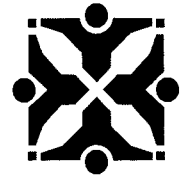


City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B 41-15

Department Source: Law

To: City Council

From: City Manager & Staff

Council Meeting Date: 2/16/2015

Re: Easement Release Agreement with Missouri CVS Pharmacy, L.L.C. and Mark M. Stevenson

Documents Included With This Agenda Item

Resolution/Ordinance, Exhibits to Resolution/Ordinance

Supporting documentation includes: None

Executive Summary

This agreement with Missouri CVS Pharmacy, L.L.C. (hereinafter "CVS") and Mark M. Stevenson provides a mechanism by which the City can release certain sewer easements located on private property on the southeast corner of Providence Road and Broadway. Release of these easements would be conditioned upon construction of new sewer facilities within the public rights-of-way and surface parking areas, to ensure access to new sewer facilities, and upon construction of private improvements that meet certain architectural elements.

Discussion

In order for CVS to develop the private property located on the southeast corner of Broadway and Providence Road, CVS needs for the City to vacate/release certain sewer easements dating back to 1939 that transect such private property. In order to induce the City to release these easements, CVS has offered to construct new sewer facilities within the rights-of-way of Broadway and Fourth Street, and then along new easements on the property, to tie into existing facilities and replace facilities on the private property. CVS is also offering to construct its new CVS building in accordance with architectural drawings attached to the Easement Release Agreement.

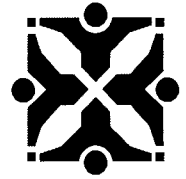
Fiscal Impact

Short-Term Impact: N/A. New sewer improvement will be constructed at the expense of CVS.

Long-Term Impact: N/A

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Community Character, Community Facilities and Services, Development, Downtown, Economic Development

Strategic Plan Impact: Economic Development, Infrastructure

Comprehensive Plan Impact: Land Use & Growth Management, Infrastructure

Suggested Council Action

Council should consider whether is it satisfied with the proposed architectural feature of the new CVS building and the installation and construction of new sewer facilities such that the Council would release existing sewer easements on the private property, which would allow redevelopment of the private property located on the southeast corner of Broadway and Providence in accordance with plans attached to the agreement

Legislative History

New necessary rights-of-way and utility easements to accommodate the new sewer facilities were dedicated to the City by way of a plat approved on February 3, 2014 by Ordinance No. 021969.



Department Approved



City Manager Approved

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 41-15

AN ORDINANCE

authorizing an easement release agreement with Missouri CVS Pharmacy, L.L.C. and the Mary M. Hackett Trust No. 1 relating to the vacation of sewer easements located on the southeast corner of Providence Road and Broadway; 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 an easement release agreement with Missouri CVS Pharmacy, L.L.C. and the Mary M. Hackett Trust No. 1 relating to the vacation of sewer easements located on the southeast corner of Providence Road and Broadway. The form and content of the agreement shall be substantially in the same form as set forth in "Attachment A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2015.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

EASEMENT RELEASE AGREEMENT

THIS EASEMENT RELEASE AGREEMENT (this "**Agreement** ") is made to be effective _____, 2015 (the "**Effective Date**") by and between the **CITY OF COLUMBIA, MISSOURI**, a political subdivision of the State of Missouri ("**City**"), **MISSOURI CVS PHARMACY, L.L.C.**, a Missouri limited liability company ("**Tenant**") and **MARK M. STEVENSON, as Trustee of the Mary M. Hackett Trust No. 1**, established by Irrevocable Living Trust Indenture dated December 27, 1991 ("**Owner**"). Tenant and Owner shall be collectively referred to as "**Applicant**" and all obligations ascribed to "Applicant" in this Agreement shall be the joint and several obligations of Tenant and Owner.

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Release of Easement. City shall execute and deliver to the escrow agent as described in paragraph 9 below an Easement Release in the form attached hereto as **Exhibit A** and incorporated herein by reference (the "**Release**") to release, vacate, and disclaim: (a) all rights, title and interest in and to that certain easement established and described at Book 217, Page 599 of the records of the Boone County Recorder of Deeds and set forth on April 7, 1939 by and between Columbia Ice and Storage Co. and the City of Columbia (the "**Sewer Easement**"); and (b) to the extent not released pursuant to subclause (a) above, all right title and interest in and to those specific areas of the Property affected by existing sewer lines shown as "Existing Sewer Areas to be Released" on the plan attached hereto as **Exhibit A-1** (as well as the sewer lines themselves, which are surplus and will be replaced by new sewer lines to be installed in the easement area referenced in paragraph 2(c) below); all subject to all other lawful and recorded rights, interests, and estates of third parties, and upon the terms and conditions set forth below.

