



Historic Avenue of the Columns

May 5, 2014

Ginny Chadwick, Ward 1
Columbia City Council
City of Columbia
701 East Broadway
P.O. Box 6015
Columbia, MO 65205

Dear Ginny:

I am writing to you today on behalf of the Historic Avenue of the Columns Committee to share our perspective on the current proposal by the Opus Group to develop the land on Locust between Eighth and Seventh Streets. While you all have access to the master plan for the Avenue, I thought I would highlight some important points in the plan that apply to this development.

Master Plan Objectives

- Guide the nature of public and private improvements
- Create a pedestrian oriented environment that is safe, visually pleasing, accessible and comfortable.
- Promote sidewalk interest and activity that supports commercial interests.
- Enhance the character of Downtown Columbia.
- Reinforce the unique character of Columbia, Boone County and the University of Missouri.
- Integrate diverse uses into a common fabric.
- Maintain a sense of connection to the history of the community.
- Unify the visual image of the Avenue of the Columns.

And more specifically, the plan speaks to redevelopment objectives:

Redevelopment – Surface parking lots and underutilized buildings create a “gap” of activity and street character. Redeveloping these areas of potential are critical to a successful street, one that is diverse in use and function. General guidelines for redevelopments should include:

- Buildings and facades oriented to the street.
- Ground floors dedicated to retail activity.
- Buildings consistent in scale and character to Downtown Columbia and surrounding structures.
- Avoidance of large, undifferentiated areas of façade including integration of art, entryways and ornamentation.
- Ground level transparency to encourage pedestrian interaction and exchange.
- Lighting that accentuates the street’s character.



Historic Avenue of the Columns

When reviewing the initial proposal for the development, the committee expressed concerns about the lack of activity on the Avenue of the Columns. Through a productive dialogue, Opus returned to us with a proposal that significantly opens up that first-floor space and creates street-level activity. In addition, their willingness to implement the streetscape design including bump outs will have a positive impact on our master plan.

In both design and character, the development is appropriate for our master plan. We felt that it was important to share this information with you as you work through your approval process. And, of course, we welcome your questions.

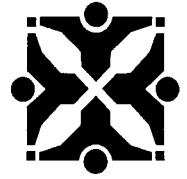
Sincerely,

Mary Wilkerson, Chair
Avenue of the Columns Committee

cc: Mike Mathes
Joe Downs
Avenue of the Columns Committee

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B130-14 Supplemental Information

Department Source: Law

To: City Council

From: City Manager & Staff

Council Meeting Date: May 19, 2014

Re: Supplemental Information for B130-14 Relating to the Amended and Restated Development Agreement with Opus Development Company and Repeal of Ordinance No. 022010

Documents Included With This Agenda Item

Supplemental Council Memo, Amendment Sheet

Supporting documentation includes: None

Executive Summary

An amendment sheet has been prepared to revise Section 3 of the council bill as it relates to the repeal of Ordinance No. 022010, which is the ordinance authorizing the original development agreement with Opus. In order to protect the City's ability to meet its current contractual commitments, the repeal is contingent upon no referendum petition being filed to repeal the amended and restated development agreement with Opus.

Discussion

The Charter allows a referendum to be filed within 20 days following enactment of an ordinance. It has come to staff's attention that if the ordinance is approved at any Monday meeting of the City Council, the 20th day following enactment would fall on a Sunday. Under rules of computation of time, if a day on which a task is to be performed falls on a Saturday or Sunday, the deadline to perform the task is pushed to the following business day - which would be Monday and technically 21 days following enactment. To ensure there is no potential gap between the repeal and the filing deadline for a referendum petition, staff recommends that Section 3 be amended to include language providing that Ordinance No. 022010 will be repealed if no referendum petition is filed within the timeframe allowed under the City Charter..

Fiscal Impact

None.

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Development, Downtown

Strategic Plan Impact: Infrastructure

Comprehensive Plan Impact: Land Use & Growth Management, Infrastructure, Livable & Sustainable Communities

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Suggested Council Action

Passage of the amendment sheet. No suggested Council action given as it relates to passage of the amended ordinance.

Legislative History

Ordinance 022010 approving a Development Agreement between the City and Opus Development Company adopted by Council on March 19, 2014.

Council Bill B130-14 was introduced and given first reading at the May 5, 2014 Council meeting.



