

Council Bill: B 62-14

MOTION TO AMEND: _____

MADE BY: _____

SECONDED BY: _____

MOTION: I move that Council Bill B 62-14 be amended as set forth on this amendment sheet.

=====

Attachment A attached to this amendment sheet is substituted for the Attachment A attached to the original bill.

Development Agreement

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into this _____ day of _____, 2014, (the “**Effective Date**”) between **Opus Development Company, L.L.C.**, a Delaware limited liability company, whose address is 7733 Forsyth Boulevard, Ste. 1100, St. Louis, MO 63105, and its successors and assigns (the “**Developer**”) and the **City of Columbia**, a municipal corporation and constitutional charter city under the laws of the State of Missouri, whose address is 701 East Broadway, Columbia, Missouri 65201 (the “**City**”), (collectively hereinafter referred to as the “**Parties**”).

WHEREAS, Developer is the contract purchaser of certain tracts of land in the City of Columbia, Boone County, State of Missouri, described on Exhibit A to this Agreement (the “**Developer Tract**”); and

WHEREAS, the current zoning of the Developer Tract is C-2; and

WHEREAS, the Developer desires to construct a residential housing structure on the Developer Tract generally in the manner shown on the depictions attached hereto as Exhibit B (the “**Conceptual Site Plan**”) to consist of a building not to exceed six (6) stories in height and containing a maximum of 260 bedrooms in a mix of one, two, three and/or four bedroom units together with parking and related uses (the “**Project**”); and

WHEREAS, the existing use of the Developer Tract consists of three buildings currently used for commercial and residential purposes; and

WHEREAS, the Project to be constructed by Developer is a significant change of use from the existing use of the Developer Tract; and

WHEREAS, prior to issuance of a building permit to construct the Project, City and Developer desire to ensure adequate utilities and public infrastructure exist to serve the intended use; and

WHEREAS, the City has conducted a survey of existing public infrastructure within the overall downtown Columbia geographical area, which includes the Developer Tract; and

WHEREAS, inadequate water, fire protection, electric, storm water and sanitary sewer facilities exist to serve the proposed increase in use of the Developer Tract which will result from the Project construction; and

WHEREAS, the Developer desires to begin construction of the Project during the 2nd calendar quarter of 2014 and to complete construction and open to residents on or before 3rd calendar quarter of 2015 (the “**Project Schedule**”); and

WHEREAS, it is critical for Developer to receive the assurances and protections provided by this Agreement in order to proceed with the acquisition of the Developer Tract and

final design and construction of the Project in order to construct the Project according to the Project Schedule; and

WHEREAS, establishing the terms and conditions under which utilities will be provided to the Project will protect and benefit the health, safety, and general welfare of the City and is in the best interest of the public; and

NOW, THEREFORE, in consideration of the recitals set forth above, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Definitions.**

“Affiliated Entity” of any Party means any other person directly or indirectly controlling, controlled by or under common control with, such person. For purposes of this definition, the term “control” (including the correlative meaning of the terms “controlling”, “controlled by” and “under common control with”), as applied with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person whether through the ownership of voting securities or by contract or otherwise, provided (but without limiting the foregoing) that no pledge of voting securities of any person without the current right to exercise voting right with respect thereto shall by itself be deemed to constitute control over such person. Without limiting the generality of the foregoing, the word “Affiliate” with respect to Developer shall include any entity that directly or indirectly through one or more intermediaries is controlled by, controls or is under common control with some or all of (a) Developer, (b) the founder of Opus Holding, L.L.C. and Opus Holding Corporation group of companies, his children, his grandchildren or other members of his family or their issue, (c) the trustee of a trust or trusts for the benefit of the founder of Opus Holding, L.L.C. and the Opus Holding Corporation group of companies, his children, his grandchildren or other members of his family or their issue, or (d) a partner, limited liability company, corporation or other entity comprised of all or some of the above.

“Applicable Law” means those rules, regulations, official policies, standards and specifications, ordinances and resolutions which are controlled by the City and in force and effect on the Effective Date of this Agreement.

“Commencement of Construction” means the issuance of the building permit to authorize physical construction of the structure and shall not include demolition and grading activities on the site related to the Project prior to issuance of the building permit.

“Construction Period” means the period of time the Project is under construction. The Construction Period shall commence at such time as City issues the building permit the construct the Project and such construction shall proceed without unnecessary delay until completion of the project, which shall be evidenced by issuance of a certificate of occupancy by the City.

“Governmental Authority” or **“Governmental Authorities”** means any municipal governmental authority, including all executive, legislative and administrative departments and bodies thereof having jurisdiction over the Developer, the Developer Tract, and the Project.

“Governmental Requirements” means all laws, ordinances, statutes, executive orders, rules, zoning requirements and agreements of any Governmental Authority that are applicable to the acquisition, renovation, demolition, development, and construction of the Developer Tract and/or Project including, without limitation, all required permits, approvals and any rules, guidelines or restrictions enacted or imposed by any Governmental Authorities.

“Term” means the earlier of: (i) the last day of the Construction Period; or (ii) the fifth anniversary date of the Effective Date, unless extended with the written consent of the City.

2. **Project Development.** With respect to the use and development of the Project and the Developer Tract and provided all requisite permits have been issued by the City, the Developer agrees to begin Commencement of Construction of the Project by September 1, 2014 in substantial conformance with the Conceptual Site Plan and complete such construction by the end of the Term pursuant to the terms and provisions herein and City agrees to permit construction of the Project pursuant to the terms and conditions of this Agreement and Applicable Law. Notwithstanding anything contained herein to the contrary, this Agreement shall terminate and the terms and provisions shall be null, void, and of no force or effect and the Parties shall have no further obligations hereunder if Commencement of Construction has not occurred by September 1, 2014.
3. **Storm Water Improvements.** As part of the Project, the Developer shall replace the existing storm water improvements serving the Developer Tract with new structures (the **“Storm Water Improvements”**) in a new location within the Developer Tract that is consistent with the Conceptual Site Plan and as shall be approved by the City and the Developer. The Developer shall construct such Storm Water Improvements at its sole cost and expense and shall cause the Storm Water Improvements to be designed, constructed and dedicated to comply with the requirements of the Applicable Law. City agrees to accept the dedication of the Storm Water Improvements for maintenance upon completion thereof pursuant to the terms of this Agreement and to vacate any rights and interests it may have on or around the location of the existing storm water improvements at the time that the City accepts the Storm Water Improvements. Prior to Commencement of Construction, the Developer shall submit to the City’s Public Works Department for review and approval a complete set of engineered plans for the Storm Water Improvements. Said plans shall be prepared by a registered engineer authorized to perform such work and shall be designed in accordance with the Applicable Law. The Storm Water Improvements shall be dedicated to the public prior to issuance of a certificate of occupancy to occupy the Project.
4. **Water System Improvements.** Developer hereby agrees to pay to City \$250,000 for the upgrade and reconstruction of the water main depicted in Exhibit E attached hereto (the **“Water System Infrastructure”**). Subject to the public improvement process requirements set

forth is Chapter 22 of the Columbia City Code, the City shall perform the construction and be responsible for all remaining costs of reconstruction of the Water System Infrastructure in excess of Developer's contribution. Developer's payment for the upgrade and reconstruction of the Water System Infrastructure shall be made by Developer to City prior to issuance of the building permit to construct the Project. Nothing contained herein shall prohibit City from requiring other developers or property owners to contribute to the cost of reconstruction of the Water System Infrastructure. Failure of City to construct or complete the Water System Infrastructure improvements prior to the end of the Construction Period shall not prevent Developer from obtaining a certificate of occupancy following construction of the Project or obtaining any other necessary approvals to occupy and use the Project for its intended purpose.

5. **Sanitary Sewer Improvements.** Developer hereby agrees to pay to City \$200,000 for the reconstruction and/or rehabilitation of the connecting sanitary sewer main depicted in Exhibit D attached hereto (the "**Sanitary Sewer Infrastructure**"). Subject to the public improvement process requirements set forth in Chapter 22 of the Columbia City Code, the City shall perform the construction and be responsible for all remaining costs of reconstruction of the Sanitary Sewer Infrastructure in excess of Developer's contribution. Developer's payment for the reconstruction of the Sanitary Sewer Infrastructure shall be made by Developer to City prior to issuance of the building permit to construct the Project. Nothing contained herein shall prohibit City from requiring other developers or property owners to contribute to the cost of reconstruction of the Sanitary Sewer Infrastructure. Failure of City to construct or complete the Sanitary Sewer Infrastructure improvements prior to the end of the Construction Period shall not prevent Developer from obtaining a certificate of occupancy following construction of the Project or obtaining any other necessary approvals to occupy and use the Project for its intended purpose.
6. **Availability of Public Utility Services.** City and Developer acknowledge that the availability of public utility services of electricity, water, storm water and sanitary sewer capacity is critical to the Project. The Developer has submitted to the City the projected load and flow demands for public utility services to be generated by the Project at the end of the Construction Period as set forth in Exhibit E attached hereto. (the "**Utility Estimates**"). The City has reviewed the Utility Estimates and hereby commits that, in combination with the Developer commitments contained in this Agreement, the City will have adequate capacity to support the Project and the intended uses set forth herein by the end of the Construction Period and that if the Developer is not in default under this Agreement the City will not deny Developer the ability to connect to such essential public services to serve the Project at the end of the Construction Period. In no event shall the commitment of the City to reserve, construct or supply adequate capacity to support the Project extend beyond the Term of this Agreement, nor shall the City's commitment herein to provide public utility services be in excess of the Utility Estimates.
7. **Permit and Connection Fees.** In addition to the commitments of Developer contained herein, the Developer shall pay to the City, at the time and in the amount required by the Applicable Law, the standard connection and permit fees associated with connecting the Developer Tract to the utilities.