The City shall take all necessary legal action to authorize and effectuate the release of the Sewer Easement and execution and delivery of the Release. Without limitation of the generality of the foregoing, any City ordinance through which this Agreement is approved shall be deemed to also authorize and approve the foregoing release of the Sewer Easement and the execution and delivery of the Release in accordance with the terms of this Agreement, without requirement of any additional ordinance or any further vote, resolution, or other action of the City Council.

2. Conditions of Release. The Release set forth in paragraph 1 shall be effective upon completion of the following conditions of Release:
 - a. Construction and acceptance by the City of a new sanitary sewer facility in those locations shown on, and in accordance with, the drawings and specifications attached hereto as **Exhibit B** and incorporated herein by reference. Upon completion and satisfactory inspection, Owner shall dedicate in fee all sanitary sewer facilities installed to meet the condition of Release. Such dedicated facilities shall be warranted by Applicant for a period of two (2) years after the City's acceptance of such dedicated facilities.
 - b. Completion of construction of the building, driveways and curb cuts and other private improvements on the Property substantially in accordance with and in the locations as shown **Exhibit C**, but in any event, in accordance with plans approved by the City. The parties specifically acknowledge the pedestrian entrance off of Broadway, the construction of a second story, and the architectural elements including the window grids, cornices and exterior finish as shown on **Exhibit C** are minimum standards and essential for compliance with the requirements of this agreement.

- c. Owner has dedicated to the City a permanent public utility easement shown as "New 16' Utility Easement" on the Final Minor Plat Stevenson Addition, recorded with the Boone County Recorder of Deeds on February 6, 2014 as Instrument No. 2014001842, in Book 48, page 10, in which areas the new sanitary facilities to be constructed pursuant to subclause 2(a) above will be located.
3. Work to Meet Conditions of Release. Applicant shall be responsible for all costs incurred to perform all work necessary to meet the conditions of Release described in paragraph 2, including costs to extend, relocate, replace existing private facilities, and costs incurred by the City, including but not limited to costs relating to inspection of new sanitary sewer facilities connected to existing City facilities or work performed in so connecting new facilities to existing City sanitary sewerage facilities, if any, and any escrow or recording fees.
4. No Damages. The parties to this Agreement may, either in law or equity, by suit, action, mandamus or other proceedings in court, seek injunctive and declaratory relief, enforce and compel specific performance of this Agreement, or any of the foregoing; provided that in no event shall the City or the Applicant (collectively, Owner and Tenant) (except for breach of Applicant's obligations under paragraph 9 below) have any liability in damages, costs (including attorneys' fees) or any other monetary liability to any other party or any affiliate of any other party, any person claiming through any other party, or to their respective successors, assigns, heirs and personal representatives in respect of any suit, claim, or cause of action arising out of any breach of this Agreement or any of the actions or transactions contemplated herein.
5. Third Party Actions. Tenant or Owner shall have the right, but not the obligation to assume the costs of defense of any action or proceeding initiated by a third party challenging this Agreement, or any other actions or transactions contemplated by this Agreement (including, without limitation, to settle or compromise any claim or action for which Tenant or Owner has assumed the defense) with counsel of Tenant's or Owner's choosing and the parties agree that so long as no conflicts of interest exist among them, the same attorney or attorneys may simultaneously represent the parties in any such proceeding. In no event shall the parties have any liability to another party for damages or otherwise in the event that all or any part of this Agreement shall be declared invalid or unconstitutional in whole or in part by a final (as to which all rights of appeal have been exhausted or expired) judgment of a court of competent jurisdiction, and, in the event Applicant or Owner elects not to assume such defense and costs, the City shall have no obligation to defend or to assume the costs of defense of any such action.
6. Severability. Because the obligations and inducements set forth in paragraphs 1, 2, 3, 4, and 10 of this Agreement (the "Interdependent Provisions") are inter-dependent of each other obligation and inducement contained in the Interdependent Provisions, the Interdependent Provisions shall be non-severable. In the event any part or portion of the Interdependent Provisions is held partially or wholly invalid or unenforceable by a court of competent jurisdiction, this Agreement shall terminate. Upon such termination, the parties shall have no further liability to each other under this Agreement or otherwise. If any provision of this Agreement (other than the Interdependent Provisions) shall be held invalid, inoperative or unenforceable, the remainder of this Agreement shall be given effect as if such invalid or inoperative portion had not been included. This Agreement shall not be modified without the written consent of the parties hereto or their respective successors or assigns.
7. Continuity of Obligations. Except as otherwise herein provided, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, personal representatives, successors and assigns; provided that the parties hereto acknowledge that this Agreement is not intended to benefit any third party owner, resident, occupant, or tenant who purchases, rents or otherwise occupies any parcel of the property of the Owner upon which the Sewer Easement is to be released is located (the "**Property**") or any space or building subsequently constructed on the Property following the development thereof and none of the same shall have any cause of action for breach hereunder.

8. Notices. All notices between the parties hereto shall be in writing and shall be sent by certified or registered mail, return receipt requested, by personal delivery against receipt or by overnight courier, shall be deemed to have been validly served, given or delivered immediately when delivered against receipt or Three (3) business days after deposit in the mail, postage prepaid, or One (1) business day after deposit with an overnight courier, and shall be addressed as follows:

If to the City:

City of Columbia
Director of Public Works
701 E. Broadway
Columbia, MO 65205

If to Applicant:

Missouri CVS Pharmacy, L.L.C.
One CVS Drive
Woonsocket, Rhode Island 02895
Attn: Property Administration, Store #10004

with a copy to:

Orange Development, Inc.
1200 Corporate Drive
Suite G-50
Birmingham, Alabama 35242
Attn: Donn Fizer

If to Owner:

Mary M. Hackett Trust No. 1
11 South 4th Street
Columbia, MO 65201
Attn: Mark Stevenson, as Trustee

with a copy to:

Van Matre, Harrison, Hollis, Taylor, and Elliot, P.C.
1103 East Broadway
P.O. Box 1017
Columbia, MO 65201
Attention: Robert Hollis

Each party shall have the right to specify that notice is to be addressed to another address by giving to the other party ten (10) days written notice thereof.

9. Hold Harmless. Applicant at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, boards, commissions, officers, employees, attorneys, and agents from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, from the Applicant's conduct of

any work under this Easement Release that is performed in any public street adjacent to the Property or in any public easement on the Property, inclusive of any actions taken by Applicant's agents, representatives, employees, contractors, subcontractors or any other person for whose acts Applicant may be liable, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors, provided nothing contained herein shall be deemed a waiver of the City's sovereign or governmental immunities. The indemnification, duty to defend and hold harmless obligations set forth in this Section shall survive for a period of five (5) years from the date of expiration or termination of this Easement Release.

10. Recordation. The original, recordable Release duly executed by the City shall be deposited with a third party escrow agent to be selected by the City within 5 days of its receipt of a fully executed version of this Agreement. Upon completion of the conditions of Release set forth in paragraph 2 above, Applicant shall apply to the escrow agent for recordation of the Release. The City shall cause the escrow agent to confirm with the City that the conditions of Release have been fulfilled to the satisfaction of the City in its sole reasonable discretion, whereupon the City shall direct the escrow agent to record the Release in the official land records of the Boone County Recorder of Deeds.

11. Miscellaneous.

(a) The paragraph headings herein are solely for convenience and shall in no way be deemed to affect the meaning or construction of any part hereof. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Missouri without regard to its conflicts of law rules.

(b) The parties agree that this Agreement constitutes the entire agreement among the parties and that no other agreements or representations relating to the Release other than those contained in this Agreement, have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties. The parties acknowledge that this Agreement is a lawful contract between them and that they entered into this Agreement voluntarily.

(c) This Agreement is executed in multiple counterparts, each of which shall be an original but such counterparts together shall constitute one and the same instrument notwithstanding that all parties are not signatories to the same counterpart. Delivery of an executed counterpart of this Agreement by electronic mail or telefacsimile shall be equally as effective as delivery of any original executed counterpart. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one (1) document.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This Agreement has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

CITY:

City of Columbia, Missouri

701 E. Broadway
Columbia, Missouri 65205

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

Missouri CVS Pharmacy, L.L.C.

By: _____

Name: _____

Title: _____

Date: _____

CVS Legal Approval: _____

OWNER:

MARK M. STEVENSON, as Trustee of the
Mary M. Hackett Trust No. 1, established by
Irrevocable Living Trust Indenture dated December 27, 1991

Exhibit "A"

Space Above this Line for Recorder's Use

Title of Document: Easement Release

Date of Document: _____, 20__

Grantor: CITY OF COLUMBIA, MISSOURI

Grantor's Address: 701 E. Broadway
Columbia, Missouri 65205

Grantee: _____

Grantee's Address: _____

Full legal description:

Legal Description is contained on Exhibit A to this Easement Release

Reference Book(s) and Page(s), if required:

Easement Release

THIS EASEMENT RELEASE is hereby executed this ____ day of _____, 2015, by the City of Columbia, Missouri, a Missouri municipal corporation (**“Grantor” or “Releasor”**), whose address for purposes of this instrument is 701 E. Broadway, Columbia, Missouri, which terms “Grantor” and “Releasor” shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of Grantor and Releasor:

WITNESSETH:

WHEREAS, Releasor is the holder of certain rights and easements granted in that Certain Conveyance of Right of Way by and between Columbia Ice and Storage Company and the City of Columbia, dated April 7, 1939 and recorded at Book 217, Page 599 of the records of the Boone County Recorder of Deeds (the "**Easement**"), and affecting that certain parcel of real property situated in Boone County, Missouri as described on **Exhibit A** attached hereto and incorporated herein by reference (the "**Subject Property**"); and

WHEREAS, Releasor has determined that the Easement is no longer required to serve the public purposes for which it was acquired, and the release of the Easement will be of public benefit in facilitating the redevelopment of the Subject Property.

NOW THEREFORE, for valuable consideration the receipt and sufficiency of which are hereby acknowledged, Releasor does hereby release, vacate, and disclaim all of its rights, title and interests in (a) the Easement, which is hereby vacated and terminated and is of no further force and effect; (b) to the extent not released pursuant to subclause (a) above, all right title and interest in and to those specific areas of the Property affected by existing sewer lines shown as “Existing Sewer Areas to be Released” on the plan attached hereto as **Exhibit A-1**; and (c) any and all sewer lines and related facilities that were installed prior to the date of this Easement Release in or on the Subject Property pursuant to the Easement, however nothing herein shall be deemed to release any interest in the Subject Property conveyed to the City of Columbia, Missouri on the Final Minor Plat Stevenson Addition, recorded with the Boone County Recorder of Deeds on February 6, 2014 as Instrument No. 2014001842, in Book 48, page 10.

[Signature page follows]

IN WITNESS WHEREOF, Releasor has executed this Easement Release as of the date and year first above written.

RELEASOR:

City of Columbia, Missouri

By: _____
Name: Mike Matthes
Title: City Manager

Attest:

By: _____
Sheela Amin, City Clerk

Approved as to form:

By: _____
Nancy Thompson, City Counselor

State of Missouri)
) ss.
County of Boone)

On this _____ day of _____, 2015, 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 _____.

EXHIBIT A (to Easement Release)

Legal Description of Subject Property

A tract of land located in all of Lots 181, 182, and 136, also a portion of Lots 183, 137, and 138, also the vacated alley between said Lots and the West 17 feet of right-of-way of 4th Street in the Original Town, now City of Columbia, Boone County, Missouri, being more particularly described as follows: Beginning at the Southwest corner of Lot 136; thence N 00°00'00" E, along the West line of Lot 136, a distance of 169.05 feet to the East line of a tract of land described in Book 559 at Page 730; thence N 11°18'41" E, along said East line, a distance of 32.64 feet to the South line of the North 99 feet of Lot 183; thence S 89°57'56" E, along said South line, a distance of 73.51 feet to the West line of Lot 182; thence N 00°01'11" W, along said West line, a distance of 99.00 feet to the Northwest corner thereof; thence S 89°57'56" E, along the North line of Lots 182, 181, and the extension thereof, a distance of 176.75 feet to the East line of the West 17 feet of vacated 4th Street; thence S 00°03'24" E, along said East line, a distance of 252.54 feet; thence N 89°57'48" W, along the South line of the North 95 feet of Lots 137, 138, and the extension thereof, a distance of 176.92 feet to the East line of Lot 136; thence S 00°01'11" E, along said East line, a distance of 47.53 feet to the Southeast corner thereof; thence N 89°57'40" W, along the South line of Lot 136, a distance of 79.98 feet to the point of beginning. Encompassing an area of 1.392 acres.