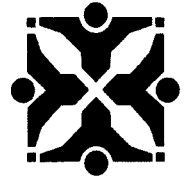
Department Approved



City Manager Approved

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B130-14

Department Source: Law

To: City Council

From: City Manager & Staff

Council Meeting Date: May 5, 2014

Re: Amended and Restated Development Agreement with Opus Development Company and Repeal of Ordinance No. 022010

Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Exhibits to Resolution/Ordinance
Supporting documentation includes: None

Executive Summary

An ordinance approving an Amended and Restated Development Agreement with Opus Development Company and providing for repeal of Ordinance No. 022010.

Discussion

The ordinance is being submitted to Council at the request of Councilperson Chadwick.

The Amended and Restated Development Agreement with Opus Development Company contains a new Exhibit B, which eliminates the prior apartment units on the ground floor along 8th Street and replaces them with active living space for tenants. The intent of the active living space on the first floor is to create a more inviting pedestrian walkway along the Avenue of the Columns (which is a concept promoted by the Downtown CID).

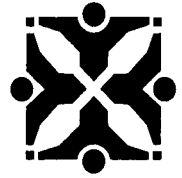
In conjunction with the Amended and Restated Development Agreement, the ordinance provides for the manner in which Ordinance No. 022010 (aka 62-14A) will be repealed. It is not advisable for the City Council to intentionally default on the existing contract between the City and Opus by repealing the prior approving ordinance without some protection in place. The delay in the effective date of the repeal protects the City Council from voluntarily engaging in an act of default and would prevent the repeal of the existing agreement in the event a new challenge is mounted to the Amended and Restated Development Agreement.

Fiscal Impact

Short-Term Impact: City will receive \$250,000 from Opus for off-site sanitary sewer improvements and \$200,000 for off-site water system improvements - both of which are in excess of the traditional

City of Columbia

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permitting and development fees paid to the City and the adjacent site improvements to be constructed by Opus.

The City will need to continue to make improvements to the sanitary sewer system and water system to accommodate the increased demands on its existing system. All other infrastructure and public services will also need to be monitored for maintenance and adequacy.

Long-Term Impact: Unknown. It is anticipated that the fees and charges to the customers of the utility services will be adequate to maintain the system and the tax revenues from the economic activity generated from the residents will be sufficient to maintain the other public services necessary to serve the project.

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Development, Downtown

Strategic Plan Impact: Infrastructure

Comprehensive Plan Impact: Land Use & Growth Management, Infrastructure, Livable & Sustainable Communities

Suggested Council Action


None.

Legislative History

Ordinance 022010 approving a Development Agreement between the City and Opus Development Company adopted by Council on March 19, 2014.



Department Approved



City Manager Approved

Council Bill: B 130-14

MOTION TO AMEND:

MADE BY: _____

SECONDED BY: _____

MOTION: I move that Council Bill B 130-14 be amended as set forth on this amendment sheet.

=====

Material deleted from the original bill is shown in ~~strikeout~~;
material added to original bill shown underlined.

Section 3 is amended as follows:

SECTION 3. In the event a referendum petition is not filed by the voters with the City Clerk pursuant to City Charter Article XVII requesting a repeal of this ordinance ~~on or before twenty (20) days following enactment of this ordinance~~ within the timeframe allowed for filing a referendum petition under the City Charter, Ordinance No. 022010 shall hereby be repealed in its entirety.

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 130-14

AN ORDINANCE

authorizing the City Manager to execute an amended and restated 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 providing for the repeal of Ordinance No. 022010.

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

SECTION 1. The City Manager is hereby authorized to execute an amended and restated 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 amended and restated 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 amended and restated development agreement recorded in the office of the Boone County Recorder of Deeds.

SECTION 3. In the event a referendum petition is not filed by the voters with the City Clerk pursuant to City Charter Article XVII requesting a repeal of this ordinance on or before twenty (20) days following enactment of this ordinance, Ordinance No. 022010 shall hereby be repealed in its entirety.

PASSED this _____ day of _____, 2014.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

Amended and Restated Development Agreement

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “**Amended and Restated 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, City and Developer desire to re-evaluate the original development agreement approved by Bill 62-14A enacted as Ordinance 022010 on March 19, 2014 and desire to modify the project design and conceptual plan set forth in Exhibit B to provide for community spaces on the street-level floor along Eighth Street, giving the building an "active" ground floor together with an expanded time frame for consideration of the proposed plan by providing for introduction and first reading of the bill to approve this Amended and Restated Agreement at a regular council meeting scheduled for May 5, 2014 with public comment on such plan two weeks later at a regular council meeting scheduled on May 19, 2014; and

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 Amended and Restated 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated Agreement and Applicable Law. Notwithstanding anything contained herein to the contrary, this Amended and Restated 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 Amended and Restated 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 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 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated 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.
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 Amended and Restated 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 Amended and Restated Agreement which would prohibit or limit the use of the Developer Tract for the Project as described in this Amended and Restated Agreement;
 - b. Limit or control the availability of public utilities, services or facilities for the Project as described in this Amended and Restated 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 Amended and Restated 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 Amended and Restated 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 Amended and Restated 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

10. **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 Amended and Restated 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 Amended and Restated 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.

