds East 60.00 feet along a radial line to the Northeast corner of August Hill Drive, as shown on the aforementioned plat; thence along a curve to the right, whose radius point bears South 19 degrees 23 minutes 58 seconds West 605.00 feet from the last mentioned point, a distance of 265.66 feet to a point; thence along a curve to the right, whose radius point bears South 44 degrees 33 minutes 31 seconds West 699.40 feet from the last mentioned point, a distance of 271.37 feet to the West line of property described in deed to the City of Chesterfield as recorded in Book 11138 page 430 of the St. Louis County Records, being also the East line of Lydia Hill Drive, 60 feet wide, per plat recorded in Plat Book 345 pages 305 and 306 of the St. Louis County Records; thence along said line South 00 degrees 36 minutes 53 seconds West 279.05 feet to a point in the West line of the aforementioned Lydia Hill Drive; thence along a curve to the left, whose radius point bears North 89 degrees 52 minutes 18 seconds West 644.37 feet from the last mentioned point, a distance of 262.48 feet to a point; thence along a curve to the left, whose radius point bears South 66 degrees 47 minutes 24 seconds West 639.40 feet from the last mentioned point, a distance of 248.09 feet to a point; thence along a curve to the left, whose radius point bears South 44 degrees 33 minutes 31 seconds West 545.00 feet from the last mentioned point, a distance of 239.31 feet to the point of beginning and containing 0.8 Acres according to calculations by Volz Inc. during February 2009.

EXHIBIT
A-1

August 20, 2009 EJK Re: C226B
(includes Riparian Corridor)
Parks Donation

A tract of land being part of Lot 7 of the Thomas K. Humphrey's Estate and Part of Lot 4 of the Subdivision of the West One Half of U.S. Survey 415, in U.S. Survey 415 and Section 9, Township 45 North – Range 4 East, City of Chesterfield, St. Louis County, Missouri and being more particularly described as follows:

Beginning at the intersection of the South right-of-way line of August Hill Drive, 60 feet wide, as dedicated in Plat Book 344 pages 365 and 366 of the St. Louis County Records, with the East line of "Stonehill Village C," as recorded in Plat Book 347 pages 511 and 512 of the St. Louis County Records; thence leaving said East line of said "Stonehill Village C," along a curve to the right, whose radius point bears South 19 degrees 23 minutes 58 seconds West 545.00 feet from the last mentioned point, a distance of 239.31 feet to a point; thence along a curve to the right, whose radius point bears South 44 degrees 33 minutes 31 seconds West 639.40 feet from the last mentioned point, a distance of 248.09 feet to a point; thence along a curve to the right, whose radius point bears South 66 degrees 47 minutes 24 seconds West 644.37 feet from the last mentioned point, a distance of 268.28 feet to the East line of said Lot 7 of the Thomas K. Humphrey's Estates; thence South along said East line of the Thomas K. Humphrey's Estate, South 00 degrees 36 minutes 53 seconds West 1,184.78 feet to the South line of said Section 9; thence Westwardly along said South line of Section 9, North 89 degrees 10 minutes 59 seconds West 429.93 feet to the East line of "Stonehill Village A" a subdivision according to the plat thereof recorded in Plat Book 347 pages 515 and 516; thence Northwardly along said East line of "Stonehill Village A" and along the East line of said "Stonehill Village C" the following courses and distances: North 45 degrees 49 minutes 04 seconds East 281.87 feet, North 00 degrees 37 minutes 15 seconds East 300.00 feet, North 44 degrees 22 minutes 41 seconds West 99.00 feet, North 00 degrees 37 minutes 16 seconds East 1,050.75 feet and North 32 degrees 47 minutes 18 seconds West 179.90 feet to the point of beginning and containing 10.5 acres according to calculations by Volz Inc. during December 2007.

EXHIBIT
A-2

November 20, 2007 BET Re: C204
Parks Donation

A tract of land being part of Parcel C-204 and part of Parcel C-203 conveyed to Chesterfield Village, Inc., by Deed recorded in Deed Book 7768, Page 1382, of the St. Louis County Records, situated in U.S. Survey 2002, Township 45 North, Range 4 East, in the City of Chesterfield, St. Louis County, Missouri, being more particularly described as follows:

Commencing at a point on the Western Right-Of-Way Line of Justus Post Road, 43 feet wide, at its intersection with a point on the Northeastern Line of "Oak Plat No. 1", a Subdivision according to the plat thereof recorded in Plat Book 172, Pages 30 through 33 of the St. Louis County Records; thence Northwesterly, along the Northeastern Line of said subdivision, North 53 degrees 13 minutes 00 seconds West 457.01 feet to the most Northern corner thereof and being the Point Of Beginning of the tract of land herein described; thence Southwesterly, along the Northwestern Line of said Oak Plat No 1, South 36 degrees 47 minutes 00 seconds West 62.00 feet to a point; thence Northwesterly, along the Northern Line of "Oak Plat No. 4", a Subdivision according to the Plat thereof recorded in Plat Book 187, Page 100, of the St. Louis County Records, North 82 degrees 13 minutes 00 seconds West 20.63 feet to a point; thence Northwesterly, along the Southern Line of property conveyed to Chesterfield Village Association by Deed recorded in Deed Book 8920, Page 2321, of the St. Louis County Records, North 53 degrees 13 minutes 00 seconds West 156.07 feet to a point; thence North 19 degrees 19 minutes 31 seconds West 120.93 feet to a point; thence North 36 degrees 47 minutes 00 seconds East 73.00 feet to a point; thence South 66 degrees 57 minutes 42 seconds East 195.62 feet to a point; thence South 86 degrees 17 minutes 01 second East 64.30 feet to a point; thence South 53 degrees 13 minutes 00 seconds East 49.16 feet to a point; thence Southwesterly, departing the Southern Line of said property conveyed to Chesterfield Village Association, South 45 degrees 00 minutes 00 seconds West 36.47 feet to a point on curve; thence Northwesterly, along a curve to the left having a radius of 86.00 feet, an arc distance of 8.45 feet (North 86 degrees 17 minutes 12 seconds West 8.45 feet on its chord) to a point of compound curvature; thence Southwesterly, along a curve to the left having a radius of 56.00 feet, an arc distance of 87.77 feet (South 46 degrees 00 minutes 00 seconds West 79.06 feet on its chord) to a point of reverse curvature; thence Southwesterly, along a curve to the right having a radius of 34.00 feet, an arc distance of 21.17 feet (South 18 degrees 56 minutes 32 seconds West 20.83 feet on its chord) to a point of tangency; thence South 36 degrees 47 minutes 00 seconds West 11.43 feet to the point of beginning, containing 1.0 acres, more or less, according to a survey made by Volz Inc., during the month of May, 2006.

EXHIBIT
A-3

October 1, 2009 BET Re: C-207

A tract of land being in Parcel C-207, as shown on the plat of "Lake Post Commons Recreation Facility Easement Plat" as recorded in Plat Book 333 pages 568 – 569 of the St. Louis County Records, being in U.S. Survey 2002, Township 45 North – Range 4 East, City of Chesterfield, St. Louis County, Missouri and being more particularly described as follows:

Commencing at the Northeastern corner of said Parcel C-207 where the aforementioned corner intersects the Southwestern line of Chesterfield Village Parkway, 73 feet wide, at the Northwestern corner of the Lake Post Commons Recreational Facility as shown on the "Boundary Adjustment Plat of Lake Post Commons Recreational Facility" and tracts of land in U.S. Survey 2002, Township 45 North – Range 4 East, per the recorded plat recorded in Plat Book 196 page 77 of the St. Louis County Records; thence along the Eastern line of Parcel C-207, South 38 degrees 22 minutes 25 seconds West 231.91 feet to the point of beginning of tract herein described; thence continuing along the aforementioned line, South 38 degrees 22 minutes 25 seconds West 97.32 feet to a point; thence North 77 degrees 36 minutes 45 seconds West 592.15 feet to a point; thence along a curve to the right, whose radius point bears North 84 degrees 47 minutes 24 seconds East 25.00 feet from the last mentioned point, a distance of 15.92 feet to a point; thence North 31 degrees 16 minutes 48 seconds East 30.03 feet to a point; thence along a curve to the right, whose radius point bears South 58 degrees 43 minutes 12 seconds East 15.00 feet from the last mentioned point, a distance of 27.68 feet to a point; thence South 43 degrees 00 minutes 36 seconds East 18.00 feet to a point; thence along a curve to the left, whose radius point bears North 46 degrees 59 minutes 24 seconds East 25.00 feet from the last mentioned point, a distance of 20.19 feet to a point; thence South 89 degrees 17 minutes 55 seconds East 24.68 feet to a point; thence along a curve to the right, whose radius point bears South 00 degrees 42 minutes 05 seconds West 180.00 feet from the last mentioned point, a distance of 61.83 feet to a point; thence South 69 degrees 37 minutes 01 second East 29.17 feet to a point; thence along a curve to the left, whose radius point bears North 20 degrees 22 minutes 59 seconds East 170.00 feet from the last mentioned point, a distance of 54.37 feet to a point; thence South 87 degrees 56 minutes 26 seconds East 17.96 feet to a point; thence along a curve to the left, whose radius point bears North 02 degrees 03 minutes 34 seconds East 95.00 feet from the last mentioned point, a distance of 29.51 feet to a point; thence North 74 degrees 15 minutes 17 seconds East 35.84 feet to a point; thence North 70 degrees 21 minutes 01 second East 21.06 feet to a point; thence along a curve to the right, whose radius point bears South 19 degrees 38 minutes 59 seconds East 55.00 feet from the last mentioned point, a distance of 46.23 feet to a point; thence South 61 degrees 29 minutes 22 seconds East 12.43 feet to a point; thence along a curve to the left, whose radius point bears North 28 degrees 30 minutes 38 seconds East 45.00 feet from the last mentioned point, a distance of 19.12 feet to a point; thence South 85 degrees 50 minutes 23 seconds East 3.78 feet to a point; thence along a curve to the right, whose radius point bears South 04 degrees 09 minutes 37 seconds West 55.00 feet from the last mentioned point, a distance of 34.70 feet to a point; thence South 49 degrees 41 minutes 35 seconds East 13.89 feet to a point; thence along a curve to the left, whose radius point bears North 40 degrees 18 minutes 25 seconds East 70.00 feet from the last mentioned point, a distance of 18.66 feet to a point; thence South 64 degrees 57 minutes 56 seconds East 32.49 feet to a point; thence along a curve to the left, whose radius point bears North 25 degrees 02 minutes 04 seconds East 55.00 feet from the last mentioned point, a distance of 38.28 feet to a point; thence North 75 degrees 09 minutes 21 seconds East 52.21 feet to a point; thence along a curve to the right, whose radius point bears South 14 degrees 50 minutes 39 seconds East 50.00 feet from the last mentioned point, a distance of 39.59 feet to a point; thence South 59 degrees 28 minutes 51 seconds East 8.81 feet to the point of beginning, said tract containing 0.9 acres according to calculations by Volz Inc. during the month of October 2009.

EXHIBIT
A-4

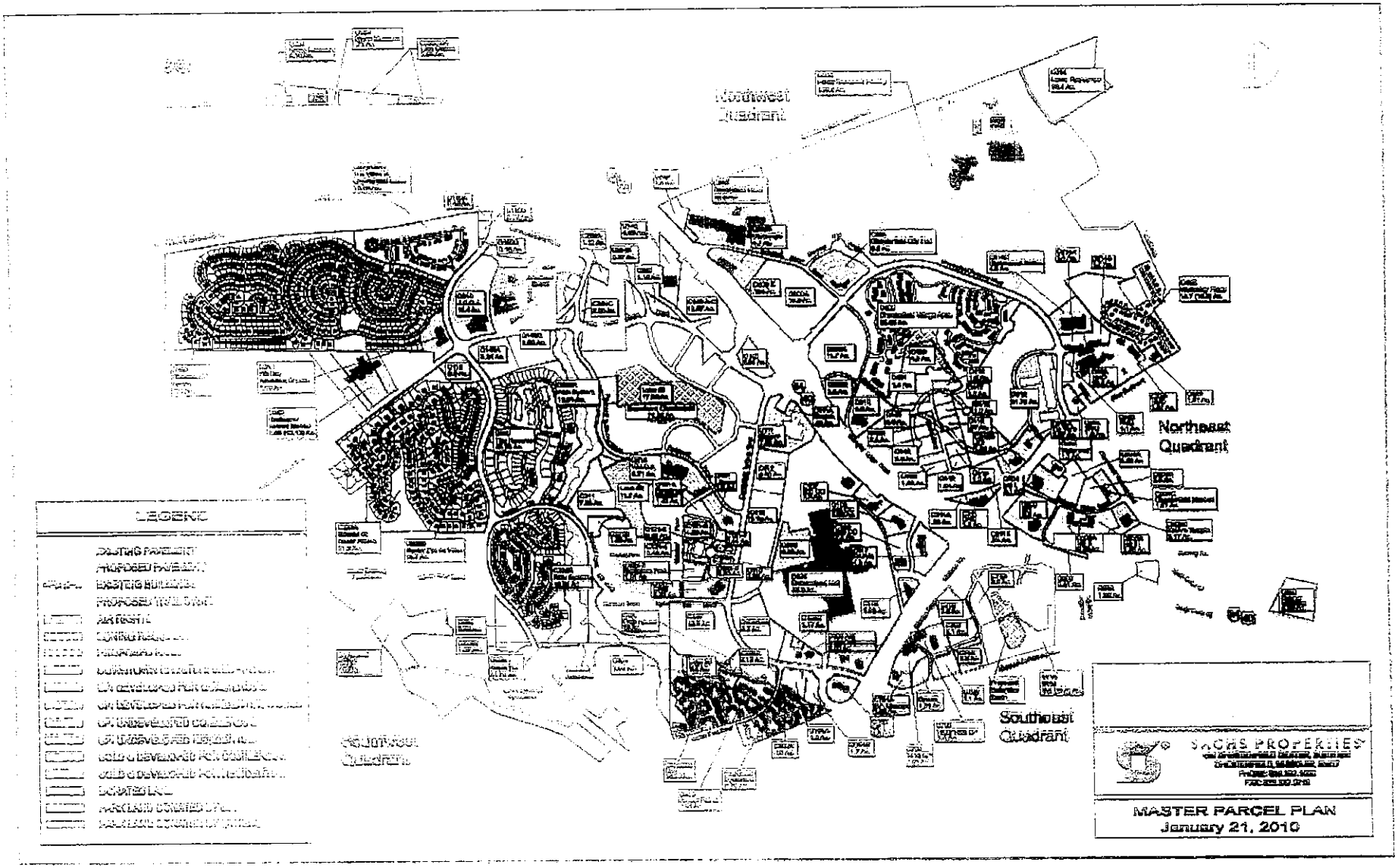
Northwest Quadrant
Northeast Quadrant
Southwest Quadrant
Southeast Quadrant
LEGEND
SACHS PROPERTIES
MASTER PARCEL PLAN
January 21, 2010

EXHIBIT
B

FINANCE AND ADMINISTRATION COMMITTEE

The Finance and Administration Committee has the following action items for the March 5th, 2018 City Council meeting.

