



Agenda

**REGULAR MEETING
GOVERNING BODY
CITY OF LENEXA, KANSAS
17101 W. 87th STREET PARKWAY**

**SEPTEMBER 20, 2022
7:00 PM
COMMUNITY FORUM**

CALL TO ORDER

Pledge of Allegiance

ROLL CALL

APPROVE MINUTES

August 23, 2022 Special City Council meeting draft minutes (located in the Appendix)

September 6, 2022 City Council meeting draft minutes (located in the Appendix)

MODIFICATION OF AGENDA

PROCLAMATIONS

Diaper Need Awareness Week Sept. 26 – Oct. 2

CONSENT AGENDA

Item Numbers 1 through 6

All matters listed within the Consent Agenda have been distributed to each member of the Governing Body for review, are considered to be routine, and will be enacted by one motion with no separate discussion. If a member of the Governing Body or audience desires separate discussion on an item, that item may be removed from the Consent Agenda and placed on the regular agenda.

1. Acceptance of sidewalk easements granted by Lenexa 33, LLC in connection with the Villas at Waterside Project

The Villas at Waterside Project is required to construct a new sidewalk and to complete some missing sidewalk links. Due to utility conflicts, the sidewalk must be placed outside the public right-of-way in areas adjacent to property owned by Lenexa 33, LLC. The easements are being dedicated to the City for the public sidewalk.
2. Approval of a preliminary plan for Higher Ground Education located north of 87th Street Parkway and west of Gillette Street in the CP-1, Planned

Neighborhood Commercial District to allow a "Daycare, Commercial" use

The proposed daycare site is within Greystone South Plaza, a multi-building commercial and office development. The lot where the daycare is proposed is undeveloped and is located just north of the Hy-Vee gas station.

3. Resolution authorizing the Mayor to execute an encroachment agreement with Every Metro, Inc. for the 95th Street & Loiret Boulevard Intersection Improvement Project

Every Metro, Inc. has agreed to permit construction over its easement for this project. Improvements related to the encroachment agreement include sidewalks and associated retaining walls.

4. Ordinance granting a telecommunications franchise to Google Fiber Kansas, LLC

In early 2022, Google Fiber Kansas, LLC ("Google") notified the City that it was going to discontinue its video service, but that it would continue to provide broadband and voice services. With the discontinuation of its State Video Franchise, Google needs City authorization to maintain its facilities in the right-of-way. The proposed franchise provides this authorization and contains the necessary provisions typically included in the City's franchises.

5. Ordinance granting a telecommunications franchise to Cox Communications Kansas, LLC

This ordinance will renew the franchise with Cox Communications Kansas, LLC. The franchise ordinance includes a 5% fee on gross receipts and a two-year term with four automatic renewal terms for a total of 10 years.

6. Ordinance granting a telecommunications franchise to Everfast Fiber Networks, LLC

This ordinance will grant a new franchise to Everfast Fiber Networks, LLC. The franchise ordinance includes a 5% fee on gross receipts and a two-year term with four automatic renewal terms for a total of 10 years.

END OF CONSENT AGENDA

BOARD RECOMMENDATIONS

7. Consideration of a special use permit and companion preliminary plan for

Range USA, located at the northwest corner of 107th Street & Santa Fe Trail Drive, to allow "Personal Instruction, General" in the BP-2, Planned Manufacturing Zoning District - **WITHDRAWN BY THE APPLICANT**

- a. Ordinance approving a three-year Special Use Permit for Range USA
- b. Approval of a preliminary plan for Range USA

This item has been withdrawn by the applicant.

- 8. Ordinance rezoning property for Land Pool Restoration located on 88th Street east of Monrovia Street from CP-2, Planned Community Commercial, to BP-2, Planned Manufacturing Zoning District

The applicant is requesting approval to rezone a 0.92-acre site to facilitate a "Construction Sales and Services" land use in an existing 3,025 square foot building and allow continuation of a "Vehicle and Equipment Repair" land use in an existing 6,052 square foot building. RZ22-06

PUBLIC HEARINGS

- 9. Consideration of vacating a utility easement located at the southeast corner of Prairie Star Parkway & Ridgeview Road
 - a. Public hearing to consider a request to vacate a utility easement
 - b. Ordinance vacating the utility easement

The utility easement was dedicated to provide for utility service to the site. The development plan for this site has changed since the easement was dedicated. The easement is no longer required for the proposed development and use of the site.

NEW BUSINESS

None

BUSINESS FROM FLOOR

Comments will be accepted from the audience on items not listed on the agenda. Please limit remarks to a maximum of five (5) minutes per person/issue.

COUNCILMEMBER REPORTS

STAFF REPORTS

ADJOURN

APPENDIX

10. August 23, 2022 Special City Council meeting draft minutes
11. September 6, 2022 City Council meeting draft minutes
12. Diaper Need Awareness Week Proclamation
13. Item 1 -- Lenexa 33, LLC Easement
14. Item 3 -- Evergy Metro, LLC Agreement

Dist. Governing Body; Management Team; Agenda & Minutes Distribution List

IF YOU NEED ANY ACCOMMODATIONS FOR THE MEETING, PLEASE CONTACT THE CITY ADA COORDINATOR, 913/477-7550. KANSAS RELAY SERVICE 800/766-3777. PLEASE GIVE 48 HOURS NOTICE



**CITY COUNCIL
MEMORANDUM**

ITEM 1

SUBJECT: Acceptance of sidewalk easements granted by Lenexa 33, LLC in connection with the Villas at Waterside Project

CONTACT: Tim Green, Deputy Community Development Director

DATE: September 20, 2022

ACTION NEEDED:

Accept the sidewalk easements granted by Lenexa 33, LLC in connection with the Villas at Waterside Project.

PROJECT BACKGROUND/DESCRIPTION:

The Villas at Waterside Apartment project, located at the intersection of 81st Street & Flint Street, is required to construct a new sidewalk along their property. The approved plans also require the Villas at Waterside project to complete the missing sidewalk links along 81st Street west of Quivira Road. Due to utility conflicts, the sidewalk must be placed outside the public right-of-way in areas adjacent to 11601 W. 81st Street, which is owned by Lenexa 33, LLC. The easements are being dedicated to the City since this will serve as a public sidewalk. The width varies from 4-feet to 10-feet wide. The Villas at Waterside will be responsible for constructing the new sidewalk.

STAFF RECOMMENDATION:

Acceptance of the easements.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

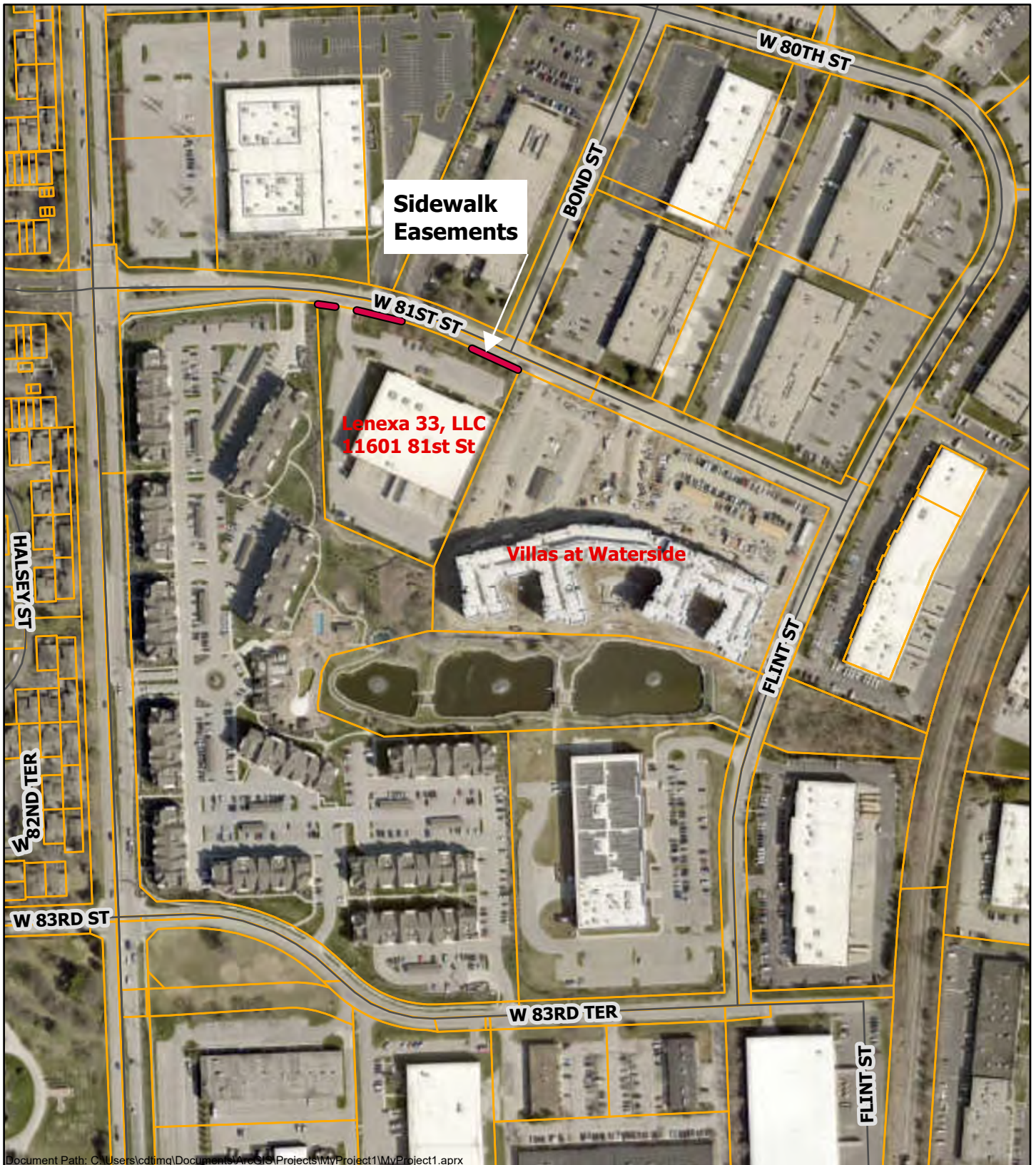
Integrated Infrastructure & Transportation

Guiding Principles

Superior Quality Services

ATTACHMENTS

1. Map
2. Easement located in the Appendix



Document Path: C:\Users\lcm\My Documents\ArcGIS\Projects\MyProject1\MyProject1.aprx

Data Source: City of Lenexa and Johnson County Kansas
For further information, please call 913-477-7500

Acceptance of Sidewalk Easements 11601 81st Street



0 150 300 600
Feet



**CITY COUNCIL
MEMORANDUM**

ITEM 2

SUBJECT: Approval of a preliminary plan for Higher Ground Education located north of 87th Street Parkway and west of Gillette Street in the CP-1, Planned Neighborhood Commercial District to allow a "Daycare, Commercial" use

CONTACT: Stephanie Kisler, Planning & Development Administrator

DATE: September 20, 2022

ACTION NEEDED:

Approve a preliminary plan for Higher Ground Education located north of 87th Street Parkway and west of Gillette Street in the CP-1, Planned Neighborhood Commercial District to allow a "Daycare, Commercial" use.

APPLICANT:

Ben Udell, Murphy Real Estate Services LLC

OWNER:

Stags Leap

PROPERTY LOCATION/ADDRESS:

North of 87th Street Parkway and west of Gillette Street in Greystone South Plaza

PROJECT BACKGROUND/DESCRIPTION:

This preliminary plan is for a new daycare building in the Greystone South Plaza office and commercial center. Greystone South Plaza is a multi-building neighborhood center that began developing in the mid 1980's. The center consists of a main multi-tenant building, a smaller multi-tenant building, and eight out-parcel lots. The proposed daycare is to be located on the last undeveloped lot within the development.

The proposed building is a single-story and will be located in the northwest corner of the Greystone South Plaza center. The building is 12,718 square feet in area. A parking area will be on the south side of the building and fenced play areas for the children will be on the north side. The applicant intends to preserve as much of the existing tree line as possible along the north and west property lines. The existing tree line will help buffer the activity of the daycare from the neighboring single-family residential subdivision to the north.

STAFF RECOMMENDATION:

Approval of the preliminary plan.

PLANNING COMMISSION ACTION:

This preliminary plan was considered at the August 29, 2022 Planning Commission meeting. The Commission discussed the proposed daycare site layout and the use of the site. The Commission acknowledged the site has been undeveloped for several years and recounted a previous proposal for a more intense commercial use. Commissioners stated that a daycare is an appropriate use considering the

context of the site and the proximity to the residential subdivision to the north. No one from the public spoke on the matter.

Acting Chair Burson entertained a motion for **APPROVAL** of the Preliminary Plan for Higher Ground Education. Commissioner Harber moved for approval and the motion was seconded by Commissioner Macke. The Planning Commission approved the motion by a unanimous voice vote.

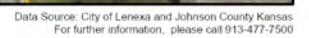
VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040
Thriving Economy

Guiding Principles
Responsible Economic Development

ATTACHMENTS

- 1. Map
- 2. PC Staff Report & Exhibits
- 3. PC Draft Minutes Excerpt




 Lenexa
 K A N S A S
 Page 9

MEETING DATE: August 29, 2022

REGULAR AGENDA ITEM: 5

PROJECT TITLE: Higher Ground Education Daycare

PROJECT # / REQUEST: PL22-11P – Preliminary Plan

APPLICANT:

Ben Udell, Murphy Real Estate Services LLC

OWNER:

Stags Leap LLC

PROPERTY LOCATION:

North of 87th Street and west of Gillette Street
in Greystone South Plaza

STAFF PLANNER:

Dave Dalecky

SUMMARY OF RECOMMENDATION

Staff recommends **APPROVAL** of the preliminary plan for a Commercial Daycare known as Higher Ground Education in Greystone South Plaza.

PROPOSED PROJECT DESCRIPTION AND BACKGROUND INFORMATION
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The application is a preliminary plan to construct a new daycare in the Greystone South Plaza office and retail center. Greystone South Plaza is a multi-building neighborhood center which originally began developing in the mid 1980's. The center consists of a multi-tenant building and eight out-parcel lots. The proposed daycare is located on the remaining undeveloped out-parcel lot.

CURRENT ZONING:

CP-1, Planned Neighborhood Commercial District

CURRENT USE:

Undeveloped land

PROPOSED USE:

Daycare, Commercial

ACREAGE:

2.49

BUILDING SQUARE FOOTAGE:

12,718

COMPREHENSIVE PLAN RECOMMENDATION FOR AREA

Neighborhood Retail – Commercial uses consisting of retail, office, or personal services with a gross leasable area of 30,000 to 125,000 square feet intended to serve surrounding neighborhoods within a 1 to 3 mile radius. Such centers may have one anchor tenant, often consisting of a supermarket or grocery store. Neighborhood Commercial Centers usually consist of more than one tenant and encompass 3 to 5 acres of land.

VICINITY ZONING PATTERN:

North: R-1, Residential Single-Family District
South: CP-2, Planned Community Commercial District
East: NP-O, Planned Neighborhood Office District
West: CP-2, Planned Community Commercial District

VICINITY LAND USE PATTERN:

North: Single-family residential
South: Convenience store
East: Office
West: Retail

PRELIMINARY PLAN ANALYSIS

The application is for a preliminary plan to construct a new daycare in the Greystone South Plaza office and retail center located north of 87th Street and west of Gillette Street. Greystone South Plaza is a neighborhood center that originally began developing in the mid 1980's. The center has a main multi-tenant retail building and several out-parcel lots, with most buildings constructed in the 1980's and early 1990's. A convenience store and fuel station were built in 2014 and an auto parts store was built in 2018. The proposed daycare is to be built on an undeveloped lot.

SITE LAYOUT

The daycare is proposed on the lot at the northwesterly corner of the commercial center. The building is centrally located on the site with parking on the southerly side and outdoor play area for the children on the north. Access into the lot is provided from the private drive in the Greystone South Plaza center. The parking lot is an L-shaped lot. The long "leg" of the parking lot enters the site on the east and runs along the front of the building. The site plan showing the daycare (outlined in red) and the extent of Greystone South Plaza (outlined in pink) is shown in the following *Exhibit 1*.

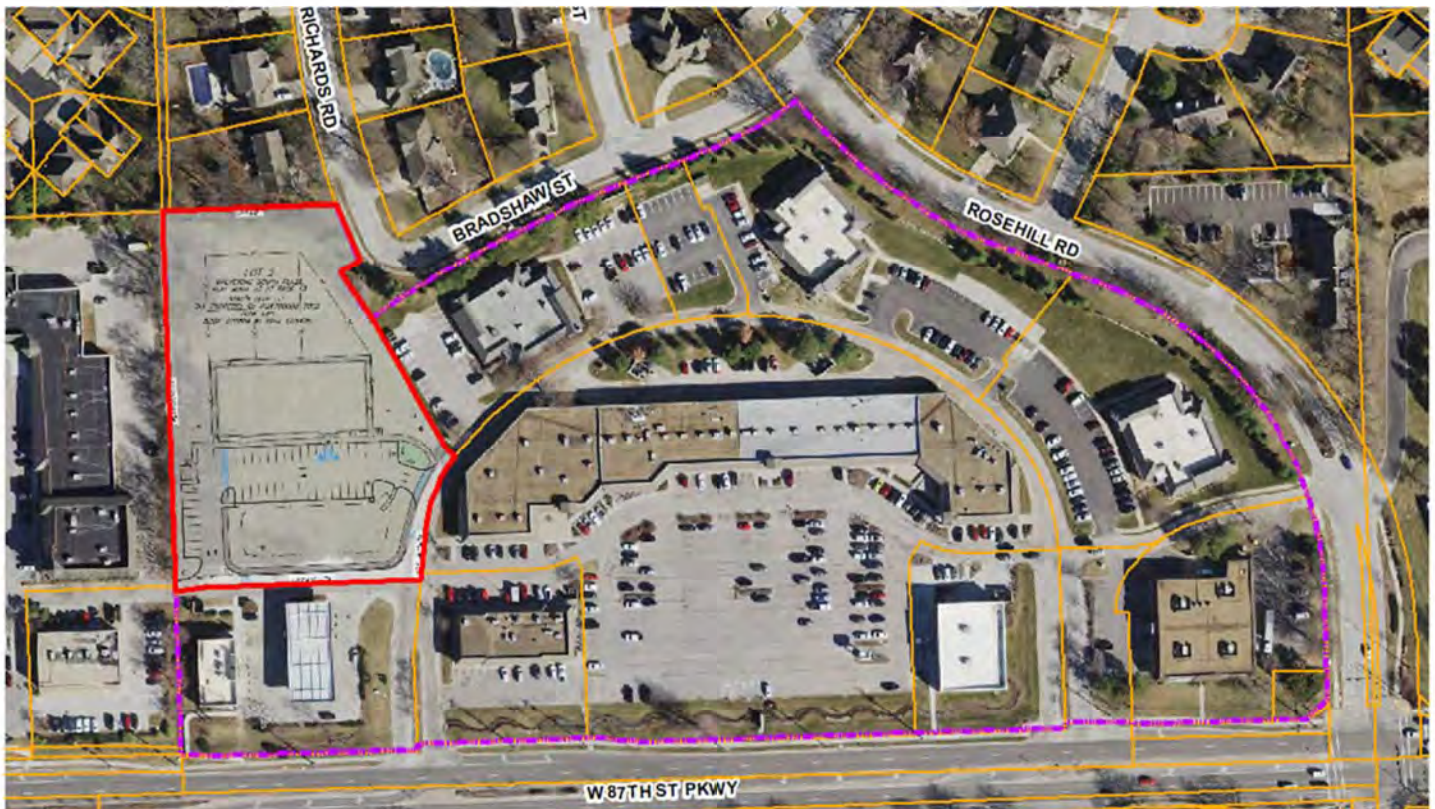


Exhibit 1

The parking lot turns to the south and the other “leg” connects to the access drive through the commercial center. The proposed site plan meets the parking requirement within the Unified Development Code (UDC) for a commercial daycare, which is shown in the following *Table 1*.

Use Type	UDC Requirement	Parking Required	Parking Provided
Daycare, Commercial	1 stall per 10-person capacity, and 1 stall per employee	48	49

Table 1

The site provides for pedestrian connectivity with new sidewalks along the access drive, into the parking lot and to the entrance to the building. The center has sidewalk connections through the out-parcels to the public sidewalk along 87th Street. The sidewalks follow a circuitous route because they have been introduced after the bulk of the development has been constructed. The sidewalks will provide a continual connection from the proposed daycare out to the sidewalk along 87th Street.

The daycare will serve up to 181 children from infant to pre-school age. The building is divided into several rooms for the different age groups. The play areas are separated into three playgrounds for the different age groups of the children. The fenced play area is 40 feet away for the north property line.

The site will have a pedestrian amenity feature with a paved patio space and benches at the easterly end of the parking lot. Bicycle racks are provided at the east side of the building to meet code requirements for bicycle parking.

The site slopes down from the north to the south. The lowest part of the site is at the southerly end. A stormwater treatment feature is located at this end of the site between the access drive and the parking lot. With respect to stormwater, the project will be picking up off-site water entering the site in the northeast portion of the site and direct piping it around the site so that it does not flow through the site or the site’s systems. The applicant proposes utilizing bioretention along with native vegetation to meet Lenexa’s stormwater management requirements. Staff is working with the applicant to finalize their preliminary stormwater study; however, based upon the information in said report along with discussions with the applicant’s engineer, Staff believes that the applicant intends to, and will be able to, meet the City’s requirements.