8. Transit Services. Developer hereby agrees to purchase 118 transit system bus passes for use of residents of the Project for each fall and spring semester of The University of Missouri for the first two years following opening of the Project. The price for the first two years shall be paid by Developer in a lump sum of \$30,680 prior to end of the Construction Period. During the first two years following opening of the Project, Developer may purchase additional bus passes as desired at the rate of \$65.00 per pass. After the first two years following end of the Construction Period, Developer may continue to purchase transit system bus passes at the rates then in effect as Developer determines to be necessary or desirable for use of its residents. Provided City is in receipt of payment for bus passes from Developer, City shall provide such passes to Developer at least two weeks prior to the start of each semester.

7.9. **No Conflicting Enactments.** During the Term the City will not impose on the Project or Developer Tract, whether by action of the City Council or otherwise, any Governmental Requirement (to the extent that the City has authority with respect to a Governmental Requirement), ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a “**City Regulation**” and collectively the “**City Regulations**”) that reduces the assurances provided by this Agreement with respect to the availability of public utilities for the development, maintenance, and operation of the Project. Nothing contained herein shall prohibit the City from enacting a Governmental Requirement and imposing the same on the Project and Developer Tract for protection of the health, safety and welfare of the public in the same manner and to the same extent as imposed on the general public. During the Term, any change in the following shall not be effective as applied to the Developer Tract without the express written agreement of Developer:

- a. Change any land use designation or permitted use of the Development Tract existing as of the Effective Date of this Agreement which would prohibit or limit the use of the Developer Tract for the Project as described in this Agreement;
- b. Limit or control the availability of public utilities, services or facilities for the Project as described in this Agreement, unless such limitation is necessary to address health and safety issues created by the increase in capacity demanded by the Project which is in excess of the capacity contemplated herein;
- c. Apply to the Project any City Regulation otherwise allowed by this Agreement that is not uniformly applied to all similar types of development projects and project sites within the Downtown Community Improvement District boundaries; and
- d. Establish, enact, increase, or impose against the Project or Developer Tract any fees, taxes (including without limitation general, special and excise taxes), assessments or other monetary obligations other than those imposed and applied on all similar types of development projects and project sites within the Downtown Community Improvement District boundaries; provided however, if such additional fees, taxes, assessments or other monetary obligations related to the utility infrastructure improvements are imposed by City against the Developer Tract, the Developer shall

have the right to claim a credit for any payments and construction enhancements made by Developer pursuant to this Agreement.

Nothing herein shall limit the City's authority to enact ordinances, resolutions, or otherwise pass laws or promulgate rules or regulations with regard to any matter, so long as same does not have the effect of limiting construction of the Project on the Developer Tract within the Term in substantially the same manner as set forth in this Agreement. City expressly retains the right to control and determine all matters relating to the public streets and rights of way without any regard to the impact such decisions may have on the Project or Developer Tract, including but not limited to the granting of right of use permits and/or street closures adjacent to the Developer Tract

| **910. Timing of Project Construction and Completion.** Subject to the following, the Developer shall endeavor in good faith and with reasonable diligence to proceed with and construct the Project during the Term and as described in this Agreement:

- a. It is the intent of the Developer to complete construction of the Project by August 31, 2015. The timing, order and rate of development shall be in Developer's sole discretion. It shall not be an event of default hereunder if the Project is not constructed during the Term; rather, this Agreement shall terminate in such case without any further action required by the Parties.
- b. In no event shall a delay by Developer to complete construction of the Project according to the Project Schedule result in a refund or claim for refund of Developer's contribution for the construction of the Sanitary Sewer Improvements.

| **4011. Waiver.** Failure of any party to this Agreement to insist on the full performance of any of its provisions by the other Party shall not constitute a waiver of such performance unless the Party failing to insist on full performance of the provision declares in writing signed by it that it is waiving such performance. A waiver of any breach under this Agreement by any Party, unless otherwise expressly declared in writing, shall not be a continuing waiver or waiver of any subsequent breach of the same or other provision of this Agreement.

| **4412. Governing Law.** The laws of the State of Missouri (without regard to conflicts of law) shall govern the validity, construction, enforcement and interpretation of this Agreement.

| **4213. Headings.** All section headings in this Agreement are for the convenience of the reader only and are not intended, nor shall they be deemed, to define or limit the scope of any provision of this Agreement.

| **4314. Notices.** All notices, demands, requests, and other communications required or permitted hereunder shall be in writing shall be considered delivered: (a) upon personal delivery to the party to whom the notice is directed; or (b) two (2) business days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows (or to such other address as the Parties may specify by notice given pursuant to this section):

To Developer: Opus Development Company, L.L.C.
7733 Forsyth Boulevard, Ste. 1100
St. Louis, MO 63105
Attn: Joe Downs

With a Copy to: Opus Development Company, L.L.C.
7733 Forsyth Boulevard, Ste. 1100
St. Louis, MO 63105
Attn: Legal Department

And a Copy to: Robert Hollis
Van Matre, Harrison, Hollis, Taylor, and Bacon, P.C.
1103 East Broadway
Columbia, MO 65201

To City: City of Columbia
Attn: City Manager
701 East Broadway
Columbia, MO 65201

With a Copy to: City of Columbia
Attn: City Counselor
701 E. Broadway
Columbia, MO 65201

1415. No Adverse Inference. This Agreement shall not be construed more strongly against one Party or the other. The Parties had equal access to input with respect to, and influence over, the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

1516. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

1617. Jurisdiction and Venue. Legal action concerning any dispute, claim or matter arising out of the Agreement shall be brought only in the Circuit Court of Boone County, Missouri.

1718. Severability or Partial Invalidity. This Agreement is to be considered in its entirety and both parties acknowledge the assurances granted herein are dependent upon each other. If any provision of this Agreement is for any reason held to be invalid or unenforceable, such provision shall render the entire agreement invalid and unenforceable.

1819. Gender and Number. Pronouns and any reference to a person or persons, wherever used herein, and of whatever gender, shall include natural persons, corporations, associations, partnerships and other entities of every kind and character, and the singular shall include the plural and vice versa, wherever and as often as may be appropriate.

1920. Failure or Delay to Enforce. No failure to exercise or delay in exercising any right hereunder on the part of any Party to this Agreement shall operate as a waiver thereof, and no single or partial exercise of any right of such Party shall preclude any other or further exercise of such right or the exercise of any other right.

2021. Force Majeure. In the event that either Party shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, riots, insurrection, the act, failure to act or default of the other Party, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

2122. Priority and Recording. This Agreement shall be recorded in the records of Boone County, Missouri and the covenants, rights and obligations contained herein shall run with the Developer Tract. By the recordation of this Agreement, all conditions, terms and obligations of this Agreement are effective as to and binding on the Parties, their successors and assigns with the intention that this Agreement with the intention that it will, in addition to the Parties hereto, govern all future and subsequent owners of all or any portion of the Developer Tract unless and until this Agreement is amended or terminated in accordance with the terms hereof.

2223. Binding Effect; Assignment. This Agreement is not assignable by any party, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, without the consent of the City: (a) Developer may assign this Agreement, and its rights hereunder, to an Affiliated Entity, provided that (i) Developer shall remain jointly and severally liable with the assignee for the obligations contained in this Agreement; (ii) Developer, and any assignee by accepting assignment of this Agreement, expressly agrees to defend and indemnify City from any litigation arising out of the assignment; and (iii) written notice of the assignment, including the name of the assignee, is provided to City at least fifteen (15) business days prior to the effective date of such assignment

2324. Power of the City. Notwithstanding anything set forth in this Agreement to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. All financial obligations of the City shall be subject to future appropriation of the City in accordance with Applicable Laws and Requirements. Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Requirements.

2425. Time. Time is of the Essence in this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

2526. Sovereign Immunity. Nothing in this Agreement shall constitute or be construed as a waiver of the City's governmental or official immunity or its officers or employees from liability or suit pursuant to Section 537.600 RSMo.

2627. Authorized Employees. Developer acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Developer therefore covenants that it is not knowingly in violation of Section 285.530(1), RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on any project which is the subject of this Agreement, and that its employees are lawfully eligible to work in the United States. Developer will execute an Immigration Law Compliance Affidavit in substantially the same form as attached hereto in Exhibit GF and will cause any person or entity performing work on the Infrastructure Project to confirm compliance with Section 285.530(1) and execute an Immigration Law Compliance Affidavit.