Bill No. 3180 – City Administrators Compensation
(Second Reading) As considered and recommended by City Council in conjunction with the annual performance evaluation, the proposed bill establishes the annual compensation for the City Administrator as required by Statute.

Bill No. 3186 – Repeals Ordinance 852 – Drug Abuse Coordinator
(Second Reading) Repeals Chapter 2, Article 5, Section 2-107, (Ordinance Number 582) of the City of Chesterfield Municipal Code, establishing the position of the coordinator of alcohol and drug abuse prevention.

Bill No. 3187 – Repeals the Establishment of the Finance and Administration Citizens Advisory Committee as a Statutory Committee (Second Reading) The Finance and Administration Committee met and recommends that the Finance and Citizens Advisory Committee be established by policy and not established by City Code. This Ordinance repeals Chapter 2 Article VII, Division 1, Section 2-202 and Division 4, Section 2-236 through Section 2-240.6 by deleting numerical item #6 the Finance and Administration Citizens Advisory Committee. The Finance and Administration Citizens Advisory Committee is hereby no longer identified as a Statutory Committee.

The next meeting of the Finance and Administration Committee is scheduled for Monday March 12th, 2018

If you have any questions or require additional information please contact Finance Director Chris DesPlanques or me prior to Monday's meeting.

PARKS, RECREATION AND ARTS COMMITTEE

The next meeting of the Parks Recreation and Arts Committee has not yet been scheduled.

As always, if you have any questions or require additional information, please contact Tom McCarthy or me prior to Monday's meeting.

PUBLIC HEALTH AND SAFETY COMMITTEE

The next meeting of the Public Health and Safety Committee has been scheduled for Monday, March 5th, at 4:30 p.m., prior to the City Council work session.

If you have any questions or require additional information, please contact Chief Ray Johnson or me prior to Monday's meeting.

CITY ADMINISTRATOR'S REPORT

2018 Selective Slab Replacement A
(Roll Call Vote) Department of Public Works recommends approval
As detailed more fully in Director of Public Works\City Engineer – Jim Eckrichs' memo, the City sought bids for the annual street reconstruction program. I join with Mr. Eckrich in recommending that the ***City accept the second to low bid as submitted by J. M. Marschuetz and to authorize the City Administrator to enter into a contract with J. M. Marschuetz Construction Company for the 2018 Selective Slab Replacement Area A in an amount not to exceed $938,674.*** This work is fully funded through the Capital Projects Fund. The 2018 budget provides $1,740,000 for street reconstruction. This is the first of two contracts recommended for approval at Monday's meeting.

2018 Selective Slab Replacement A
(Roll Call Vote) Department of Public Works recommends approval
As detailed more fully in Director of Public Works\City Engineer – Jim Eckrichs' memo, the City sought bids for the annual street reconstruction program. I join with Mr. Eckrich in recommending that the ***City accept the low bid as submitted by J. M. Marschuetz and to authorize the City Administrator to enter into a contract with J. M. Marschuetz Construction Company for the 2018 Selective Slab Replacement Area B in an amount not to exceed $801,057.*** This work is fully funded through the Capital Projects Fund. The 2018 budget provides $1,740,000 for street reconstruction. This is the second and final contract recommended for approval at Monday's meeting.

If you have any questions prior to Monday's meeting, please contact Mr. Eckrich or me.

Memorandum
Department of Public Works

TO: Michael O. Geisel, P.E.
City Administrator

FROM: James A. Eckrich, P.E.
Public Works Dir. / City Engineer

DATE: February 23, 2018

RE: 2018 Selective Slab Replacement A

The Department of Public Works publicly opened bids for the 2018 Selective Slab Replacement Project A on February 20, 2018. The results of the bid opening are detailed in the attached memorandum from Project Manager Mark Wilson. After reviewing the bids, Staff recommends the project be awarded to the second low bidder, J.M. Marschuetz Construction Company, in their bid amount of $938,674. J.M. Marschuetz Construction Company has successfully performed street replacement work in the City of Chesterfield in the past and is positively recommended by City Staff.

You will note that the low bid received was from E. Meier Contracting. E. Meier Contracting was awarded a similar project in 2017. While the work they performed was of satisfactory quality, their progress was slow, and a portion of that project was ultimately removed from their contract and awarded to another contractor. I would have no reservation about positively recommending E. Meier for a smaller contract. However, until E. Meier can demonstrate that it can effectively construct a project of this size, I concur with the Project Manager and believe it is in the best interest of the City of Chesterfield to award this contract to the second bidder, J.M. Marschuetz Company.

The streets included as part of this project are attached. This project is budgeted within Account 120-079-5490. Should you have questions or require additional information on this project, please let me know.

Concurrence: _____
Chris DesPlanques, Finance Director

Action Recommended

This matter should be forwarded to the City Council for consideration. Should Council concur with Staff's recommendation, it should authorize the City Administrator to enter into an Agreement with J.M. Marschuetz Construction Company in the amount of $938,674.

MEMORANDUM

DATE: February 22, 2018

TO: Jim Eckrich, Public Works Director

FROM: Mark Wilson, Project Manager

SUBJECT: 2018 Selective Slab Replacement Project, Area A - 2018-PW-03A

As you are aware, we opened bids for the above referenced project Tuesday, February 20, 2018. Three bids were received:

Contractor	Total Bid
E. Meier Contracting	$918,314.90
J.M. Marschuetz Construction Co.	$938,673.75
Amcon Municipal Concrete	$950,598.35

The low bidder, E. Meier Contracting was awarded a street replacement project in 2017 but was unable to complete the project. They have not shown any references to indicate they are able to complete a project of this size. J.M. Marschuetz has successfully performed street replacement work in the past in the City of Chesterfield.

Accordingly, I recommend acceptance of the bid of $938,673.75 submitted by J.M. Marschuetz Construction Co. and request authorization of work up to the amount of $938,675.00 Adequate funding is available in the Capital Projects Street Improvements account, 120-079-5490, to fund this project.

A copy of the best bid from Marschuetz is attached for the Department of Finance and Administration's use in preparing a purchase order for the project. The list of streets scheduled for work under this project is attached. Should you require additional information, please advise.

City of Chesterfield

BID TABULATION
2018 SELECTIVE SLAB REPLACEMENT PROJECT
2018-PW-03A
February 20, 2018

ITEM #	DESCRIPTION	UNIT	QUANTITY	Project Estimate		E. Meier Contracting		J.M. Marschuetz Construstion		Amcon Municipal Concrete	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
1	REMOVE & REPLACE P.C.C. PAVEMENT	Sq. Yd.	16,741	$46.75	$782,641.75	$42.75	$715,677.75	$43.50	$728,233.50	$45.00	$753,345.00
2	JOINT SEALANT	Sq. Yd.	16,741	$1.60	$26,785.60	$1.50	$25,111.50	$1.85	$30,970.85	$1.70	$28,459.70
3	4" ROLLED STONE BASE	Sq. Yd.	19,491	$4.35	$84,785.85	$4.15	$80,887.65	$4.30	$83,811.30	$3.75	$73,091.25
4	UNDERGRADING	Cu. Ft.	650	$0.50	$325.00	$3.18	$2,067.00	$0.50	$325.00	$0.25	$162.50
5	GEOTEXTILE FABRIC	Sq. Yd.	16,741	$1.00	$16,741.00	$1.00	$16,741.00	$0.85	$14,229.85	$0.95	$15,903.95
6	STRUCTURAL GEOGRID	Sq. Yd.	325	$0.50	$162.50	$2.00	$650.00	$0.55	$178.75	$0.50	$162.50
7	SEEDING & MULCHING	Sq. Yd.	595	$1.00	$595.00	$1.00	$595.00	$1.00	$595.00	$0.01	$5.95
8	TRAFFIC CONTROL	L.S.	1	$16,000.00	$16,000.00	$12,000.00	$12,000.00	$12,000.00	$12,000.00	$21,000.00	$21,000.00
9	PAVED APPROACHES	Sq. Yd.	378	$55.00	$20,790.00	$40.00	$15,120.00	$52.00	$19,656.00	$40.00	$15,120.00
10	SAWCUTTING	Lin. Ft.	649	$2.50	$1,622.50	$2.50	$1,622.50	$2.50	$1,622.50	$2.50	$1,622.50
12	UNDERDRAINS	Lin. Ft.	343	$15.00	$5,145.00	$19.50	$6,688.50	$14.00	$4,802.00	$15.00	$5,145.00
13.0	SIDEWALKS	Sq. Ft.	320	$7.00	$2,240.00	$6.75	$2,160.00	$6.50	$2,080.00	$7.00	$2,240.00
13.1	DETECTABLE WARNING SURFACE	Each	2	$350.00	$700.00	$300.00	$600.00	$345.00	$690.00	$250.00	$500.00
14	REPLACE INLET SILL	Each	4	$400.00	$1,600.00	$500.00	$2,000.00	$400.00	$1,600.00	$300.00	$1,200.00
15	ADJUSTMENT OF INLET SILL	Each	7	$350.00	$2,450.00	$400.00	$2,800.00	$350.00	$2,450.00	$300.00	$2,100.00
16	DRILLING AND DOWELING	Each	625	$12.00	$7,500.00	$10.00	$6,250.00	$12.00	$7,500.00	$9.00	$5,625.00
17	A2 JOINTS	Lin. Ft.	502	$15.00	$7,530.00	$17.00	$8,534.00	$14.50	$7,279.00	$15.00	$7,530.00
18	SILT FENCE	Lin. Ft.	210	$1.00	$210.00	$1.00	$210.00	$1.00	$210.00	$0.50	$105.00
19	INLET PROTECTION	Each	8	$56.00	$448.00	$75.00	$600.00	$55.00	$440.00	$35.00	$280.00
20	GRATED TROUGH REPLACEMENT	Each	1	$22,000.00	$22,000.00	$18,000.00	$18,000.00	$20,000.00	$20,000.00	$17,000.00	$17,000.00
	BID FORM TOTAL				$1,000,272.20		$918,314.90		$938,673.75		$950,598.35

2018 SELECTIVE SLAB REPLACEMENT PROJECT

2018-PW-03 A

Street	From	To	Subdivision	Comments
Ladue Farm Road	Entrance	13491	Ladue Farm Estates	Trench Grate Included
River Bend Drive	79	94	River Bend Estates	
Shady Valley Drive	Intersection at Witmer Drive		River Bend Estates	
Westernmill Drive	Olive Road	Stablestone Drive	Westmill Estates	
Millchester Circle	14313	14307	Westmill Estates	
Millbriar Circle	14334	14338	Westmill Estates	

EXHIBIT A

BID FORM

BID TIME: 10:00 a.m.
BID DATE: Tuesday, February 20, 2018

TO: THE CITY OF CHESTERFIELD

The undersigned, having carefully examined the site and all the Contract Documents, adding Addenda — through —, for the

2018 Selective Slab Replacement-Area A
2018-PW-03 A

being familiar with the local conditions affecting the work, hereby proposes to furnish all labor, materials, equipment and services required for the performance and completion of said project in accordance with the said Contract Documents for the following itemized bid.

The City is requesting unit price proposals for this work, consisting of the removal and reconstruction of approximately 16,750 square yards of concrete pavement, property restoration and other necessary appurtenances.

The Contract contains a binding arbitration provision which may be enforced by the parties.

Bid submitted by:

Company Name: J.M. Marschuetz Construction

Address: 15 Truitt Dr.

