



Agenda

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

**OCTOBER 18, 2022
7:00 PM
COMMUNITY FORUM**

CALL TO ORDER Pledge of Allegiance

ROLL CALL

APPROVE MINUTES October 4, 2022 City Council meeting draft minutes
(located in the Appendix)

**MODIFICATION OF
AGENDA**

PROCLAMATIONS World Polio Day - Oct. 24

CONSENT AGENDA **Item Numbers 1 through 7**
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 for maintenance
 - a. Acceptance of the Cedarcrest Third Plat public improvements for maintenance

This project constructed public street, storm, and streetlight improvements in the Cedarcrest subdivision and was funded by private development.
 - b. Acceptance of the K-7 Highway and Prairie Star Parkway Interchange Project for maintenance

This project constructed new traffic signals on Prairie Star Parkway at K-7

Highway and associated road improvements, for a total cost of \$1,618,891.64.

- c. Acceptance of the completed storm drainage repairs under the BNSF Railroad tracks at Pflumm Road & Santa Fe Trail Drive for maintenance

A damaged storm drain pipe failed, causing Santa Fe Trail Drive to flood during heavy rains. This project bored a new pipe under the railroad and replaced additional pipe along the west side of Pflumm Road, for a total cost of \$259,361.41.

- d. Acceptance of the Oak Hill Storm Drainage Improvement Project for maintenance

Routine inspections of the storm sewer and curb inlets indicated that most of the system is comprised of corrugated metal pipes and much of it had reached the end of its useful life. A rehabilitation project was completed for a total cost of \$1,712,342.11.

- 2. Acceptance of landscape and utility easements as shown on Cottonwood Canyon, Thirteenth Plat

This is a one-lot final plat to allow the joining of two parcels to facilitate construction of a single-family home. Landscape and utility easements are being dedicated to the City with the final plat. PT22-22F

- 3. Acceptance of permanent public utility easements as shown on Mize Hill, First Plat

This is a dedication of public utility easements in the Mize Hill subdivision. The easements are needed to accommodate rear yard power and communication lines.

- 4. Approval of a revised preliminary plan for the WaterOne Campus located at 10747 Renner Boulevard in the BP-1, Planned Business Park, and BP-2, Planned Manufacturing, zoning districts to allow continuation of a "Construction Sales and Service, General" use

This revised preliminary plan is for WaterOne, which is on 110 acres of partially developed land. The campus includes three main buildings and a proposed fourth building for vehicle maintenance services. The revised plan includes a new outdoor storage area for various materials.

- 5. Resolution authorizing the Mayor to execute an agreement with Serve You Rx for pharmacy benefit management services for 2023-2025

The City's health benefits consultant requested proposals to provide pharmacy benefit management services for the City's self-funded employee health care plan. Staff recommends contracting with Serve You Rx for the three-year period from January 1, 2023 through December 31, 2025. The estimated three-year cost is \$3,104,913.

6. Resolution authorizing the Mayor to execute an amendment to the interlocal agreement with Johnson County for partial reimbursement of construction costs for the 109th Street to College Boulevard & Pflumm Road Storm Drainage Improvements Project

This amendment increases the City's reimbursement for project eligible costs including construction, inspection, and utility relocation. The City will be awarded 50%, up to a maximum of \$802,239.

7. Resolution authorizing the Mayor to execute an agreement with Clearwater Enterprises, LLC for the purchase of natural gas

Since 2017, the City has purchased natural gas for City facilities from Clearwater Enterprises, LLC to obtain wholesale pricing. Under this agreement, the City will pay a wholesale rate calculated by adding \$0.30/MMBtu (Million British Thermal Units) to the monthly index price. The City has saved \$55,094.92 on natural gas purchases since the agreement began and \$12,168.56 for the most recent 12 months of the agreement.

END OF CONSENT AGENDA

BOARD RECOMMENDATIONS

8. Ordinance amending Ordinance 4136 to grant a modification to a permanent special use permit on property located at 11937 Santa Fe Trail Drive

This request is for consideration of an amendment and modification of a special use permit for an existing wireless communication facility to add an additional 256 square feet to the fenced ground equipment area to accommodate a new generator.

9. Approval of a preliminary plan for CubeSmart Self-Storage located at the northwest corner of College Boulevard & Greenwood Street in the BP-2, Planned Manufacturing, zoning district to allow an indoor self-storage facility

The proposed indoor, climate-controlled self-storage facility is a three-story,

61,600 square foot building with 636 units and internal access. PL22-10P

NEW BUSINESS

10. Resolution approving the 2022-23 insurance program and authorizing the City Manager to execute all documents necessary to procure property and liability insurance and associated lines of coverage

The City's current insurance carrier, Intact Insurance, left the public entity insurance market, requiring a comprehensive bid for the City's entire property and liability insurance program for 2022-2023. Staff recommends utilizing a self-insured retention program for the 2022-2023 policy year that will cost approximately \$404,434 in base premiums, which is about a 23% decrease from last year.

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

11. October 4, 2022 City Council meeting draft minutes
12. World Polio Day Proclamation
13. Item 3 -- Mize Hill Easement
14. Item 5 -- Serve You Rx 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 1a

SUBJECT: Acceptance of the Cedarcrest Third Plat public improvements for maintenance

CONTACT: Tim Green, Deputy Community Development Director

DATE: October 18, 2022

ACTION NEEDED:

Accept the Cedarcrest Third Plat public improvements for maintenance.

PROJECT BACKGROUND/DESCRIPTION:

This project constructed public street, storm, and streetlight improvements related to the Cedarcrest subdivision.

Staff performed a final inspection on August 26, 2022 and advised that all work had been completed in accordance with the plans and specifications. The maintenance bonds for this project shall go into force upon acceptance by the Governing Body on October 18, 2022 and will expire on October 18, 2024.

The contractor was Superior Bowen.

Total lane miles:	0.64 miles
Total statute miles:	0.32 miles
Pipe length:	1,449 linear feet

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

This project was funded by private development.

STAFF RECOMMENDATION:

Acceptance for maintenance.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

Integrated Infrastructure & Transportation

Guiding Principles

Strategic Community Investment

ATTACHMENTS

1. Map



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

Cedarcrest, Third Plat Acceptance for Maintenance



0 150 300 600 Feet



**CITY COUNCIL
MEMORANDUM**

ITEM 1b

SUBJECT: Acceptance of the K-7 Highway and Prairie Star Parkway Interchange Project for maintenance

CONTACT: Tim Green, Deputy Community Development Director

DATE: October 18, 2022

ACTION NEEDED:

Accept the K-7 Highway and Prairie Star Parkway Interchange Project for maintenance.

PROJECT BACKGROUND/DESCRIPTION:

This project constructed two new traffic signals on Prairie Star Parkway at the ramp terminals for K-7 Highway. It also included:

- widening of the exit ramps,
- a new median on Prairie Star Parkway at Hedge Lane,
- removal of the Hedge Lane connection on the north side of Prairie Star Parkway, and
- mill and overlay of Prairie Star Parkway from Hedge Lane to the bridge 500 feet east of Monticello Terrace.

Staff performed a final inspection on September 12, 2022 and advised that all work had been completed in accordance with the plans and specifications. The maintenance bonds for this project shall go into force upon acceptance by the Governing Body on October 18, 2022 and will expire on October 18, 2024.

The contractor was V.F. Anderson Builders, Inc.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

This project was funded with KDOT Access Management Construction Project Program funding in the amount of \$1.2 million. The remaining project costs were funded by TIP zone fees, Capital Improvement Funds, and the Pavement Management Program. The total construction cost was \$1,618,891.64.

The project budget breakdown follows:

KDOT funding	\$1,200,000
TIP fees	\$452,287
Capital Improvement Fund	\$116,463

Pavement Management Program	\$250,000
Total	\$2,018,750

STAFF RECOMMENDATION:

Acceptance for maintenance.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

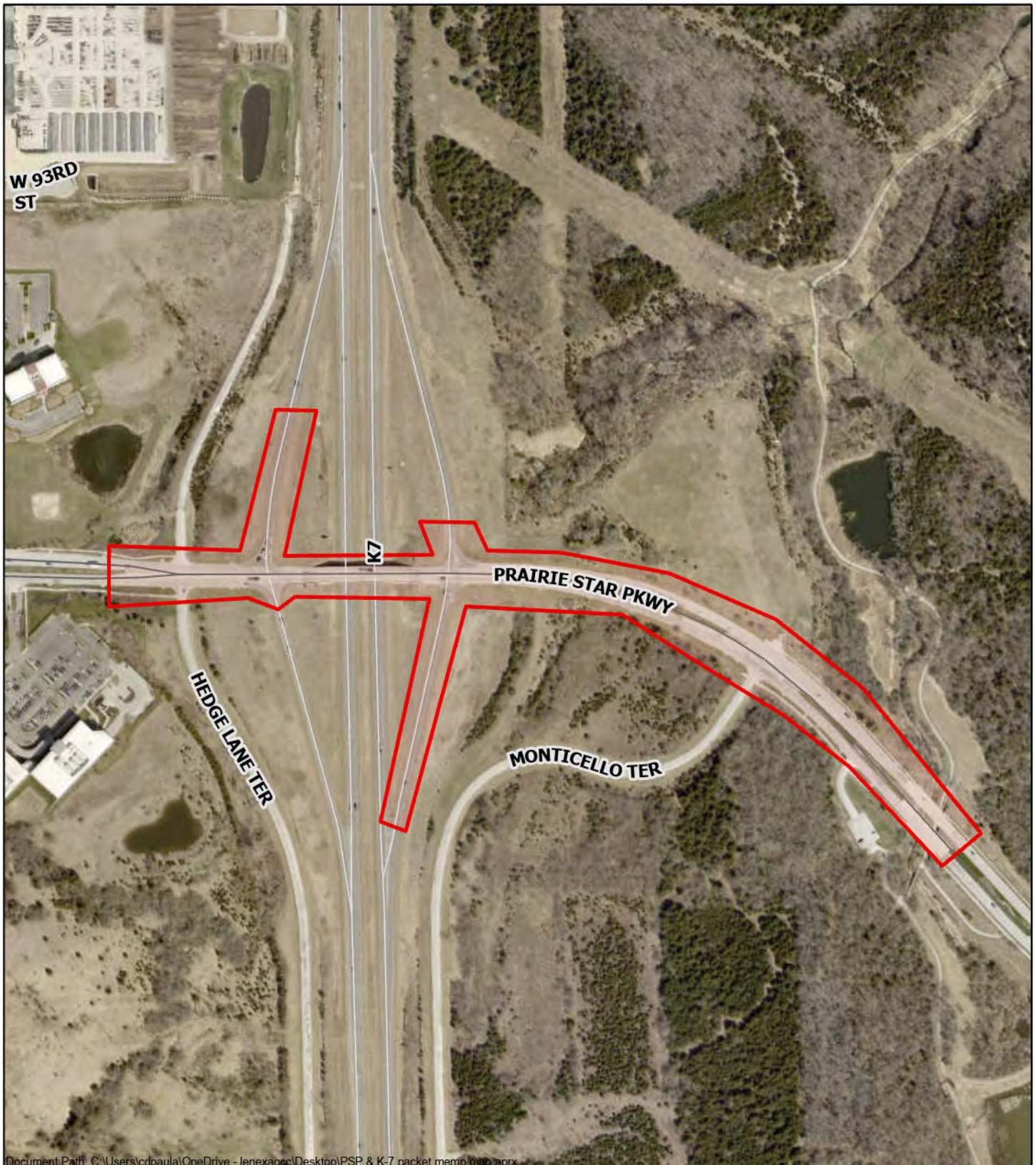
Integrated Infrastructure & Transportation

Guiding Principles

Strategic Community Investment

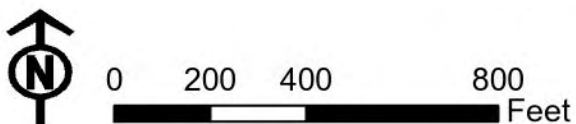
ATTACHMENTS

- 1. Map



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

K-7 & Prairie Star Parkway Aerial/Vicinity Map





**CITY COUNCIL
MEMORANDUM**

ITEM 1c

SUBJECT: Acceptance of the completed storm drainage repairs under the BNSF Railroad tracks at Pflumm Road & Santa Fe Trail Drive for maintenance

CONTACT: Tim Green, Deputy Community Development Director

DATE: October 18, 2022

ACTION NEEDED:

Accept the completed storm drainage repairs under the BNSF Railroad tracks at Pflumm Road & Santa Fe Trail Drive for maintenance.

PROJECT BACKGROUND/DESCRIPTION:

A damaged storm drain pipe located under the BNSF Railroad tracks at Pflumm Road & Santa Fe Trail Drive failed, causing Santa Fe Trail Drive to flood during heavy rains. This repair project included boring a new pipe under the railroad and replacing additional pipe along the west side of Pflumm Road to the next curb inlet, approximately 200 feet to the south.

Staff performed a final inspection on September 5, 2022 and advised that all work had been completed in accordance with the plans and specifications. The maintenance bonds for this project shall go into force upon acceptance by the Governing Body on October 18, 2022 and will expire on October 18, 2024.

The contractor was Leavenworth Excavating and Equipment Company, Inc.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

This project was funded by the Capital Improvement Fund - 2021 Traditional Stormwater Infrastructure Project (Project No. 90058). The total construction cost was \$259,361.41.

STAFF RECOMMENDATION:

Acceptance for maintenance.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

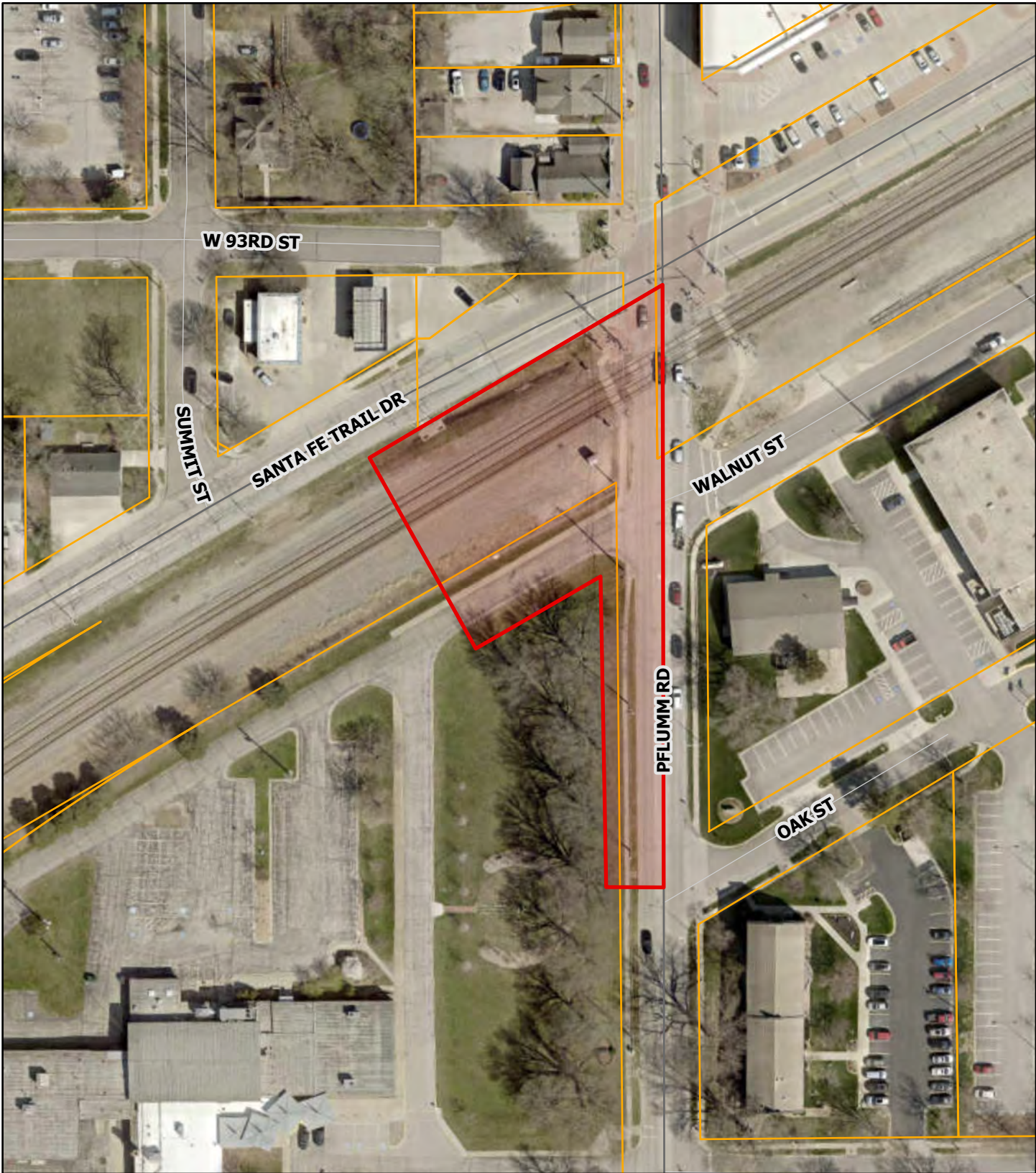
Integrated Infrastructure & Transportation

Guiding Principles

Strategic Community Investment

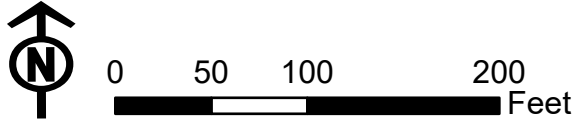
ATTACHMENTS

1. Map



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

Pipe Replacement Under BNSF Acceptance for Maintenance





**CITY COUNCIL
MEMORANDUM**

ITEM 1d

SUBJECT: Acceptance of the Oak Hill Storm Drainage Improvement Project for maintenance

CONTACT: Tim Green, Deputy Community Development Director

DATE: October 18, 2022

ACTION NEEDED:

Accept the Oak Hill Storm Drainage Improvement Project for maintenance.

PROJECT BACKGROUND/DESCRIPTION:

Routine inspections of the storm sewer and curb inlets in the Oak Hill neighborhood indicated that most of the system was comprised of corrugated metal pipes and much of it had reached the end of its useful life. A rehabilitation project was designed by Wilson & Co. Inc and construction was completed by V.F. Anderson Builders, Inc.

Staff performed a final inspection on July 22, 2022 and advised that all work had been completed in accordance with the plans and specifications. The maintenance bonds for this project shall go into force upon acceptance by the Governing Body on October 18, 2022 and will expire on October 18, 2024.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

This project was funded by the Capital Improvement Fund (Project No. 90057). The total construction cost was \$1,712,342.11.

STAFF RECOMMENDATION:

Acceptance for maintenance.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

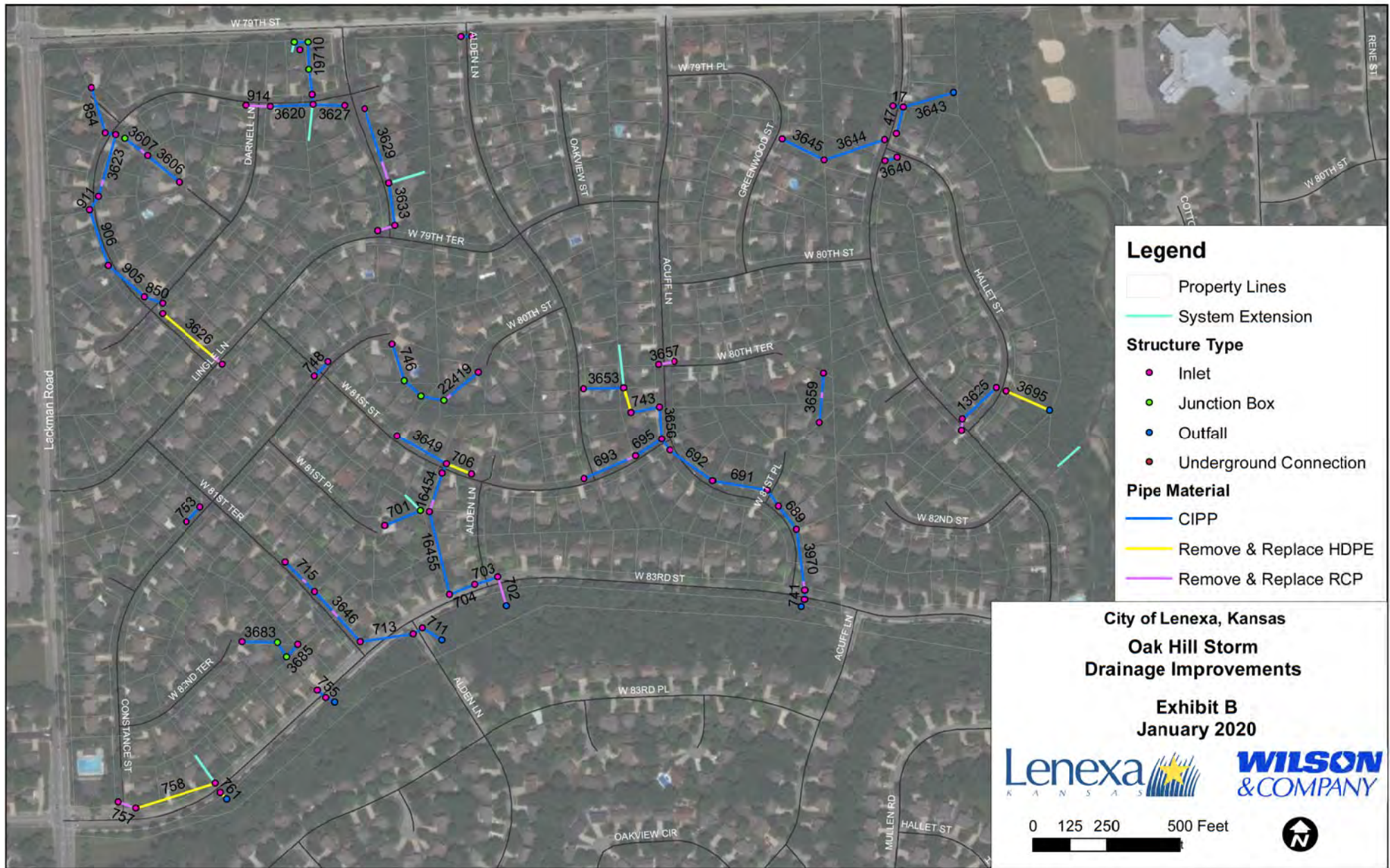
Integrated Infrastructure & Transportation

Guiding Principles

Strategic Community Investment

ATTACHMENTS

1. Map





**CITY COUNCIL
MEMORANDUM**

ITEM 2

SUBJECT: Acceptance of landscape and utility easements as shown on Cottonwood Canyon, Thirteenth Plat

CONTACT: Stephanie Kisler, Planning & Development Administrator

DATE: October 18, 2022

ACTION NEEDED:

Accept the landscape and utility easements as shown on Cottonwood Canyon, Thirteenth Plat.

APPLICANT:

Wes Barber, Keller Williams Partner, Inc.

OWNER:

Evan Shane McCarthy

PROPERTY LOCATION/ADDRESS:

9350 Cottonwood Canyon Drive

PROJECT BACKGROUND/DESCRIPTION:

Cottonwood Canyon, Thirteenth Plat is a one-lot plat located north of Prairie Star Parkway and south of 87th Street Parkway. The subdivision intertwines with the golf course to the west of City Center. A new home is being constructed on a sloped site along Cottonwood Canyon Drive. The property owner acquired land from the golf course with the intention of installing a retaining wall to reduce the slope of the lot. The final plat will combine the existing lot and the land from the golf course into a single lot so that both the new single-family home and the retaining wall are on the same parcel of land.

The lot includes the same setback reduction deviations approved with the original plat of the property. The lot will have a reduced side yard setback of five feet (instead of seven feet) and a reduced front yard setback of 25 feet (instead of 30 feet).

STAFF RECOMMENDATION:

Acceptance of the easements.

PLANNING COMMISSION ACTION:

At the October 3, 2022 Planning Commission meeting, the final plat for Cottonwood Canyon, Thirteenth Plat, was approved as part of the consent agenda. Chairman Poss entertained a motion for **APPROVAL** of the consent agenda. Commissioner Leib moved for approval and the motion was seconded by Commissioner Horine. The Planning Commission approved the consent agenda by a unanimous voice vote.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

Vibrant Neighborhoods

Guiding Principles

ATTACHMENTS

1. Map
2. Plat
3. PC Report
4. PC Draft Minutes Excerpt



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

Cottonwood Canyon Thirteenth Plat Landscape and Utility Easements



0 150 300 600
Feet

FINAL PLAT OF
COTTONWOOD CANYON
THIRTEENTH PLAT

A REPLAT OF ALL OF LOT 127, COTTONWOOD CANYON, ELEVENTH PLAT
AND PART OF THE SW 1/4 OF SEC. 31-12-24
IN THE CITY OF LENEXA, JOHNSON COUNTY, KANSAS

DESCRIPTION:

A replat of all of LOT 127, COTTONWOOD CANYON, ELEVENTH PLAT, a subdivision of land recorded in Book 201812 at Page 004321 and part of the Southwest One-Quarter of Section 31, Township 12 South, Range 24 East in the City of Lenexa, Johnson County, Kansas, both together, being more particularly described as follows:

Commencing at the Northwest corner of the said Southwest One-Quarter; thence along the West line of the said Southwest One-Quarter, South 00 degrees 51 minutes 38 seconds East, a distance of 223.38 feet to the Point of Beginning; thence South 87 degrees 43 minutes 23 seconds East, a distance of 267.61 feet to the Northeast corner of said Lot 127; thence along the East line of said Lot 127, South 29 degrees 14 minutes 26 seconds West, a distance of 100.24 feet to the Southeast corner thereof; thence along the South line of said Lot 127, North 87 degrees 12 minutes 53 seconds West, a distance of 200.82 feet to the Southwest corner thereof, said point being on the West line of the said Southwest One-Quarter; thence along said West line and the West line of said Lot 127 and its Northerly extension, North 00 degrees 51 minutes 38 seconds West, a distance of 181.62 feet to the Point of Beginning and containing 0.7250 acres, more or less.

Replatted area (LOT 127): 18,696.71 sq. ft.

DEVIATION TYPE	LOTS	DEVIATION REQUEST	CODE REQUIREMENT
FRONT YARD SETBACK REDUCTION	127	5 ft.	30 ft.
SIDE YARD SETBACK REDUCTION	127	2 ft.	7 ft.

DEDICATION:

The undersigned proprietor of the above described tract of land has caused the same to be subdivided in the manner shown on the accompanying plat which hereafter shall be known as "COTTONWOOD CANYON, THIRTEENTH PLAT".

The streets and roads shown on this plat and not heretofore dedicated as thoroughfares are hereby dedicated to the City of Lenexa, Johnson County, Kansas.

An easement or license to enter upon, locate, construct and maintain or authorize the location, construction or maintenance and use of conduits, pipes, poles, wires, drainage facilities, ducts and cables, and similar facilities, upon, over and under those areas outlined and designated on this plat as "Utility Easement" or "UE" is hereby granted to the City of Lenexa, Kansas, to allow ground facilities associated with the uses herein permitted shall be constructed, located, or maintained in any area of the "UE" that crosses or intersects with a "Drainage Easement" or "DE".

A 15 foot wide Utility Easement or "UE" is hereby dedicated to the City of Lenexa, Johnson County, Kansas, on its designees, off of lots or tracts adjacent to and parallel with all Street lines.

A 15 foot wide Landscape Easement or "LE" is hereby dedicated to the City of Lenexa, Johnson County, Kansas, off of lots adjacent to and parallel with all Street lines. Maintenance of this "LE" shall be the responsibility of the Homeowner.

RESTRICTIONS:

The use of all Lots and Tracts of land in this subdivision shall hereafter be subject to the covenants and restrictions which will be filed at the office of Records and Tax Administration of Johnson County, Kansas and shall hereby become a part of the dedication of this plat as though fully set herein.

This plat shall not be filed by Records and Tax Administration unless filing is within 730 calendar days after the City of Lenexa Governing Body approval date, inclusive.

The ground floor area classification for lots in this plat is Class "E".

All Mine Survey Data was provided by URS Corporation, Dated June, 2007.

APPROVALS:

Approved by the Planning Commission of the City of Lenexa, Johnson County, Kansas, this ____ day of _____, 2022.

Chris Posa, Chairman

Approved by the Governing Body of the City of Lenexa, Johnson County, Kansas, this ____ day of _____, 2022.

Michael A. Boehm, Mayor

Jennifer Martin, City Clerk

ACKNOWLEDGMENT:

IN TESTIMONY WHEREOF, the undersigned proprietors have caused this instrument to be executed this ____ day of _____, 2022.

Evan Shane McCarthy

STATE OF KANSAS

COUNTY OF JOHNSON

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2022, by _____

Notary Public

My Appointment Expires _____

LEGEND:

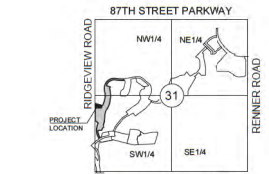
- BL - BUILDING LINE
- R/W - RIGHT-OF-WAY
- WE - WATERLINE EASEMENT
- - FOUND 1/2" REBAR W/LS-54 CAP UNLESS OTHERWISE NOTED
- - SET 1/2" REBAR W/LS-54 CAP UNLESS OTHERWISE NOTED
- - FOUND MONUMENT BOX
- - EXISTING LOT AND PROPERTY LINES



I HEREBY CERTIFY THIS PLAT WAS PREPARED UNDER MY DIRECT SUPERVISION BASED ON A FIELD SURVEY PERFORMED ON 06-28-2022. THE DETAILS SHOWN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.



Aaron T. Rauter - Land Surveyor
KS# LS-1429



SECTION 31-12-24
LOCATION MAP
SCALE 1" = 2000'



DATE: 8/2/2022
DRAWN BY: JMT
CHECKED BY: SCH
PROJ. NO.: 21-011

FINAL PLAT OF
COTTONWOOD CANYON
THIRTEENTH PLAT
SHEET NO. 1

MEETING DATE: October 3, 2022

CONSENT AGENDA ITEM: 4

PROJECT TITLE: Cottonwood Canyon, Thirteenth Plat

PROJECT # / REQUEST: PT22-22F – Final Plat

APPLICANT:

Wes Barber, Keller Williams Partner, Inc.

OWNER:

Evan Shane McCarthy

DESIGN PROFESSIONAL:

David Rinne, Schlager

STAFF PLANNER:

David Dalecky

PROPERTY LOCATION: 9350 Cottonwood Canyon Drive

SUMMARY OF RECOMMENDATION

Staff recommends **APPROVAL** of the final plat for Cottonwood Canyon, Thirteenth Plat for a one-lot single-family lot subdivision.

PROPOSED PROJECT DESCRIPTION AND BACKGROUND INFORMATION

The applicant is requesting approval of a one-lot plat to consolidate additional property into the single-family lot. The additional property will allow for the installation of a retaining wall on the northerly side of the lot. A part of the proposed lot was originally platted as Lot 127 in Cottonwood Canyon, 11th Plat. Cottonwood Canyon subdivision is developed around a golf course. Per [Section 4-2-B-1](#) of the UDC a golf course is exempt from the platting requirement. A replat is required due to the assembling of the tract with the current platted lot.

CURRENT ZONING:

RP-1

CURRENT USE:

Single-Family residential home
under construction

PROPOSED USE:

Single-Family residential home

ACREAGE:

0.72

DWELLING CLASSIFICATION:

E

COMPREHENSIVE PLAN RECOMMENDATION FOR AREA

Suburban Density Residential – Low density detached single-family housing not exceeding a gross density of 3.5 dwelling units per acre.

VICINITY ZONING PATTERN:

North: RP-1, Planned Residential Single-Family District

South: RP-1, Planned Residential Single-Family District

East: RP-1, Planned Residential Single-Family District

West: AG, Agricultural District

VICINITY LAND USE PATTERN:

North: *Public and Open Space* land developed as a golf course

South: Suburban Density development

East: Suburban Density development

West: Undeveloped land

FINAL PLAT ANALYSIS

The proposed final plat is the consolidation of two parcels into a single lot. Part of the lot is the current platted Lot 127 of Cottonwood Canyon, Eleventh Plat, and the other part is an unplatted tract that had been part of the golf course property that the Cottonwood Canyon subdivision is developed around. The property owner proposes to increase the size of the lot to allow for a retaining wall to be installed along the north edge of the lot as part of the house construction. The final plat is an assembling of the platted lot and the adjacent unplatted tract to create a larger lot so that all elements of the site's development is contained within the platted lot.

The lot for the proposed final plat is shown in the following *Exhibit 1*:



Exhibit 1

The part of the lot that is to be added to the original lot includes undermined area. The edge of the undermined area is identified on the plat.

The Cottonwood Canyon subdivision is approved with reduced front and side yard setback deviations. The deviations are listed in the following table:

Deviation/Encroachment	UDC Requirement	Proposed
Front Yard Setback	30 feet	25 feet
Side Yard Setback	7 feet	5 feet

This one-lot subdivision reflects the same setback deviations approved for all other lots in all phases of the Cottonwood Canyon subdivision.