LANDSCAPE AND BUFFERS

The site is currently an undeveloped lot. A hedgerow of deciduous and evergreen trees is existing along the north and west property lines and partially along the northeasterly property line. The applicant is proposing to retain as many of the existing trees as possible. The existing landscaping can be credited toward the required landscaping for buffering between this commercial use and the single-family residential development to the north and the northeast. The adjacent development directly to the west, south, and the southeast are commercial uses and do not require a buffer per the *Land Use Intensity Buffer* requirement of [Section 4-1-D-2-N](#) of the UDC. The applicant will need to identify the types and sizes of the trees that are to be preserved to calculate the credit to be applied to the buffer requirement. A preliminary plan must show the specific quantities and types of landscaping. This information will be provided with the final plan submittal.

Additional landscaping will be installed around the building and parking area and along specific areas of the access drives. Landscaping is typically not installed along the sloped sides of the retention basin used for stormwater treatment. The required landscaping around the perimeter of the site can be strategically located in certain areas to accommodate both the required number of plantings and to provide for effective stormwater management.

ARCHITECTURAL COMPATIBILITY

The daycare is a rectangular one-story building. The building uses a random stacked stone masonry material, horizontal lap siding, and a shake shingle siding pattern. The roof is a hip roof with gable features at the main entrance and the side entrances. The stacked stone material continues around the base of the building at a wainscot height separated with a stone trim detail from the lap siding. The shake shingle siding is used at the top part of the building façade creating a bottom-middle-top character to the building design. The front elevation is shown in the following *Exhibit 2*.



Exhibit 2

The front of the building, which is the south facing façade, includes two offset elements. One offset feature is the main entrance into the building. The second feature is at the other end to balance the appearance of the building. The main entrance projects outward from the building façade providing a covered space to protect the visitors from the weather as they enter and exit the building. The element at the other end of the building has a more subtle offset from the building façade. The mechanical equipment is mounted on the roof of the building and will be set within a recessed space fully concealed from view.

The existing buildings use stacked and random stone, stucco siding with stained wood trim. The two most recently constructed buildings use brick with stucco accent materials with a parapet roof. The buildings do not have to exactly resemble one another in the center to create the desired character of the development.

SIGN PROGRAM

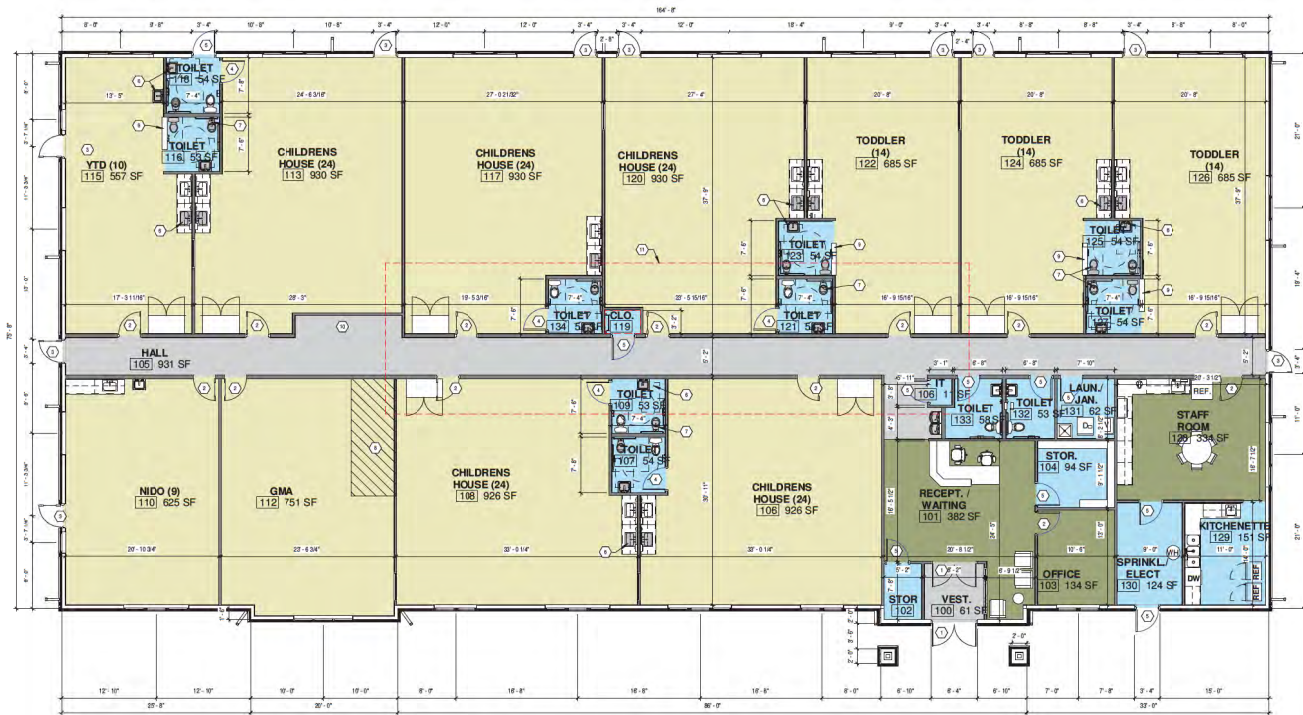
Greystone South Plaza has a sign criteria applicable to each site within the development. The criteria was revised to accommodate renovations to the multi-tenant building. The center now requires channel letter signs for all façade signs. Any proposed sign for the daycare will require a sign permit prior to the installation of the sign. A shared freestanding sign exists for the overall commercial center. Individual lots are not permitted their own freestanding sign.

INFORMATIONAL COMMENTS

The preliminary plan is scheduled to be considered by the Governing Body on September 20, 2022.

STAFF RECOMMENDATION

Staff recommends **APPROVAL** of the preliminary plan for a Commercial Daycare known as Higher Ground Education located north of 87th Street and west of Gillette Street in Greystone South Plaza.



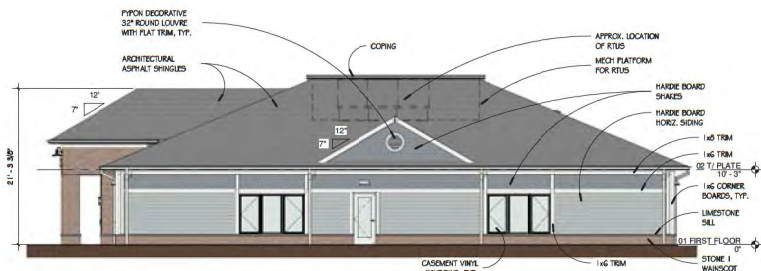
1 FIRST FLOOR PLAN
1/8" = 1'-0"

01 - CLASSROOM OCCUPANCY					
NAME	NO.	OCCUPANT LOAD FACTOR	ACTUAL # STUDENTS (ENROLLMENT)	ALLOWABLE OCCUPANT	REQUIRED AREA
CHILDRENS HOUSE (24)	106	35	926 SF	24	26.5
CHILDRENS HOUSE (24)	108	35	926 SF	24	26.5
NIDO (9)	110	35	625 SF	9	11.4
GMA	112	0	751 SF	0	0 SF
CHILDRENS HOUSE (24)	113	35	930 SF	24	26.6
YTD (10)	115	35	557 SF	10	15.9
CHILDRENS HOUSE (24)	117	35	930 SF	24	26.6
CHILDRENS HOUSE (24)	120	35	930 SF	24	26.6
TODDLER (14)	122	35	685 SF	14	19.6
TODDLER (14)	124	35	685 SF	14	19.6
TODDLER (14)	126	35	685 SF	14	19.6
TOTAL			5,630 SF	181	

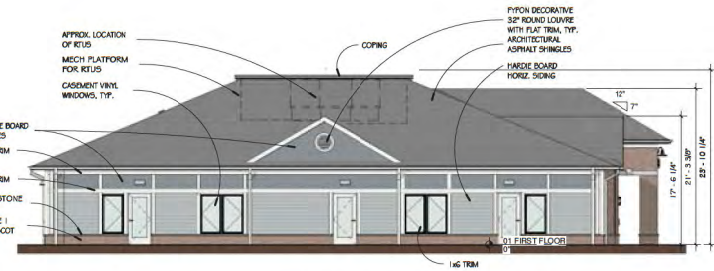
01 - Keynotes - Hex (SD Phase)	
NOTE	DESCRIPTION
1	STOREFRONT DOOR(S)
2	FULL HEIGHT, HALF LITE DOOR
3	FULL HEIGHT, FULL LITE DOOR
4	HALF HEIGHT DOOR
5	FULL HEIGHT DOOR
6	CHILD HEIGHT SINK, TYP.
7	CHILD HEIGHT TOILET, TYP.
8	CLIMBING WALL & MAT
9	HALF WALL
10	CANYALCOVE
11	RTU PLATFORM ABOVE



1 SOUTH ELEVATION
1/8" = 1'-0"



2 EAST ELEVATION
1/8" = 1'-0"



3 WEST ELEVATION
1/8" = 1'-0"



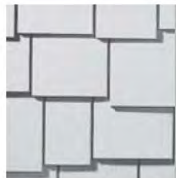
4 NORTH ELEVATION
1/8" = 1'-0"



ARCHITECTURAL SHINGLES:
CERTAINTED LANDMARK,
GEORGETOWN GRAY



STONE 1:
LAPAGE FOR RIVER DECORATIVE STONE
CUSTOM COUNTRY BLEND STONE



HARDIESHINGLE SIDING:
SHINGLE SIDING, TEXTURED
SEE HARDIE BOARD SHAKE PAINT FOR COLOR



HARDIE BOARD SHAKE PAINT:
SHERWIN WILLIAMS
CADET SW6145



HARDIEPLANK LAP SIDING:
LAP SIDING, TEXTURED
SEE HARDIE LAP SIDING PAINT FOR COLOR



HARDIE LAP SIDING PAINT:
SHERWIN WILLIAMS
SHIMONAX SILVER SW6223



BOARD & BATTEN LAP SIDING PAINT:
SHERWIN WILLIAMS
EXTRA WHITE SW7005

SD 6/22/22 (NFC)

ALLEN PEPA ARCHITECTS
INFO@ALLENPEPA.COM
TEL: (850) 579-1105
215 FULTON ST., GENEVA, IL 60134

GPC
GLOBAL POWER & CONSTRUCTION

WILLIAMS ENGINEERS, INC.
605 EAST 10TH AVE., SUITE 1010
LENEXA, KS 66042
WWW.WILLIAMS-ENGINEERS.COM
PHONE: (800) 627-6100
FAX: (913) 791-1100

HIGHER GROUND LENEXA
GREYSTONE PLAZA, LOT 2
LENEXA, KS

Schema Design: 6/22/22
Design Development:
Bidding:
Permit:
ISSUE DATE:
POST-BID/PERMIT REVISIONS:
No. Date Description
PROJECT NO.: 22-010
DRAWN BY: AK
CHECKED BY: EP
SHEET: 2 OF 2
EXTERIOR ELEVATIONS

A2-1

ALLEN-PEPA COPYRIGHT 6/22/2022 10:56:58 PM

REGULAR AGENDA**PUBLIC HEARING****5. Preliminary Plan for Higher Ground Education located approximately at 87th & Long Street within the CP-1, Planned Neighborhood commercial Zoning District. PL22-11P**

Consideration of a preliminary plan for the development of 2.49-acre commercial daycare.

APPLICANT PRESENTATION:

Chris Horney of Murphy Real Estate Services presented information about the proposed project. He noted that their company works with Higher Ground in 30 other locations. They work with the same contractor across the country. They are the largest private operator of private Montessori schools that serves ages 0-6 years. This specific brand is called Guidepost Montessori. They propose a 12,000 SF daycare on 2.4 acres. The hours of operation are from 7am-6pm Monday through Friday. There are no specific drop-off and pick-up times. Parents typically drop off between 7am -10am and pick up between 3pm and 6pm. There would be a maximum of 27 employees at peak time. He described the site layout and noted the building is centered on the site, the playground is to the north, and the parking lot is to the south. The berm and trees will not be disturbed. There will be improvements to redirect drainage away from the playground area. He spoke about the floor plan and the exterior elevations. The building includes Hardie siding and masonry. The fencing is a 6' tall black aluminum fence. They intend to use durable materials. He noted an existing Guidepost Montessori that they operate in Leawood, which was opened within an existing building.

STAFF PRESENTATION:

Dave Dalecky presented the Staff Report. He provided an overview of the site location and the surrounding zoning. He noted that the proposed daycare use is allowed in the CP-1 Zoning District. A map showing the nearby access points was displayed. He noted that the existing hedgerow will be counted toward the landscape buffer requirement. He talked about the one-story hip roof architecture and noted the trim elements and other features. The building will be compatible with other buildings within the commercial development. Staff recommends approval.

PLANNING COMMISSION DISCUSSION:

Chairman Burson asked if anyone wished to speak on this item. Hearing no comments from the public, Chairman Burson continued with discussion.

Commissioner Horine said the proposed use was a good use of the property.

Commissioner Harber asked if the streets nearby is public. Dave Dalecky said they are not public streets. Commissioner Harber said the private streets are not being maintained and need improvements, especially between Starbucks and Hy-Vee Gas. Dave Dalecky said Staff is aware and pursuing corrective measures.

Commissioner Woolf asked to clarify the signalized intersection areas. Dave Dalecky displayed the map. Tim Collins said that the staggered trips to the site will lessen the impact of the new trip generation.

Commissioner Katterhenry said it has a residential feel but also matches the Greystone commercial area.

Commissioner Handley said the drop-off and pick-up data is helpful. He asked what the gates are for. Applicant said that they are for required egress and access to the playground.

MOTION:

Chairman Burson entertained a motion to recommend **APPROVAL** of the preliminary plan for a Commercial Daycare known as Higher Ground Education located north of 87th Street and west of Gillette Street in Greystone South Plaza.

Moved by Commissioner Harber, seconded by Commissioner Macke, and carried by a unanimous voice vote.



**CITY COUNCIL
MEMORANDUM**

ITEM 3

SUBJECT: Resolution authorizing the Mayor to execute an encroachment agreement with Evergy Metro, Inc. for the 95th Street & Loiret Boulevard Intersection Improvement Project

CONTACT: Tim Green, Deputy Community Development Director

DATE: September 20, 2022

ACTION NEEDED:

Adopt a resolution authorizing the Mayor to execute an encroachment agreement with Evergy Metro, Inc. ("Evergy") for the 95th Street & Loiret Boulevard Intersection Improvement Project ("Project").

PROJECT BACKGROUND/DESCRIPTION:

Resolution 2022-014 was adopted on March 1, 2022, which authorized the Mayor to execute the encroachment agreement. Since execution, Evergy requested a sidewalk re-alignment to accommodate future transmission pole replacement. The revised encroachment agreement terms are the same with the only revision being the exhibit. Improvements related to the encroachment agreement include sidewalks and associated retaining walls. The Project will:

- Install a new traffic signal with ADA ramps;
- Install pedestrian signals and ADA push buttons on all approaches;
- Construct a westbound right-turn lane on 95th Street;
- Construct a southbound right-turn lane on Loiret Boulevard;
- Construct an extension of the existing northbound right-turn lane on Loiret Boulevard; and
- Construct a trail along the east side of Loiret Boulevard from 95th Street to the Electric Park entrance.

STAFF RECOMMENDATION:

Adoption of the resolution.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

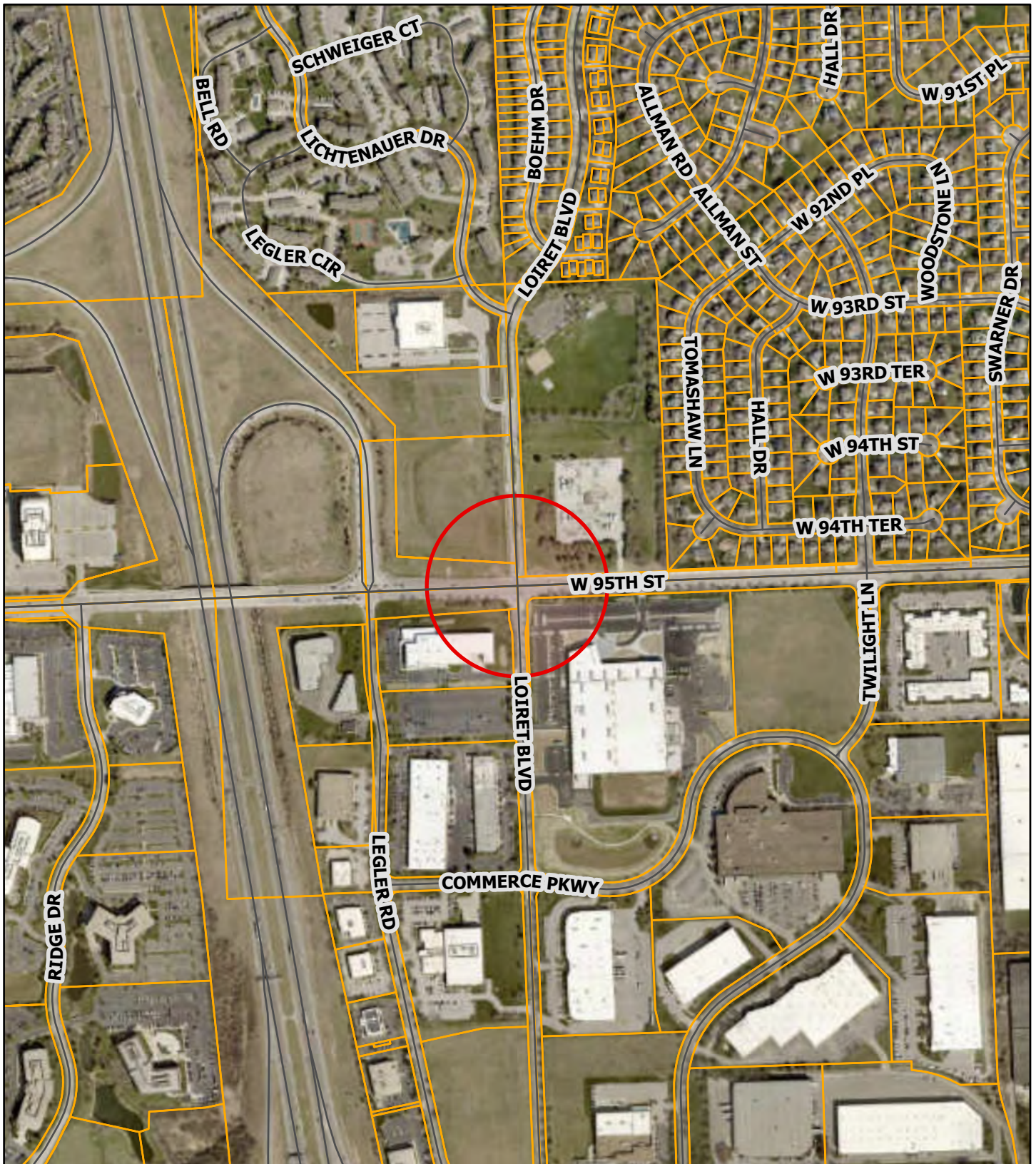
Integrated Infrastructure & Transportation

Guiding Principles

Strategic Community Investment

ATTACHMENTS

1. Map
2. Resolution
3. Agreement located in the Appendix



Data Source: City of Lenexa and Johnson County Kansas
For further information, please call 913-477-7500

95th St. & Loiret Blvd. Intersection Improvement Project



0 300 600 1,200
Feet

RESOLUTION NO. 2022 - _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN ENCROACHMENT AGREEMENT BETWEEN EVERGY (“EVERGY”) AND THE CITY OF LENEXA FOR WORK ASSOCIATED WITH THE 95TH STREET AND LOIRET BOULEVARD INTERSECTION IMPROVEMENT PROJECT.

WHEREAS, Evergy is the owner of an easement containing electrical facilities located near the intersection of 95th Street and Loiret Boulevard; and

WHEREAS, as part of the construction of the 95th Street and Loiret Boulevard Intersection Improvement Project the City needs to construct sidewalks and associated retaining walls in Evergy’s easement; and

WHEREAS, The City and Evergy have reached agreement regarding the conditions upon which Evergy will permit encroachment into its easement for said construction and desire to enter into an encroachment agreement to evidence those understandings.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:

SECTION ONE: The City of Lenexa, Kansas, a municipal corporation, does hereby authorize the Mayor to execute an Encroachment Agreement with Evergy, in substantially the same form as attached hereto as Exhibit A and incorporated herein by reference.

SECTION TWO: This Resolution shall take effect immediately after its adoption.

ADOPTED by the Lenexa City Council this 20th day of September, 2022.

SIGNED by the Mayor this 20th day of September, 2022.

CITY OF LENEXA, KANSAS

Michael A. Boehm, Mayor

Attest:

Jennifer Martin, City Clerk

Approved As To Form:

Steven D. Shrout, Assistant City Attorney



**CITY COUNCIL
MEMORANDUM**

ITEM 4

SUBJECT: Ordinance granting a telecommunications franchise to Google Fiber Kansas, LLC

CONTACT: Sean McLaughlin, City Attorney

DATE: September 20, 2022

ACTION NEEDED:

Pass an ordinance granting a telecommunications franchise to Google Fiber Kansas, LLC ("Google").

PROJECT BACKGROUND/DESCRIPTION:

In September 2013, the City and Google entered into: (1) a Network Cooperation Services Agreement, and (2) a Structure Attachment and Conduit Occupancy Agreement to allow Google to begin construction of its telecommunications infrastructure in the city. Subsequently, Google began to provide telecommunication services, including broadband, voice, and video services to city residents.