City, State Eureka, MO 63025

Phone number: 636-938-3600 Fax: 636-938-7411

E-mail address: todd@marschuetz.com

Type of Firm: Sole Partnership ____ Partnership ____
Corporation ✓ Other ____

Officer Todd Wall

Title Vice President

Signature Todd Wall

Date 2/20/18

ITEMIZED BID
CITY OF CHESTERFIELD
2018 SELECTIVE SLAB REPLACEMENT PROJECT
2018-PW-03 A

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	EXTENDED PRICE
1	REMOVE & REPLACE P.C.C. PAVEMENT	Sq. Yd.	16,741	43.50	728,233.50
2	JOINT SEALANT	Sq. Yd.	16,741	1.85	30,970.85
3	4" ROLLED STONE BASE	Sq. Yd.	19,491	4.30	83,811.30
4	UNDERGRADING	Cu. Ft.	650	0.50	325.00
5	GEOTEXTILE FABRIC	Sq. Yd.	16,741	0.85	14,229.85
6	STRUCTURAL GEOGRID	Sq. Yd.	325	0.55	178.75
7	SEEDING & MULCHING	Sq. Yd.	595	1.00	595.00
8	TRAFFIC CONTROL	L.S.	1	12,000.00	12,000.00
9	PAVED APPROACHES	Sq. Yd.	378	52.00	19,656.00
10	SAWCUTTING	Lin. Ft.	649	2.50	1,622.50
12	UNDERDRAINS	Lin. Ft.	343	14.00	4,802.00
13.0	SIDEWALKS	Sq. Ft.	320	6.50	2,080.00
13.1	DETECTABLE WARNING SURFACE	Each	2	345.00	690.00
14	REPLACE INLET SILL	Each	4	400.00	1,600.00
15	ADJUSTMENT OF INLET SILL	Each	7	350.00	2,450.00
16	DRILLING AND DOWELING	Each	625	12.00	7,500.00
17	A2 JOINTS	Lin. Ft.	502	14.50	7,279.00
18	SILT FENCE	Lin. Ft.	210	1.00	210.00
19	INLET PROTECTION	Each	8	55.00	440.00
20	GRATED TROUGH REPLACEMENT	Each	1	20,000.00	20,000.00

TOTAL BID $ 938,673.75

Memorandum
Department of Public Works

TO: Michael O. Geisel, P.E.
City Administrator

FROM: James A. Eckrich, P.E.
Public Works Dir. / City Engineer

DATE: February 23, 2018

RE: 2018 Selective Slab Replacement B

The Department of Public Works publicly opened bids for the 2018 Selective Slab Replacement Project B on February 22, 2018. The results of the bid opening are detailed in the attached memorandum from Project Manager Mark Wilson. After reviewing the bids, Staff recommends the project be awarded to the low bidder, J.M. Marschuetz Construction Company, in the low bid amount of $801,057. J.M. Marschuetz Construction Company has successfully performed street replacement work in the City of Chesterfield in the past and is positively recommended by City Staff. Additionally, City Staff believes that J.M. Marschuetz is capable of effectively performing both Project A and Project B for the City of Chesterfield.

The streets included as part of this project are attached. This project is budgeted within Account 120-079-5490. Please note that the amount budgeted for Project A and Project B was $1,740,000. The recommended amount of Project A and Project B, in aggregate, is $1,739,731. As you can see, there is no room for contingency, so none is being requested. Should it become apparent as these projects progress that change orders are necessary, City Staff will return to City Council for supplemental funding.

If you have questions or require additional information on this project, please let me know.

Concurrence: _____
Chris DesPlanques, Finance Director

Action Recommended

This matter should be forwarded to the City Council for consideration. Should Council concur with Staff's recommendation, it should authorize the City Administrator to enter into an Agreement with J.M. Marschuetz Construction Company in the amount of $801,057.

MEMORANDUM

DATE: February 22, 2018

TO: Jim Eckrich, Public Works Director

FROM: Mark Wilson, Project Manager

SUBJECT: 2018 Selective Slab Replacement Project, Area B - 2018-PW-03B

As you are aware, we opened bids for the above referenced project today Thursday, February 22, 2018. Two bids were received:

Contractor	Total Bid
J.M. Marschuetz Construction Co.	$801,056.75
Amcon Municipal Concrete	$808,967.35

The low bidder, J.M. Marschuetz has successfully performed street replacement work in the past in the City of Chesterfield, and is recommended for the slab project 'A' project. They have the references to show they are capable of completing both projects.

Accordingly, I recommend acceptance of the bid of $801,056.75 submitted by J.M. Marschuetz Construction Co. and request authorization of work up to the amount of $801,325.00 Adequate funding is available in the Capital Projects Street Improvements account, 120-079-5490, to fund this project.

A copy of the best bid from Marschuetz is attached for the Department of Finance and Administration's use in preparing a purchase order for the project. The list of streets scheduled for work under this project is attached. Should you require additional information, please advise.

City of Chesterfield

BID TABULATION
2018 SELECTIVE SLAB REPLACEMENT PROJECT
2018-PW-03 B
February 22, 2018

ITEM #	DESCRIPTION	UNIT	QUANTITY	Project Estimate		J.M. Marschuetz Construction		Amcon Municipal Concrete	
				UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
1	REMOVE & REPLACE P.C.C. PAVEMENT	Sq. Yd.	14,995	$46.75	$701,016.25	$42.00	$629,790.00	$43.32	$649,583.40
2	JOINT SEALANT	Sq. Yd.	14,995	$1.60	$23,992.00	$1.70	$25,491.50	$1.70	$25,491.50
3	4" ROLLED STONE BASE	Sq. Yd.	14,995	$4.35	$65,228.25	$4.20	$62,979.00	$3.75	$56,231.25
4	UNDERGRADING	Cu. Ft.	500	$0.50	$250.00	$0.50	$250.00	$0.25	$125.00
5	GEOTEXTILE FABRIC	Sq. Yd.	14,995	$1.00	$14,995.00	$0.85	$12,745.75	$0.95	$14,245.25
6	STRUCTURAL GEOGRID	Sq. Yd.	250	$0.50	$125.00	$1.00	$250.00	$0.01	$2.50
7	SEEDING & MULCHING	Sq. Yd.	347	$1.00	$347.00	$1.00	$347.00	$0.01	$3.47
8	TRAFFIC CONTROL	L.S.	1	$16,000.00	$16,000.00	$9,500.00	$9,500.00	$12,000.00	$12,000.00
9	PAVED APPROACHES	Sq. Yd.	434	$55.00	$23,870.00	$50.75	$22,025.50	$40.00	$17,360.00
10	SAWCUTTING	Lin. Ft.	536	$2.50	$1,340.00	$2.25	$1,206.00	$2.50	$1,340.00
12	UNDERDRAINS	Lin. Ft.	482	$15.00	$7,230.00	$13.50	$6,507.00	$15.00	$7,230.00
13.0	SIDEWALKS	Sq. Ft.	1,280	$7.00	$8,960.00	$6.15	$7,872.00	$6.50	$8,320.00
13.1	DETECTABLE WARNING SURFACE	Each	8	$350.00	$2,800.00	$345.00	$2,760.00	$250.00	$2,000.00
14	REPLACE INLET SILL	Each	7	$400.00	$2,800.00	$400.00	$2,800.00	$300.00	$2,100.00
15	ADJUSTMENT OF INLET SILL	Each	7	$350.00	$2,450.00	$300.00	$2,100.00	$200.00	$1,400.00
16	DRILLING AND DOWELING	Each	715	$12.00	$8,580.00	$12.00	$8,580.00	$8.00	$5,720.00
17	A2 JOINTS	Lin. Ft.	374	$15.00	$5,610.00	$14.50	$5,423.00	$15.00	$5,610.00
18	SILT FENCE	Lin. Ft.	100	$1.00	$100.00	$1.00	$100.00	$0.25	$25.00
19	INLET PROTECTION	Each	6	$56.00	$336.00	$55.00	$330.00	$30.00	$180.00
20	GRATED TROUGH REPLACEMENT	Each	0	$22,000.00	$0.00	$20,000.00	$0.00	$0.00	$0.00
	BID FORM TOTAL				$886,029.50		$801,056.75		$808,967.37

2018 SELECTIVE SLAB REPLACEMENT PROJECT

2018-PW-03 B

Street	From	To	Subdivision	Comments
Schoettler Valley Drive	Highcroft Drive	Chesterfield Parkway	Schoettler Valley Estates	
Countryside Manor Drive	Kehrs Mill Road	Country Lake Estates Dr	Countryside at Chesterfield	
Coventry Farm Drive	Kehrs Mill Road	End	Coventry Farm	
Coventry Farm Court	Coventry Farm Drive	End	Coventry Farm	
Coventry Glen Court	Coventry Farm Drive	End	Coventry Farm	

EXHIBIT A

BID FORM

BID TIME: 10:00 a.m.
BID DATE: Thursday, February 22, 2018

TO: THE CITY OF CHESTERFIELD

The undersigned, having carefully examined the site and all the Contract Documents, adding Addenda ___ through ___, for the

2018 Selective Slab Replacement-Area B
2018-PW-03 B

being familiar with the local conditions affecting the work, hereby proposes to furnish all labor, materials, equipment and services required for the performance and completion of said project in accordance with the said Contract Documents for the following itemized bid.

The City is requesting unit price proposals for this work, consisting of the removal and reconstruction of approximately 15,000 square yards of concrete pavement, property restoration and other necessary appurtenances.

The Contract contains a binding arbitration provision which may be enforced by the parties.

Bid submitted by:

Company Name: J.M. Marschuetz Construction

Address: 15 Truitt Dr.

City, State Eureka, Mo

Phone number: 636-938-3600 Fax: 636-938-7411

E-mail address: todd@marschuetz.com

Type of Firm: Sole Partnership ___ Partnership ___
Corporation ✓ Other ___

Officer Todd Wall

Title Vice President

Signature Todd Wall

Date 2/22/18

ITEMIZED BID
CITY OF CHESTERFIELD
2018 SELECTIVE SLAB REPLACEMENT PROJECT
2018-PW-03 B

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	EXTENDED PRICE
1	REMOVE & REPLACE P.C.C. PAVEMENT	Sq. Yd.	14,995	42.00	629,790.00
2	JOINT SEALANT	Sq. Yd.	14,995	1.70	25,491.50
3	4" ROLLED STONE BASE	Sq. Yd.	14,995	4.20	62,979.00
4	UNDERGRADING	Cu. Ft.	500	0.50	250.00
5	GEOTEXTILE FABRIC	Sq. Yd.	14,995	0.85	12,745.75
6	STRUCTURAL GEOGRID	Sq. Yd.	250	1.00	250.00
7	SEEDING & MULCHING	Sq. Yd.	347	1.00	347.00
8	TRAFFIC CONTROL	L.S.	1	9,500.00	9,500.00
9	PAVED APPROACHES	Sq. Yd.	434	50.75	22,025.50
10	SAWCUTTING	Lin. Ft.	536	2.25	1,206.00
12	UNDERDRAINS	Lin. Ft.	482	13.50	6,507.00
13.0	SIDEWALKS	Sq. Ft.	1,280	6.15	7,872.00
13.1	DETECTABLE WARNING SURFACE	Each	8	345.00	2,760.00
14	REPLACE INLET SILL	Each	7	400.00	2,800.00
15	ADJUSTMENT OF INLET SILL	Each	7	300.00	2,100.00
16	DRILLING AND DOWELING	Each	715	12.00	8,580.00
17	A2 JOINTS	Lin. Ft.	374	14.50	5,423.00
18	SILT FENCE	Lin. Ft.	100	1.00	100.00
19	INLET PROTECTION	Each	6	55.00	330.00
20	GRATED TROUGH REPLACEMENT	Each	0	20,000.00	0.00

TOTAL BID $ 801,056.75

UNFINISHED BUSINESS

There are no unfinished items on the agenda for Monday evening.

If you have any questions or require additional information, please contact me prior to Monday's meeting.

NEW BUSINESS

I am unaware of any New Business items for Monday's agenda.

If you have any questions or require additional information, please contact me prior to Monday's meeting.

LEGISLATION

A. Bill No. 3180 – An ordinance Setting the 2018 Salary for the City Administrator. As considered and recommended by City Council in conjunction with the annual performance evaluation, the proposed bill establishes the annual compensation for the City Administrator as required by Statute. (City Administrators Compensation)**(Second Reading)**

B. Bill No. 3186 – Repeals Chapter 2, Article 5, Section 2-107, (Ordinance Number 582) of the City of Chesterfield Municipal Code, establishing the position of the Coordinator of Alcohol and Drug Abuse Prevention. **(Second Reading) F&A Committee recommends approval**

C. Bill No. 3187 – An Ordinance to repeal the establishment of the Finance and Administration Citizens Advisory Committee as a Statutory Committee. **(Second Reading)**

D. Bill No. 3188 - An ordinance amending Ordinance 2866 to authorize replacement construction and maintenance escrows for Arbors at Kehrs Mill Subdivision, Plat 1 **(First & Second Readings) Planning & Public Works Committee recommends approval**

E. Bill No. 3189 - An ordinance amending Ordinance 2867 to authorize replacement construction and maintenance escrows for Arbors at Kehrs Mill Subdivision, Plat 2 **(First & Second Readings) Planning & Public Works Committee recommends approval**

F. Bill No. 3190 - An ordinance authorizing the City Administrator to execute a Transportation Alternative Funds Program Agreement with the Missouri Highways and Transportation Commission for construction of the Riparian Trail from August Hill Drive to Old Chesterfield Road **(First Reading) Planning & Public Works Committee recommends approval**

BILL NO. 3180 **ORDINANCE NO.** _____

AN ORDINANCE SETTING THE 2018 SALARY FOR THE CITY ADMINISTRATOR

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1.
In accordance with §3(a) & (b) of the City Administrator Employment Agreement (the "Agreement"), which is attached hereto as Exhibit "A" and incorporated herein by this reference, the annual salary of the City Administrator shall be One Hundred Seventy Three Thousand Four Hundred Dollars and Zero Cents (173,400.00). Said salary shall commence on January 1, 2018 and represents a Three Thousand Four Hundred Dollar ($3,400.00) increase in the salary of the City Administrator. Except as specifically modified by the terms of this Ordinance, all the terms of the Agreement are hereby ratified and confirmed, and shall remain unchanged and are in full force and effect.

Section 2.
This Ordinance shall serve as ratification of the City Council's previous approval, as required pursuant to §77.044 RSMo.

Section 3.
This Ordinance shall be in full force and effect from and after its passage and approval.

Read two times and passed by the City Council of the City of Chesterfield, Missouri, this 5th day of February, 2018.

_____ _____

Presiding Officer **Bob Nation, MAYOR**

ATTEST:

_____

Vickie Hass, CITY CLERK

BILL NO. 3186 **ORDINANCE NO._____**

REPEALS CHAPTER 2, ARTICLE 5, SECTION 2-107, (ORDINANCE NUMBER 582) OF THE CITY OF CHESTERFIELD MUNICIPAL CODE, ESTABLISHING THE POSITION OF THE COORDINATOR OF ALCOHOL AND DRUG ABUSE PREVENTION.