2728. Inspection. Upon reasonable prior notice, the City may conduct such periodic inspections of the Project, including any applicable phase, as may be generally provided in the Applicable Law or for inspection thereof pursuant to comply with the terms of this Agreement. The Developer shall not deny the City and its officers, employees, agents and independent contractors the right to inspect upon reasonable prior written request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Project or any applicable phase thereof.

2829. Entire Agreement; Amendment. It is agreed and understood by the parties that this Agreement embodies the entire understanding and represents the full and final agreement among the parties with respect to the subject matter hereof and supersede any and all prior commitments, agreements, discussions, representations, and understandings, whether written or oral, relating to the subject matter hereof; that this Agreement may not be contradicted or varied by evidence of prior or contemporaneous written or oral agreements or discussions of the parties, or subsequent oral agreements or discussions of the parties; that there are no oral agreements among the parties, and no representations, agreements or promises not set forth herein have been made. Without limiting the foregoing, Developer acknowledges that: (i) no promise or commitment has been made to it by or on behalf of the City other than as set forth in this Agreement; and (ii) except as otherwise expressly provided herein, this Agreement supersedes and replaces any and all proposals, letters of intent and approval and commitment letters relating to the subject matter hereof, none of which shall be considered a part of this Agreement unless expressly incorporated into this Agreement. This Agreement shall be amended only in writing and effective when signed by the parties.

2930. Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

| **31. Counterparts.** This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute but one and the same document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement as of the date first above written.

CITY OF COLUMBIA, MISSOURI (“City”)

By: _____
Mike Matthes, City Manager

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

**OPUS DEVELOPMENT COMPANY, L.L.C.
 (“Developer”)**

By: _____
David J. Menke, Vice President

State of Missouri)
) ss.
County of Boone)

On this _____ day of _____, 2014, before me personally appeared Mike Matthes, who, upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is an authorized agent for the **City of Columbia, Missouri** and that he has executed this document on behalf of said entity as the free act and deed of said entity, and that he is duly empowered by said entity to execute this document on said entity's behalf.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at my office in Columbia, Missouri, the day and year first above written.

_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

State of Missouri)
) ss.
County of Boone)

On this _____ day of _____, 2014, before me personally appeared David J. Menke, who upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is a Vice President of **Opus Development Company, L.L.C.**, that he executed the foregoing on behalf of said company, as the free act and deed of said company, and pursuant to the authority vested in him to execute the foregoing by the company, that the foregoing is binding in all respects upon said company, and that said company is duly empowered to enter into the foregoing.

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

_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

EXHIBIT A

Developer Tract

A TRACT OF LAND LOCATED IN THE SE 1/4 OF SECTION 12, TOWNSHIP 48 NORTH, RANGE 13 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF LOTS 85, 86, AND ALL OF LOT 87 OF THE ORIGINAL TOWN, NOW CITY OF COLUMBIA AS RECORDED IN BOOK A, PAGE 335 AND DESCRIBED BY THE DEEDS RECORDED IN BOOK 3291, PAGE 110, BOOK 3179, PAGE 81, BOOK 3198, PAGE 15, BOOK 3179, PAGE 82, BOOK 1310, PAGE 670, BOOK 1072, PAGE 427, AND BOOK 3212, PAGE 168 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 87, N 88°48'55"W, 239.61 FEET TO THE SOUTHWEST CORNER SAID LOT 85; THENCE WITH THE WEST LINE OF SAID LOT 85, N 1°10'35"E, 142.22 FEET TO THE NORTHWEST CORNER OF LOT 85 AND THE SURVEY RECORDED IN BOOK 623, PAGE 597; THENCE S 88°50'15"E, 239.65 FEET TO THE NORTHEAST CORNER OF SAID LOT 87; THENCE S 1°11'40"W, 142.31 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.75 ACRES.