The subdivision has a dwelling classification of *E*. Dwelling classification establishes a minimum floor area of the home based on the type of structure. For an *E* dwelling classification, the minimum ground floor area is noted in the following table:

Dwelling Classification	1-story	1 and 1/2 -story	2-story
E	1,400 square feet	1,000 square feet	750 square feet

INFORMATIONAL COMMENTS

The plat includes easement dedications for the area previously unplatted portion added to the lot. The Governing Body will consider acceptance of the utility and landscape easements as shown on the final plat on October 18, 2022.

STAFF RECOMMENDATION

Staff recommends **APPROVAL** of the final plat for Cottonwood Canyon, Thirteenth Plat, for a one-lot single-family subdivision located at 9350 Cottonwood Canyon Drive.

CONSENT AGENDA

1. **Revised Final Plan for Sunflower Medical Office Building Parking located at 10900 West 86th Street in the CP-2, Planned Community Commercial District. PL22-05FR**
Consideration of a revised final plan for parking at the Sunflower Medical Office Building.
2. **Final Plan for Primus Prairie Creek Patio located at 16971 West 94th Street in the CP-1, Planned Neighborhood Commercial District. PL22-20F**
Consideration of a final plan and deviation request to allow a setback of 15' where 30' is required to install an outdoor patio area.
3. **Final Plan for Indian Trails Pool located at 8801 Greenway Lane in the R-1, Single-Family Residential District. PL22-21F**
Consideration of a final plan for the City of Lenexa to improve parking areas and the outdoor aquatic park to renovate the two pools and add one water slide tower and accessory buildings.
4. **Final Plat for Cottonwood Canyon, 13th Plat located at 9350 Cottonwood Canyon Drive in the RP-1, Planned Residential (Low Density) District. PT22-22F**
Consideration of a final plat to combine a lot with an unplatted tract to accommodate the construction of a new single-family residence.
5. **Revised Final Plan for The Domain at City Center located at 8800 Penrose Lane in the CC, Planned City Center District. PL22-06FR**
Consideration of a final plan for The Domain to replace the exterior finish materials of the multi-family residential building.

Chairman Poss entertained a motion to **APPROVE** Consent Agenda Items one through five. Moved by Commissioner Leib, seconded by Commissioner Horine, and carried by a unanimous voice vote.



**CITY COUNCIL
MEMORANDUM**

ITEM 3

SUBJECT: Acceptance of permanent public utility easements as shown on Mize Hill, First Plat

CONTACT: Tim Green, Deputy Community Development Director

DATE: October 18, 2022

ACTION NEEDED:

Accept the permanent public utility easements as shown on Mize Hill, First Plat.

PROJECT BACKGROUND/DESCRIPTION:

Mize Hill, First Plat was approved by the Planning Commission on April 5, 2021 and by the Governing Body on April 20, 2021. After plat approval, it was discovered that additional easements were needed to accommodate rear yard power and communication lines. The proposed public utility easements are generally 10-feet-wide along the rear lots of the subdivision.

STAFF RECOMMENDATION:

Accept the easements.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

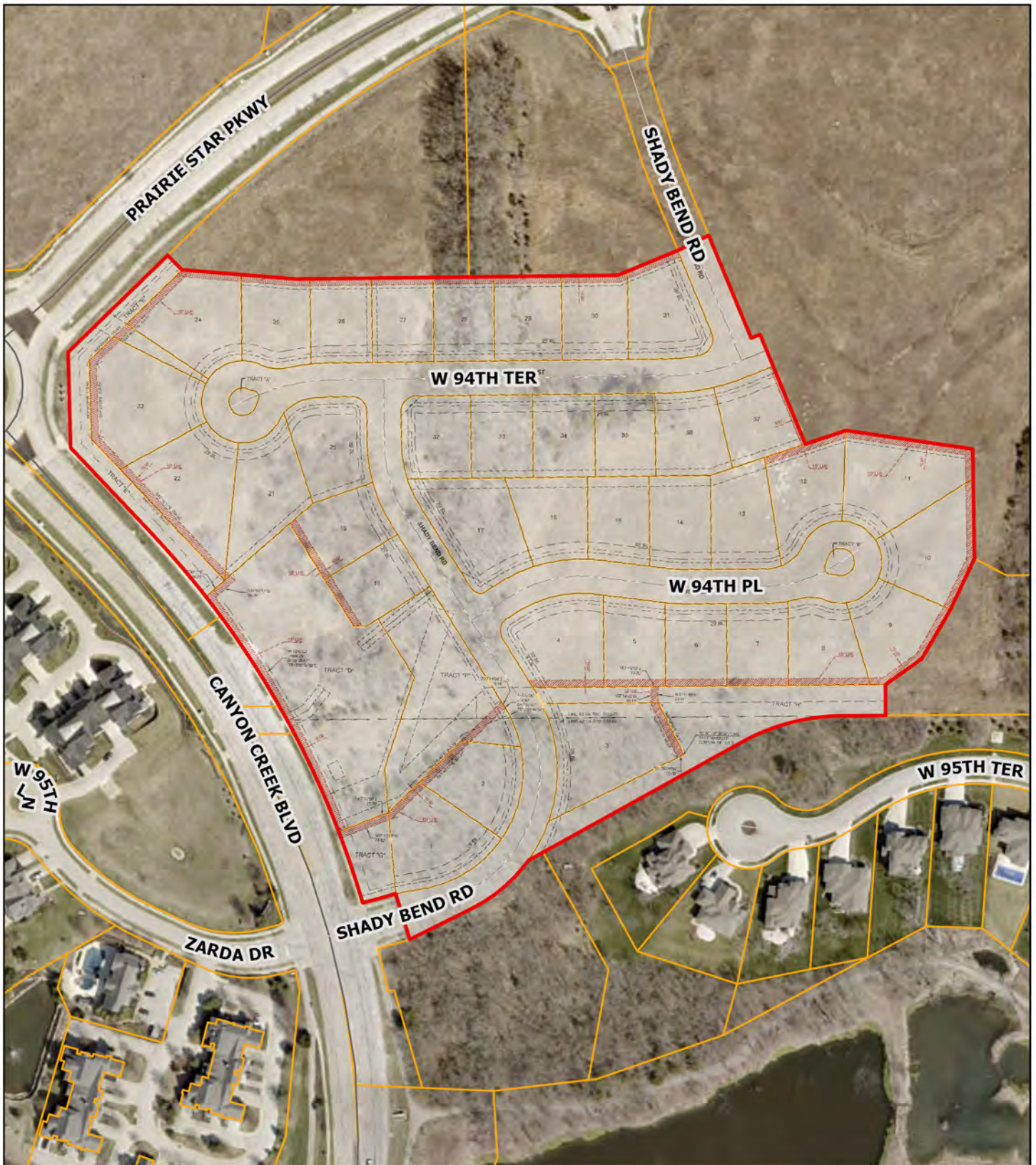
Vibrant Neighborhoods

Guiding Principals

Superior Quality Services

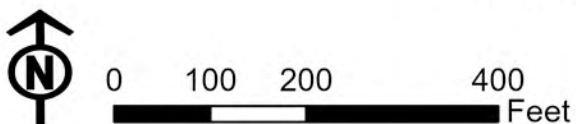
ATTACHMENTS

1. Map
2. Easement located in the Appendix



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

Mize Hill Subdivision Public Utility Easements





**CITY COUNCIL
MEMORANDUM**

ITEM 4

SUBJECT: Approval of a revised preliminary plan for the WaterOne Campus located at 10747 Renner Boulevard in the BP-1, Planned Business Park, and BP-2, Planned Manufacturing, zoning districts to allow continuation of a "Construction Sales and Service, General" use

CONTACT: Stephanie Kisler, Planning & Development Administrator

DATE: October 18, 2022

ACTION NEEDED:

Approve a revised preliminary plan for the WaterOne Campus located at 10747 Renner Boulevard in the BP-1, Planned Business Park, and BP-2, Planned Manufacturing, zoning districts to allow continuation of a "Construction Sales and Service, General" use.

APPLICANT:

Austin Taulbee, WaterOne

OWNER:

Water District #1 of Johnson County

PROPERTY LOCATION/ADDRESS:

10747 Renner Boulevard

PROJECT BACKGROUND/DESCRIPTION:

The applicant is requesting preliminary approval of a campus plan for the WaterOne administrative office and service yard facility located at 10747 Renner Boulevard. The WaterOne property is multiple parcels containing approximately 110 acres of land. A new fleet vehicle service building is proposed to be constructed in the existing parking area between buildings. The new fleet vehicle service building is 13,800 square feet, bringing the total building area to 221,955 square feet. The new building will displace an outdoor storage area of the site. This outdoor storage area is proposed to be moved to the north and east of the developed part of the overall site (north of the water tower). The relocated storage area will be moved further from the surrounding streets, which will reduce the visibility from passersby. The outdoor storage area will be in a fenced and screened area of the site.

STAFF RECOMMENDATION:

Approval of the plan.

PLANNING COMMISSION ACTION:

The Planning Commission considered this revised preliminary plan at a public meeting on October 3, 2022. A commissioner asked if the materials that are located in areas around the site, which are currently partially visible from the surrounding streets, would be relocated to the new outside storage area. The applicant replied that they would all be consolidated into the new outside storage area to the north and east of the existing yard and the yard will be fenced for additional screening. The applicant said that trees will be added to the east side of the outside storage area for increased screening from the adjacent JCPenney distribution facility.

Chairman Poss entertained a motion for **APPROVAL** of the Revised Preliminary Plan for WaterOne. Commissioner Leib moved for approval and the motion was seconded by Commissioner Horine. The Planning Commission approved the motion by a unanimous voice vote.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040
Thriving Economy

Guiding Principles

ATTACHMENTS

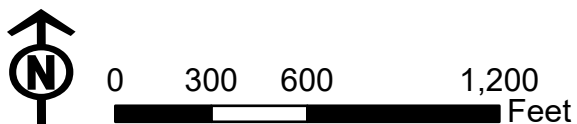
- 1. Map
- 2. PC Report and Exhibits
- 3. PC Draft Minutes Excerpt



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

WaterOne

Revised Preliminary Plan



MEETING DATE: October 3, 2022

REGULAR AGENDA ITEM: 8

PROJECT TITLE: WaterOne Campus Improvement

PROJECT # / REQUEST: PL22-03PR – Revised Preliminary Plan

APPLICANT:

Austin Taulbee, WaterOne

OWNER:

Water District #1 of Johnson County

DESIGN PROFESSIONAL:

Michael Coats, Burns & McDonnell

STAFF PLANNER:

David Dalecky

PROPERTY LOCATION: 10747 Renner Boulevard

SUMMARY OF RECOMMENDATION

Staff recommends **APPROVAL** of the Revised Preliminary Plan for WaterOne Campus Improvement located at 10747 Renner Boulevard.

PROPOSED PROJECT DESCRIPTION AND BACKGROUND INFORMATION

The applicant is requesting approval of a campus plan for the WaterOne utility office and service yard facility. The WaterOne campus includes an administration building, vehicle fleet facility and service yard containing repair equipment and materials for the Johnson County region water utility. The site is split-zoned. The easterly part of the site is zoned BP-2, Planned Manufacturing District and the west part is zoned BP-1, Planned Business Park District. The east part of the site contains the equipment yard and is where the service vehicles are stored. The westerly side contains the administration building and parking area for the employees and visitors. The more intense uses, including the storage yard, is obscured from Renner Boulevard and from 108th Street by the administration building and by perimeter landscaping installed along the street.

CURRENT ZONING:

BP-1, Planned Business Park District, and
BP-2, Planned Manufacturing District

CURRENT USE:

Office, and Construction Sales and Service,
General

PROPOSED USE:

Office, and Construction Sales and Service,
General

ACREAGE:

110.33

BUILDING SQUARE FOOTAGE:

208,155 (existing)
13,800 (new)
221,955 Total

COMPREHENSIVE PLAN RECOMMENDATION FOR AREA

Business Park – Developments providing space for uses that may include light assembly and manufacturing, or warehousing and distribution. Settings may range from campus-like business parks to single-use buildings.

VICINITY ZONING PATTERN:

North: BP-2, Planned Manufacturing District

South: BP-2, Planned Manufacturing District

East: BP-2, Planned Manufacturing District

West: BP-2, Planned Manufacturing District, and AG, Agricultural District

VICINITY LAND USE PATTERN:

North: Office, Lab, and Manufacturing, across K-10 Highway

South: Storage, Warehouse, Fire Station, and Construction Sales and Service, General (Every facility)

East: Warehouse and Distribution

West: Undeveloped land

PRELIMINARY ANALYSIS

The applicant is requesting preliminary plan approval for the WaterOne campus. WaterOne is the water utility provider for Johnson County. The subject property is the administration and maintenance site for the utility provider. The site includes an administration and office building, a maintenance and vehicle service building, an equipment yard and several ancillary structures. The subject property includes a large parcel north of the main facility and a recently acquired parcel and building immediately to the east. The overall site is five parcels and contains 110 acres. An aerial image of the overall site is shown in the following *Exhibit 1*:

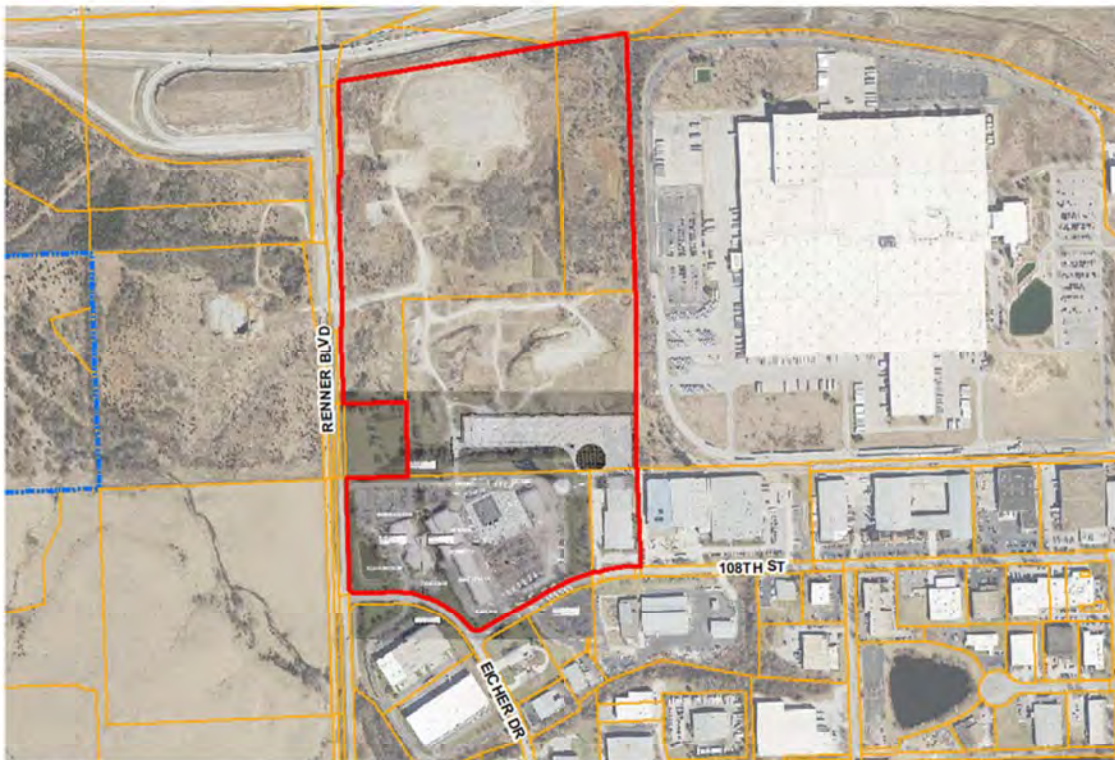


Exhibit 1

SITE LAYOUT

The WaterOne site is the Johnson County water utility administration and service facility. The site includes the office and administration building, a fleet maintenance and service building and service yard with material storage and ancillary construction and maintenance equipment storage. The site also has a several stories tall water tower. The majority of the land owned by WaterOne remains undeveloped. The administration building is the building closest to Renner Boulevard. Employee and visitor parking areas are on north, west and south sides of the building. The campus is located along Renner Boulevard, bordered by K-10 Highway to the north and by Eicher Drive and 108th Street to the south. The JCPenney warehouse and distribution and other warehouses and logistic uses are to the east of the site.

The southerly part of the site is the developed area with the buildings, parking, ancillary structures, and storage areas are currently built. The campus includes an unoccupied building at the southeast corner of the site. This lot was recently acquired by WaterOne. This building is currently unused. The plan includes a new vehicle maintenance building to be constructed in employee and fleet vehicle parking area. This will require adjustments of the outside storage area. The area of the site currently used for outside storage will be converted to parking area and the storage area will move to an area on the easterly side of the site north of the water tower. This area is currently being used for overflow of materials. This part of the site will be paved, and access drives extended into the area. The relocated outside storage area is further from the adjacent public streets and is much less visible from view.

The site is split zoned, partially zoned BP-1 and partially zoned BP-2. The office and administration building and parking area, on the southwesterly part of the overall site, is zoned BP-1. The zoning boundary shifts to the east for the north part of the site. Approximately three-fourths of the undeveloped area of the site is zoned BP-1. The plan shows the expanded outdoor storage area is just to the north of the water tower and will be within both the BP-1 and BP-2 zoning districts. The outdoor storage area is an accessory use to the *Construction Sales and Service, General* use to the WaterOne utility facility and is an allowed use.

Access into the site is from Eicher Drive, 108th Street and from Renner Boulevard. Most employees and visitors enter the site to access the parking area on the westerly side of the site from the drive entrance on 108th Street or from Renner Boulevard. A gated drive entrance is on 108th Street that allows access into the service yard for construction vehicles. Construction vehicles also enter the site from the drive on Renner Boulevard. Access into the service yard is controlled with an internal gate to control access into the restricted part of the site. A new drive access is provided from the adjacent property to the southeast of the site. This drive access uses an existing easement from 108th Street to allow access into the WaterOne property. This will also be a controlled point of access.

The new outdoor storage area sits just east of an existing basin that the applicant has indicated the intent to modify said basin to account for the area of the new storage. At final plan stage, a final stormwater management study will be necessary to identify any necessary modifications to the existing basin in order to appropriately serve the new outdoor storage yard.

LANDSCAPE AND BUFFERS

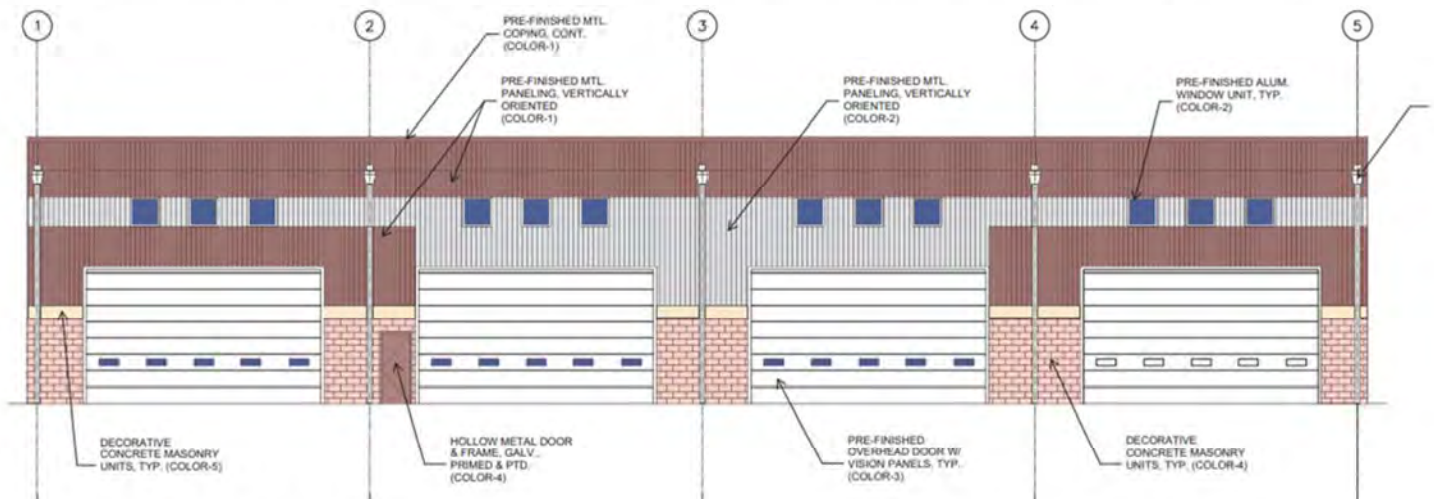
The developed part of the site is extensively landscaped with perimeter landscaping and landscaping throughout the existing employee and visitor parking area. The part of the service yard to be converted to employee parking will have parking lot islands installed which will have new shade trees installed in the islands.

The proposed expansion of the outdoor storage area in the northerly, undeveloped, part of site is well screened from view from K-10 Highway and from Renner Boulevard. The existing grades of the site slopes upward creating a natural berm from Renner Boulevard and from the highway. The site also has existing hedgerows which effectively eliminates visibility of the interior of the site.

The new outdoor storage area, immediately north of the water tower, is located on a part of the site that is well screened from the adjacent streets. The storage area is adjacent to the JCPenney distribution facility. This new outdoor storage area is approximately 200 feet from a semi-trailer storage area of the JCPenney loading dock area. The uses are contextually similar. A specific buffer requirement per the *LUI Site Feature Buffering and Screening* section of the code is not required. Reasonable screening that consists of additional trees planted along the east side of the new outdoor storage yard is appropriate. The applicant has indicated that additional trees will be installed for screening of the outdoor storage area. The number and placement of the additional trees will be reviewed with the subsequent approval of the site.

ARCHITECTURAL COMPATIBILITY

The proposed site plan includes one new 13,800 square-foot vehicle maintenance building. The new vehicle maintenance building will use block and metal panels for the exterior finish of the building. The building will be identically finished as the existing buildings on the site, using the same materials and colors. The building will have overhead doors on the east and west facing sides. The sides of the building with the overhead doors are oriented to face other buildings and will not be visible from the street. An elevation of the proposed maintenance building are shown in the following *Exhibit 2*:



TYPICAL EAST & WEST BLDG. ELEVATION

Exhibit 2

SIGN PROGRAM

The facility has one existing freestanding signs at the intersection of Eicher Drive and Renner Boulevard. The WaterOne logo is also painted on the top of the water tower. No additional signs are shown with the revised preliminary plan.

INFORMATIONAL COMMENTS

The revised preliminary plan is scheduled to be considered by the Governing Body on October 18, 2022.

This project requires approval of a final plan.

STAFF RECOMMENDATION

Staff recommends **APPROVAL** of the Revised Preliminary Plan for WaterOne Campus Improvement to allow Office and Construction Sales and Service, General uses on property located at 10747 Renner Boulevard.

1. Revised Preliminary Plan for WaterOne Campus located approximately at the southeast corner of K-10 Highway and Renner Boulevard in the BP-2, Planned Manufacturing District. PL22-03PR

Consideration of a revised preliminary plan for proposed building improvements and parking lot relocation.

Chairman Poss noted that Commissioner Macke is recusing herself from this item. She stepped out of the room.

APPLICANT PRESENTATION:

Michael Coats of Burns and McDonnell presented information about the proposed project. He said that there will be quite a bit of renovation at the site. He said there will be a new laydown area at the northern part of the property along with a pass-through road. A new parking area and material storage area are proposed. There will be a tenant improvement within the west building. There will be improvements to the warehouse building to the east as well.

STAFF PRESENTATION:

Dave Dalecky presented the Staff Report. He said the applicant did a good job of summarizing the scope. WaterOne owns property north of the developed area of the site. The site is zoned BP-1 and BP-2. The split zoning does not impact the use of the site or the proposed plan. The overall site plan was shown on the screen. The outdoor storage area will be relocated from the center of the site to the north of the site near the water tower. The new location is more obscure from rights-of-way. The proposed vehicle maintenance building will be identical in architecture to the existing building. Staff recommends approval of the project as proposed.

PLANNING COMMISSION DISCUSSION:

Commissioner Burson asked about the blue pipe that is exposed and whether it will be screened. Michael Coats said there will be a fence around the laydown area. Austin Taulbee of WaterOne said you cannot see to the laydown area from Renner Boulevard due to a berm and existing landscaping. The outdoor storage will be screened.

MOTION:

Chairman Poss entertained a motion to recommend **APPROVAL** for a Revised Preliminary Plan for WaterOne Campus located approximately at the southeast corner of K-10 Highway and Renner Boulevard in the BP-2, Planned Manufacturing District.

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



**CITY COUNCIL
MEMORANDUM**

ITEM 5

SUBJECT: Resolution authorizing the Mayor to execute an agreement with Serve You Rx for pharmacy benefit management services for 2023-2025

CONTACT: James Bowers, Human Resources Director
Kristin Crow, Human Resources Manager

DATE: October 18, 2022

ACTION NEEDED:

Adopt a resolution authorizing the Mayor to execute an agreement with Serve You Rx for pharmacy benefit management services for 2023-2025.

PROJECT BACKGROUND/DESCRIPTION:

The City operates and administers a self-insured health care plan for the benefit of all full- and part-time employees and their eligible dependents. One of the benefits offered to participants in the health care plan is prescription drug coverage. Under the plan, this benefit is administered by a pharmacy benefit manager (PBM), which provides pharmacy network contracting, claims processing, mail and specialty drug access, formulary management, eligibility verification, cost containment, clinical safety, adherence and other like programs, pricing, and reporting services. The City's current PBM is Elixir Rx Solutions LLC, formerly MedTrakRX.

Lockton Companies, the City's broker for its health care plans, marketed the City's plan's PBM administration on behalf of the City. Six companies (National Cooperative CVS, RxBenefits Optum Rx, RxBenefits CVS, Serve You Rx, Trustmark, and Elixir) submitted competitive quotes. After a thorough analysis of the quotes, staff recommends contracting with Serve You Rx for 2023. While Serve You Rx was not the lowest bid received in this process, staff with the assistance of Lockton, considered each bidder's reference checks related to the quality of customer service, the amount of disruption that would be experienced by members due to the change in pharmacy networks, Serve You Rx's reporting capabilities, and their mail-order drug service, in deciding which organization to recommend.

An exhibit containing the executive summary of the quotes, prepared by Lockton Companies, is attached.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

Staff recommends contracting with Serve You Rx for an estimated three-year cost of \$3,104,913, an estimated savings of \$993,866 over three years. The costs are funded through the City's Health Reserve Fund.

3-year PBM Cost and Savings Summary		
	Current PBM	Serve You Rx
Ingredient Costs	\$5,441,718	\$5,104,463
Dispensing Fees	\$16,297	\$22,089
Total Prescription Costs	\$5,458,015	\$5,126,552
Administration Fees	\$0	\$72,180
Rebate Credit	\$1,000,377	\$1,734,960
3-year Gross Cost After Rebate	\$4,457,638	\$3,463,772
3-year Savings		\$993,866
Estimated Member Share	\$382,061	\$358,859
3-year Net Plan Rx Cost	\$4,075,577	\$3,104,913

STAFF RECOMMENDATION:

Adoption of the resolution.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

Healthy People

Guiding Principles

Prudent Financial Management
Values-based Organizational Culture

ATTACHMENTS

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

PBM Marketing Savings Summary

3 Year Totals

3-Year Totals Pricing Proposal Type	Incumbent Contract	National Cooperative CVS Traditional	RxBenefits OptumRx Traditional	RxBenefits CVS Traditional	Serve You Rx Pass Through	Trustmark Traditional	Elixir Renewal Traditional
Ingredient Cost	\$5,441,718	\$5,317,859	\$5,308,952	\$5,307,576	\$5,104,463	\$5,455,894	\$5,410,762
Dispensing Fees	\$16,297	\$8,832	\$10,845	\$6,508	\$22,089	\$24,891	\$14,301
Total Prescription Cost	\$5,458,015	\$5,326,691	\$5,319,797	\$5,314,084	\$5,126,552	\$5,480,785	\$5,425,063
Coalition Fee		\$7,747	\$0	\$0	\$0	\$0	\$0
Consulting Fee		Included	\$28,872	\$28,872	Included	\$28,872	Included
Admin Fees	\$0	\$0	\$19,771	\$19,771	\$72,180	\$0	\$0
Rebate Credit	\$1,000,377	\$2,026,265	\$2,041,230	\$1,945,140	\$1,734,960	\$1,769,879	\$1,168,029
3-Year Gross Cost After Rebate	\$4,457,638	\$3,308,173	\$3,327,210	\$3,417,587	\$3,463,772	\$3,739,778	\$4,257,034
PROJECTED SAVINGS		\$1,149,465	\$1,130,428	\$1,040,051	\$993,866	\$717,860	\$200,604
PROJECTED SAVINGS % (Contract Baseline)		25.8%	25.4%	23.3%	22.3%	16.1%	4.5%
Estimated Member Share	\$382,061	\$372,868	\$372,386	\$371,986	\$358,859	\$383,655	\$379,754
3-Year Net Cost	\$4,075,577	\$2,935,305	\$2,954,824	\$3,045,601	\$3,104,913	\$3,356,123	\$3,877,280

- All savings numbers should be used only to compare the cost of the bidders relative to one another. They should never be used for projecting future Rx spend.

RESOLUTION NO. _____

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A PLAN SPONSOR AGREEMENT WITH SERVE YOU CUSTOM PRESCRIPTION MANAGEMENT, INC. FOR PHARMACY BENEFIT MANAGER SERVICES FOR THE CITY'S HEALTH CARE PLAN.

WHEREAS, the City of Lenexa operates and administers a self-insured health care plan for the benefit of all full and part-time employees and their eligible dependents; and

WHEREAS, one of the benefits offered to participants in the health care plan is prescription drug coverage; and

WHEREAS, this benefit is administered by a pharmacy benefit manager (PBM), which provides pharmacy network contracting, claims processing, mail and specialty drug access, formulary management, eligibility verification, cost containment, clinical safety, adherence and other like programs, pricing, and reporting services; and

WHEREAS, Lockton Companies, the City's broker for its health care plans, recently marketed the City's PBM administration; and

WHEREAS, after a detailed analysis of the six quotes submitted, staff desires to enter into a three-year Plan Sponsor Agreement with Serve You Custom Prescription Management, Inc. ("Serve You Rx") for PMB administration, which is attached hereto.

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

SECTION ONE: That the Mayor is authorized to execute the Plan Sponsor Agreement and all attachments thereto, attached hereto and incorporated herein by reference.

SECTION TWO: That during the term of this Plan Sponsor Agreement, the City Manager or her designee is authorized to execute such other documents as may be reasonably necessary to keep the Plan Sponsor Agreement in effect, provided such documents are approved as to form by the City Attorney.

SECTION THREE: This Resolution shall become effective upon adoption.

PASSED by the Lenexa City Council this 18th day of October, 2022.

SIGNED by the Mayor this 18th day of October, 2022.

CITY OF LENEXA, KANSAS

[SEAL]

Michael A. Boehm, Mayor

ATTEST:

Jennifer Martin, City Clerk

APPROVED AS TO FORM:

MacKenzie Harvison, Deputy City Attorney



**CITY COUNCIL
MEMORANDUM**

ITEM 6

SUBJECT: Resolution authorizing the Mayor to execute an amendment to the interlocal agreement with Johnson County for partial reimbursement of construction costs for the 109th Street to College Boulevard & Pflumm Road Storm Drainage Improvements Project

CONTACT: Tim Green, Deputy Community Development Director

DATE: October 18, 2022

ACTION NEEDED:

Adopt a resolution authorizing the Mayor to execute an amendment to the interlocal agreement with Johnson County for partial reimbursement of construction costs for the 109th Street to College Boulevard & Pflumm Road Storm Drainage Improvements Project.

PROJECT BACKGROUND/DESCRIPTION:

On June 30, 2022, the City entered into an interlocal agreement with Johnson County to receive a Stormwater Management Program grant ("Agreement") for the reconstruction of the main storm sewer from 109th Street to College Boulevard & Pflumm Road due to its poor condition and previous failures. The Agreement allows the City to be reimbursed for 50% of all eligible costs including construction, inspection, and utility relocation costs. Execution of this Agreement was delayed until construction was nearly complete to account for additional utility relocation costs.

The amendment uses the City's standard form and is available for review in the City Clerk's office.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

Since entering into the Agreement, the project costs have increased from \$1,548,334 to \$1,604,478 and the proposed amendment will increase the grant funding by \$28,072. The City will be awarded 50% of construction, inspection, and utility relocation costs up to a maximum of \$802,239. This project is budgeted in the 2022-2026 Capital Improvement Program (Project No. 90050).

STAFF RECOMMENDATION:

Adoption of the resolution.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

Integrated Infrastructure & Transportation

Guiding Principles

Sustainable Policies and Practices
Strategic Community Investment

ATTACHMENTS

1. Map
2. Resolution



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

109th Street & College Boulevard Storm Drainage Improvement Project



0 235 470 940
Feet

RESOLUTION NO. _____

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE INTERLOCAL AGREEMENT WITH THE JOHNSON COUNTY BOARD OF COUNTY COMMISSIONERS FOR THE 109TH TERRACE NEAR PFLUMM STORMWATER SYSTEM RENEWAL PROJECT.

WHEREAS, the County has established a county-wide retailers' sales tax for the purpose of providing funds for Stormwater Management projects; and created a Stormwater Management Advisory Council to identify and recommend projects for inclusion in the Stormwater Management Program; and

WHEREAS, the County has established a Stormwater Management and Flood Control Fund for the purpose of funding Stormwater Management Program projects; and

WHEREAS, on June 30, 2022, the City entered into an interlocal agreement with Johnson County to receive a Stormwater Management Program grant ("Grant Agreement") for the reconstruction of the main storm sewer from 109th Street to College Boulevard due to its poor condition and previous failures (the "Project"); and

WHEREAS, since entering into the Grant Agreement the project costs have increased from \$1,548,334 to \$1,604,478 and an amendment is necessary to increase the funding the City will receive; and

WHEREAS, the Amendment attached as Exhibit "A" has been reviewed and accepted by the City of Lenexa's Governing Body.

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

SECTION ONE: The City Council does hereby approve the Amendment to the Agreement between the Board of County Commissioners of Johnson County, Kansas and the City of Lenexa, Kansas, for the reimbursement of the construction of a Stormwater Management Project identified as the 109th Terrace Near Pflumm Renewal Project 2-LX-2020-R-1 in substantially the same form as set out in Exhibit A and incorporated herein by reference and authorize the Mayor to execute same. The Mayor or designee is further authorized to execute any amendments or other documents, as approved by the City Attorney, necessary to carry out the Grant Agreement.

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

ADOPTED by the City Council this 18th day of October, 2022.

SIGNED by the Mayor this 18th day of October, 2022.

CITY OF LENEXA, KANSAS

[SEAL]

Michael A. Boehm, Mayor

ATTEST:

Jennifer Martin, City Clerk

APPROVED AS TO FORM:

Sean McLaughlin, City Attorney



**CITY COUNCIL
MEMORANDUM**

ITEM 7

SUBJECT: Resolution authorizing the Mayor to execute an agreement with Clearwater Enterprises, LLC for the purchase of natural gas

CONTACT: Nick Arena, Director of Municipal Services

DATE: October 18, 2022

ACTION NEEDED:

Adopt a resolution authorizing the Mayor to execute an agreement with Clearwater Enterprises, LLC for the purchase of natural gas.

PROJECT BACKGROUND/DESCRIPTION:

In 2016, the City contracted with a consultant to review the City's utility bills and make recommendations to reduce utility costs. As a result of the review, the consultant recommended purchasing natural gas on a wholesale basis for City facilities. Because of square footage minimum requirements, only certain City facilities are eligible to receive natural gas at the wholesale price. Those locations are as followed: Fire Station #3, Municipal Services campus, City Hall, Rec Center, Public Safety Complex, Community Center and the Parks Maintenance building. Once completed, the Lenexa Justice Center will be eligible to receive natural gas at a wholesale price. Based on the consultant's recommendations, the City entered into a wholesale natural gas purchase agreement with Clearwater Enterprises, LLC ("Clearwater") in 2017.

Clearwater has provided good service to the City and staff recommends extending the agreement. The terms of the agreement are substantially similar to the initial agreement and available for review in the City Clerk's office.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

Current market conditions are causing extreme volatility in the natural gas market. The City will pay a wholesale rate calculated by adding \$0.30/MMBtu (Million British Thermal Units) to the monthly index price, which fluctuates monthly based on demand and weather conditions.

In fiscal year 2021, the City expended \$140,842.87 on natural gas purchases for all City facilities. The City has saved \$55,094.92 on natural gas purchases since the agreement began in November 2017 and \$12,168.56 for the most recent 12 months of the agreement.

STAFF RECOMMENDATION:

Adoption of the resolution.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

Guiding Principles

Prudent Financial Management

ATTACHMENTS

1. Resolution

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF LENEXA, KANSAS ["CITY"] AND CLEARWATER ENTERPRISES, LLC ["CLEARWATER"] FOR THE PURCHASE OF NATURAL GAS.

WHEREAS, since 2017, the City has used Clearwater to purchase natural gas on a wholesale basis resulting in significant cost savings; and

WHEREAS, Clearwater and City desire to extend the agreement under substantially the same terms; and

WHEREAS, both parties have read and understand the terms and conditions of the Agreement as set out in the attached Exhibit "A".

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

SECTION ONE: The City does hereby authorize the Mayor to execute the Agreement with Clearwater, in substantially the same form as that Agreement attached hereto as Exhibit "A" and incorporated herein by reference and authorizes the Mayor or the City Manager or their designee to execute all other documents and instruments as may be reasonably necessary for the purchase of natural gas on a wholesale basis and carry out the terms of the Agreement.

SECTION TWO: This resolution shall become effective upon adoption by the Governing Body.

ADOPTED by the Governing Body this 18th day of October, 2022.

APPROVED by the Mayor this 18th day of October, 2022.

CITY OF LENEXA, KANSAS

[SEAL]

Michael A. Boehm, Mayor

ATTEST:

Jennifer Martin, City Clerk

APPROVED AS TO FORM:

Sean McLaughlin, City Attorney



**CITY COUNCIL
MEMORANDUM**

ITEM 8

SUBJECT: Ordinance amending Ordinance 4136 to grant a modification to a permanent special use permit on property located at 11937 Santa Fe Trail Drive

CONTACT: Stephanie Kisler, Planning & Development Administrator

DATE: October 18, 2022

ACTION NEEDED:

Pass an ordinance amending Ordinance 4136 to grant a modification to a permanent special use permit (SUP) on property located at 11937 Santa Fe Trail Drive.

APPLICANT:

Sherry Duff, General Dynamics

OWNER:

City of Lenexa

PROPERTY LOCATION/ADDRESS:

11937 Santa Fe Trail Drive

PROJECT BACKGROUND/DESCRIPTION:

The request is for consideration of an amendment and modification of a SUP for the existing wireless communication facility at 11937 Santa Fe Trail Drive. A permanent SUP was approved in March 1998 for the construction of a wireless communication facility, also known as a cell tower.

The site was formerly the location of the Lenexa City Annex. At the time, the purpose of the tower construction was to serve as the eastern site of an expanded and upgraded City radio system that consolidated several existing City radio operations. The Lenexa City Annex was demolished around 2013, and the City maintained ownership of 0.16 acres, selling the remaining property for private development. Along with providing communications for the City, the tower also functions as a partnership opportunity with wireless carriers by allowing space for commercial wireless facilities. AT&T is proposing to modify the existing SUP to add 256 square feet to the fenced ground equipment area for a new generator.

The proposed site modifications will not increase the height of the structure. The monopole measures 180 feet tall. Three equipment shelters are currently located at the base of the structure. The proposed area will host ground mounted equipment for AT&T. There is a small parking area at the northwest corner of the site to allow access for tower maintenance. The proposed 16-foot by 16-foot, 256 square foot addition is located on the west side of the site adjacent to the parking area and directly south of the existing AT&T shelter. The new yard area will include a generator, a 4-foot by 10-foot concrete pad for the generator, and related equipment. The 32 feet of existing fence between the proposed area and the existing equipment yard will be demolished. The proposed new fence will match the existing black vinyl coated chain-link fence on site.

STAFF RECOMMENDATION:

Passage of the ordinance.

PLANNING COMMISSION ACTION:

This item was considered at the October 3, 2022 Planning Commission meeting. No one from the public spoke during the public hearing.

Chairman Poss entertained a motion to recommend **APPROVAL** for a Special Use Permit for Cell Tower Expansion located at 11937 Santa Fe Trail Drive in the BP-2, Planned Manufacturing District. Moved by Commissioner Harber, seconded by Commissioner Burson, and carried by a unanimous voice vote.

VISION / GUIDING PRINCIPLES ALIGNMENT:**Vision 2040**

Integrated Infrastructure & Transportation

Guiding Principles

Responsible Economic Development

ATTACHMENTS

1. Map
2. PC Report and 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

Wireless Communication Facility Special Use Permit



0 100 200 400
Feet

MEETING DATE: October 3, 2022 - **PUBLIC HEARING REQUIRED**

REGULAR AGENDA ITEM: 7.

PROJECT TITLE: Cell Tower Yard Expansion for AT&T

PROJECT # / REQUEST: SU22-09 – Special Use Permit

APPLICANT:

Sherry Duff, General Dynamics

OWNER:

City of Lenexa

PROPERTY LOCATION:

11937 Santa Fe Trail Drive

STAFF PLANNER:

Christa McGaha, AICP

SUMMARY OF RECOMMENDATION

Staff recommends **APPROVAL** of a permanent Special Use Permit to allow the continued operation and modification of a wireless communication tower, for the existing wireless communication facility at 11937 Santa Fe Trail Drive.

PROPOSED PROJECT DESCRIPTION AND BACKGROUND INFORMATION

The request is for consideration of a renewal for a Special Use Permit (SUP) to modify the existing wireless communication facility at 11937 Santa Fe Trail Drive. The SUP was previously approved in March 1998 (SU98-01) for the construction of the wireless communication facility, which is also known as a cell tower. The permit was approved for a permanent period of time with no expiration.

Historically, the site was the location of the Lenexa City Annex. At the time, the purpose of the tower construction was to serve as the eastern site of an expanded and upgraded City radio system that consolidated several existing City radio operations. The Lenexa City Annex was demolished around 2013, but the City still owns the now 0.16-acre property. Along with providing communications for the City of Lenexa, the tower also functions as a partnership opportunity with the City of Lenexa and wireless carriers by allowing space for commercial wireless facilities. AT&T is proposing to modify the existing SUP to add an additional 256-square feet to the fenced ground equipment area for a new generator.

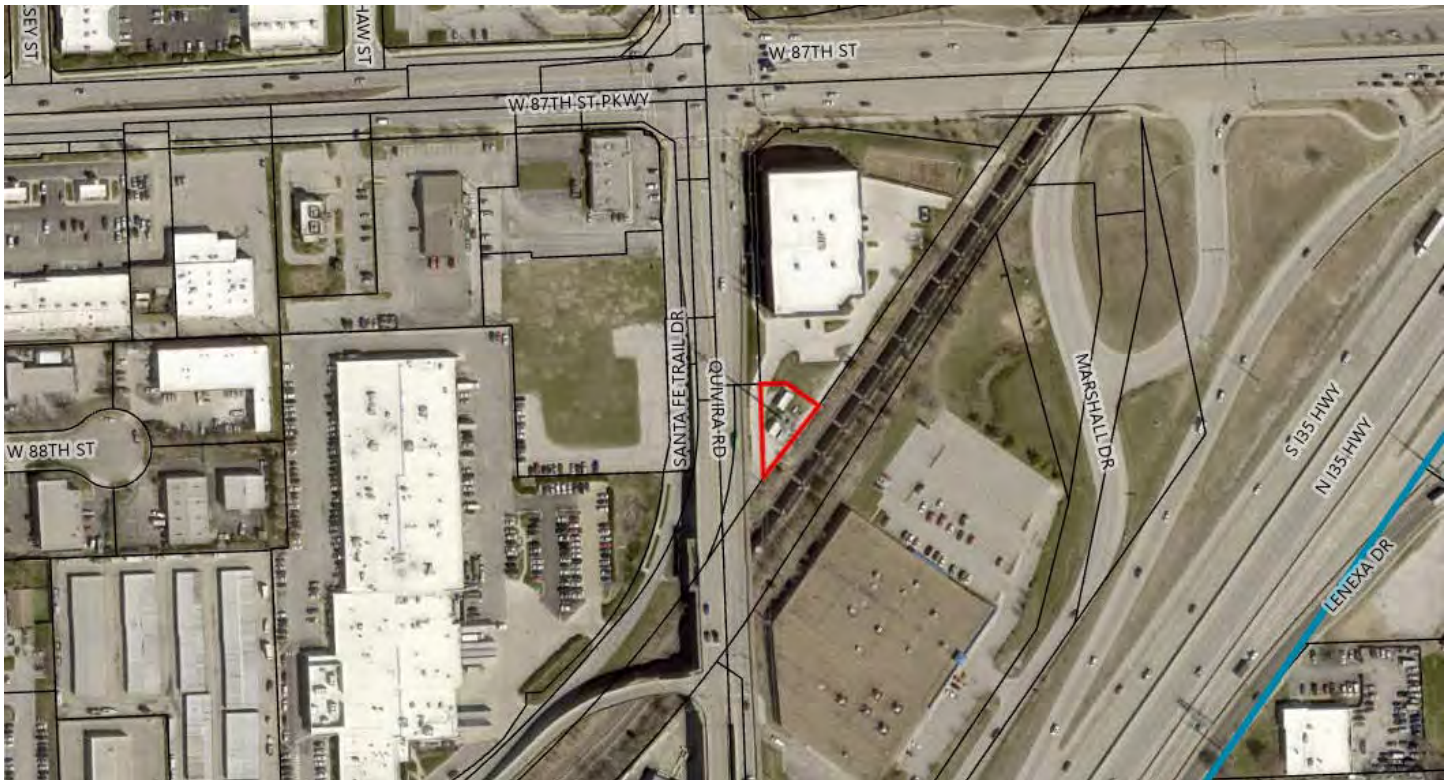


Exhibit 1, Cell Tower Site Location

[Section 4-1-B-23-AE](#) of the Unified Development Code (UDC) requires Special Use Permits to be updated for “*substantial changes of Wireless Communication Facilities... or any other installation, construction or modification of equipment not associated with existing Wireless Communication Facilities.*” The proposal for a 256-square foot ground equipment area meets these criteria and triggers the SUP reconsideration.

CURRENT ZONING:

CP-2, Planned Community Commercial District

PROPOSED ZONING:

No Change

CURRENT USE:

Wireless communication facility

PROPOSED USE:

Wireless communication facility

ACREAGE:

0.16

BUILDING SQUARE FOOTAGE:

Proposed equipment yard addition: 256

COMPREHENSIVE PLAN RECOMMENDATION FOR AREA

Community Commercial Center - Commercial uses with a combined or total gross leasable area of 125,000 to 400,000 square feet that provides services for a 3-to-6-mile trade area radius. Uses often include general merchandise offerings with a wider range of goods than Neighborhood Commercial Centers. Community Centers often have two or more anchor tenants which could include a discount store, supermarket, or large specialty discount store and are developed on land 10 to 40 acres in size.

SPECIAL USE PERMIT ANALYSIS

PROPOSED SITE CHANGES



Exhibit 2, View of Existing Tower and Current Fenced Equipment Area

The proposed site modifications will not increase the height of the structure. The monopole itself measures 180-feet tall. Three equipment shelters are currently located at the base of the structure. The proposed area will host ground mounted equipment for AT&T. There is a small parking area at the northwest corner of the site to allow access for maintenance of the tower.



Exhibit 3, Proposed Fenced Equipment Area

The proposed 16' x 16', 256 square foot addition is located on the west side of the site adjacent to the parking area and directly south of the existing AT&T shelter on site. The new yard area will include a generator, a 4' x 10' concrete pad for the generator, and related equipment. The 32-feet of existing fence between the proposed area and the existing equipment yard will be demolished. The proposed new fence will match the existing black vinyl coated chain-link fence on-site.

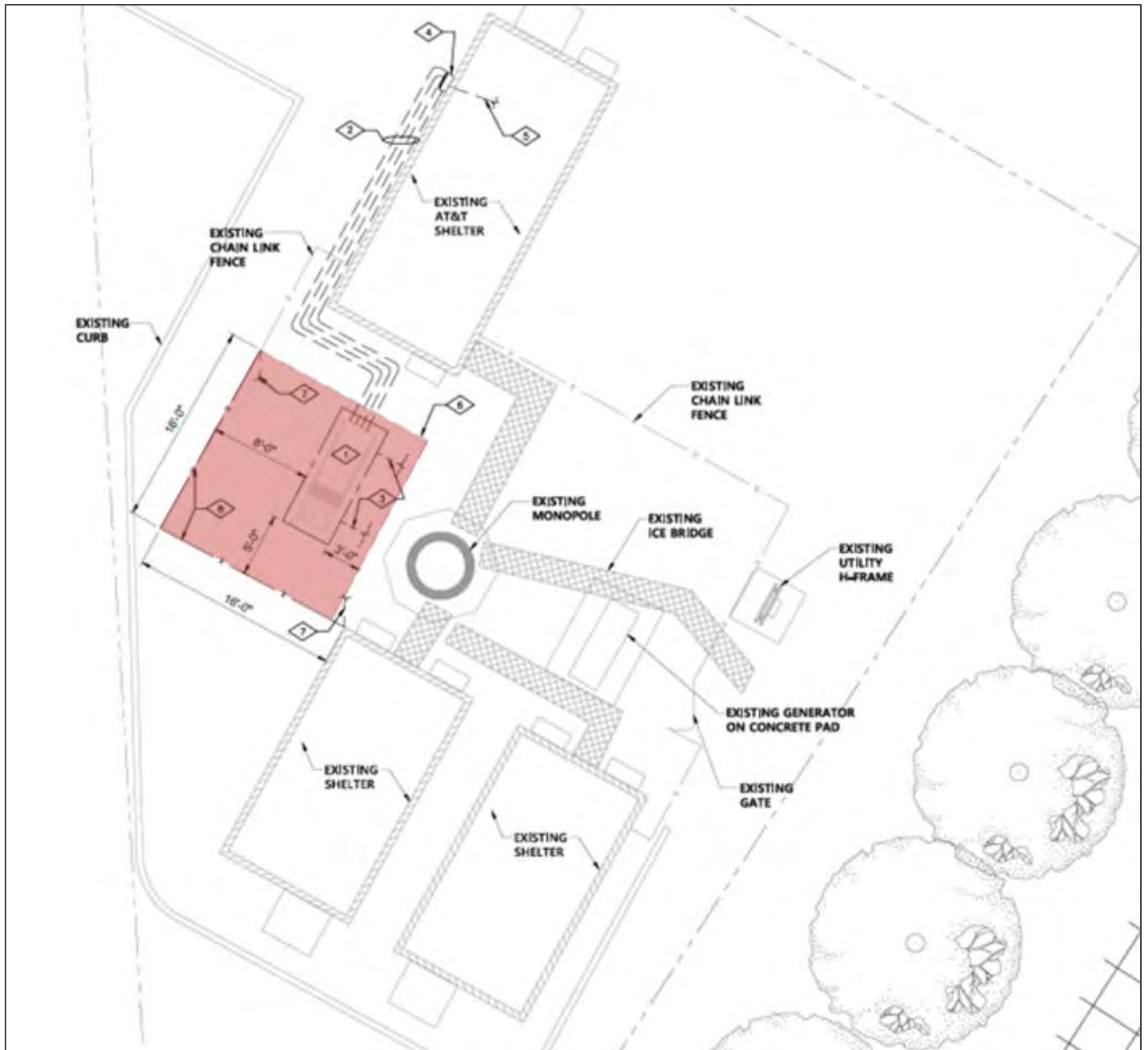


Exhibit 4, Site Plan and Proposed Site Modifications.

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

1. *The character of the neighborhood.*

Except for the Public Storage building to the north of the property, the majority of the property is bounded by street and railroad rights-of-way: Quivira Road, and the Burlington Northern Railroad. Other surrounding business are generally commercial in nature.

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

Based on the summary of zoning and land use information provided below, the wireless communication facility is compatible with the context of the area.

VICINITY ZONING PATTERN:

North: CP-3, Planned Regional Commercial District

South: CP-3, Planned Regional Commercial District

East: CP-3, Planned Regional Commercial District

West: CP-2, Planned Community Commercial District

VICINITY LAND USE PATTERN:

North: Self-storage, Public Storage

South: Railroad right-of-way & commercial uses, retail outlet stores.

East: Road right-of-way

West: Vacant property

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

Freestanding wireless communication towers are allowed in nonresidential zoning districts, subject to standards outlined in [Section 4-1-B-23-AE](#) of the UDC.

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

Surrounded by various road and railroad right-of-way, the impact of the yard expansion to nearby properties is minimal. The site is located south of the Public Storage building site. The closest point of the proposed equipment area is 140-feet away from the rear of the Public Storage building. The 256 square foot extension of the equipment yard is not anticipated to detrimentally affect nearby property.

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

The tower was originally approved in 1998 and was constructed by the City of Lenexa. The tower has been utilized for the City of Lenexa and commercial wireless communications since. The property is not vacant, so this criterion is not applicable.

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.*

Staff does not see a relative gain to the public in recommending denial of this application given that the tower has been in existence for 24 years without any known complaints from surrounding property owners.

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

See Staff recommendation section.

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

The site will retain its current CP-2 zoning designation and it does not conflict with the Comprehensive Plan designation of Community Retail.

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.*

Major utilities are existing and will remain.

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.*

The approval of this Special Use Permit renewal will not adversely impact traffic in the area.

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

Staff is not aware of any environmental impacts associated with this proposal.

12. *The ability of the applicant to satisfy any requirements (e.g. site plan, etc.) applicable to the specific use imposed pursuant to the zoning regulations in this Chapter and other applicable ordinances.*

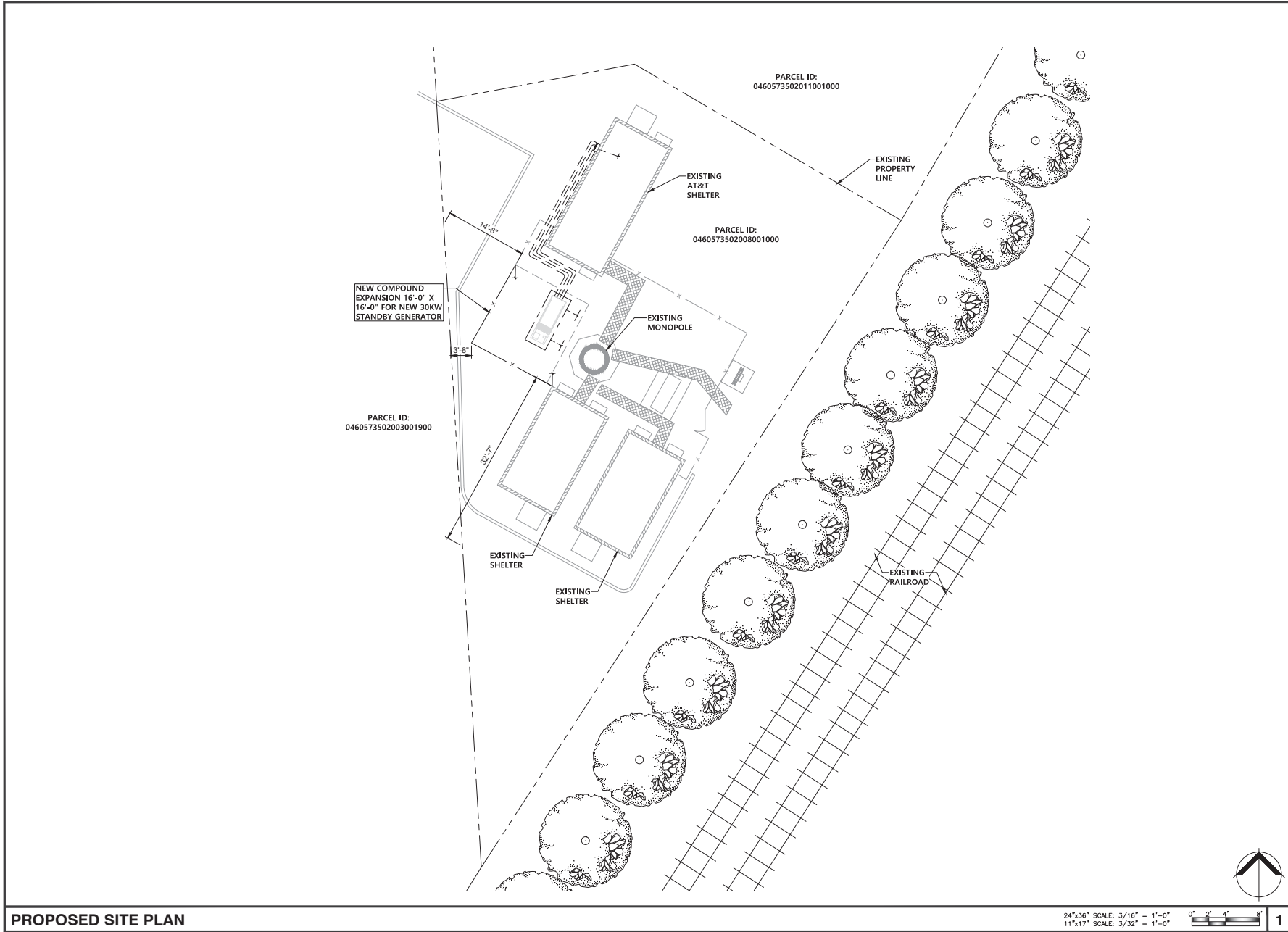
The wireless communication facility meets criteria outlined in Section [4-1-B-23-AE](#) of the UDC. Staff is supportive of the proposed additions and modifications to the cell tower provided by the applicant.

INFORMATIONAL COMMENTS

This item is tentatively scheduled to go before the Governing Body on October 18, 2022.

STAFF RECOMMENDATION

Staff recommends **APPROVAL** of a permanent Special Use Permit for the Cell Tower Yard Expansion, located at 11937 Santa Fe Trail Drive within the CP-2, Planned Community Commercial Zoning District, as proposed by the applicant and without conditions.



PROPOSED SITE PLAN

24"x36" SCALE: 3/16" = 1'-0"
11"x17" SCALE: 3/32" = 1'-0"

at&t
930 NATIONAL PKWY, 4TH FLOOR
SCHAUMBURG, IL 60173

C.A. BASS
TELECOM MANAGEMENT SERVICES
11710 FM2661,
TYLER, TX 75709
TEL: (903) 596-8464
FAX: (214) 276-1920

GDIT
GENERAL DYNAMICS
INFORMATION TECHNOLOGY
12906 SHELBYVILLE RD # 230,
LOUISVILLE, KY 40243

AJM Consulting
1931 Newport Blvd, Suite C
Costa Mesa, CA 92627-2250
949 515 4870 office
949 515 4875 fax

DRAWN BY: RA
CHECKED BY: RM

STEPHEN D. HATH
LICENSED PROFESSIONAL ENGINEER
1/6614
IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

REV	DATE	DESCRIPTION	BY
2	09/15/2022	100% CD'S - BP SUBMITTAL	RA
1	12/03/2021	100% CD'S - BP SUBMITTAL	RA
0	12/01/2021	90% CD'S FOR SUBMITTAL	RA

SITE ID: 3202A0Y6GX
SITE NAME: LENEXA
ADDRESS: 11937 SANTE FE TRAIL DRIVE
LENEXA, KS 66215

SHEET TITLE
PROPOSED SITE PLAN

SHEET NUMBER
A-1

1. PUBLIC HEARING: Special Use Permit for Cell Tower Expansion located at 11937 Santa Fe Trail Drive in the BP-2, Planned Manufacturing District. SU22-09

Consideration of a special use permit for additional ground equipment adjacent to an existing cell tower.

APPLICANT PRESENTATION:

Jim Bell of General Dynamics presented information about the proposed project. The expansion will include an ATS and a compound.

STAFF PRESENTATION:

Christa McGaha presented the Staff Report. She noted that this request is for the renewal of a Special Use Permit for an existing wireless communication facility. She displayed a graphic of the location. The property is owned by the City of Lenexa. The original Special Use Permit was approved for a permanent, unlimited time back in 1998. The Special Use Permit request tonight is for another permanent timeframe. The request is before the Planning Commission due to the expansion of the equipment area. The project entails a 16'x16' (256 SF) equipment yard expansion with a generator and related equipment and replace fencing around the enclosure. She displayed graphics showing details of the plans. She discussed the thirteen criteria for Special Use Permits and noted some highlights from the Staff Report. Staff recommends approval of the expansion of the equipment yard area and the Special Use Permit request.

PUBLIC HEARING:

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

PLANNING COMMISSION DISCUSSION:

Chairman Poss asked the Commissioners if they had any questions. There were none.

MOTION:

Chairman Poss entertained a motion to recommend **APPROVAL** for a Special Use Permit for Cell Tower Expansion located at 11937 Santa Fe Trail Drive in the BP-2, Planned Manufacturing District.

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

SU _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 4136 TO GRANT A MODIFICATION TO A PERMANENT SPECIAL USE PERMIT ON PROPERTY LOCATED AT 11937 SANTA FE TRAIL DRIVE.

WHEREAS, in 1998, a permanent Special Use Permit (SU98-01), was granted by Ordinance No. 4136 to allow a wireless communications facility ("Cell Tower"), located at 11937 Santa Fe Trail Drive, owned by the City of Lenexa ("City") for providing communications for City operations and to allow space on the City's Cell Tower for commercial wireless facilities; and

WHEREAS, AT&T has requested a modification of the existing Special Use Permit to add an additional 256 square feet to the fenced ground equipment area for a new generator; and

WHEREAS, a public hearing was held by the Lenexa Planning Commission on October 3, 2022, and notice was provided in accordance with K.S.A. 12-757, to hear the request for said Special Use Permit modification; and

WHEREAS, the Lenexa Planning Commission recommended approval of the modification of the Permanent Special Use Permit to allow the continued operation and modification of the existing wireless communication facility, located at 11937 Santa Fe Trail Drive, as reflected in the minute record for said meeting; and

WHEREAS, on October 18, 2022, the application and Planning Commission recommendation were considered by the Governing Body, 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: That the Governing Body hereby approves this amendment to Ordinance No. 4136 granting a modification of the existing Special Use Permit to add an additional 256 square feet to the fenced ground equipment area for a new generator as reflected in the minute record of the October 18, 2022, Governing Body meeting for the real estate hereinafter described, to-wit:

A tract of land in the Northwest Quarter of Section 35, Township 12 South, Range 24 East, in the City of Lenexa, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Northwest corner of said Section 35; thence S 0°00'55" W, along the West line of said Northwest Quarter, a distance of 297.00 feet to a point; thence S 89°59'05" E, a distance of 55.00 feet to a point on the

East line of Quivira Road right-of- way, as now established; thence N 0°00'55 " E, along said West right-of-way line a distance of 197.00 feet to a point on the Southerly right-of-way line of 97th Street Parkway, as now established; thence N 58 °42'18" E along said Southerly right-of-way line, a distance of 76.26 feet to a point of deflection; thence S 84° 51'21" E, continuing along said Southerly right-of-way line, a distance of 30. 19 feet to a point of deflection; thence S 80°57'05", continuing along said Southerly right-of-way line, a distance of 293.76 feet to a point; thence S 37°04'09" W, a distance of 639.50 feet to a point on the East right-of-way line of Quivira Road; thence N 0°00'55" E, along said East right-of- way line, a distance of 322.56' to the Point of Beginning and containing 2.48 acres, more or less.

SECTION TWO: The Director of Community Development of the City of Lenexa, Kansas, is hereby authorized and directed to record the issuance of this permanent Special Use Permit renewal in accordance with the above upon the City's official land use map.

SECTION THREE: That this ordinance shall be construed as follows:

A. Liberal Construction. The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Savings Clause. The repeal of Ordinance sections, as provided herein below shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or actions involving any of the provisions of said Ordinances or parts thereof. Said Ordinance repealed is hereby continued in force and effect after the passage, approval, and publications of this Ordinance for the purposes of such rights, fines, penalties, forfeitures, liabilities and actions therefor.

C. Invalidity. If for any reason any chapter, article, section, subsection, sentence, portion or part of this proposed Ordinance set out in this Ordinance, or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this Code or other Ordinances.

SECTION FOUR: This Ordinance shall take effect and be in force from and after publication of the ordinance summary in the City's official newspaper as provided by State law.

PASSED by the Governing Body this 18th day of October 2022.

SIGNED by the Mayor this 18th day of October 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 9

SUBJECT: Approval of a preliminary plan for CubeSmart Self-Storage located at the northwest corner of College Boulevard & Greenwood Street in the BP-2, Planned Manufacturing, zoning district to allow an indoor self-storage facility

CONTACT: Stephanie Kisler, Planning & Development Administrator

DATE: October 18, 2022

ACTION NEEDED:

Approve a preliminary plan for CubeSmart Self-Storage located at the northwest corner of College Boulevard & Greenwood Street in the BP-2, Planned Manufacturing, zoning district to allow an indoor self-storage facility.

APPLICANT & DESIGN PROFESSIONAL:

Jeffrey Skidmore, Schlager Associates

OWNER:

Lenexa SS LLC

PROPERTY LOCATION/ADDRESS:

Northwest corner of College Boulevard & Greenwood Street

PROJECT BACKGROUND/DESCRIPTION:

This preliminary plan is for an indoor, climate-controlled self-storage facility in BP-2, Planned Manufacturing District. Surrounding uses include offices and business parks.