WHEREAS, Chapter 2, Article 5, Section 2-107 of the Chesterfield Municipal Code (Ordinance Number 852) establishes the position of Coordinator of Alcohol and Drug Abuse, and

WHEREAS, the position of Coordinator of Alcohol and Drug Abuse has never been staffed, and

WHEREAS, the staffing, structure, and organization of the Drug Abuse Task Force has evolved along lines that no longer facilitate nor require such a position, and

WHEREAS, the duties and responsibilities of the position of Coordinator of Alcohol and Drug Abuse are no longer pertinent to the purpose and mission of the task force, and

WHEREAS, the Finance and Administration Committee met and recommends elimination of the position,

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1.
Chapter 2 Article 5, section 2-107 of the municipal code (ordinance number 852) is hereby repealed.

Section 2.
All other sections and provisions of the municipal code are unchanged.

Section 3.
This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved by the City Council of the City of Chesterfield, Missouri this _____ day of _____, 2018.

_____ _____

PRESIDING OFFICER **BOB NATION, MAYOR**

ATTEST:

_____

VICKIE HASS, CITY CLERK

FIRST READING HELD _____

BILL NO. 3187 **ORDINANCE NO.**_____

AN ORDINANCE TO REPEAL THE ESTABLISHMENT OF THE FINANCE AND ADMINISTRATION CITIZENS ADVISORY COMMITTEE AS A STATUTORY COMMITTEE

WHEREAS, the Finance and Administration Citizens Advisory Committee offers significant contributions to the City of Chesterfield, and

WHEREAS, Chapter 2, Article VII, Division 4 Section 2-107 of the Chesterfield Municipal Code establishes the Finance and Administration Citizens Advisory Committee as a Statutory Committee, and

WHEREAS, Chapter 2, Article VII, Division 4 Section 2-236 through Section 2-240.6 of the Chesterfield Municipal Code defines the purpose, scope and membership of the Finance and Administration Citizens Advisory Committee, and

WHEREAS, the Finance and Administration Committee met and recommends that the Finance and Citizens Advisory Committee be established by policy and not established by City Code,

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1.
Chapter 2 Article VII, Division 1, Section 2-202 Statutory Committees is amended by deleting numerical item #6 the Finance and Administration Citizens Advisory Committee. The Finance and Administration Citizens Advisory Committee is hereby no longer identified as a Statutory Committee.

Section 2.
Chapter 2 Article VII, Division 4, Section 2-236 through Section 2-240.6 is hereby repealed and removed from the City Code.

Section 3.
All other sections and provisions of the municipal code are unchanged.

Section 4.
This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved by the City Council of the City of Chesterfield, Missouri this _____ day of _____, 2018.

_____ _____

PRESIDING OFFICER **BOB NATION, MAYOR**

ATTEST:

_____

VICKIE HASS, CITY CLERK

FIRST READING HELD _____

BILL NO. 3188 **ORDINANCE NO.**_____

AN ORDINANCE AMENDING ORDINANCE 2866 TO AUTHORIZE REPLACEMENT CONSTRUCTION AND MAINTENANCE ESCROWS FOR ARBORS AT KEHRS MILL SUBDIVISION, PLAT 1

WHEREAS, the developer of Arbors at Kehrs Mill Subdivision, Arbors at Kehrs Mill, LLC has sold a number of lots to McBride Kehrs Mill, LLC; and

WHEREAS, McBride Kehrs Mill, LLC has agreed to assume the remaining responsibilities with the construction and maintenance for Plat 1 of the Arbors at Kehrs Mill Subdivision thus relieving the original developer Arbors at Kehrs Mills, LLC, from its responsibility as established by its prior escrows.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The Department of Planning and Development Services and the Department of Public Works, having reviewed the request by McBride Kehrs Mill, LLC for the replacement of construction and maintenance escrows for Plat 1 of Arbors at Kehrs Mill Subdivision in accordance with the established procedures as set out by the Subdivision Ordinance of the City of Chesterfield, which dictate that the developer must establish escrow agreements, which are hereby amended to require that the construction escrow be Seventy-Five Thousand, Three Hundred Sixteen Dollars and Two Cents ($75,316.02) as shown as Exhibit A and maintenance escrow be Forty-Five Thousand, Two Hundred Fifty-Two Dollars and Thirty-Three Cents ($45,252.33) as shown as Exhibit B.

Section 2. That the remaining construction and maintenance escrow established for the Arbors at Kehrs Mill Subdivisions by Arbors at Kehrs Mill, LLC be released.

Section 3. Said Replacement Escrows are hereby approved by the City of Chesterfield subject to be disbursed on the direction and the order of the Director of Planning and Development Services for the City of Chesterfield.

Section 4. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this _____day of _____, 2018.

_____ _____

PRESIDING OFFICER Bob Nation, MAYOR

ATTEST:

_____

Vickie Hass, CITY CLERK

FIRST READING HELD_03/05/2018___

RECEIVED
AUG 28 2017
City of Chesterfield
Department of Public Services

RECEIVED
JUN 28 2017
City of Chesterfield
Department of Public Services

SUBDIVISION IMPROVEMENT CONSTRUCTION DEPOSIT AGREEMENT

THIS CONSTRUCTION DEPOSIT AGREEMENT made and entered into by McBride Kehrs Mill, LLC, herein called DEVELOPER, Midwest Bank Centre, herein called ESCROW HOLDER *(strike through this party if cash deposited with City),* and the City of Chesterfield, Missouri, herein called CITY.

WITNESSETH:

WHEREAS, the DEVELOPER has submitted plans, information and data to the CITY for the creation and development of a subdivision to be known as The Arbors at Kehrs Mill (Plat 1) in accordance with Ordinance No. _____, the governing ordinance for the subdivision, and the Subdivision Regulations of the City of Chesterfield, and has requested approval of same; and

WHEREAS, the subdivision plans have been approved and the CITY has reasonably estimated and determined that the cost of construction, installation and completion of said improvements, all in accordance with the provisions of said governing ordinance and Subdivision Regulations, as amended, will be in the sum of Seventy-five thousand three hundred and sixteen dollars and two cents DOLLARS ($75,316.02), lawful money of the United States of America; and

WHEREAS, the DEVELOPER is seeking approval from the CITY of the record plat of the aforesaid subdivision as the same is provided in said governing ordinance and Subdivision Regulations; and

WHEREAS, the Subdivision Regulations provide inter alias that the commencement of said subdivision may be approved by the CITY upon the DEVELOPER submitting satisfactory construction and maintenance deposit agreements guaranteeing the construction and maintenance

of the subdivision improvements in accordance with the approved plans, said governing ordinance and Subdivision Regulations.

NOW, THEREFORE, in consideration of the covenants, promises and agreement herein provided;

IT IS HEREBY MUTUALLY AGREED:

1. That the DEVELOPER has established a CONSTRUCTION DEPOSIT in the amount of Seventy five thousand three hundred sixteen dollars and two cents, DOLLARS ($75,316.02) lawful money of the United States of America by: (check one)

- ☐ Depositing cash with the City.
- ☑ Submitting a Letter of Credit in the form required by the CITY and issued by the ESCROW HOLDER.
- ☐ Submitting a _____ *(type of readily negotiable instrument acceptable to the CITY)* endorsed to the City and issued by the ESCROW HOLDER.

Said deposit guarantees the construction, installation and completion of the required subdivision improvements in The Arbors at Kehrs Mill (Plat 1) Subdivision, all in accordance with the approved plans, the governing ordinance for the subdivision and the Subdivision Regulations of the City of Chesterfield, which are by reference made a part hereof, and in accordance with all ordinances of the CITY regulating same. A cost estimate thereof is attached hereto as "Exhibit A".

2. That the CONSTRUCTION DEPOSIT will be held in escrow by the CITY or the ESCROW HOLDER, as applicable, until such time as releases are authorized by the Planning and Development Services Division. The CONSTRUCTION DEPOSIT may be subject to special audit of the CITY from time to time.

3. That the CONSTRUCTION DEPOSIT guarantees the construction, installation and completion of the improvements in the aforesaid subdivision in accordance with the plans and specifications for the said subdivision which have been filed with the CITY, which are made a part hereof by reference as if set forth herein word for word.

4. Pursuant to Revised Statutes of Missouri, 89.410, the amounts set out on Exhibit "A" are identified by separate line item and are subject to release of ninety five percent (95%) of said estimated costs within thirty (30) days of the completion of said specific component of work by DEVELOPER. The Developer shall notify CITY in writing when they consider the specific component ready for release of funds. Accordingly, the CITY may not allow for the reallocation of escrowed funds from one line item to another, without specific written agreement between the DEVELOPER and CITY indicating what specific component or components are being modified. ESCROW HOLDER shall not modify or expend funds from other than the identified line item component without written approval from CITY. Completion is when the particular item has had all documentation and certification filed in a complete and acceptable form and the specific items have been inspected and all identified deficiencies have been corrected and the work has been approved by the City.

5. That in the event the CITY should determine that the ESCROW SUM or any line item thereon as herein provided, is insufficient to complete the said Subdivision Improvements, or the specific line item, the CITY will so notify the DEVELOPER who shall deposit within thirty (30) days of said notice with the ESCROW HOLDER that additional sum of lawful money of the United States of America that will be required to complete the said specific component of the improvement and said additional sum will be subject to the terms of this Escrow Agreement. Failure to provide said sum shall cause for immediate cessation of all work on said subdivision until the additional amount is paid.

6. That the DEVELOPER guarantees that all required utilities and improvements will be installed, constructed and completed within two (2) years from the date of the approval of the said Subdivision Plat and the DEVELOPER shall certify the completion of all said improvements, along with the filing of all documentation and certification, all as provided in the governing ordinance for this subdivision and the Subdivision Regulations of the CITY.

7. That the ESCROW HOLDER, in accordance with paragraph 4 above, shall only release or disburse the ESCROW SUM, or portion thereof, upon receipt and in the amount set forth in a written authorization from the Planning and Development Services Division addressed to the ESCROW HOLDER, which authorization may be for the payment of labor and materials used in the construction, installation and completion of the said improvements, as the work progresses, as provided in the Subdivision Regulations or governing ordinance for this subdivision.

8. That in the event the DEVELOPER shall abandon the subdivision or fail to complete the subdivision improvements within two (2) years, from the date of the CITY'S approval of the said subdivision plat or subsequent extension period granted to this DEPOSIT AGREEMENT, whichever shall first occur, the CITY shall present to the ESCROW HOLDER a certified statement from the City Engineer estimating the cost for the completion of the subdivision improvements and require the ESCROW HOLDER to immediately perform on this agreement for completion of the specific components of the project or disburse said funds identified by the City Engineer's estimates directly to the CITY. The CITY may complete, or have completed by outside resources, the said improvements. The ESCROW HOLDER having disbursed the escrow sums therefore as ordered and directed by the CITY, and upon such disbursement shall be relieved of all liability under the terms of this agreement.

9. That in the event of any legal actions taken by the CITY against DEVELOPER or ESCROW HOLDER to enforce the provision of this agreement, the parties agree to pay a reasonable attorney's fee in addition to any other sums due under this agreement

10. That there shall be no assignment by DEVELOPER or ESCROW HOLDER under the terms of this agreement without written approval of the CITY.

11. That if DEVELOPER is unable to meet its obligation hereunder or to provide additional sums to complete the Subdivision improvements as may be determined by the CITY or if the DEVELOPER or ESCROW HOLDER shall go into receivership or file for bankruptcy protection, then in any such event the CITY may declare the DEVELOPER or ESCROW HOLDER (as the case may be) in default and may immediately order the payment of all remaining sums held by ESCROW HOLDER to be paid to the CITY without further legal process, to be used to complete the subdivision improvements as set out under the terms hereof.

12. That the ESCROW HOLDER will immediately inform the City of any changes of address for ESCROW HOLDER or DEVELOPER (known to ESCROW HOLDER) during the period of this Agreement. Failure to do so shall result in a breach of this Agreement and the CITY may declare the DEVELOPER or ESCROW HOLDER (as the case may be) in default and may immediately order the payment of all remaining sums held by ESCROW HOLDER to be paid to the CITY without further legal process, to be used to complete the subdivision improvements as set out under the terms hereof.

13. That no forbearance on the part of the CITY in enforcing any of its rights under this agreement, nor any extension thereof by CITY, shall constitute a waiver of any terms of this Agreement or a forfeiture of any such rights.

14. That the CITY hereby accepts this agreement as a satisfactory ESCROW AGREEMENT under the provisions and requirements of the governing ordinance for this

subdivision and any amendments or revisions thereto and the Subdivision Regulations of the CITY.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the 13th day of JUNE, 2017.

ATTEST: (SEAL)

Type Name: Josh Foster
Title: Vice President

DEVELOPER: McBride Kehrs Mill, LLC
BY: McBRIDE & SON ACQUISITIONS, LLC, Managing Member

BY: Michael D. Arri Manager
Type Name: MICHAEL D. ARRI
Title: MANAGER

Firm Address:
16091 Swingley Ridge Road, Suite 300
Chesterfield, MO 63017

Midwest BankCentre INCORPORATED SEAL 1906 ST. LOUIS COUNTY, MO

ATTEST: (SEAL)

Type Name: Daniel J Bunyard
Title: Vice President

ESCROW HOLDER: Midwest Bank Centre

BY:
Type Name: Chris Pate
Title: Vice President

Firm Address:
2191 Lemay Ferry Road
St. Louis, MO 63125

CITY OF CHESTERFIELD, MISSOURI

BY _____
Planning and Development Services Director

ATTEST: (SEAL)

APPROVED:

City Clerk

Mayor

NB: The signatures of the DEVELOPER and CREDIT HOLDER are to be acknowledged before a Notary Public. In the case of a partnership, all partners must sign. In the case of a corporation, the affidavits of the corporation act must be attached.

BANK OFFICIAL'S ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 13th day of June, 2017, before me appeared Chris Rife, to me personally known, who, being by me duly sworn, did say that he/she is the Vice President (title) of Midwest BankCentre (name of bank), a Corporation (corporation, etc.) organized and existing under the laws of the United States of America, and that the seal affixed to the foregoing instrument is the Corporate Seal of said bank, and that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and said Vice President (title) acknowledged said instrument to be the free act and deed of said bank.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in County and State aforesaid, the day and year first above written.

Vicki K Nagel
Notary Public Vicki K Nagel

My Commission Expires: 09/13/2019

VICKI K. NAGEL
Notary Public - Notary Seal
STATE OF MISSOURI
St. Charles County
My Commission Expires: Sept. 13, 2019
Commission # 15386502

LLC EXECUTING OFFICIAL'S ACKNOWLEDGEMENT

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 12TH day of JUNE, 2017, before me appeared MICHAEL D. ARRI (name) to me personally known, who, being by me duly sworn, did say that he/she is the MANAGER (title or Executing Official) of McBRIDE & SON ACQUISITIONS, LLC, a Missouri Limited Liability Corporation, and that he/she in fact has the authority to execute the foregoing agreement pursuant to the authority given him/her by the Limited Liability Corporation, and that said agreement was signed and sealed by him/her on behalf of the aforesaid L.L.C. by authority of its MANAGER, (President or title of chief officer), MICHAEL D. ARRI (name) as MANAGER (title of Executing Official) of said L.L.C. acknowledges said agreement to be the lawful, free act and deed of said L.L.C.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, this 12th day of June, 2017.

MARY DIMARIA
Notary Public - Notary Seal
STATE OF MISSOURI
St. Charles County
My Commision Expires: Feb. 21, 2021
Commission # 13669182

Mary Di Maria
Notary Public

My Commission Expires:

EXHIBIT A

Attach: Subdivision Deposit Spreadsheet

CONSTRUCTION DEPOSIT

SUBDIVISION: Arbors at Kehrs Mill
PLAT: 1
SUBDIVISION CODE: 305
NO. LOTS: 26
DATE OF PLAT APPROVAL: 10/5/2015

DEVELOPER: Arbors at Kehrs Mill LLC

CATEGORY	DATE OF RELEASE	% RELEASE	ORIGINAL BALANCE	TOTAL RELEASED	TOTAL % RELEASED	CURRENT BALANCE	% REMAINING
STREETS	10/28/15	95	$349,890.97	$332,396.42 $0.00 $0.00	95	$17,494.55	5
SIDEWALKS	06/07/16	95	$3,724.60	$3,538.37 $0.00 $0.00	95	$186.23	5
STORM SEWER Original escrow established at 90% of cost	03/07/16	100	$504,384.41	$504,384.41 $0.00 $0.00	100	$0.00	0
SAN. SEWER Original escrow established at 90% of cost	03/07/16	100	$126,513.29	$126,513.29 $0.00	100	$0.00	0
DETENTION			$18,177.50	$0.00 $0.00 $0.00	0	$18,177.50	100
GRADING	12/08/16	95	$10,776.70	$10,237.87 $0.00 $0.00	95	$538.83	5
EROSION CONTROL	12/08/16	50	$11,321.20	$5,660.60 $0.00 $0.00	50	$5,660.60	50
SILTAT'N CONTROL	12/08/16	50	$5,882.80	$2,941.40 $0.00 $0.00	50	$2,941.40	50
MONUMENTS			$16,302.00	$0.00 $0.00	0	$16,302.00	100
STREET LIGHTS	01/11/16	95	$6,776.00	$6,437.20 $0.00	95	$338.80	5
STREET SIGNS	01/11/16	95	$1,082.40	$1,028.28 $0.00	95	$54.12	5
WATER MAINS	11/30/15	100	$266,718.60	$266,718.60 $0.00	100	$0.00	0
COMMON GR. SEED	12/08/16	30	$15,371.60	$4,611.48 $0.00	30	$10,760.12	70
ISLAND SODDING			$1,960.20	$0.00	0	$1,960.20	100

CONSTRUCTION DEPOSIT

SUBDIVISION: Arbors at Kehrs Mill **DEVELOPER:** Arbors at Kehrs Mill LLC
PLAT: 1

$0.00

RETAINING WALL	09/28/15	95	$15,785.00	$14,995.75	95	$789.25	5
				$0.00			
FENCE	10/28/15	95	$2,248.40	$2,135.98	95	$112.42	5
				$0.00			
LOMR	04/20/16	100	$13,750.00	$13,750.00	100	$0.00	0
				$0.00			
TOTALS			$1,370,665.66	$1,295,349.64	95	$75,316.02	5

RECEIVED
JAN 17 2018
City of Chesterfield
Department of Public Services

SUBDIVISION IMPROVEMENT MAINTENANCE DEPOSIT AGREEMENT

THIS MAINTENANCE DEPOSIT AGREEMENT made and entered into by McBride Kehrs Mill, LLC, herein called DEVELOPER, Midwest Bank Centre, herein called CREDIT HOLDER *(strike through this party if cash deposited with City),* and the City of Chesterfield, Missouri, herein called CITY.

WITNESSETH:

WHEREAS, the DEVELOPER has submitted plans, information and data to the CITY for the creation and development of a subdivision to be known as The Arbors at Kehrs Mill (Plat 1) in accordance with Ordinance No. _____, the governing ordinance for the subdivision, and the Subdivision Regulations of the City of Chesterfield, and has requested approval of same; and

WHEREAS, the subdivision plans have been approved and the CITY has reasonably estimated and determined that the cost of maintenance of the required improvements, based on the cost of construction of said improvements, all in accordance with the provisions of said subdivision governing ordinance and Subdivision Regulations, as amended, will be in the sum of Forty-five thousand two hundred fifty-two dollars and thirty-three cents DOLLARS ($45,252.33), lawful money of the United States of America; and

WHEREAS, the DEVELOPER is seeking approval from the CITY of the record plat of the aforesaid subdivision as the same is provided in said governing ordinance and Subdivision Regulations; and

WHEREAS, the Subdivision Regulations provide inter alias that the commencement of said subdivision may be approved by the CITY upon the DEVELOPER submitting satisfactory construction and maintenance deposit agreements guaranteeing the construction and maintenance of the subdivision improvements in accordance with the approved plans, said governing ordinance and Subdivision Regulations.

NOW, THEREFORE, in consideration of the covenants, promises and agreement herein provided;

IT IS HEREBY MUTUALLY AGREED:

1. That the DEVELOPER has established a MAINTENANCE DEPOSIT in the amount of Forty-five thousand two hundred fifty-two dollars and thirty-three cents DOLLARS ($45,252.33), lawful money of the United States of America by: (check one)

- ☐ Depositing cash with the City.
- ☑ Submitting a Letter of Credit in the form required by the CITY and issued by the CREDIT HOLDER.
- ☐ Submitting a _____ *(type of readily negotiable instrument acceptable to the CITY)* endorsed to the City.

Said deposit guarantees the DEVELOPER will perform his maintenance obligations regarding subdivision improvements, including, but not limited to; lots, streets, sidewalks, trees, common ground areas, erosion and siltation control, and storm drainage facilities, in The Arbors at Kehrs Mill (Plat 1) Subdivision, all in accordance with the approved plans, the governing ordinance for the subdivision and the Subdivision Regulations of

the City of Chesterfield, which by reference are made a part hereof, and in accordance with all ordinances of the CITY regulating same.

2. That the MAINTENANCE DEPOSIT will be held in escrow by the CITY or the CREDIT HOLDER, as applicable, until such time as releases are authorized by the Planning and Development Services Division.

3. That the DEVELOPER shall be responsible for, and hereby guarantees, the maintenance of the subdivision improvements, including, but not limited to, lots, streets, sidewalks, trees, common ground areas, erosion and siltation control, and storm and drainage facilities, until (1) expiration of twelve (12) months after occupancy permits have been issued on eighty percent (80%) of all of the lots in the subdivision plat(s), or (2) twelve (12) months after completion of the subdivision and acceptance / approval of all required improvements by the CITY, whichever is longer. In the case of landscaping, the maintenance period shall be twenty-four (24) months after installation is approved by the CITY. Maintenance shall include repair or replacement of all defects, deficiencies and damage to the improvements that may exist or arise, abatement of nuisances caused by such improvements, removal of mud and debris from construction, erosion control, grass cutting, removal of construction materials (except materials to be used for construction on the lot or as permitted by site plan), and snow removal. All repairs and replacement shall comply with CITY specifications and standards. Any maintenance of improvements accepted by the CITY for public dedication shall be completed under the supervision of and with the prior written approval of the Planning and Development Services Director. The maintenance obligation for required improvements to existing public roads or other existing public infrastructure already maintained by a public governmental entity shall terminate on and after the date such improvements have been

inspected and accepted by the appropriate governmental entity and the deposit for same shall be released. Irrespective of other continuing obligations, the developer's snow removal obligations shall terminate on the date a street is accepted by the CITY for public maintenance.

4. That the maintenance deposit shall be retained by the CITY OR CREDIT HOLDER to guarantee maintenance of the required improvements and, in addition to being subject to the remedies of Section 1005.080 Subsection (G) and other remedies of the City Code, shall be subject to the immediate order of the Planning and Development Services Director to defray or reimburse any cost to the CITY of maintenance or repair of improvements related to the subdivision which the developer fails or refuses to perform. Except in emergency circumstances or where action is otherwise required before written notice can be provided, the Planning and Development Services Director shall provide the developer with a written demand and opportunity to perform the maintenance before having such maintenance performed by the CITY, or its agents. The Planning and Development Services Director shall have the authority to require the maintenance deposit to be replaced or replenished by the developer, in any form permitted for an original deposit, where the amount remaining is determined to be insufficient or where the maintenance deposit was drawn upon by the CITY for maintenance.

5. That in determining the amount of MAINTENANCE DEPOSIT that shall continue to be held, portions of the deposit amount that were attributable to improvements that have been accepted by any third-party governmental entity or utility legally responsible for the maintenance of the improvement may be released upon such acceptance of the improvement by the entity. The Planning and Development Services Director may approve such further releases if it is determined in his or her discretion, after inspection of the improvements, that the total

maintenance amount retained is clearly in excess of the amount necessary for completion of the maintenance obligation, after all reasonable contingencies are considered.

6. That in the event the CITY should determine that the MAINTENANCE DEPOSIT, or any line item thereon as herein provided, is insufficient, the CITY will so notify the DEVELOPER who shall, within thirty (30) days of said notice, deposit additional sums with the CITY or have the amount of the letter of credit or other banking instrument increased as will be required to maintain the said specific component of the improvement and said additional sum will be subject to the terms of this MAINTENANCE DEPOSIT AGREEMENT. Failure to provide said sum shall be cause for immediate cessation of all work on said subdivision until the additional amount is paid.

7. That the CREDIT HOLDER, in accordance with paragraphs 2, 4 and 5 above, shall only release or disburse the MAINTENANCE DEPOSIT, or portion thereof, upon receipt and in the amount set forth in a written authorization from the said Planning and Development Services Division addressed to the Credit Holder, which authorization may be for payment, as provided in the Subdivision Regulations or governing ordinance for this subdivision.

8. That upon expiration of the maintenance obligations established herein, the Planning and Development Services Director shall cause a final inspection to be made of the required improvements. Funds shall then be released if there are no defects or deficiencies found and all other obligations including payment of all sums due, are shown to be satisfied on inspection thereof, or at such time thereafter as any defects or deficiencies are cured with the permission of, and within the time allowed by, the Planning and Development Services Director. This release shall in no way be construed to indemnify or release any person from any

civil liability that may exist for defects or damages caused by any construction, improvement or development for which any deposit has been released.

9. That there shall be no assignment by DEVELOPER or CREDIT HOLDER under the terms of this agreement without written approval of the CITY.

10. That if DEVELOPER is unable to meet its obligation hereunder or to provide additional sums to guarantee maintenance of the Subdivision improvements as may be determined by the CITY or if the DEVELOPER shall abandon the subdivision or go into receivership or file for bankruptcy protection, then in any such event the CITY may declare the DEVELOPER in default and may immediately order the payment of all remaining sums held in the MAINTENANCE DEPOSIT to be paid to the CITY without further legal process, to be used to complete and maintain the subdivision improvements as set out under the terms hereof.

11. That the CREDIT HOLDER will immediately inform the City of any changes of address for CREDIT HOLDER or DEVELOPER (known to CREDIT HOLDER) during the period of this Agreement. Failure to do so shall result in a breach of this Agreement and the CITY may declare the DEVELOPER or CREDIT HOLDER (as the case may be) in default and may immediately order the payment of all remaining sums held by CREDIT HOLDER to be paid to the CITY without further legal process, to be used to maintain the subdivision improvements as set out under the terms hereof.

12. That no forbearance on the part of the CITY in enforcing any of its rights under this agreement, nor any extension thereof by CITY, shall constitute a waiver of any terms of this Agreement or a forfeiture of any such rights.

13. That the CITY hereby accepts this agreement as a satisfactory MAINTENACE DEPOSIT AGREEMENT under the provisions and requirements of the governing ordinance

for this subdivision and any amendments or revisions thereto and the Subdivision Regulations of the CITY.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the 13TH day of JUNE, 2017 A.D.

ATTEST: (SEAL)

Type Name: [illegible]
Title: [illegible]

DEVELOPER: McBride Kehrs Mill, LLC

BY: McBRIDE & SON ACQUISITIONS, LLC
Managing Member

BY: Michael D. Arri Manager
Type Name: MICHAEL D. ARRI
Title: MANAGER

Firm Address:
16091 Swingley Ridge Rd, Suite 300
Chesterfield, MO 63017

ATTEST: (SEAL)

Name: Daniel J Bunyard
Title: Vice President

CREDIT HOLDER: Midwest Bank Centre

BY:
Name: Chris Rife
Title: Vice President

Firm Address:
2191 Lemay Ferry Road
St. Louis, MO 63125

CITY OF CHESTERFIELD, MISSOURI

BY _____
Planning and Development Services Director

ATTEST: (SEAL)

APPROVED:

City Clerk

Mayor

NB: The signatures of the DEVELOPER and CREDIT HOLDER are to be acknowledged before a Notary Public. In the case of a partnership, all partners must sign. In the case of a corporation, the affidavits of the corporation act must be attached.