11. **Waiver.** Failure of any party to this Amended and Restated 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 Amended and Restated 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 Amended and Restated Agreement.

12. **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 Amended and Restated Agreement.
13. **Headings.** All section headings in this Amended and Restated 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 Amended and Restated Agreement.
14. **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

15. **No Adverse Inference.** This Amended and Restated 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 Amended and Restated 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 Amended and Restated Agreement.

16. **Third Party Beneficiaries.** There are no third party beneficiaries to this Amended and Restated Agreement.
17. **Jurisdiction and Venue.** Legal action concerning any dispute, claim or matter arising out of the Amended and Restated Agreement shall be brought only in the Circuit Court of Boone County, Missouri.
18. **Severability or Partial Invalidity.** This Amended and Restated 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 Amended and Restated Agreement is for any reason held to be invalid or unenforceable, such provision shall render the entire agreement invalid and unenforceable.
19. **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.
20. **Failure or Delay to Enforce.** No failure to exercise or delay in exercising any right hereunder on the part of any Party to this Amended and Restated 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.
21. **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.
22. **Priority and Recording.** This Amended and Restated 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 Amended and Restated Agreement, all conditions, terms and obligations of this Amended and Restated Agreement are effective as to and binding on the Parties, their successors and assigns with the intention that this Amended and Restated 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 Amended and Restated Agreement is amended or terminated in accordance with the terms hereof.
23. **Binding Effect; Assignment.** This Amended and Restated 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 Amended and Restated 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 Amended and Restated Agreement; (ii) Developer, and any assignee by accepting assignment of this Amended and Restated 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

24. **Power of the City.** Notwithstanding anything set forth in this Amended and Restated 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.
25. **Time.** Time is of the Essence in this Amended and Restated Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Amended and Restated Agreement requires their continued cooperation.
26. **Sovereign Immunity.** Nothing in this Amended and Restated 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.
27. **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 Amended and Restated 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.
28. **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 Amended and Restated 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.

29. **Entire Agreement; Amendment.** It is agreed and understood by the parties that this Amended and Restated 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 Amended and Restated 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 Amended and Restated Agreement; and (ii) except as otherwise expressly provided herein, this Amended and Restated 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 Amended and Restated Agreement unless expressly incorporated into this Amended and Restated Agreement. This Amended and Restated Agreement shall be amended only in writing and effective when signed by the parties.
30. **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 Amended and Restated Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Amended and Restated Agreement.
31. **Counterparts.** This Amended and Restated 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 Amended and Restated 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