To date, Google has operated its facilities in the right-of-way under the authority of a State Video Franchise and a corresponding Right-of-Way Agreement with the City in accordance with Kansas state law. In early 2022, Google notified the City that it was going to discontinue its video service, but that it would continue to provide broadband and voice services. With the discontinuation of its State Video Franchise, Google needs City authorization to maintain its facilities in the right-of-way. The proposed franchise provides this authorization and contains the necessary provisions typically included in the City's franchises.

Under the franchise, Google agrees to: abide by the City's right-of-way ordinance and permit requirements; submit a bond; maintain insurance; and indemnify the City. The term of the franchise provides for an initial 10-year term with two renewals up to five years each for a total term of 20 years. Both Overland Park and Leawood have approved similar agreements with Google and it is expected that the other Johnson County cities and the Unified Government will offer Google very similar franchises in the upcoming future.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

Google will pay the City a franchise fee of 2% of its broadband services. This is less than the City's standard 5% franchise fee, but the City's current franchise fee with Google and other providers only covers video services offered by Google and does not include other services, including broadband. As Google reduces and eventually eliminates video services in favor of broadband, the City's 5% franchise fee would eventually be eliminated. In the proposed Google franchise, the 2% franchise fee will now include broadband services, which are expected to increase and staff's review indicates the expected franchise fees should be consistent and comparable with the amount of the video service fee that Google has paid the City over the past several years.

STAFF RECOMMENDATION:

Passage of the ordinance.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

Integrated Infrastructure & Transportation

Guiding Principles

Strategic Community Investment

ATTACHMENTS

1. Ordinance

ORDINANCE NO. _____**AN ORDINANCE GRANTING TO GOOGLE FIBER KANSAS, LLC, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN COMMUNICATIONS SERVICE FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF LENEXA, KANSAS AND PRESCRIBING THE TERMS THEREOF.**

WHEREAS, the City of Lenexa, Kansas, a city organized and existing under the laws of the State of Kansas (the “**City**”), has jurisdiction over the use of the public rights-of-way in the City (“**Public ROW**”); and

WHEREAS, Google Fiber Kansas, LLC, a Kansas limited liability company, and its direct parent, and its direct parent’s subsidiaries, successors, or assigns (“**Franchisee**”), owns, maintains, operates, and controls a fiber optic infrastructure network in Public ROW (“**Network**”); and

WHEREAS, the Network consists of equipment and facilities that may include aerial or underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities (“**Network Facilities**”); and

WHEREAS, prior to the Effective Date (as defined herein), Franchisee operated the Network pursuant to an appropriate state video services franchise and Franchisee desires to continue to use and occupy Public ROW in order to install, operate, and maintain its Network for the purposes of offering certain communications services (“**Services**”), consisting of broadband Internet access service as defined in 47 C.F.R. § 8.1(b) (“**Broadband Internet Services**”) and Voice over Internet Protocol services (“**VOIP Services**”) to residents and businesses in the City (“**Customers**”), but excluding multichannel video programming services that would be subject to a video services franchise under K.S.A. 12-2021 et seq. and telecommunications services as defined in 47 C.F.R. § 153(53), K.S.A. 12-2001(c)(9) or K.S.A. 17-1902(a)(3); and

WHEREAS, in order to facilitate Franchisee’s desire, and pursuant to K.S.A. 12-2001 and its home rule powers, the City is adopting this ordinance granting Franchisee the right to install, operate and maintain its Network in the Public ROW for the provision of Services to its Customers (this “**Contract Franchise**”) and, upon acceptance by Franchisee, this Contract Franchise shall act as a binding agreement between the parties.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LENEXA:

SECTION 1. Grant and Permission to Use and Occupy.

- 1.1. Permission to Use and Occupy Public ROW. Upon the Commencement Date, the City grants Franchisee permission to use and occupy the Public ROW for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the “**Work**”) in order to provide Services to Customers. This Contract Franchise does not authorize Franchisee to use any property other than the Public ROW as agreed herein (e.g., any City parkland or other recreational property, any governmental office property, any public safety property, or any public works facility). Franchisee’s use of any other City property, including poles and conduits, will be governed under a separate agreement regarding that use.

Franchisee shall not provide any additional services (other than the Services defined herein) for which a franchise or license is required by the City without first obtaining a separate

franchise or license or amending this Contract Franchise, and Franchisee shall not knowingly allow the use of its Network Facilities by any third party in violation of any federal, state or local law.

- 1.2. Commencement Date. This Contract Franchise will be effective upon the later of the date on which (a) (i) Franchisee has discontinued provision of facilities-based linear video services to Customers, (ii) Franchisee has taken all actions necessary under its state video services franchise to terminate such state franchise and such state franchise has terminated, and (iii) Franchisee has notified the City of (i) and (ii); or (b) the Effective Date ("**License Commencement Date**").
- 1.3. Subject to State and Local Law. This Contract Franchise is subject to the City's valid authority under state and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Contract Franchise.
- 1.4. Subject to City's Right to Use Public ROW. This Contract Franchise is subject and subordinate to the City's prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.
- 1.5. Subject to Pre-Existing Property Interests. The City's grant and permission to use and occupy the Public ROW is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Franchisee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.
- 1.6. No Grant of Property Interest. This Contract Franchise does not grant or convey any property interest, or any title, equitable or legal, in the Public ROW. Additionally, this Contract Franchise does not grant the right to use any facilities or property owned or controlled by a third-party without the consent of such third-party; and Franchisee is responsible for obtaining appropriate access or attachment agreements before locating its Network Facilities on property or facilities owned or controlled by a third-party.
- 1.7. Non-Exclusive. This Contract Franchise is not exclusive. The City expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("**Person**"), as well as the right in its own name as a city, to use Public ROW for similar or different purposes allowed Franchisee under this Contract Franchise.
- 1.8. Reservation of Right. In entering into this Contract Franchise, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas or applicable federal laws and regulations as the same may be amended, its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

SECTION 2. Franchisee's Obligations

- 2.1. Use of Public ROW. Franchisee's use of the Public ROW shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public ROW; provided that any such exercise must be

competitively neutral and may not be unreasonable or discriminatory. Franchisee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public ROW or otherwise relating to Franchisee's Network Facilities.

- 2.2. Individual Permits Required. Franchisee will obtain the City's approval of required individual encroachment, construction, and other necessary permits before placing its Network Facilities in the Public ROW or other property of the City as authorized. Franchisee will pay all lawful processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by the City.
- 2.3. Franchisee's Sole Cost and Expense. Franchisee will perform the Work at its sole cost and expense.
- 2.4. Compliance with Laws. Franchisee will comply with all applicable laws and regulations when performing the Work. Franchisee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by the City. Franchisee shall also participate in the Kansas One Call utility location program. To the extent applicable, Franchisee shall obtain any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the FCC or the Kansas Corporation Commission (KCC).
- 2.5. Reasonable Care. Franchisee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater. Franchisee's Network Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use of such public ways by other utilities.
- 2.6. No Nuisance. Franchisee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.
- 2.7. Repair. Franchisee will promptly repair any damage to the Public ROW, City property, or private property: (i) if such damage is directly caused by Franchisee's Work (including Work by an Authorized Individual) and no other Person is responsible for the damage (e.g., where a Person other than Franchisee or its Authorized Individual fails to accurately or timely locate its underground facilities as required by applicable law); or (ii) as otherwise might be required under law. Franchisee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Franchisee's obligation under this Section 2.7 will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 2.8. As-Built Drawings and Maps. Franchisee will maintain accurate as-built drawings and maps of its Network Facilities located in the City and will provide them to the City upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections.
- 2.9. Network Design. Nothing in this Contract Franchise requires Franchisee to build to all areas of the City, and Franchisee retains the discretion to determine the scope, location, and timing of the design and construction of the Network.
- 2.10. Protection of Facilities. It shall be the responsibility of Franchisee to take adequate measures to protect and defend its Network Facilities in the Public ROW from harm or damage.

SECTION 3. City's Obligations.

- 3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of the City or its residents, the City may remove or relocate the applicable portions of the Network Facilities without prior notice to Franchisee. The City will, however, make best efforts to provide prior notice to Franchisee before making an emergency removal or relocation. In any event, the City will promptly provide to Franchisee a written description of any emergency removals or relocations of Franchisee's Network Facilities. Franchisee will reimburse the City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by the City, the direct cause of which was Franchisee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Franchisee's obligation to reimburse the City under this section will be separate from Franchisee's obligation to pay the Franchise Fee (as defined below).
- 3.2. Relocation to Accommodate Governmental Purposes. If Franchisee's then-existing Network Facilities would interfere with the City's planned use of the Public ROW or other City property for a legitimate governmental purpose, such as the construction, installation, repair, maintenance, or operation of a new water, sewer, or storm drain line, or a public road, curb, gutter, sidewalk, park, or recreational facility, Franchisee will, upon written notice from the City, relocate its Network Facilities at Franchisee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the City's governmental purpose and Franchisee's interest in maintaining the integrity and stability of its Network. Franchisee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances.
- 3.3. Relocation to Accommodate Non-Governmental Purposes. If Franchisee's then-existing Network Facilities would interfere with (a) the City's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (b) a third-party's use of the Public ROW, Franchisee will not be required to bear the cost to relocate or adjust its Network Facilities and shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment.
- 3.4. Non-Discrimination. The City will at all times treat Franchisee and provide access to the Public ROW in a non-discriminatory manner as compared to other similar non-incumbent holders of local or state franchise authority offering wired facilities-based Broadband Internet Services.
- 3.5. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Contract Franchise, Franchisee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by the City.

SECTION 4. Contractors and Subcontractors.

- 4.1. Use of Contractors and Subcontractors. Franchisee may retain contractors and subcontractors to perform the Work on Franchisee's behalf; provided, Franchisee shall be responsible for its contractors and subcontractors including responsible for their actions or failures to act, and Franchisee shall ensure its contractors and subcontractors adhere to the requirements of this Contract Franchise and any applicable laws. Accordingly, when and if

applicable, references in this Contract Franchise to “Franchisee” shall include and apply to Franchisee’s contractors and subcontractors.

- 4.2. Contractors to be Licensed. Franchisee’s contractors and subcontractors used for the Work will be properly licensed under applicable law.
- 4.3. Authorized Individuals. Franchisee’s contractors and subcontractors may submit individual permit applications to the City on Franchisee’s behalf, so long as the permit applications are signed by individuals that Franchisee has authorized to act on its behalf via a letter of authorization provided to the City in the form attached as **Exhibit A (“Authorized Individuals”)**. The City will accept permit applications under this Contract Franchise submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Franchisee under this Contract Franchise.

SECTION 5. Franchise Fee. Franchisee will pay the City a fee (“**Franchise Fee**”) to compensate the City for Franchisee’s use and occupancy of Public ROW pursuant to this Contract Franchise. Franchisee and the City acknowledge and agree that the Franchise Fee provides fair and reasonable compensation for Franchisee’s use and occupancy of Public ROW and other City property as authorized, and shall in no way be deemed a tax of any kind. The Franchise Fee will begin accruing on the License Commencement Date (as defined herein) and will be calculated as set forth in Section 5.1. Subject to any applicable statute of limitations, Franchisee’s payment obligations as of expiration or termination of Contract Franchise hereunder shall survive the expiration or termination of this Contract Franchise.

- 5.1. Franchise Fee. Franchisee will pay the City two percent (2%) (the “**Revenue Percentage**”) of Gross Revenues for a calendar quarter, remitted within forty five (45) days of the end of each calendar quarter, commencing on the License Commencement Date. The payment will be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by the City to determine the accuracy of the payment. Subject to any applicable statute of limitations, Franchisee’s payment obligations hereunder shall survive the expiration or termination of this Contract Franchise.

- 5.1.1. As used herein, “**Gross Revenues**” means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Franchisee from Customers for Broadband Internet Services that are provided to Customers through Network Facilities located at least in part in Public ROW.

- 5.1.2. Gross Revenues do not include:

- (i) any revenue not actually received, even if billed, such as bad debt;
- (ii) refunds, rebates, or discounts made to Customers, or the City;
- (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit a franchise or similar fee to the City from the purchaser’s customer;
- (iv) revenue derived from the provision of Broadband Internet Services to Customers where none of the Network Facilities used to provide such Broadband Internet Services are located in Public ROW;
- (v) any forgone revenue from Franchisee’s provision of Broadband Internet Services to Customers at no charge if required by state law;
- (vi) any revenue derived from advertising;

- (vii) any revenue derived from VOIP Services;
- (viii) any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the Broadband Internet Services;
- (ix) any revenue derived from referral or marketing agreements with third party providers of online services which Franchisee may make available to Customers;
- (x) any tax of general applicability imposed upon Franchisee or its Customers by the City or by any state, federal, or any other governmental entity, and required to be collected by Franchisee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Contract Franchise);
- (xi) any forgone revenue from Franchisee's provision, in Franchisee's discretion, of free or reduced cost Broadband Internet Services to any Person, including without limitation employees of Franchisee; provided, however, that any forgone revenue which Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and
- (xii) sales of capital assets or sales of surplus equipment.

5.2. Pass Through. To the extent allowed by either federal or state law, Franchisee may identify and collect, as a separate item on the regular bill of any Customer whose Broadband Internet Services are provided by Network Facilities located at least in part in Public ROW, that Customer's pro rata amount of the Franchise Fee.

5.3. Interest on Late Payments. Any payments that are due and payable under this Contract Franchise that are not received within thirty (30) days from the specified due date will be assessed interest at an annual rate equal to the applicable statutory interest rate in effect upon the due date.

5.4. No Accord. No acceptance by the City of any Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Franchise Fee payment be construed as a release or any claim of the City.

5.5. Audit. The City shall have the right to examine, upon 30-days written notice to Franchisee and no more often than once per calendar year, those records necessary to verify the correctness of the Franchise Fee paid by Franchisee.

5.6. Change in Franchise Fee. The parties may timely negotiate, in good faith and in conformance with applicable law, a potential change to either the Franchise Fee or the Revenue Percentage upon any of the following events:

5.6.1. A request by either party to reduce or increase the Franchise Fee.

5.6.2. A change in applicable law.

5.6.3. If during the term of this the Contract Franchise the City subsequently enters into a franchise with another comparable provider granting said provider the right to use and occupy the Public ROW for the provision of comparable wired facilities-based Broadband Internet Services for a fee more favorable than the Franchise Fee set forth in Section

5.1, then the City and Franchisee shall negotiate a lower Franchise Fee that is comparable to said other provider.

SECTION 6. Defense and Indemnity.

- 6.1. Franchisee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Franchisee, any agent, officer, director, representative, employee or subcontractor of Franchisee, while installing, repairing or maintaining Facilities in the Public ROW.
- 6.2. The indemnity provided by this Section 6 does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Franchisee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. Likewise, the indemnity provided by this Section 6 does not apply to any liability resulting from the negligence of any third party not associated with Franchisee, or for any portion of any harm caused by the same. This section is solely for the benefit of the City and Franchisee and does not create or grant any rights, contractual or otherwise, to any other person or entity.
- 6.3. Franchisee or the City shall promptly advise the other in writing of any known claim or demand against Franchisee or the City relating to or arising out of Franchisee's activities in the Public ROW.

SECTION 7. Limitation of Liability. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS CONTRACT FRANCHISE. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE LAW.

SECTION 8. Performance Bond. If Franchisee has not previously provided the City with a performance bond under any prior agreement, Franchisee will, promptly after the License Commencement Date, provide the City with a performance bond in the amount of fifty thousand dollars (\$50,000) naming the City as obligee and guaranteeing Franchisee's faithful performance of its obligations under this Contract Franchise. The performance bond will remain in full force during the Term of this Contract Franchise. The bond must be with good and sufficient sureties, issued by a surety authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. At Franchisee's election, any performance bond previously provided by Franchisee to the City and associated with its state or local video service franchise may be applied to its obligations, in whole or in part, under this paragraph.

SECTION 9. Insurance.

- 9.1. Franchisee will carry and maintain:
 - 9.1.1. Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$1,000,000 for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance

endorsement; and (b) CGL policy will include an endorsement which names the City, its employees, and officers as additional insureds.

9.1.2. Workers' Compensation insurance with policy limits not less than the Kansas Statutory requirements.

9.1.3. Business Automobile Policy covering all owned, hired and nonowned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

9.2. All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Contract Franchise will be mailed directly to the City's insurance compliance representative upon the City's written request.

SECTION 10. **Term.**

10.1. This Contract Franchise is effective on the later of (a) the date the last party to sign executes this Contract Franchise and (b) the date on which any implementing ordinance becomes effective in accordance with its terms and state law ("**Effective Date**"). The Contract Franchise will expire automatically on the tenth anniversary of the License Commencement Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. Thereafter, the Contract Franchise will automatically renew for two (2) successive 5-year terms (each a "**Renewal Term**") unless a party provides at least six (6) months' prior written notice to the other party of its intent not to renew.

10.2. In the event the parties are actively negotiating in good faith a new contract franchise or an amendment to this Contract Franchise upon the termination date of this Contract Franchise, the parties by written mutual agreement may extend the termination date of this Contract Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract Franchise and not as a new franchise or amendment.

10.3. Upon written request of either the City or Franchisee, this Contract Franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Franchisee, including but not limited to the scope of the Contract Franchise granted to Franchisee or the compensation to be received by the City hereunder.

SECTION 11. **Termination.**

11.1. Termination by City. The City may terminate this Contract Franchise if Franchisee is in material breach of this Contract Franchise, provided that the City must first provide Franchisee written notice of the breach and one hundred twenty (120) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Franchisee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law.

SECTION 12. Assignment. Except as set forth below, Franchisee shall not assign or transfer its rights or obligations under this Contract Franchise, in whole or part, to a third party, without the written consent of the City. Any agreed upon assignee will take the place of the Franchisee, and the Franchisee will be released from all of its rights and obligations upon the completion of the

requirements of Subsection 12.3 below; provided, however, such release shall not include any liability or obligations under the Contract Franchise, whether of indemnity or otherwise, which may constitute a breach of the Contract Franchise and have accrued prior to the date of such assignment.

12.1. Notwithstanding the foregoing, Franchisee may at any time, on written notice to the City, assign this Contract Franchise or any or all of its rights and obligations under this Contract Franchise:

12.1.1. to any Affiliate (as defined below) of Franchisee;

12.1.2. to any successor in interest of Franchisee's business operations in the City in connection with any merger, acquisition, or similar transaction if Franchisee reasonably determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Contract Franchise; or

12.1.3. to any purchaser of all or substantially all of Franchisee's Network Facilities in the City if Franchisee reasonably determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Contract Franchise.

12.2. Following any assignment of this Contract Franchise to an Affiliate, Franchisee will remain responsible for such Affiliate's performance under the terms of this Contract Franchise. For purposes of this section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Franchisee; and (b) "control" means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

12.3. Franchisee shall: furnish the City with written notice of the assignment/transfer; provide a point of contact for the assignee; and advise the City of the effective date of the assignment. Additionally, Franchisee's obligations under this Contract Franchise with regard to indemnity, bond and insurance shall continue until the assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the assignment.

SECTION 13. Notice and Emergency Contact.

13.1. Emergency Contact. Franchisee shall maintain with the City a point of contact who shall be available to act on behalf of Franchisee in the event of an emergency. Franchisee shall provide the City's ROW Coordinator and City Engineer with said contact's name, address, telephone number and e-mail address.

Emergency notice by the City to Franchisee may be made by telephone to Franchisee's Emergency Contact at (866) 954-1572 or by email to gfiber-noc-leads@google.com.

(Or to replacement Emergency Contact that is later designated by Franchisee in writing.)

Emergency notice by Franchisee to the City may be made by telephone to the City's ROW Supervisor at (913) 233-9530. If the City's ROW Coordinator is not available, then contact the City Engineer or Public Works Director.

(Or to replacement Emergency Contact that is later designated by the City in writing.)

- 13.2. Notice.** All other notices related to this Contract Franchise will be in writing and sent, if to Franchisee to the email addresses set forth below, and if to the City to the address set forth below. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

Franchisee's e-mail address for notice is: googlefibernotices@google.com, with a copy to legal-notices@google.com.

(Or to replacement Notice contact that is later designated by Franchisee in writing.)

City's address for notice is: City of Lenexa, 17101 W. 87th Street Pkwy, Lenexa, KS 66219, Attn: City Clerk, with a copy to City of Lenexa, 17101 W. 87th Street Pkwy, Lenexa, KS 66219, Attn: City Attorney.

(Or to replacement Notice contact that is later designated by the City in writing.)

SECTION 14. General Provisions. This Contract Franchise is governed by the laws of the state where the City is located (Kansas). Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. The failure of either party to insist upon the strict performance of any one or more terms or provisions of this Contract Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. This Contract Franchise sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Contract Franchise, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Contract Franchise in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Contract Franchise agrees that Franchisee may use electronic signatures. If any clause, sentence, or section of this Contract Franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Franchisee may elect to declare the entire Contract Franchise is invalidated if the portion declared invalid is, in the judgment of the City or Franchisee, an essential part of the Contract Franchise.

SECTION 15. Acceptance of Terms and Effective Date. This Contract Franchise shall take effect and be in force from and after (i) its passage and approval by the City, (ii) written acceptance by Franchisee, and (iii) publication in the official city newspaper in accordance with Statute (the "**Effective Date**"). Franchisee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Franchisee. In accordance with Kansas Statute, Franchisee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

PASSED by the City Council this ____th day of ____, 2022.

APPROVED by the Mayor this th day of _____, 2022.

CITY OF LENEXA, KANSAS

Michael A. Boehm, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Martin, City Clerk

Sean McLaughlin, City Attorney

ACCEPTANCE OF FRANCHISE ORDINANCE

Google Fiber Kansas, LLC for itself, its successors and assigns, hereby accepts the terms and conditions of the Ordinance and all rights and privileges therein granted, adopted by the Governing Body of the City of Lenexa, Kansas, on the ____ day of _____, 2022, designated as Ordinance No. _____, and entitled:

AN ORDINANCE GRANTING TO GOOGLE FIBER KANSAS, LLC, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN COMMUNICATIONS SERVICE FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF LENEXA, KANSAS AND PRESCRIBING THE TERMS THEREOF.

This acceptance is executed and filed as required in Section 15 of said Ordinance, and certifies Grantee's agreement to all the terms and conditions of said Ordinance.

Dated this ____ day of _____, 2022.

By: _____

(Signature)

(Printed Name)

(Title)

State of Kansas
County of Johnson
City of Lenexa

I, Jennifer Martin, City Clerk of the City of Lenexa, Kansas, do hereby certify that the foregoing acceptance of Ordinance No. _____ of the City of Lenexa was filed in the office of the Clerk of City on the ____ day of _____, 2021, and is now recorded among the original records thereof, and that I am the keeper of the same.

Witness my hand and the official seal of said City, this ____ day of _____, 2022.

Jennifer Martin, City Clerk

(Seal)



**EXHIBIT A
FORM OF LETTER OF AUTHORIZATION**

[Franchisee LETTERHEAD]

[Date]

Via Email ([Email Address])

Lenexa

[Addressee]

[Address]

Re: [Amended] Letter of Authorization

Dear [Name],

In accordance with Section 4.3 of the Contract Franchise dated [redacted] between **the City of Lenexa, Kansas** and **Google Fiber Kansas, LLC** ("**Google Fiber**"), Google Fiber hereby designates the following Authorized Individuals (as that term is defined in the Contract Franchise), who may submit and sign permit applications and other submissions to the City on behalf of Google Fiber. [If applicable: This letter amends and supersedes the Letter of Authorization dated _____.]

[Insert name and title for each Authorized Individual, including any Authorized Individual previously named and whose authority continues. Strike through the names of any individuals who are no longer authorized, if any.]

1. [Name, Title]
2. [Name, Title]
3. [Name, Title (previously authorized, authorization continues)]
4. ~~[Name, Title (authorization withdrawn)]~~

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective 24 hours after receipt by the City.

Kind regards,

[Name]

Manager, **Google Fiber Kansas, LLC**



**CITY COUNCIL
MEMORANDUM**

ITEM 5

SUBJECT: Ordinance granting a telecommunications franchise to Cox Communications Kansas, LLC
CONTACT: Sean McLaughlin, City Attorney
DATE: September 20, 2022

ACTION NEEDED:

Pass an ordinance granting a telecommunications franchise to Cox Communications Kansas, LLC ("Cox").

PROJECT BACKGROUND/DESCRIPTION:

This is a franchise renewal permitting Cox to continue to construct, operate, and maintain a telecommunications system within the city. This franchise ordinance is substantially similar to Cox's previous franchise, as well as the City's current franchises with other telecommunication entities.

The franchise provides that any use of the right-of-way by Cox is subordinate to the City's health, safety, and welfare requirements and regulations, including the City's right-of-way management code. The franchise does not include the right to use any other City-owned facilities, parkland, or property. Pursuant to the franchise, Cox is required to maintain sufficient workers' compensation and general liability insurance or demonstrate to the City that it is self-insured and able to provide sufficient coverage to protect the City from any claims for personal injury or property damage occasioned by Cox.

Finally, the franchise agreement contains a provision allowing for renegotiation upon the occurrence of certain events including but not limited to change in law, regulation, or other unanticipated material changes. The franchise agreement will become effective on September 28, 2022. The existing Cox franchise (Ordinance 5476) will be repealed upon the effective date of this ordinance. The franchise is for a two-year term with up to four automatic renewal terms of two years each for a total of 10 years.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

The City receives 5% of the gross receipts for certain telecommunication services that Cox collects within the city.

STAFF RECOMMENDATION:

Passage of the ordinance.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

Integrated Infrastructure & Transportation

Guiding Principles

Strategic Community Investment

ATTACHMENTS

1. Ordinance

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO COX COMMUNICATIONS KANSAS, LLC ("GRANTEE"), A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF LENEXA, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE AND REPEALING ORDINANCE NO. 5476.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS ("CITY"): :

SECTION 1. DEFINITIONS.

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
- b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(3), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
- d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.

- e. "City" - means the City of Lenexa, Kansas.
- f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.
- g. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.
- h. "Grantee" - means Cox Communications Kansas, LLC, a telecommunications local exchange service provider providing, or intending to provide local exchange service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
- i. "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee's Facilities to provide services described in Sections (1) through (6) . All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- j. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.
- k. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include

the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

- l. "Telecommunications local exchange service provider" – means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187 and amendments thereto, which does, or in good faith intends to, provide local exchange service.
- m. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 2. GRANT OF CONTRACT FRANCHISE.

- a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.
- b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:
 - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
 - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
 - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any

- necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).
- d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
 - e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

- a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance Relating to Managing the Use and Excavation of the Public Right-of-way of the City of Lenexa, Kansas, codified at Article 4-6-I of the Lenexa City Code, and amendments thereto.
- c. Grantee shall participate in the Kansas One Call utility location program.

SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed \$2.00 per Access line per month. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.
- b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.
- c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement showing the manner in which the franchise fee was calculated.
- e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.
- f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.
- g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of one thousand Dollars (\$1,000). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

- h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.
- i. Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter into a contract franchise ordinance.

SECTION 5. INDEMNITY AND HOLD HARMLESS.

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage by its negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence or willful misconduct of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND

- a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:
 - (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
 - (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.
- b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars (\$1,000,000) per occurrence and two million dollars (2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.
- c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
- d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond or irrevocable letter of credit in the amount of \$20,000 payable

to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The letter of credit must be from a recognized financial institution acceptable to the City, on terms and in a form reasonably satisfactory to the City. The performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and reasonably satisfactory to the City Attorney in form and substance. If after Grantee's initial installation Grantee expands its telecommunications network in the City's right-of-way, the City, at its reasonable discretion, upon thirty (30) days prior notice, may require Grantee to increase the amount of the performance bond or letter of credit. Such increase shall not exceed a total of \$50,000.

SECTION 7. REVOCATION AND TERMINATION.

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

SECTION 8. RESERVATION OF RIGHTS.

- a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting their consent hereunder, neither the City nor the Grantee do in any manner waive their regulatory or other rights and powers under and by virtue of the laws of the State of Kansas, as they currently stand or as the same may be amended, and neither party waives any of their rights under the Constitution of the State of Kansas, nor any of their rights and powers under or by virtue of present or future ordinances of the City. The City explicitly does not waive its Home Rule powers under the Constitution of the State of Kansas.
- c. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise), and/or rulings.

SECTION 9. FAILURE TO ENFORCE.

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

SECTION 10. TERM AND TERMINATION DATE.

- a. This Contract franchise shall be effective for a two-year term beginning on the effective date of this Contract franchise. Thereafter, this Contract franchise will automatically renew for up to four additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

- b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.
- c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.
- d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.
- e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

SECTION 11. POINT OF CONTACT AND NOTICES

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:

Grantee:

The City of Lenexa, Kansas
17101 W. 87th Street Parkway
Lenexa, KS 66219

Attn: City Clerk
(913) 477-7504 fax

With a copy to:

City Attorney
The City of Lenexa, Kansas
17101 W. 87th Street Parkway
Lenexa, KS 66219
(913) 477-7639

Cox Communications
901 S. George Washington Blvd.,
Wichita, KS 67211

Attn: Director of Government Affairs
megan.bottenberg@cox.com

With a copy to:

Cox Communications
Attn: VP of Government Affairs
6205-B Peachtree-Dunwoody Rd.
Atlanta, GA 30328

or to replacement addresses that may be later designed in writing.

SECTION 12. TRANSFER AND ASSIGNMENT.

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned unless such transfer or assignment occurs between any entity controlling, controlled by or under common control with Grantee. Grantee shall notify the City prior to transfer and inform the City of any change in contact information.

SECTION 13. CONFIDENTIALITY.

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

SECTION 14. ACCEPTANCE OF TERMS.

Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas.

SECTION 15. PAYMENT OF COSTS.

In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

SECTION 16. SEVERABILITY.

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

SECTION 17. FORCE MAJEURE.

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

SECTION 18. EFFECTIVE DATE.

This Ordinance shall take effect on _____.

SECTION 19. REPEAL OF EXISTING ORDINANCE.

Grantee's prior franchise ordinance, as adopted by Ordinance No. 5476, shall be repealed automatically upon the effective date of this Ordinance.

PASSED by the City Council of the City of Lenexa, Kansas this ____ day of _____, 20__.

APPROVED by the Mayor this ____ day of _____, 20__.

ATTEST:

Michael A. Boehm, Mayor
APPROVED AS TO FORM:

Jennifer Martin, City Clerk

Steven D. Shrout, Assistant City Attorney



**CITY COUNCIL
MEMORANDUM**

ITEM 6

SUBJECT: Ordinance granting a telecommunications franchise to Everfast Fiber Networks, LLC

CONTACT: Sean McLaughlin, City Attorney

DATE: September 20, 2022

ACTION NEEDED:

Pass an ordinance granting a telecommunications franchise to Everfast Fiber Networks, LLC ("Everfast").

PROJECT BACKGROUND/DESCRIPTION:

This is a franchise grant to Everfast to construct, operate, and maintain a telecommunications system within the city. In June 2022, the City was notified that Everfast had entered into an agreement to purchase all of the customer base and other assets of Consolidated Communications Enterprise Services, Inc. ("Consolidated") in the Kansas City metropolitan area. As such, a new franchise with Everfast is required.

This franchise ordinance is substantially similar to Consolidated's previous franchise, as well as the City's current franchises with other telecommunication entities. The franchise provides that any use of the right-of-way by Everfast is subordinate to the City's health, safety, and welfare requirements and regulations, including the City's right-of-way management code. The franchise does not include the right to use any other City-owned facilities, parkland, or property. Pursuant to the franchise, Everfast is required to maintain sufficient workers' compensation and general liability insurance or demonstrate to the City that it is self-insured and able to provide sufficient coverage to protect the City from any claims for personal injury or property damage occasioned by Everfast.

Finally, the franchise agreement contains a provision allowing for renegotiation upon the occurrence of certain events including but not limited to change in law, regulation, or other unanticipated material changes. The franchise agreement will become effective on September 28, 2022. The existing Consolidated franchise (Ordinance 5759) will be repealed upon the effective date of this ordinance. The franchise is for a two-year term with up to four automatic renewal terms of two years each for a total of 10 years.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

The City will receive 5% of the gross receipts for certain telecommunication services that Everfast collects within the city.

STAFF RECOMMENDATION:

Passage of the ordinance.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

Integrated Infrastructure & Transportation

Guiding Principles

Strategic Community Investment

ATTACHMENTS

1. Ordinance

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO EVERFAST FIBER NETWORKS LLC, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF LENEXA, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE AND REPEALING ORDINANCE NO. 5759.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:

SECTION 1. DEFINITIONS.

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
- b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(3), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
- d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
- e. "City" - means the City of Lenexa, Kansas.

- f. "Contract franchise" - means this Ordinance granting the right, privilege, and franchise to Grantee to provide Telecommunications services within the City.
- g. "Facilities" - means telephone and telecommunications lines, conduits, manholes, hand holes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide Telecommunications services.
- h. "Grantee" – Everfast Fiber Networks LLC, a Telecommunications local exchange service provider providing, or intending to provide local exchange service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
- i. "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee's Facilities to provide services described in Sections (1) through (6) . All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- j. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.
- k. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways, or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

- l. "Telecommunications local exchange service provider" – means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187 and amendments thereto, which does, or in good faith intends to, provide local exchange service.
- l. m. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 2. GRANT OF CONTRACT FRANCHISE.

- a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend, and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.
- b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:
 - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
 - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
 - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration, or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC, or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).
- d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract

franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state, or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

- e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

- a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions, and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance Relating to Managing the Use and Excavation of the Public Right-of-way of the City of Lenexa, Kansas, codified at Article 4-6-I of the Lenexa City Code, and amendments thereto.
- c. Grantee shall participate in the Kansas One Call utility location program.

SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed \$2.00 per Access line per month. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year. City acknowledges Grantee's right to add to

its end user customers' bill a surcharge equal to the pro rata share of any such gross receipts or access line fee as set forth in K.S.A. 12-2001(r).

- b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.
- c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement showing the manner in which the franchise fee was calculated.
- e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.
- f. The City or its designees shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.
- g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars (\$1,000.00). The parties agree that such fee reimburses the City for its reasonable, actual, and verifiable costs of reviewing and approving this Contract franchise.
- h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees, and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.
- i. Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter into a contract franchise ordinance, provided, however, the Grantee may collect an amount

equivalent to the fee described in this subsection from the Telecommunications local exchange service provider to which it resold access lines.

SECTION 5. INDEMNITY AND HOLD HARMLESS.

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage by its negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors, or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

- (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

- (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.
- b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.
- c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
- d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$50,000 payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and reasonably satisfactory to the City Attorney in form and substance.

SECTION 7. REVOCATION AND TERMINATION.

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have ninety (90) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such ninety (90) day period the City deems

that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

SECTION 8. RESERVATION OF RIGHTS.

- a. The City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas or applicable federal laws or regulations as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances (e.g., the City's right-of-way ordinance referenced in Section 3b of this Contract franchise), and/or rulings.

SECTION 9. FAILURE TO ENFORCE.

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

SECTION 10. TERM AND TERMINATION DATE.

- a. This Contract franchise shall be effective for a two-year term beginning on the effective date of this Contract franchise. Thereafter, this Contract franchise will automatically renew for up to four (4) additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.
- b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.
- c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.
- d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.
- e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

SECTION 11. POINT OF CONTACT AND NOTICES

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:

The City of Lenexa, Kansas
17101 W. 87th Street Parkway
Lenexa, KS 66219
Attn: City Clerk
(913) 477-7504 fax

With a copy to:

City Attorney
The City of Lenexa, Kansas
17101 W. 87th Street Parkway
Lenexa, KS 66219
(913) 477-7639

Grantee:

With a copy to:

or to replacement addresses that may be later designed in writing.

SECTION 12. TRANSFER AND ASSIGNMENT.

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to any entity controlling, controlled by or under common control with Grantee. The parties acknowledge that said City consent shall only be with regard to the transfer or assignment of this Contract franchise, and that, in accordance with Kansas Statute, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of Grantee. In the event of any transfer or assignment of either this Contract franchise or Grantee's business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. Additionally, Grantee's obligations under this Contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any

coverage as a result of the transfer or assignment. In the event an entity acquires substantially all of the assets of Grantee, said successor entity shall be allowed to operate under this Contract franchise for up to one hundred and eighty (180) days from the date of transfer; provided, within thirty (30) days from the date of transfer said successor entity makes application with the City for either a new ordinance or the transfer of this Contract franchise, and provides the City with written evidence satisfying the obligations under this Contract franchise with regard to indemnity, bonding and insurance.

SECTION 13. CONFIDENTIALITY.

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

SECTION 14. ACCEPTANCE OF TERMS.

Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas.

SECTION 15. PAYMENT OF COSTS.

In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

SECTION 16. SEVERABILITY.

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise, provided, however, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise, and this Contract franchise shall remain in effect according to its terms pending completion of any renegotiation provided by this section..

SECTION 17. FORCE MAJEURE.

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

SECTION 18. EFFECTIVE DATE.

This Ordinance shall take effect on September 28, 2022, unless within sixty-one days after final publication a sufficient petition for a referendum is filed asking that the new fee established herein be submitted to a popular vote, as provided in K.S.A. 12-2001(m), in which case the Ordinance shall become effective is approved by a majority of the electors voting thereon.

SECTION 19. REPEAL OF EXISTING ORDINANCE.

Grantee has entered into an agreement to purchase all the customer base and other assets, including, but not limited to a fiber and hybrid coax network, of Consolidated Communications Enterprise Services, Inc. (“Consolidated”). As such, Consolidated’s current franchise ordinance (Ordinance No. 5759) shall be repealed automatically upon the effective date of this Ordinance.

PASSED by the City Council of the City of Lenexa, Kansas this ____ day of _____, 20__.

APPROVED by the Mayor this ____ day of _____, 20__.

Michael A. Boehm, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Martin, City Clerk

Steven D. Shrout, Assistant City Attorney



**CITY COUNCIL
MEMORANDUM**

ITEM 7

SUBJECT: Consideration of a special use permit and companion preliminary plan for Range USA, located at the northwest corner of 107th Street & Santa Fe Trail Drive, to allow "Personal Instruction, General" in the BP-2, Planned Manufacturing Zoning District - **WITHDRAWN BY THE APPLICANT**

CONTACT: Stephanie Kisler, Planning & Development Administrator

DATE: September 20, 2022

APPLICANT:

Amy Grant, Polsinelli

PROPERTY LOCATION:

Northwest corner of 107th Street & Santa Fe Trail Drive

OWNER:

Turner Properties, LLC

PROJECT BACKGROUND/DESCRIPTION:

This item has been withdrawn by the applicant.



**CITY COUNCIL
MEMORANDUM**

ITEM 8

SUBJECT: Ordinance rezoning property for Land Pool Restoration located on 88th Street east of Monrovia Street from CP-2, Planned Community Commercial, to BP-2, Planned Manufacturing Zoning District

CONTACT: Stephanie Kisler, Planning & Development Administrator

DATE: September 20, 2022

ACTION NEEDED:

Pass an ordinance rezoning property for Land Pool Restoration located on 88th Street east of Monrovia Street from CP-2, Planned Community Commercial, to the BP-2, Planned Manufacturing Zoning District.

APPLICANT:

Laird Goldsborough

OWNER:

POD IV, LLC

PROPERTY LOCATION/ADDRESS:

12101 W. 88th Street and 12095 W. 88th Street

PROJECT BACKGROUND/DESCRIPTION:

The applicant requests to rezone a 0.92-acre site on 88th Street east of Monrovia Street from CP-2, Planned Community Commercial, to the BP-2, Planned Manufacturing Zoning District for Land Pool Restoration to be able to occupy tenant space at 12095 W. 88th Street. Land Pool Restoration is a swimming pool contractor classified by the Unified Development Code (UDC) as a "Construction Sales and Services" use. This type of use is not allowed within the CP-2 Zoning District.

The parcel to be rezoned includes two buildings, which are addressed separately. Auto Dino, classified as a "Vehicle and Equipment Repair" use, occupies the building at 12101 W. 88th Street and will continue to operate there. Land Pool Restoration, which was previously located at 12110 W. 88th Street on the BP-2 zoned parcel to the north of this proposed rezoning, will occupy 12095 W. 88th Street.

A companion final plan application and side-yard setback deviation request to allow an existing, nonconforming setback of 14 feet, 8 inches was approved unanimously by the Planning Commission.

STAFF RECOMMENDATION:

Passage of the ordinance

PLANNING COMMISSION ACTION:

This item was considered at the August 29, 2022 Planning Commission meeting. No one from the public spoke at the Planning Commission meeting.

Acting Chair Burson entertained a motion to recommend **APPROVAL** of the rezoning for Land Pool

Restoration located at 12101 W. 88th Street from CP-2, Planned Community Commercial, to the BP-2, Planned Manufacturing District.

Moved by Commissioner Harber, seconded by Commissioner Horine, and carried by a unanimous voice vote.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040
Thriving Economy

Guiding Principles
Responsible Economic Development

ATTACHMENTS

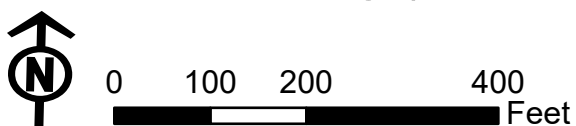
- 1. Map
- 2. PC Staff Report & Exhibits
- 3. PC Draft Minutes Excerpt
- 4. Ordinance



Data Source: City of Lenexa and Johnson County Kansas
For further information, please call 913-477-7500

Land Pool Restoration

Rezoning (RZ22-06) and Final Plan (PL22-19F)



MEETING DATE: August 29, 2022 - **PUBLIC HEARING REQUIRED**

REGULAR AGENDA ITEM: 4 a. & 4 b.

PROJECT TITLE: Land Pool Restoration

PROJECT # / REQUEST: RZ22-06 & PL22-19F – Rezoning & Final Plan

APPLICANT AND OWNER:
Laird Goldsborough, POD IV LLC

STAFF PLANNER:
Kimberly Portillo, AICP

PROPERTY LOCATION: 12101 W. 88th Street and 12095 W. 88th Street

SUMMARY OF RECOMMENDATION

Staff recommends **APPROVAL** of the rezoning for Land Pool Restoration located at 12101 W. 88th Street from CP-2, Planned Community Commercial to BP-2, Planned Manufacturing District.

Staff recommends **APPROVAL** of the final plan for Auto Repair/Warehouse Storage and a deviation request to allow a side setback of 14'8" for Land Pool Restoration located at 12101 W. 88th Street.