The proposed plan consists of a single-tenant building located at the southwest corner of the site. Access is provided via a curved drive with two entrances off Greenwood Street appropriately placed opposite an existing street and an existing driveway. The applicant submitted a preliminary stormwater management report that shows the intent to meet the City's stormwater requirements through the use of rain gardens, native vegetation, and extended dry detention.

Parking is provided north of the drive entrance with two additional stalls provided on the southeast side of the drive. Pedestrian access is provided by a sidewalk connection to the east onto Greenwood Street and a second sidewalk connection on the north to Greenwood Street.

Building materials consist of brick veneer, brick panels, EIFS, and split-face CMU (concrete block building material) in a combination of brown, tan, and burnt orange colors. The architecture is compatible with surrounding existing structures. A land use intensity buffer is provided to the south and west.

STAFF RECOMMENDATION:

Approval of the preliminary plan.

PLANNING COMMISSION ACTION:

The preliminary plan was considered at the October 3, 2022 Planning Commission meeting. The Commission discussed the proposed self-storage facility operations and building design. No one from the public spoke.

Chairman Poss entertained a motion for **APPROVAL** of the Preliminary Plan for CubeSmart Self-Storage. Commissioner Horine 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

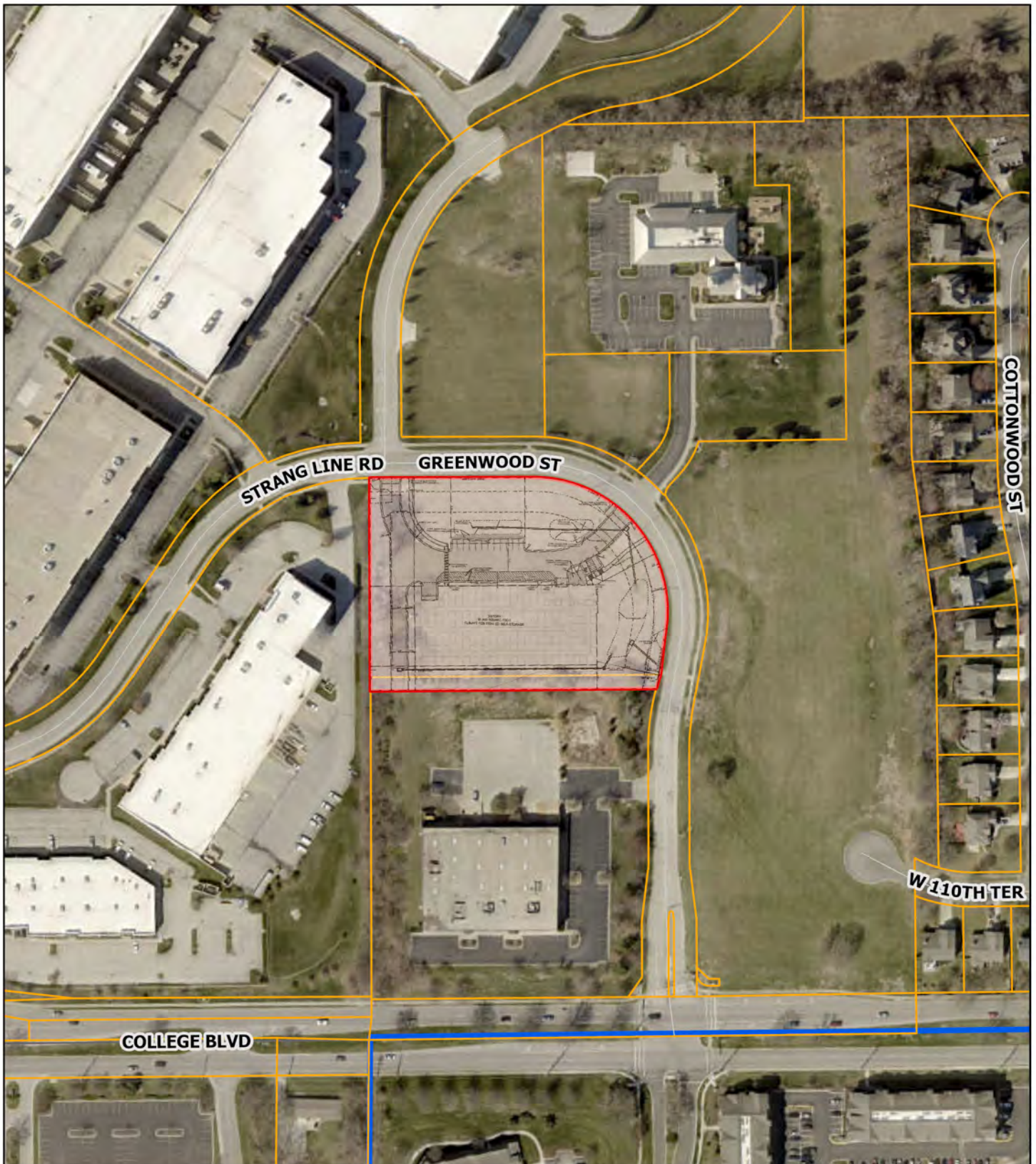
Thriving Economy

Guiding Principles

Responsible Economic Development

ATTACHMENTS

1. Map
2. PC Report and Exhibits
3. PC Draft Minutes Excerpt



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

CubeSmart Self-Storage Preliminary Plan



MEETING DATE: October 3, 2022

REGULAR AGENDA ITEM: 9

PROJECT TITLE: CubeSmart Self-Storage

PROJECT # / REQUEST: PL22-10P - Preliminary Plan

APPLICANT & DESIGN PROFESSIONAL:

Jeffrey Skidmore, Schlagel Associates

OWNER:

Lenexa SS LLC.

PROPERTY LOCATION:

Located approximately at the northwest corner of College Boulevard & Greenwood Street

STAFF PLANNER:

Kimberly Portillo, AICP

SUMMARY OF RECOMMENDATION

Staff recommends **APPROVAL** of the preliminary plan for CubeSmart Self Storage.

PROPOSED PROJECT DESCRIPTION AND BACKGROUND INFORMATION

The applicant is requesting approval of a preliminary plan for a three-story, 91,600 square foot climate controlled self-storage facility on Greenwood Street, east of I-35, north of College Boulevard and west of Pflumm Road. The self-storage facility will contain 636 units that are accessed through internal walkways. All unit doors will be enclosed within the building.



Figure 1: Location Map

CURRENT ZONING:
BP-2 Planned Manufacturing

CURRENT USE:
Undeveloped Land

ACREAGE:
2.68

PROPOSED ZONING:
BP-2 Planned Manufacturing

PROPOSED USE:
Self-Storage

BUILDING SQUARE FOOTAGE:
91,600

COMPREHENSIVE PLAN RECOMMENDATION FOR AREA

Office/Employment Center: Designated for businesses with little or no sales of product, manufacturing, or warehousing. Examples include both campus-type development as well as single buildings and could include both single and multiple tenants.

VICINITY ZONING PATTERN:
North: CP-O Planned General Office
South: BP-1 Planned Business Park
East: CP-O Planned General Office
West: BP-1 Planned Business Park

VICINITY LAND USE PATTERN:
North: Office/Employment Center and Public/Open Space
South: Business Park
East: Office/ Employment Center
West: Business Park

PRELIMINARY PLAN ANALYSIS

SITE LAYOUT

The proposed plan consists of a single-tenant building located at the southwest corner of the site. Access is provided via a curved drive with two entrances off Greenwood Street appropriately placed opposite of an existing street and an existing driveway. The applicant has submitted a preliminary stormwater management report, that shows the intent to meet the City's stormwater requirements through the use of rain gardens, native vegetation, and extended dry detention.

Twelve parking stalls are provided on the north of the drive, and two additional parking stalls, (one ADA), are provided on the southeast side of the drive with direct sidewalk access to the building. Pedestrian access is provided by a 5-foot sidewalk connection to the east onto Greenwood Street and a second 5-foot sidewalk on the north to Greenwood Street with a crosswalk to cross the drive. A loading zone is provided to the north of the building and a paved fire access drive is on the west of the building. A concrete patio amenity area with a bench is located at the northeast corner of the building.

An exterior trash enclosure is not provided in order to deter illegal dumping. An interior central trash collection location will be provided for users of the storage facility. Weekly or bi-weekly trash service will be contracted with a local waste management company to accommodate the facility.

LANDSCAPE AND BUFFERS

A Land Use Intensity (LUI) difference of 1 exists between the subject site and the properties to the south (zoned BP-1) and west (zoned BP-1).

Boundary/LUI	Ordinance Requirement per 100 FT	Linear Feet	Landscape Required	Landscape Provided
South/ LUI 1	1 shade tree 2 evergreen 10 shrubs 10' wide buffer	417	4 shade trees 8 evergreen 42 shrubs 10' wide buffer	4 shade trees 8 evergreen 42 shrubs
West/ LUI 1	1 shade tree 2 evergreen 10 shrubs 10' wide buffer	307	3 shade trees 6 evergreen 31 shrubs 10' wide buffer	3 shade trees 6 evergreen 31 shrubs

Native grasses and existing trees are to be planted and preserved along the south and west boundaries. New landscaping in the form of street trees, shrubs, parking lot landscaping, and perimeter plantings will be added to the site.

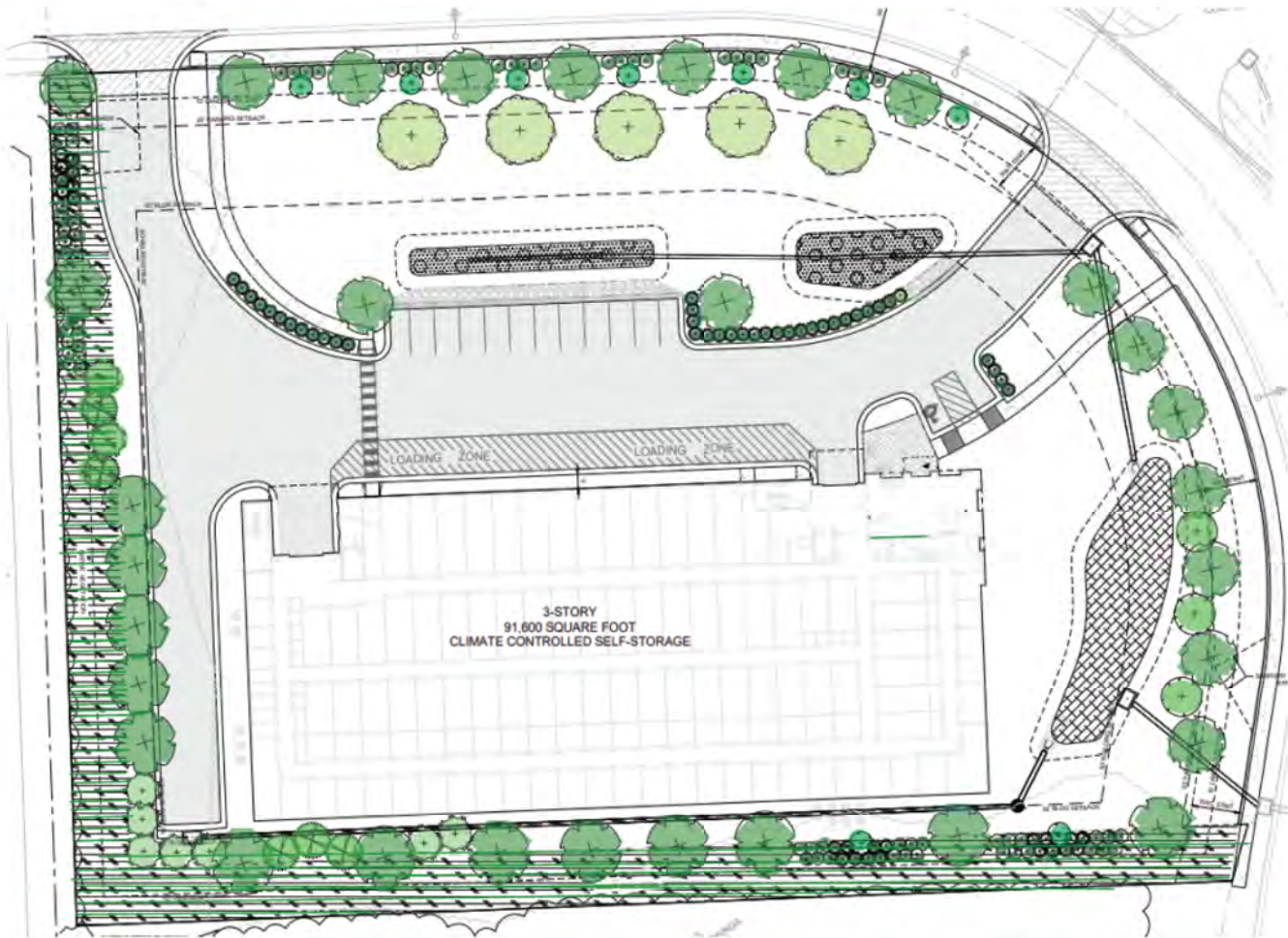


Figure 2: Landscaping

ARCHITECTURAL COMPATIBILITY

The building is a three-story, 91,600 SF structure. The primary entrance at the northeast corner contains brick veneer with an aluminum canopy, eight windows, and double doors. The north façade facing Greenwood Street has recessed brick panels set in an EIFS frame and a split face CMU base. Roofline height varies by architectural design and is 41'5" at the tallest point. South and west facades have been articulated with the use of differing material textures, colors and changes in plane to be consistent with the more visible north and east facades, including continuation of recessed brick panels and roofline variation.



Figure 3: North facade street-facing entrance.

The facades of surrounding structures use similar materials and muted colors with variations of beige and burnt red accenting, making this a compatible development for the area.

SIGN PROGRAM

Proposed signage shall be submitted and approved through the sign permit process. Signage is proposed on the north and east façade with the name of the facility.

FIRE DEPARTMENT REQUIREMENTS

A fire access lane has been provided to the west of the building.

INFORMATIONAL COMMENTS

The preliminary plan is tentatively scheduled to be considered by the Governing Body on October 18, 2022.

STAFF RECOMMENDATION

Staff recommends **APPROVAL** of the preliminary plan for CubeSmart Self Storage located at approximately the northwest corner of Greenwood Street and College Boulevard as proposed with no conditions.



CubeSmart Self Storage PL22-10P



1. Preliminary Plan for CubeSmart located approximately at the northwest corner of College Boulevard and Greenwood Street in the BP-2, Planned Manufacturing District. PL22-10P

Consideration of a preliminary plan for a three-story, 91,600 square foot climate controlled self-storage facility on 2.84 acres.

APPLICANT PRESENTATION:

Jeff Skidmore of Schlager presented information about the proposed project. He noted the location of the property. He said that he appreciated Kim's thorough information in the Staff Report. The site layout has the access in alignment with adjacent access points. The building is approximately 92,000 SF. The building is brick, block, and EIFS building materials. There are sliding doors and no overhead doors.

STAFF PRESENTATION:

Kim Portillo presented the Staff Report. She said that this is a preliminary plan application. The uses in the vicinity are industrial in nature. The proposed use is compatible with the area and the zoning. The architecture is consistent with the area in color, material, and form. There are some changes in roofline that bring variation in height. There are two access points which align with adjacent access points. A fire lane is provided to the west of the building. The plans include street trees, parking lot landscaping, and buffering. The trash enclosure is interior to the building. Staff recommends approval of the project as proposed.

PLANNING COMMISSION DISCUSSION:

Commissioner Horine asked how large the door is. Jeff Skidmore said it is a small 12' door. Commissioner Horine asked about the trash. Jeff Skidmore said that the interior trash enclosure will prevent passersby from dumping in a trash dumpster. He said most units are 10'x20' and even a small U-Haul truck may not be accommodated.

Chairman Poss said that he has no additional comments.

MOTION:

Chairman Poss entertained a motion to recommend **APPROVAL** for a Preliminary Plan for CubeSmart located approximately at the northwest corner of College Boulevard and Greenwood Street in the BP-2, Planned Manufacturing District.

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



**CITY COUNCIL
MEMORANDUM**

ITEM 10

SUBJECT: Resolution approving the 2022-23 insurance program and authorizing the City Manager to execute all documents necessary to procure property and liability insurance and associated lines of coverage

CONTACT: Steven Shrout, Assistant City Attorney

DATE: October 18, 2022

ACTION NEEDED:

Adopt a resolution approving the 2022-23 insurance program and authorizing the City Manager to execute all documents necessary to procure property and liability insurance and associated lines of coverage.

PROJECT BACKGROUND/DESCRIPTION:

The City's property and liability insurance operates on a November 1st through October 31st policy period. The City currently utilizes a first-dollar insurance program. Staff comprehensively bids the entire property and liability insurance program, including insurance brokers, every three to five years. This comprehensive bid was completed last year for the 2021-2022 policy year.

In early 2022, the City's Insurance Broker, Arthur Gallagher Risk Management Services Inc. ("Arthur Gallagher"), informed staff that the City's current insurance carrier, Intact Insurance, was pulling out of the market for public entity insurance. As a result, for the 2022-2023 policy year renewal, Arthur Gallagher was required to comprehensively bid the City's entire property and liability insurance program again. Due to insurance market conditions and increasing costs, City staff also contracted with Charlesworth Consulting, LLC ("Charlesworth") to provide consulting services to help identify any alternative insurance options and assist the City during the 2022-2023 policy year renewal.

Arthur Gallagher secured quotes for two different insurance program options, considering the difficult insurance market, which provided a favorable renewal for the City's various lines of coverage. After extensive review of the program options by Arthur Gallagher, Charlesworth, and the City, staff recommends utilizing a self-insured retention program for the 2022-2023 policy year. If approved, the program will cost approximately \$404,434 in base premiums, which is about a 23% decrease from last year. The cost savings for the 2022-2023 renewal is the result of several factors, including, but not limited to:

- The property deductible for All Other Perils increased to \$50,000 from \$25,000;
- The utilization of a self-insured retention on the City's liability lines of coverage instead of a first-dollar deductible;

- A favorable cyber liability quote that bundled two other lines of coverage that were previously purchased separately; and
- A favorable umbrella liability quote.

The insurance program as it pertains to property coverage remains essentially the same as last year's with little to no changes in coverage, except for an increase in the all other perils deductible and an increase in the Wind and Hail Deductible to 2% of the value of the property involved or \$250,000 minimum (under previous policy the deductible was a flat \$25,000).

Exhibit A to the resolution provides a summary of the package. The summary compares premium amounts for individual coverage lines (i.e., property, auto, cyber) to premiums paid last year.

FINANCIAL IMPLICATIONS/FUNDING SOURCES:

The property and liability insurance program is part of the Legal Department Budget under the General Fund and contains sufficient funds to cover the costs associated with the 2022-23 insurance program.

STAFF RECOMMENDATION:

Adoption of the resolution.

VISION / GUIDING PRINCIPLES ALIGNMENT:

Vision 2040

Guiding Principles

Sustainable Policies and Practices

ATTACHMENTS

1. Resolution

RESOLUTION NO. _____

A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS OF INSURANCE AND RELATED DOCUMENTS FOR THE POLICY PERIOD COMMENCING NOVEMBER 1, 2022.

WHEREAS, the City annually secures property and casualty insurance for the policy period commencing November 1 and ending October 31 of the following year; and

WHEREAS, for the 2022-2023 policy period, the City requested its insurance broker secure renewal quotes from its current insurance carriers; and

WHEREAS, Travelers Property Casualty Company of America ("Travelers"), provided favorable renewal quotes; and

WHEREAS, the City desires to contract with Travelers for its property and liability insurance for the 2022-2023 policy period; and

WHEREAS, the City will also secure smaller coverage lines from Travelers and various other carriers including, but not limited to, crime, cyber liability, fiduciary, storage tank, and Finance Director's bond insurance; and

WHEREAS, the City will secure insurance brokerage and risk management consulting services during the 2022-2023 policy period.

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

SECTION ONE: The City Council does hereby approve of the recommended 2022-2023 insurance program and authorizes the City Manager to execute all documents necessary to purchase and bind all necessary lines of insurance coverage and insurance brokerage and risk management services for the policy period commencing November 1, 2022 on forms acceptable to the City Attorney at a total program cost substantially similar to the total program cost identified in Exhibit A, attached hereto and incorporated herein by reference.

SECTION TWO: This Resolution shall become effective upon adoption.

ADOPTED by the City Council this 18th day of October, 2022.

SIGNED by the Mayor this 18th day of October, 2022.

CITY OF LENEXA, KANSAS

Michael A. Boehm, Mayor

ATTEST:

Jennifer Martin, City Clerk

APPROVED AS TO FORM:

Steven D. Shrout, Assistant City Attorney

Exhibit A - Insurance Package Summary

	EXPIRING 2020-2021	EXPIRING 2021-2022	RECOMMENDATION 2022-2023	CHANGE
PROPERTY				
Carrier:	OneBeacon (Atlantic Specialty)	Intact	Travelers	
Policy Period:	11/01/2020 - 11/1/2021	11/01/2021 - 11/1/2022	11/01/2022 - 11/1/2023	-5.16%
Premium:	\$ 139,083	\$ 149,199	\$ 141,495	\$ (7,704)
BOILER				
Carrier:	Travelers	Travelers	Travelers	
Policy Period:	11/01/2020 - 11/1/2021	11/01/2021 - 11/1/2022	11/01/2022 - 11/01/2023	9.51%
Premium:	\$ 8,458	\$ 8,458	\$ 9,262	\$ 804
LIABILITY				
Carrier:	OneBeacon (Atlantic Specialty)	Intact	Travelers	
Policy Period:	11/01/2020 - 10/31/2021	11/01/2021 - 11/1/2022	11/01/2022 - 11/01/2023	-6.20%
Premium:	\$ 104,464	\$ 86,492	\$ 81,133	\$ (5,359)
AUTO				
Carrier:	OneBeacon (Atlantic Specialty)	Intact	The Charter Oak Fire Insurance Company	
Policy Period:	11/01/2020 - 11/1/2021	11/01/2021 - 11/1/2022	11/01/2022 - 11/01/2023	20.04%
Premium:	\$ 74,636	\$ 76,589	\$ 91,938	\$ 15,349
UMBRELLA/EXCESS				
Carrier:	OneBeacon (Atlantic Specialty)	Intact	Travelers	
Policy Period:	11/01/2020 - 11/1/2021	11/01/2021 - 11/1/2022	11/01/2022 - 11/01/2023	-80.19%
Premium:	\$ 57,517	\$ 136,292	\$ 26,993	\$ (109,299)
Package Total:	\$ 375,700	\$ 448,572	\$ 341,559	\$ (107,013)
ENVIRONMENTAL LIABILITY				
Above Ground Storage Tank				
Carrier:	ACE TankSafe	ACE TankSafe	Ace TankSafe	
Policy Period:	12/01/2020 - 12/1/2021	12/01/2021 - 12/1/2022	12/01/2022 - 12/01/2023	13.70%
Premium:	\$ 1,117	\$ 1,117	\$ 1,270	\$ 153
ENVIRONMENTAL LIABILITY				
Underground Storage Tank				
Carrier:	Great American	Great American	Great American	
Policy Period:	12/27/2020 - 12/27/2021	12/27/2021 - 12/27/2022	12/01/2022 - 12/01/2023	0.00%
Premium:	\$ 400	\$ 358	\$ 358	\$ -
FIDUCIARY LIABILITY				
Carrier:	Federal Insurance (Chubb)	Federal Insurance (Chubb)	Included in Travelers Cyber	
Policy Period:	11/1/2020 - 11/1/2021	11/1/2021 - 11/1/2022		
Premium:	\$ 8,799	\$ 8,799		
CRIME				
Carrier:	Liberty Mutual Ins Co	Liberty Mutual Ins Co	Included in Travelers Cyber	
Policy Period:	11/1/2020 - 11/1/2021	11/1/2021 - 11/1/2022		
Premium:	\$ 3,070	\$ 3,562		
CYBER LIABILITY				
Carrier:	BCS Insurance	Certain Underwriters at Lloyd's of London	Travelers	
Policy Period:	11/1/2020 - 11/1/2021	11/1/2021 - 11/1/2022	11/01/2022 - 11/01/2023	0.25%
Premium:	\$ 21,453	\$ 51,593	\$ 51,721	\$ 128
DRONE LIABILITY				
Carrier:	Included in OBGR package	Included in OBGR package	Included in Travelers Liability package	
Policy Period:				
Premium:				
FINANCE DIRECTOR'S BOND				
Carrier:	Western Surety	Western Surety	Travelers	
Policy Period:	1/3/2021 - 1/3/2022	1/3/2022 - 1/3/2023	1/03/2022 - 1/03/2024	0.00%
Premium:	\$ 350	\$ 263	\$ 263	\$ -
TOTAL INSURANCE COST:	\$ 419,348	\$ 522,723	\$ 404,433	\$ -22.63%
				\$ (106,732)
Total Insurance Cost shown above does not include costs of insurance brokerage services and risk management consulting services.				



**MINUTES OF THE
OCTOBER 4, 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 Roh made a motion to approve the September 20, 2022 City Council meeting draft minutes and Councilmember Eiterich seconded the motion. Motion passed unanimously.

MODIFICATION OF AGENDA

There were no modifications to the agenda.

PROCLAMATIONS

Fire Prevention Month
National Community Planning Month
Active People Health Nation

CONSENT AGENDA

1. Resolution authorizing the Mayor to execute an agreement with Morton Buildings, Inc. for the design and construction of the Fire Apparatus Building – Station 6 located at 12350 W. 87th Street Parkway and waiving the sealed bid process
A temporary building is needed to shelter a fire truck in the north parking lot of Fire Station 6. Morton Buildings, Inc. will design and construct the structure for \$294,528.
2. Resolution amending the Volumetric Rate Calculation Form to be used in determining the Volumetric Rate to be paid for transport gas pursuant to the City's natural gas franchises and repealing Resolution 2022-069
On July 19, 2022, the City adopted Resolution 2022-069 setting the Volumetric Rate

Calculation Form for 2023, allowing the City to receive compensation for gas transported through the City in accordance with the City's natural gas franchises. An error in the Volumetric Rate Calculation Form for 2023 was discovered and the City worked with the natural gas providers to correct the error.

3. Resolution approving the annual investment policy for operating funds
The Pooled Money Investment Board for the State of Kansas requires government entities with expanded investment powers to review and adopt an investment policy on an annual basis. Staff and the City's investment consultant have reviewed the existing policy and do not recommend any changes.
4. Resolution authorizing certain employees and officers to act as agents for the City to transact business with authorized financial institutions and repealing Resolution 2022-083
Multiple Finance Department employees are responsible for processing financial transactions on the City's behalf with authorized financial institutions. Due to staffing changes, the City is required to update the signature cards and authorizations for its commercial deposit accounts.
5. 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 2022-084
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.
6. Ordinance approving a franchise with Kansas Gas Service
This franchise renewal is for Kansas Gas Service, permitting them to continue to construct, operate, and maintain a natural gas plant and distributing system within the city. The franchise ordinance includes a 5% fee on gross receipts, a 5% fee on the volumetric rate, and a 20-year term.
7. Ordinance adopting the annual appropriations for the fiscal year 2023 budget
As part of the annual budget process, state law requires the City to pass an ordinance authorizing and ratifying the payment of all claims and invoices received during fiscal year 2023 provided there are budgeted funds for the payments. The proposed ordinance also authorizes the Mayor to execute all ongoing licensing and maintenance agreements included in the annual budget that exceed \$75,000 without further approval.
8. Resolution approving a lease subordination agreement in connection with a commercial facility financed with industrial revenue bonds (Sonoma Plaza Retail Project)
Portions of the Sonoma Plaza Retail development located south of the intersection of 87th Street Parkway & Maurer Road is financed by industrial revenue bonds. The developer has requested refinancing and needs the City's consent to do so.

END OF CONSENT AGENDA

Mayor Boehm said he would abstain from voting on item 8 due to a conflict of interest.

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

Council President Roh asked if there was any discussion on item 8.

Councilmember Sayers made a motion to approve item 8 on the consent agenda and Councilmember Karlin seconded the motion. Motion passed unanimously.

PUBLIC HEARINGS

9. Consideration of vacating a portion of a utility and drainage easement located at the northwest corner of 100th Terrace & Prairie Creek Road, in the Enclave at Manchester Park, First Plat

a. Public hearing to consider a request to vacate a portion of a utility and drainage easement

b. Ordinance vacating a portion of the utility and drainage easement

This request is to allow a single-family home to be built up to the side yard setback on a lot in the Enclave at Manchester Park subdivision, reducing a utility and drainage easement by two feet. The remaining easement is less than the required setback to ensure no utilities will be installed up to the edge of the foundation.

Scott McCullough, Community Development Director, said this is an application to vacate a utility and drainage easement in the recently platted Enclave at Manchester Park, located near 101st Street and Prairie Creek Road. He explained that the easement encroaches into the buildable area on the lot and an application to construct a single family dwelling on this lot has been submitted; this vacation will remove that conflict.

Mr. McCullough said staff has considered the request and found that there should be no harm in reducing the easement.

Mr. McCullough said that staff recommends approval.

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

No public comments were made.

Councilmember Roh made a motion to close the public hearing and Councilmember Nolte seconded the motion. Motion passed unanimously.

The public hearing closed at 7:15 PM.

Councilmember Nicks made a motion to approve Item 9b and Councilmember

Eiterich seconded the motion. Motion passed unanimously.

NEW BUSINESS

10. Resolution approving Amendment No. 2 to the construction contract with J.E. Dunn Construction Company for the Lenexa Justice Center Project
J.E. Dunn Construction Company ("Dunn") proposes to amend the Construction Agreement for the Lenexa Justice Center for Phase One of the project. Dunn has submitted the second guaranteed maximum price package consisting of waterproofing, roofing materials, concrete, primary steel members, electrical switchgear, two electrical generators, and the pre-engineered metal building for a total of \$12,490,820.

Todd Pelham, Deputy City Manager, said this request is for a second amendment to the contract with J.E. Dunn for the construction of the Lenexa Justice Center. He explained what the first amendment was approved in August; and said that this second amendment is for guaranteed maximum price (GMP) No. 2 at approximately \$12.5 million.

Bill Crandall, CBC Real Estate Group and owner's representative, said they have accomplished the first GMP and are now requesting approval of the second package, making the project about 30% under contract. He talked about the work being performed in each of the packages. He noted that both the packages came in under budget and the team is confident the remaining portion can be done within budget.

Mr. Crandall provided an update on the project schedule and construction phasing and said the project's anticipated completion is March 2024.

Mr. Crandall presented photos of the site work being done on the property.

Councilmember Denny made a motion to approve Item 10 and Councilmember Arroyo seconded the motion. Motion passed unanimously.

BUSINESS FROM FLOOR

There was no business from the floor.

COUNCILMEMBER REPORTS

Councilmember Denny said it is good to hear the fire safety trailer is being taken to the elementary schools again.

STAFF REPORTS

11. Capital Improvement Program project status update

Tim Green, Deputy Community Development Director/City Engineer, provided updates on current CIP projects:

Projects In Construction phase:

- 87th Street Parkway & I-435 Interchange Improvements - complete by Dec 1
- Little Mill Creek Tunnel - complete by Oct 31
- Quivira Road Improvements - complete in Oct
- City Center North SBD (Advent) - complete Oct 31

Projects In Design phase:

- 99th Street & Canyon Creek Boulevard signalization - complete summer 2023
- 99th Street & Clare Road construction - complete fall 2023
- 95th Street & Loiret Boulevard - complete in fall 2023
- 2022 CDBG street lighting - complete in fall 2023
- Prairie Star Parkway & Lone Elm Road signalization - bid spring 2023
- 83rd Street & Monticello Road signalization - bid summer 2023
- Lackman Road right-turn lane at eastbound I-435 - complete fall 2024
- 103rd Street east of Pflumm Road bridge replacement - complete summer 2024
- Widmer/95th Street to Pennycross Storm Drainage improvements - complete fall 2023
- Pipe failure replacements (3) - construct summer 2023
- Oak Park/Century Estates Storm Drainage improvements - complete fall 2023

Parks projects: Cedar Station Park; skate park reconstruction; Indian Trails Aquatic Center renovations; Community Center & Senior Center; Black Hoof Park parking lot; Disc Golf complex

Discussion followed about County Assistance Road System and Stormwater Management Program funding, as well as the coordination of the Pennycross storm drainage and road repair projects.

12. 2022 Exterior Grant Program report

Mr. McCullough provided an update on the 2022 Exterior Grant Program, reviewing the background of the program and changes in criteria for this year. He said that 52 applications were received, and 10 projects were funded, although one of the projects withdrew late in the process. He presented a map showing the grant locations and presented photos of the improvements made.

He said that for 2023, applications will be accepted from March 1st through April 15th and grant selections would be made by May 1st. He thanked the Governing Body for approving an increase to the grant budget to \$90,000.

Discussion followed regarding the improvements, appreciation and thanks to staff for the work done on this program, repercussions and lessons learned with the project that was withdrawn, process timeline adjustments to help residents plan summer projects sooner and avoid supply chain issues, and appreciation for growing and changing the program as lessons are learned.

ADJOURN

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

The meeting adjourned at 7:54 PM.

Proclamation

WHEREAS, Rotary International's motto is Service Above Self, inspiring members to provide humanitarian service, follow high ethical standards, and promote goodwill and peace in the world; and

WHEREAS, Rotary in 1985 launched PolioPlus and in 1988 helped establish the Global Polio Eradication Initiative, which today includes the World Health Organization, U.S. Centers for Disease Control and Prevention, UNICEF, the Bill & Melinda Gates Foundation, and Gavi, the Vaccine Alliance, to immunize the children of the world against polio; and

WHEREAS, polio cases have dropped by 99.9 percent since 1988 and the world stands on the threshold of eradicating the disease; and

WHEREAS, these efforts are providing much-needed operational support, medical staff, laboratory equipment, and educational materials for health workers and parents; and

WHEREAS, members of the Lenexa Rotary Club sponsor service projects to address such critical issues as poverty, disease, hunger, illiteracy, and the environment in our local community and abroad, and

WHEREAS, Lenexa Rotarians have committed their time, talent and treasure to continue support of PolioPlus until Polio is finally eradicated from the earth.

NOW, THEREFORE, I, Michael A. Boehm, Mayor of Lenexa, do hereby proclaim the 24th of October, 2022 to be

WORLD POLIO DAY

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of October, 2022.



Michael A. Boehm
Mayor of Lenexa, Kansas

PUBLIC UTILITY EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that LAMBIE GRANT LLC, hereinafter referred to as Grantor, owner of property herein described, does hereby grant to the **CITY OF LENEXA, KANSAS**, Johnson County, Kansas, a body corporated, its heirs and assigns the following described Public Utility Easement for the sum of One Dollar (\$1.00) and/or other valuable considerations, the receipt of which is hereby acknowledged.

TO WIT:

**SEE ATTACHMENT EXHIBIT
Or
INSERT LEGAL DESCRIPTION HERE**

The above described permanent utility easement is to be used to locate, construct, maintain or authorize the location, construction, or maintenance and use of all utility service, including water; gas; and sewer lines; poles; wires; conduits and cables, etc., upon over and under said area, together with the necessary appurtenances thereto, together with the right of ingress and egress and to allow public access.

The Grantor agrees that it will not construct, plant or cause to be placed within the limits of this said grant any obstacle or a permanent nature. If any obstacle or thing is placed within the limits of this grant by the Grantor, his representative or agent, the Grantor 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 of public facilities within said permanent utility easement.

The Grantor and their heirs, executors, administrators, successors and assigns hereby waive and release to the City of Lenexa and all claims for damages or compensation either now or in the future arising by reason of the use of said land for the purposes herein described.

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 does hereby consent and agree.

IN WITNESS HEREOF, the parties above named have hereunto set their hands this 7th day of October, 2022.

GRANTORS

Lambie Grand, LLC

James Lambie, Member

CORPORATE ACKNOWLEDGMENT

STATE OF KANSAS)
)
COUNTY OF JOHNSON) ss.

BE IT REMEMBERED, that on this 7th day of October, 2022, before me the undersigned, a Notary Public in and for said County and State, came James Lambie, who is known to me to be the same person who executed the within instrument of writing on behalf of Lambie Grand, LLC, and such person duly acknowledges the execution of the same to be his free act and deed individually and as an officer and the free and corporate act of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Melinda C Linden
Notary Public

My Commission Expires: August 25, 2023

MELINDA C LINDEN
NOTARY PUBLIC
STATE OF KANSAS
My Appointment Expires:
8-25-23

EASEMENT EXHIBIT
MIZE HILL, FIRST PLAT
PARTS OF THE NE 1/4 OF SECTION 5-13-23 AND THE SE 1/4 OF SECTION 32-12-23

MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, Johnson County, Kansas.

An easement or license to enter upon, locate, construct and maintain or authorize the location, construction or maintenance and use of conduits, pipes, poles, wires, drainage facilities, sanitary sewers, ducts and cables, and similar facilities, upon, over and under those areas outlined and designated on this plat as "Utility Easement" or "UE" is hereby granted to the City of Lenexa, Kansas. No above ground facilities associated with the users herein permitted shall be constructed, coated, or maintained in any area of the "UE" that crosses or intersects with a "Drainage Easement" or "DE".

DESCRIPTION: PROPOSED UTILITY EASEMENTS

A Tract of land 5.00 feet in width, being a part of Lot 37, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the Easterly 5.00 feet of said Lot 37.

Also
A Tract of land 10.00 feet in width, being a part of Lot 12, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the Northerly 10.00 feet of said Lot 12.

Also
Tracts of land 10.00 feet in width, being a part of Lots 4, 5, 6, 7, 8, 9, 10 and 11, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the South 10.00 feet of said Lots 4, 5, 6, 7 and 8, and All of the South 10.00 feet and All of the Southeasterly 10.00 feet of said Lot 9, and All of the Easterly 10.00 feet of said Lot 10, and All of the East 10.00 feet and All of the North 10.00 feet of said Lot 11.

Also
A Tract of land 10.00 feet in width, being a part of Lot 3 and a part of Tract "H", MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
Beginning at the Easternmost corner of said Lot 3; thence along the Southerly line of said Lot 3, South 81 degrees 50 minutes 25 seconds West a distance of 10.00 feet; thence North 28 degrees 09 minutes 35 seconds West a distance of 86.87 feet; thence North 02 degrees 14 minutes 48 seconds West a distance of 26.11 feet to a point on the North line of said Tract "H"; thence along said North line, North 87 degrees 45 minutes 12 seconds East a distance of 10.00 feet; thence South 02 degrees 14 minutes 48 seconds East a distance of 23.81 feet to the Northeast corner of said Lot 3; thence along the Easterly line of said Lot 3, South 28 degrees 09 minutes 35 seconds East a distance of 64.37 feet to the Point of Beginning.

Also
A Tract of land 10.00 feet in width, being a part of Lot 1, Lot 2, Tract "C" and Tract "H", MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
Beginning at the Northwest corner of said Tract "G"; thence along the North line of said Tract "G", North 07 degrees 13 minutes 56 seconds East a distance of 77.70 feet to the Northwest corner of said Lot 1; thence along the Northerly line of said Lot 1 and Lot 2 and the Northeasterly extension thereof, North 43 degrees 43 minutes 47 seconds East a distance of 231.15 feet to a point on the Easterly line of said Tract "F"; thence along the said Easterly line of said Tract "F" the following two courses, South 33 degrees 44 minutes 04 seconds East a distance of 9.44 feet to a point of curvature; thence Southeasterly on a curve to the right being tangent to the previous course, having a radius of 175.00 feet, a central angle of 00 degrees 15 minutes 47 seconds and an arc length of 0.80 feet; thence South 43 degrees 43 minutes 47 seconds East a distance of 231.01 feet; thence South 67 degrees 13 minutes 56 seconds West a distance of 79.82 feet to a point on the West line of said Tract "G"; said point being a point of curvature; thence along said West line on a curve to the left, having an initial tangent bearing of North 32 degrees 20 minutes 31 seconds West, a radius of 1330.00 feet, a central angle of 00 degrees 25 minutes 51 seconds and an arc length of 10.00 feet to the Point of Beginning.

Also
A Tract of land 10.00 feet in width, being a part of Lots 21, 22, 23, 24, Tract "E" and Tract "G", MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
Beginning at the Southwest corner of said Tract "D", said corner being a point of curvature; thence Northwesterly on a curve to the left having an initial tangent bearing of North 22 degrees 46 minutes 22 seconds West, a radius of 1330.00 feet, a central angle of 17 degrees 02 minutes 36 seconds and an arc length of 395.75 feet to the Westernmost corner of said Tract "D"; thence along the Northerly line of said Tract "D", North 47 degrees 06 minutes 17 seconds East a distance of 36.01 feet to the Southernmost corner of said Lot 21; thence along the Southwesterly, Westerly and Northwesterly lines of said Lots 22, 23 and 24 the following three courses, North 45 degrees 10 minutes 31 seconds West a distance of 232.45 feet; thence North 30 degrees 20 minutes 29 seconds West a distance of 115.00 feet; thence North 43 degrees 48 minutes 38 seconds East a distance of 189.69 feet to the Northernmost corner of said Lot 24; thence along the North line of said Lot 24, South 87 degrees 10 minutes 15 seconds East a distance of 13.25 feet; thence South 43 degrees 48 minutes 39 seconds West a distance of 194.01 feet; thence South 03 degrees 20 minutes 29 seconds East a distance of 106.81 feet; thence South 45 degrees 13 minutes 31 seconds East a distance of 290.03 feet; thence South 47 degrees 06 minutes 17 seconds West a distance of 36.98 feet to a point of curvature; thence Southeasterly on a curve to the right having an initial tangent bearing of South 39 degrees 24 minutes 58 seconds East, a radius of 1340.00 feet, a central angle of 16 degrees 39 minutes 37 seconds and an arc length of 395.25 feet to a point on the South line of said Tract "D"; thence along said South line, South 67 degrees 13 minutes 56 seconds West a distance of 10.00 feet to the Point of Beginning.

Also
Tracts of land 10.00 feet in width, being a part of Lots 24, 25, 26, 27, 28, 29, 30 and 31, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the North 10.00 feet of said Lots 24, 25, 26, 27, 28, 30 and 31, MIZE HILL, FIRST PLAT.

Also
Tracts of land 10.00 feet in width, being a part of Lots 18 and 19, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the Westerly 10.00 feet of said Lots 18 and 19, MIZE HILL, FIRST PLAT.

Also
A Tract of land 10.00 feet in width, being a part of Lot 3, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
Beginning at the Southwest corner of said Tract "D", said corner being a point of curvature; thence Northwesterly on a curve to the left having an initial tangent bearing of North 22 degrees 46 minutes 22 seconds West, a radius of 1330.00 feet, a central angle of 17 degrees 02 minutes 36 seconds and an arc length of 395.75 feet to the Westernmost corner of said Tract "D"; thence along the Northerly line of said Tract "D", North 47 degrees 06 minutes 17 seconds East a distance of 36.01 feet to the Southernmost corner of said Lot 21; thence along the Southwesterly, Westerly and Northwesterly lines of said Lots 22, 23 and 24 the following three courses, North 45 degrees 10 minutes 31 seconds West a distance of 232.45 feet; thence North 30 degrees 20 minutes 29 seconds West a distance of 115.00 feet; thence North 43 degrees 48 minutes 38 seconds East a distance of 189.69 feet to the Northernmost corner of said Lot 24; thence along the North line of said Lot 24, South 87 degrees 10 minutes 15 seconds East a distance of 13.25 feet; thence South 43 degrees 48 minutes 39 seconds West a distance of 194.01 feet; thence South 03 degrees 20 minutes 29 seconds East a distance of 106.81 feet; thence South 45 degrees 13 minutes 31 seconds East a distance of 290.03 feet; thence South 47 degrees 06 minutes 17 seconds West a distance of 36.98 feet to a point of curvature; thence Southeasterly on a curve to the right having an initial tangent bearing of South 39 degrees 24 minutes 58 seconds East, a radius of 1340.00 feet, a central angle of 16 degrees 39 minutes 37 seconds and an arc length of 395.25 feet to a point on the South line of said Tract "D"; thence along said South line, South 67 degrees 13 minutes 56 seconds West a distance of 10.00 feet to the Point of Beginning.

Also
Tracts of land 10.00 feet in width, being a part of Lots 24, 25, 26, 27, 28, 29, 30 and 31, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the North 10.00 feet of said Lots 24, 25, 26, 27, 28, 30 and 31, MIZE HILL, FIRST PLAT.

Also
Tracts of land 10.00 feet in width, being a part of Lots 18 and 19, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the Westerly 10.00 feet of said Lots 18 and 19, MIZE HILL, FIRST PLAT.

Also
A Tract of land 10.00 feet in width, being a part of Lot 3, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
Beginning at the Southwest corner of said Tract "D", said corner being a point of curvature; thence Northwesterly on a curve to the left having an initial tangent bearing of North 22 degrees 46 minutes 22 seconds West, a radius of 1330.00 feet, a central angle of 17 degrees 02 minutes 36 seconds and an arc length of 395.75 feet to the Westernmost corner of said Tract "D"; thence along the Northerly line of said Tract "D", North 47 degrees 06 minutes 17 seconds East a distance of 36.01 feet to the Southernmost corner of said Lot 21; thence along the Southwesterly, Westerly and Northwesterly lines of said Lots 22, 23 and 24 the following three courses, North 45 degrees 10 minutes 31 seconds West a distance of 232.45 feet; thence North 30 degrees 20 minutes 29 seconds West a distance of 115.00 feet; thence North 43 degrees 48 minutes 38 seconds East a distance of 189.69 feet to the Northernmost corner of said Lot 24; thence along the North line of said Lot 24, South 87 degrees 10 minutes 15 seconds East a distance of 13.25 feet; thence South 43 degrees 48 minutes 39 seconds West a distance of 194.01 feet; thence South 03 degrees 20 minutes 29 seconds East a distance of 106.81 feet; thence South 45 degrees 13 minutes 31 seconds East a distance of 290.03 feet; thence South 47 degrees 06 minutes 17 seconds West a distance of 36.98 feet to a point of curvature; thence Southeasterly on a curve to the right having an initial tangent bearing of South 39 degrees 24 minutes 58 seconds East, a radius of 1340.00 feet, a central angle of 16 degrees 39 minutes 37 seconds and an arc length of 395.25 feet to a point on the South line of said Tract "D"; thence along said South line, South 67 degrees 13 minutes 56 seconds West a distance of 10.00 feet to the Point of Beginning.

Also
Tracts of land 10.00 feet in width, being a part of Lots 24, 25, 26, 27, 28, 29, 30 and 31, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the North 10.00 feet of said Lots 24, 25, 26, 27, 28, 30 and 31, MIZE HILL, FIRST PLAT.

Also
Tracts of land 10.00 feet in width, being a part of Lots 18 and 19, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the Westerly 10.00 feet of said Lots 18 and 19, MIZE HILL, FIRST PLAT.

Also
A Tract of land 10.00 feet in width, being a part of Lot 3, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
Beginning at the Southwest corner of said Tract "D", said corner being a point of curvature; thence Northwesterly on a curve to the left having an initial tangent bearing of North 22 degrees 46 minutes 22 seconds West, a radius of 1330.00 feet, a central angle of 17 degrees 02 minutes 36 seconds and an arc length of 395.75 feet to the Westernmost corner of said Tract "D"; thence along the Northerly line of said Tract "D", North 47 degrees 06 minutes 17 seconds East a distance of 36.01 feet to the Southernmost corner of said Lot 21; thence along the Southwesterly, Westerly and Northwesterly lines of said Lots 22, 23 and 24 the following three courses, North 45 degrees 10 minutes 31 seconds West a distance of 232.45 feet; thence North 30 degrees 20 minutes 29 seconds West a distance of 115.00 feet; thence North 43 degrees 48 minutes 38 seconds East a distance of 189.69 feet to the Northernmost corner of said Lot 24; thence along the North line of said Lot 24, South 87 degrees 10 minutes 15 seconds East a distance of 13.25 feet; thence South 43 degrees 48 minutes 39 seconds West a distance of 194.01 feet; thence South 03 degrees 20 minutes 29 seconds East a distance of 106.81 feet; thence South 45 degrees 13 minutes 31 seconds East a distance of 290.03 feet; thence South 47 degrees 06 minutes 17 seconds West a distance of 36.98 feet to a point of curvature; thence Southeasterly on a curve to the right having an initial tangent bearing of South 39 degrees 24 minutes 58 seconds East, a radius of 1340.00 feet, a central angle of 16 degrees 39 minutes 37 seconds and an arc length of 395.25 feet to a point on the South line of said Tract "D"; thence along said South line, South 67 degrees 13 minutes 56 seconds West a distance of 10.00 feet to the Point of Beginning.

Also
Tracts of land 10.00 feet in width, being a part of Lots 24, 25, 26, 27, 28, 29, 30 and 31, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the North 10.00 feet of said Lots 24, 25, 26, 27, 28, 30 and 31, MIZE HILL, FIRST PLAT.

Also
Tracts of land 10.00 feet in width, being a part of Lots 18 and 19, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the Westerly 10.00 feet of said Lots 18 and 19, MIZE HILL, FIRST PLAT.

Also
A Tract of land 10.00 feet in width, being a part of Lot 3, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
Beginning at the Southwest corner of said Tract "D", said corner being a point of curvature; thence Northwesterly on a curve to the left having an initial tangent bearing of North 22 degrees 46 minutes 22 seconds West, a radius of 1330.00 feet, a central angle of 17 degrees 02 minutes 36 seconds and an arc length of 395.75 feet to the Westernmost corner of said Tract "D"; thence along the Northerly line of said Tract "D", North 47 degrees 06 minutes 17 seconds East a distance of 36.01 feet to the Southernmost corner of said Lot 21; thence along the Southwesterly, Westerly and Northwesterly lines of said Lots 22, 23 and 24 the following three courses, North 45 degrees 10 minutes 31 seconds West a distance of 232.45 feet; thence North 30 degrees 20 minutes 29 seconds West a distance of 115.00 feet; thence North 43 degrees 48 minutes 38 seconds East a distance of 189.69 feet to the Northernmost corner of said Lot 24; thence along the North line of said Lot 24, South 87 degrees 10 minutes 15 seconds East a distance of 13.25 feet; thence South 43 degrees 48 minutes 39 seconds West a distance of 194.01 feet; thence South 03 degrees 20 minutes 29 seconds East a distance of 106.81 feet; thence South 45 degrees 13 minutes 31 seconds East a distance of 290.03 feet; thence South 47 degrees 06 minutes 17 seconds West a distance of 36.98 feet to a point of curvature; thence Southeasterly on a curve to the right having an initial tangent bearing of South 39 degrees 24 minutes 58 seconds East, a radius of 1340.00 feet, a central angle of 16 degrees 39 minutes 37 seconds and an arc length of 395.25 feet to a point on the South line of said Tract "D"; thence along said South line, South 67 degrees 13 minutes 56 seconds West a distance of 10.00 feet to the Point of Beginning.

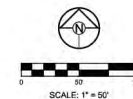
Also
Tracts of land 10.00 feet in width, being a part of Lots 24, 25, 26, 27, 28, 29, 30 and 31, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the North 10.00 feet of said Lots 24, 25, 26, 27, 28, 30 and 31, MIZE HILL, FIRST PLAT.

Also
Tracts of land 10.00 feet in width, being a part of Lots 18 and 19, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:
All of the Westerly 10.00 feet of said Lots 18 and 19, MIZE HILL, FIRST PLAT.



SCHLAGEL
ENGINEERS PLANNERS SURVEYORS LANDSCAPE ARCHITECTS
1402 West 107th Street • Lenexa, Kansas 66158
PH: (913) 462-6118 • FAX: (913) 462-6400 • WWW.SCHLAGELASSOCIATES.COM

DATE: 8-25-2022	FINAL PLAT OF
DRAWN BY: JMT	MIZE HILL, FIRST PLAT
CHECKED BY: AR	EASEMENT EXHIBIT
PROJ. NO. 20-162	SHEET NO. 1



DESCRIPTION:

A Tract of land 5.00 feet in width, being a part of Lot 37, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:

All of the Easterly 5.00 feet of said Lot 37.

Also

A Tract of land 10.00 feet in width, being a part of Lot 12, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:

All of the Northerly 10.00 feet of said Lot 12.

Also

Tracts of land 10.00 feet in width, being a part of Lots 4, 5, 6, 7, 8, 9, 10 and 11, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:

All of the South 10.00 feet of said Lots 4, 5, 6, 7 and 8, and All of the South 10.00 feet and All of the Southeasterly 10.00 feet of said Lot 9, and All of the Easterly 10.00 feet of said Lot 10, and All of the East 10.00 feet and All of the North 10.00 feet of said Lot 11.

Also

A Tract of land 10.00 feet in width, being a part of Lot 3 and a part of Tract "H", MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:

Beginning at the Easternmost corner of said Lot 3; thence along the Southerly line of said Lot 3, South 61 degrees 50 minutes 25 seconds West a distance of 10.00 feet; thence North 28 degrees 09 minutes 35 seconds West a distance of 86.67 feet; thence North 02 degrees 14 minutes 48 seconds West a distance of 26.11 feet to a point on the North line of said Tract "H"; thence along said North line, North 87 degrees 45 minutes 12 seconds East a distance of 10.00 feet; thence South 02 degrees 14 minutes 48 seconds East a distance of 23.81 feet to the Northeast corner of said Lot 3; thence along the Easterly line of said Lot 3, South 28 degrees

09 minutes 35 seconds East a distance of 84.37 feet to the Point of Beginning.

Also

A Tract of land 10.00 feet in width, being a part of Lot 1, Lot 2, Tract "G" and Tract "F", MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:

Beginning at the Northwest corner of said Tract "G"; thence along the North line of said Tract "G", North 67 degrees 13 minutes 56 seconds East a distance of 77.70 feet to the Northwest corner of said Lot 1; thence along the Northerly line of said Lot 1 and Lot 2 and the Northeasterly extension thereof, North 43 degrees 43 minutes 47 seconds East a distance of 231.15 feet to a point on the Easterly line of said Tract "F"; thence along the said Easterly line of Tract "F" the following two courses, South 33 degrees 44 minutes 04 seconds East a distance of 9.44 feet to a point of curvature; thence Southeasterly on a curve to the right being tangent to the previous course, having a radius of 175.00 feet, a central angle of 00 degrees 15 minutes 47 seconds and an arc length of 0.80 feet; thence South 43 degrees 43 minutes 47 seconds West a distance of 231.01 feet; thence South 67 degrees 13 minutes 56 seconds West a distance of 79.82 feet to a point on the West line of said Tract "G", said point being a point of curvature; thence along said West line on a curve to the left, having an initial tangent bearing of North 22 degrees 20 minutes 31 seconds West, a radius of 1330.00 feet, a central angle of 00 degrees 25 minutes 51 seconds and an arc length of 10.00 feet to the Point of Beginning.

Also

A Tract of land 10.00 feet in width, being a part of Lots 21, 22, 23, 24, Tract "E" and Tract "D", MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:

Beginning at the Southwest corner of said Tract "D", said corner being a point of curvature; thence Northwesterly on a curve to the left having an initial tangent bearing of North 22 degrees 46 minutes 22 seconds West, a radius of 1330.00 feet, a central angle of 17 degrees 02 minutes 56 seconds and an arc length of 395.75 feet to the Westernmost corner of said

tract "D"; thence along the Northerly line of said tract "D", North 47 degrees 06 minutes 17 seconds East a distance of 36.01 feet to the Southernmost corner of said Lot 21; thence along the Southwesterly, Westerly and Northwesterly lines of said Lots 22, 23 and 24 the following three courses, North 45 degrees 13 minutes 31 seconds West a distance of 283.45 feet; thence North 03 degrees 20 minutes 29 seconds West a distance of 115.00 feet; thence North 43 degrees 48 minutes 39 seconds East a distance of 189.69 feet to the Northernmost corner of said Lot 24; thence along the North line of said Lot 24, South 87 degrees 10 minutes 15 seconds East a distance of 13.25 feet; thence South 43 degrees 48 minutes 39 seconds West a distance of 194.01 feet; thence South 03 degrees 20 minutes 29 seconds East a distance of 106.81 feet; thence South 45 degrees 13 minutes 31 seconds East a distance of 290.03 feet; thence South 47 degrees 06 minutes 17 seconds West a distance of 36.98 feet to a point of curvature; thence Southeasterly on a curve to the right having an initial tangent bearing of South 39 degrees 24 minutes 58 seconds East, a radius of 1340.00 feet, a central angle of 16 degrees 38 minutes 37 seconds and an arc length of 389.25 feet to a point on the South line of said Tract "D"; thence along said South line, South 67 degrees 13 minutes 56 seconds West a distance of 10.00 feet to the Point of Beginning.

Also

Tracts of land 10.00 feet in width, being a part of Lots 24, 25, 26, 27, 28, 29, 30 and 31, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:

All of the North 10.00 feet of said Lots 24, 25, 26, 27, 28, 29, 30 and 31, MIZE HILL, FIRST PLAT.

Also

Tracts of land 10.00 feet in width, being a part of Lots 18 and 19, MIZE HILL, FIRST PLAT, a subdivision in the City of Lenexa as recorded in book 202205 at page 001430, being described as follows:

All of the Westerly 10.00 feet of said Lots 18 and 19, MIZE HILL, FIRST PLAT.



Account #: 7500

Plan Sponsor Agreement

THIS AGREEMENT is made and entered into as of the date set forth below by and between **SERVE YOU CUSTOM PRESCRIPTION MANAGEMENT, INC.**, a Wisconsin corporation, dba Serve You Rx ("Serve You Rx"), and **CITY OF LENEXA** ("Plan Sponsor").

RECITALS

WHEREAS, Plan Sponsor desires to offer a prescription drug benefit plan through the services of Serve You Rx, providing for administration and other services described herein related to dispensing of Covered Prescriptions, Covered Supplies, and other services to Eligible Members, and

WHEREAS, Eligible Members may obtain Covered Services principally through Pharmacies at negotiated Prescription Drug rates, and receive other administrative and Prescription Drug provider services related thereto through Serve You Rx, and

WHEREAS, Plan Sponsor desires hereby to engage Serve You Rx to perform services, including, among other things, pharmacy network contracting; Claim processing; mail and specialty drug pharmacy; formulary management; eligibility verification; cost containment, clinical safety, adherence and other like programs; pricing; and reporting ("PBM Services"), and

WHEREAS, Serve You Rx is qualified to perform the PBM Services referred to hereunder and is willing to do so upon and subject to the terms and conditions hereof:

NOW THEREFORE, in consideration of the mutual promises and agreement herein contained, Plan Sponsor and Serve You Rx hereby agree as follows:

ARTICLE 1

Definitions

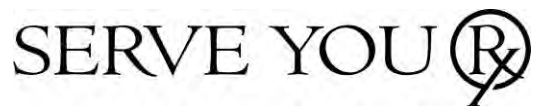
For the purposes hereof, the following terms shall have the following meanings:

1.1 **Adherence Monitoring Program** shall mean a program in which Serve You Rx identifies potentially non-adherent patients via review of targeted therapy refill patterns of medications used to treat specific conditions such as, but not limited to, diabetes, high cholesterol or high blood pressure, followed by educational intervention with the patient and/or prescriber.

1.2 **Administrative Fees** shall mean all fees payable to Serve You Rx by Plan Sponsor as identified on Exhibit A, hereto.

1.3 **Administrative Override** shall mean the process in which Serve You Rx administers the non-clinical rules and conditions established or adopted by Plan Sponsor to determine whether a drug may be approved for coverage, where such evaluation does not require professional consultation with a physician, physician office staff, nurse, clinical pharmacist, Serve You Rx's clinical review staff, or other persons authorized to prescribe prescription drugs or other health care professionals, such as, but not limited to vacation overrides, lost/stolen/broken overrides, emergency overrides, mandatory mail overrides, and maintenance overrides. This does not include reviews utilizing clinical review guidelines or protocols.

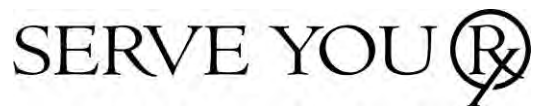
1.4 **Average Wholesale Price or AWP** shall mean the benchmark price published and reported to Serve You Rx by Medi-Span's National Drug Data File, or such other nationally recognized pricing source reasonably determined by Serve You Rx ("Pricing Source"), based on the 11-digit NDC of the prescription drug actually dispensed. Average Wholesale Price does not represent a true Average Wholesale Price, but rather is a fluctuating benchmark provided by third party sources. Serve You Rx shall update the AWP pricing at least weekly.



- 1.5 **Benefit Plan** shall mean the self-funded prescription drug benefit sponsored and/or administered by Plan Sponsor pursuant to which Covered Services are provided to Eligible Members.
- 1.6 **Benefit Plan Information** shall mean the processing parameters and administrative rules concerning the Benefit Plan as documented and adopted by Plan Sponsor in the Benefit Plan Implementation Guide, which Benefit Plan Implementation Guide is required by Serve You Rx to process Claims under this Agreement.
- 1.7 **Benefit Plan Implementation Guide** shall mean the Serve You Rx document completed and approved by Plan Sponsor that details the specific parameters as adopted by Plan Sponsor regarding Covered Services and the implementation and management of Plan Sponsor specific Benefit Plans. Serve You Rx shall utilize the Benefit Plan Implementation Guide in providing the PBM Services under this Agreement.
- 1.8 **Brand Drug** shall mean single or multi-source drugs with a brand classification as set forth by the Pricing Source, or as reasonably determined by Serve You Rx.
- 1.9 **Charges** shall have the meanings set forth in Exhibit A.
- 1.10 **Claim(s)** shall mean claim(s) submitted for payment and processed through Serve You Rx's on-line claims processing system or otherwise sent to and processed by Serve You Rx in accordance with the terms of this Agreement.
- 1.11 **Clinical Review** shall mean any review performed by the Serve You Rx clinical staff. Clinical Reviews include clinical prior authorizations. Clinical Reviews may also include other hard-halt point of service edits such as standard prior authorization reviews, step therapy reviews, high dollar claim reviews, and other cases that necessitate clinical staff review. Serve You Rx will perform standard prior authorization, clinical prior authorization, and other Clinical Reviews pursuant to criteria adopted by Plan Sponsor as part of the Benefit Plan Implementation Guide. Any criteria for coverage that Plan Sponsor desires to be applied to the Benefit Plan's Claims that is different from Serve You Rx standard criteria must be supplied to Serve You Rx in advance prior to implementation. Additional charges may apply to customized administration. Serve You Rx makes no warranty or representation that Serve You Rx criteria for coverage is consistent with criteria applied by a secondary or subsequent payer.
- 1.12 **Copayment/Coinsurance** shall mean the amount, including any deductible, which is required to be collected by a Pharmacy from an Eligible Member at the time the prescription is dispensed pursuant to the Benefit Plan Information.
- 1.13 **Covered Immunization Services** shall mean those immunizations administered to Eligible Members at a Pharmacy where, subject to the limitations or restrictions imposed by federal and state laws, qualified health care professionals are available and authorized to provide such Covered Immunization Services, in accordance with the indications and contraindications listed in current guidelines from the Advisory Committee on Immunization Practices (ACIP) or the U.S. Centers for Disease Control & Prevention (CDC).
- 1.14 **Covered Prescription** shall mean a Prescription Drug, prescription device or prescription supply that an Eligible Member is entitled to receive under a given Benefit Plan.
- 1.15 **Covered Services** shall mean, with respect to any Benefit Plan and subject to the provisions of such Benefit Plan, Covered Prescriptions and Covered Supplies that an Eligible Member is entitled to receive under a given Benefit Plan.
- 1.16 **Covered Supply** shall mean a non-prescription supply that an Eligible Member is entitled to receive under a given Benefit Plan.



- 1.17 **Drug Utilization Review (DUR)** shall mean the standard Serve You Rx DUR edits, which are hereby adopted by Plan Sponsor, subject to Plan Sponsor's discretion to implement changes. Any changes that Plan Sponsor desires to be applied to the Benefit Plan Claims that are different from the standard Serve You Rx DUR edits must be defined in the Benefit Plan Implementation Guide.
- 1.18 **Effective Date** shall mean the date Serve You Rx commences processing claims for Eligible Members for Covered Services and shall be: **January 1, 2023**.
- 1.19 **Eligibility File** shall mean the list submitted by Plan Sponsor or a third party to Serve You Rx in a reasonably acceptable electronic format indicating persons eligible for coverage under the Benefit Plan, which shall include the information required by Sections 2.2 and 2.3.
- 1.20 **Eligible Members** shall mean, with respect to any Benefit Plan, all of the individuals eligible for benefits under such Benefit Plan who are identified in the Eligibility File prepared and maintained by Plan Sponsor and delivered to Serve You Rx.
- 1.21 **Formulary** shall mean a list of FDA-approved drugs that have been evaluated by the Formulary Management Company's Pharmacy and Therapeutics Committee for inclusion on Serve You Rx's formulary based on their clinical efficacy, safety, uniqueness, and cost effectiveness. The drugs and supplies included on the Formulary will be modified by the Formulary Management Company from time to time as a result of factors, including, but not limited to, medical appropriateness, manufacturer rebate arrangements, and patent expirations. Additions and/or deletions to the Formulary are hereby adopted by Plan Sponsor, subject to Plan Sponsor's discretion to elect not to implement any such addition or deletion, which such election shall be considered a Plan Sponsor change to the Formulary and benefit design.
- 1.22 **Formulary Management Company** shall mean an independent vendor that is contracted with Serve You Rx to perform certain formulary management services, including, but not limited to, Pharmacy & Therapeutics (P & T) Committee services.
- 1.23 **Generic Drug** shall mean all drugs with a generic classification as set forth by the Pricing Source, both single and multi-source, or as reasonably determined by Serve You Rx.
- 1.24 **Gross Cost** shall mean Ingredient Cost plus the dispensing fee plus sales tax.
- 1.25 **Gross Cost for Vaccines** shall mean Ingredient Cost plus dispensing fee plus sales tax plus the vaccine fee.
- 1.26 **Group** shall mean those entities under ownership or control by, or contracted with, Plan Sponsor for which Plan Sponsor manages and/or administers a Pharmacy Benefit Plan for employees of such entities and a Group of Eligible Members entitled to benefits under a given Benefit Plan.
- 1.27 **Identification Card** shall mean a printed Identification Card containing specific information about the Covered Services to which Eligible Members are entitled. All Identification Cards shall contain information necessary to process a Claim in a format acceptable to Serve You Rx.
- 1.28 **Implementation Credit** shall have the meaning set forth in Exhibit A.
- 1.29 **Individual** shall mean a natural person.
- 1.30 **Ingredient Cost** shall mean the lesser of (1) AWP minus the applicable discount percentage; (2) the Maximum Allowable Cost; or (3) the Usual & Customary price.
- 1.31 **Maximum Allowable Cost (MAC)** shall mean the maximum unit ingredient cost payable by Plan Sponsor for a drug on the MAC List based on maximum reimbursement payment schedules established and updated by Serve You Rx.



1.32 **MAC List** shall mean a list of off-patent prescription drugs or supplies subject to MAC rates established and updated by Serve You Rx. The criteria and pricing formulas for drugs on the MAC List may change from time to time at Serve You Rx's sole discretion.

1.33 **Manufacturer Discount** shall mean the monetary amount that is paid to Serve You Rx by the Formulary Management Company pursuant to Serve You Rx's agreement with the Formulary Management Company, and which is related to amounts received by the Formulary Management Company pursuant to its written agreements with Pharmaceutical Manufacturers, and which amounts are attributable to Manufacturer Discount Eligible Utilization of certain Covered Prescriptions.

1.34 **Manufacturer Discount Eligible Utilization** shall mean and refer to prescription Claims of Eligible Members who are enrolled in Benefit Plans that adopt and comply with the Formulary and any required utilization management programs, and all requirements set forth in Article 5 of this agreement.

1.35 **Organization** shall mean any corporation, limited liability company, partnership, joint venture, trust, unincorporated organization, government agency or political subdivision thereof or any other entity, but shall not include any Individual.

1.36 **Paid Claim** shall mean a Claim that has been processed and approved for payment by Serve You Rx and shall not include reversed or denied Claims.

1.37 **Performance Guarantees** shall be set forth in Exhibits C & D.

1.38 **Pharmaceutical Manufacturer** shall mean a pharmaceutical company that has entered into an agreement with Serve You Rx's Formulary Management Company to provide retrospective formulary rebates for certain pharmaceutical products.

1.39 **Pharmacy** shall mean, at any given time, any licensed pharmacy that is at that point in time a party to a currently effective Serve You Rx Provider Pharmacy Agreement. Except with respect to the Serve You DirectRx Pharmacy, Pharmacies are independent contractors of Serve You Rx.

1.40 **Prescriber** shall mean any Individual appropriately licensed, registered, and empowered to prescribe Covered Prescriptions and Covered Supplies for Eligible Members under a given Benefit Plan.

1.41 **Prescription Drug** shall mean insulin and those drugs and drug compounds (i) that are included in the United States Pharmacopoeia and that are required to be dispensed pursuant to a prescription and that, by law, are required to bear the legend: "Caution – Federal law prohibits dispensing without prescription," or (ii) that are otherwise accepted by Plan Sponsor as a Prescription Drug for purposes of this Agreement (e.g., over-the-counter drugs) as reflected on the Formulary.

1.42 **Processed Claim** shall mean any Claim resulting in a paid or rejected response.

1.43 **Sole or Limited Distribution Drugs** shall mean those drugs that are distributed by a single Pharmacy or a limited number of Pharmacies.

1.44 **Specialty Drugs** shall mean those drugs on the Specialty Drug List. Specialty Drugs, which may be administered by any route of administration, are typically used to treat chronic or complex conditions, and typically have one or more of several key characteristics, including requiring special handling, requiring enhanced supervision or monitoring by a health care professional, or having limited access and/or requiring specific reporting.

1.45 **Specialty Drug List** shall mean the standard list of Specialty Drugs and their reimbursement rates applicable to Plan Sponsor and maintained and updated by Serve You Rx from time to time.

1.46 **Specialty Generic Medication** shall mean any NDC with a Medispan indication of Y and its GPI 14 on the Serve You Rx Specialty Drug List.



1.47 **Subrogation Claim** shall mean subrogation claims submitted by any state or a person or entity acting on behalf of a state under Medicaid or similar United States or state governmental health care programs, for which Plan Sponsor is deemed to be the primary payor by operation of applicable federal or state law.

1.48 **Usual & Customary (U & C)** shall mean the price the Pharmacy would have charged a patient if that patient were a cash-paying member of the general public (including any applicable discounts, promotions, or other offers to attract customers).

ARTICLE 2

Responsibilities of Plan Sponsor

2.0. Delivery and Use of Information

2.1. **Adoption of Formulary**. Plan Sponsor hereby adopts Serve You Rx's recommended drug list, as amended from time to time, as the Formulary for prescription drugs dispensed under the Benefit Plan.

2.2. **Group Information**. At least thirty (30) calendar days before the Effective Date, Plan Sponsor shall provide Serve You Rx with sufficient specifications regarding each of Plan Sponsor's Groups, if any, to enable Serve You Rx to perform its duties hereunder, including, without limitation, names of Groups, anticipated start date, number of Eligible Members and primary location of Eligible Members. Thereafter, Plan Sponsor may communicate changes to Serve You Rx, and any such changes shall be effective on the first day of the first calendar month that begins at least thirty (30) calendar days after the date on which Plan Sponsor communicates such changes to Serve You Rx, or earlier upon mutual agreement. This information must be complete and accurate and in a format and media approved by Serve You Rx. Serve You Rx is entitled to rely on the accuracy and completeness of this information.

2.3. **Eligible Member Information**. At least thirty (30) calendar days before the Effective Date, Plan Sponsor shall provide, or cause to be provided, to Serve You Rx the Eligibility File as well as sufficient other specifications regarding each Eligible Member under each Benefit Plan sponsored or offered by Plan Sponsor to enable Serve You Rx to perform its duties hereunder, including without limitation, the information set forth in Section 2.2 and Section 2.3. If received less than thirty (30) calendar days prior to the Effective Date of each Eligible Member, eligibility will be loaded in a mutually agreed upon time frame and may include an additional cost. Thereafter, Plan Sponsor may communicate changes to the Eligibility File to Serve You Rx in written or electronic form, and any such changes shall be effective on the date specified by Plan Sponsor, but not less than two (2) business days from the time such changes are communicated to Serve You Rx unless agreeable to Serve You Rx. This information must be complete and accurate and Serve You Rx is entitled to rely on the accuracy and completeness of this information.

2.3.1. Plan Sponsor will be responsible for all Covered Services during the period of the Eligible Member's eligibility as indicated on the Eligibility File, including for retroactively termed Eligible Members. If notification that a person is no longer an Eligible Member is not received by Serve You Rx at least two (2) business days prior to the dispensing of any prescription, Plan Sponsor shall be responsible for any Covered Prescription and Covered Supply dispensed to such person until the end of the second business day following Serve You Rx's receipt of such notification.

2.3.2. Plan Sponsor shall communicate the Eligibility File and all other Eligible Member information to Serve You Rx via electronic media, via Serve You Rx's remote access system, or via another mutually agreed manner. If Plan Sponsor communicates any Eligible Member information to Serve You Rx in a manner not acceptable to Serve You Rx, Serve You Rx may impose a reasonable charge as indicated on Exhibit A for the input of such information into Serve You Rx's claim processing system.



2.4. **Benefit Plan Information.**

2.4.1. At least thirty (30) calendar days before the Effective Date, Plan Sponsor shall complete and submit the Benefit Plan Implementation Guide to Serve You Rx with the specifications regarding each Benefit Plan sponsored or offered by Plan Sponsor for each Group, if any, that are necessary to enable Serve You Rx to perform its duties hereunder, including without limitation, Covered Services and Group Information, Eligible Member Copayment/Coinsurance amounts, Administrative Override and Clinical Review requirements and the additional information set forth in the Benefit Plan Implementation Guide. The Plan Sponsor must sign off on the Benefit Plan Implementation Guide before implementation of the benefit design. Thereafter, Plan Sponsor may communicate changes to Serve You Rx, and any such changes, subject to Section 2.4.2 below, shall be effective on the first day of the calendar month that begins at least thirty (30) calendar days after the date on which Plan Sponsor communicates such changes to Serve You Rx, or earlier upon mutual agreement. In the event any such changes would require customized services, the Parties shall mutually agree to a time frame for such implementation. All such changes are required to be in a written Benefit Change Form amending the Benefit Plan Implementation Guide, and signed by Plan Sponsor's Authorized Representative as defined in the Benefit Plan Implementation Guide. Serve You Rx will not be responsible or otherwise liable to Plan Sponsor or Eligible Members for costs or other damages in any way resulting from Plan Sponsor's failure to communicate Benefit Plan changes to Serve You Rx as provided for in this Article.

2.4.2. If: (i) there is a material change in the conditions or assumptions stated in this Agreement, or in the size, demographics, or gender distribution of Plan Sponsor's membership compared to data provided by Plan Sponsor; or (ii) Plan Sponsor changes its Benefit Plan design, breadth or other characteristics of the provider network, implements over-the-counter plans, clinical or trend programs or otherwise takes an action that has the effect of lowering the amount of Manufacturer Discounts earned hereunder or impacting any guarantee, then Serve You Rx will have the right, upon notice, to make an equitable adjustment to the Charges, Administrative Fees, and/or Manufacturer Discounts, as necessary to return Serve You Rx to its contracted economic position as of the effective date of such event.

2.5. **Communication with Eligible Members.** Serve You Rx will provide to Plan Sponsor communication materials for Eligible Members to access the Benefit Plan. Plan Sponsor shall be responsible for distributing all communication materials to Eligible Members. At the request of Plan Sponsor, Serve You Rx will mail such materials to Eligible Members. Plan Sponsor will be responsible for payment of all postage charges incurred as a result of such mailing to Eligible Members. Serve You Rx may choose to mail other communication materials related to the Benefit Plan to Eligible Members at its own expense. In any case, Plan Sponsor shall ensure that all Eligible Members under a Benefit Plan managed by Plan Sponsor are furnished an Identification Card satisfactory to Serve You Rx for presentation to Pharmacies. Plan Sponsor represents and warrants that it shall obtain and will maintain any and all authorizations or consents as may be required by law from Eligible Members for Plan Sponsor or Serve You Rx to communicate with Eligible Members. Subject to applicable law, Serve You Rx may communicate with Eligible Members and physicians as necessary or appropriate to perform PBM Services, including, without limitation, regarding benefit design, cost savings, availability and use of the Serve You DirectRx Pharmacy.

2.6. **Control of Plan.** Plan Sponsor will not name or represent that Serve You Rx is, and Serve You Rx will not be, a Plan Administrator or a named fiduciary of Plan Sponsor's Prescription Drug Benefit Plan ("Plan") as those terms are used in the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1001 et seq., and the regulations promulgated under ERISA. Plan Sponsor acknowledges and agrees that neither Serve You Rx nor any of Serve You Rx's subsidiaries or affiliates: (a) have



discretionary authority or control with respect to management of the Benefit Plan, or (b) exercise any authority or control with respect to management or disposition of the assets of the Benefit Plan or Plan Sponsor. Plan Sponsor further acknowledges that all such discretionary authority and control with respect to management of the Benefit Plan and plan assets is retained by Plan Sponsor or the Plan. Plan Sponsor will have complete discretionary, binding and final authority to construe the terms of the Plan, to interpret ambiguous Plan language, to make factual determinations regarding the payment of Claims or provisions of benefits, to review denied Claims upon request and to resolve complaints by Eligible Members. Serve You Rx will have no obligation or authority to make any determinations as to interpretation of the terms of the Plan or determination of benefits or coverage under the Plan. Plan Sponsor is solely responsible for any liability arising in connection with the Plan Sponsor's Benefit Plan. Serve You Rx makes no representation or warranty that the Benefit Plan is in compliance with any law that applies to Plan Sponsor, and Serve You Rx has no responsibility to advise Plan Sponsor about Plan Sponsor's compliance with any applicable law. Upon reasonable notice, Serve You Rx will have the right to terminate PBM Services to any Benefit Plan (or, if applicable, to Eligible Members) located in a state requiring a pharmacy benefit manager to be a fiduciary to Plan Sponsor, the Benefit Plan, or an Eligible Member in any capacity.

2.7. **Acceptance Agreement.** Plan Sponsor will review all reports, statements, and invoices provided by Serve You Rx to Plan Sponsor or its designee(s), and shall notify Serve You Rx in writing of any errors or objections within thirty (30) calendar days of receipt by Plan Sponsor or its designee(s) of such report, statement or invoice. Unless Plan Sponsor notifies Serve You Rx in writing of any errors or objections within the thirty (30) calendar day period, all the information contained in the report, statement or invoice, will be deemed accurate, complete and acceptable to Plan Sponsor and thereafter Serve You Rx shall have no liability related thereto.

2.8. **Pharmacy Agreements.** Plan Sponsor agrees that during the term of this Agreement, it (including any affiliates or agents) will not contract, directly or indirectly, with any pharmacy related to dispensing of prescription drugs to Eligible Members under this Agreement, unless mutually agreed upon by Serve You Rx in writing.

2.9. **Business Associate Agreement.** Plan Sponsor will, concurrent with the delivery and execution of this Agreement, deliver an executed copy of the Business Associate Agreement as set forth in Exhibit B to this Agreement. Notwithstanding the foregoing, the parties acknowledge that in providing services to Eligible Members, the Serve You DirectRx Pharmacy is acting as a separate health care provider covered entity under HIPAA and not as a business associate to the Benefit Plan covered by the Business Associate Agreement. In providing services, the Serve You DirectRx Pharmacy will abide by all HIPAA requirements applicable to covered entities and shall safeguard, use and disclose Eligible Member Protected Health Information ("PHI") accordingly.

ARTICLE 3

Responsibilities of Serve You Rx

3.0. **Serve You Rx Services.**

3.1. **Pharmacy Network.** Serve You Rx will provide to Plan Sponsor access to a Pharmacy network that will provide adequate access to Pharmacies. Serve You Rx will also provide to Plan Sponsor access to a Pharmacy network that will provide Covered Immunization Services. Serve You Rx will maintain a look up function of network Pharmacies in the member portal where Eligible Members may locate a Pharmacy. During the term hereof, Serve You Rx shall make commercially reasonable efforts to not materially reduce the number of Pharmacies in Plan Sponsor's service area.

3.2. **Pharmaceutical Services.** Subject to the terms and conditions of this Agreement, pursuant to Serve You Rx's agreements with Pharmacies, Pharmacies will dispense to each Eligible Member under



each Benefit Plan sponsored or offered by Plan Sponsor all Covered Prescriptions and Covered Supplies under the Benefit Plan, subject to applicable legal restrictions and the professional ethics and judgment of the Pharmacies' pharmacists, and subject in each case to the payment of the applicable Copayment/Coinsurance amount, if any, under the Benefit Plan.

3.3. **Mail Service.** Serve You Rx Pharmacy ("Serve You DirectRx Pharmacy") is deemed to be a Pharmacy and may dispense Prescriptions for Eligible Members and may mail such drugs or supplies to such Eligible Members subject to the following terms and conditions:

3.3.1. **Distribution of Information.** Serve You Rx shall provide Plan Sponsor with copies of informational materials explaining the mail service and the forms necessary for Eligible Members to utilize the Serve You DirectRx Pharmacy. Plan Sponsor shall distribute the Serve You DirectRx Pharmacy informational materials and forms to all Eligible Members.

3.3.2. **Delivery and Dispensing.** Serve You DirectRx Pharmacy may dispense new or refill Covered Prescription or Covered Supply orders upon receipt from an Eligible Member of (i) a valid prescription order or a completed refill order form or other acceptable method, and (ii) the applicable Copayment/Coinsurance, if any. Serve You DirectRx Pharmacy shall cause the filled prescriptions to be mailed to each Eligible Member via common carrier at the address set forth in the Eligible Member Information, or on the order form or as provided by an Eligible Member. Serve You DirectRx Pharmacy shall be responsible for shipping and mailing costs, except that additional costs incurred as a result of requests from an Eligible Member for special shipping and handling costs or express delivery shall be the sole responsibility of said Eligible Member. Serve You Rx may suspend Serve You DirectRx Pharmacy services to an Eligible Member who is in default of any Copayment/Coinsurance amount due to Serve You Rx.

3.3.3. **Serve You DirectRx Pharmacy.** Serve You DirectRx Pharmacy shall operate in compliance with applicable state and federal pharmaceutical laws and regulations and shall dispense only those Prescription Drugs that, in its sole discretion, fulfill the requirements of a valid prescription and comply with applicable law. Serve You DirectRx Pharmacy may refuse to fill any prescription it believes in good faith would potentially jeopardize its license or would otherwise result in liability for Serve You DirectRx Pharmacy.

3.4. **Claims Processing.** Serve You Rx, or its subcontractor, shall process on a real-time basis all Claims made by Pharmacies hereunder. In processing each Claim, Serve You Rx, or its subcontractor, shall:

3.4.1. Confirm that the Benefit Plan under which an Individual purports to be covered lists the Individual as an Eligible Member in the Eligibility File; and

3.4.2. Confirm that the Benefit Plan under which the Individual in question purports to be covered provides coverage for the prescription or supply being dispensed as a Covered Prescription or Covered Supply per the Benefit Plan Implementation Guide.

3.5. **Claims History.** Serve You Rx shall maintain a record of each Claim processed by Serve You Rx hereunder for a period of seven (7) years from the date the Claim is made. Each such record shall be accessible on-line to the Benefit Plan to which the Claims processing relates for a period of twelve (12) months from the date the Claim is made. If so requested by Plan Sponsor, and upon payment of Serve You Rx's then current fee thereof, Serve You Rx shall, within ninety (90) calendar days after the termination of this Agreement, furnish the Benefit Plan to which the Claims processing relates with a history of all Claims processed by Serve You Rx hereunder with respect to that Benefit Plan for a period of up to seven (7) years prior to the termination of this Agreement, with such history to be in Serve You Rx's standard format. Serve You Rx shall not otherwise be required to maintain a record of Claims processed hereunder after the termination of this Agreement.



3.6. **Standard Management Reports.** Serve You Rx shall provide Plan Sponsor with access to Standard Management Reports, as defined by Serve You Rx.

3.7. **Customer Service Call Center.** During the term of this Agreement, if agreed upon by the parties, Serve You Rx will provide a toll-free Customer Service Call Center available to Plan Sponsor and to Eligible Members under Benefit Plans sponsored or offered by Plan Sponsor, and to Pharmacies providing Pharmacy benefit services to Eligible Members.

3.8. **Subrogation Claims.** If authorized by Plan Sponsor on the Benefit Plan Implementation Guide, or if required by law, Serve You Rx will process Subrogation Claims in accordance with applicable federal and state laws, in which case Plan Sponsor will pay such Subrogation Claims in accordance with the payment terms of this Agreement. If Plan Sponsor does not authorize Serve You Rx to process Subrogation Claims, Serve You Rx will, if permitted by law, reject the claim and refer claimants to Plan Sponsor regarding such claims in accordance with applicable federal and state laws. Serve You Rx is not legally responsible to pay Subrogation Claims to the extent Plan Sponsor is not timely paying Serve You Rx with respect to such Subrogation Claims.

3.9. **Other Services.** Serve You Rx may engage in utilization review, quality assurance, and audit procedures with respect to the Pharmacies. During the term hereof, Serve You Rx shall provide to Plan Sponsor such additional services as Serve You Rx may generally provide and Plan Sponsor may request, such as those included in Exhibit A, hereto. In accordance with applicable law, Serve You Rx shall provide a Claims data file to Plan Sponsor or to a designated third party upon request. Charges may apply for additional data file requests. Serve You Rx's current fee schedule for the portfolio of services it generally provides as of the date hereof is attached as Exhibit A, hereto.

3.10. **Changes to Services.** Serve You Rx may, in its sole discretion and without notice to Plan Sponsor, make changes to its programs or services, so long as such changes do not materially alter any of the provisions of this Agreement. Additionally, Serve You Rx may, from time to time, add new programs or services, or make material modifications to existing programs or services, provided Serve You Rx shall give Plan Sponsor written notice of such new programs or services or material modifications at least sixty (60) calendar days prior to their implementation. Such written notice shall provide Plan Sponsor the opportunity to decline to participate or "opt out" of the new or modified program or service. If Plan Sponsor does not decline or opt out of the new or modified program or service pursuant to the instructions in the written notice, Plan Sponsor shall be deemed to have accepted the new or modified program or service and the Agreement will be deemed so modified without further writing or signature.

ARTICLE 4

Payment Due Serve You Rx

4.0. Compensation

4.1. **Charges.** As consideration for the services described herein, Plan Sponsor shall pay Serve You Rx an amount equal to: (i) the Charges as defined herein for such Covered Prescription or Covered Supply minus; (ii) the Copayment/Coinsurance amount, if any, applicable thereto under a given Benefit Plan. Charges will be invoiced twice per month. The first invoice will include all Charges from the 1st through the 15th of the month. The second invoice will include all Charges from the 16th through the last day of the month.

4.1.1. **Administrative Fees.** In addition to the foregoing, the Plan Sponsor shall pay Serve You Rx Administrative Fees as set forth on Exhibit A, hereto, for each Eligible Members each month.

4.1.2. **Implementation Credit.** A one-time Implementation Credit may be applied to Charges to offset transition costs incurred by Plan Sponsor. All costs must be identified and submitted to Serve You Rx within ninety (90) days of the Effective Date and approved by Serve You Rx in



order for Plan Sponsor to receive any such credit. If applicable, the credit will be calculated as described in Exhibit A.

4.2. Payment to Serve You Rx. The Plan Sponsor shall pay Serve You Rx all Charges and Administrative Fees due Serve You Rx under this Agreement within thirty (30) calendar days of invoice date (Net 30 calendar days). All invoices will be paid by wire transfer, electronic ACH debit or ACH credit. Any amount not paid within thirty (30) calendar days from date of invoice shall bear interest at the rate of one and one-half percent (1.5%) per month or, if lower, the highest interest rate permitted by law from the date due until paid. Plan Sponsor will reimburse Serve You Rx for all costs of collection, including, without limitation, reasonable attorneys' fees, incurred by Serve You Rx in connection therewith. Serve You Rx reserves the right to withhold payment of Manufacturer Discounts, if any, until such time as Plan Sponsor is no longer in arrears. Plan Sponsor may permit a third party to make payment of Charges and Administrative Fees due Serve You Rx by Plan Sponsor under this Agreement on its behalf. However, Plan Sponsor retains responsibility and remains liable for payment due under this Agreement until all such funds are received by Serve You Rx. In the event Plan Sponsor objects to any cost in an invoice, Plan Sponsor is still obligated to remit payment of the full payment amount to Serve You Rx within the agreed upon payment terms. Within 30 calendar days of Plan Sponsor's receipt of the invoice, Plan Sponsor shall identify and fully explain the basis for such objections in writing to Serve You Rx. Plan Sponsor and Serve You Rx will then work together to determine the validity of the amounts to which Plan Sponsor has objected. Any overpayments or underpayments will be reconciled through a charge or credit in a subsequent invoice.

Serve You Rx will be responsible for payment to the Pharmacies for Covered Services solely to the extent it has received funds provided by Plan Sponsor for payment of such services. Serve You Rx shall not be required to render payments to Pharmacies or Eligible Members unless and until Serve You Rx has received payment for the Covered Services from Plan Sponsor. Therefore, Plan Sponsor recognizes that it is essential to make timely payments to Serve You Rx, and that payment that is not timely may adversely affect availability of pharmacy services. Notwithstanding the foregoing, in the event that Serve You Rx elects to pay Pharmacies and Eligible Persons for Covered Services prior to its receipt of payment from Plan Sponsor, such election shall not constitute a waiver of Serve You Rx's right to suspend performance or of Plan Sponsor's obligation to render payment to Serve You Rx either as to that payment or as to any other payment, nor shall such election serve to establish a course of dealing or a course of performance between Serve You Rx and Plan Sponsor. The amount that Plan Sponsor pays to Serve You Rx under this Section is not an asset of any Benefit Plan.

4.3. Sales and Use Taxes. If any taxes, assessments, surcharges, and/or similar fees ("Tax(es)") are imposed upon Serve You Rx or a Pharmacy by any governmental authority based upon Serve You Rx or Pharmacy's provision of Covered Services to Eligible Members hereunder, Plan Sponsor shall be responsible for payment of such Tax(es). Pharmacy will transmit the applicable Tax amount imposed upon Pharmacy through electronic media or via Serve You Rx remote access system. Plan Sponsor shall be responsible for determination and payment of any Tax that may apply in any state in which Plan Sponsor does business or in which Plan Sponsor offers Benefit Plans or Covered Services to Eligible Members. In the event any Tax is imposed on Serve You Rx or any one or more of its subsidiaries or affiliates arising from or relating to Serve You Rx's or its subsidiaries' or affiliates' performance of services as a pharmacy benefit manager, third party administrator, or otherwise in any jurisdiction, Serve You Rx will notify Plan Sponsor of the applicable Tax amount and Plan Sponsor shall reimburse Serve You Rx such amount. In no event shall Serve You Rx be liable for any such Taxes or the calculation thereof. Serve You Rx reserves the right to charge a reasonable administrative fee for collection and remittance services provided with respect to Plan Sponsor. Plan Sponsor is not responsible for any income or profit taxes imposed upon Serve You Rx by any governmental authority.



4.4. **Deposit.** If, at any time: (i) Plan Sponsor has two or more invoices past due or outstanding, or (ii) Serve You Rx has reasonable grounds to believe Plan Sponsor may be delinquent in payment based on Plan Sponsor's financial data (e.g. bankruptcy or insolvency), Serve You Rx may require that the Plan Sponsor provide to Serve You Rx a deposit in an amount equal to twice the average invoice amount over the previous six (6) months, or if there are less than six (6) months of billing history, the deposit amount shall be twice the average invoice amount over the actual billing history. Serve You Rx will retain any deposit provided hereunder until the termination of this Agreement at which time such deposit shall be returned to Plan Sponsor, without interest, less any offsets for payment defaults and collection costs pursuant to Section 4.5 below.

4.5. **Offsets.** In the event of any payment default that is not cured by Plan Sponsor, Plan Sponsor authorizes Serve You Rx to offset the amount of such payment default and collection costs against Plan Sponsor's deposit, if any. Where applicable, Plan Sponsor hereby authorizes Serve You Rx to offset the amount of payment defaults and reasonable collection costs against amounts payable to Plan Sponsor (including, without limitation, any Manufacturer Discounts). Serve You Rx shall notify Plan Sponsor in writing of any offset. The notification of offset shall detail the amounts being offset and Serve You Rx's reason for activating its right to offset.

4.6. **Suspension of Covered Services.** Failure by Plan Sponsor to make any payments described in Article 4 will constitute a payment default. If ten(10) calendar days have elapsed from the time any amount described in Article 4 was due Serve You Rx, and payment in full (including any accrued interest) has not been received by wire transfer, electronic ACH debit or ACH credit, Serve You Rx may, at its discretion, suspend services to Plan Sponsor. At any time thereafter, Serve You Rx may terminate this Agreement as provided in Article 6.

ARTICLE 5

Manufacturer Discount Program

5.0. Manufacturer Discount Program.

5.1. **Manufacturer Discount and Formulary Services.** Serve You Rx will provide Manufacturer Discount and Formulary services through a national Formulary Management Company contracted by Serve You Rx to collect Manufacturer Discounts from pharmaceutical manufacturers for claims submitted by Serve You Rx and provide other formulary management services ("Formulary Management Contract"). Plan Sponsor gives Serve You Rx authority to: (i) appoint the Formulary Management Company as the exclusive agent for negotiating and arranging for Manufacturer Discounts on the purchase of prescription drugs and related services from pharmaceutical manufacturers under this Agreement; and (ii) authorize the Formulary Management Company to contract with pharmaceutical companies for Manufacturer Discounts as a group purchasing organization for Serve You Rx's clients, including Plan Sponsor.

5.2. **Manufacturer Discounts.** Claims for certain prescription drugs on the Formulary are eligible for a Manufacturer Discount pursuant to applicable agreements between Serve You Rx's Formulary Management Company and Pharmaceutical Manufacturers. Under such agreements, Manufacturer Discounts are paid based on the utilization of eligible prescription drugs by Eligible Members of the Plan Sponsor. To be eligible for Manufacturer Discounts, if any, based on the terms of Exhibit A, the Plan Sponsor must fund at least fifty percent (50%) of the Charges associated with submitted Claims. To verify compliance with this burden, upon request, Plan Sponsor must provide to Serve You Rx Copayment/Coinsurance information, Claim evidence, or evidence of member reimbursement (if the Benefit Plan is so designed), as well as written verification that the fifty percent (50%) threshold exists. Any Claims for which Plan Sponsor funds less than fifty percent (50%) of the Charges of Covered Prescriptions will not be entitled to Manufacturer Discounts. This requirement does not include Claims from Eligible Members who are meeting their deductible as part of their defined pharmacy benefit. Plan Sponsor's eligibility to receive Manufacturer Discounts, if any, based on the terms of Exhibit A, is

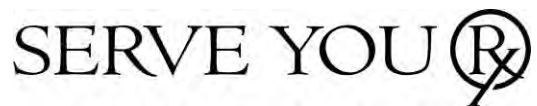


contingent upon 100 percent (100%) compliance with the Formulary and any required utilization management programs. Claims excluded from Manufacturer Discount eligibility, calculations, guarantees, credits, and payments, if any, as set forth in this Agreement include ineligible Claims, such as biosimilar products; Subrogation Claims; coordination of benefit Claims; Covered Immunization Services; Claims with invalid service provider identification or prescription numbers; multi-source Brand Drugs with a DAW code (DAW 1 or DAW 2) requiring the substitution of a Brand Drug over a Generic Drug; House Generic Drugs; direct Eligible Member submitted Claims; Claims for devices without a Prescription Drug component or Claims that are not for Prescription Drugs (except for insulins or diabetic test strips); non-FDA approved products regardless of indication; Claims for Prescription Drugs labeled with repackaged national drug codes (NDCs); stale dated Claims over 180 days old; compounded prescriptions; Claims from 340B Pharmacies, or Claims from entities eligible for federal supply schedule prices (e.g., Department of Veterans Affairs, U.S. Public Health Service, Department of Defense, Indian Health Services); long term care facility Claims; vaccines; Sole or Limited Distribution Drugs; unit dose NDCs for institutional use; secondary Claims; zero days' supply; zero drug quantity dispensed; Claims with an invalid quantity; inactive NDCs; obsolete NDCs; invalid submitted date; Prescription Drugs excluded or not covered by the Formulary; Medicaid Managed Care Claims in states where the state law prohibits collecting supplemental Manufacturer Discounts; or for utilization pursuant to a consumer card or discount card program where the Benefit Plan had no cost liability on the Claim or the Claims are otherwise not eligible for Manufacturer Discounts under the agreement with the Formulary Management Company.

5.3. The clinical information contained in the Formulary is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill and judgment of physicians, pharmacists, or other health care professionals in the Eligible Member's care. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate, or effective for any Eligible Member.

5.4. Serve You Rx's payment of Manufacturer Discounts as set forth in this Section 5.4 and Exhibit A will constitute payment in full of Serve You Rx's obligation to Plan Sponsor for Manufacturer Discounts. Serve You Rx will pay guaranteed Manufacturer Discounts as outlined in Exhibit A one time quarterly, no later than ninety (90) calendar days after the end of each calendar quarter in which the Plan Sponsor has participated in the program. Quarterly payments will be based on the minimum guarantees outlined in Section 3 of Exhibit A. Manufacturer Discounts does not include any discount, price concession or other direct or indirect remuneration Serve You Rx receives for direct purchase of a Prescription Drug for Serve You DirectRx Pharmacy, or any amounts the Formulary Management Company pays Serve You Rx for providing any products or services, including fees for managing and administering Serve You Rx's Manufacturer Discount program. An annual Manufacturer Discounts reconciliation shall be calculated one hundred eighty (180) days after the end of each contract year ("Reconciliation Period"). For each such Reconciliation Period, Serve You Rx shall determine the actual Manufacturer Discounts payable to Serve You Rx from the Formulary Management Company that are attributable to Plan Sponsor's Claims processed during such Reconciliation Period. In the event that the actual Manufacturer Discounts payable for such Reconciliation Period are greater than the minimum guaranteed Manufacturer Discounts paid by Serve You Rx to Plan Sponsor for such Reconciliation Period, then Serve You Rx shall pay Plan Sponsor the amount of such excess less applicable management fees within forty-five (45) days of such determination. Once the annual reconciliation has been paid such Reconciliation Period shall be considered closed. Serve You Rx shall have no further obligation to pay Manufacturer Discounts to Plan Sponsor for such Reconciliation Period and the reconciliation for that Reconciliation Period shall not be reopened except for repayments as provided in Section 5.5.

5.5. If Plan Sponsor has been paid Manufacturer Discounts with respect to Claims, and if for any reason (including without limitation, manufacturer takebacks, manufacturer shortpays, duplicate claims, audit, reconciliation or otherwise) Serve You Rx is required to repay all or a part of any Manufacturer



Discount it has received with respect to such Claims, Plan Sponsor, upon demand of Serve You Rx, will promptly repay to Serve You Rx (i) the Manufacturer Discount amount Plan Sponsor was paid with respect to such Claims or (ii) in the case of a partial repayment by Serve You Rx, a pro rata portion of such Manufacturer Discount, based on the portion of the billed Manufacturer Discounts that Serve You Rx is required to repay, whichever is applicable. Serve You Rx may offset any amount owed to it under this paragraph against amounts owed to Plan Sponsor under this Agreement.

5.6. All Manufacturer Discounts referred to in this Article are subject to change, reduction or elimination due to, among other things, the terms of the contract between Serve You Rx and the Formulary Management Company or the terms of the contracts between Serve You Rx's Formulary Management Company and Pharmaceutical Manufacturers or local, federal, state or other laws or regulations affecting the distribution or the amount of Manufacturer Discounts available or payable under law, or the actions of any Pharmaceutical Manufacturer, outside of Serve You Rx's Formulary Management Company's control, that affect the availability of Manufacturer Discounts. Notwithstanding the foregoing, if the amount of any Manufacturer Discount generated by such agreements with Pharmaceutical Manufacturers is reduced or eliminated as a result of (i) a particular item from Serve You Rx's prescription drug Formulary not being included in the Plan Sponsor's Formulary; (ii) conflicts between the Plan Sponsor's Formulary and the Serve You Rx prescription drug Formulary or any required utilization management programs; (iii) change(s) in contractual requirements from Pharmaceutical Manufacturers that result in Plan Sponsor being unable or unwilling to meet reasonable drug Formulary compliance requirements, including, but not limited to, drug Formulary inclusion or exclusion or Formulary driven interventions; (iv) an unassumed movement of a Brand Drug to off-patent or if Generic Drugs, low priced Brand Drugs or over-the-counter substitutes becoming available; (v) a modification to the benefit design or program specifications, including, without limitation, changes in Copayment/Coinsurance amounts or tiers; or (vi) substantial change in Plan Sponsor's drug utilization; or (vii) any government imposed change in federal, state or local laws or interpretation thereof or industry-wide change that materially changes Serve You Rx's performance of its duties hereunder including a change resulting from the elimination or material modification of historic drug manufacturer rebate pricing models or changes made to the AWP benchmark or methodology, then Serve You Rx will have the right, upon notice, to make an equitable adjustment to the Charges, Administrative Fees, and/or guaranteed Manufacturer Discounts, as necessary to return Serve You Rx to its contracted economic position as of the effective date of such event, even if the date is retroactive. In addition, Serve You Rx shall perform an annual review of Plan Sponsor's performance as it relates to Manufacturer Discounts and may adjust the Charges, Administrative Fees and/or amounts paid to Plan Sponsor on Exhibit A accordingly.

5.7. No amounts for Manufacturer Discounts will be paid to Plan Sponsor until this Agreement is executed by Plan Sponsor. Serve You Rx will have a right to apply Plan Sponsor's Manufacturer Discounts, including guaranteed Manufacturer Discounts, if any, to unpaid Charges or Administrative Fees.

5.8. Plan Sponsor agrees that during the term of this Agreement, it (including any affiliates or agents) will not, directly or indirectly, negotiate or in any way arrange for Manufacturer Discounts or any other financial incentives from any pharmaceutical manufacturer related to the purchase of prescription drugs by Eligible Members under this Agreement. Plan Sponsor also agrees to cancel any such existing arrangements, agreements, or contracts related to Manufacturer Discounts or any other financial incentives from any pharmaceutical manufacturer as of the Effective Date of this Agreement.

5.9. Serve You Rx may implement Serve You Rx's Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with Eligible Members, Pharmacies, and/or physicians. Serve You Rx reserves the right to modify or replace such programs from time to time. Manufacturer Discounts, if any, set forth in Exhibit A, are conditioned on adherence to such programs and controls.



5.10. Plan Sponsor hereby warrants and represents that any Benefit Plan covered by this Agreement is not a "Federal health care program" as that term is defined by 42 U.S.C. § 1320a-7b(f). Serve You Rx hereby notifies Plan Sponsor that to the extent Plan Sponsor contracts with a state or federal healthcare program, Plan Sponsor may be obligated to fully and accurately report the Manufacturer Discounts received by Plan Sponsor under this Agreement in costs or charges made to such governmental programs.

ARTICLE 6

Term, Termination, Miscellaneous

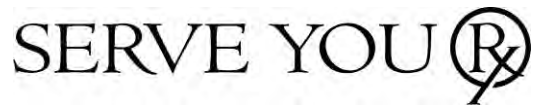
6.0. **Term and Termination, Miscellaneous.** Unless otherwise terminated sooner as provided for herein, the Agreement shall commence on the Effective Date and continue thereafter for an initial term of three (3) years ("Initial Term"). Subject to the provisions in this Article 6, after the Initial Term the Agreement shall automatically be renewed for successive three (3)-year renewal terms ("Renewal Term") unless either party gives a written notice of non-renewal to the other party at least ninety (90) calendar days prior to the expiration of the Initial Term or Renewal Term, as applicable. Plan Sponsor may terminate this agreement by providing written notice to Serve You Rx at least one-hundred twenty (120) days prior to the intended date of termination.

6.1. **Event of Default.** If either party commits an "Event of Default" at any time during the Initial Term or any Renewal Term, then the other party may terminate the Agreement "for cause" by providing sixty (60) calendar days written notice to the defaulting party. For the purposes hereof, it shall constitute an Event of Default if a party:

- 6.1.1. Fails to make any payment to the other party hereto when due hereunder;
- 6.1.2. Breaches any material term or provision of the Agreement if such breach remains uncured thirty (30) calendar days after written notice thereof from the other party hereto;
- 6.1.3. Becomes the subject of any voluntary or involuntary bankruptcy, dissolution, liquidation or insolvency proceeding; or
- 6.1.4. Violates any law or regulation that prevents or otherwise limits the defaulting party from materially carrying out its obligations pursuant to the Agreement.

6.2. **Notice of Non-Renewal.** If Plan Sponsor gives Serve You Rx written notice for non-renewal in the Initial Term or any Renewal Term, but such notice is not furnished to Serve You Rx at least ninety (90) calendar days before the expiration of the then-current term as required under the Agreement, or if Plan Sponsor desires to terminate the Agreement in the absence of an Event of Default, without limiting any other remedy Serve You Rx may have under this Agreement or at law or equity, Plan Sponsor shall completely forfeit any Manufacturer Discounts and Performance Guarantee penalties, if any, owed to it under the Agreement upon termination. In addition, Serve You Rx shall have all legal and equitable remedies available to it in the event Plan Sponsor breaches this Article 6 or any other provision of the Agreement. The parties agree that the provisions of this Article 6 are fair and reasonable. If any provision in the Agreement is or becomes invalid, illegal or unenforceable, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken and the remainder of the Agreement shall remain in full force and effect.

6.3. **Charges and Administrative Fees After Termination.** Plan Sponsor remains responsible for all Charges (and associated Administrative Fees described herein) with a date of service prior to the effective date of any termination. Such Charges and associated Administrative Fees must be received by Serve You Rx within ninety (90) calendar days after the effective date of the termination. Plan Sponsor



shall also be responsible for the following expenses at Serve You Rx's prevailing rates: (i) data files and (ii) special reports requested by Plan Sponsor.

6.4. **Surviving Provisions Following Termination.** In the event of the expiration or termination of this Agreement, the following sections of this Agreement will continue to survive: Article 7, Article 10, and Sections 11.2 and 11.8.

6.5. **Change of Control.** If Serve You Rx experiences a change of control due to an acquisition during the term of this agreement, Plan Sponsor may terminate this Agreement without penalty by providing written notice at least ninety (90) days prior to the intended date of termination.

ARTICLE 7

Damages and Indemnification

7.0. **Damages and Indemnification by Serve You Rx.** Serve You Rx shall defend, indemnify and hold Plan Sponsor harmless from and against any loss, cost, damage or expense including reasonable attorneys' fees (collectively, "Damages") that Plan Sponsor may sustain resulting from or arising out of a third party claim and based on: (i) any misrepresentation or breach of warranty made by Serve You Rx herein; or (ii) any negligent acts or omissions of Serve You Rx. The maximum aggregate amount for which Serve You Rx may at any time be obligated to indemnify Plan Sponsor hereunder shall in no case exceed the Charges and Administrative Fees paid by Plan Sponsor to Serve You Rx, net of Manufacturer Discounts paid by Serve You Rx to Plan Sponsor, if any, during the twelve (12) months immediately preceding the event giving rise to the Damages for which Plan Sponsor seeks indemnification hereunder.

7.1. **Damages and Indemnification by Plan Sponsor.** Plan Sponsor shall defend, indemnify, and hold Serve You Rx harmless from and against any Damages that Serve You Rx may sustain resulting from or arising out of a third party claim and based on: (i) any misrepresentation or breach of warranty made by Plan Sponsor herein; or (ii) any negligent acts or omissions of Plan Sponsor. The maximum aggregate amount for which Plan Sponsor may at any time be obligated to indemnify Serve You Rx hereunder shall in no case exceed the Charges and Administrative Fees paid by Plan Sponsor to Serve You Rx, net of Manufacturer Discounts paid by Serve You Rx to Plan Sponsor, if any, during the twelve (12) months immediately preceding the event giving rise to the Damages for which Serve You Rx seeks indemnification hereunder.

7.2. **Notice of Claims.** Promptly after any party hereto: (i) receives notice of any claim or the commencement of any action or proceeding against it, (ii) has knowledge of any claim, action or proceeding against it or, (iii) has knowledge of any matter for which it intends to seek indemnification hereunder, such party shall, if any claim for reimbursement with respect thereto is to be made against any other party hereto obligated to provide indemnification ("Indemnifying Party") hereunder, give the Indemnifying Party written notice of such claim or commencement of such action or proceeding provided, however, that failure to give such notification shall not affect indemnification hereunder except to the extent that the Indemnifying Party; (a) is unable to defend or verify such claim or; (b) is required to pay a greater amount or accrue additional expenses with respect thereto as a result of such failure to provide prompt notice.

7.3. **Defense by Indemnifying Party.** In connection with any claim for indemnification hereunder resulting from or arising out of any claim or legal proceeding by a person who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense, may (but shall not be required to) upon written notice to the party seeking indemnification ("Indemnified Party"), intervene in the defense of any such claim or legal proceeding, with counsel reasonably satisfactory to the Indemnified Party. If the Indemnifying Party shall undertake to defend any such claim or legal proceeding, the Indemnified Party shall cooperate with the Indemnifying Party in the defense thereof. Such cooperation shall include, but not be limited to, furnishing the Indemnifying Party with any books, records or information reasonably



requested by the Indemnifying Party. After the Indemnifying Party has undertaken to defend any such claim or legal proceeding, the Indemnifying Party shall not be liable for any additional legal expenses incurred by the Indemnified Party with respect to such claim. However, the Indemnified Party shall be entitled to participate (but not control) the defense of any such claim or legal proceeding, with its own counsel and at its own expense.

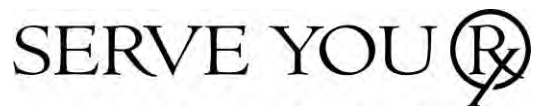
7.4. **Compromise of Claims.** If the Indemnifying Party undertakes to defend any such claim or legal proceeding as described in this Article 7 the Indemnifying Party shall have the right to settle or compromise, at its own expense, any such claim or legal proceeding, provided such settlement or compromise provides a full and complete release of the Indemnified Party with respect to the claim or legal proceeding in question. In the event of such settlement, the Indemnified Party shall have the right to review and shall approve any such settlement prior to its execution.

7.5. **Exclusive Remedy.** Except as otherwise set forth in this Agreement, each party's rights under this Article 7 shall constitute the sole and exclusive remedy for such party with respect to any violation or breach of the terms of this Agreement, or a default hereunder, by any other party hereto.

7.6. **Limitation On Liability.** IN NO EVENT SHALL SERVE YOU RX OR ANY AFFILIATE OF SERVE YOU RX BE LIABLE TO PLAN SPONSOR, ANY ELIGIBLE MEMBER, OR ANY AFFILIATE OF SUCH PARTY FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO SERVE YOU RX'S PERFORMANCE UNDER THIS AGREEMENT OR BREACH THEREOF, EVEN IF SERVE YOU RX HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. SERVE YOU RX'S LIABILITY TO PLAN SPONSOR, ANY ELIGIBLE MEMBER, OR ANY AFFILIATE OF SUCH PARTY UNDER THIS AGREEMENT, IF ANY, SHALL IN NO CASE EXCEED THE CHARGES AND ADMINISTRATIVE FEES PAID BY PLAN SPONSOR TO SERVE YOU RX, NET OF MANUFACTURER DISCOUNTS PAID BY SERVE YOU RX TO PLAN SPONSOR, IF ANY, DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE DATE THE CLAIM IS ASSERTED. ANY AWARD OF ATTORNEYS' FEES TO BE PAID BY SERVE YOU RX IS INCLUDED WITHIN THIS LIMITATION. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

7.7. Neither party nor any affiliate of the parties will be liable for any claim asserted by the other party more than thirty (30) calendar days after the other party is or reasonably should have been aware of such claim. In no event shall either party or any affiliate of the parties be liable for any claim asserted by the other party more than twelve (12) months after the event giving rise to the claim.

7.8. Except with respect to the Serve You DirectRx Pharmacy, Pharmacies are independent contractors and not subcontractors or agents of Serve You Rx and Serve You Rx does not direct or exercise any control over the Pharmacies or the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Pharmacy. Accordingly, Serve You Rx shall have no liability to Plan Sponsor, any Eligible Member or any other person or entity for any act or omission of any Pharmacy or its agents or employees. Plan Sponsor acknowledges that any utilization analysis to be performed by Serve You Rx shall be used only as an informational guide, and is not to be regarded or relied upon as a substitute for the skill, judgment and care of the pharmacists and other health care professionals in dispensing pharmaceutical products. Serve You Rx shall not, under any circumstances, be liable or responsible for injury, including death, suffered by any consumer of any pharmaceutical or any other product dispensed or distributed by any Pharmacy, or for any side effects or other consequential or incidental damages of any kind or description whatsoever from the use of any such product. It is expressly understood that such liability and



responsibility rests entirely upon the pharmacists and other health care professionals involved in dispensing the product in question.

7.9. Serve You Rx will use ordinary care and reasonable diligence in the performance of its duties pursuant to this Agreement. With the exception of Covered Prescriptions or Covered Supplies dispensed by Serve You DirectRx Pharmacy, Plan Sponsor acknowledges that this Agreement is not a contract for the sale of goods. EXCEPT AS WARRANTED IN THIS SECTION, SERVE YOU RX DISCLAIMS ALL EXPRESS AND ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE SUITABILITY FOR ANY PARTICULAR PURPOSE OF THE DATA GENERATED THROUGH SERVE YOU RX'S OR ITS SUBCONTRACTORS' SYSTEMS, AND ANY OTHER WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SERVE YOU RX RELIES ON MEDI-SPAN, FIRST DATABANK, OR COMPARABLE DATABASES IN PROVIDING PLAN SPONSOR AND ELIGIBLE MEMBERS WITH DRUG UTILIZATION REVIEW SERVICES. SERVE YOU RX HAS UTILIZED REASONABLE CARE IN COLLECTING AND REPORTING THE INFORMATION CONTAINED IN THE DATABASES AND HAS OBTAINED SUCH INFORMATION FROM SOURCES BELIEVED TO BE RELIABLE. SERVE YOU RX, HOWEVER, DOES NOT WARRANT THE ACCURACY OF REPORTS, ALERTS, CODES, PRICES, OR OTHER DATA CONTAINED IN THE DATABASES. SERVE YOU RX DOES NOT WARRANT THAT ITS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

7.10. Nothing in this Agreement will be construed or be deemed to create any rights or remedies in any third party, including, but not limited to, an Eligible Member.

ARTICLE 8

Representations and Warranties

8.0. **Representations and Warranties.** Each of the parties represents and warrants to the other as follows:

8.1. **Due Organization.** It is duly organized, validly existing and in good standing under the laws of the state of its incorporation.

8.2. **Authorization.** It has full corporate authority to execute and deliver this Agreement and the additional Agreements, to which it is to be a party hereunder, and to perform hereunder and thereunder, and the execution, delivery and performance hereof and thereof, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporation action.

8.3. **No Breach of Statute or Contract.** Neither its execution and delivery of this Agreement or the Agreements to which it is to be a party hereunder, nor its compliance with the terms and provisions hereof or thereof will: (i) cause it to violate or be in any conflict with any law, order, injunction, statute, ordinance or regulation of any governmental authority; or (ii) conflict with or result in a breach of any of the terms, conditions, or provisions of any of its organizational documents or of any Agreement or instrument to which it is a party or by which it or its properties may be bound.

8.4. **Enforceability.** This Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditor's rights generally.

ARTICLE 9

Representation Regarding Software

9.0. **Serve You Rx Representation Regarding Software.** Serve You Rx represents that software used by it or its subcontractors has been prepared in good faith in consultation with qualified professionals



and that, as of the Effective Date, Serve You Rx has no knowledge of any errors in the claims processing or other software, including DUR. However, Serve You Rx makes no further representation or warranty with respect to the software, and Serve You Rx specifically excludes from its representations and warranties hereunder and in Article 8 any representation or warranty as to merchantability, fitness for particular purpose, non-infringement or any other matter.

ARTICLE 10

Non-Disclosure of Proprietary Information and Audit

10.0. Non-Disclosure of Proprietary Information

10.1. **Proprietary Information.** Plan Sponsor acknowledges that Serve You Rx's software, business plans, operating procedures, know-how, ideas, techniques, inventions, methodology, test results, performance criteria, plan lists, pricing information, marketing strategies, and financial information are proprietary information of Serve You Rx. All such information is herein referred to as "Proprietary Information". Notwithstanding the foregoing, Proprietary Information shall not include, and the restrictions of this Article 10 shall not apply to any information that is or becomes publicly known without the fault of Plan Sponsor. In consideration of Serve You Rx's promises set forth herein, Plan Sponsor acknowledges and agrees that:

10.1.1. Plan Sponsor shall not acquire any patent, license or other right or interest in any Proprietary Information;

10.1.2. Plan Sponsor shall treat all Proprietary Information as secret and confidential and shall protect and safeguard such Proprietary Information in the same manner as it protects and safeguards its own Proprietary Information;

10.1.3. Plan Sponsor shall not use any Proprietary Information for any purpose unrelated to the administration of this Agreement and will not disclose any Proprietary Information to anyone other than (i) its employees or representatives that have a need to know such information in the ordinary course of business and who are obligated to maintain the confidentiality of such information; or (ii) to entities whereby Plan Sponsor is legally required to disclose Proprietary Information pursuant to a subpoena or otherwise, provided Plan Sponsor has provided Serve You Rx with a reasonable opportunity to take such steps as may be reasonably available to avoid such legal requirement or to protect the proprietary nature of such disclosure.

10.2. **Use of Information.** Both during and after the term of this Agreement, Serve You Rx may use and disclose, reproduce, or adapt information obtained in connection with this Agreement, including, without limitation, Claims data information and eligibility information for developing new products and services, including reporting tools, research, provider profiling, benchmarking, drug trend, and cost and other internal analysis and comparisons, clinical, safety and/or trend management programs, for disclosures or reporting required by law, or for other business purposes that may be outside the scope of this Agreement, except that Serve You Rx and its agents, employees, and contractors shall maintain the confidentiality of this information to the extent required by all applicable law, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and may not use the information in any way prohibited by law or by this Agreement. Any such data shall be blinded and aggregated. Each party shall be solely responsible for its own use of such information, and shall indemnify and hold the other party harmless for, from, and against any and all costs, losses, or damages incurred by such other party as a result of such use.

10.3. **Specific Performance.** Plan Sponsor acknowledges that irrevocable injury may result to Serve You Rx in the event of any use or disclosure by Plan Sponsor of Proprietary Information in violation of this Agreement, and Plan Sponsor agrees that if it or any of its employees or representatives shall make or attempt to make any such use or disclosure in violation of the provisions hereof, Serve You Rx shall



be entitled, in addition to such other remedies, damages or relief as may be available under applicable law, to specific performance, including but not limited to an injunction prohibiting such use and/or disclosure and specifically enforcing the provisions of this Article 10.

10.4. **Audit.** Either party may once annually audit the other party in relation to its duties and obligations under this Agreement. No audits may be initiated or conducted during the months of December or January due to the extraordinary demands placed on staff during these annual renewal periods. These rights shall include auditing Claims and other relevant records which shall be made accessible upon thirty (30) days prior written notice and at reasonable intervals during the regular business hours of the audited party. Notwithstanding the foregoing, Plan Sponsor's audit of Serve You Rx records is limited to review of Claims transactions for adherence to and accuracy against the approved plan design and pricing under this Agreement, for the limited purpose of verifying Serve You Rx's compliance with the terms of this Agreement. All expenses for such audits shall be at the expense of the requesting party. Plan Sponsor acknowledges that it shall not be entitled to audit: (i) documents, in whole or in part, that Serve You Rx deems proprietary, confidential or trade secret; and (ii) documents, in whole or in part, that Serve You Rx is barred from disclosing by law or pursuant to an obligation of confidentiality to a third party. All information and records reviewed pursuant to this section shall be considered Confidential Information for purposes of this Agreement.

10.5. **Auditors.** Notwithstanding the foregoing, only a mutually agreed independent third-party auditor will have the right to assist Plan Sponsor in any audit pursuant to Section 10.4 of this Agreement. No third party may be allowed or designated to conduct an audit without an executed nondisclosure agreement with Serve You Rx no less than sixty (60) days prior to the date of the audit, ensuring the confidentiality of Serve You Rx's Confidential Information, and the prior written consent of the party whose records are being audited. The audit scope will cover a period not to exceed twelve (12) months immediately preceding the date of audit, unless the audit relates to a financial guarantee for a period exceeding twelve (12) months, in such case, shall be limited to the term of the financial guarantee. Requests for older data may be subject to payment of fees for retrieval of data. The audited period may not be re-audited once the audit is complete. Neither party may initiate an audit of the other party pursuant to this Agreement more than once in any twelve (12)-month period, nor more than eighteen (18) months after the date of the termination of this Agreement.

Plan Sponsor's auditor shall not be an individual or entity that is: a competitor of Serve You Rx, a covered manufacturer representative, any retail, mail or specialty drug pharmacy representative or vendor, or any other third-party auditor that is engaged in providing services for Plan Sponsor or otherwise that conflict with the scope or independent nature of the audit.

10.6. **Audit Close.** A final audit report shall be provided by Plan Sponsor (or its auditor) in writing to Serve You Rx within sixty (60) days of the end of the audit. Serve You Rx shall have ninety (90) days to respond. Automatic closure and/or settlement, if applicable, will occur if Plan Sponsor or its auditor fails to communicate within thirty (30) days of Serve You Rx's response.

ARTICLE 11

Miscellaneous

11.0. Miscellaneous.

11.1. **Relationship of the Parties.** Plan Sponsor and Serve You Rx are independent entities and nothing in the Agreement shall be construed or be deemed to create a relationship of employer and employee or principal and agent or franchisor and franchisee or any relationship, fiduciary or otherwise, other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. This Agreement does not create any partnership or any joint venture between Serve You Rx and Plan Sponsor or their respective directors, officers, employees or agents.



Nothing in this Agreement shall be construed or deemed to confer upon Serve You Rx any responsibility for or control over the Benefit Plan.

11.2. **Dispute Resolution.** If a dispute occurs between the parties, the complaining party may request a meeting by executive officers of each party who will attempt to resolve the dispute in good faith before beginning a legal proceeding, except for matters subject to injunctive relief. If the parties' executive officers do not resolve the dispute within sixty (60) days after the notice, then either party may begin a legal proceeding.

11.3. **Publicity.** Plan Sponsor shall not make any public announcement or other general public communication concerning this Agreement or the terms hereof without the prior written consent to the timing, manner and content thereof by Serve You Rx hereto. Upon advance written consent of Plan Sponsor, Serve You Rx may use Plan Sponsor's logos, trademarks or service marks as needed for press releases or other marketing communications.

11.4. **Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient and shall be deemed to have been given when delivered in person, when transmitted by facsimile (transmission confirmed) or three (3) calendar days after being sent by United States Mail, certified, return receipt requested, postage pre-paid or the next business day when delivered to a reputable national overnight courier. All notices shall be addressed to a party at its address or telecommunication number as the same is provided below or such other address or telecommunication number as a party may designate by notice duly given in accordance with this paragraph.

If to Serve You Rx: Serve You Rx, Attn: Compliance Department
 10201 Innovation Drive, Suite 600
 Milwaukee, WI 53226
 FAX: (414) 410-3226

If to Plan Sponsor: City Of Lenexa, Attn: Human Resources
 17101 W. 87th St. Pkwy.
 Lenexa, KS 66219

11.5. **Entire Agreement.** This Agreement, including the Exhibits hereto, constitutes the entire Agreement between the parties hereto relating to the subject matter hereof, and all prior Agreements, correspondence, discussions and understandings of the parties are superseded hereby. Except as otherwise set forth in this Agreement, no amendment or modification hereto shall be valid unless expressed in writing and signed by both parties to this Agreement.

11.6. **Waiver.** The failure of any party to exercise or enforce any right conferred upon it hereunder shall not be deemed to be a waiver of any such right nor operate to bar any party the right to exercise or enforce such right at any time thereafter; nor shall waiver of any right hereunder, including rights to payment, be deemed to be a waiver of any future right hereunder.

11.7. **Assignment.** This Agreement shall not be assignable by Plan Sponsor without the prior written consent of Serve You Rx. Serve You Rx may assign this Agreement to third persons without the prior consent of Plan Sponsor and, in the event of such assignment, will provide written notice to Plan Sponsor. Serve You Rx may perform services under this Agreement through one or more Serve You Rx subsidiaries, affiliates, or designees. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.8. **Governing Law.** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Kansas without giving effect to the principles of conflicts-



of-law, or any rule that would result in the application of the law of any different jurisdiction. The courts of Kansas shall have exclusive jurisdiction in connection with any legal proceeding brought by Serve You Rx arising hereunder, and the courts of Wisconsin shall have exclusive jurisdiction in connection with any legal proceeding brought by Plan Sponsor. The parties hereby submit to the jurisdiction of such courts and waive any objection to the venue of such courts and any claim that such courts may be inconvenient.

11.9. **Compliance with Law.** Each party is responsible for ensuring its compliance with any laws applicable to its business, including, but not limited to obtaining and maintaining any necessary licenses and permits. Plan Sponsor will comply with all federal, state and local laws applicable to its performance of its obligations under this Agreement and the services it provides to its Benefit Plans and Eligible Members. Serve You Rx will have no responsibility to advise Plan Sponsor about its compliance with any applicable laws, including, without limitation, federal or state kickback laws, HIPAA, ERISA, or the Americans with Disabilities Act ("ADA"). Plan Sponsor will disclose to Benefit Plans and Eligible Members any and all matters that are required by law to be disclosed. No party will make payments or perform services under this Agreement that would be prohibited by law. No part of this Agreement will be construed to induce or encourage the referral of patients, and no payment made pursuant to this Agreement or any other agreement between Serve You Rx and Plan Sponsor will be construed to induce the purchase, lease, order or arrangement for the furnishing of health care products or services. If this Agreement, or any part hereof, is found not to be in compliance with applicable law, then the parties will renegotiate the Agreement for the sole purpose of correcting the non-compliance in an equitable manner, which may include a pricing adjustment. If the parties are unable to agree upon an equitable adjustment within sixty (60) days after either party notifies the other of such non-compliance with applicable law, then the Agreement will automatically terminate.

11.10. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall remain valid and effective.

11.11. **Binding Effect.** This Agreement shall be binding on the parties hereto and their successors and permitted assigns.

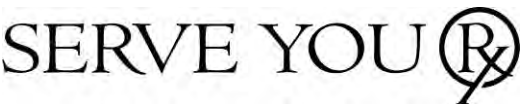
11.12. **Force Majeure.** The performance by either party hereunder will be excused to the extent of circumstances beyond such party's reasonable control, such as flood, tornado, earthquake, or other natural disaster, epidemic, war, fire, or other acts of God; provided, however, that this clause may not be invoked to excuse Plan Sponsor's payment obligations hereunder. In the event of such circumstances, the parties will use their best efforts to resume performance as soon as reasonably possible.

11.13. **Headings.** The headings of Articles and Exhibits contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11.14. **Retention of Serve You Rx.** Plan Sponsor hereby retains Serve You Rx as its exclusive provider of pharmacy benefit management services to Eligible Members.

11.15. **Plan Sponsor Authority.** Plan Sponsor represents that it has the authority to enter into this Agreement on behalf of its Benefit Plans.

11.16. **Market Check.** After July 1, 2024, Plan Sponsor or its designee may provide Serve You Rx with a de-identified report of current competitive pricing offers, which takes into account, the aggregate plan design, clinical and trend programs, formulary covered drug list, pharmacy network, specialty pharmacy and mail pharmacy utilization ("Sponsor Current Market Price"). Serve You Rx shall have a reasonable opportunity to evaluate the Sponsor's Current Market Price, not to exceed 15 business days. If Plan Sponsor or its designee conclude that the Sponsor's Current Market Price would yield an annual three percent (3%) or more savings of Net Plan Costs. "Net Plan Costs" is defined as the sum of the total ingredient cost of Covered Prescriptions, dispensing fees, claims administrative fees, and consulting fees



less Manufacturer Discounts received by Plan Sponsor (if Plan Sponsor utilizes standard formulary under the Agreement. If Serve You Rx is unable or unwilling to offer new terms and conditions that would result in the savings offered by the competing offer, as determined by Plan Sponsor or its designee, then Plan Sponsor may terminate the Agreement upon ninety (90) days' prior written notice to Serve You Rx at no cost to Plan Sponsor or its designee.

11.17. **Electronic Signatures**. The Parties agree that this Agreement may be executed by electronic or digital signature, which shall have the same force and effect as an original signature.

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

SERVE YOU RX

CITY OF LENEXA

BY: _____
Cindy Ten Pas

Vice President of Compliance, Contracts, and
Regulatory Affairs

BY: _____
Kristin Crow

Print Name

Title

DATE: _____

DATE: _____

Plan Sponsor Agreement
Exhibit A – Charges and Administrative Fees

Program Pricing Terms

CITY OF LENEXA

Account Number: 7500

Effective Date: January 1, 2023

1. Serve You Rx Pharmacy Network (Does not Apply to the Serve You DirectRx Pharmacy)

Plan Sponsor shall pay the actual retail pharmacy rates paid by Serve You Rx for Covered Services electronically processed and dispensed to an Eligible Member through the Serve You Rx Retail Pharmacy Network. The average effective discounts and dispensing fees are listed below.

- 1.1 In the case of a Covered Prescription for a Brand Drug or Covered Supply dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of: (i) the Pharmacy's Usual and Customary (U&C) price, as submitted, or (ii) Average Wholesale Price (AWP) minus a discount of **18.00%** from January 1, 2023 through December 31, 2023, **18.10%** from January 1, 2024 through December 31, 2024, and **18.20%** from January 1, 2025 through December 31, 2025 and subsequent Renewal Terms; plus the Dispensing Fee set forth below. The guaranteed aggregate brand effective rate shall be AWP minus a discount of **84.00%** from January 1, 2023 through December 31, 2023, **84.25%** from January 1, 2024 through December 31, 2024, and **84.50%** from January 1, 2025 through December 31, 2025 and subsequent Renewal Terms.

In the case of a Covered Prescription for a Generic Drug or Covered Supply dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of (i) the Pharmacy's U&C price, as submitted or (ii) the Maximum Allowable Cost ("MAC"); plus the Dispensing Fee set forth below. The guaranteed aggregate generic effective rate shall be AWP minus a discount of **84.00%** from January 1, 2023 through December 31, 2023, **84.25%** from January 1, 2024 through December 31, 2024, and **84.50%** from January 1, 2025 through December 31, 2025 and subsequent Renewal Terms.

In the case of a Covered Prescription or Covered Supply designated by Serve You Rx as a Specialty Drug and dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of: (i) the Pharmacy's U&C price, as submitted; or (ii) AWP minus a discount of **15.00%**, or the MAC, or NDC-specific discount where applicable; plus the Dispensing Fee set forth below.

In the case of a Covered Immunization Service submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of (i) the Pharmacy's U&C price, as submitted or (ii) the Pharmacy's contracted rate with Serve You Rx.