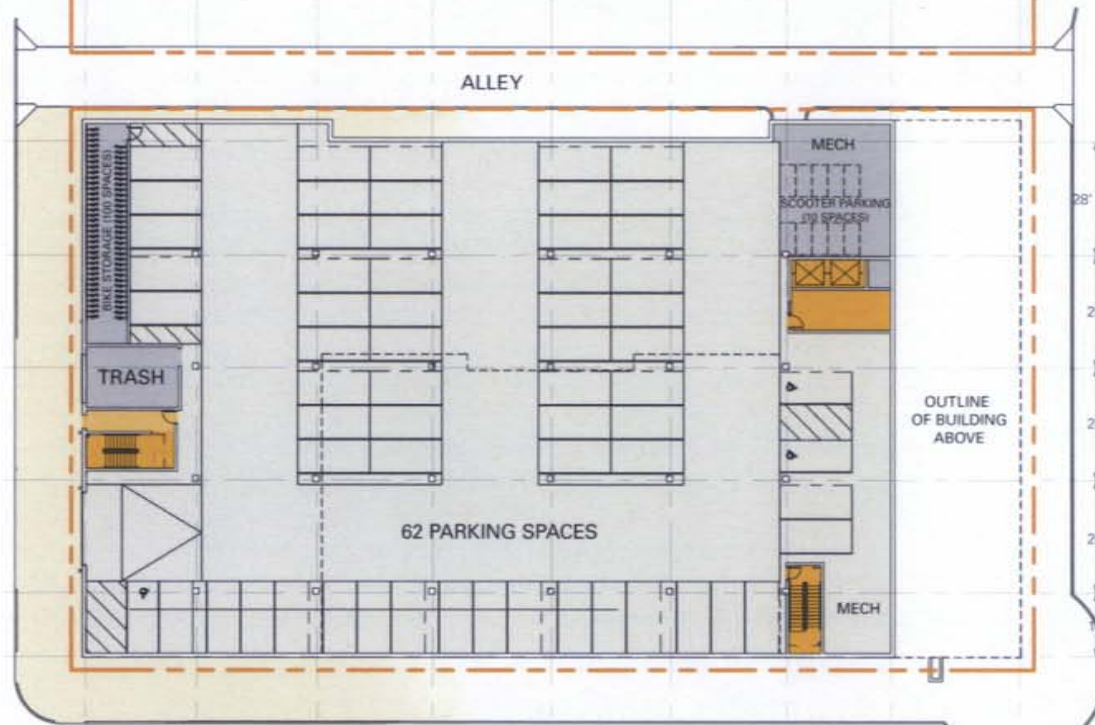
Conceptual Site Plan







S SEVENTH ST



S EIGHTH ST



0 15 30 60

8th Street Apartments at University of Missouri
Columbia, MO

Preliminary Parking Level
04-25-2014

S SEVENTH ST

S EIGHT ST

ALLEY

LOCUST ST



S SEVENTH ST

ALLEY