PROPOSED PROJECT DESCRIPTION AND BACKGROUND INFORMATION

This is a request for rezoning a parcel with two existing buildings, addressed separately as 12101 W. 88th Street (Auto Dino) and 12095 W. 88th Street (Land Pool), part of Lot 7 of Meridian Heights Plat, which was recorded in 1925. The Auto Dino building was built in 1980, with the Land Pool building subsequently built in 1996 and approved as part of final plan application PT 96-10F. At the time of final plan approval, the second building was approved for an auto storage use.

The applicant is requesting to rezone the property in order to facilitate the proposed use (Auto Repair/Warehouse Storage), which is not allowed within the CP-2 Zoning District. This application is a result of a request for a Certificate of Occupancy by Land Pool Restoration. During review of the application Staff determined the use would require BP-2 zoning. Prior to Land Pool Restoration, a landscape company occupied the space with a similar functionality. Notes in the Certificate of Occupancy application for that use state the following:

"This type of use isn't clearly defined in the UDC. Based on the location of this building, along with the entire service area being completely enclosed with a wood privacy fence, staff is comfortable with allowing this land use in CP-2. The building is completely surrounded by BP-2 zoning with the exception to the west, which is an automotive repair shop or "vehicle and equipment repair" which technically should be in BP-2 zoning but it's been there since 1980 so not sure what land use category staff used back then"

Land Pool Restoration is a swimming pool contractor and has been classified as Construction Sales and Services, General, the definition of which specifically calls out swimming pool sales. Land Pool Restoration previously held a certificate of occupancy at 12110 W. 88th Street, the parcel adjacent to the north of the proposed rezoning. 12110 W. 88th Street is zoned BP-2.

Auto Dino operates as an auto repair shop specializing in foreign luxury vehicle repair. Staff review has determined this operation would be considered an Automobile Body/Repair Shop which falls under the Vehicle and Equipment Repair use on the Use Regulations Schedule of the UDC. A similar use, by a different name, occupied the building since the 1980’s.

A deviation for the side yard setback would formally allow the existing nonconforming side yard setback.

CURRENT ZONING:
CP-2 Planned Community Commercial

PROPOSED ZONING:
BP-2 Planned Manufacturing

CURRENT USE:
Auto Repair/Warehouse Storage

PROPOSED USE:
Auto Repair/Warehouse Storage

ACREAGE:
0.92

BUILDING SQUARE FOOTAGE:
Auto Dino: 6,052 SF, Land Pool: 3,025 SF

COMPREHENSIVE PLAN RECOMMENDATION FOR AREA

Community Commercial Center: Intended for commercial uses with two or more anchor tenants and a combined or total gross leasable area of 125,000 to 400,000 square feet providing services for a 3-to-6-mile trade area radius.

REZONING ANALYSIS

With regard to the review criteria contained within [Section 4-1-G-5](#) of the Unified Development Code (UDC), Staff has the following comments:

1. *The character of the neighborhood.*

The 88th Street cul-de-sac was constructed during the 1980’s and zoned for commercial use. At that time, commercial uses were more abundant in the area with the Lenexa Trails Shopping Center built in 1978 along W. 87th Street. Over time, industrial and business park uses have become more common. The property is one block from W. 87th Street (an arterial); however, the property is located behind the shopping center and does not have any visibility, so it is not ideal for commercial uses. In 1988, the property on the north side of the cul-de-sac successfully pursued a rezoning from CP-2 to BP-2 for construction of a 16,600 square foot warehouse that now sits between the subject site and commercial uses to the north.

The surrounding properties to the east and south also have BP-2 zoning.

2. *The zoning and use of properties nearby.*

VICINITY ZONING PATTERN:

North: BP-2 Planned Manufacturing
South: BP-2 Planned Manufacturing
East: BP-2 Planned Manufacturing
West: CP-2 Planned Community
Commercial

VICINITY LAND USE PATTERN:

North: Business Park
South: Business Park
East: Business Park
West: Non-Profit Family Services

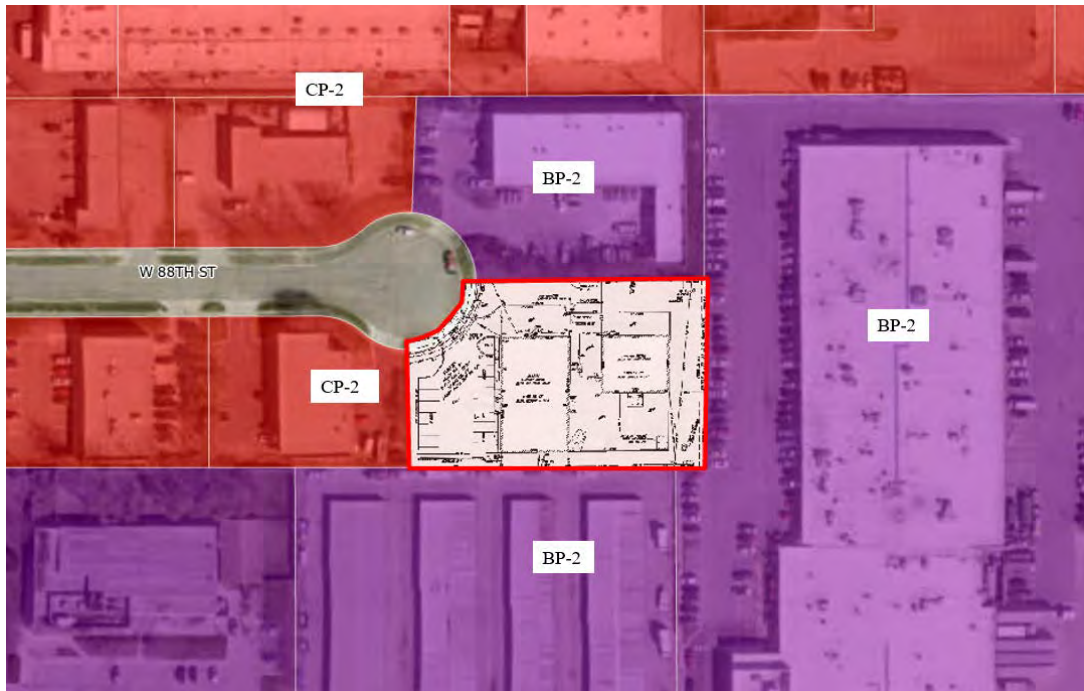


Figure 1: Zoning context.

3. *The suitability of the subject property for the uses to which it has been restricted.*

The property is not ideal for commercial uses given the lack of visibility and lack of direct access to a major street. It has access from the 88th Street cul-de-sac which feeds into Monrovia.

4. *The extent to which the proposed use will detrimentally affect nearby property.*

The proposed use of auto repair and swimming pool contractor and any future potential uses allowed within the BP-2 Zoning District will not detrimentally affect nearby property. Surrounding properties host similar uses and intensity.

5. *The length of time the subject property has remained vacant as zoned.*

The property is not vacant. The Auto Dino building has been occupied by the use since 2008, and the Land Pool building was previously occupied by Grade A Lawn and Landscaping until 2021.



Figure 2: Buildings labeled by occupant.

6. ***The relative gain to public health, safety and welfare due to the denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.***

There would be no gain to public health, safety, or welfare if this application is denied.

7. ***Recommendation of City's permanent professional staff.***

See Staff's recommendation.

8. ***Conformance of the requested change to the adopted or recognized Master Plan being utilized by the City.***

While the proposed use is not a commercial center, it will fit within the context of the surrounding uses and neighborhood.

9. ***The availability and adequacy of required utilities and services to serve the proposed use. These utilities and services include, but are not limited to, sanitary and storm sewers, water and electrical service, police and fire protection, schools, parks and recreation facilities, etc.***

The site is developed with existing adequate access to required utilities and services. No site changes are proposed with this change of zoning.

10. ***The extent to which the proposed use would adversely affect the capacity or safety of that portion of the street network influenced by the use, or present parking problems in the vicinity of the property.***

Use Type	Required Standard	Parking Required	Parking Provided
Vehicle and Equipment Repair	2 spaces per service bay, minimum of 3 spaces	6	6
Construction Sales and Service	1 space per 250 square feet plus 1 space per 1,000 square feet of outdoor storage and display	12	12
Total		18	18

There are 15 striped parking stalls (14 standard and 1 ADA) in the parking lot on the west side of the Auto Dino building. There is a rear asphalt parking lot south of the Land Pool building that is paved with existing curb. The applicant will need to stripe the rear parking lot, per the standards of [Section 4-1-D-1](#) of the UDC for an additional 3 stalls.

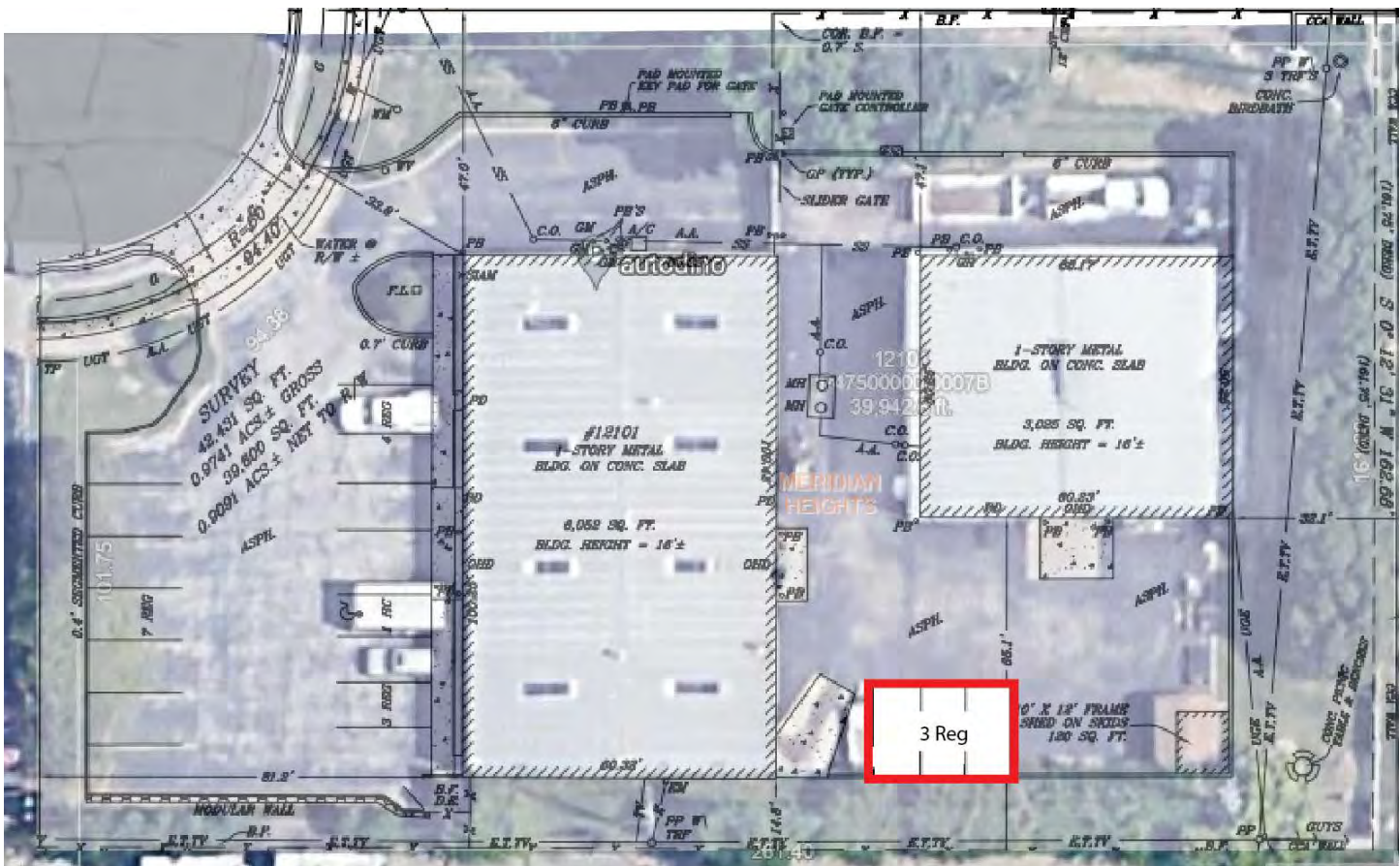


Figure 3: Graphic identifying approximate location of 3 additional stalls to be striped, as highlighted in red.

11. **The environmental impacts the proposed use will generate including, but not limited to, excessive stormwater runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm.**

The proposed use will not generate excessive stormwater runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm.

The Auto Dino building was built so that it does not meet current minimum setback for non-street property lines on the south side. The existing building is 14'-8" from the property line while the minimum setback requirement is 30 feet. Staff could not find record of a variance for the initial development of this building in 1980; however, the lack of compliance was noted, but not addressed, in the final plan application for the second building in 1996. With the change to a new zoning district, Staff determined a deviation from the BP-2 setback standard would be needed and the applicant has applied for such with the final plan. The BP-2 setback requirement is also 30 feet, so the proposed rezoning does not affect the existing side yard setback.

The abutting property to the south is a self-storage facility (Public Storage). There is a buffer that includes evergreen trees, shade trees, shrubs, and a 6-foot-tall wood fence. Staff's opinion is that approval of the deviation will not have negative impacts on surrounding property because the aesthetics will not be altered.

SITE LAYOUT

The site contains two existing buildings that will remain. Building 1 is a one-story, 6,052 S.F. metal building, constructed in 1980. Building 2 is a one-story, 3,025 S.F. metal building, constructed in 1996. The site is accessed from the W. 88th Street cul-de-sac which intersects with Monrovia. Parking is provided in a lot of the cul-de-sac to the west of the Auto Dino building. Additional parking is available near the Land Pool building. No outdoor storage is proposed.

LANDSCAPE AND BUFFERS

The site has significant landscaping with several mature shade trees, evergreens, and shrubs along property lines as well as a shade tree and shrub in a landscape island and evergreen trees along the street-facing base of the Auto Dino building. If the rezoning is granted, a Land Use Intensity (LUI) difference of 1 exists between the subject property and the property to the west. In addition to the evergreens along the western facing façade of the building, there is an existing 10-foot island with four mature trees, shown in Figure 7 below. Staff recommends the addition of 10 shrubs in the west buffer, as shown in Figure 9 below, to comply with buffer requirements of the UDC. The applicant has agreed to this condition.



Figure 5: Landscaping along east property line.



Figure 6: Landscaping along north property line.



Figure 7: Landscaping along south property line.



Figure 8: Landscaping along west property line.

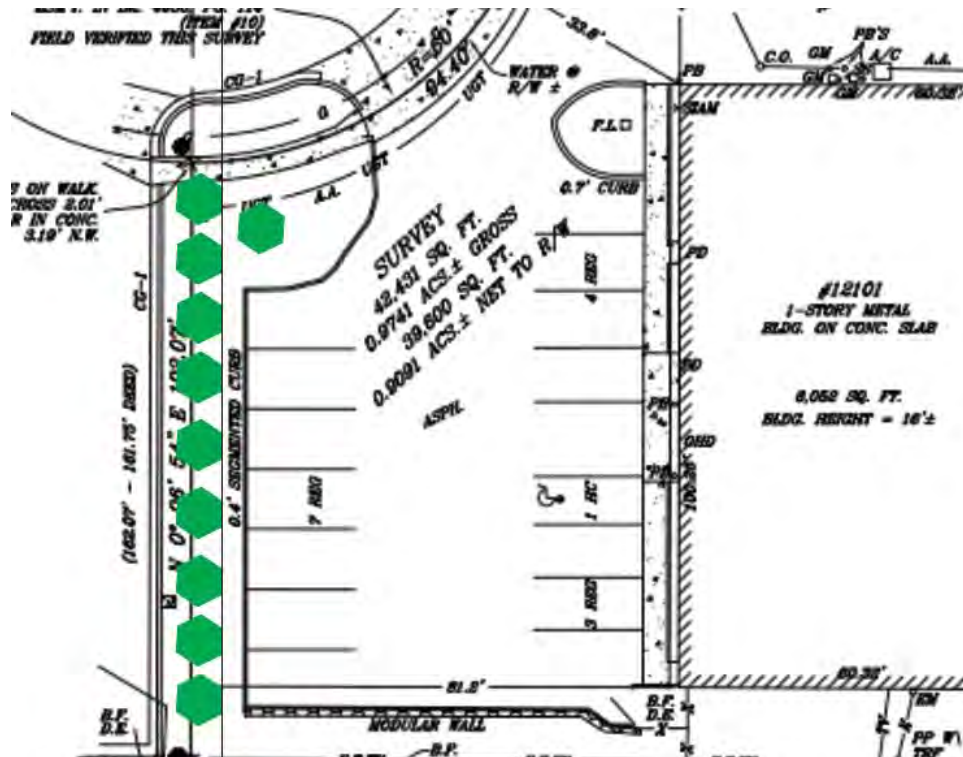


Figure 9: Additional shrubs to be added in landscape island along west property boundary.

ARCHITECTURAL COMPATIBILITY

There are two existing buildings on the site that will remain. Both buildings are tan, single-story metal panel buildings. The site is tucked in the corner of a cul-de-sac and is surrounded on three sides by larger industrial structures. The buildings have limited visibility from the public right-of-way. The buildings and landscaping have historically been well-maintained and do not have a history of enforcement violations. Additionally, the applicant will be providing additional landscaping on the west buffer per Staff's recommendation. Contextually, the surrounding area has a variety of building types including concrete block, wood stud with hardboard siding, and brick.



Figure 10: Photo provided by applicant. View of the property from W. 88th Street cul-de-sac.

SIGN PROGRAM

The Auto Dino building has an existing façade sign. Any signage for Land Pool Restoration will require a sign permit and be in compliance with the sign code section of the UDC.

STAFF RECOMMENDATION

Staff recommends **APPROVAL** of the final plan for Auto Repair/Warehouse Storage and a deviation request to allow a side setback of 14'-8" where 30' is required for Land Pool Restoration located at 12101 W. 88th Street with the following conditions:

1. Prior to approval of a Certificate of Occupancy for Land Pool Restoration, the applicant must plant an additional 10 shrubs in the buffer area along the western property line abutting the CP-2 Zoning District. Species shall be submitted to Staff for review and approved prior to installation.
2. Prior to approval of a Certificate of Occupancy for Land Pool Restoration, an additional 3 parking stalls must be striped in the rear lot in accordance with [Section 4-1-D-1](#) of the UDC and the final plan.



Land Pool Restoration

RZ22-06 & PL22-19F Rezoning and Final Plan

**ALTA/NSPS
LAND TITLE SURVEY**
#2022 E. SPRUCE CIRCLE
OLATHIE, JOHNSON COUNTY, KANSAS
FOR: KAREN HOLDEN YOUNG

LEGAL DESCRIPTION:

That part of Lot 7, MERRIDIAN HEIGHTS, a subdivision in the City of Lenexa, Johnson County, Kansas, according to the recorded plat thereon, described as follows: Beginning at the Southwest corner of said Lot 7, MERRIDIAN HEIGHTS; thence West along the South line of said Lot 7, 381.4 feet; thence North and parallel to the East line of said Lot 7, 161.78 feet; thence East and parallel to the South line of Lot 7, 381.4 feet to the East line of said Lot 7; thence South along said East line 161.78 feet to the point of beginning, subject to that part thereof in road.

The above described tract contains 45.631 square feet, or, 0.0741 acres, more or less, gross, and 39,600 square feet, or, 0.9091 acres, more or less, net to Right-of-Way line.

Current Zoning = CP-2, Planned Community Commercial District.
Post setback: 30'
Other setbacks: 30'
Height Limit: 45'

Striped Parking Space =
14 Regular Spaces & 1 Handicapped Space

THIS PROPERTY LIES WITHIN FLOOD ZONE "X", DERIVED AS AREAS OF MINIMAL FLOOD HAZARD AS SHOWN ON THE FLOOD INSURANCE DATA MAP NO. 50001C0036, EFFECTIVE DATE 09/03/2008

TITLE INFORMATION TAKEN FROM FIDELITY NATIONAL TITLE INSURANCE COMPANY, ISSUING OFFICE: CENTRAL LAND TITLE, INC., COMMITMENT NUMBER: 14, ISSUING OFFICE FILE NO. 1400014, COMMITMENT DATE: DECEMBER 8, 2018 AT 08:00 AM

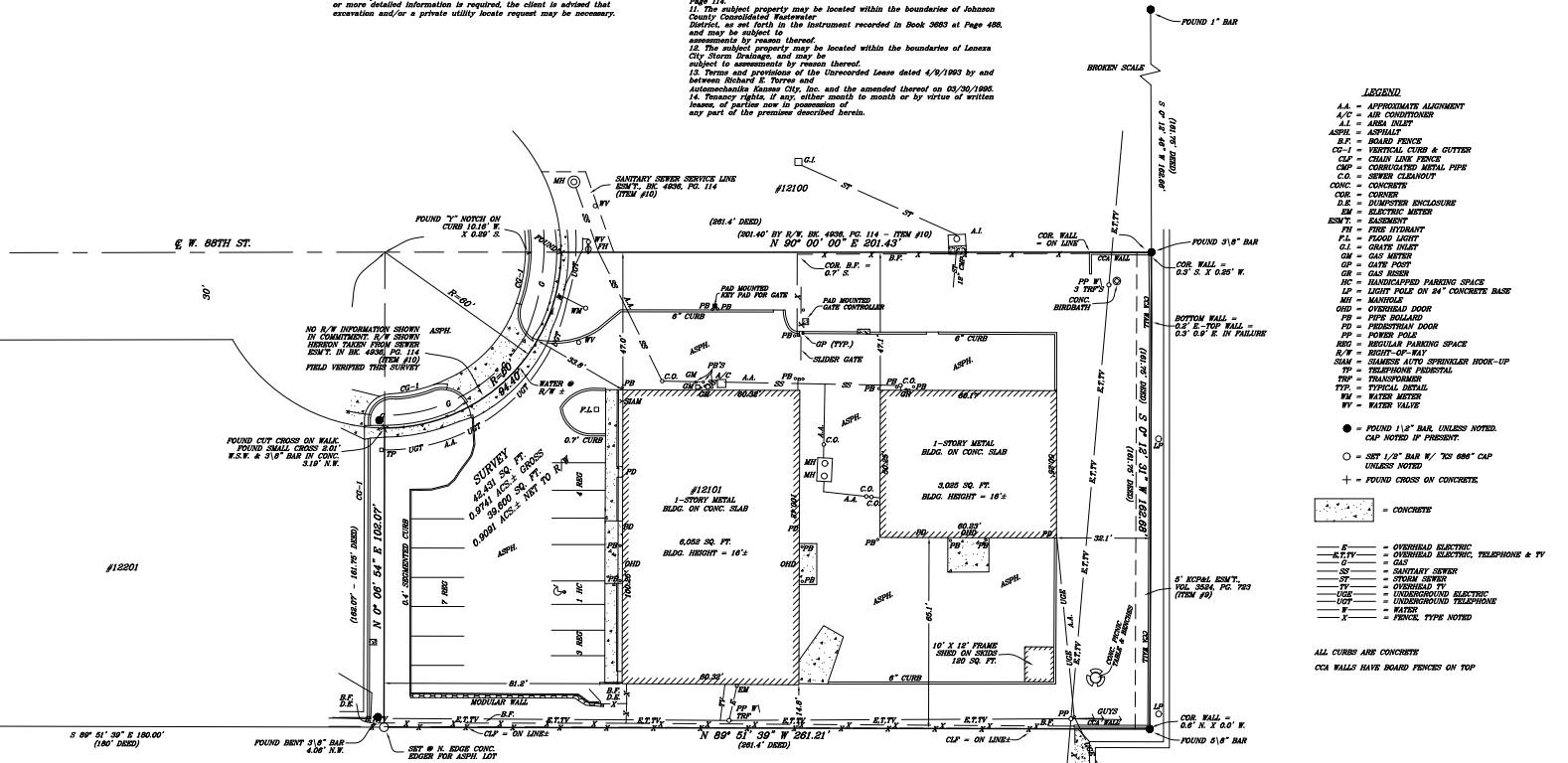
The property is affected by the following items from the Commitment:

7. Easements and/or Restrictions, if any, as shown on the recorded plat recorded in Plat Book 6 at Page 47.
8. Building and use restrictions created by the instrument recorded in Book 1863 at Page 67, and re-recorded in Book 1863 at Page 84, as more fully described therein.
9. Easement granted to Kansas City Power and Light Company, as more fully set forth in the instrument recorded in Book 3558 at Page 763.
10. Terms and provisions of Right of Way by and between McCaffrey, McCaffrey Investments and John D. Holden Trust as set forth in instrument recorded 07/17/1998 as Document No. 285177 in Book 4626 at Page 114.
11. The subject property may be located within the boundaries of Johnson County Consolidated Waterworks District, as set forth in the instrument recorded in Book 3683 at Page 498, and may be subject to assessments by reason thereof.
12. The subject property may be located within the boundaries of Lenexa City Storm Drainage, and may be subject to assessments by reason thereof.
13. Terms and provisions of the Unrecorded Lease dated 4/9/1993 by and between Richard E. Turner and Automobiles Kansas City, Inc. and the amended thereon on 03/30/1995.
14. Easement rights, if any, either month to month or by virtue of written lease, of parties now in possession of any part of the premises described herein.

Note to the client, insurer and lender - With regard to Table A, Item 11(1), source information from plans and meetings will be combined with observed evidence of utilities pursuant to Section 5.6.2(c), to develop a view of those the underground utilities. However, including excavation, the exact location of underground features cannot be accurately, completely and reliably depicted. In addition, in some jurisdictions 611 (i.e. 800-call Dig Hole, Kansas 1-call Dig Safe or other similar utility locate requests) from surveyors may be ignored or result in an incomplete response, in which case the surveyor shall note on the plat or map how this affected the surveyor's assessment of the location of the utilities. Where additional or more detailed information is required, the client is advised that excavation and/or a private utility locate request may be necessary.



SCALE 1"=10'
BEARINGS ARE FROM FLAT



To: PGD IV, LLC, Central Bank, Coflet Land Title and Fidelity National Title Insurance Company;

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2018 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, justly established and adopted by ALTA and NSPS in 2016, and include items 1, 2, 3, 4, 5, 6, 7, (a), (b), (c) 8 and 11 of Table A thereof. The field work was completed on December 8, 2018.

Date: _____

Daniel R. Roark PG - 689

ROARK SURVEYING
9414 GREENWAY LN.
LENEXA, KS 66215
913-688-5289
RoarkSurveying@aol.com

12-27-18
#018-073

REGULAR AGENDA

PUBLIC HEARING:

4. a. Rezoning for **Land Pool Restoration** located at 12101 West 88th Street from the CP-2 Planned Community Commercial District to the BP-2 Planned Manufacturing District. **RZ22-06**

- b. Final Plan for **Land Pool Restoration** located at 12101 West 88th Street in the proposed BP-2 Planned Manufacturing District. **PL22-19F**

Consideration of a rezoning and final plan with a side yard setback deviation to allow a nonconforming setback and allow construction sales and services, general use in a 3,000 SF warehouse space.

APPLICANT PRESENTATION:

Jack Goldsborough of POD IV LLC presented information about the proposed project. They seek rezoning from CP-2 to BP-2. They will be adding some parking spaces and screening with additional shrubs.

STAFF PRESENTATION:

Kim Portillo presented the Staff Report. She started by explaining how this project came before the Planning Commission. She talked about the history of the building and how the proposed rezoning will bring the site into compliance with the Auto Dino use and also allow the proposed Land Pool use. She shows a graphic of the zoning in the vicinity. The site is surrounded by BP-2 on three sides and CP-2 to the west. She shows the Site Plan and notes that it is not changing. A deviation is required in order to formally accept the nonconforming side yard setback along the south property line. Mature landscaping exists on the site currently. Staff recommended that they add ten more shrubs to the west property line to increase the buffer between the CP-2 Zoning District. Staff recommends approval.

PUBLIC HEARING:

Chairman Burson **OPENED** the Public Hearing and asked if anyone wished to speak on this item. Hearing no comments from the public, Chairman Burson entertained a motion to **CLOSE** the Public Hearing. Moved by Commissioner Macke, seconded by Commissioner Katterhenry, and carried by a unanimous voice vote.

PLANNING COMMISSION DISCUSSION:

Commissioner Katterhenry said he has no issues.

Commissioner Burson said he supports Staff's recommendation.

MOTION:

Chairman Burson entertained a motion to recommend **APPROVAL** of the rezoning for Land Pool Restoration located at 12101 W. 88th Street from CP-2, Planned Community Commercial, to the BP-2, Planned Manufacturing District.

Moved by Commissioner Harber, seconded by Commissioner Horine, and carried by a unanimous voice vote.

Chairman Burson entertained a motion to recommend **APPROVAL** of the final plan for Auto Repair/Warehouse Storage and a deviation request to allow a side setback of 14'-8" where 30' is required for Land Pool Restoration located at 12101 W. 88th Street with the following conditions:

1. Prior to approval of a Certificate of Occupancy for Land Pool Restoration, the applicant must plant an additional 10 shrubs in the buffer area along the western property line abutting the CP-2 Zoning District. Species shall be submitted to Staff for review and approved prior to installation.
2. Prior to approval of a Certificate of Occupancy for Land Pool Restoration, an additional 3 parking stalls must be striped in the rear lot in accordance with Section 4-1-D-1 of the UDC and the final plan.

Moved by Commissioner Horine, seconded by Commissioner Leib, and carried by a unanimous voice vote.

RZ 22-06

ORDINANCE NO. _____

AN ORDINANCE REZONING PROPERTY LOCATED AT THE SOUTHEAST TERMINUS OF THE W. 88TH STREET CUL-DE-SAC EAST OF MONROVIA STREET FROM CP-2, PLANNED COMMUNITY COMMERCIAL DISTRICT TO BP-2, PLANNED MANUFACTURING DISTRICT.

WHEREAS, on June 27, 2022, Laird Goldsborough, agent for POD IV, LLC, owner of record, filed a request to rezone property located at the southwest terminus of the W. 88th Street cul-de-sac east of Monrovia Street from CP-2, Planned Community Commercial District to BP-2, Planned Manufacturing District; and

WHEREAS, on August 29, 2022, the Lenexa Planning Commission held a public hearing to hear the rezoning request. Notice for the public hearing was provided in accordance with K.S.A. 12-757; and

WHEREAS, on August 29, 2022, the Lenexa Planning Commission recommended approval of said rezoning, as reflected in the minute record for said meeting; and

WHEREAS, on September 20, 2022, the Governing Body considered the rezoning request and Planning Commission recommendation, as reflected in the minute record for said meeting; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:

SECTION ONE: The real estate described as:

THAT PART OF LOT 7, MERIDIAN HEIGHTS, A SUBDIVISION IN THE CITY OF LENEXA, JOHNSON COUNTY, KANSAS ACCORDING TO THE RECORDED PLAT THEREOF, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 7, MERIDIAN HEIGHTS; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 7, 261.4 FEET; THENCE NORTH AND PARALLEL TO THE EAST LINE OF SAID LOT 7, 161.75 FEET; THENCE EAST AND PARALLEL TO THE SOUTH LINE OF LOT 7, 261.4 FEET TO THE EAST LINE OF SAID LOT 7; THENCE SOUTH ALONG SAID EAST LINE 161.75 FEET TO THE POINT OF BEGINNING, SUBJECT TO THAT PART THEREOF IN ROAD.

THE ABOVE DESCRIBED TRACT CONTAINS 42,431 SQUARE FEET, OR, 0.9741 ACRES, MORE OR LESS, GROSS, AND 39,600 SQUARE FEET, OR, 0.9091 ACRES, MORE OR LESS, NET TO RIGHT-OF-WAY LINE.

now zoned CP-2, Planned Community Commercial District is hereby rezoned to BP-2, Planned Manufacturing District as described above and as reflected in the minute record of the September 20, 2022, Governing Body meeting.

SECTION TWO: The Community Development Director is hereby directed to amend the series of maps entitled “Official Copy Zoning District Map of the City of Lenexa” as adopted by the City via City Code Section 4-1-A-6(A) in accordance with said rezoning.

SECTION THREE: This Ordinance shall be construed as follows:

- A. Liberal Construction. This Ordinance shall be liberally construed to effectively carry out its purposes that are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.
- B. Savings Clause. The repeal of any ordinance or code section, as provided herein, shall not affect any rights acquired, fines, penalties, forfeitures, or liabilities incurred thereunder, or any action or proceeding commenced under or by virtue of the ordinance or code section repealed. Any ordinance or code section repealed continues in force and effect after the passage, approval, and publications of this Ordinance for the purposes of such rights, fines, penalties, forfeitures, liabilities, and proceedings.
- C. Invalidity. If for any reason any chapter, article, section, subsection, sentence, portion, or part of this Ordinance, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance, the Lenexa City Code, or other ordinances.

SECTION FOUR: This Ordinance shall take effect after publication of an ordinance summary in the City’s official newspaper as provided by State law.

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PASSED by the Governing Body September 20, 2022.

SIGNED by the Mayor September 20, 2022.

CITY OF LENEXA, KANSAS

Michael A. Boehm, Mayor

ATTEST:

Jennifer Martin, City Clerk

APPROVED AS TO FORM:

Alexander Aggen, Assistant City Attorney II



**CITY COUNCIL
MEMORANDUM**

ITEM 9

SUBJECT: Consideration of vacating a utility easement located at the southeast corner of Prairie Star Parkway & Ridgeview Road

CONTACT: Stephanie Kisler, Planning & Development Administrator

DATE: September 20, 2022

ACTION NEEDED:

- a. Conduct a public hearing; and
- b. Pass an ordinance vacating the utility easement located at the southeast corner of Prairie Star Parkway & Ridgeview Road.

PROJECT BACKGROUND/DESCRIPTION:

The utility easement was dedicated several years ago to provide for utility service to the site. The development plan for this site has changed since the easement was initially dedicated. The easement is no longer required for the proposed development and use of the site.

Notices were sent to the utility companies that serve the area. Everygy does have facilities within this location, but has a separate private easement with the property owner for the placement of those facilities. No other utility is located within this easement.

The standards for approval of a vacation are:

1. Legal notice has been given by publication: As required by law, a notice of public hearing was published on August 30, 2022 in the Legal Record.
2. That no private rights will be injured or endangered by such vacation: It is staff's opinion that no private rights will be injured or endangered by this vacation.
3. That the public will suffer no loss or inconvenience by said vacation: Staff does not anticipate any loss or inconvenience imposed on the public by this vacation.
4. That justice to the petitioner, the vacation should be granted: It is staff's opinion the vacation should be approved.

STAFF RECOMMENDATION:

Passage of the ordinance.

ATTACHMENTS

1. Map
2. Narrative
3. Ordinance



Data Source: City of Lenexa and Johnson County Kansas
For further information, please call 913-477-7500

Utility Easement Vacation (VA22-01)

Prairie Star Pkwy. & Ridgeview Rd



0 200 400 800 Feet

August 15, 2022

Dave Dalecky
ddalecky@lenexa.com
via: planning portal

Re: West Star Easement Vacation Request

Dave,

On behalf of West Star Development, with this letter is a formal application that the City of Lenexa vacate an unused utility easement that burdens the Vista Village development. The easement originated with a 1993 eminent domain action. Our team believes that the City acquired this easement for the relocation of a power line when Prairie Star Parkway and Ridge View Road were improved. The power line that was moved into this area was again moved more recently, and we expect that the City no longer has an interest or utility line in this area.

There is some urgency to the very small portion of this easement that burdens the City Scape portion of the Vista Village development. There is a pending transfer of that parcel related to the upcoming development work on that parcel. We are hopeful that the very small portion of the easement on that parcel can be addressed as soon as possible.

If you need any additional information, please let us know.

Sincerely,

Patrick Watkins

ORDINANCE NO. _____

AN ORDINANCE VACATING A UTILITY EASEMENT, OR A PART THEREOF, LOCATED IN THE VICINITY SOUTH OF PRAIRIE STAR PARKWAY AND EAST OF RIDGEVIEW ROAD, IN THE CITY OF LENEXA, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Lenexa, Kansas has received a request for the vacation of a utility easement ("Easement") or a portion thereof, located in the vicinity of the southwest corner of Prairie Star Parkway and Ridgeview Road; and

WHEREAS, the Easement was recorded in 2002 at the Johnson County Register of Deeds in Book 7567, at Page 898; and

WHEREAS, the City has caused Notice of Public Hearing to be published in the official City newspaper according to K.S.A. 12-504, *et seq.*, and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and evidence has been presented, and the Governing Body has determined that due and legal notice has been given by publication as required by statute; and

WHEREAS, the Governing Body heard the evidence at the public hearing on September 20, 2022; and

WHEREAS, the Governing Body having reviewed and weighed the evidence finds:

1. No private rights will be injured or endangered by this vacation; and
2. The public will suffer no loss or inconvenience by this vacation; and
3. The petitioner should in the interest of justice be granted this request.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:

SECTION ONE: The following described real estate, previously dedicated as a utility easement should be and is hereby vacated, to wit:

A TRACT OF LAND IN THE NORTHWEST ONE QUARTER OF SECTION 6, TOWNSHIP 13, SOUTH, RANGE 24 EAST, IN THE CITY OF LENEXA, JOHNSON COUNTY, KANSAS, BASED ON A KANSAS GENERAL WARRANTY DEED, FILED JANUARY 11, 2002 AND RECORDED IN THE RECORDS OF JOHNSON COUNTY IN BOOK 7567 AT PAGE 898, AND IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 6, THENCE NORTH 87° 46' 05" EAST, ALONG THE NORTH LINE OF SAID

SECTION 6, A DISTANCE OF 548.42 FEET; THENCE SOUTH 02° 13' 55" EAST, PERPENDICULAR TO THE LAST COURSE, A DISTANCE OF 230.32 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING OF THIS DESCRIPTION:

THENCE SOUTH 17° 02' 00" WEST A DISTANCE OF 554.69 FEET;
THENCE NORTH 29° 33' 49" WEST, A DISTANCE OF 25.03 FEET;
THENCE SOUTH 60° 26' 11" WEST, A DISTANCE OF 10.00 FEET;
THENCE SOUTH 29° 33' 49" EAST, A DISTANCE OF 229.96 FEET;
THENCE NORTH 01° 57' 59" WEST, A DISTANCE OF 30.50 FEET;
THENCE NORTH 88° 02' 01" EAST, A DISTANCE OF 10.00 FEET;
THENCE SOUTH 01° 57' 59" EAST, A DISTANCE OF 49.63 FEET;
THENCE SOUTH 29° 33' 49" EAST, A DISTANCE OF 32.31 FEET;
THENCE NORTH 60° 26' 11" EAST, A DISTANCE OF 10.00 FEET;
THENCE NORTH 29° 33' 49" WEST, A DISTANCE OF 35.10 FEET;
THENCE NORTH 01° 39' 00" WEST, A DISTANCE OF 43.51 FEET;
THENCE SOUTH 88° 02' 01" WEST, A DISTANCE OF 22.98 FEET;
THENCE NORTH 29° 33' 49" WEST, A DISTANCE OF 160.86 FEET;
THENCE NORTH 17° 02' 00" EAST A DISTANCE OF 567.64 FEET;
THENCE SOUTH 87° 46' 05" WEST, A DISTANCE OF 10.59 FEET TO THE POINT OF BEGINNING.

THE TRACT DESCRIBED ABOVE CONTAINS 8,549 SQUARE FEET.

SECTION TWO: The City of Lenexa, Kansas reserves to itself any property rights it may hold in the area that are not expressly vacated herein.

SECTION THREE: That said Ordinance shall take effect from and after its passage and publication as required by law.

SECTION FOUR: That the City Clerk shall certify a copy of this Ordinance to the Register of Deeds of Johnson County, Kansas, for filing all in accordance with K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 20th day of September, 2022.

SIGNED by the Mayor this this 20th day of September, 2022.

[signature page to follow]

CITY OF LENEXA, KANSAS

[SEAL]

Michael A. Boehm, Mayor

ATTEST:

Jennifer Martin, City Clerk

APPROVED AS TO FORM:

Alexander J. Aggen, Assistant City Attorney

**MINUTES OF THE
AUGUST 23, 2022
SPECIAL LENEXA CITY COUNCIL MEETING
COMMUNITY FORUM, 17101 W 87th STREET PARKWAY
LENEXA, KS 66219**

CALL TO ORDER

Mayor Boehm called the meeting to order at 7 PM.

ROLL CALL

Councilmembers Karlin, Eiterich, Nicks, Roh, Arroyo, Sayers, and Denny were present with Mayor Boehm presiding. Councilmember Nolte was absent.

Staff present included Beccy Yocham, City Manager; Todd Pelham, Deputy City Manager; Mike Nolan, Assistant City Manager; Scott McCullough, Community Development Director; Sean McLaughlin, City Attorney; Jennifer Martin, City Clerk; and other City staff.

PUBLIC HEARINGS

1. Consideration of a resolution levying a property tax rate exceeding the revenue-neutral property tax rate of 25.938 mills for the FY 2023 budget
 - a. Public hearing to consider exceeding the revenue-neutral property tax rate for FY 2023
 - b. Resolution levying a property tax rate exceeding the revenue-neutral property tax rate of 25.938 mills for FY 2023

In 2021, the state legislature enacted notice and public hearing requirements for proposed budgets planned to exceed the revenue-neutral property tax rate. For the FY 2023 budget, the City's revenue-neutral property tax rate was calculated to be 25.938 mills by Johnson County. Since the estimated mill levy in the recommended FY 2023 budget is 28.102 mills (a 1.000 mill reduction from FY 2022) and exceeds the revenue neutral rate, the City will hold a public hearing and consider a resolution to exceed the revenue neutral rate for the FY 2023 budget.

Nate Blum, Chief Financial Officer, reviewed the FY 2023 recommended budget, including the City's budget principles and budgetary pressures. He also went through the proposed budget numbers, total revenues by source, total expenditures by function, and a chart reflecting the mill levy over time from 2017-2023.

Beccy Yocham, City Manager, explained what the revenue-neutral rate is by

definition and said that it provides no allowance for additional growth or inflation. She talked about the 2023 estimated property tax rates by mill levy and explained how to determine property tax rates, using a property in the Olathe School district as an example.

Ms. Yocham showed a graphic detailing all the services residents receive and said that statistically valid surveys performed by ETC Institute reflect resident satisfaction with city services.

Ms. Yocham reviewed the budget process leading up to this meeting, as well as all the communications on the budget and the intent to exceed the revenue-neutral rate. She added that six emails were received from residents and shared with the Governing Body after 3:30 PM today.

Mayor Boehm opened the public hearing at 7:15 PM.

Dana Krug, 9854 Saddletop Street, talked about his taxes and home value increasing in recent years, how the mill is being reduced but off of a bigger number, inflation is impacting everyone, and his concerns with the City wanting to spend more than needed.

Tim Mahoney, 8911 Acuff Lane, talked about wanting to slow the city's growth, the City giving deferred tax breaks to companies and residents not benefitting, his disappointment with the City's response to a neighborhood concern, assets being for the whole city and not just Ward 4, new buildings being constructed while vacant old buildings decay, loss of the city's character through increased traffic and crime, selling his bikes because he feels it is too risky to be on the roads anymore, and how a smaller budget would slow things down and stop filling all the green space with development.

Gaylene Van Horn, 8131 Rosehill Road, talked about living on the old side of Lenexa, having issues with the growth to the west of I-435, separation of the east side of the city by moving the Police Department and building a fire station, increased housing values, having to cut her budget to accommodate inflation and how the City should understand this is an inflationary period that will possibly become a recession with people losing jobs, people not returning to work in offices and buildings being closed up, and the construction of so many apartments on her side of town that the congestion on Quivira Road is a nightmare.

Jeff Walters, 8526 Barstow Street, talked about the revenue and property taxes; asked how the City would handle reduced sales tax revenue when people choose not to spend in Lenexa and if that has been considered. He talked about the number of emails not being representative of those who are concerned and asked if there a committee of residents with expertise in budgets and finance who help review the budget and offer suggestions.

Janice Walters, 8526 Barstow Street, talked about using common sense with spending and adjusting the budget, how the City seems to feel there is an

endless amount of money to spend, she is paying more in property taxes than she ever paid for a mortgage, she has never seen anyone waiting to cross the street to Sar-Ko-Par Trails Park yet the City is building an expensive tunnel – it would be less expensive for the City to pay Uber 24/7 to provide transportation across or more exciting to have a zipline across the street, and how resurfacing roads when there is on-going construction will tear them up.

Tony Petrehn, 8125 Lingle Lane, talked about wasting money trying to comply with federal ADA regulations unnecessarily, raising taxes, spending public money on new city buildings when old ones are vacant, money spent marking bicycle routes on the road, light pole replacement along Lackman and Quivira, and being against progressiveness and spending.

Ms. Yocham said that staff uses conservative revenue approaches.

Mr. Blum said that the City has 10 years of statistics on how property taxes affect sales tax and tracking of other jurisdictions and that staff considers both the historical data and future projections.

Ms. Yocham reported on current and anticipated future use of the previous City Hall building. She also listed the investments east of I-435 already underway or forthcoming, totaling approximately \$40 million.

Councilmember Karlin shared his appreciation for the residents in attendance and for those who sent emails, saying this is the first time anyone has spoken at a revenue-neutral public hearing. He said he is very tax aware and understands the concerns. He noted that the revenue-neutral rate is flawed by not taking growth and inflation into consideration, but that Lenexa plans for the long-term and leverages other sources to its benefit.

Councilmember Eiterich said she also appreciated the residents sharing their opinions. She said that she understands that the revenue-neutral rate and getting the county form in the mail was confusing. She said she testified in Topeka about this, but she is proud Lenexa provides the level of service residents expect and has great staff.

Councilmember Roh thanked the residents who attended for sharing their thoughts. He said that the city's aging infrastructure needs attention now to avoid more expensive repairs later. He added that the biggest driver in Lenexa is Vision 2040. He asked for future presentations to include some of the things that are not chosen for implementation.

Councilmember Roh made a motion to approve Item 1b and Councilmember Karlin seconded the motion.

Jennifer Martin, City Clerk, called the roll call vote:
Councilmember Karlin - Aye
Councilmember Eiterich- Aye
Councilmember Nicks- Aye

Councilmember Nolte - Absent
Councilmember Roh- Aye
Councilmember Arroyo- Aye
Councilmember Sayers- Aye
Councilmember Denny- Aye
Mayor Boehm- Aye

The motion passed 8-0.

Councilmember Sayers made a motion to close the public hearing and Councilmember Eiterich seconded the motion. Motion passed unanimously.

The public hearing closed at 7:57 PM.

2. Consideration of a resolution approving the FY 2023 budget

a. Public hearing to consider the fiscal year 2023 budget

b. Resolution approving the FY 2023 budget

The Governing Body reviewed the fiscal year 2023 recommended budget at Committee of the Whole meetings held in June and July. The total recommended fiscal year 2023 budget for all funds is \$204.2 million and the estimated mill levy for the budget is 28.102 mills.

Ms. Yocham said she had no further presentation, but that staff was available to answer questions.

Mayor Boehm opened the public hearing at 7:58 PM.

Mr. Mahoney talked about the presumption that growth is inevitable, reducing the budget to stop growth, his Vision 2040 involvement and how the ideas created spending wish lists, improvements in the east not improving the quality of life for people in that area, residents not speaking out because they don't feel heard, his hate of the growth of the city, and how he feels the City Council is not as connected to its constituents as it may think.

Mr. Walters asked about the reserve funds and how those are calculated.

Tony Petrehn asked what percentage of residents responded to the citizens' survey. He talked about residents not wanting to pay more taxes, good cities leaving money in the hands of the people, how he received the survey and did not respond, and how he questions that the Council is in touch with the people.

Ms. Van Horn talked about her appreciation for road upgrades in the east of the city even at significant expense, her concern about losing the presence of city people in the east of the city with offices moving west of I-435, the location of the fire department in the old city hall being hidden and not well-publicized, and how the Vision 2040 meetings are for dreams.

Mr. Petrehn talked about the City spending \$1 million to improve the skate park unnecessarily.

Councilmember Denny made a motion to close the public hearing and Councilmember Nicks seconded the motion. Motion passed unanimously.

The public hearing closed at 8:09 PM.

Councilmember Denny made a motion to approve Item 2b and Councilmember Roh seconded the motion.

Ms. Martin called the roll call vote:

Councilmember Eiterich - Aye

Councilmember Nicks- Aye

Councilmember Nolte- Absent

Councilmember Roh- Aye

Councilmember Arroyo- Aye

Councilmember Sayers- Aye

Councilmember Denny- Aye

Councilmember Karlin- Aye

Mayor Boehm- Aye

The motion passed 8-0.

ADJOURN

Councilmember Sayers made a motion to adjourn and Councilmember Eiterich seconded the motion. Motion passed unanimously.

The meeting adjourned at 8:20 PM.

Mayor Boehm announced that the Special Committee of the Whole meeting would convene at 8:25 PM.



**MINUTES OF THE
SEPTEMBER 6, 2022
LENEXA CITY COUNCIL MEETING
COMMUNITY FORUM, 17101 W 87th STREET PARKWAY
LENEXA, KS 66219**

CALL TO ORDER

Mayor Boehm called the meeting to order at 7 PM.

ROLL CALL

Councilmembers Karlin, Eiterich, Nicks, Nolte, Roh, Arroyo, Sayers, and Denny were present with Mayor Boehm presiding.

Staff present included Beccy Yocham, City Manager; Todd Pelham, Deputy City Manager; Mike Nolan, Assistant City Manager; Scott McCullough, Community Development Director; Sean McLaughlin, City Attorney; Jennifer Martin, City Clerk; and other City staff.

APPROVE MINUTES

Councilmember Arroyo made a motion to approve the August 16, 2022 City Council meeting draft minutes and Councilmember Sayers seconded the motion. Motion passed unanimously.

MODIFICATION OF AGENDA

Staff requested item 6 removed from the Consent Agenda to be presented and discussed.

PROCLAMATIONS

Fetal Alcohol Spectrum Disorders Awareness Month
Suicide Prevention Month
Constitution Week Sept. 16-22

CONSENT AGENDA

1. Change order to the contract with Pyramid Contractors, Inc. for the Little Mill Creek Trail Tunnel Project
Under contract provisions for the Little Mill Creek Trail Tunnel Project, Change Order No. 2 provides for an incentive payment of \$150,000 to Pyramid Contractors, Inc. for opening 87th Street Parkway to traffic ahead of schedule.
2. Bid award to Wildcat Construction Company, Inc. for the 99th Street & Canyon Creek Boulevard Intersection Improvement Project
This project will construct a traffic signal at the intersection of 99th Street & Canyon

Creek Boulevard. Wildcat Construction Company, Inc. bid \$474,972 for the project.

3. Resolution authorizing certain employees and officers to act as agents for the City to transact business with authorized financial institutions and repealing Resolution 2022-041

Currently, there are multiple Finance Department employees responsible for processing financial transactions, on the City's behalf, with authorized financial institutions. Due to staffing changes in the Finance Department, the City is required to update the signature cards and authorizations for its commercial deposit accounts.

4. Resolution authorizing certain employees to take necessary and appropriate action, to make inquiries, and to receive notices regarding the Municipal Investment Pool on behalf of the City and repealing Resolution 2022-042

Due to staffing changes in the Finance Department, the City is required to modify the employee authorizations for its State of Kansas Municipal Investment Pool (MIP) account. The MIP requires the modifications to be authorized by City Council resolution.

5. Resolution authorizing the Mayor to execute an agreement with Swagit Productions, LLC for video recording services

The City will begin recording and posting videos of all 24 regularly scheduled business meetings of the City Council beginning January 3, 2023. To facilitate video production and agenda software/website integration, the City plans to execute an agreement with Swagit Productions, LLC to provide video recording and indexing services, as well as closed captioning services for City Council meeting videos. The initial cost is \$72,005 for implementation and a monthly fee of \$1,740 to record and provide closed captioning services for up to 25 City Council meetings per year.

6. Resolution approving and authorizing the Mayor to execute a purchase agreement with Conrad Fire Equipment, Inc. for the purchase of a fire truck

This purchase agreement is for a 2022 Pierce Enforcer Mid-Mount Aerial fire truck. The contract amount is \$1,933,837.25.

7. Resolution consenting to the enlargement of the Consolidated Main Sewer District of Johnson County, Kansas to include property located southwest of 83rd Street & Cedar Niles Road

The Consolidated Main Sewer District of Johnson County, Kansas has requested consent to enlarge its sanitary sewer system to serve Stoneridge, First Plat.

8. Resolution authorizing the sale, possession, and consumption of alcohol at the 2022 Lenexa Chili Challenge

In order to permit the sale, possession, and consumption of alcohol at the 2022 Lenexa Chili Challenge, the City must adopt a resolution that approves the consumption of alcoholic liquor at the event, designates the boundaries of the event where alcohol may be consumed, and identifies the public streets to be closed. The resolution will also approve the Rotary Club of Lenexa as the designated vendor to sell alcohol at the event.

END OF CONSENT AGENDA

Councilmember Roh made a motion to approve items 1 through 5 and 7 through 8 on the consent agenda and Councilmember Karlin seconded the motion. Motion passed unanimously.

Item 6 - Resolution approving and authorizing the Mayor to execute a purchase agreement with Conrad Fire Equipment, Inc. for the purchase of a fire truck

Travis Vaughn, Fire Chief, said that this request to purchase a fire apparatus is for the FY 2024 Capital Improvement Program (CIP). He reviewed the current fire apparatus fleet inventory and explained where each item is located and its functions.

Chief Vaughn talked about the apparatus moving to reserve and the proposed new purchase, saying the new apparatus would be a mid-mount that provides length and reach advantages that the prior apparatus does not have.

Chief Vaughn said the 2022-2026 CIP includes the purchase of five trucks through that period and explained the replacement schedule. He said that two apparatus were authorized for purchase in October 2021 that are expected to be delivered in August 2023, no purchases are scheduled for 2023, this \$1.6 million apparatus is scheduled for 2024, one apparatus is scheduled for 2025, and one apparatus is scheduled for 2026.

Chief Vaughn talked about the two apparatus in the fleet that had to be retired prematurely due to frame defects.

Chief Vaughn said the prices of the apparatus have increased 20% since the two apparatus were ordered in 2021, but the City had locked in price with the orders.

Councilmember Denny asked about the apparatus on the inventory list that was purchased and placed in reserve in the same year. Chief Vaughn explained why that occurred in the past and that it is his intent for purchases to be on front-line service for 8-10 years before moving to reserve for another 8-10 years.

Mayor Boehm requested clarification that this purchase is for one apparatus so the City can lock in the price before it increases and to get in line for the 28-month projected delivery. He and that the previous purchase was for two apparatus.

Chief Vaughn said that other Johnson County cities are experiencing the same issues; that all manufacturers have the same lead-times and delays. He said the City uses Pierce because there are Lenexa Municipal Services mechanics who are Pierce-certified to work on the apparatus.

Councilmember Eiterich made a motion to approve Item 6 and Councilmember Sayers seconded the motion. Motion passed unanimously.

NEW BUSINESS

9. Resolution authorizing the Mayor to execute a Presenting Sponsorship agreement for the Black Hoof Disc Golf Complex

The City is designing and constructing a disc golf course complex at Black Hoof Park that will include an 18-hole course and a 9-hole course. To offset costs associated with the construction, operation, and maintenance of the Disc Golf Complex, the City desires to enter an agreement with Henderson Engineers, Inc., The Kansas Flying Disc Association, Rich Smith, Kevin Lewis, and Jason Wollum to set forth benefits and obligations associated with their donation to the Lenexa Foundation.

Logan Wagler, Parks & Recreation Director, said this item is for approval of a 10-year Presenting Sponsorship Agreement with Henderson Engineers for the City to receive financial support for design, construction, operation, and maintenance of the Black Hoof Park Disc Golf Complex. He said that the details of the agreement were presented and discussed at a July 2022 Committee of the Whole meeting and the donation was accepted by the Lenexa Foundation Board last month.

Mr. Wagler introduced Rich Smith, former President and CEO of Henderson Engineers and founder of the Kansas Flying Disc Association, and Jason Wollum, Principal and Chief Sector Officer of Henderson Engineers. He said Kevin Lewis, CEO of Henderson Engineers, who has also been involved in the discussions could not attend. He said that each of these individuals are passionate about disc golf and are also true Lenexans.

Mr. Wagler said that the project is moving slower than anticipated and announced that the opening of the Disc Golf Complex would be delayed to spring 2023 because work on the parking lot has not yet started. He added that this will be a beautiful, high-quality complex and the community is going to enjoy it.

Mr. Smith said that 2022 is the 30th anniversary of the Henderson headquarters being in Lenexa and talked about City's reputation for doing things top-notch. He talked about the importance of physical activity and how disc golf is relatively inexpensive with minimal barriers to participate.

Mr. Wollum said he is a Lenexa resident and is excited to play at this park. He talked about how the company will be able to engage with the community through this project.

Councilmember Sayers thanked Mr. Smith and Mr. Wollum for making this investment and for the partnership.

Councilmember Denny noted that this is an agreement with three entities and asked if that would be problematic. Sean McLaughlin, City Attorney, said there are no concerns with the agreement as it is written.

Mayor Boehm thanked Henderson for the many years of partnership with the City.

Councilmember Nolte made a motion to approve Item 9 and Councilmember Roh seconded the motion. Motion passed unanimously.

BUSINESS FROM FLOOR

There was no business from the floor.

COUNCILMEMBER REPORTS

Councilmember Roh requested an update on the Quivira Road project. Tim Green, Deputy Community Development Director/City Engineer, said the concrete contractor will start work this week and the project should be complete in late September or early October.

Councilmember Karlin congratulated staff on a successful celebration of the Public Market's fifth anniversary.

Mayor Boehm thanked everyone who was involved in resolving the 99th Street & and Rosehill Road utility issue.

STAFF REPORTS

Beccy Yocham said that there are several worthy Lenexa businesses and events nominated in the Shawnee Mission Post's Best of Johnson County contest and encouraged everyone to vote for their favorites daily.

Charlie Love provided an update on the Fire Department's apparatus enclosure for Station 6. He presented an aerial map reflecting the proposed location for the enclosure, saying it will sit on the existing parking lot with dimensions of 25-feet by 50-feet.

Mr. Love showed renderings of the enclosure. He also said neighbors were invited to attend an open house to ask questions. He added that the structure will have some screening, but the site is already well-screened.

Mr. Love said the enclosure is only temporary until the site is repurposed. He added that there will be a contract on a future City Council meeting agenda for consideration and that staff anticipates starting on the enclosure as early as mid-September with at least three months of construction.

Councilmember Nolte said that Morton is known for these types of structures and he hopes it could be relocated in the future after this temporary use is complete. He said this is a good solution for an expensive piece of equipment.

Councilmember Denny asked how this structure will be constructed with the apparatus operating out of that lot currently. Mr. Love and Ms. Yocham said staff expect to use the south/front lot when the north/back lot cannot be used.

Councilmember Roh asked about the cost of the project and Mr. Love said it will be about \$330,000.

ADJOURN

Councilmember Nolte made a motion to adjourn and Councilmember Eiterich seconded the motion. Motion passed unanimously.

The meeting adjourned at 7:50 PM.

Proclamation

WHEREAS, diaper need, the condition of not having a sufficient supply of clean diapers to keep babies and toddlers clean, dry, and healthy, can adversely affect their health and well-being; and

WHEREAS, national surveys and research studies report that one in three families struggle with diaper need, and 48% of families delay changing a diaper to extend the available supply; and

WHEREAS, purchasing enough diapers to keep a baby or toddler clean, dry, and healthy can consume 14% of a low-wage family's post-tax income, making it difficult to provide the necessary supply; and

WHEREAS, a daily or weekly supply of diapers is generally an requirement for babies and toddlers to participate in child care programs and early-education programs that enable children to thrive and parents to work; and

WHEREAS, without enough diapers, infections and health problems may require medical attention resulting in medical costs, and parents may be prevented from accessing child care needed, thereby destabilizing the family's economic prospects and well-being; and

WHEREAS, diaper need is a public health issue, and addressing it can lead to economic opportunity for the families and communities and improved health for children, thus ensuring all children and families have access to the basic necessities required to thrive and reach their full potential.

NOW, THEREFORE, I, Michael A. Boehm, Mayor of Lenexa, do hereby proclaim the week of September 26th through October 2nd, 2022 as

NATIONAL DIAPER NEED AWARENESS WEEK

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of September, 2022.

PERMANENT SIDEWALK EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that LENEXA 33, LLC of the Post Office of 17 **West Stow Road, Marlton, New Jersey** 08053, their heirs, successors and assigns, hereinafter known as Grantor(s), owner of real property herein described, do(es) hereby grant to the City of Lenexa, Johnson County, Kansas, a municipal corporation, hereinafter called Grantee, its successors and assigns, the following described permanent sidewalk easement for the sum of One Dollar (\$1.00) and/or other valuable consideration, the receipt of which is hereby acknowledged.

TO WIT:

See attached Exhibit "A" for easement description ("Easement Area") and Exhibit "B" for easement drawing.

The above described permanent sidewalk easement is to be used to locate, construct, maintain, repair and use a perpetual right of way for public access and walkway, including all appurtenances thereto. The construction, maintenance, and repairs to the above stated public access and walkway may result in grade changes.

Grantor agrees and understands that the Grantee is under no obligation to routinely maintain or repair the public access and walkway facilities placed within the limits of this easement, and in no event shall this easement be construed to impose any such obligation on the Grantee.

Grantee is to have and to permanently hold the above described Easement Area for the uses and purposes hereinabove described.

The Grantor(s) agrees that it (they) will not construct, plant or cause to be placed within the limits of this said Easement Area any obstacle of a permanent nature. If any obstacle or thing is placed within the limits of this Easement Area by the Grantor(s), his representative or agent, the Grantor(s) will in no way hold the City of Lenexa, Kansas or its assigns liable for any damage done thereto during any period of construction, maintenance or repair to the same sidewalk easement.

The rights granted herein shall not be construed to interfere with or restrict the Grantor(s) and assigns from the use of the Easement Area and the premises owned by Grantor with respect to the construction and maintenance of improvements along or adjacent to said premises and the Easement Area herein described so long as the same are so constructed as not to impair the strength or interfere with the use and maintenance of said sidewalks.

Grantee represents that it is a self-insured municipality and/or governmental entity that is subject to the provisions of the Kansas Tort Claims Act (K.S.A. §75-6101, et. seq.). In the event ownership of the Easement Area is transferred to or held by an entity not subject to the provisions of the Kansas Tort Claims Act, as amended, such entity shall obtain and maintain general public liability insurance to afford protection against any and all claims for personal injury, death or property damage arising directly or indirectly out of the exercise of the rights and privileges granted. In such event, said insurance shall be issued by solvent, reputable insurance companies authorized to do business in the State of Kansas, naming Grantor as an additional insured, in a combined-single limit of not less than \$2,000,000.00 with respect to bodily injury or death and property damage.

This Agreement is binding upon the heirs, executors, administrators, successors and assigns of both parties hereto and it is understood that this agreement cannot be changed or altered in any way except by writing, legally signed by both parties concerned herewith.

TO THESE COVENANTS, the Grantor(s) does hereby consent and agree.

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

Lenexa 33, LLC,
a Kansas limited liability company

By: _____
Alan Breslow,
Authorized Representative

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____

On the ____ day of _____, 2022, before me personally came Alan Breslow, to me known to be the person who executed the foregoing instrument, and who, being by me duly sworn, did depose and say that he/she is the Authorized Representative of Lenexa 33, LLC, a Kansas limited liability company; and that he/she executed the foregoing instrument in the name of said limited liability company, and that he/she had authority to sign the same, and acknowledged that he/she executed the same as the act and deed of said limited liability company.

Witness my hand and official seal, this ____ day of _____, 2022.

Notary Public

Printed Name: _____

My Commission Expires:

ACCEPTANCE OF GRANTEE

[SEAL]

CITY OF LENEXA, KANSAS

By: _____
Michael A. Boehm, Mayor

ATTEST:

Jennifer Martin, City Clerk

APPROVED AS TO FORM:

Steven D. Shrout, Assistant City Attorney

ACKNOWLEDGMENT

STATE OF KANSAS)
)ss.
COUNTY OF JOHNSON)

On this _____ day of _____, 2022 before me appeared Michael A. Boehm, who acknowledged himself to be Mayor of the City of Lenexa, Kansas, and that he, as such and being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of said entity.

In Witness Whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

CONSENT OF MORTGAGEE

The undersigned, as holder of a certain Mortgage(s) covering the Grantor's property hereby consents to this Permanent Sidewalk Easement and agrees that its Mortgage(s) shall be subject and subordinate to the terms and conditions hereof.

OCEANFIRST BANK, N.A.

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
 :
COUNTY OF : SS

BE IT REMEMBERED that in this ____ day of _____, 2022, before me, the undersigned authority, personally appeared _____, of OCEANFIRST BANK, N.A., who I am satisfied is the individual who signed the within Instrument, sealed with the corporate seal and delivered the same as such office aforesaid, and that he/she signed the same, and that the within Instrument is the voluntary act and deed of such Corporation, made by virtue of a Resolution of its Board of Directors.

Witness my hand and official seal, this ____ day of _____, 2022.

Notary Public

Printed Name: _____

My Commission Expires:

SIDEWALK EASEMENT

EXHIBIT 'A'

LEGAL DESCRIPTION:

All such Three (3) portions of Lot 33, PINE RIDGE WEST BUSINESS PARK - SIXTH PLAT, a subdivision of land in the City of Lenexa, Johnson County, Kansas, and being more particularly described as follows:

BEGINNING at the Northwest Corner of said Lot 33, thence southeasterly along the Northerly Line of said Lot 33 on a curve to the right, said curve having an initial tangent bearing of South 83°02'18" East, a radius of 1085.00 feet, a delta angle of 02°24'48", an arc length of 45.70 feet to a point hereinafter known as POINT "A"; thence departing said Northerly Line of said Lot 33, South 09°19'59" West, a distance of 4.00 feet; thence northwesterly along a line 4 feet southerly of as measured radial to, and parallel with said Northerly Line of said Lot 33 on a curve to the left, said curve having an initial tangent bearing of North 80°37'29" West, a radius of 1081.00 feet, a delta angle of 02°22'47", an arc length of 44.90 feet to a point on the Westerly Line of said Lot 33; thence North 02°06'15" West, a distance of 4.05 feet to the place of beginning;

ALSO,

COMMENCING at the aforementioned Point "A"; thence southeasterly along the Northerly Line of said Lot 33 on a curve to the right, said curve having an initial tangent bearing of South 80°37'30" East, a radius of 1085.00 feet, a delta angle of 04°13'54", an arc length of 80.14 feet to the true POINT OF BEGINNING of land being described; thence continuing southeasterly along said Northerly Line of said Lot 33 on a curve to the right, said curve having an initial tangent bearing of South 76°23'36" East, a radius of 1085.00 feet, a delta angle of 02°56'09", an arc length of 55.60 feet to a point hereinafter known as POINT "B"; thence departing said Northerly Line of Lot 33, South 16°32'34" West, a distance of 4.00 feet; thence northwesterly along a line 4 feet southerly of as measured radial to, and parallel with said Northerly Line of said Lot 33 on a curve to the left, said curve having an initial tangent bearing of North 73°27'26" West, a radius of 1081.00 feet, a delta angle of 02°56'09", an arc length of 55.39 feet; thence North 13°36'24" East, a distance of 4.00 feet to the place of beginning;

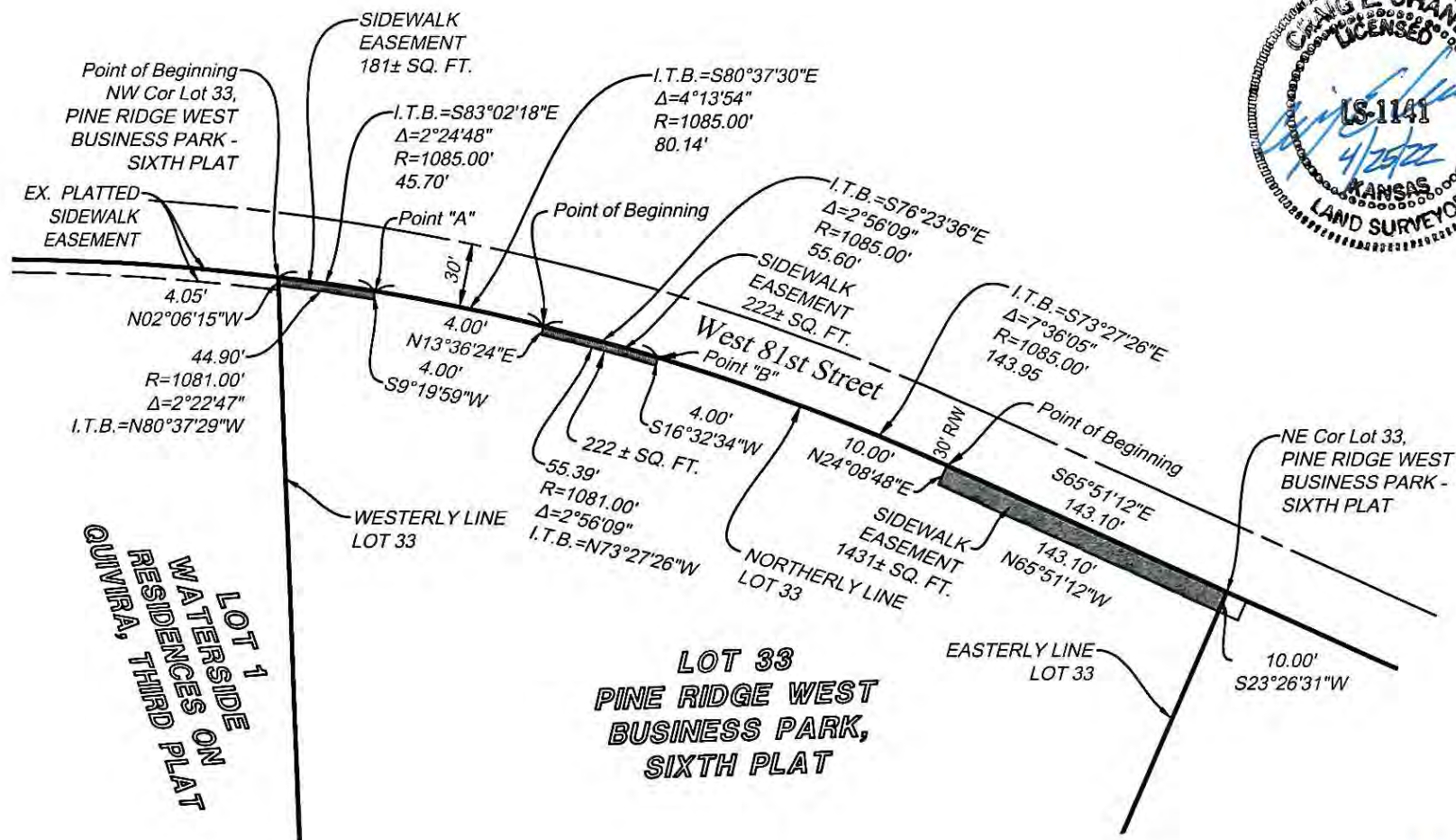
ALSO,

COMMENCING at the aforementioned Point "B"; thence southeasterly along the Northerly Line of said Lot 33 on a curve to the right, said curve having an initial tangent bearing of South 73°27'26" East, a radius of 1085.00 feet, a delta angle of 07°36'05", an arc length of 143.95 feet to the true POINT OF BEGINNING of land being described; thence continuing along said Northerly Line of Lot 33, South 65°51'12" East, a distance of 143.10 feet to the Northeast Corner of said Lot 33; thence South 23°26'31" West, along the Easterly Line of said Lot 33, a distance of 10.00 feet; thence departing said Easterly Line, North 65°51'12" West, along a line 10 feet southwesterly of as measured perpendicular to, and parallel with said Northerly Line of Lot 33, a distance of 143.10 feet; thence North 24°08'48" East, a distance of 10.00 feet to the place of beginning;

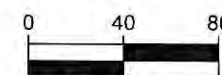
Containing 1,835 square feet or 0.042 acres, more or less.

The afore described original legal description was prepared and written on April 22, 2022 by me, Craig E. Chaney, Professional Surveyor, P.S. No. 1141.

SIDEWALK EASEMENT



NORTH



(IN FEET)
1 inch = 80 ft.

Page 111



making lives better.

11031 Strang Line Road
Lenexa, Kansas 66215
913-888-7800
www.mcclurevision.com

REVISIONS

LOT 33
PINE RIDGE WEST
BUSINESS PARK - SIXTH PLAT
LENEXA
JOHNSON COUNTY, KANSAS
190782-000
4/25/22

ENGINEER
N/A
SURVEYOR
CEC

DRAWN BY
BGL
CREW CHIEF
N/A

PAGE
2 of 2

S5| ||QQ/Q
T13S|Johnson County
R24E|Kansas State

ENCROACHMENT AGREEMENT

This **Easement Encroachment Agreement** ("Agreement") is made and entered into effective as of the ____ day of _____, 2022, by and between City of Lenexa, Kansas, "**GRANTEE**" and, Evergy Metro, Inc., a Missouri corporation (Evergy), whose mailing address is PO Box 418679, Kansas City, Missouri 64141-9679, "**GRANTOR**".

After recording mail to: **Evergy**
Real Estate Department
P.O. BOX 418679
Kansas City, MO 64141-9679

WITNESSETH:

WHEREAS, Grantor holds an Easement Conveyance over lands situated in Johnson County, Kansas, described as follows:

*A tract of land ninety (90) feet in width the center line of which is described as follows: Beginning on the North line of the Northeast Quarter (NE 1/4) of Section S, Township 13, Range 24, Johnson County, Kansas, at a point forty-five (45) feet East of the West line of said Quarter (1/4) Section, thence South parallel to said West line a distance of six hundred sixty (660) feet to a point, hereby designated and hereinafter referred to as Point '1 A1', thence continuing on the last described course a distance of forty-five (45) feet.
Also the further right to install and maintain down guys and anchors within that portion of a circle lying southerly and easterly of the outer boundaries of the above described ninety (90) foot tract of land, said circle having a radius of one hundred twenty (120) feet, and the center of said circle being aforesaid Point "A".*

*Said easement or right of way (next hereinabove described)
is located within a part of the following described larger
tract of land (Tract No. 2) in which those defendants above
named as to Tract No. 2 have or claim an interest:
The Northeast 1 / 4 of Section 5, Township 13, Range 24, in Johnson
County, Kansas.*

(the "Easement Area"); and

WHEREAS, said Easement Conveyance was recorded in Book 1100 at Page 811 in the office of the Johnson County, Kansas Recorder [**or** Register] of Deeds; and

WHEREAS, Grantee has requested Grantor's permission to encroach on and within certain portions of the Easement Area (the "Encroachments") in accordance with the drawings attached hereto as **Exhibit A** and incorporated herein (the "Improvement Drawings"); and

WHEREAS, Grantor has determined that the Encroachments do not and will not adversely affect its ability to use the Easement Area and has consented to Grantee's request, subject to the terms and conditions described in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows.

1. Grantor does hereby grant, without warranty, and only to the extent that it has right to do so, unto Grantee the right, subject to the reserved rights of Every under the Easement Conveyance, to construct the Encroachments within the Easement Area in accordance with the Improvement Drawings. Except as provided in this Agreement, Grantee, its successors and assigns, from this day forward, may not, without the express written consent of Grantor: (i) use or develop the Easement Area in any way which would constitute a further encroachment; or (ii) construct, install or locate any additional structure on a permanent or temporary basis on or within the Easement Area beyond the scope of the Encroachments as set forth in the Improvement Drawings. This does not include ordinary repairs and maintenance to Encroachment so long as Grantee complies with requirements herein.
2. Grantee shall obtain from the appropriate property owner such rights as may be required from the property owner for Grantee to install and operate the Encroachments. Grantor agrees to the Encroachment but does not represent that Grantee has the right to install and operate the Encroachments without the consent and approval of other persons having interests in the Easement Area.
3. Grantee shall not construct install or locate any additional or replacement structure or object on a permanent or temporary basis within the Easement Area, without prior written consent from Grantor. This does not include ordinary repairs and maintenance to Encroachment so long as Grantee complies with requirements herein.
4. Grantor retains the right to enter and use the Easement Area for any purpose permitted under the Easement Conveyance, and Grantor does not in any way subordinate, release, quit claim, or otherwise convey, limit, waive, or terminate the rights provided by the Easement Conveyance except as such rights are specifically limited herein.

5. Grantee shall conform to the Limitations set forth in Exhibit B, attached hereto and incorporated herein by this reference.
6. Grantee, for itself and its heirs, successors and assigns, expressly releases and discharges Grantor, its successors, assigns, insurers, stockholders, directors, officers, employees, and agents for any and all loss or damage to the above-mentioned Encroachment, and any claim for damages resulting therefrom, which may result from any activity by Grantor within the Easement Area, or from Grantor's use or non-use in any way of the Easement Conveyance. Grantor agrees to take reasonable care not to cause damage to Encroachment, except in case of emergency situations.
7. Grantee assumes full responsibility for the risk of damage to the Easement Area which may be caused by Grantee's activities. To the fullest extent permitted by applicable law and subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), Grantee agrees to defend, indemnify and save harmless Grantor, its subsidiary companies, and their successors, assigns, directors, officers, employees, servants and agents from any and all claims, demands, charges, suits or actions for property damage or loss, or loss of use thereof, and personal injury and death, whether at law or in equity, brought by any person, entity, or agency, and all expenses of litigation including, but not limited to reasonable attorney's fees and litigation expenses, arising out of or in any manner connected with the Encroachments.
8. This Agreement may not be modified or released except in writing, duly executed by the parties hereto. This Agreement may be filed in the real estate records. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants not contained herein. This Agreement shall be construed, interpreted, and governed in all respects by the laws of the state in which the Easement Area is located.
9. This Agreement may be enforced by appropriate action and the prevailing party in any such action shall recover as part of its costs, reasonable attorneys' fees and court costs.
10. If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and the remaining provisions shall not in any way be impaired or affected.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Encroachment Agreement.

Grantor:
Evergy Metro, Inc.

By: _____
Printed Name: _____
Title: _____

ACKNOWLEDGMENT OF GRANTOR

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this _____ day of _____, 2022, before me, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is the _____ for Evergy Metro, Inc., a Missouri corporation, and that the within instrument was signed in behalf of said corporation by authority of its Board of Directors, and he/she 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 at my office in _____ County, Missouri, the day and year last above written.

Notary Public

THREE: _____

PROG: _____

122

COUNTY OF _____)

On this ____ day of _____, 2022, before me, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that s/he is the _____ for _____, and that the within instrument was signed in behalf of said company, and s/he acknowledged said instrument to be the free act and deed of said company.

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

Exhibit A
Improvement Drawings

See accompanying HNTB
ISRW Detail Sheet
Sheet 23 - Dated 7/29/2021

Plotted on 10-AUG-2022 11:54 AM
 Jopert Plot Queue: square\$
 Pen Table \\ovp001\jobs\7468\PrintProduction\Library\PrintPb\132\34.open
 Plot Scale 1:5
 Design Filename: \\ovp001\jobs\7468\PrintProduction\Roadway\35th.plan.prof_wal.dgn

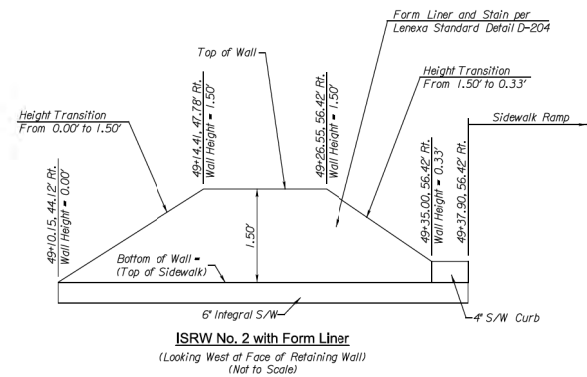
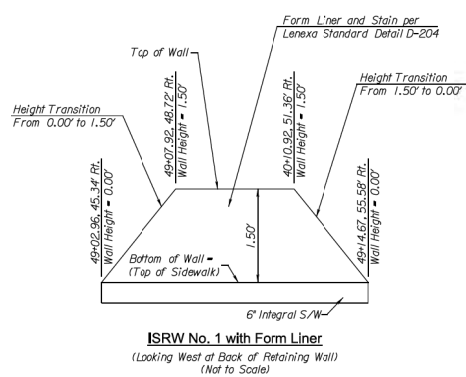
[illegible]

Exhibit B
Limitations upon Grantee's Exercise of
Rights in the Easement Area



Evergy Guidelines for Construction within Transmission Easements
(Rev. 10/06/2021)

General Guidelines:

- 1) No permanent structures are allowed within the easement.
- 2) No retention or detention basins within the easement.
- 3) No swimming pools are allowed within the easement.
- 4) Changes in grading within the easement shall be sent to Evergy for approval.
- 5) Access must be maintained to existing structures and wires for maintenance.
- 6) All changes within the easement need to comply with the current version of the National Electric Safety Code (NESC), ANSI C2.
- 7) As a general rule within the easement:
 - a. No mature tree height greater than 10 feet.
 - b. No lighting structures greater than 10 feet.
- 8) Lighting and landscaping plans shall be reviewed by Evergy for approval to verify safety code compliance.
- 9) All construction equipment shall maintain the proper clearance from the transmission lines; no equipment with a height taller than 14' within the easement area.
- 10) All spoils from construction are to be maintained off the easement to assure proper clearances.
- 11) All metal fence designs shall include bonding per Evergy specification. Specification provided upon request.
- 12) All OSHA regulations and Evergy safety requirements shall be followed when working near energized lines; see page 9 for Evergy clearance safety requirements.
- 13) Storage of explosives or explosive material is not permitted on right-of-way.
- 14) Storage of fuels such as gasoline or diesel fuel is not permitted on right-of way.
- 15) Blasting will be permitted on the right-of-way when approved by Evergy. When blasting, blasting mats or other suitable material will be used in such a fashion to adequately protect the conductor and structures from flying debris. All detonating cord shall be staked down securely at ten (10) feet intervals.
- 16) Fueling equipment from bulk containers or trucks is not permitted on right-of-way.
- 17) Excavation shall not be permitted within 20 feet of poles and anchors.
- 18) Fill material such as dirt or debris shall not be placed around anchors or poles.

Typical Transmission Line Easement:

Evergy shall have the right of ingress and egress to and from said land to survey, erect, construct, maintain, inspect, patrol, modify, rebuild and repair its lines, together with the right to replace, renew, and relocate upon, over or under its right of way all poles, towers, wires, anchor, underground conduit, and appurtenances thereto, and the right to remove any or all of said installations or appurtenances. Evergy may erect, maintain and use gates in all fences that cross or shall hereinafter cross the route of said lines. Evergy may trim, cut, clear away and/or remove any trees, limbs and brush on the above-described land now or at any future time. Evergy shall have the further right to trim, cut, clear away and/or remove any trees, limbs, and brush on lands adjacent to the above-described right of way whenever in its judgment such will interfere with or endanger the construction, operation or maintenance of said lines. All logs, limbs and brush cut or trimmed by Evergy shall be chipped or removed by Evergy. In exercising its rights of ingress and egress Evergy shall, whenever practicable, use existing roads or lanes, and shall repair any damage caused by its use thereof.

Grantor, their successors or assigns, may cultivate, use and enjoy the land above described, provided such use shall not in the judgment of Evergy, interfere with or endanger the construction, operation or maintenance of said lines, and provided further that no buildings shall be constructed on said right of way.

Construction Adjacent to or Under Transmission Lines:

Evergy shall be notified prior to the start of construction work adjacent to or under transmission lines so that an inspector can be assigned to the job to determine the extent of work to be performed to protect conductor, structures and anchors. Construction work on transmission right-of-way must be approved by Evergy Transmission Engineering, (816) 652-1575. The cost incurred to maintain an Evergy inspector on site, when deemed necessary, shall be reimbursable by the party of the Third part. **Evergy Overhead Transmission Line Clearance Safety** handouts will be discussed with all employees prior to any work or construction on right-of-ways.

The cost of construction and other measures incurred by Party of the First Part in order to accommodate the construction of improvements by the Second Party or the Party of the Third Part to the land to be dedicated such as, by way of example and without limitation, temporarily relocating anchors, stabilizing structures, or other protecting said facilities, and the cost of repair of any damages to the Party of the Second Part or Party of the Third Part to the land to be dedicated shall be paid to Party of the First Part, provided Party of the First Part obtains the prior written consent of the reimbursing party to any such construction and or repair, except that in the case of emergency construction and or repair, the reimbursing Party shall have the right to request an itemized statement of cost of said emergency construction and or repair after such work is completed by Party of the First Part.

Overhead Transmission Line Clearance Safety Requirements:

The following minimum clearances shall be maintained between Evergy's energized transmission line conductors and all construction equipment.

<u>Line Voltage</u>	<u>Clearance Requirement</u>
69kV	15.0 FEET (In all directions and at all times)
161kV	20.0 FEET (In all directions and at all times)
345kV	25.0 FEET (In all directions and at all times)

Emergency Contacts:

System Control	(816) 645-1238
Craig Rice	(816) 214-3963
Ian Dennis	(816) 718-5663
Keith Beers	(785) 304-4109
Jeremy Seever	(816) 935-9851