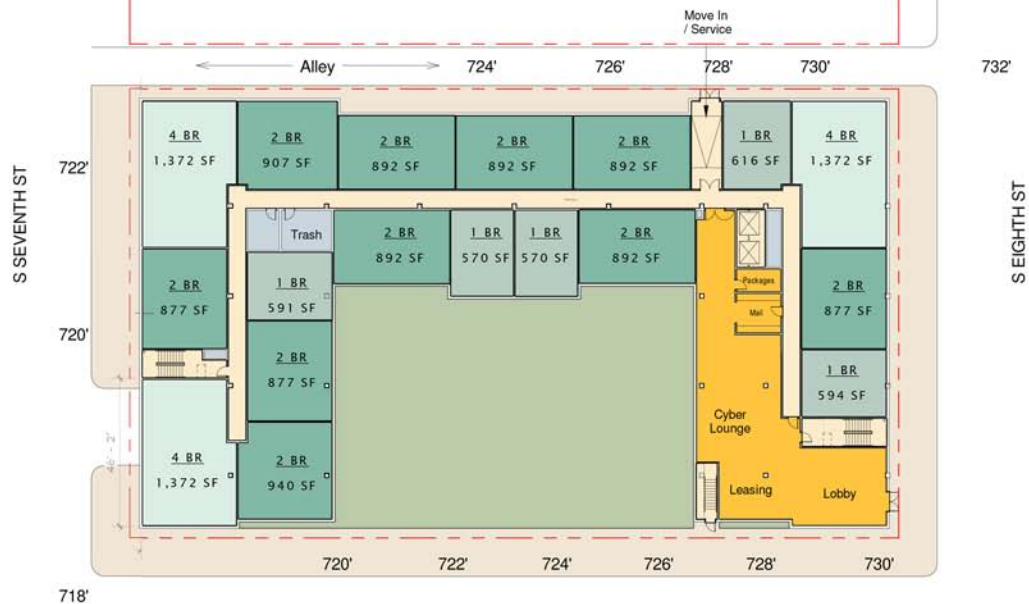
EXHIBIT B

Conceptual Site Plan









Level 1 Plan
1:30 Scale

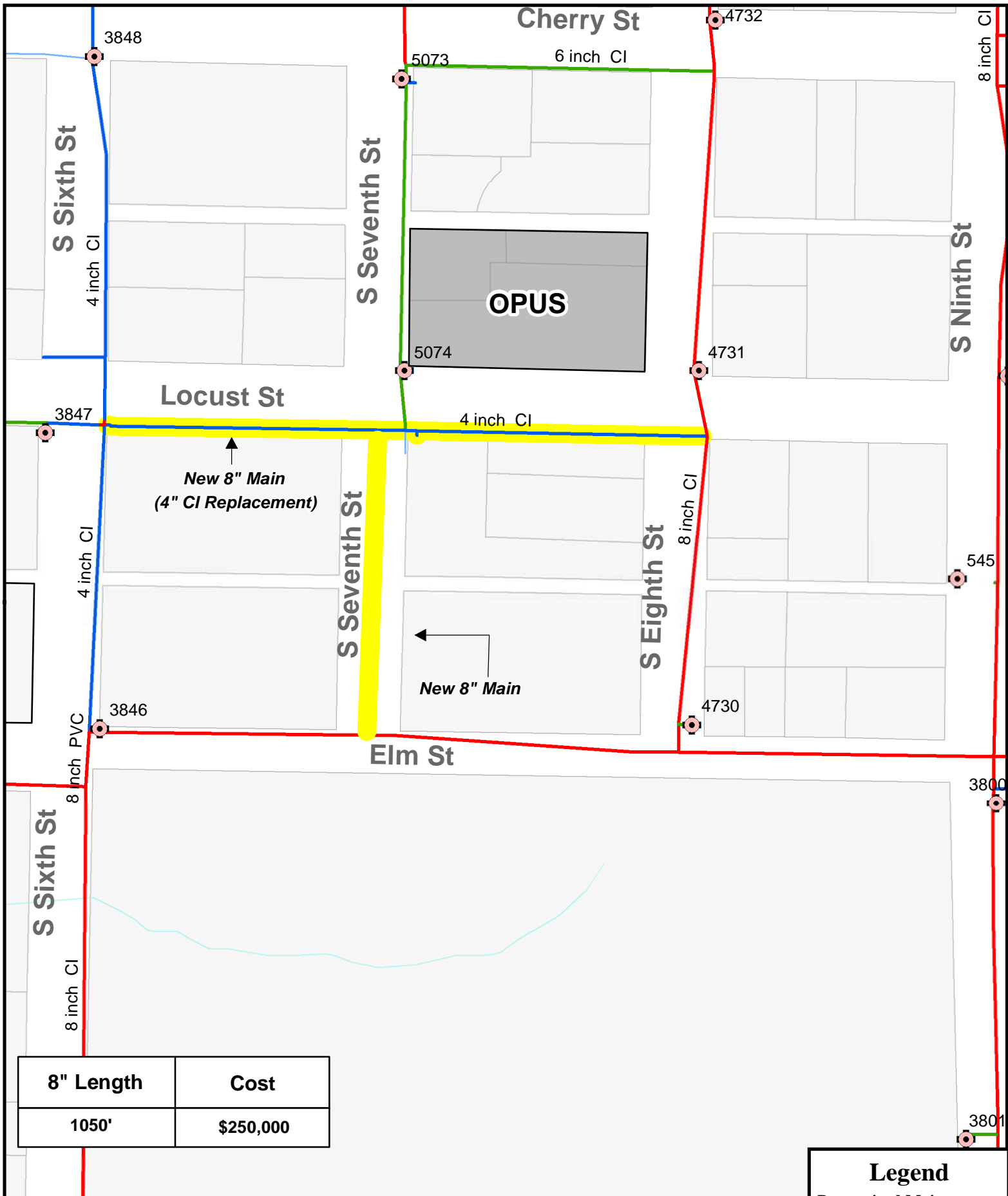
November 4, 2013
ESG Architects Inc





EXHIBIT C

Water System Improvements



8" Length	Cost
1050'	\$250,000



Water Line Replacements

OPUS Development

0 100 200 Feet

3/10/14



Legend

- Pressurized Main**
- Pressurized Main <4"
 - Pressurized Main 4"-5"
 - Pressurized Main 6"
 - Pressurized Main 8"-10"
 - Pressurized Main 12"-16"
 - Pressurized Main >16"

EXHIBIT D

Sanitary Sewer Improvements

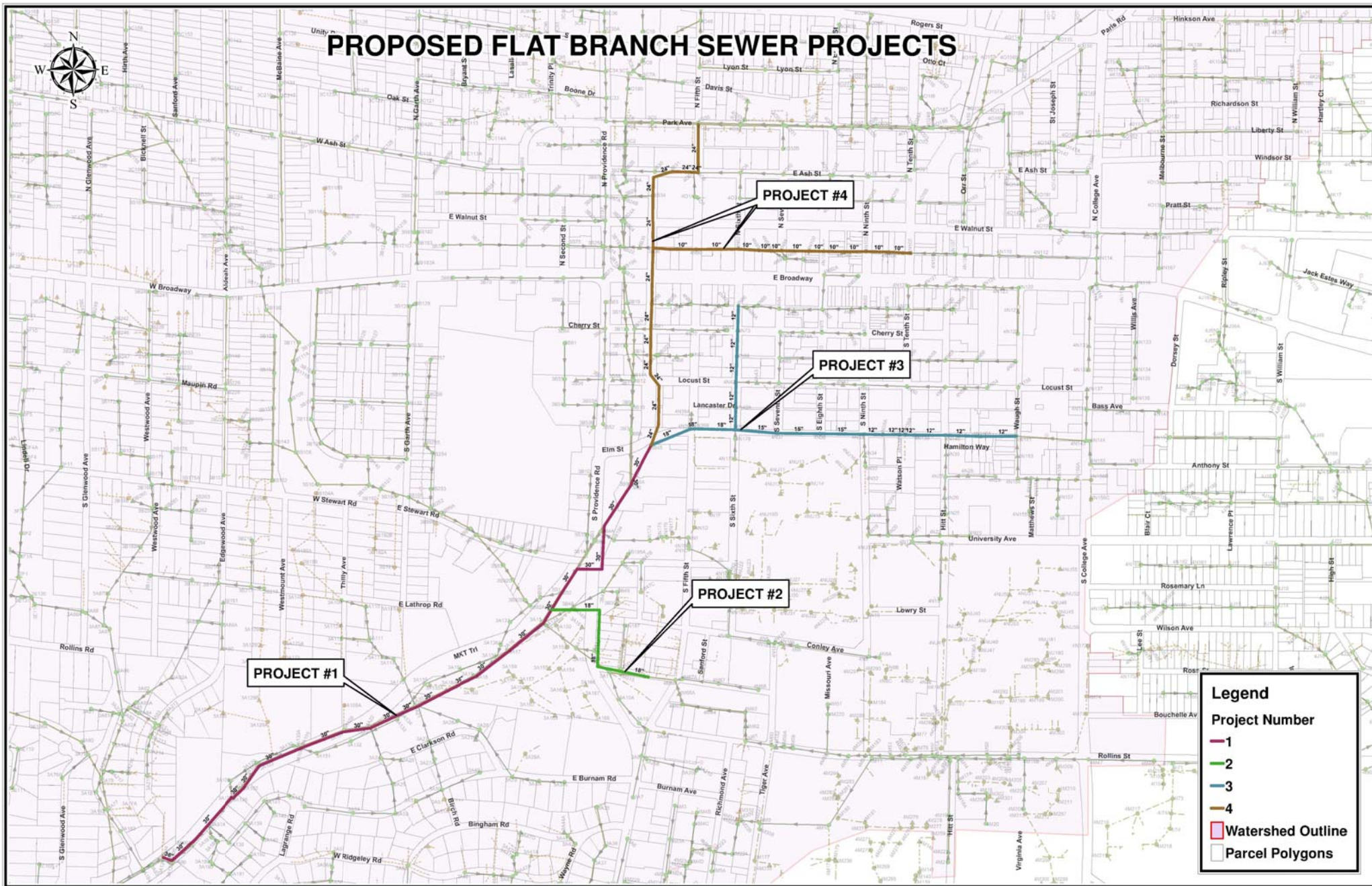


EXHIBIT E

Utilities Estimates

Sanitary

Load = 1300 drainage fixture units (DFU)

Service size = two 6" connections or one 8" connection

Total gallons per day = 11,552

Average gallons per minute = 8.0

Peak gallons per minute = 32.1

Domestic Water

Load = 210 gpm, 1000 water supply fixture units (WSFU)

Service size = 3" pipe, 3" meter

Fire Protection: 4" to 6" connection, depending on pressure

Electrical

Load = total ~900KVA diversified

Service size = One service @ 1200 A, 120Y/208V 3ph AND another @ 1600A to include house loads OR one service at 2,500A 120Y/208V 3ph

EXHIBIT F

Form of Immigration Law Compliance Affidavit

STATE OF MISSOURI)
) ss:
COUNTY OF _____)

AFFIDAVIT

(as required by Section 285.530, Revised Statutes of Missouri)

As used in this Affidavit, the following terms shall have the following meanings:

EMPLOYEE: Any person performing work or service of any kind or character for hire within the State of Missouri.

FEDERAL WORK AUTHORIZATION PROGRAM: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

KNOWINGLY: A person acts knowingly or with knowledge,
a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist(; or
b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

UNAUTHORIZED ALIEN: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared _____, who, being duly sworn, states on his/her oath or affirmation as follows:

1. My name is _____ and I am currently the President of _____ (hereinafter "Contractor"), whose business address is _____, and I am authorized to make this Affidavit.
2. I am of sound mind and capable of making this Affidavit, and am personally acquainted with the facts stated herein.
3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the following services contracted between Contractor and the City of Columbia: _____.
4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.
5. Attached hereto is documentation affirming Contractor's enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.

Further, Affiant saith not.

Signature of Affiant
Printed Name: _____

Subscribed and sworn to before me this _____ day of _____,2011.

Notary Public

My Commission Expires:

**PLEASE NOTE:* Acceptable enrollment and participation documentation consists of the following 2 pages of the E-Verify Memorandum of Understanding: (1) A valid, completed copy of the first page identifying the Contractor; and (2) A valid copy of the signature page completed and signed by the Contractor, and the Department of Homeland Security - Verification Division.

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 62-14

AN ORDINANCE

authorizing the City Manager to execute a development agreement with Opus Development Company, L.L.C. as it relates to property located on the north side of Locust Street, between Seventh Street and Eighth Street; directing the City Clerk to have the development agreement recorded; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a development agreement with Opus Development Company, L.L.C. as it relates to property located on the north side of Locust Street, between Seventh Street and Eighth Street. The form and content of the development agreement shall be substantially in the same form as set forth in "Attachment A" attached hereto.

SECTION 2. The City Clerk is authorized and directed to have a certified copy of the development agreement recorded in the office of the Boone County Recorder of Deeds.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2014.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

Development Agreement

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into this _____ day of _____, 2014, (the “**Effective Date**”) between **Opus Development Company, L.L.C.**, a Delaware limited liability company, whose address is 7733 Forsyth Boulevard, Ste. 1100, St. Louis, MO 63105, and its successors and assigns (the “**Developer**”) and the **City of Columbia**, a municipal corporation and constitutional charter city under the laws of the State of Missouri, whose address is 701 East Broadway, Columbia, Missouri 65201 (the “**City**”), (collectively hereinafter referred to as the “**Parties**”).

WHEREAS, Developer is the contract purchaser of certain tracts of land in the City of Columbia, Boone County, State of Missouri, described on Exhibit A to this Agreement (the “**Developer Tract**”); and

WHEREAS, the current zoning of the Developer Tract is C-2; and

WHEREAS, the Developer desires to construct a residential housing structure on the Developer Tract generally in the manner shown on the depictions attached hereto as Exhibit B (the “**Conceptual Site Plan**”) to consist of a building not to exceed six (6) stories in height and containing a maximum of 260 bedrooms in a mix of one, two, three and/or four bedroom units together with parking and related uses (the “**Project**”); and

WHEREAS, the existing use of the Developer Tract consists of _____ currently used as _____; and

WHEREAS, the Project to be constructed by Developer is a significant change of use from the existing use of the Developer Tract; and

WHEREAS, prior to issuance of a building permit to construct the Project, City and Developer desire to ensure adequate utilities and public infrastructure exist to serve the intended use; and

WHEREAS, the City has conducted a survey of existing public infrastructure within the overall downtown Columbia geographical area, which includes the Developer Tract; and

WHEREAS, inadequate water, fire protection, electric, storm water and sanitary sewer facilities exist to serve the proposed increase in use of the Developer Tract which will result from the Project construction; and

WHEREAS, the Developer desires to begin construction of the Project during the 2nd calendar quarter of 2014 and to complete construction and open to residents on or before 3rd calendar quarter of 2015 (the “**Project Schedule**”); and

WHEREAS, it is critical for Developer to receive the assurances and protections provided by this Agreement in order to proceed with the acquisition of the Developer Tract and

final design and construction of the Project in order to construct the Project according to the Project Schedule; and

WHEREAS, establishing the terms and conditions under which utilities will be provided to the Project will protect and benefit the health, safety, and general welfare of the City and is in the best interest of the public; and

NOW, THEREFORE, in consideration of the recitals set forth above, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Definitions.**

“Affiliated Entity” of any Party means any other person directly or indirectly controlling, controlled by or under common control with, such person. For purposes of this definition, the term “control” (including the correlative meaning of the terms “controlling”, “controlled by” and “under common control with”), as applied with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person whether through the ownership of voting securities or by contract or otherwise, provided (but without limiting the foregoing) that no pledge of voting securities of any person without the current right to exercise voting right with respect thereto shall by itself be deemed to constitute control over such person. Without limiting the generality of the foregoing, the word “Affiliate” with respect to Developer shall include any entity that directly or indirectly through one or more intermediaries is controlled by, controls or is under common control with some or all of (a) Developer, (b) the founder of Opus Holding, L.L.C. and Opus Holding Corporation group of companies, his children, his grandchildren or other members of his family or their issue, (c) the trustee of a trust or trusts for the benefit of the founder of Opus Holding, L.L.C. and the Opus Holding Corporation group of companies, his children, his grandchildren or other members of his family or their issue, or (d) a partner, limited liability company, corporation or other entity comprised of all or some of the above.

“Applicable Law” means those rules, regulations, official policies, standards and specifications, ordinances and resolutions which are controlled by the City and in force and effect on the Effective Date of this Agreement.

“Commencement of Construction” means the issuance of the building permit to authorize physical construction of the structure and shall not include demolition and grading activities on the site related to the Project prior to issuance of the building permit.

“Construction Period” means the period of time the Project is under construction. The Construction Period shall commence at such time as City issues the building permit the construct the Project and such construction shall proceed without unnecessary delay until completion of the project, which shall be evidenced by issuance of a certificate of occupancy by the City.

“Governmental Authority” or **“Governmental Authorities”** means any municipal governmental authority, including all executive, legislative and administrative departments and bodies thereof having jurisdiction over the Developer, the Developer Tract, and the Project.

“Governmental Requirements” means all laws, ordinances, statutes, executive orders, rules, zoning requirements and agreements of any Governmental Authority that are applicable to the acquisition, renovation, demolition, development, and construction of the Developer Tract and/or Project including, without limitation, all required permits, approvals and any rules, guidelines or restrictions enacted or imposed by any Governmental Authorities.

“Term” means the earlier of: (i) the last day of the Construction Period; or (ii) the fifth anniversary date of the Effective Date, unless extended with the written consent of the City.

2. **Project Development.** With respect to the use and development of the Project and the Developer Tract and provided all requisite permits have been issued by the City, the Developer agrees to begin Commencement of Construction of the Project by September 1, 2014 in substantial conformance with the Conceptual Site Plan and complete such construction by the end of the Term pursuant to the terms and provisions herein and City agrees to permit construction of the Project pursuant to the terms and conditions of this Agreement and Applicable Law. Notwithstanding anything contained herein to the contrary, this Agreement shall terminate and the terms and provisions shall be null, void, and of no force or effect and the Parties shall have no further obligations hereunder if Commencement of Construction has not occurred by September 1, 2014.
3. **Storm Water Improvements.** As part of the Project, the Developer shall replace the existing storm water improvements serving the Developer Tract with new structures (the **“Storm Water Improvements”**) in a new location within the Developer Tract that is consistent with the Conceptual Site Plan and as shall be approved by the City and the Developer. The Developer shall construct such Storm Water Improvements at its sole cost and expense and shall cause the Storm Water Improvements to be designed, constructed and dedicated to comply with the requirements of the Applicable Law. City agrees to accept the dedication of the Storm Water Improvements for maintenance upon completion thereof pursuant to the terms of this Agreement and to vacate any rights and interests it may have on or around the location of the existing storm water improvements at the time that the City accepts the Storm Water Improvements. Prior to Commencement of Construction, the Developer shall submit to the City’s Public Works Department for review and approval a complete set of engineered plans for the Storm Water Improvements. Said plans shall be prepared by a registered engineer authorized to perform such work and shall be designed in accordance with the Applicable Law. The Storm Water Improvements shall be dedicated to the public prior to issuance of a certificate of occupancy to occupy the Project.
4. **Water System Improvements.** Developer hereby agrees to pay to City \$250,000 for the upgrade and reconstruction of the water main depicted in Exhibit E attached hereto (the **“Water System Infrastructure”**). Subject to the public improvement process requirements set

forth is Chapter 22 of the Columbia City Code, the City shall perform the construction and be responsible for all remaining costs of reconstruction of the Water System Infrastructure in excess of Developer's contribution. Developer's payment for the upgrade and reconstruction of the Water System Infrastructure shall be made by Developer to City prior to issuance of the building permit to construct the Project. Nothing contained herein shall prohibit City from requiring other developers or property owners to contribute to the cost of reconstruction of the Water System Infrastructure. Failure of City to construct or complete the Water System Infrastructure improvements prior to the end of the Construction Period shall not prevent Developer from obtaining a certificate of occupancy following construction of the Project or obtaining any other necessary approvals to occupy and use the Project for its intended purpose.

5. **Sanitary Sewer Improvements.** Developer hereby agrees to pay to City \$200,000 for the reconstruction and/or rehabilitation of the connecting sanitary sewer main depicted in Exhibit D attached hereto (the "**Sanitary Sewer Infrastructure**"). Subject to the public improvement process requirements set forth in Chapter 22 of the Columbia City Code, the City shall perform the construction and be responsible for all remaining costs of reconstruction of the Sanitary Sewer Infrastructure in excess of Developer's contribution. Developer's payment for the reconstruction of the Sanitary Sewer Infrastructure shall be made by Developer to City prior to issuance of the building permit to construct the Project. Nothing contained herein shall prohibit City from requiring other developers or property owners to contribute to the cost of reconstruction of the Sanitary Sewer Infrastructure. Failure of City to construct or complete the Sanitary Sewer Infrastructure improvements prior to the end of the Construction Period shall not prevent Developer from obtaining a certificate of occupancy following construction of the Project or obtaining any other necessary approvals to occupy and use the Project for its intended purpose.
6. **Availability of Public Utility Services.** City and Developer acknowledge that the availability of public utility services of electricity, water, storm water and sanitary sewer capacity is critical to the Project. The Developer has submitted to the City the projected load and flow demands for public utility services to be generated by the Project at the end of the Construction Period as set forth in Exhibit E attached hereto. (the "**Utility Estimates**"). The City has reviewed the Utility Estimates and hereby commits that, in combination with the Developer commitments contained in this Agreement, the City will have adequate capacity to support the Project and the intended uses set forth herein by the end of the Construction Period and that if the Developer is not in default under this Agreement the City will not deny Developer the ability to connect to such essential public services to serve the Project at the end of the Construction Period. In no event shall the commitment of the City to reserve, construct or supply adequate capacity to support the Project extend beyond the Term of this Agreement, nor shall the City's commitment herein to provide public utility services be in excess of the Utility Estimates.
7. **Permit and Connection Fees.** In addition to the commitments of Developer contained herein, the Developer shall pay to the City, at the time and in the amount required by the Applicable Law, the standard connection and permit fees associated with connecting the Developer Tract to the utilities.