EXHIBIT A1 (to Easement Release)

Drawing of Released Sewer Line Areas

[Attached]

[new sewer facilities]

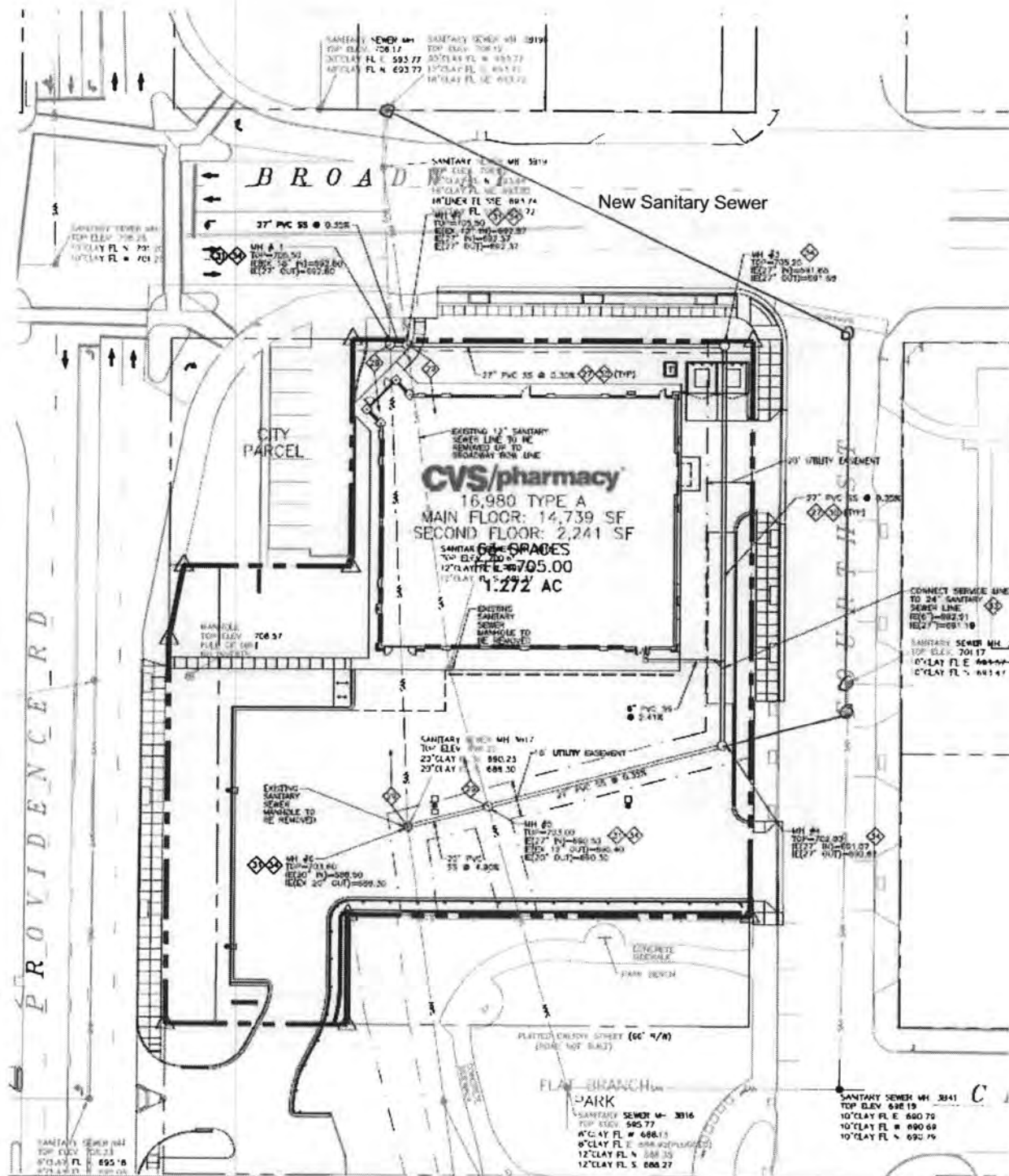


Exhibit "C"

EXHIBIT C



Broadway and Providence
COLUMBIA, MISSOURI
OCTOBER 31, 2014



NOTE: STORAGE UNLESS OTHERWISE NOTED. REFER TO APPROVED STORAGE YARDAGE FROM STORAGE YARD FOR SIZES AND LOCATIONS OF SIGNS. EXTERIOR STORAGE TO BE EXPANDED AND/OR REMOVED.

PELON STORAGE CFS COLOR TO MATCH THE BUILDING CFS COLOR.

LEGEND

© - RE EXTERIOR FINISH SCHEDULE

GENERAL NOTES

1. 36" SIGNS SHALL BE REQUIRED VARIANCE BY SIGN WISCONSIN OR CITY APPROVAL.
2. WISCONSIN SIGNS WILL BE REQUIRED IN DESIGNATED AREAS.



CVS/pharmacy