BANK OFFICIAL'S ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 13th day of June, 2017, before me appeared Chris Rife, to me personally known, who, being by me duly sworn, did say that he/she is the Vice President (title) of Midwest BankCentre (name of bank), a Corporation (corporation, etc.) organized and existing under the laws of the United States of America, and that the seal affixed to the foregoing instrument is the Corporate Seal of said bank, and that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and said Vice President (title) acknowledged said instrument to be the free act and deed of said bank.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in County and State aforesaid, the day and year first above written.

Vicki K Nagel
Notary Public Vicki K Nagel

My Commission Expires: 09/13/2019

VICKI K. NAGEL
Notary Public - Notary Seal
STATE OF MISSOURI
St. Charles County
My Commission Expires: Sept. 13, 2019
Commission # 15386502

LLC EXECUTING OFFICIAL'S ACKNOWLEDGEMENT

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 12th day of June, 2017, before me appeared MICHAEL D. ARRI (name) to me personally known, who, being by me duly sworn, did say that he/she is the MANAGER (title or Executing Official) of McBRIDE & SON ACQUISITIONS, LLC a Missouri Limited Liability Corporation, and that he/she in fact has the authority to execute the foregoing agreement pursuant to the authority given him/her by the Limited Liability Corporation, and that said agreement was signed and sealed by him/her on behalf of the aforesaid L.L.C. by authority of its MANAGERS, (President or title of chief officer), MICHAEL D. ARRI (name) as MANAGER (title of Executing Official) of said L.L.C. acknowledges said agreement to be the lawful, free act and deed of said L.L.C.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, this 12th day of June, 2017.

MARY DIMARIA
Notary Public - Notary Seal
STATE OF MISSOURI
St. Charles County
My Commision Expires: Feb. 21, 2021
Commission # 13669182

Mary DiMaria
Notary Public

My Commission Expires:

MAINTENANCE DEPOSIT

SUBDIVISION: Arbors at Kehrs Mill
PLAT: 1
SUB CODE: 305
DEVELOPER: Arbors at Kehrs Mill LLC

NOTE: Deposit is adjusted to account for 10% of entire sewer costs, and 0% of LOMR/Elev. Cert's, if any)

CATEGORY	ORIGINAL BALANCE	DATE OF RELEASE	AMOUNT RELEASED	CURRENT BALANCE
STREETS	$34,989.10			$34,989.10
SIDEWALKS	$372.46			$372.46
STORM SEWER	$56,037.11	3/7/2016	$56,037.11	($0.00)
SAN. SEWER	$14,055.63	3/7/2016	$14,055.63	($0.00)
DETENTION	$1,817.75			$1,817.75
GRADING	$1,077.67			$1,077.67
EROSION CONTROL	$1,132.12			$1,132.12
SILTAT'N CONTROL	$588.28			$588.28
MONUMENTS	$1,630.20			$1,630.20
STREET LIGHTS	$677.60	1/11/2016	$677.60	$0.00
STREET SIGNS	$108.24			$108.24
WATER MAINS	$26,671.86	11/30/2015	$26,671.86	$0.00
COMMON GR. SEED	$1,537.16			$1,537.16
ISLAND SODDING	$196.02			$196.02
RETAINING WALL	$1,578.50			$1,578.50
FENCE	$224.84			$224.84
TOTALS	$142,694.53		$97,442.20	$45,252.33

BILL NO. 3189 **ORDINANCE NO.**_____

AN ORDINANCE AMENDING ORDINANCE 2867 TO AUTHORIZE REPLACEMENT CONSTRUCTION AND MAINTENANCE ESCROWS FOR ARBORS AT KEHRS MILL SUBDIVISION, PLAT 2

WHEREAS, the developer of Arbors at Kehrs Mill Subdivision, Arbors at Kehrs Mill, LLC has sold a number of lots to Claymont Development, LLC; and

WHEREAS, Claymont Development, LLC has agreed to assume the remaining responsibilities with the construction and maintenance for Plat 2 of the Arbors at Kehrs Mill Subdivision thus relieving the original developer Arbors at Kehrs Mills, LLC, from its responsibility as established by its prior escrows.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The Department of Planning and Development Services and the Department of Public Works, having reviewed the request by Claymont Development, LLC, for the replacement of construction and maintenance escrows for Plat 2 of Arbors at Kehrs Mill Subdivision in accordance with the established procedures as set out by the Subdivision Ordinance of the City of Chesterfield, which dictate that the developer must establish escrow agreements, which are hereby amended to require that the construction escrow be Seventy-Four Thousand, Four Hundred Thirty-Eight Dollars and Eighty-One Cents ($74,438.81) as shown as Exhibit A and maintenance escrow be Sixty Thousand, One Hundred Ninety Dollars and Twenty-One Cents ($60,190.21) as shown as Exhibit B.

Section 2. That the remaining construction and maintenance escrow established for the Arbors at Kehrs Mill Subdivisions by Arbors at Kehrs Mill, LLC be released.

Section 3. Said Replacement Escrows are hereby approved by the City of Chesterfield subject to be disbursed on the direction and the order of the Director of Planning and Development Services for the City of Chesterfield.

Section 4. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this _____day of _____, 2018.

_____ _____

PRESIDING OFFICER Bob Nation, MAYOR

ATTEST:

_____

Vickie Hass, CITY CLERK

FIRST READING HELD_03/05/2018___

RECEIVED
AUG 28 2017
City of Chesterfield
Department of Public Services

RECEIVED
JUN 28 2017
City of Chesterfield
Department of Public Services

SUBDIVISION IMPROVEMENT CONSTRUCTION DEPOSIT AGREEMENT

THIS CONSTRUCTION DEPOSIT AGREEMENT made and entered into by Claymont Development, LLC, herein called DEVELOPER, Midwest Bank Centre, herein called ESCROW HOLDER *(strike through this party if cash deposited with City),* and the City of Chesterfield, Missouri, herein called CITY.

WITNESSETH:

WHEREAS, the DEVELOPER has submitted plans, information and data to the CITY for the creation and development of a subdivision to be known as The Arbors at Kehrs Mill (Plat 2) in accordance with Ordinance No. _____, the governing ordinance for the subdivision, and the Subdivision Regulations of the City of Chesterfield, and has requested approval of same; and

WHEREAS, the subdivision plans have been approved and the CITY has reasonably estimated and determined that the cost of construction, installation and completion of said improvements, all in accordance with the provisions of said governing ordinance and Subdivision Regulations, as amended, will be in the sum of Seventy-four thousand four hundred thirty-eight dollars and eighty-one cents DOLLARS ($74,438.81), lawful money of the United States of America; and

WHEREAS, the DEVELOPER is seeking approval from the CITY of the record plat of the aforesaid subdivision as the same is provided in said governing ordinance and Subdivision Regulations; and

WHEREAS, the Subdivision Regulations provide inter alias that the commencement of said subdivision may be approved by the CITY upon the DEVELOPER submitting satisfactory construction and maintenance deposit agreements guaranteeing the construction and maintenance

of the subdivision improvements in accordance with the approved plans, said governing ordinance and Subdivision Regulations.

NOW, THEREFORE, in consideration of the covenants, promises and agreement herein provided;

IT IS HEREBY MUTUALLY AGREED:

1. That the DEVELOPER has established a CONSTRUCTION DEPOSIT in the amount of Seventy-four thousand four hundred thirty-eight dollars and eighty-one cents, DOLLARS ($74,438.81) lawful money of the United States of America by: (check one)

☐ Depositing cash with the City.

☑ Submitting a Letter of Credit in the form required by the CITY and issued by the ESCROW HOLDER.

☐ Submitting a _____ *(type of readily negotiable instrument acceptable to the CITY)* endorsed to the City and issued by the ESCROW HOLDER.

Said deposit guarantees the construction, installation and completion of the required subdivision improvements in The Arbors at Kehrs Mill (Plat 2) Subdivision, all in accordance with the approved plans, the governing ordinance for the subdivision and the Subdivision Regulations of the City of Chesterfield, which are by reference made a part hereof, and in accordance with all ordinances of the CITY regulating same. A cost estimate thereof is attached hereto as "Exhibit A".

2. That the CONSTRUCTION DEPOSIT will be held in escrow by the CITY or the ESCROW HOLDER, as applicable, until such time as releases are authorized by the Planning and Development Services Division. The CONSTRUCTION DEPOSIT may be subject to special audit of the CITY from time to time.

3. That the CONSTRUCTION DEPOSIT guarantees the construction, installation and completion of the improvements in the aforesaid subdivision in accordance with the plans and specifications for the said subdivision which have been filed with the CITY, which are made a part hereof by reference as if set forth herein word for word.

4. Pursuant to Revised Statutes of Missouri, 89.410, the amounts set out on Exhibit "A" are identified by separate line item and are subject to release of ninety five percent (95%) of said estimated costs within thirty (30) days of the completion of said specific component of work by DEVELOPER. The Developer shall notify CITY in writing when they consider the specific component ready for release of funds. Accordingly, the CITY may not allow for the reallocation of escrowed funds from one line item to another, without specific written agreement between the DEVELOPER and CITY indicating what specific component or components are being modified. ESCROW HOLDER shall not modify or expend funds from other than the identified line item component without written approval from CITY. Completion is when the particular item has had all documentation and certification filed in a complete and acceptable form and the specific items have been inspected and all identified deficiencies have been corrected and the work has been approved by the City.

5. That in the event the CITY should determine that the ESCROW SUM or any line item thereon as herein provided, is insufficient to complete the said Subdivision Improvements, or the specific line item, the CITY will so notify the DEVELOPER who shall deposit within thirty (30) days of said notice with the ESCROW HOLDER that additional sum of lawful money of the United States of America that will be required to complete the said specific component of the improvement and said additional sum will be subject to the terms of this Escrow Agreement. Failure to provide said sum shall cause for immediate cessation of all work on said subdivision until the additional amount is paid.

6. That the DEVELOPER guarantees that all required utilities and improvements will be installed, constructed and completed within two (2) years from the date of the approval of the said Subdivision Plat and the DEVELOPER shall certify the completion of all said improvements, along with the filing of all documentation and certification, all as provided in the governing ordinance for this subdivision and the Subdivision Regulations of the CITY.

7. That the ESCROW HOLDER, in accordance with paragraph 4 above, shall only release or disburse the ESCROW SUM, or portion thereof, upon receipt and in the amount set forth in a written authorization from the Planning and Development Services Division addressed to the ESCROW HOLDER, which authorization may be for the payment of labor and materials used in the construction, installation and completion of the said improvements, as the work progresses, as provided in the Subdivision Regulations or governing ordinance for this subdivision.

8. That in the event the DEVELOPER shall abandon the subdivision or fail to complete the subdivision improvements within two (2) years, from the date of the CITY'S approval of the said subdivision plat or subsequent extension period granted to this DEPOSIT AGREEMENT, whichever shall first occur, the CITY shall present to the ESCROW HOLDER a certified statement from the City Engineer estimating the cost for the completion of the subdivision improvements and require the ESCROW HOLDER to immediately perform on this agreement for completion of the specific components of the project or disburse said funds identified by the City Engineer's estimates directly to the CITY. The CITY may complete, or have completed by outside resources, the said improvements. The ESCROW HOLDER having disbursed the escrow sums therefore as ordered and directed by the CITY, and upon such disbursement shall be relieved of all liability under the terms of this agreement.

9. That in the event of any legal actions taken by the CITY against DEVELOPER or ESCROW HOLDER to enforce the provision of this agreement, the parties agree to pay a reasonable attorney's fee in addition to any other sums due under this agreement

10. That there shall be no assignment by DEVELOPER or ESCROW HOLDER under the terms of this agreement without written approval of the CITY.

11. That if DEVELOPER is unable to meet its obligation hereunder or to provide additional sums to complete the Subdivision improvements as may be determined by the CITY or if the DEVELOPER or ESCROW HOLDER shall go into receivership or file for bankruptcy protection, then in any such event the CITY may declare the DEVELOPER or ESCROW HOLDER (as the case may be) in default and may immediately order the payment of all remaining sums held by ESCROW HOLDER to be paid to the CITY without further legal process, to be used to complete the subdivision improvements as set out under the terms hereof.

12. That the ESCROW HOLDER will immediately inform the City of any changes of address for ESCROW HOLDER or DEVELOPER (known to ESCROW HOLDER) during the period of this Agreement. Failure to do so shall result in a breach of this Agreement and the CITY may declare the DEVELOPER or ESCROW HOLDER (as the case may be) in default and may immediately order the payment of all remaining sums held by ESCROW HOLDER to be paid to the CITY without further legal process, to be used to complete the subdivision improvements as set out under the terms hereof.

13. That no forbearance on the part of the CITY in enforcing any of its rights under this agreement, nor any extension thereof by CITY, shall constitute a waiver of any terms of this Agreement or a forfeiture of any such rights.

14. That the CITY hereby accepts this agreement as a satisfactory ESCROW AGREEMENT under the provisions and requirements of the governing ordinance for this

subdivision and any amendments or revisions thereto and the Subdivision Regulations of the CITY.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the 12th day of MAY, 2017.

ATTEST: (SEAL)

DEVELOPER: Claymont Development, LLC

BY: _____

Type Name: Wesley Byrne
Title: GM

Firm Address:
26 Pacland Estates Drive
Chesterfield, MO 63005

ATTEST: (SEAL)

Midwest BankCentre INCORPORATED SEAL 1906 ST. LOUIS COUNTY, MO

ESCROW HOLDER: Midwest Bank Centre

BY: _____

Type Name: Jeremy Scott
Title: Assistant Vice President

Type Name: Wm. Kral
Title: President

Firm Address:
2191 Lemay Ferry Road
St. Louis, MO 63125

CITY OF CHESTERFIELD, MISSOURI

BY _____
Planning and Development Services Director

ATTEST: (SEAL)

APPROVED:

City Clerk

Mayor

NB: The signatures of the DEVELOPER and CREDIT HOLDER are to be acknowledged before a Notary Public. In the case of a partnership, all partners must sign. In the case of a corporation, the affidavits of the corporation act must be attached.

BANK OFFICIAL'S ACKNOWLEDGMENT

STATE OF MISSOURI)
Warren) SS
COUNTY OF ~~ST. LOUIS~~)

On this 12th day of May, 2017, before me appeared William L Kral, to me personally known, who, being by me duly sworn, did say that (he/she) is the President (title) of Midwest BankCentre (name of bank), a Missouri Corp (corporation, etc.) organized and existing under the laws of the United States of America, and that the seal affixed to the foregoing instrument is the Corporate Seal of said bank, and that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and said President (title) acknowledged said instrument to be the free act and deed of said bank.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in County and State aforesaid, the day and year first above written.

Jodi Baldwin
Notary Public

My Commission Expires: 9-9-19

JODI BALDWIN
Notary Public - Notary Seal
STATE OF MISSOURI
Warren County
My Commission Expires: September 9, 2019
Commission #15536127

LLC EXECUTING OFFICIAL'S ACKNOWLEDGEMENT

STATE OF MISSOURI)
Warren) SS
COUNTY OF ~~ST. LOUIS~~)

On this 12th day of May, 2017, before me appeared Wesley Byrne (name) to me personally known, who, being by me duly sworn, did say that he/she is the Managing Member (title or Executing Official) of Claymont Development, LLC, a Missouri Limited Liability Corporation, and that he/she in fact has the authority to execute the foregoing agreement pursuant to the authority given him/her by the Limited Liability Corporation, and that said agreement was signed and sealed by him/her on behalf of the aforesaid L.L.C. by authority of its Members, (President or title of chief officer), Wesley Byrne (name) as Managing Member (title of Executing Official) of said L.L.C. acknowledges said agreement to be the lawful, free act and deed of said L.L.C.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, this 12th day of May, 2017.

Jodi Baldwin
Notary Public

My Commission Expires: 9-9-19

JODI BALDWIN
Notary Public - Notary Seal
STATE OF MISSOURI
Warren County
My Commission Expires: September 9, 2019
Commission #15536127

EXHIBIT A

Attach: Subdivision Deposit Spreadsheet

CONSTRUCTION DEPOSIT

SUBDIVISION: Arbors at Kehrs Mill
PLAT: 2
SUBDIVISION CODE: 305
NO. LOTS: 18
DATE OF PLAT APPROVAL: 10/5/2015

DEVELOPER: Arbors at Kehrs Mill LLC

CATEGORY	DATE OF RELEASE	% RELEASE	ORIGINAL BALANCE	TOTAL RELEASED	TOTAL % RELEASED	CURRENT BALANCE	% REMAINING
STREETS	10/28/15	95	$401,093.00	$381,038.35 $0.00 $0.00	95	$20,054.65	5
SIDEWALKS	06/07/16	95	$27,067.15	$25,713.79 $0.00 $0.00	95	$1,353.36	5
STORM SEWER Original escrow established at 90% of cost	03/07/16	100	$296,822.99	$296,822.99 $0.00 $0.00	100	$0.00	0
SAN. SEWER Original escrow established at 90% of cost	03/07/16	100	$140,266.96	$140,266.96 $0.00	100	$0.00	0
DETENTION			$15,977.50	$0.00 $0.00 $0.00	0	$15,977.50	100
GRADING	12/08/16	95	$7,987.10	$7,587.75 $0.00 $0.00	95	$399.36	5
EROSION CONTROL	12/08/16	50	$8,047.60	$4,023.80 $0.00 $0.00	50	$4,023.80	50
SILTAT'N CONTROL	12/08/16	50	$4,492.40	$2,246.20 $0.00 $0.00	50	$2,246.20	50
MONUMENTS			$14,883.00	$0.00 $0.00	0	$14,883.00	100
STREET LIGHTS	01/11/16	95	$6,776.00	$6,437.20 $0.00	95	$338.80	5
STREET SIGNS	01/11/16	95	$541.20	$514.14 $0.00	95	$27.06	5
WATER MAINS	11/30/15	100	$266,718.60	$266,718.60 $0.00	100	$0.00	0
COMMON GR. SEED	12/08/16	30	$12,004.56	$3,601.37 $0.00	30	$8,403.19	70

CONSTRUCTION DEPOSIT

SUBDIVISION: Arbors at Kehrs Mill **DEVELOPER:** Arbors at Kehrs Mill LLC
PLAT: 2

ISLAND SODDING			$1,306.80	$0.00 $0.00	0	$1,306.80	100
RETAINING WALL	09/28/15	95	$101,114.20	$96,058.49 $0.00	95	$5,055.71	5
FENCE	10/28/15	95	$7,387.60	$7,018.22 $0.00	95	$369.38	5
LOMR	04/20/16	100	$41,250.00	$41,250.00 $0.00	100	$0.00	0
TOTALS			$1,353,736.66	$1,279,297.86	95	$74,438.81	5

RECEIVED
JAN 17 2018
City of Chesterfield
Department of Public Services

SUBDIVISION IMPROVEMENT MAINTENANCE DEPOSIT AGREEMENT

THIS MAINTENANCE DEPOSIT AGREEMENT made and entered into by Claymont Development, LLC, herein called DEVELOPER, Midwest Bank Centre, herein called CREDIT HOLDER *(strike through this party if cash deposited with City),* and the City of Chesterfield, Missouri, herein called CITY.

WITNESSETH:

WHEREAS, the DEVELOPER has submitted plans, information and data to the CITY for the creation and development of a subdivision to be known as The Arbors at Kehrs Mill (Plat 2) in accordance with Ordinance No. _____, the governing ordinance for the subdivision, and the Subdivision Regulations of the City of Chesterfield, and has requested approval of same; and

WHEREAS, the subdivision plans have been approved and the CITY has reasonably estimated and determined that the cost of maintenance of the required improvements, based on the cost of construction of said improvements, all in accordance with the provisions of said subdivision governing ordinance and Subdivision Regulations, as amended, will be in the sum of Sixty thousand one hundred ninety dollars & twenty-one cents DOLLARS ($60,190.21), lawful money of the United States of America; and

WHEREAS, the DEVELOPER is seeking approval from the CITY of the record plat of the aforesaid subdivision as the same is provided in said governing ordinance and Subdivision Regulations; and

WHEREAS, the Subdivision Regulations provide inter alias that the commencement of said subdivision may be approved by the CITY upon the DEVELOPER submitting satisfactory construction and maintenance deposit agreements guaranteeing the construction and maintenance of the subdivision improvements in accordance with the approved plans, said governing ordinance and Subdivision Regulations.

NOW, THEREFORE, in consideration of the covenants, promises and agreement herein provided;

IT IS HEREBY MUTUALLY AGREED:

1. That the DEVELOPER has established a MAINTENANCE DEPOSIT in the amount of Sixty thousand one hundred ninety dollars & twenty-one cents DOLLARS ($60,190.21), lawful money of the United States of America by: (check one)

- ☐ Depositing cash with the City.
- ☑ Submitting a Letter of Credit in the form required by the CITY and issued by the CREDIT HOLDER.
- ☐ Submitting a _____ *(type of readily negotiable instrument acceptable to the CITY)* endorsed to the City.

Said deposit guarantees the DEVELOPER will perform his maintenance obligations regarding subdivision improvements, including, but not limited to; lots, streets, sidewalks, trees, common ground areas, erosion and siltation control, and storm drainage facilities, in The Arbors at Kehrs Mill (Plat 2) Subdivision, all in accordance with the approved plans, the governing ordinance for the subdivision and the Subdivision Regulations of

the City of Chesterfield, which by reference are made a part hereof, and in accordance with all ordinances of the CITY regulating same.

2. That the MAINTENANCE DEPOSIT will be held in escrow by the CITY or the CREDIT HOLDER, as applicable, until such time as releases are authorized by the Planning and Development Services Division.

3. That the DEVELOPER shall be responsible for, and hereby guarantees, the maintenance of the subdivision improvements, including, but not limited to, lots, streets, sidewalks, trees, common ground areas, erosion and siltation control, and storm and drainage facilities, until (1) expiration of twelve (12) months after occupancy permits have been issued on eighty percent (80%) of all of the lots in the subdivision plat(s), or (2) twelve (12) months after completion of the subdivision and acceptance / approval of all required improvements by the CITY, whichever is longer. In the case of landscaping, the maintenance period shall be twenty-four (24) months after installation is approved by the CITY. Maintenance shall include repair or replacement of all defects, deficiencies and damage to the improvements that may exist or arise, abatement of nuisances caused by such improvements, removal of mud and debris from construction, erosion control, grass cutting, removal of construction materials (except materials to be used for construction on the lot or as permitted by site plan), and snow removal. All repairs and replacement shall comply with CITY specifications and standards. Any maintenance of improvements accepted by the CITY for public dedication shall be completed under the supervision of and with the prior written approval of the Planning and Development Services Director. The maintenance obligation for required improvements to existing public roads or other existing public infrastructure already maintained by a public governmental entity shall terminate on and after the date such improvements have been

inspected and accepted by the appropriate governmental entity and the deposit for same shall be released. Irrespective of other continuing obligations, the developer's snow removal obligations shall terminate on the date a street is accepted by the CITY for public maintenance.

4. That the maintenance deposit shall be retained by the CITY OR CREDIT HOLDER to guarantee maintenance of the required improvements and, in addition to being subject to the remedies of Section 1005.080 Subsection (G) and other remedies of the City Code, shall be subject to the immediate order of the Planning and Development Services Director to defray or reimburse any cost to the CITY of maintenance or repair of improvements related to the subdivision which the developer fails or refuses to perform. Except in emergency circumstances or where action is otherwise required before written notice can be provided, the Planning and Development Services Director shall provide the developer with a written demand and opportunity to perform the maintenance before having such maintenance performed by the CITY, or its agents. The Planning and Development Services Director shall have the authority to require the maintenance deposit to be replaced or replenished by the developer, in any form permitted for an original deposit, where the amount remaining is determined to be insufficient or where the maintenance deposit was drawn upon by the CITY for maintenance.

5. That in determining the amount of MAINTENANCE DEPOSIT that shall continue to be held, portions of the deposit amount that were attributable to improvements that have been accepted by any third-party governmental entity or utility legally responsible for the maintenance of the improvement may be released upon such acceptance of the improvement by the entity. The Planning and Development Services Director may approve such further releases if it is determined in his or her discretion, after inspection of the improvements, that the total

maintenance amount retained is clearly in excess of the amount necessary for completion of the maintenance obligation, after all reasonable contingencies are considered.

6. That in the event the CITY should determine that the MAINTENANCE DEPOSIT, or any line item thereon as herein provided, is insufficient, the CITY will so notify the DEVELOPER who shall, within thirty (30) days of said notice, deposit additional sums with the CITY or have the amount of the letter of credit or other banking instrument increased as will be required to maintain the said specific component of the improvement and said additional sum will be subject to the terms of this MAINTENANCE DEPOSIT AGREEMENT. Failure to provide said sum shall be cause for immediate cessation of all work on said subdivision until the additional amount is paid.

7. That the CREDIT HOLDER, in accordance with paragraphs 2, 4 and 5 above, shall only release or disburse the MAINTENANCE DEPOSIT, or portion thereof, upon receipt and in the amount set forth in a written authorization from the said Planning and Development Services Division addressed to the Credit Holder, which authorization may be for payment, as provided in the Subdivision Regulations or governing ordinance for this subdivision.

8. That upon expiration of the maintenance obligations established herein, the Planning and Development Services Director shall cause a final inspection to be made of the required improvements. Funds shall then be released if there are no defects or deficiencies found and all other obligations including payment of all sums due, are shown to be satisfied on inspection thereof, or at such time thereafter as any defects or deficiencies are cured with the permission of, and within the time allowed by, the Planning and Development Services Director. This release shall in no way be construed to indemnify or release any person from any

civil liability that may exist for defects or damages caused by any construction, improvement or development for which any deposit has been released.

9. That there shall be no assignment by DEVELOPER or CREDIT HOLDER under the terms of this agreement without written approval of the CITY.

10. That if DEVELOPER is unable to meet its obligation hereunder or to provide additional sums to guarantee maintenance of the Subdivision improvements as may be determined by the CITY or if the DEVELOPER shall abandon the subdivision or go into receivership or file for bankruptcy protection, then in any such event the CITY may declare the DEVELOPER in default and may immediately order the payment of all remaining sums held in the MAINTENANCE DEPOSIT to be paid to the CITY without further legal process, to be used to complete and maintain the subdivision improvements as set out under the terms hereof.

11. That the CREDIT HOLDER will immediately inform the City of any changes of address for CREDIT HOLDER or DEVELOPER (known to CREDIT HOLDER) during the period of this Agreement. Failure to do so shall result in a breach of this Agreement and the CITY may declare the DEVELOPER or CREDIT HOLDER (as the case may be) in default and may immediately order the payment of all remaining sums held by CREDIT HOLDER to be paid to the CITY without further legal process, to be used to maintain the subdivision improvements as set out under the terms hereof.

12. That no forbearance on the part of the CITY in enforcing any of its rights under this agreement, nor any extension thereof by CITY, shall constitute a waiver of any terms of this Agreement or a forfeiture of any such rights.

13. That the CITY hereby accepts this agreement as a satisfactory MAINTENACE DEPOSIT AGREEMENT under the provisions and requirements of the governing ordinance

for this subdivision and any amendments or revisions thereto and the Subdivision Regulations of the CITY.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the 17th day of May, 2017 A.D.

ATTEST: (SEAL)

Type Name: Kurt Andersen
Title: VP

DEVELOPER: Claymont Development, LLC

BY: _____
Type Name: Wesley Byrne
Title:

Firm Address:
26 Pacland Estates Drive
Chesterfield, MO 63005

Midwest BankCentre INCORPORATED SEAL 1906 LOUIS COUNTY MO

ATTEST: (SEAL)

Name: Jeremy Scott
Title: Assistant Vice President

CREDIT HOLDER: Midwest Bank Centre

BY: _____, Pres
Name: William Kraft
Title: President

Firm Address:
2191 Lemay Ferry Road
St. Louis, MO 63125

CITY OF CHESTERFIELD, MISSOURI

BY _____
Planning and Development Services Director

ATTEST: (SEAL)

APPROVED:

City Clerk

Mayor

NB: The signatures of the DEVELOPER and CREDIT HOLDER are to be acknowledged before a Notary Public. In the case of a partnership, all partners must sign. In the case of a corporation, the affidavits of the corporation act must be attached.