8. **No Conflicting Enactments.** During the Term the City will not impose on the Project or Developer Tract, whether by action of the City Council or otherwise, any Governmental Requirement (to the extent that the City has authority with respect to a Governmental Requirement), ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a “**City Regulation**” and collectively the “**City Regulations**”) that reduces the assurances provided by this Agreement with respect to the availability of public utilities for the development, maintenance, and operation of the Project. Nothing contained herein shall prohibit the City from enacting a Governmental Requirement and imposing the same on the Project and Developer Tract for protection of the health, safety and welfare of the public in the same manner and to the same extent as imposed on the general public. During the Term, any change in the following shall not be effective as applied to the Developer Tract without the express written agreement of Developer:

- a. Change any land use designation or permitted use of the Development Tract existing as of the Effective Date of this Agreement which would prohibit or limit the use of the Developer Tract for the Project as described in this Agreement;
- b. Limit or control the availability of public utilities, services or facilities for the Project as described in this Agreement, unless such limitation is necessary to address health and safety issues created by the increase in capacity demanded by the Project which is in excess of the capacity contemplated herein;
- c. Apply to the Project any City Regulation otherwise allowed by this Agreement that is not uniformly applied to all similar types of development projects and project sites within the Downtown Community Improvement District boundaries; and
- d. Establish, enact, increase, or impose against the Project or Developer Tract any fees, taxes (including without limitation general, special and excise taxes), assessments or other monetary obligations other than those imposed and applied on all similar types of development projects and project sites within the Downtown Community Improvement District boundaries; provided however, if such additional fees, taxes, assessments or other monetary obligations related to the utility infrastructure improvements are imposed by City against the Developer Tract, the Developer shall have the right to claim a credit for any payments and construction enhancements made by Developer pursuant to this Agreement.

Nothing herein shall limit the City’s authority to enact ordinances, resolutions, or otherwise pass laws or promulgate rules or regulations with regard to any matter, so long as same does not have the effect of limiting construction of the Project on the Developer Tract within the Term in substantially the same manner as set forth in this Agreement. City expressly retains the right to control and determine all matters relating to the public streets and rights of way without any regard to the impact such decisions may have on the Project or Developer Tract, including but not limited to the granting of right of use permits and/or street closures adjacent to the Developer Tract

9. **Timing of Project Construction and Completion.** Subject to the following, the Developer shall endeavor in good faith and with reasonable diligence to proceed with and construct the Project during the Term and as described in this Agreement:
- a. It is the intent of the Developer to complete construction of the Project by August 31, 2015. The timing, order and rate of development shall be in Developer's sole discretion. It shall not be an event of default hereunder if the Project is not constructed during the Term; rather, this Agreement shall terminate in such case without any further action required by the Parties.
 - b. In no event shall a delay by Developer to complete construction of the Project according to the Project Schedule result in a refund or claim for refund of Developer's contribution for the construction of the Sanitary Sewer Improvements.
10. **Waiver.** Failure of any party to this Agreement to insist on the full performance of any of its provisions by the other Party shall not constitute a waiver of such performance unless the Party failing to insist on full performance of the provision declares in writing signed by it that it is waiving such performance. A waiver of any breach under this Agreement by any Party, unless otherwise expressly declared in writing, shall not be a continuing waiver or waiver of any subsequent breach of the same or other provision of this Agreement.
11. **Governing Law.** The laws of the State of Missouri (without regard to conflicts of law) shall govern the validity, construction, enforcement and interpretation of this Agreement.
12. **Headings.** All section headings in this Agreement are for the convenience of the reader only and are not intended, nor shall they be deemed, to define or limit the scope of any provision of this Agreement.
13. **Notices.** All notices, demands, requests, and other communications required or permitted hereunder shall be in writing shall be considered delivered: (a) upon personal delivery to the party to whom the notice is directed; or (b) two (2) business days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows (or to such other address as the Parties may specify by notice given pursuant to this section):

To Developer: Opus Development Company, L.L.C.
7733 Forsyth Boulevard, Ste. 1100
St. Louis, MO 63105
Attn: Joe Downs

With a Copy to: Opus Development Company, L.L.C.
7733 Forsyth Boulevard, Ste. 1100
St. Louis, MO 63105
Attn: Legal Department

And a Copy to: Robert Hollis
Van Matre, Harrison, Hollis, Taylor, and Bacon, P.C.
1103 East Broadway
Columbia, MO 65201

To City: City of Columbia
Attn: City Manager
701 East Broadway
Columbia, MO 65201

With a Copy to: City of Columbia
Attn: City Counselor
701 E. Broadway
Columbia, MO 65201

14. **No Adverse Inference.** This Agreement shall not be construed more strongly against one Party or the other. The Parties had equal access to input with respect to, and influence over, the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.
15. **Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.
16. **Jurisdiction and Venue.** Legal action concerning any dispute, claim or matter arising out of the Agreement shall be brought only in the Circuit Court of Boone County, Missouri.
17. **Severability or Partial Invalidity.** This Agreement is to be considered in its entirety and both parties acknowledge the assurances granted herein are dependent upon each other. If any provision of this Agreement is for any reason held to be invalid or unenforceable, such provision shall render the entire agreement invalid and unenforceable.
18. **Gender and Number.** Pronouns and any reference to a person or persons, wherever used herein, and of whatever gender, shall include natural persons, corporations, associations, partnerships and other entities of every kind and character, and the singular shall include the plural and vice versa, wherever and as often as may be appropriate.
19. **Failure or Delay to Enforce.** No failure to exercise or delay in exercising any right hereunder on the part of any Party to this Agreement shall operate as a waiver thereof, and no single or partial exercise of any right of such Party shall preclude any other or further exercise of such right or the exercise of any other right.
20. **Force Majeure.** In the event that either Party shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, riots, insurrection, the act, failure to act or default of the other Party, war or other reason beyond their control, then performance

of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

21. **Priority and Recording.** This Agreement shall be recorded in the records of Boone County, Missouri and the covenants, rights and obligations contained herein shall run with the Developer Tract. By the recordation of this Agreement, all conditions, terms and obligations of this Agreement are effective as to and binding on the Parties, their successors and assigns with the intention that this Agreement with the intention that it will, in addition to the Parties hereto, govern all future and subsequent owners of all or any portion of the Developer Tract unless and until this Agreement is amended or terminated in accordance with the terms hereof.
22. **Binding Effect; Assignment.** This Agreement is not assignable by any party, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, without the consent of the City: (a) Developer may assign this Agreement, and its rights hereunder, to an Affiliated Entity, provided that (i) Developer shall remain jointly and severally liable with the assignee for the obligations contained in this Agreement; (ii) Developer, and any assignee by accepting assignment of this Agreement, expressly agrees to defend and indemnify City from any litigation arising out of the assignment; and (iii) written notice of the assignment, including the name of the assignee, is provided to City at least fifteen (15) business days prior to the effective date of such assignment
23. **Power of the City.** Notwithstanding anything set forth in this Agreement to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. All financial obligations of the City shall be subject to future appropriation of the City in accordance with Applicable Laws and Requirements. Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Requirements.
24. **Time.** Time is of the Essence in this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
25. **Sovereign Immunity.** Nothing in this Agreement shall constitute or be construed as a waiver of the City's governmental or official immunity or its officers or employees from liability or suit pursuant to Section 537.600 RSMo.
26. **Authorized Employees.** Developer acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Developer therefore covenants that it is not knowingly in violation of Section 285.530(1), RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on any project which is the subject of this Agreement, and that its employees are lawfully eligible to work in the United States. Developer will execute an Immigration Law Compliance Affidavit in substantially the same

form as attached hereto in Exhibit GF and will cause any person or entity performing work on the Infrastructure Project to confirm compliance with Section 285.530(1) and execute an Immigration Law Compliance Affidavit.

27. **Inspection.** Upon reasonable prior notice, the City may conduct such periodic inspections of the Project, including any applicable phase, as may be generally provided in the Applicable Law or for inspection thereof pursuant to comply with the terms of this Agreement. The Developer shall not deny the City and its officers, employees, agents and independent contractors the right to inspect upon reasonable prior written request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Project or any applicable phase thereof.
28. **Entire Agreement; Amendment.** It is agreed and understood by the parties that this Agreement embodies the entire understanding and represents the full and final agreement among the parties with respect to the subject matter hereof and supersede any and all prior commitments, agreements, discussions, representations, and understandings, whether written or oral, relating to the subject matter hereof; that this Agreement may not be contradicted or varied by evidence of prior or contemporaneous written or oral agreements or discussions of the parties, or subsequent oral agreements or discussions of the parties; that there are no oral agreements among the parties, and no representations, agreements or promises not set forth herein have been made. Without limiting the foregoing, Developer acknowledges that: (i) no promise or commitment has been made to it by or on behalf of the City other than as set forth in this Agreement; and (ii) except as otherwise expressly provided herein, this Agreement supersedes and replaces any and all proposals, letters of intent and approval and commitment letters relating to the subject matter hereof, none of which shall be considered a part of this Agreement unless expressly incorporated into this Agreement. This Agreement shall be amended only in writing and effective when signed by the parties.
29. **Representatives Not Personally Liable.** No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute but one and the same document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE
TO FOLLOW]

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement as of the date first above written.

City of Columbia (“City”)

By: _____
Mike Matthes, City Manager

Attest:

By: _____
Sheela Amin, City Clerk

Approved as to form:

By: _____
Nancy Thompson, City Counselor

**Opus Development Company, L.L.C.
 (“Developer”)**

By: _____
David J. Menke, Vice President

State of Missouri)
) ss.
County of Boone)

On this _____ day of _____, 2014, before me personally appeared Mike Matthes, who, upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is an authorized agent for the **City of Columbia, Missouri** and that he has executed this document on behalf of said entity as the free act and deed of said entity, and that he is duly empowered by said entity to execute this document on said entity's behalf.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at my office in Columbia, Missouri, the day and year first above written.

_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

State of Missouri)
) ss.
County of Boone)

On this _____ day of _____, 2014, before me personally appeared David J. Menke, who upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is a Vice President of **Opus Development Company, L.L.C.**, that he executed the foregoing on behalf of said company, as the free act and deed of said company, and pursuant to the authority vested in him to execute the foregoing by the company, that the foregoing is binding in all respects upon said company, and that said company is duly empowered to enter into the foregoing.

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

_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

EXHIBIT A

Developer Tract

A TRACT OF LAND LOCATED IN THE SE 1/4 OF SECTION 12, TOWNSHIP 48 NORTH, RANGE 13 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF LOTS 85, 86, AND ALL OF LOT 87 OF THE ORIGINAL TOWN, NOW CITY OF COLUMBIA AS RECORDED IN BOOK A, PAGE 335 AND DESCRIBED BY THE DEEDS RECORDED IN BOOK 3291, PAGE 110, BOOK 3179, PAGE 81, BOOK 3198, PAGE 15, BOOK 3179, PAGE 82, BOOK 1310, PAGE 670, BOOK 1072, PAGE 427, AND BOOK 3212, PAGE 168 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 87, N 88°48'55"W, 239.61 FEET TO THE SOUTHWEST CORNER SAID LOT 85; THENCE WITH THE WEST LINE OF SAID LOT 85, N 1°10'35"E, 142.22 FEET TO THE NORTHWEST CORNER OF LOT 85 AND THE SURVEY RECORDED IN BOOK 623, PAGE 597; THENCE S 88°50'15"E, 239.65 FEET TO THE NORTHEAST CORNER OF SAID LOT 87; THENCE S 1°11'40"W, 142.31 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.75 ACRES.

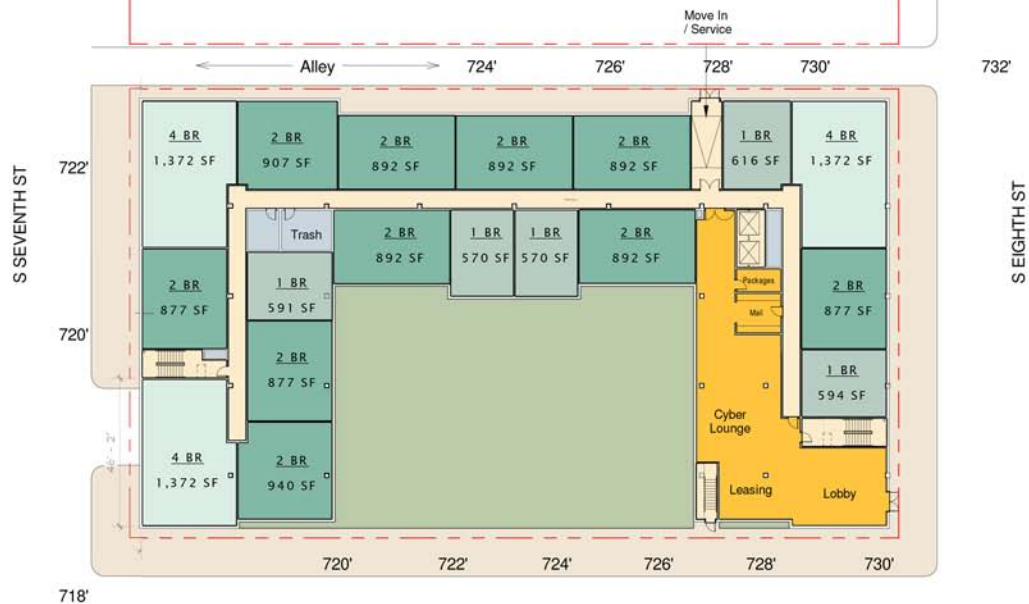
EXHIBIT B

Conceptual Site Plan









Level 1 Plan
1:30 Scale

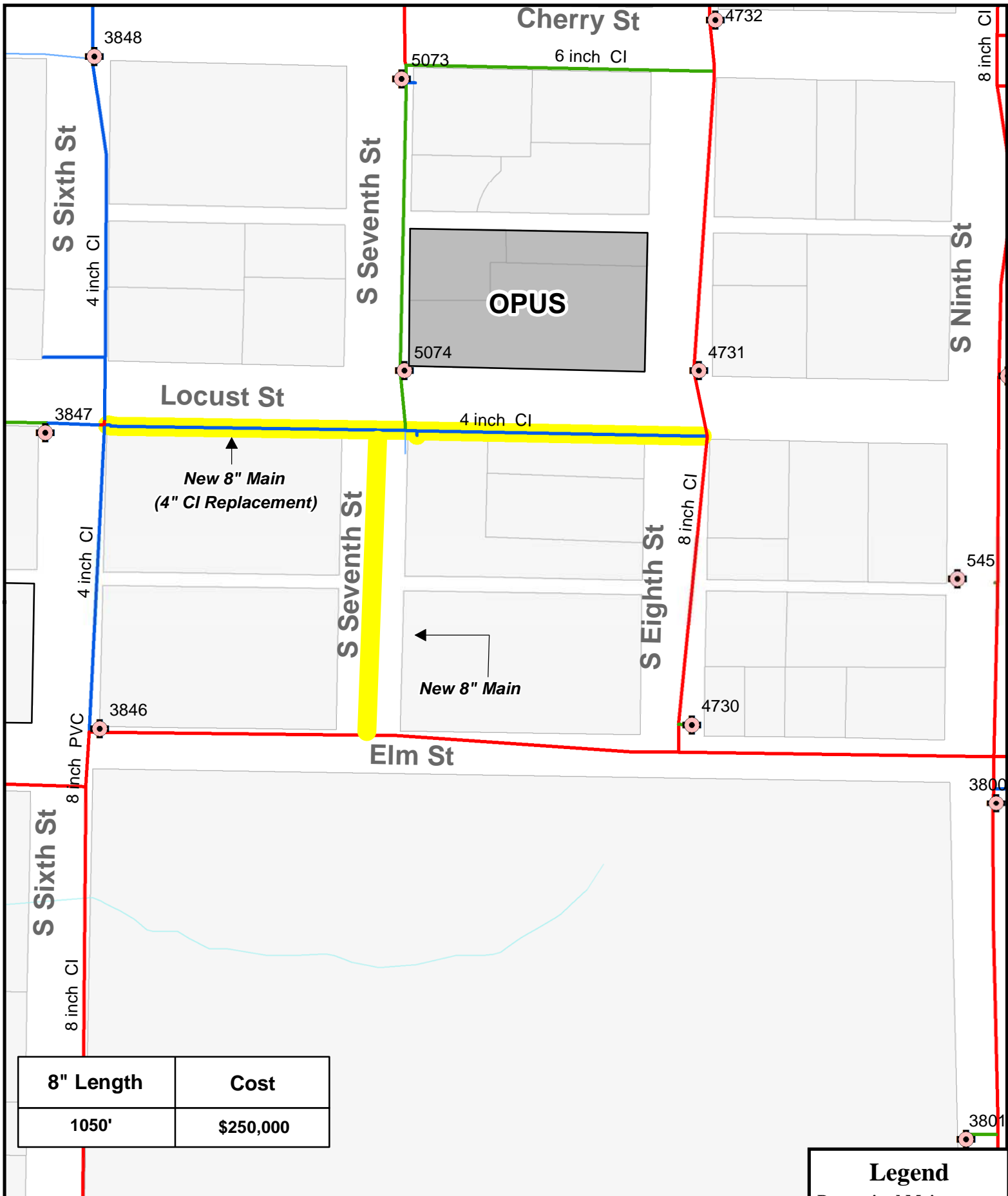
November 4, 2013
ESG Architects Inc





EXHIBIT C

Water System Improvements



8" Length	Cost
1050'	\$250,000



Water Line Replacements

OPUS Development

0 100 200 Feet

3/10/14



Legend

- Pressurized Main**
- Pressurized Main <4"
 - Pressurized Main 4"-5"
 - Pressurized Main 6"
 - Pressurized Main 8"-10"
 - Pressurized Main 12"-16"
 - Pressurized Main >16"

EXHIBIT D

Sanitary Sewer Improvements

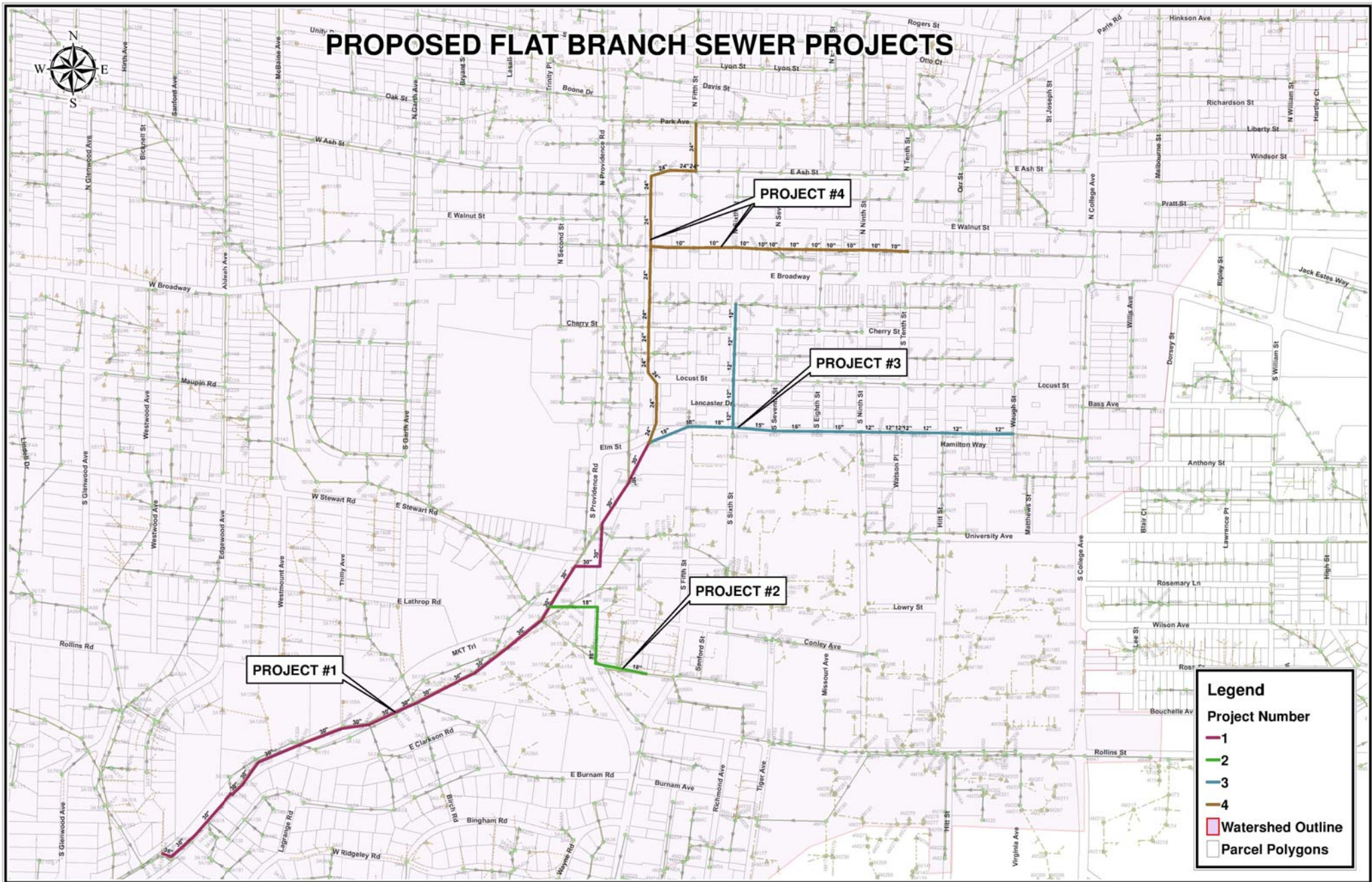


EXHIBIT E

Utilities Estimates

Sanitary

Load = 1300 drainage fixture units (DFU)

Service size = two 6" connections or one 8" connection

Total gallons per day = 11,552

Average gallons per minute = 8.0

Peak gallons per minute = 32.1

Domestic Water

Load = 210 gpm, 1000 water supply fixture units (WSFU)

Service size = 3" pipe, 3" meter

Fire Protection: 4" to 6" connection, depending on pressure

Electrical

Load = total ~900KVA diversified

Service size = One service @ 1200 A, 120Y/208V 3ph AND another @ 1600A to include house loads OR one service at 2,500A 120Y/208V 3ph

EXHIBIT F

Form of Immigration Law Compliance Affidavit

STATE OF MISSOURI)
) ss:
COUNTY OF _____)

AFFIDAVIT
(as required by Section 285.530, Revised Statutes of Missouri)

As used in this Affidavit, the following terms shall have the following meanings:

EMPLOYEE: Any person performing work or service of any kind or character for hire within the State of Missouri.

FEDERAL WORK AUTHORIZATION PROGRAM: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

KNOWINGLY: A person acts knowingly or with knowledge,
a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist(; or
b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

UNAUTHORIZED ALIEN: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared _____, who, being duly sworn, states on his/her oath or affirmation as follows:

1. My name is _____ and I am currently the President of _____ (hereinafter "Contractor"), whose business address is _____, and I am authorized to make this Affidavit.
2. I am of sound mind and capable of making this Affidavit, and am personally acquainted with the facts stated herein.
3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the following services contracted between Contractor and the City of Columbia: _____.
4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.
5. Attached hereto is documentation affirming Contractor's enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.

Further, Affiant saith not.

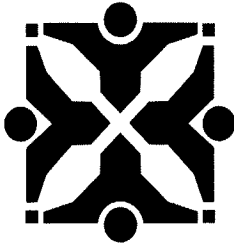
Signature of Affiant
Printed Name: _____

Subscribed and sworn to before me this _____ day of _____,2011.

Notary Public

My Commission Expires:

**PLEASE NOTE:* Acceptable enrollment and participation documentation consists of the following 2 pages of the E-Verify Memorandum of Understanding: (1) A valid, completed copy of the first page identifying the Contractor; and (2) A valid copy of the signature page completed and signed by the Contractor, and the Department of Homeland Security - Verification Division.



Source: City Manager

Agenda Item No:

To: City Council
From: City Manager and Staff

Council Meeting Date: March 12, 2014

Re: Authorizing a Development Agreement with Opus Development Company, LLC for Provision of Utility Services by the City.

EXECUTIVE SUMMARY:

Staff has prepared for Council consideration a development agreement with Opus Development Company, LLC which documents the terms under which the City will provide utility services to their residential housing structure project as shown on Exhibit B of the agreement.

DISCUSSION:

Council is aware of a number of projects in the central city (downtown) area of Columbia that have been put on hold due to the inability of many utility infrastructure systems to support additional capacity. Over the past few weeks, staff has been evaluating ways by which projects could be given a green light to proceed. The project proposed by Opus is in the conceptual design phase. Opus has not acquired the real estate for the project, and is seeking City's approval for the development agreement to ensure adequate utility infrastructure will be in place to serve the proposed project. Rezoning of the Opus tract is not required to construct the project.

Opus's project has been placed on hold due to inadequate sewer capacity to serve their housing development comprising 256 beds, as well as improvements needed for both stormwater and water systems. Following much discussion and negotiation, Opus has agreed to contribute 100% of the estimated \$200,000 needed to fund the reconstruction and/or rehabilitation of the connecting sanitary sewer main depicted in Exhibit D to the agreement. Additionally, Opus will agree to design, construct and replace the existing stormwater structure in a new location on their site to be approved by the City, and will pay 100% of the \$250,000 cost for the City to construct and dedicate the water service improvements depicted in Exhibit C of the agreement.

Opus's \$200,000 contribution for sanitary sewer improvements and \$250,000 contribution for the water system improvements to be constructed by the City are in addition to standard connection and permit fees required to connect their development tract to the utilities.

FISCAL IMPACT:

All improvements described will be paid for by the developer.

VISION IMPACT:

<http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php>

6 Vision Statement: Downtown Columbia is a hip and vibrant district with a diversity of easily accessible businesses, residences, attractions and institutions; it is an exciting gathering place for all types of people.

6.2 Goal: Downtown Columbia will have a variety of safe housing options, including new and revitalized units, for all age groups and income levels with easy access to desirable amenities. Development and design guidelines will be instituted.

SUGGESTED COUNCIL ACTIONS:

Approval of the legislation authorizing the development agreement with Opus Development Company, LLC.

FISCAL and VISION NOTES:					
City Fiscal Impact Enter all that apply		Program Impact		Mandates	
City's current net FY cost	\$0.00	New Program/ Agency?	No	Federal or State mandated?	No
Amount of funds already appropriated	\$0.00	Duplicates/Expands an existing program?	No	Vision Implementation impact	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	Yes	Enter all that apply: Refer to Web site	
Estimated 2 year net costs:		Resources Required		Vision Impact?	Yes
One Time	\$0.00	Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	6.0
Operating/ Ongoing	\$0.00	Requires add'l facilities?	Yes	Secondary Vision, Strategy and/or Goal Item #	6.2
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	