The Charges payable by Plan Sponsor for Covered Prescriptions, Covered Supplies or Covered Immunization Services administered or dispensed and submitted by a Pharmacy shall not include the applicable Copayment/Coinsurance amount.

- 1.2 Dispensing Fee. The Dispensing Fee per prescription or authorized refill is **\$1.00** for Brand Drugs, **\$1.00** for Generic Drugs and **\$1.00** for Specialty Drugs.

- 1.3 Sole or Limited Distribution Drugs. The Charges for Sole or Limited Distribution Drugs are subject to the rates set by the Pharmacy and/or the Pharmaceutical Manufacturer.
- 1.4 Specialty Drugs are subject to addition, deletion or modification from time to time at the sole discretion of Serve You Rx.

1A. **Serve You Rx 90 Day at Retail Pharmacy Network (Does not Apply to Serve You DirectRx Pharmacy)**

In order for the Serve You Rx 90 Day at Retail Pharmacy Network pricing to apply, Plan Sponsor shall adopt Benefit Plan parameters by which an Eligible Member may only have a 90-day prescription supply at a retail Pharmacy that has agreed to Serve You Rx's reimbursement rates for 90-day prescription supplies.

Plan Sponsor shall pay the actual retail pharmacy rates paid by Serve You Rx for Covered Services electronically processed and dispensed to an Eligible Member through the Serve You Rx Retail Pharmacy Network. The average effective discounts and dispensing fees are listed below.

- 1A.1 In the case of a Covered Prescription for a Brand Drug or Covered Supply dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of: (i) the Pharmacy's Usual and Customary (U&C) price, as submitted, or (ii) Average Wholesale Price (AWP) minus a discount of **22.00%** from January 1, 2023 through December 31, 2023, **22.10%** from January 1, 2024 through December 31, 2024, and **22.20%** from January 1, 2025 through December 31, 2025 and subsequent Renewal Terms; plus the Dispensing Fee set forth below. The guaranteed aggregate brand effective rate shall be AWP minus a discount of **84.00%** from January 1, 2023 through December 31, 2023, **84.25%** from January 1, 2024 through December 31, 2024, and **84.50%** from January 1, 2025 through December 31, 2025 and subsequent Renewal Terms.

In the case of a Covered Prescription for a Generic Drug or Covered Supply dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of (i) the Pharmacy's U&C price, as submitted or (ii) the Maximum Allowable Cost ("MAC"); plus the Dispensing Fee set forth below. The guaranteed aggregate generic effective rate shall be AWP minus a discount of **84.00%** from January 1, 2023 through December 31, 2023, **84.25%** from January 1, 2024 through December 31, 2024, and **84.50%** from January 1, 2025 through December 31, 2025 and subsequent Renewal Terms.

In the case of a Covered Prescription or Covered Supply designated by Serve You Rx as a Specialty Drug and dispensed and submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of: (i) the Pharmacy's U&C price, as submitted; or (ii) AWP minus a discount of **15.00%**, or the MAC, or NDC-specific discount where applicable; plus the Dispensing Fee set forth below.

In the case of a Covered Immunization Service submitted by a Pharmacy, the term "Charges" shall mean an amount equal to the lesser of (i) the Pharmacy's U&C price, as submitted or (ii) the Pharmacy's contracted rate with Serve You Rx.

The Charges payable by Plan Sponsor for Covered Prescriptions, Covered Supplies or Covered Immunization Services administered or dispensed and submitted by a Pharmacy shall not include the applicable Copayment/Coinsurance amount.

- 1A.2 Dispensing Fee. The Dispensing Fee per prescription or authorized refill is **\$0.00** for Brand Drugs, **\$0.00** for Generic Drugs and **\$1.00** for Specialty Drugs.
- 1A.3 Sole or Limited Distribution Drugs. The Charges for Sole or Limited Distribution Drugs are subject to the rates set by the Pharmacy and/or the Pharmaceutical Manufacturer.
- 1A.4 Specialty Drugs are subject to addition, deletion or modification from time to time at the sole discretion of Serve You Rx.

2. Serve You DirectRx Pharmacy

In the case of a Covered Prescription for a Brand Drug or Covered Supply dispensed by Serve You DirectRx Pharmacy with a days supply of 84 days or greater, the term "Charges" shall mean an amount equal to AWP minus a discount of **24.50%**; plus the Dispensing Fee set forth below. In the case of a Covered Prescription for a Brand Drug or Covered Supply dispensed by Serve You DirectRx Pharmacy with a days supply of fewer than 84 days, the term "Charges" shall mean an amount equal to AWP minus a discount of **24.50%**; plus the Dispensing Fee set forth below. The guaranteed aggregate brand effective rate shall be AWP minus a discount of **88.00%** from January 1, 2023 through December 31, 2023, **88.25%** from January 1, 2024 through December 31, 2024, and **88.50%** from January 1, 2025 through December 31, 2025 and subsequent Renewal Terms.

In the case of a Covered Prescription for a Generic Drug or Covered Supply dispensed by Serve You DirectRx Pharmacy, the term "Charges" shall mean an amount equal to the MAC; plus the Dispensing Fee set forth below. The guaranteed aggregate generic effective rate shall be AWP minus a discount of **88.00%** from January 1, 2023 through December 31, 2023, **88.25%** from January 1, 2024 through December 31, 2024, and **88.50%** from January 1, 2025 through December 31, 2025 and subsequent Renewal Terms.

In the case of a Covered Prescription or Covered Supply designated by Serve You Rx as a Specialty Drug and dispensed by Serve You DirectRx Pharmacy, the term "Charges" shall mean an amount equal to: (i) the MAC, or (ii) AWP minus a discount of **18.00%**, or (iii) NDC- specific discount, where applicable; plus the Dispensing Fee set forth below. Specialty Drug Charges are contingent upon the specialty network being limited to Serve You DirectRx Pharmacy and limited to a thirty (30) day supply maximum per fill. If the specialty network is not limited to Serve You DirectRx Pharmacy, the term "Charges" shall mean an amount equal to: (i) the MAC, or (ii) AWP minus a discount of **15.50%**, or (iii) NDC-specific discount, where applicable; plus the Dispensing Fee set forth below.

The Charges payable by Plan Sponsor for Covered Prescriptions or Covered Supplies dispensed by Serve You DirectRx Pharmacy shall not include the applicable Copayment/Coinsurance.

- 2.1 Dispensing Fee. The Dispensing Fee per prescription or authorized refill is **\$0.00** for Brand Drugs, **\$0.00** for Generic Drugs and **\$0.00** for Specialty Drugs limited to Serve You DirectRx Pharmacy and **\$1.00** for Specialty Drugs not being limited to Serve You DirectRx Pharmacy.
- 2.2 Shipping and Handling. Covered Services that require special handling may incur additional fees.
- 2.3 Specialty Drugs are subject to addition, deletion or modification from time to time at the sole discretion of Serve You Rx.
- 2.4 Limited Availability Drugs may be subject to limited availability from the Pharmaceutical Manufacturer or, because they are in short supply, subject to recall or allocation. As a

result of any such limited availability, Serve You Rx reserves the right, at its sole discretion, to modify the pricing until the short supply situation is corrected.

3. **Manufacturer Discounts** are set forth below as minimum guarantees. Payment of Manufacturer Discounts is subject to Plan Sponsor's implementation, without change or deviation, of the Formulary and any required utilization management programs, including any changes (additions or exclusions) that Serve You Rx and the Formulary Management Company make to the Formulary.

Select Formulary Manufacturer Discounts	2023	2024	2025
Per net paid retail Brand Claim	\$235.00	\$240.00	\$245.00
Per net paid 90 day at retail Brand Claim	\$705.00	\$720.00	\$735.00
Per net paid mail service Brand Claim	\$705.00	\$720.00	\$735.00
Per net paid Specialty Drug Brand Claim	\$2,750.00	\$2,800.00	\$2,850.00

Payment of managed Manufacturer Discounts is contingent on Plan Sponsor maintaining a three-tiered Copayment/Coinsurance Benefit Plan whereby the Formulary products are given preferential status through Formulary enforcement mechanisms including but not limited to, lower copayment, placement on the first or second tier of a three-tier copayment Benefit Plan having a minimum \$15 Copayment differential or Coinsurance equal to a 15% differential between the second and third tiers.

Managed Manufacturer Discounts

Per net paid retail Brand Claim	\$160.00	\$165.00	\$170.00
Per net paid 90 day at retail Brand Claim	\$525.00	\$540.00	\$555.00
Per net paid mail service Brand Claim	\$525.00	\$540.00	\$555.00
Per net paid Specialty Drug Brand Claim	\$2,000.00	\$2,050.00	\$2,100.00

Unmanaged Manufacturer Discounts

Per net paid retail Brand Claim	\$160.00	\$165.00	\$170.00
Per net paid 90 day at retail Brand Claim	\$525.00	\$540.00	\$555.00
Per net paid mail service Brand Claim	\$525.00	\$540.00	\$555.00
Per net paid Specialty Drug Brand Claim	\$2,000.00	\$2,050.00	\$2,100.00

4. **Right to Adjust Rates**

The rates set forth in this Exhibit A are subject to modification by Serve You Rx in accordance with Sections 2.4.2 and 5.6 of the Plan Sponsor Agreement.

5. **Administrative Fees**

Plan Sponsor will pay Serve You Rx an Administrative Fee in the amount of **\$5.00** per employee per month.

6. **Services Available at Additional Cost**

Eligibility: Manual Submission

\$1.25 per entry

Claim Processing:

- Coordination of Benefits & Member-Submitted Paper Claim (secondary COB) \$3.50 per Claim
- Processing of Government Reimbursement/Subrogation Claims \$3.50 per Claim
- Direct Reimbursement:** Processing Paper Claims \$2.50 per entry
- Clinical Review** \$45.00 each
- Covered Immunization Service** \$2.00 per immunization
- Adherence Monitoring Program** \$0.36 PEPM

Member Materials:

- Targeted Communications or Replacement, Re-issuance, or Customization of any Materials Quoted per request
- Reprinting of Entire Group's ID Cards \$0.30 per card
- Member Mailings Actual postage charges
- Report Programming** Prevailing rate
- CAAP Rx** 15% of computed savings
- Other Services and Products:** Quoted upon request Negotiated rates

7. **Guarantee Rates and Manufacturer Discounts.** The pricing and fees set forth in Exhibit A Sections 1 and 2 are guaranteed separately by channel and drug type. The specific guaranteed components are defined as the following: retail 30 brand, retail 90 brand, mail brand, retail specialty brand, mail specialty brand, specialty generic, retail generic, and mail generic.

The Manufacturer Discount Amounts set forth in Exhibit A Section 3 are guaranteed in aggregate and may be offset by other guarantee amounts provided in Section 3.

8. **Guarantee Exclusions.** Prescription Drug Claims for over-the-counter (OTC) products, Direct Member Reimbursement, Subrogation Claims, compounds, vaccines, or other immunizations, supplies and all products filled through pharmacies subject to federal supply schedules shall be excluded from the reconciliation of all guarantees.
9. **Guarantee Reconciliation.** Serve You Rx shall provide a reconciliation report of the guaranteed rates in Exhibit A Sections 1 and 2 to Plan Sponsor no later than ninety (90) days after the end of any one (1)-year period of the Initial Term or Renewal Term of this Agreement, as applicable. Any reported shortfall shall be paid to Plan Sponsor within thirty (30) days of Plan Sponsor receipt of the reconciliation report, subject to the terms of Section 2.7 of the Agreement.

Guarantees for Specialty Drugs shall include both Brand Drugs and Generic Drugs that may be on the Serve You Rx Specialty Drug List. Guarantees for Brand Drugs shall include all products with a Medi-Span multisource code of M, N or O, and as defined in Section 1.8 of the Agreement. Guarantees for Generic Drugs shall include all products with a generic indicator of Y which includes single-source generics, and as defined in Section 1.23 of the Agreement. The discount guarantees will be calculated using the following formula: $(\text{Total AWP} - \text{Discounted AWP before Copayment/Coinsurance}) / (\text{Total AWP})$. The Dispensing Fee guarantees will be calculated using the following formula: $(\text{Total Dispensing Fee} / \text{Total net Paid Claims})$.

10. **Implementation Credit.** The credit set forth in this Exhibit A is a one-time per Eligible Member credit and is based on the number of Eligible Members on the Effective Date of this Agreement. The credit will be applied against the above-defined Charges not to exceed **\$5.00** per Eligible Member.

11. **Ongoing Management Credit**. The credit set forth in this Exhibit A is an annual per Eligible Member credit and is based on the number of Eligible Members the Plan Sponsors has as of January 1 of that year. The credit will be applied against the above-defined Charges not to exceed **\$5.00** per Eligible Member. This credit can be used through the life of the contract and carry over each calendar year. The credit may be used for any pharmacy related cost offset including but not limited to programs, data costs, or ad-hoc programming.

Plan Sponsor Agreement

Exhibit B – Business Associate Agreement

This HIPAA Business Associate Agreement ("Agreement") is made by and between City of Lenexa ("Covered Entity"), and Serve You Custom Prescription Management, Inc., a Wisconsin corporation, dba Serve You Rx ("Business Associate") (each a "Party" and collectively the "Parties").

1. BACKGROUND

Business Associate and Plan Sponsor are Parties to a Plan Sponsor Agreement ("PBM Agreement") pursuant to which Business Associate performs PBM Services (as defined in the PBM Agreement). In connection therewith, Business Associate performs functions, activities or services for Covered Entity and Business Associate creates, receives, maintains, or transmits Protected Health Information ("PHI"), including Electronic Protected Health Information ("EPHI"), in order to perform such functions, activities or services. Covered Entity and Business Associate are subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing privacy, security, breach notification and enforcement rules at 45 C.F.R. Parts 160 and 164 ("HIPAA Rules"), the applicable provisions of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), and any future implementing regulations and guidance issued by the Secretary. The HIPAA Rules require Covered Entity and Business Associate to enter into an agreement to provide for the protection of the privacy and security of PHI, including EPHI, before Business Associate is permitted to create, receive, maintain, or transmit PHI on behalf of Covered Entity.

2. DEFINITIONS

Capitalized terms not otherwise defined herein shall have the same meaning as those terms in the HIPAA Rules. Following are some of the key terms of this Agreement.

2.1 *Individual*. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

2.2 *Limited Data Set*. "Limited Data Set" shall have the same meaning as a "limited data set" described in 45 C.F.R. § 164.514(e)(2).

2.3 *Minimum Necessary*. "Minimum Necessary" shall have the same meaning as "minimum necessary" described in 45 C.F.R. § 164.502(b).

2.4 *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and Part 164, subparts A and E.

2.5 *Security Rule*. "Security Rule" shall mean the Security Standards for the Protection of EPHI at 45 C.F.R. Parts 160 and 164, subparts A and C.

2.6 *Protected Health Information*. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, but shall be limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

2.7 *Electronic Protected Health Information.* “Electronic Protected Health Information” or “EPHI” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103, but shall be limited to the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

2.8 *Required By Law.* “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

2.9 *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his designee.

2.10 *Security Incident.* “Security Incident” shall have the same meaning as “security incident” in 45 C.F.R. § 164.304.

2.11 *Subcontractor.* “Subcontractor” shall have the same meaning as the term “subcontractor” in 45 C.F.R. § 160.103.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

3.1 *Use and Disclosure.* Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement or as Required By Law.

3.2 *Safeguards.* Business Associate agrees to use appropriate safeguards and comply, where applicable, with 45 C.F.R. Part 164 Subpart C with respect to EPHI, to prevent use or disclosure of the EPHI other than as provided for by this Agreement.

3.3 *Mitigation.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

3.4 *Reports of Non-Permitted Use or Disclosure.* Business Associate agrees to promptly report to Covered Entity any use or disclosure of PHI not provided for by this Agreement or permitted by the HIPAA Rules.

3.5 *Reports of Security Incidents.* Business Associate agrees to promptly notify Covered Entity of any Security Incident involving EPHI of which it becomes aware. Business Associate and Covered Entity agree that this provision constitutes notice of attempted but unsuccessful Security Incidents that do not result in any unauthorized access, use, disclosure, modification or destruction of EPHI, or interference with an information system. For purposes of this Agreement, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

3.6 *Subcontractors.* Business Associate agrees to ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including but not limited to, compliance with the applicable requirements of 45 C.F.R. Parts 160 and 164.

3.7 *Designated Record Set.*

- (a) If Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524 within fifteen (15) days of receipt of a request. If Covered Entity requests an electronic copy of PHI that is maintained electronically in a Designated Record Set in the Business Associate's custody or control, Business Associate will provide an electronic copy in the form and format specified by the Individual if it is readily producible in such format. If it is not readily producible in such format, Business Associate will work with Covered Entity and the Individual to determine an alternative form and format that enables Covered Entity to meet its electronic access obligations under 45 C.F.R. § 164.524.
- (b) If Business Associate has PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual.

3.8 *Internal Practices.* Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created, received, maintained, or transmitted by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules.

3.9 *Documentation of Disclosures.*

- (a) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. In accordance with HITECH and any future implementing regulations and guidance issued by the Secretary, if Business Associate uses or maintains an electronic health record with respect to PHI, Business Associate agrees to document disclosures made through an electronic health record for treatment, payment, or health care operations, and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures in accordance with 45 C.F.R. § 164.528.
- (b) Business Associate agrees to provide to Covered Entity information collected in accordance with Section 3.9(a) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

3.10 *Business Associate's Obligations Related to Breach of Unsecured PHI.*

- (a) For purposes of this Section 3.10, "Breach" and "Unsecured PHI" shall have the same meaning as "breach" and "unsecured protected health information," respectively, as such terms are defined by 45 C.F.R. § 164.402.
- (b) Following the discovery of a Breach of Unsecured PHI, Business Associate shall notify Covered Entity of the Breach. Such notification shall be made without unreasonable delay after discovering the Breach, but no later than sixty (60) calendar days after its discovery.

- (c) Business Associate's notice shall include, to the extent possible, the information set forth at 45 C.F.R. § 164.410(c).

3.11 *Carrying Out Obligations of Covered Entity.* To the extent the Business Associate is to carry out Covered Entity's obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation.

3.12 *Prohibition on the Sale of PHI or Electronic Health Records.* Business Associate shall comply with 45 C.F.R. § 164.502(a)(5), which relates to the prohibition on the sale of electronic health records and PHI.

3.13 *Conditions on Certain Marketing and Fundraising Contacts.* Business Associate shall not use or disclose PHI for marketing or fundraising without consent of Covered Entity and only to the extent permitted by 45 C.F.R. §§ 164.508(a)(3) and 164.514(f).

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

4.1 *General Use and Disclosure.* Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform PBM Services as such services are specified in the PBM Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

4.2 *Specific Use and Disclosure.*

- (a) Business Associate may use or disclose PHI for the proper management and administration of Business Associate and to carry out its legal obligations, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- (b) Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (c) Business Associate may use PHI to create de-identified information in accordance with the requirements outlined in the Privacy Rule. Data that has been de-identified will no longer be subject to the terms of this Agreement.
- (d) Business Associate may use PHI to report violations of law to appropriate state and federal authorities, to the extent permitted or required by 45 C.F.R. § 164.502(j)(1) and state law.

4.3 *Minimum Necessary.* All uses and disclosures of PHI must comply with the minimum necessary requirements under the Privacy Rule. The Party disclosing PHI shall determine what constitutes the minimum necessary to accomplish the intended purpose of the disclosure. Until the effective date of further guidance or regulations issued on the meaning of minimum necessary, Business Associate shall use a Limited Data Set when using, disclosing, and requesting PHI, to the extent practicable. If using a Limited Data Set is not practicable, any use, disclosure, or request of PHI must be limited to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.

After the effective date of subsequent implementing guidance and/or regulations on the meaning of Minimum Necessary, Business Associate shall comply with such guidance or regulations.

5. OBLIGATIONS OF COVERED ENTITY

5.1 *Privacy Practices.* Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, and shall promptly provide Business Associate with any changes to such notice.

5.2 *Notice of Changes and Restrictions.* Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent such changes affect Business Associate's permitted or required uses and disclosures. Such notification shall include any restriction that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522. If Business Associate receives a request to restrict the disclosure of PHI directly from an Individual, Business Associate shall notify Covered Entity of such request and Covered Entity shall be responsible for making the determination, in accordance with the Privacy Rule, as to whether Business Associate shall comply with the Individual's request.

5.3 *Permissible Requests by Covered Entity.* Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity, except that Business Associate may use or disclose PHI as set forth in Section 4.2.

5.4 *Other Business Associates.* Covered Entity shall require that all of its business associates agree in writing to similar terms and conditions as are contained in this Agreement in accordance with the HIPAA Rules. Covered Entity may request Business Associate to Disclose Health Information to other business associates of Covered Entity. Such requests must be made in writing, specify the authorized recipient (i.e., name of other business associate), and the nature and duration of the Disclosure. Covered Entity represents and warrants that any requests made pursuant to this Section 5.4 are permissible under the HIPAA Rules by virtue of a business associate relationship having been established between the Covered Entity and other business associate.

6. TERM AND TERMINATION

6.1 *Term.* This Agreement shall be effective upon execution by the Parties and shall remain in effect for the duration of the relationship, functions or services giving rise to the necessity of a Business Associate Agreement, and until all of the PHI provided by Covered Entity to Business Associate, or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section 6.

6.2 *Termination.*

(a) *Termination Resulting from the End of Relationship, Functions or Services.* This Agreement shall terminate in the event that the underlying relationship, functions, or services that give rise to the necessity of a Business Associate Agreement terminate for any reason.

(b) *Termination for Cause.* Upon either Party's knowledge of a material breach of this Agreement by the other Party, the non-breaching Party must provide an opportunity for the breaching Party to cure the breach or end the violation, and if the breaching

Party does not cure the breach or end the violation within thirty (30) days of the breach, the non-breaching Party shall terminate this Agreement and any underlying agreement(s).

6.3 *Return or Destruction of PHI.*

- (a) Except as provided in paragraph (b) of this Section 6.3, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
- (b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

MISCELLANEOUS

7.1 *Regulatory References.* A reference in this Agreement to a section in the HIPAA Rules or HITECH, or any other reference to a law or regulation, means the section or law as in effect as of the date of this Agreement or as subsequently amended.

7.2 *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time to comply with the requirements of the HIPAA Rules or HITECH.

7.3 *Survival.* The respective rights and obligations of Business Associate under Sections 6.3, 7.8 and 7.10 of this Agreement shall survive the termination of this Agreement.

7.4 *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits compliance with the HIPAA Rules and HITECH.

7.5 *Relationship to Other Agreement Provisions.* In the event that a provision of this Agreement is contrary to a provision of an underlying agreement or agreements under which Covered Entity discloses PHI to Business Associate, the provision of this Agreement shall control. Otherwise, this Agreement shall be construed under, and in accordance with, the terms of such underlying agreement or agreements between the Parties.

7.6 *Prior Business Associate Agreements.* Consistent with Section 7.5, this Agreement shall supersede any and all prior business associate agreement(s), addenda, exhibits or similar provisions thereof.

7.7 *Modification of Agreement.* No alteration, amendment or modification of the terms of this Agreement shall be valid or effective unless in writing and signed by Business Associate and Covered Entity.

7.8 *Relationship of Parties.* Business Associate, in furnishing services to Covered Entity, is acting as an independent contractor, and Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Business Associate under this Agreement. Business Associate is not an agent of Covered Entity, and has no authority to represent Covered Entity as to any matters, except as expressly authorized in this Agreement.

7.9 *Notices.* Any notices required or permitted to be given under this Agreement by either Party shall be given in writing: (a) by personal delivery; (b) by electronic facsimile with confirmation sent by United States first class mail; (c) by bonded courier or nationally recognized overnight delivery service; or (d) by United States first class registered or certified mail, postage prepaid, return receipt requested, addressed to the Parties at the addresses set forth in Section 11.4 of the Plan Sponsor Agreement or to such other addresses as the Parties may request in writing by notice pursuant to this Section 7.9. Notices shall be deemed received on the earliest of personal delivery, upon the next business day after delivery by electronic facsimile with confirmation that the transmission was completed or upon receipt by any other method of delivery.

7.10 *Applicable Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of Kansas.

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

SERVE YOU RX

BY: _____

Cindy Ten Pas

Vice President of Compliance, Contracts, and
Regulatory Affairs

DATE: _____

CITY OF LENEXA

BY: _____

Kristin Crow

Print Name

Title

DATE: _____

Plan Sponsor Agreement

Exhibit C – Performance Guarantees

Serve You Rx agrees to provide performance guarantees to Plan Sponsor according to the standards and measurements listed below.

Performance standards will be measured and reconciled on a quarterly basis. Within ninety (90) days after the end of each quarter, Serve You Rx shall send a performance report to Plan Sponsor. Any amounts due resulting from a Serve You Rx failure to meet any performance standard(s), if any, shall be calculated and paid to Plan Sponsor within thirty (30) days following Plan Sponsor's receipt of the performance report. No performance penalties, if any, will be paid until this Agreement is executed by Plan Sponsor. In no event will the sum of the payments to Plan Sponsor, as a result of Serve You Rx's failure to meet the performance standards, exceed \$10.00 per average annual Eligible Member per contract year.

The performance standards are based on 1,000 average annual Eligible Members. Average annual Eligible Members shall be calculated at the end of each contract year as the sum of the aggregate number of Eligible Members for each month of the contract year period divided by twelve (12). Any material change below such number may result in a renegotiation of the standards and penalties set forth below. Following notice by Serve You Rx, both parties agree to negotiate in good faith to reach agreement on revised standards and penalties within sixty (60) days. Performance standards for Serve You DirectRx Pharmacy are only payable with a minimum of 1,000 Paid Claims submitted annually during each contract year.

In the event that Serve You Rx fails to meet any performance standard due to a force majeure as defined in Section 11.12 of the Agreement, failure of Plan Sponsor to perform its obligations under the Agreement, or any action of Plan Sponsor or Plan Sponsor's vendor, designee, or third party administrator that adversely impacts Serve You Rx's ability to meet such standard, Serve You Rx will be exempt from compliance with such performance standards until such conditions and any residual or other related effects have been resolved. No payment will be due to Plan Sponsor for any period of time during which Serve You Rx's failure to meet any performance standard was a result of such events.

SERVICE	STANDARD	PENALTY
Account Team Satisfaction	Account Team Satisfaction will be scored using Serve You Rx's standard scale. Average score of at least 80% is needed.	20% of what Serve You Rx put at risk. For every 10% points under 80%, 50% of this performance guarantee's amount at risk will be assessed.
Account Team Response Rate	100% of responses returned within 24 hours after initial contact during work week.	5% of what Serve You Rx put at risk.
Response Time for Critical Issue Resolution	Work plan developed and presented within 3 business days	10% of what Serve You Rx put at risk.
Delivery of Management Reports	Within 15 business days following end of reporting period.	5% of what Serve You Rx put at risk.
Call Center: Average Speed of Answer	80% of calls answered within an average of 30 seconds or less. Guarantee is based on Serve You Rx's book of business.	5% of what Serve You Rx put at risk.

Call Center: Abandonment Rate	The call abandonment rates will not exceed 5%. Guarantee is measured based on Serve You Rx's book of business.	5% of what Serve You Rx put at risk
Call Center: First Call Resolution	Serve You Rx guarantees that 95% or greater of all calls will be resolved on first point of contact. Guarantee is measured based on Serve You Rx's book of business.	5% of what Serve You Rx put at risk.
Mail Service: Dispensing Accuracy Rate	Serve You Rx guarantees that 99.9% of prescriptions will be dispensed accurately. Guarantee is measured based on Serve You Rx's book of business. Included in this guarantee is that 99.8% of specialty pharmacy service prescriptions will be dispensed accurately.	5% of what Serve You Rx put at risk.
Mail Service: Turnaround Time for Clean Prescriptions	Clean prescriptions will be mailed in an average of 2 business days from receipt of required information. Guarantee is measured based on Serve You Rx's book of business.	5% of what Serve You Rx put at risk.
Mail Service: Turnaround Time for Prescriptions Requiring Intervention	Prescriptions subject to intervention will be mailed in an average of 5 business days from receipt of order. Guarantee is measured based on Serve You Rx's book of business.	
Specialty Pharmacy Service: Turnaround Time for Prescriptions	Specialty pharmacy service prescriptions will be received by Eligible Members no less than the business day prior to the Eligible Member's "Needs-By" date.	5% of what Serve You Rx put at risk.
Eligibility	Eligibility information submitted to Serve You Rx will be loaded within an average of 1 business day from receipt with 100% accuracy.	5% of what Serve You Rx put at risk.
Paper Claim Payment Timeliness	97% of paper claims will be processed and paid within 10 days of Serve You Rx's receipt.	5% of what Serve You Rx put at risk.
Claim Payment Accuracy	100% of claims paid by Serve You Rx will be accurate.	5% of what Serve You Rx put at risk.
ID Card Production	If Serve You Rx is producing ID cards, Serve You Rx guarantees that ID cards will be produced and mailed within 5 business days of receiving both complete and accurate information.	5% of what Serve You Rx put at risk.
Formulary Notification	Serve You Rx guarantees it will provide at least 60 days notice to Plan Sponsor prior to any formulary or drug list changes. Serve You Rx agrees to provide membership impact associated with the formulary or drug list changes in advance and notify Eligible Members who will be disrupted in a manner agreed upon with Plan Sponsor.	5% of what Serve You Rx put at risk, but this will be measured and reconciled on an annual basis.
Plan Design Change/Updates	Serve You Rx guarantees 100% accuracy within 7 calendar days or mutually agreeable timing following the submission of proposed changes to plan design.	5% of what Serve You Rx put at risk.

Plan Sponsor Agreement

Exhibit D – Implementation Performance Guarantees

Serve You Rx agrees to provide performance guarantees to Plan Sponsor according to the standards and measurements listed below.

Performance standards will be measured and reconciled after the first contract year of the Initial Term. Within ninety (90) days after the end the first contract year, Serve You Rx shall send a performance report to Plan Sponsor. Any amounts due resulting from a Serve You Rx failure to meet any performance standard(s), if any, shall be calculated and paid to Plan Sponsor within thirty (30) days following Plan Sponsor's receipt of the performance report. No performance penalties, if any, will be paid until this Agreement is executed by Plan Sponsor. In no event will the sum of the payments to Plan Sponsor, as a result of Serve You Rx's failure to meet the performance standards, exceed \$10.00 per average annual Eligible Member per contract year.

The performance standards are based on 1,000 average annual Eligible Members. Average annual Eligible Members shall be calculated at the end of the first contract year as the sum of the aggregate number of Eligible Members for each month of the contract year period divided by twelve (12). Any material change below such number may result in a renegotiation of the standards and penalties set forth below. Following notice by Serve You Rx, both parties agree to negotiate in good faith to reach agreement on revised standards and penalties within sixty (60) days. Performance standards for Serve You DirectRx Pharmacy are only payable with a minimum of 1,000 Paid Claims submitted annually during each contract year.

In the event that Serve You Rx fails to meet any performance standard due to a force majeure as defined in Section 11.12 of the Agreement, failure of Plan Sponsor to perform its obligations under the Agreement, or any action of Plan Sponsor or Plan Sponsor's vendor, designee, or third party administrator that adversely impacts Serve You Rx's ability to meet such standard, Serve You Rx will be exempt from compliance with such performance standards until such conditions and any residual or other related effects have been resolved. No payment will be due to Plan Sponsor for any period of time during which Serve You Rx's failure to meet any performance standard was a result of such events.

SERVICE	STANDARD	PENALTY
ID Card Production	If Serve You Rx is producing ID cards, Serve You Rx guarantees they will be produced per the agreed upon implementation timeline.	5% of what Serve You Rx put at risk.
Delivery and Timeliness of Initial Welcome Packets to Members	Serve You Rx guarantees the initial welcome packets will be delivered per the agreed upon implementation timeline.	20% of what Serve You Rx put at risk.
Eligibility Loading and Testing	Serve You Rx guarantees that eligibility will be loaded and tested per the agreed upon implementation timeline.	20% of what Serve You Rx put at risk.
Accuracy of Benefits Set-Up	Serve You Rx guarantees 100% accuracy as determined by mutually agreeable documentation.	20% of what Serve You Rx put at risk.
Accuracy of Clinical Program Set-Up	Serve You Rx guarantees 100% accuracy as determined by mutually agreeable documentation.	15% of what Serve You Rx put at risk.

Overall Plan Sponsor Satisfaction	Overall Plan Sponsor satisfaction will be scored using Serve You Rx's standard scale. Average score of at least 80% is guaranteed.	20% of what Serve You Rx put at risk. For every 10% points under 80%, 50% of this performance guarantee's amount at risk will be assessed.
Initial Contract Turnaround	Serve You Rx will deliver a contract reflecting all terms/requirements agreed upon during the RFP process no later than 15 days after the award of business.	\$5,000 per business day the contract is late.
Contract Revision Turnaround	Serve You Rx will deliver a draft of the contract with response to all issues raised no later than 7 business days after receipt of the redlined contract.	\$2,000 per business day that the contract is late.