BANK OFFICIAL'S ACKNOWLEDGMENT

STATE OF MISSOURI)
Warren) SS
COUNTY OF ~~ST. LOUIS~~)

On this 12th day of May, 2017, before me appeared William L Kral, to me personally known, who, being by me duly sworn, did say that (he)/she is the PRESIDENT (title) of midwest BankCentre (name of bank), a MO Corp (corporation, etc.) organized and existing under the laws of the United States of America, and that the seal affixed to the foregoing instrument is the Corporate Seal of said bank, and that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and said President (title) acknowledged said instrument to be the free act and deed of said bank.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in County and State aforesaid, the day and year first above written.

Jodi Baldwin
Notary Public

My Commission Expires: 9-9-19

JODI BALDWIN
Notary Public - Notary Seal
STATE OF MISSOURI
Warren County
My Commission Expires: September 9, 2019
Commission #15536127

LLC EXECUTING OFFICIAL'S ACKNOWLEDGEMENT

STATE OF MISSOURI)
Warren) SS
COUNTY OF ~~ST. LOUIS~~)

On this 12th day of May, ~~20~~ 2017, before me appeared Wesley Bygne (name) to me personally known, who, being by me duly sworn, did say that he/she is the Managing Member (title or Executing Official) of Claymont Development, LLC, a Missouri Limited Liability Corporation, and that he/she in fact has the authority to execute the foregoing agreement pursuant to the authority given him/her by the Limited Liability Corporation, and that said agreement was signed and sealed by him/her on behalf of the aforesaid L.L.C. by authority of its Members, (President or title of chief officer), Wesley Bygne (name) as Managing Member (title of Executing Official) of said L.L.C. acknowledges said agreement to be the lawful, free act and deed of said L.L.C.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, this 12th day of May, 2017.

Jodi Baldwin
Notary Public

My Commission Expires: 9-9-19

JODI BALDWIN
Notary Public - Notary Seal
STATE OF MISSOURI
Warren County
My Commission Expires: September 9, 2019
Commission #15536127

MAINTENANCE DEPOSIT

SUBDIVISION: Arbors at Kehrs Mill
PLAT: 2
SUB CODE: 305
DEVELOPER: Arbors at Kehrs Mill LLC

NOTE: Deposit is adjusted to account for 10% of entire sewer costs, and 0% of LOMR/Elev. Cert's, if any)

CATEGORY	ORIGINAL BALANCE	DATE OF RELEASE	AMOUNT RELEASED	CURRENT BALANCE
STREETS	$40,109.30			$40,109.30
SIDEWALKS	$2,706.72			$2,706.72
STORM SEWER	$32,977.03	3/7/2016	$32,977.03	$0.00
SAN. SEWER	$15,583.66	3/7/2016	$15,583.66	($0.00)
DETENTION	$1,597.75			$1,597.75
GRADING	$798.71			$798.71
EROSION CONTROL	$804.76			$804.76
SILTAT'N CONTROL	$449.24			$449.24
MONUMENTS	$1,488.30			$1,488.30
STREET LIGHTS	$677.60	1/11/2016	$677.60	$0.00
STREET SIGNS	$54.12			$54.12
WATER MAINS	$26,671.86	11/30/2015	$26,671.86	$0.00
COMMON GR. SEED	$1,200.46			$1,200.46
ISLAND SODDING	$130.68			$130.68
RETAINING WALL	$10,111.42			$10,111.42
FENCE	$738.76			$738.76
TOTALS	$136,100.36		$75,910.15	$60,190.21

BILL NO. 3190 **ORDINANCE NO.**_____

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A TRANSPORTATION ALTERNATIVE FUNDS PROGRAM AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR CONSTRUCTION OF THE RIPARIAN TRAIL FROM AUGUST HILL DRIVE TO OLD CHESTERFIELD ROAD.

WHEREAS, the City of Chesterfield was successful in obtaining a reimbursement grant for the construction of the Riparian Trail from August Hill Drive to Old Chesterfield Road; and,

WHEREAS, in order to proceed with the project, TAP-5410(630), the City needs to enter into a Transportation Alternatives Funds Program Agreement with the Missouri Highways and Transportation Commission;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The City Council of the City of Chesterfield hereby authorizes the City Administrator to act on behalf of the City of Chesterfield to enter into an Agreement with the Missouri Highways and Transportation Commission relative to the construction of Riparian Trail from August Hill Drive to Old Chesterfield Road, in form substantially similar to that attached in Exhibit A.

Section 2. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this _____ day of _____, 2018.

_____ _____

PRESIDING OFFICER Bob Nation, MAYOR

ATTEST:

_____

Vickie Hass, CITY CLERK

FIRST READING HELD:

EXHIBIT A

CCO Form: FS25
Approved: 04/95 (MGB)
Revised: 03/17 (MWH)
Modified:

CFDA Number: 20.205
CFDA Title: Highway Planning and Construction
Award name/number: TAP – 5410(630)
Award Year: 2018
Federal Agency: Federal Highway Administration, Department of Transportation

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION ALTERNATIVES FUNDS
PROGRAM AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Chesterfield (hereinafter, “City”).

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The United States Congress has authorized, in Fixing America’s Surface Transportation Act (FAST); 23 U.S.C. §101, §106 and §213; SAFETEA-LU §1404 funds to be used for transportation alternatives activities. The purpose of this Agreement is to grant the use of such transportation alternatives funds to the City.

(2) LOCATION: The transportation alternatives funds which are the subject of this Agreement are for the project at the following location: The improvement contemplated by this agreement will extend the existing Riparian Trail an additional 0.9 miles and will pass through natural areas beginning at Old Chesterfield Road and extending to August Hill Drive, running parallel to Baxter Road. A pedestrian crossing, including crosswalks, curb ramps and pedestrian buttons and signals will be installed at Wild Horse Creek Road.

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and

incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City. The City may not be eligible for future Transportation Alternatives Funds if the City does not meet the reasonable progress policy.

(4) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(5) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(6) COMMISSION REPRESENTATIVE: The Commission's District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(7) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq*.), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq*.). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so

certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or

2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(8) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(9) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(11) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term “the City” is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(13) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, City shall acquire any additional necessary right of way required for this project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act. However, upon written request by the City and written acceptance by the Commission, the Commission shall acquire right of way for the City. Upon approval of all agreements, plans and specifications by the Commission and by the FHWA, the Commission will file copies of said plans in the office of the County clerk: and proceed to acquire by negotiation and purchase or by condemnation any necessary right of way required for the construction of the improvement contemplated herein. All right of way acquired by negotiation and purchase will be acquired in the name of City, and the City will pay to grantors thereof the agreed upon purchase prices. All right of way acquired through condemnation proceedings will be acquired in the name of the State of Missouri and subsequently released to the City. The City shall pay into court all awards and final judgments in favor of any such condemnees. The City shall also reimburse the Commission for any expense incurred by the Commission in acquiring said right of way, including but not limited to the costs of surveying, appraisal, negotiation, condemnation, and relocation assistance benefits. Unless otherwise agreed to in writing the Commission shall have the final decision regarding the settlement amount in condemnation.

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalk or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalk or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalk or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City’s failure to maintain the improvement.

If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 65 percent not to exceed $998,175. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. The City shall repay any progress payments which involve ineligible costs.

(18) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(19) PERMITS: The City shall secure any necessary approvals or permits from

any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(20) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the Transportation Alternatives Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(21) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(22) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(23) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(24) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(25) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(26) OMB AUDIT: If the City expend(s) seven hundred fifty thousand dollars ($750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars ($750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(27) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this ____ day of _____, 20__.

Executed by the Commission this ____ day of _____, 20___.

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

_____

Title _____

ATTEST:

_____
Secretary to the Commission

Approved as to Form:

_____
Commission Counsel

CITY OF CHESTERFIELD

By _____

Title _____

ATTEST:

By _____

Title _____

Approved as to Form:

_____

Title _____

Ordinance No _____

Exhibit A - Location of Project

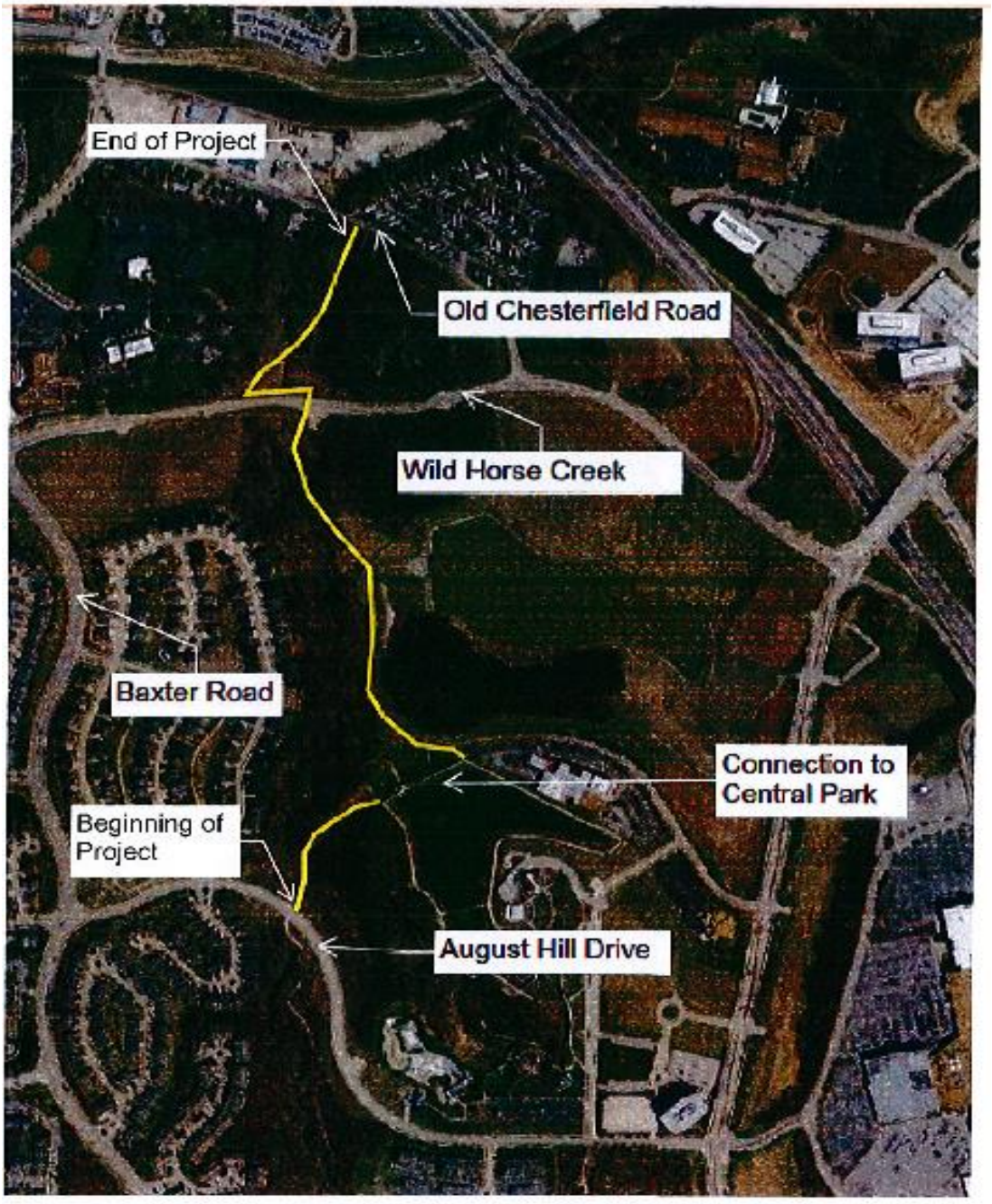

Exhibit B – Project Schedule

Project Description: TAP-5410(630)

The improvement contemplated by this agreement will extend the existing Riparian Trail an additional 0.9 miles and will pass through natural areas beginning at Old Chesterfield Road and extending to August Hill Drive, running parallel to Baxter Road. A pedestrian crossing, including crosswalks, curb ramps and pedestrian buttons and signals will be installed at Wild Horse Creek Road.

PROJECT DEVELOPMENT SCHEDULE **Many stages can occur concurrently.*

Activity Description	State Date (MM/YYYY)	Finish Date (MM/YYYY)	Time Frame (Months)
Receive notification letter	10/2017	10/2017	1
Execute agreement (project sponsor and DOT)	11/2017	1/2018	3
Engineering services contract submitted and approved*	3/2018	6/2018	3
Obtain environmental clearances (106, CE-2, etc.)	6/2018	8/2018	2
Public meeting/hearing	8/2018	9/2018	1
Develop and submit preliminary plans	7/2018	11/2018	5
Preliminary plans approved	11/2018	2/2019	3
Develop and submit right-of-way plans	6/2018	8/2018	2
Review and approval of right-of-way plans	8/2018	10/2018	2
Submit and receive approval for notice to proceed for right-of-way acquisition (A-Date)*	10/2018	12/2018	2
Right-of-way acquisition	1/2019	4/2019	4
Utility coordination	8/2018	12/2018	4
Develop and submit PS&E	2/2019	6/2019	5
District approval of PS&E/advertise for bids*	6/2019	11/2019	5
Submit and receive bids for review and approval	12/2019	2/2020	3
Project implementation/construction	2/2020	12/2020	10

* Finish date must match fiscal year for each milestone shown in **bold** text.

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and a Supplemental Agreement is required to modify this date.

Exhibit C - Required Contract Provisions
Federal-Aid Construction Contracts

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant

to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated

in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time

clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside

in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of

the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of

payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid

construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with

commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

LEGISLATION – PLANNING COMMISSION

There is no proposed legislation coming from the Planning Commission for this Monday's meeting.