S EIGHT ST



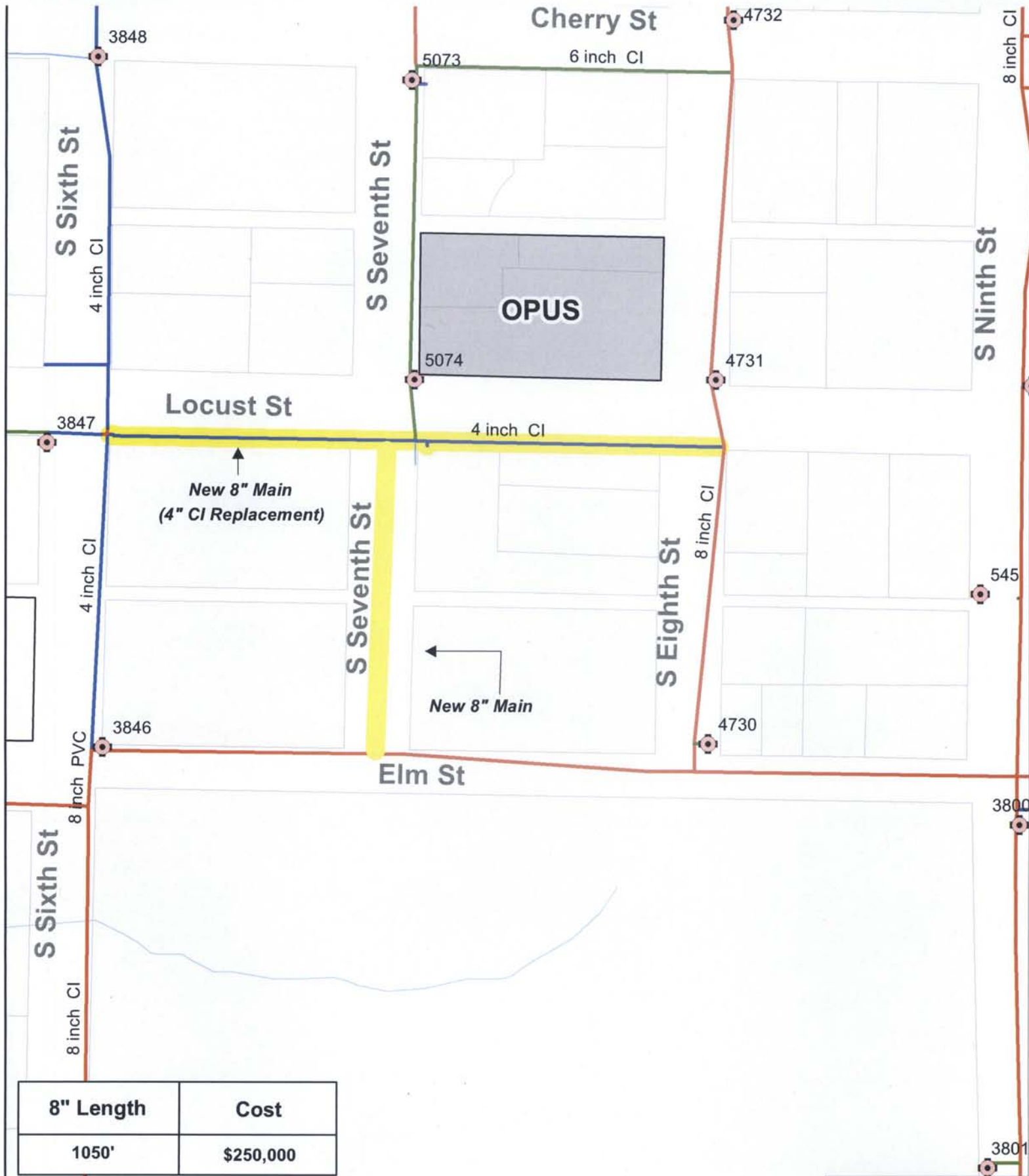
LOCUST ST



0 15 30 60

EXHIBIT C

Water System Improvements



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

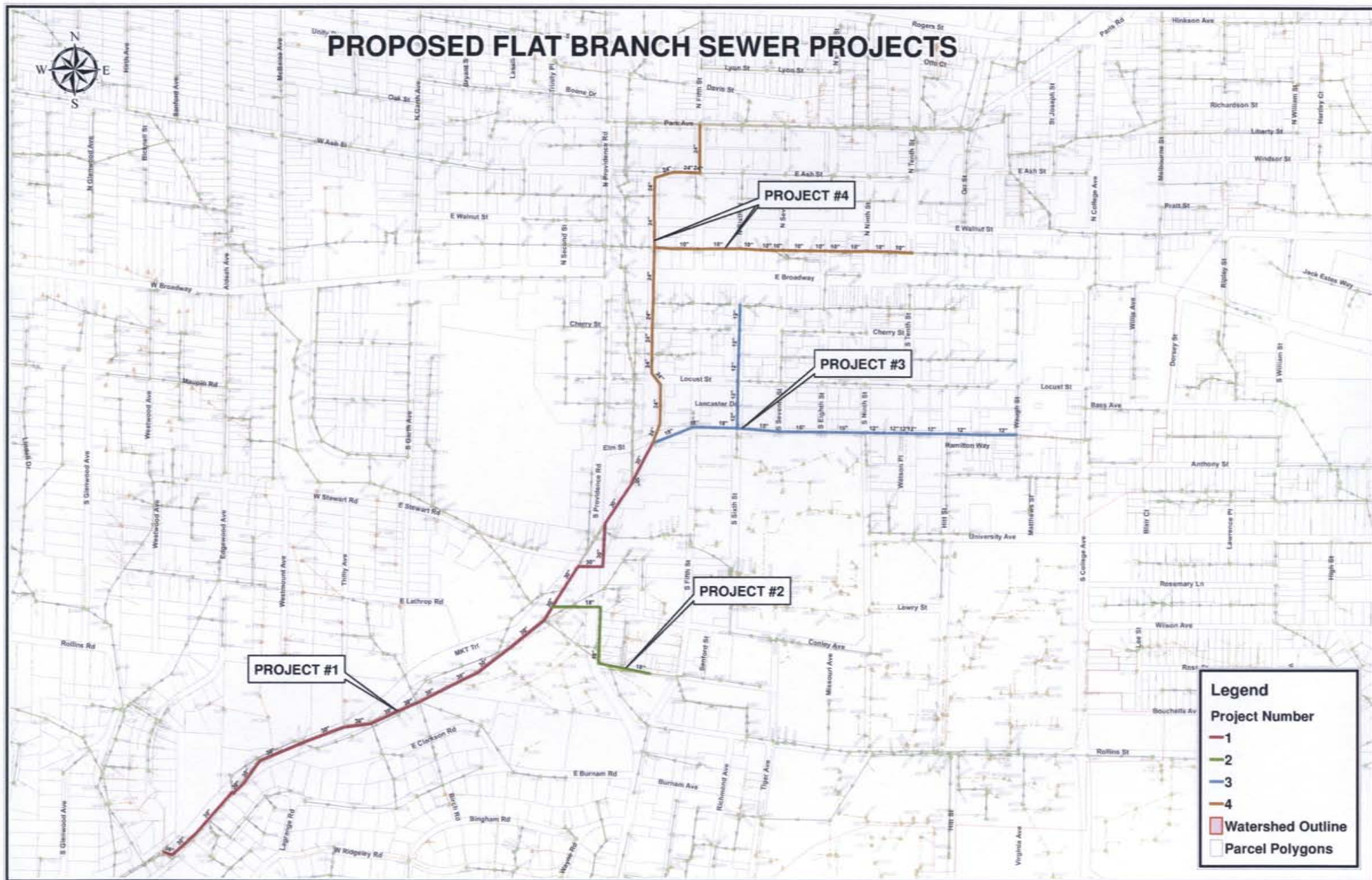


EXHIBIT E

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: