

**Memorandum
Department of Public Works**



*Please forward to
PPW for review &
recommendation
filed
2/16/2018*

TO: Michael O. Geisel, P.E.
City Administrator

FROM: James A. Eckrich, P.E. *JAE*
Public Works Dir. / City Engineer

DATE: February 16, 2018

RE: Riparian Trail Grant– Transportation Alternative Program

Earlier this year the Department of Public Works submitted a grant application through the Transportation Alternative Program (TAP) for design and construction of the Riparian Trail extension from August Hill to Old Chesterfield Road. This trail has been contemplated by the City for some time and was included in the City of Chesterfield Bikeable and Walkable Community Plan completed in 2010. The project became a higher priority after the construction of St. Louis County's Baxter Road Improvement Project. As you know, the City was successfully able to negotiate the removal of dedicated bicycle lanes as part of that project, which would have resulted in the elimination of two traffic lanes. In return, the City of Chesterfield agreed to pursue funding for the next section of the Riparian Trail, from August Hill to Old Chesterfield Road.

The City was notified in late 2017 that its grant application was successful, and that through the TAP the City would receive up to \$998,175 in grant funding for the project, which is estimated to cost \$1,535,655. **This will result in a net expenditure of only \$537,480. However, there will be no net cost to the City of Chesterfield, as the entire local share will be funded via the Chesterfield Valley Transportation Development District (TDD), as the Riparian Trail will ultimately be connected to the Monarch Chesterfield Levee Trail.** The project is scheduled to be completed by December of 2020, with design commencing in the spring of 2018.

In order to proceed with this project, there are separate actions that need to be taken by the City of Chesterfield. These are as follows:

Execution of TAP Agreement

In order to accept grant funding for this project, the City of Chesterfield must enter into an Agreement with the Missouri Highways and Transportation Commission. A copy of the TAP Agreement is attached. This Agreement has been reviewed by the

City Attorney and is similar in form to many other agreements the City has executed in order to obtain grant funding.

Selection of an Engineering Consultant to Perform Design Services

In accordance with Missouri Department of Transportation requirements, the City of Chesterfield publicly advertised for qualification submittals for design and construction engineering services for this project in early 2018. A selection committee comprised of Public Works Staff reviewed each of the fifteen proposals submitted. Staff ultimately determined that George Butler Associates, Incorporated (GBA) was the firm most qualified to perform the required engineering services. Accordingly, we entered into contract negotiations with GBA, and both parties have come to an agreement which is within the parameters allowed by the grant, as detailed in the attached memorandum from Civil Engineer Dennis Welker.

Essentially the draft Contract provides for GBA to provide design and construction engineering services at a fee of \$270,632. To allow for any change orders which may become necessary, Staff has requested that funding be allocated up to a not to exceed amount of \$284,200. Through the TAP grant, up to 65 percent of this cost, or \$184,730 will be reimbursed to the City of Chesterfield by MODOT. This will result in a net City (ultimately TDD) expenditure not to exceed \$99,470. The breakdown in fees is described in detail within the attached memorandum from Civil Engineer Dennis Welker.


It is important to note that during the design of this phase of the Riparian Trail the trail will be located farther away from the creek than it was in the first phase. As you know, the first phase of the Riparian Trail was constructed in close proximity to Chesterfield Creek. While this created an aesthetically pleasing environment for trail users, Chesterfield Creek is actively incising in this area. Construction of the trail too close to the creek does not allow for the creek to naturally meander without erosion impacting the viability of the trail. Accordingly, adjustments will be made during this design to ensure the trail is located a sufficient distance away from Chesterfield Creek.

While the project costs will be initially paid by the City of Chesterfield, the majority of these costs will be reimbursed through the TAP grant. The remaining costs will be paid by the TDD. While the project will be administered by City Staff, it is anticipated that there will be no net cost to the City of Chesterfield for this project. However, a transfer from the General Fund – Fund Reserves over the forty percent policy will be required to execute the necessary payments prior to reimbursement through the TAP grant or the TDD.

Execution of an Agreement with Chesterfield Village Incorporated

As you can see from the attached "Riparian Trail Aerial" drawing, the proposed Riparian Trail will be mostly constructed on land current owned by Chesterfield Village Incorporated (CVI). In order to obtain the necessary land to construct the next phase of the Riparian Trail, CVI has proposed an amendment to the current *Agreement Regarding Contribution of Land to the City of Chesterfield Missouri for its Parks and Trails System* (Land Agreement). The original Land Agreement, a copy of which is attached, was adopted by the City of Chesterfield in May of 2010 via ordinance 2607. That Land Agreement allowed the City of Chesterfield to construct the Lydia Hill / August Hill connection and Phase 1 of the Riparian Trail. In return for the land donation, CVI received certain "credits" for open space, tree canopy, and floor area ratio that it can use when developing Chesterfield Village.

CVI is proposing a similar arrangement for the construction of the Riparian Trail extension. Essentially, via an Amendment to the Land Agreement (Amendment), CVI will convey to the City the property necessary to construct the Riparian Trail extension from August Hill to Wild Horse Creek Road. Additionally, as part of the Amendment, CVI will convey to the City the Awakening and the Chesterfield Ridge Center Drive bridge. **Please be advised that the details of this Amendment have not yet been finalized. I am only providing the information at this time so that the PPW Committee, and City Council, understand the full extent of what is contemplated as part of this project. No action regarding the Amendment is being requested at this time. Once all details have been finalized, the Amendment will be submitted to City Council for consideration.** The draft Amendment, including Exhibit A which shows the affected properties, is attached.

While no action is required on the Amendment at this time, it is an important part of the Riparian Trail project. Without the Land Acquisition Amendment, the City would not otherwise be able to construct the Riparian Trail as that property is privately owned by CVI. 

Action Recommended

This matter should be forwarded to the Planning and Public Works Committee for consideration. Should the PPW Committee concur with Staff's recommendation, it should forward the matter to City Council for the following actions:

- 1) Adoption of the attached ordinance authorizing the City Administrator to execute a Transportation Alternative Funds Program Agreement with the Missouri Highways and Transportation Commission for the construction of the Riparian Trail from August Hill Drive to Old Chesterfield Road.
- 2) Authorize the City Administrator to execute a Contract with George Butler Associates in an amount of \$270,632, (with total funding not to exceed \$284,200) for engineering design services and construction engineering

services. Please note that this Contract must be approved by MODOT, after execution of the TAP Agreement, prior to being executed.

- 3) Authorize the transfer of \$284,200 from General Fund – Fund Reserves over the forty percent policy. This money will be returned to the General Fund – Fund Reserves from TAP grant funding or costs ultimately paid by the Chesterfield Valley TDD. There is no net cost (or loss of funds) to the General Fund – Fund Reserves associated with this project.

Once the Land Agreement Amendment with CVI is finalized it will also be forwarded to full City Council for consideration.

Should there be any questions regarding this rather complicated project, I would be happy to address those.

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A TRANSPORTATION ALTERNATIVE FUNDS PROGRAM AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR CONSTRUCTION OF THE RIPARIAN TRAIL FROM AUGUST HILL DRIVE TO OLD CHESTERFIELD ROAD.

WHEREAS, the City of Chesterfield was successful in obtaining a reimbursement grant for the construction of the Riparian Trail from August Hill Drive to Old Chesterfield Road; and,

WHEREAS, in order to proceed with the project, TAP-5410(630), the City needs to enter into a Transportation Alternatives Funds Program Agreement with the Missouri Highways and Transportation Commission;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The City Council of the City of Chesterfield hereby authorizes the City Administrator to act on behalf of the City of Chesterfield to enter into an Agreement with the Missouri Highways and Transportation Commission relative to the construction of Riparian Trail from August Hill Drive to Old Chesterfield Road, in form substantially similar to that attached in Exhibit A.

Section 2. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this _____ day of _____, 2018.

PRESIDING OFFICER

Bob Nation, MAYOR

ATTEST:

Vickie Hass, CITY CLERK

FIRST READING HELD:

Riparian Trail Aerial



Memorandum

Department of Public Works



TO: Jim Eckrich, City Engineer/PW Director

FROM: Todd Ohmes, Civil Engineer +AO

DATE: October 30, 2017

RE: Riparian Trail – TAP-5410(630)

As you are aware, the City of Chesterfield was recently awarded a Transportation Alternative Funding Grant (TAP) in an amount up to \$998,175 for the construction of the Riparian Trail from August Hill Drive to Old Chesterfield Road. The total estimated project cost is \$1,535,655 of which \$537,480 will be locally funded. Design of the project is scheduled for 2018 and 2019 and construction in 2019 and 2020.

In order to officially obligate the federal funding for this project the City of Chesterfield needs to enter into a TAP Agreement with the Missouri Highways and Transportation Commission (MoDOT). The agreement is similar to previous federal grant agreements the City has previously entered, and must be authorized via ordinance.

I recommend presenting this matter to City Council for approval of the attached ordinance authorizing the TAP Agreement. Two (2) executed copies of the Agreement need to be forwarded to MoDOT. Accordingly, a packet containing two Agreements has been attached. Upon final execution, MoDOT will return one executed copy to the City for filing. Please note that the Agreement requires three signatures – the City Administrator, the City Clerk, and the City Attorney.

cc: File 2018-PW-06

CCO Form: FS25
Approved: 04/95 (MGB)
Revised: 03/17 (MWH)
Modified:

CFDA Number: 20.205
CFDA Title: Highway Planning and Construction
Award name/number: TAP – 5410(630)
Award Year: 2018
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION ALTERNATIVES FUNDS
PROGRAM AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Chesterfield (hereinafter, "City").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The United States Congress has authorized, in Fixing America's Surface Transportation Act (FAST); 23 U.S.C. §101, §106 and §213; SAFETEA-LU §1404 funds to be used for transportation alternatives activities. The purpose of this Agreement is to grant the use of such transportation alternatives funds to the City.

(2) LOCATION: The transportation alternatives funds which are the subject of this Agreement are for the project at the following location: The improvement contemplated by this agreement will extend the existing Riparian Trail an additional 0.9 miles and will pass through natural areas beginning at Old Chesterfield Road and extending to August Hill Drive, running parallel to Baxter Road. A pedestrian crossing, including crosswalks, curb ramps and pedestrian buttons and signals will be installed at Wild Horse Creek Road.

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and

incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City. The City may not be eligible for future Transportation Alternatives Funds if the City does not meet the reasonable progress policy.

(4) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(5) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(6) COMMISSION REPRESENTATIVE: The Commission's District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(7) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so

certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(8) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(9) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(11) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(13) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, City shall acquire any additional necessary right of way required for this project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act. However, upon written request by the City and written acceptance by the Commission, the Commission shall acquire right of way for the City. Upon approval of all agreements, plans and specifications by the Commission and by the FHWA, the Commission will file copies of said plans in the office of the County clerk: and proceed to acquire by negotiation and purchase or by condemnation any necessary right of way required for the construction of the improvement contemplated herein. All right of way acquired by negotiation and purchase will be acquired in the name of City, and the City will pay to grantors thereof the agreed upon purchase prices. All right of way acquired through condemnation proceedings will be acquired in the name of the State of Missouri and subsequently released to the City. The City shall pay into court all awards and final judgments in favor of any such condemnees. The City shall also reimburse the Commission for any expense incurred by the Commission in acquiring said right of way, including but not limited to the costs of surveying, appraisal, negotiation, condemnation, and relocation assistance benefits. Unless otherwise agreed to in writing the Commission shall have the final decision regarding the settlement amount in condemnation.

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalk or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalk or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalk or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City's failure to maintain the improvement.

If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 65 percent not to exceed \$998,175. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. The City shall repay any progress payments which involve ineligible costs.

(18) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(19) PERMITS: The City shall secure any necessary approvals or permits from

any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(20) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the Transportation Alternatives Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(21) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(22) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(23) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(24) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(25) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(26) OMB AUDIT: If the City expend(s) seven hundred fifty thousand dollars (\$750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars (\$750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(27) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this ____ day of _____, 20__.

Executed by the Commission this ____ day of _____, 20__.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF CHESTERFIELD

Title _____

By _____
Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____
Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title _____

Ordinance No _____

Exhibit A - Location of Project

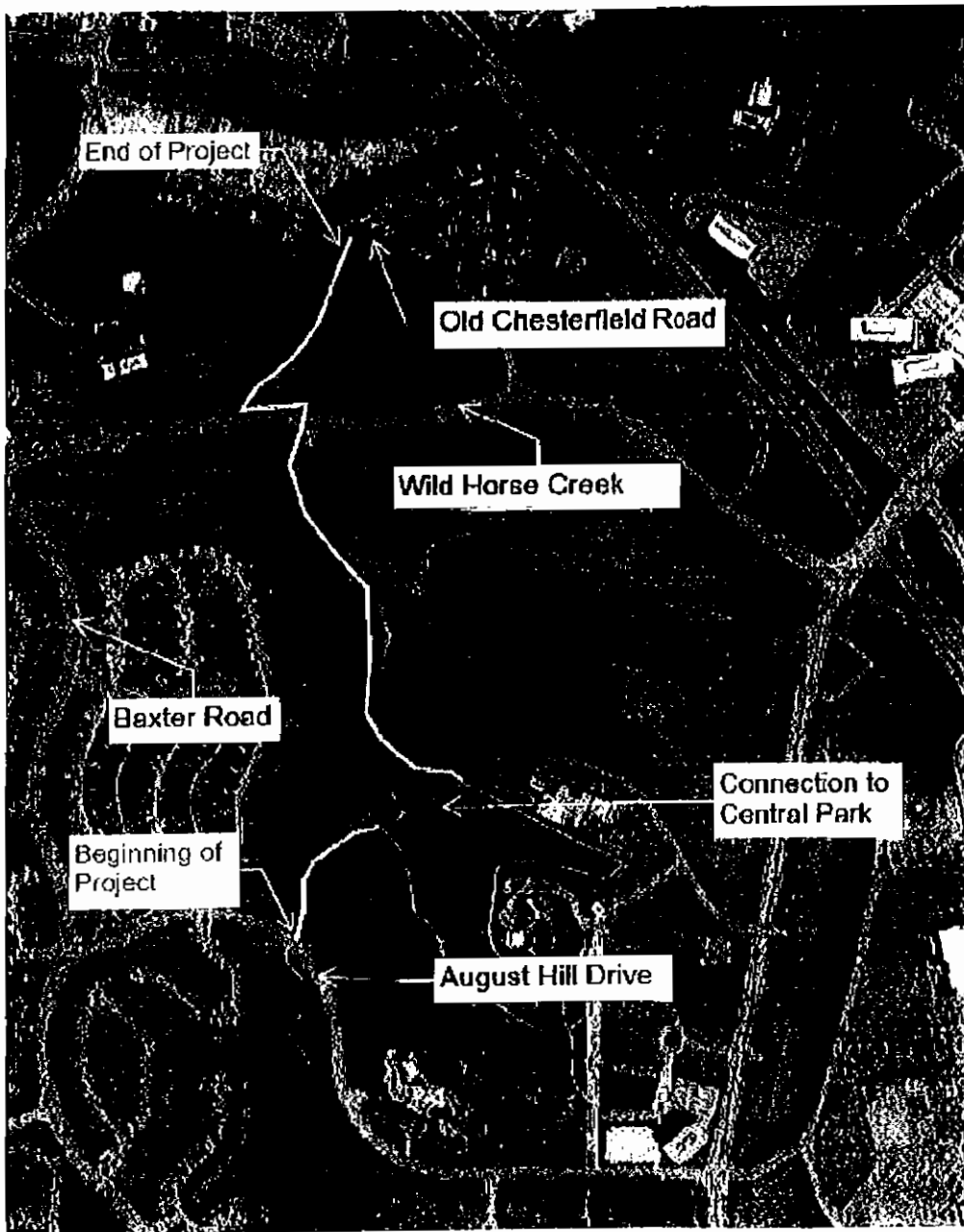


Exhibit B – Project Schedule

Project Description: TAP-5410(630)

The improvement contemplated by this agreement will extend the existing Riparian Trail an additional 0.9 miles and will pass through natural areas beginning at Old Chesterfield Road and extending to August Hill Drive, running parallel to Baxter Road. A pedestrian crossing, including crosswalks, curb ramps and pedestrian buttons and signals will be installed at Wild Horse Creek Road.

PROJECT DEVELOPMENT SCHEDULE <i>*Many stages can occur concurrently.</i>			
Activity Description	State Date (MM/YYYY)	Finish Date (MM/YYYY)	Time Frame (Months)
Receive notification letter	10/2017	10/2017	1
Execute agreement (project sponsor and DOT)	11/2017	1/2018	3
Engineering services contract submitted and approved*	3/2018	6/2018	3
Obtain environmental clearances (106, CE-2, etc.)	6/2018	8/2018	2
Public meeting/hearing	8/2018	9/2018	1
Develop and submit preliminary plans	7/2018	11/2018	5
Preliminary plans approved	11/2018	2/2019	3
Develop and submit right-of-way plans	6/2018	8/2018	2
Review and approval of right-of-way plans	8/2018	10/2018	2
Submit and receive approval for notice to proceed for right-of-way acquisition (A-Date)*	10/2018	12/2018	2
Right-of-way acquisition	1/2019	4/2019	4
Utility coordination	8/2018	12/2018	4
Develop and submit PS&E	2/2019	6/2019	5
District approval of PS&E/advertise for bids*	6/2019	11/2019	5
Submit and receive bids for review and approval	12/2019	2/2020	3
Project implementation/construction	2/2020	12/2020	10
* Finish date must match fiscal year for each milestone shown in bold text.			

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and a Supplemental Agreement is required to modify this date.

Exhibit C - Required Contract Provisions Federal-Aid Construction Contracts

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety/ Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance

of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor. During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27, and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27, and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOI) and FHWA requirements.

I. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant

to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated.

in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability, making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time

clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside

in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress,

expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of

the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the

overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116)

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project, and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of

payrolls, statements of compliance and all other Federal regulatory requirements

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract

2. It is a condition of this contract, and shall be made a condition of each subcontract, when the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704)

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project.

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation, or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation, or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented,

Shall be fined under this title or imprisoned not more than 5 years or both "

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid

construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200

I. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov>), which is compiled by the General Services Administration

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with

commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2 Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring

that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, in the best of his or her knowledge and belief, that

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-L.L.L., "Disclosure Form to Report Lobbying," in accordance with its instructions.

2 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3 The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1 During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOI, wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a To the extent that qualified persons regularly residing in the area are not available

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2 The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service

3 The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required

4 If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region

6 The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work

CCO Form: FS25
Approved: 04/95 (MGB)
Revised: 03/17 (MWH)
Modified:

CFDA Number: 20.205
CFDA Title: Highway Planning and Construction
Award name/number: TAP – 5410(630)
Award Year: 2018
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION ALTERNATIVES FUNDS
PROGRAM AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Chesterfield (hereinafter, "City").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The United States Congress has authorized, in Fixing America's Surface Transportation Act (FAST); 23 U.S.C. §101, §106 and §213; SAFETEA-LU §1404 funds to be used for transportation alternatives activities. The purpose of this Agreement is to grant the use of such transportation alternatives funds to the City.

(2) LOCATION: The transportation alternatives funds which are the subject of this Agreement are for the project at the following location: The improvement contemplated by this agreement will extend the existing Riparian Trail an additional 0.9 miles and will pass through natural areas beginning at Old Chesterfield Road and extending to August Hill Drive, running parallel to Baxter Road. A pedestrian crossing, including crosswalks, curb ramps and pedestrian buttons and signals will be installed at Wild Horse Creek Road.

The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and

incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City. The City may not be eligible for future Transportation Alternatives Funds if the City does not meet the reasonable progress policy.

(4) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(5) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(6) COMMISSION REPRESENTATIVE: The Commission's District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(7) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so

certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or

2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(8) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(9) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(11) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(13) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, City shall acquire any additional necessary right of way required for this project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act. However, upon written request by the City and written acceptance by the Commission, the Commission shall acquire right of way for the City. Upon approval of all agreements, plans and specifications by the Commission and by the FHWA, the Commission will file copies of said plans in the office of the County clerk: and proceed to acquire by negotiation and purchase or by condemnation any necessary right of way required for the construction of the improvement contemplated herein. All right of way acquired by negotiation and purchase will be acquired in the name of City, and the City will pay to grantors thereof the agreed upon purchase prices. All right of way acquired through condemnation proceedings will be acquired in the name of the State of Missouri and subsequently released to the City. The City shall pay into court all awards and final judgments in favor of any such condemnees. The City shall also reimburse the Commission for any expense incurred by the Commission in acquiring said right of way, including but not limited to the costs of surveying, appraisal, negotiation, condemnation, and relocation assistance benefits. Unless otherwise agreed to in writing the Commission shall have the final decision regarding the settlement amount in condemnation.

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalk or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalk or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalk or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City's failure to maintain the improvement.

If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 65 percent not to exceed \$998,175. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. The City shall repay any progress payments which involve ineligible costs.

(18) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(19) PERMITS: The City shall secure any necessary approvals or permits from

any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(20) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the Transportation Alternatives Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(21) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(22) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(23) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(24) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(25) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(26) OMB AUDIT: If the City expend(s) seven hundred fifty thousand dollars (\$750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars (\$750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(27) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this ____ day of _____, 20__.

Executed by the Commission this ____ day of _____, 20__.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF CHESTERFIELD

By _____

Title _____

Title _____

ATTEST:

ATTEST:

Secretary to the Commission

By _____

Title _____

Approved as to Form:

Approved as to Form:

Commission Counsel

Title _____

Ordinance No _____

Exhibit A - Location of Project

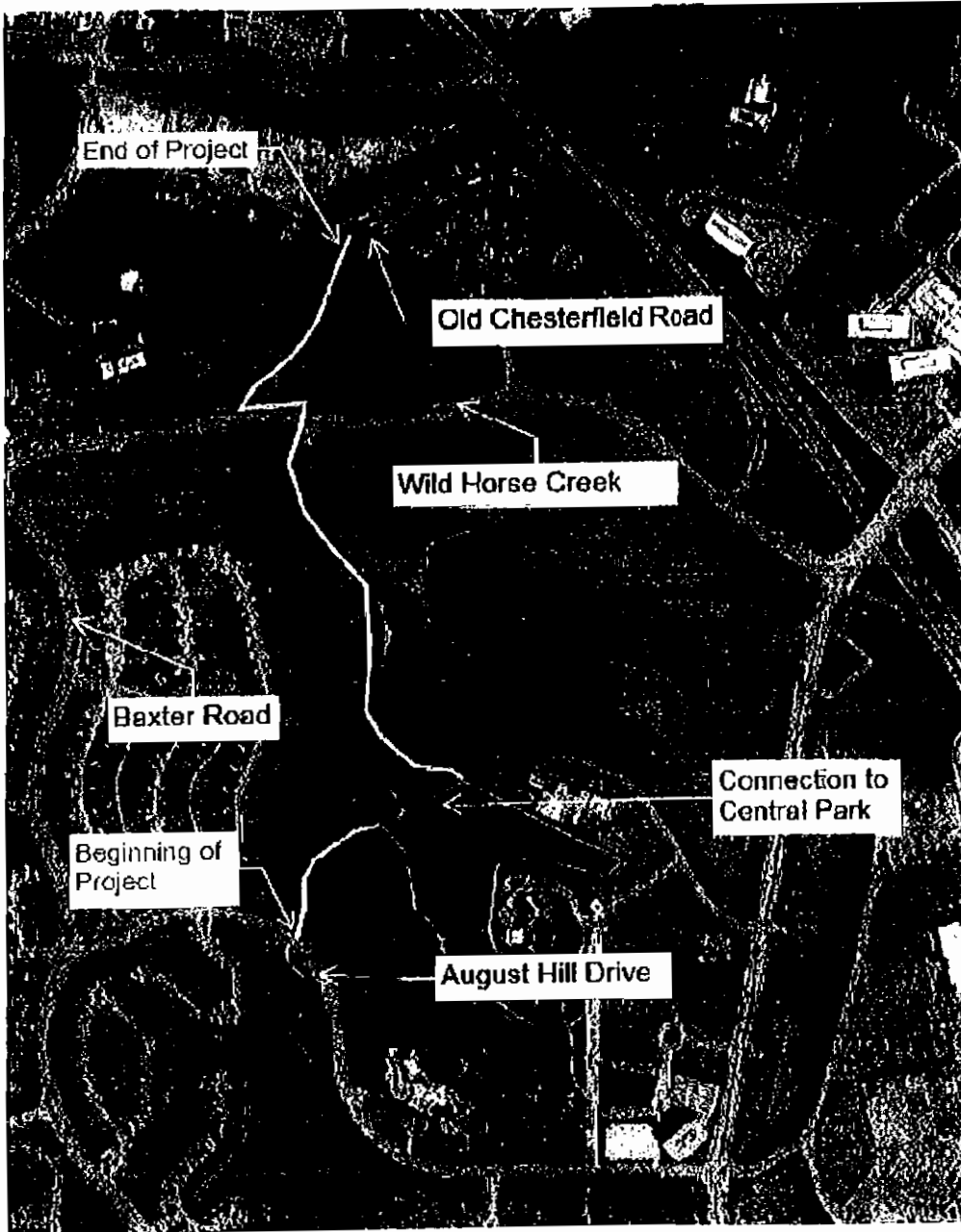


Exhibit B – Project Schedule

Project Description: TAP-5410(630)

The improvement contemplated by this agreement will extend the existing Riparian Trail an additional 0.9 miles and will pass through natural areas beginning at Old Chesterfield Road and extending to August Hill Drive, running parallel to Baxter Road. A pedestrian crossing, including crosswalks, curb ramps and pedestrian buttons and signals will be installed at Wild Horse Creek Road.

PROJECT DEVELOPMENT SCHEDULE <i>*Many stages can occur concurrently.</i>			
Activity Description	Start Date (MM/YYYY)	Finish Date (MM/YYYY)	Time Frame (Months)
Receive notification letter	10/2017	10/2017	1
Execute agreement (project sponsor and DOT)	11/2017	1/2018	3
Engineering services contract submitted and approved*	3/2018	6/2018	3
Obtain environmental clearances (106, CE-2, etc.)	6/2018	8/2018	2
Public meeting/hearing	8/2018	9/2018	1
Develop and submit preliminary plans	7/2018	11/2018	5
Preliminary plans approved	11/2018	2/2019	3
Develop and submit right-of-way plans	6/2018	8/2018	2
Review and approval of right-of-way plans	8/2018	10/2018	2
Submit and receive approval for notice to proceed for right-of-way acquisition (A-Date)*	10/2018	12/2018	2
Right-of-way acquisition	1/2019	4/2019	4
Utility coordination	8/2018	12/2018	4
Develop and submit PS&E	2/2019	6/2019	5
District approval of PS&E/advertise for bids*	6/2019	11/2019	5
Submit and receive bids for review and approval	12/2019	2/2020	3
Project implementation/construction	2/2020	12/2020	10
* Finish date must match fiscal year for each milestone shown in bold text.			

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and a Supplemental Agreement is required to modify this date.

Exhibit C - Required Contract Provisions Federal-Aid Construction Contracts

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I General
- II Nondiscrimination
- III Nonsegregated Facilities
- IV Davis-Bacon and Related Act Provisions
- V Contract Work Hours and Safety Standards Act Provisions
- VI Subletting or Assigning the Contract
- VII Safety, Accident Prevention
- VIII False Statements Concerning Highway Projects
- IX Implementation of Clean Air Act and Federal Water Pollution Control Act
- X Compliance with Governmentwide Suspension and Debarment Requirements
- XI Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1 Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services)

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2 Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance

of workers under the contractor's immediate supervision and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor. During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27, and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27, and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

I. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant

to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated.

in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time

clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside

in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebale, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress.

expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of

the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the

overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages.

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116)

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of

payrolls, statements of compliance and all other Federal regulatory requirements

b "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract

2 The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3 The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract

5 The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts, however, contracting agencies may establish their own self-performance requirements

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts

1 In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635) The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract

2 It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation, or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation, or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented,

Shall be fined under this title or imprisoned not more than 5 years or both "

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid

construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows.

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements

X CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

h. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with

commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default

b Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2 Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold

g A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring

that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1 The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency

2 Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal

XI CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement

b If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-L.L.I., "Disclosure Form to Report Lobbying," in accordance with its instructions

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1 During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except

a To the extent that qualified persons regularly residing in the area are not available.

b For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2 The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3 The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4 If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5 The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6 The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

MEMORANDUM



DATE: February 15, 2018

TO: James A. Eckrich, PE – Public Works Director/City Engineer

FROM: Dennis Welker, PE – Civil Engineer

RE: Riparian Trail (August Hill Dr. to Old Chesterfield Rd.) – TAP-5410(630)

City Project No. 2018-PW-06

In June 2017, the City applied for grant funding from the Transportation Alternatives Program (TAP) for the engineering and construction associated with the Riparian Trail – August Hill Drive to Old Chesterfield Road. In September 2017 the City was notified that it had been awarded the grant and was provided a Program Agreement, which must be executed by the City and the Missouri Department of Transportation (MoDOT). It is anticipated that authorization to execute the Program Agreement will be approved by the City Council in March 2018. Per the Program Agreement, the federal share for the project will be up to \$988,175.00. The total project cost, including design, right-of-way, and construction is estimated to be \$1,535,655.00.

In December 2017, a Request for Qualifications (RFQ) was released to seek the services of a consulting engineering firm to perform professional engineering services for the project. The City received Letters of Interest and Statements of Qualifications from fifteen (15) firms. The submittals were evaluated based on criteria in the RFQ, which included experience, technical competence, capacity and capability, and past record of performance. The top scoring firm, George Butler Associates (GBA), was selected as the most qualified firm to provide the necessary professional engineering services.

Staff met with GBA for an initial scoping meeting on February 8, 2018. After several days of negotiations, a scope of services was defined with a corresponding fee estimate of \$270,631.54. The fee includes \$182,835.14 for design services (2018) and \$87,796.40 for construction engineering services (2020). The negotiated scope and fee, which are attached, will be included in an Engineering Services Contract. After execution by the City and GBA, the Engineering Services Contract and all supporting documentation will be reviewed by MoDOT.

I recommend requesting authorization to execute an Engineering Services Contract with GBA in an amount not to exceed \$284,200.00. This includes \$192,000.00 for design services and \$92,200.00 for construction engineering services. Please note that both amounts include a modest approximate 5% allowance for contingency funding to account for any unforeseen conditions and/or additional work. The City will be responsible for up to \$99,470.00, or 35% of the total fee.

Please let me know if you have any questions, or need additional information.

Attachments: Riparian Trail Project – Scope of Services and Fee Proposal

cc: File 2016-PW-05

ATTACHMENT A – SCOPE OF SERVICES

Chesterfield Riparian Trail (August Hill Drive to Old Chesterfield Road)
TAP-5410(630)

WHEREAS, the LOCAL AGENCY has been awarded Transportation Alternatives Program Funds (TAP) to offset the cost of the extension of the Chesterfield Riparian Trail from August Hill Drive to Old Chesterfield Road, which includes, but is not necessarily limited to, full topographic survey, geotechnical investigations, preparation of conceptual plans, preliminary plans, right of way plans, final plans, job special provisions, construction cost estimate, public involvement, environmental and historic preservation services/permits, right of way/easement exhibits, legal descriptions, bid documents, utility coordination/permits, drainage design and MSD permitting, limited landscape architecture, assisting with bid and award, and providing construction support and full-time construction inspection, for approximately 4,752 linear feet of trail construction, (the “Project”); and

ARTICLE I – BASIC PRELIMINARY ENGINEERING SERVICES

The ENGINEER shall provide professional engineering services for the Project, which shall include, but not be limited to, the following basic services:

TASK 1 – SURVEY: Completed by Civil Design Inc.

- 1.1 Conceptual Alignment Study Basemap:
 - A. Gather flown data and GIS from the LOCAL AGENCY to create a working basemap for the conceptual alignment study. The LOCAL AGENCY will provide a working surface in the form of a TIN or DTM, utility and property information in CAD, aerial photography for the project area, and contours in CAD.

- 1.2 Topographic Survey, as necessary for preliminary, right of way and final design plans, at a minimum will include:
 - A. All structures, including building structures, retaining walls, drainage structures, fences, guardrail, or any other physical objects that would be in conflict with the proposed trail improvements.
 - B. Existing pavements, type of pavement, top back of curb, flowline of curb, type of curb, driveway entrances, sidewalks, steps, or any other roadway items that would be in conflict with the proposed improvements.
 - C. Break lines, including top of slopes and toe of slopes.
 - D. Missouri One-Call request for utility locates.
 - E. Survey all visible and flagged utilities, and determine flow line elevations of all storm and sanitary sewer structures.
 - F. Order Title Reports for four (4) properties.
 - G. Property reconstruction strip map of all parcels or tracts adjacent to project limits.
 - H. Acquiring recorded deeds from the St. Louis County Recorder’s Office.
 - I. Establishing horizontal and vertical control points (at a maximum interval of 1,000 feet) that can be used for construction of the project.
 - J. Tie vertical control to USGS, NGS, or MoDOT Benchmarks.

- K. Cross section existing ground every fifty (50) feet with a cross section width necessary for the trail design and production of construction documents.
- L. Survey all drainage ditches, creeks and channels upstream and downstream of the proposed trail crossing, a minimum of 100 feet each direction.
- M. Tree masses and trees with a diameter greater than 6", including type of tree.
- N. Survey basemap created in Microstation.
- O. Prepare easement exhibits and legal descriptions for up to four (4) taking areas.
- P. Staking for geotechnical boring locations.

TASK 2 – GEOTECHNICAL INVESTIGATION:

Scope provided in attached subconsultant agreement for TSI.

TASK 3 – DETAILED DESIGN:

Engineer shall undertake the following to develop the preliminary engineering phase:

- 3.1 **Conceptual Alignment Study** – this phase will evaluate alternative alignment locations for the trail before determining a preferred alignment to proceed with conceptual design plans, and will include, but not necessarily be limited to:
 - A. Project Kickoff meeting with the LOCAL AGENCY.
 - B. Design criteria memorandum. St. Louis County Department of Highways and Traffic design standards, details, and specifications will apply, except as modified by Chesterfield ordinance or policy. Trail will be designed in accordance with current ADA guidelines.
 - C. Coordinate concept basemapping with surveyor.
 - D. Gather developer data and incorporate into basemap.
 - E. The LOCAL AGENCY shall furnish GBA with available traffic information and accident data within the project limits, as necessary.
 - F. Concept alternatives study will be separated into three segments:
 - a. August Hill Drive to Central Park spillway
 - b. Central Park spillway to Wild Horse Creek Road
 - c. Wild Horse Creek Road to Old Chesterfield Road
 - G. Study shall include up to two (2) alternatives for each segment.
 - H. Concepts will indicate potential locations of retaining walls, culvert crossings, bridge crossings, and/or raised boardwalk crossings.
 - I. Landscape Architect will identify areas of tree protection, new plantings and possible mitigation areas.
 - J. Landscape Architect will review City ordinances and conservation easement documents for applicable requirements.
 - K. Strip maps will be created for the alternatives to be presented and discussed with the LOCAL AGENCY at a project meeting. Strip maps will show alignments with corresponding existing ground profiles and existing contours.

- L. One alternative shall be selected by the LOCAL AGENCY for conceptual design.
- M. Field check will be arranged with the LOCAL AGENCY to discuss design features in the project area and to verify existing topography.

3.2 **Conceptual Design Plans** – this phase will develop a set of 30% plans for one preferred trail alignment.

- A. Title sheet with location sketch, index of sheets, length of project, project description, MSD "P" reference number and base map number.
- B. Typical sections with existing sections, station limits of each typical section, location of the design centerline, trail widths, cross slopes, and fill & cut slopes.
- C. The plan view English scale shall be 1"= 20' horizontal and extend at least 100 feet beyond the project limits. The profile view English scale shall be 1"=20' horizontal, and 1"=5' vertical.
- D. Conceptual storm sewer design with drainage area map, storm sewer improvement recommendations, conceptual construction cost estimate, and MSD review coordination.
- E. Stormwater BMP evaluation with BMP drainage area maps, conceptual BMP design, conceptual construction cost estimate, and MSD review coordination.
- F. Conceptual traffic signal layout and Wild Horse Creek Road crossing to be shown on plan/profile sheets.
- G. Cross sections every 50 feet at a scale of 1" =10' will show existing ground, proposed features, and basic elevation labeling.
- H. Prepare the construction cost estimate.
- I. The 30% conceptual plans shall be submitted to the LOCAL AGENCY for review and approval.
- J. Address LOCAL AGENCY comments and resubmit one time, if necessary.
- K. Utility notification and request for facility maps.
- L. A public meeting will be held after approval of the conceptual plans. The LOCAL AGENCY will advertise for the public meeting and will set a date, time and place. GBA's representative will attend the meeting. GBA shall provide exhibits and handouts as requested by the LOCAL AGENCY. The LOCAL AGENCY will be responsible for all other documents.
- M. Quality control, project administration, and two status meetings.

3.3 **Preliminary Design Plans** – this phase will develop a set of 60% plans, including, but not necessarily limited to:

- A. Update title sheet as needed.
- B. Update typical sections as needed.
- C. One alternative selected by the LOCAL AGENCY for conceptual design will be advanced with the preparation of plan sheets to show critical design items and labeling of existing improvements.
- D. GBA may need to review preliminary cross sections sufficiently to make a cost comparison between using retaining walls versus acquiring additional right of way for proposed wall locations.

- E. Type, Size, Location study for pedestrian bridge(s), as determined necessary for the preferred trail alignment. Up to three potential bridge locations will be evaluated during the conceptual alignment study.
- F. Cross sections will be refined to include existing right of way, proposed takings, and earthwork quantities.
- G. The preliminary plans shall also include the proposed easement and right of way taking limits, property lines and ownerships, a preliminary signal plan sheet, and critical design items.
- H. Preliminary storm sewer design with storm sewer improvement recommendations, preliminary construction cost estimate, and MSD review coordination.
- I. Preliminary plan sheets should indicate construction staging with regards to construction access points, material and equipment staging areas, stockpile locations, and any temporary easements necessary for such staging work.
- J. Preliminary BMP design and MSD review coordination.
- K. Preliminary Planting plan by the project landscape architect to include plant palette, planting areas and locations of plant material, planting plans and details.
- L. Landscape Architect will develop project planting specifications.
- M. GBA shall update the construction cost estimate. The LOCAL AGENCY shall prepare the right of way estimate based on the right of way requirements furnished by GBA.
- N. The 60% preliminary plans shall be submitted to the LOCAL AGENCY for review and approval.
- O. Address LOCAL AGENCY comments and resubmit one time, if necessary.
- P. Submit plans to MoDOT LPA liaison, St. Louis County, and coordinate as needed.
- Q. Utility plans will be sent to the various utilities with request for notice of conflicts. Coordinate with the various utilities, as needed, to determine conflicts, possible conflict avoidance measures, and to obtain plans of adjustment from affected utilities. Revise trail plans as necessary during this process.
- R. Quality control, project administration, and two status meetings.

3.4 **Right of way Design Plans** – the main purpose of this phase is to develop a set of 70% plans indicating right of way taking necessary for construction of the project, to be used during right of way negotiations, and will include, but not necessarily be limited to:

- A. Right of way plans shall show alignment, geometric design, removal of improvements, drainage facilities, property lines and ownership, other land survey information, street lines and existing right of way and easements.
- B. Plans will also include any details which will require additional right of way or easements during the construction phase of the project such as bypasses, temporary construction access, temporary erosion control, etc.
- C. Right of way plans include title sheet, typical sections, right of way taking table sheet, plan and profile sheets, and cross sections of the trail.
- D. Areas of new right of way, permanent easements and/or temporary easements required from each individual property owner may be shown in tabular form on the respective sheets.

- E. The LOCAL AGENCY will prepare right of way appraisals and secure the necessary right of way by negotiation or condemnation, if necessary, for construction of this project.
- F. Prepare easement exhibits and legal descriptions for up to four (4) taking areas; per County standard.
- G. The 70% right of way plans shall be submitted to the LOCAL AGENCY for review and approval.
- H. Address LOCAL AGENCY comments and resubmit one time, if necessary.
- I. Submit plans to MoDOT LPA liaison, St. Louis County, utilities, and coordinate as needed.
- J. Quality control, project administration, and one status meeting.

3.5 **Final Design Plans** – this phase will develop a set of 100% plans, job special provisions, and engineers estimate (PS&E), including, but not necessarily limited to:

- A. Prepare storm water drainage and hydraulic studies and detailed drainage plans, for review and approval by the LOCAL AGENCY and MSD before inclusion in the final design plans
- B. Furnish design plans, which show approved right of way, drainage facilities, cross sections and trail design features, for coordination with the utility companies' existing facilities, and proposed plans of adjustments. GBA shall revise plans to adhere to all utility company standards and requirements, and make necessary utility plan revisions as become necessary during final plan design and approvals.
- C. Prepare final plans and details for any required specialty items: traffic signals, lighting, signing, striping/markings, retaining walls, pedestrian bridge foundations, curb ramp details, furnishings, if warranted. After preliminary approval of the specialty items, final plans shall be submitted to the LOCAL AGENCY for final review and approval.
- D. Structural engineering services for the pedestrian bridges will include foundation design for a prefabricated truss type bridge, with reactions to be provided by the manufacturer. It is assumed that no more than three pedestrian bridges will be required. For the purposes of this scope, individual pedestrian bridge design scope may be substituted for design of a raised, wooden plank boardwalk structure.
- E. Final plans will include a retaining wall plan and profile for each wall, with general wall details and notes included. Retaining walls, if required, are assumed to be modular block with the design to be performed by others. Any cast in place concrete or other walls requiring structural design will be considered additional services.
- F. Final plans will include a detailed traffic control staging plan with an outline for construction staging conforming to the requirements of the MUTCD. This plan will include details on construction access points, material and equipment staging areas, and stockpile locations.
- G. Prepare detailed temporary erosion control plans for inclusion in the final design plans and Stormwater Pollution Prevention Plan for inclusion in the project specifications.

- H. Final plans will include detailed planting plans, details and specifications addressing all planting areas and comments from preliminary plans.
- I. Prepare computations for all design plan quantities. All plan quantities shall be shown on a summary of quantities sheet.
- J. Prepare for review and approval by the LOCAL AGENCY all necessary Job Special Provisions (JSPs).
- K. Perform Working Day Study.
- L. A final design field check shall be held with GBA and the LOCAL AGENCY representatives prior to completing final design plan quantities. GBA shall make any necessary revisions to the final plans as determined by this design field check.
- M. The 100% final plans, JSPs and engineer's estimate of construction costs shall be submitted to the LOCAL AGENCY for review and approval.
- N. Address LOCAL AGENCY comments and resubmit up to two times, if necessary.
- O. Submit plans to MoDOT LPA liaison, St. Louis County, utilities, and coordinate as needed.
- P. The LOCAL AGENCY shall prepare front-end bid documents.
- Q. Quality control, project administration, and two status meetings.

TASK 4 – FEDERAL, STATE, AND LOCAL PERMITS:

Engineer will correspond with those agencies responsible for issuing any permits, approval, or clearances, whether environmental or otherwise, that might be required. These agencies may include, but are not limited to, MoDOT, Metropolitan Sewer District of St. Louis (MSD), St. Louis County, the U.S. Army Corps of Engineers, and MoDNR. It is understood that if the project should require wetland mitigation or an in-depth environmental or archaeological study, it may be added to the contract by addendum. The initial investigation shall include, but not be limited to, securing the following permits, clearances, or other environmental tasks necessary for construction:

- 4.1 Submit MoDOT Request for Environmental Review (RER) through MoDOT's online system.
- 4.2 Agency coordination – US Fish & Wildlife Service (FWS), Missouri Department of Conservation (MDC), State Historic Preservation Office (SHPO), MSD
- 4.3 Section 106 of the National Historic Preservation Act of 1996.
- 4.4 Preliminary Jurisdictional Waters of the U.S. Delineation.
- 4.5 Corps of Engineers Section 404/401 Nationwide Permit.
- 4.6 Coordination with Corps starting as early as conceptual design.
- 4.7 Prepare Stormwater Pollution Prevention Plan (SWPPP), as necessary for NDPES Land Disturbance permit, to be included in project bid documents. Contractor will be responsible for obtaining NDPES Land Disturbance permit. LOCAL AGENCY will be responsible for submittal and fees to the Missouri Department of Natural Resources (MDNR).

TASK 5 – LIMITED BIDDING PERIOD SERVICES:

- 4.1 GBA shall be available to the LOCAL AGENCY to discuss and interpret the plans and specifications during the bidding phase for up to a total of 12 man-hours.
- 4.2 Attend Pre-Bid Meeting, administered by the LOCAL AGENCY.

ARTICLE II – BASIC CONSTRUCTION ENGINEERING AND INSPECTION SERVICES

The ENGINEER shall provide professional construction engineering and inspection services for the Project, which shall include, but not be limited to, the following basic services:

TASK 1 – CONSTRUCTION ADMINISTRATION AND INSPECTION:

- 1.1 Assist with MoDOT coordination and LPA paperwork.
- 1.2 Work with contractor on behalf of the LOCAL AGENCY.
- 1.3 Attend preconstruction conference.
- 1.4 Full-time inspection of construction activities will include:
 - A. Perform daily site inspections.
 - B. Be present for critical construction operations.
 - C. Provide daily reporting for work performed and quantity tracking according to MoDOT LPA Guidelines for Construction Administration.
 - D. Acceptance or rejection of work being performed according to scope of work in the plans, specifications and governing construction standards.
- 1.5 Prepare change orders.
- 1.6 Inspect and test construction materials according to MoDOT LPA Guidelines for Construction Administration.
- 1.7 Review shop drawings.
- 1.8 Adjust bridge foundation plans for alternate bridge manufacturer if needed.
- 1.9 Participate in final walk-through.
- 1.10 Assist with project close-out documentation.

ASSUMPTIONS / ADDITIONAL DESIGN SERVICES:

- 1. Construction staking for the contractor and/or utility companies are not included in the base scope of work.
- 2. The project is anticipated to qualify for an MoDOT Programmatic Categorical Exclusion (CE). If necessary, GBA can prepare more detailed NEPA-related documents (e.g., letter CE, CE2, EA) as an Additional Service.

3. The project is anticipated to qualify for a Corps Section 404 Nationwide Permit (NWP). If necessary, GBA can prepare and submit an Section 404 Individual Permit application as an Additional Service.
4. If necessary, GBA can perform detailed endangered species and archaeological surveys as an Additional Service.
5. The LOCAL AGENCY will be responsible for submittal and fees to MDNR, along with any subsequent annual renewal fees.
6. Wetland Mitigation is not anticipated or included in the base scope. Mitigation credits may be necessary for disturbance within the Conservation Easement, per Corps requirements.
7. Floodplain development permits and no-rise certification are not anticipated, but can be added as additional services.
8. Design of raised boardwalk systems are not specifically included in the base scope, but may be substituted for pedestrian bridge design on an individual basis.
9. Subsurface utility exploration is not included in the base scope.
10. Structural retaining wall design is not included in the base scope.



City of Chesterfield, Missouri
Riparian Trail
 Design Fee for Engineering Services

CLASSIFICATION	PRI	SRA	ASC	LEAD	SRE	AES1	AES2	AES3	SRT	TEC1	PLS	2MN	GPS	CLI	TOTAL	EXPENSE\$	TOTAL
BASIC DESIGN SERVICES																	
CONCEPTUAL PLANS																	
1 Project Kickoff Meeting and Scoping	1		2		4										7		\$1,264.00
2 Design criteria & memorandum			1		2										3		\$498.00
3 Basemap review			1		2										3		\$498.00
4 Data gathering from City, developer plans, etc.					4			4							8		\$1,028.00
5 Concept alternatives (up to 2 alt's for 3 trail segments)			3		12		12	48							75		\$8,640.00
6 Stripmap Development for each trail segment			1		3			12							16		\$1,877.00
7 Meet w/ City to discuss Alt's and develop preferred option			2		4										6		\$996.00
8 Field check			2		4			4							10		\$1,404.00
9 Title sheet					2			4							6		\$718.00
10 Typical sections					1			4							5		\$563.00
11 Vertical Alignment generation			2		2			8							12		\$1,502.00
12 Plan sheets			2		4		10	56							72		\$7,808.00
13 Cross sections			2		8			20							30		\$3,656.00
14 Drainage																	
15 Drainage Area Map					1	5									8		\$805.00
16 Drainage Design					1	5									8		\$805.00
17 Review of Drainage Plans					1	2									3		\$415.00
18 Geotechnical report coordination					2										2		\$310.00
19 Conceptual construction cost estimate					4			8							12		\$1,436.00
20 Conceptual Plan Submittal					2			2							4		\$514.00
21 Comment Response and Resubmittal					4			8							12		\$1,436.00
22 Coordination w/ Utilities, St. Louis County, MoDOT LPA			1		8			4							13		\$1,836.00
23 Public meeting (one only)			4		4			8							16		\$2,188.00
24 Quality control / project administration / monthly meetings	1		4		8									2	15		\$2,394.00
															0		\$0.00
TASK SUBTOTAL	2	0	27	0	87	12	22	190	0	0	0	0	0	2	342	\$0.00	\$42,591.00



City of Chesterfield, Missouri
Riparian Trail
 Design Fee for Engineering Services

CLASSIFICATION	PRI	SRA	ASC	LEAD	SRE	AES1	AES2	AES3	SRT	TEC1	PLS	2MN	GPS	CLI	TOTAL	EXPENSES	TOTAL
PRELIMINARY PLANS																	
1 Title sheet					1			1							2		\$257.00
2 Typical sections					1			2							3		\$359.00
3 Plan sheets - labels, critical design features			2		4		8	40							54		\$5,956.00
4 Preliminary signal plan			1			14		8							23		\$2,824.00
5 Drainage																	
6 Drainage Design					2	4									6		\$830.00
7 Review of Drainage Plans					1	2									3		\$415.00
## MSD Review Coordination					2	6									8		\$1,090.00
## Type, Size, Location study for pedestrian bridge #1 (w/ hydro coordination)					6	2									8		\$1,190.00
## Type, Size, Location study for pedestrian bridge #2 (w/ hydro coordination)					6	2									8		\$1,190.00
## Type, Size, Location study for pedestrian bridge #3					4	2									6		\$880.00
## Cross Sections			2		4			12							18		\$2,220.00
## Preliminary right-of-way takings					4			4							8		\$1,028.00
## Preliminary construction cost estimate			1		4			8							13		\$1,624.00
## Preliminary Plan Submittal					2			2							4		\$514.00
## Comment Response and Resubmittal					4			8							12		\$1,436.00
## Coordination w/ Utilities, St. Louis County, MoDOT LPA			4		6			8							18		\$2,498.00
## Quality control / project administration / monthly meetings	1		4		8									2	15		\$2,394.00
TASK SUBTOTAL	1	0	14	0	59	32	8	93	0	0	0	0	0	2	209	\$0.00	\$26,705.00
FEDERAL, STATE & LOCAL PERMITS																	
1 Submit MoDOT RER					2		10								12		\$1,630.00
2 Agency coordination (FWS, MDC, SHPO Section 106)					4										4		\$660.00
3 Preliminary Jurisdictional Waters of US Delineation					20				8						28		\$4,340.00
4 Corps of Engineers Section 404/401 Nationwide Permit					18				2						20		\$3,230.00
5 Corps Coordination					8			4							12		\$1,728.00
6 NDPES Land Disturbance permit through MDNR / SWPPP					4		12								16		\$2,220.00
TASK SUBTOTAL	0	0	0	56	0	22	0	4	10	0	0	0	0	0	92	\$0.00	\$13,808.00
RIGHT OF WAY PLANS																	
1 Right of way and taking information shown on plan sheets w/ call labels			2					8							10		\$1,192.00
2 Right of way taking table								2							2		\$204.00
3 Right of way construction cost estimate			1		1			3							5		\$649.00
4 Right of way Plan Submittal					2			2							4		\$514.00
5 Comment Response and Resubmittal					2			4							6		\$718.00
6 Coordination w/ Utilities, St. Louis County, MoDOT LPA			2		4			4							10		\$1,404.00
7 Quality control / project administration / monthly meetings	1		2		4									2	9		\$1,398.00
TASK SUBTOTAL	1	0	7	0	13	0	0	23	0	0	0	0	0	2	46	\$0.00	\$6,079.00



City of Chesterfield, Missouri
Riparian Trail
 Design Fee for Engineering Services

CLASSIFICATION	PRI	SRA	ASC	LEAD	SRE	AES1	AES2	AES3	SRT	TEC1	PLS	2MN	GPS	CLI	TOTAL	EXPENSES	TOTAL
FINAL PLANS																	
1 Title Sheet					1			2							3		\$359.00
2 Typical Sections					1			2							3		\$359.00
3 Plan Sheets - calls, notes, details, ADA details & calls			2		8			16							26		\$3,248.00
4 Final signal plans and quantities			1			8		12							21		\$2,452.00
5 Bridge Design #1 (w/ hydro coordination)					8	14				7					29		\$3,725.00
6 Bridge Design #2 (w/ hydro coordination)					8	14				7					29		\$3,725.00
7 Bridge Design #3					6	14				7					27		\$3,415.00
8 Signing, striping, trail appurtenances plan			2		2			12							16		\$1,910.00
9 Retaining wall plan/profile and detail plan			2		2			16							20		\$2,318.00
10 Erosion Control plan			1		1			6							8		\$955.00
11 Construction Details / ADA Ramp Details			1		1			8							10		\$1,159.00
12 Geometric and project control sheets			0		1			4							5		\$563.00
13 Traffic Control Plan			1		1			4							6		\$751.00
14 Drainage - storm sewers																	
15 Drainage Details					2	4									6		\$830.00
16 Drainage Profiles					1	4									5		\$675.00
17 MSD Review Coordination					2	6									8		\$1,090.00
18 Final Quantities and Quantity Sheets			2		6			24							32		\$3,754.00
19 Cross Sections			2		2			8							12		\$1,502.00
20 Final construction cost estimate			1		2			2							5		\$702.00
21 Job Social Provisions			2		8										10		\$1,616.00
22 Working Day Study			1		2										3		\$498.00
23 Final Plan Submittal			1		2			2							5		\$702.00
24 Comment Response and Resubmittal					6			14							20		\$2,358.00
25 Coordination w/ Utilities, St. Louis County, MoDOT LPA			4		8			8							20		\$2,808.00
26 Quality control / project administration / monthly meetings	2		4		12									2	20		\$3,282.00
TASK SUBTOTAL	2	0	27	0	93	64	0	140	0	21	0	0	0	2	349	\$0.00	\$44,756.00
LIMITED BIDDING & CONSTRUCTION PERIOD SERVICES FOR DESIGN STAFF																	
1 Answer Bidder questions			2		10										12		\$1,926.00
2 Attend Pre-Bid Meeting			2		2										4		\$686.00
TASK SUBTOTAL	0	0	4	0	12	0	0	0	0	0	0	0	0	0	16	\$0.00	\$2,612.00
SUBCONSULTANTS																	
1 Surveying (plus mileage)															0	\$27,638.36	\$27,638.36
2 Title Reports (4 properties)															0	\$2,400.00	\$2,400.00
3 Water Quality Assessment															0	\$0.00	\$0.00
4 Landscaping by a certified L.A.															0	\$3,956.78	\$3,956.78
5 Peer Review of Trail Design															0	\$0.00	\$0.00
6 Geotechnical															0	\$12,290.00	\$12,290.00
TASK SUBTOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$46,284.14	\$46,284.14
DESIGN SERVICES TOTAL	6	0	79	56	264	130	30	450	10	21	0	0	0	8	1,054	46,284	\$182,835.14



City of Chesterfield, Missouri
Riparian Trail
 Fee for Full-Time Construction Inspection Services

CLASSIFICATION	PRI	SRA	ASC	LEAD	SRE	AES1	AES2	AES3	SRT	CO3	PLS	2MN	GPS	CLI	TOTAL	EXPENSES	TOTAL																	
BASIC DESIGN SERVICES																																		
FULL-TIME CONSTRUCTION INSPECTION																																		
1 Full-time inspection and documentation																0	\$0.00																	
SWPPP Weekly Inspection										24					24		\$2,400.00																	
Site Construction Inspections			4	40						476					520		\$54,952.00																	
Reporting and coordination	2			24						120					146		\$16,496.00																	
2 Attend Pre-Construction Meeting				2	2										4		\$640.00																	
2 Contractor RFI			1	4	8										13		\$2,088.00																	
3 Shop Drawing Review			1	2	8										9		\$1,448.00																	
1 Bridge Shop Drawing Review and foundation adjustments					4	8									12		\$1,680.00																	
2 Bridge Contractor RFI					1	1									2		\$285.00																	
TASK SUBTOTAL																2	0	6	72	21	9	0	0	0	0	620	0	0	0	0	0	730	\$0.00	\$79,969.00
SUBCONSULTANTS																																		
1 Geotechnical																0	\$0.00																	
2 Construction Materials Testing																0	\$7,827.40																	
TASK SUBTOTAL																0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$7,827.40	\$7,827.40
CONSTRUCTION SERVICES TOTAL																2	0	6	72	21	9	0	0	0	0	620	0	0	0	0	730	7,827	\$67,796.40	

**FIRST AMENDMENT TO
AGREEMENT RE: CONTRIBUTION OF LAND TO THE CITY OF CHESTERFIELD,
MISSOURI
FOR ITS PARKS AND TRAILS SYSTEM**

FIRST AMENDMENT (“Amendment”) made as of this ___ day of _____, 2017, by and between the CITY OF CHESTERFIELD, MISSOURI, a municipal corporation (“City”), and CHESTERFIELD VILLAGE INC., a Missouri corporation (“CVI”). Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement (as that term is defined below):

RECITALS

- A. City and CVI entered into that certain Agreement Re: Contribution of Land to the City of Chesterfield, Missouri for its Parks and Trail System dated August 2, 2010 (“Agreement”), whereby CVI agreed to contribute certain tracts of land to the City to become part of the City’s parks and trails system, and for the City to connect Lydia Hill Drive to August Hill Drive;
- B. CVI completed and City accepted such contributions;
- C. City has since completed the connection of Lydia Hill Drive to August Hill Drive;
- D. CVI now desires to contribute to the City additional tracts of land and a bridge not included in the Agreement;
- E. CVI further desires to contribute the Sculpture (as that term is defined in Section 1) to the City; and
- F. The parties now wish to amend the Agreement.

AGREEMENT

NOW, THEREFORE, the Agreement is hereby amended as follows:

1. Definitions. As used in this Amendment, the following terms shall have the following meanings.
 - A. “Additional Park and Trail Properties” means the following tracts of land, each depicted on Exhibit A attached hereto and incorporated herein by reference:
 - i. Parcel C121 Lot 2, containing approximately 1.0 acres, as described in Exhibit A-3.
 - ii. Parcel C220A, containing approximately 8.3 acres, as described in Exhibit A-5.
 - iii. A portion of Parcel C252W, containing approximately 3.3 acres, as described in Exhibit A-6.

- iv. A portion of Parcel C254W, containing approximately 2.5 acres, as described in Exhibit A-7.
 - v. Parcel C148-C, containing approximately 0.5 acres, as described in Exhibit A-8.
 - vi. Parcel C254CS, containing approximately 1.4 acres, as described in Exhibit A-9.
- B. “Bridge Property” means that certain portion of Chesterfield Ridge Center Drive, including its existing bridge, containing approximately 0.7 acres and as described in Exhibit A-15 and depicted on Exhibit A.
- C. “Contributed Property” means the Additional Park and Trail Properties, the Bridge Property, and the Sculpture.
- D. “Sculpture” means the sculpture located on Parcel C121 Lot 2, known as The Awakening.
2. Amendments to the Agreement. Recital F of the Agreement is hereby amended by adding the Additional Park and Trail Properties to the definition of “Trail Property,” “Park Sites,” and “Park and Trail Properties.”
3. Additional Properties to be Contributed.
- A. CVI shall at Closing (as defined below) convey the Contributed Property to the City.
 - B. Upon execution of this Amendment, CVI shall order a title insurance commitment from St. Louis Title, LLC (the “Title Company”) covering the Additional Park and Trail Properties and the Bridge Property, which commitment(s) shall be sent to City and to CVI upon issuance. Within fifteen (15) days following the receipt of the commitment by City, City shall notify CVI in writing of any objections it has to the titles, and CVI shall have fifteen (15) days thereafter to remove or otherwise satisfy City as to the objections raised. City will take title to the Additional Park and Trail Properties and the Bridge Property subject to the Conservation Easement encumbering all or portions of the Additional Park and Trail Properties and the Bridge Property as shown on and described in that certain instrument recorded in Plat Book 352, Pages 93 through 95 of the St. Louis County Records (the “Conservation Easement”). If City’s other objections are not satisfied within said fifteen (15) day period, City may refuse to accept all of the Additional Park and Trail Properties and the Bridge Property or any individual property, or waive its objections and accept all or any of the Additional Park and Trail Properties and the Bridge Property subject to the title exceptions, including the Conservation Easement (“Permitted Exceptions”). CVI will exercise commercially reasonable efforts (but shall not be obligated to expend any funds) to satisfy City’s objections.
 - C. Title to the Additional Park and Trail Properties and the Bridge Property shall be marketable in fact, shall be conveyed by special warranty deed free of all liens and

encumbrances, and shall be insured in a mutually agreeable amount by the Title Company, at CVI's expense, subject only to existing utility easements, rights of way of record and Permitted Exceptions.

- D. Title to the Sculpture shall be conveyed to the City by a bill of sale in a form satisfactory to the parties.
4. Limitation on Sculpture Relocation. The contribution of the Sculpture shall be subject to the condition that the Sculpture shall not, at any time, be sold, transferred, exchanged, loaned, disposed of, or moved from Parcel C121 Lot 2. If the City sells, transfers, exchanges, loans, disposes of, or proposes to move the Sculpture from Parcel C121 Lot 2, then all of City's right, title and interest in and to the Sculpture and Parcel C121 Lot 2 will automatically revert to CVI. The terms and conditions of this Section will be incorporated in the bill of sale for the sculpture and deed for Parcel C121 Lot 2 and expressly survive Closing.
5. Conditions Precedent to Closing. Closing of the transactions described herein and the attendant rights and obligations of the parties hereto shall be conditioned upon the occurrence of each of the following events:
- A. CVI's execution of a special warranty deed(s) conveying the Additional Park and Trail Properties and the Bridge Property to City, and City's acceptance of the conveyance provided therein;
 - B. CVI's execution of a bill of sale conveying the Sculpture to City, and City's acceptance of the conveyance provided therein.
6. Closing. Closing ("Closing") of the transactions described in this Amendment by and between CVI and the City shall take place at the office of the Title Company at 10:00 a.m. on the thirtieth (30th) day following the date on which the City approves in writing the title insurance commitments ordered pursuant to Section 3.
7. Charitable Donation. The parties agree that an amount equal to the fair market value of the Contributed Property shall be characterized as a charitable contribution from CVI to City, and that CVI may, in its discretion, deduct the value of the Contributed Property on its income tax returns in accordance with federal statutes and regulations. In furtherance thereof, CVI shall, at its sole cost and expense, order an appraisal (the "Appraisal") from an appraiser (the "Appraiser") of CVI's choosing certified and/or licensed by the State of Missouri to determine the current fair market value of the Contributed Property (the "Appraised Value"), and upon receipt of a copy of the Appraisal, City shall provide CVI an acknowledgement (the "Donee Acknowledgement") on Form 8283 (Rev. December 2006) – Noncash Charitable Contributions of the Department of Treasury, Internal Revenue Service ("Form 8283"). City shall not be required to sign and deliver the Donee Acknowledgement unless (i) Form 8283 has been fully completed and signed by both CVI and the Appraiser, and (ii) City is reasonably satisfied that the Donee Acknowledgement is in compliance with federal statutes and regulations.

8. As-Is. City has or, prior to Closing, will conduct its own independent inspection of the Contributed Property. CVI disclaims and City acknowledges that no warranties or representations of any kind or character, either express or implied, have been or are being made by CVI or relied upon by City with respect to the maintenance, repair, condition, design or marketability of the Contributed Property, or any portion thereof, including, without limitation, (a) any implied or express warranty of fitness for a particular purpose, (b) the compliance of the Contributed Property with governmental regulations, and (c) any environmental matter, it being the express intention of CVI and City that the Contributed Property will be transferred to and accepted by City in its present condition and state of repair, "as is" and "where is", with all faults. City represents that it is relying solely on its own expertise and that of City's consultants in accepting the Contributed Property. Further, City, for City and City's successors and assigns, hereby releases CVI from and waives any and all claims and liabilities against CVI for, related to, or in connection with, any environmental or physical condition at the Contributed Property, including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous substances (as defined in applicable federal, state and/or local statutes, laws, ordinances, rules and regulations) in, at, about or under the Contributed Property.
9. Acknowledgement of Waivers. City acknowledges and agrees that the waivers, releases and other provisions contained in this Section were a material factor in CVI's agreement to contribute the Contributed Property to City, and that CVI is unwilling to contribute the Contributed Property to City unless CVI is released as expressly set forth above. City, with City's counsel, has fully reviewed the disclaimers and waivers set forth in this Amendment, and understands their significance and effect thereof. The terms and conditions of this Section will expressly survive Closing.
10. Ratification. City and CVI hereby ratify and confirm the Agreement as modified hereby and affirm that the Agreement remains in full force and effect.
11. Conflicting Provisions. If there is any conflict between the terms of this Amendment and the terms of the Agreement, this Amendment shall control.
12. Execution. This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. For purposes of this Amendment, a facsimile or email signature shall be deemed an original signature.
13. Authority. CVI represents to the City that execution of this Amendment has been duly authorized by its board of directors, and City represents to CVI that execution of this Amendment has been duly authorized by an ordinance passed by the City Council of the City.

[SIGNATURE PAGE FOLLOWS]

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

CVI:

CHESTERFIELD VILLAGE INC., a Missouri corporation

By: _____
Ami E. Kutz, Vice President

Date: _____

CITY:

CITY OF CHESTERFIELD, MISSOURI, a municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

DRAFT

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2017, before me appeared Ami E. Kutz, to me personally known, who, being duly sworn did say that she is the Vice President of CHESTERFIELD VILLAGE INC., a corporation of the State of Missouri, and that said instrument was signed in behalf of said corporation, by authority of its Board of Directors; and said Ami E. Kutz acknowledged said instrument to be the free act and deed of said corporation.

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

Notary Public

My Commission Expires:

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2017, before me appeared _____, to me personally known, who, being duly sworn did say that she/he is the _____ of the CITY OF CHESTERFIELD in the State of Missouri, a municipal corporation, and that said instrument was signed in behalf of said City, by authority of its City Council; and said _____ acknowledged said instrument to be the free act and deed of said City.

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

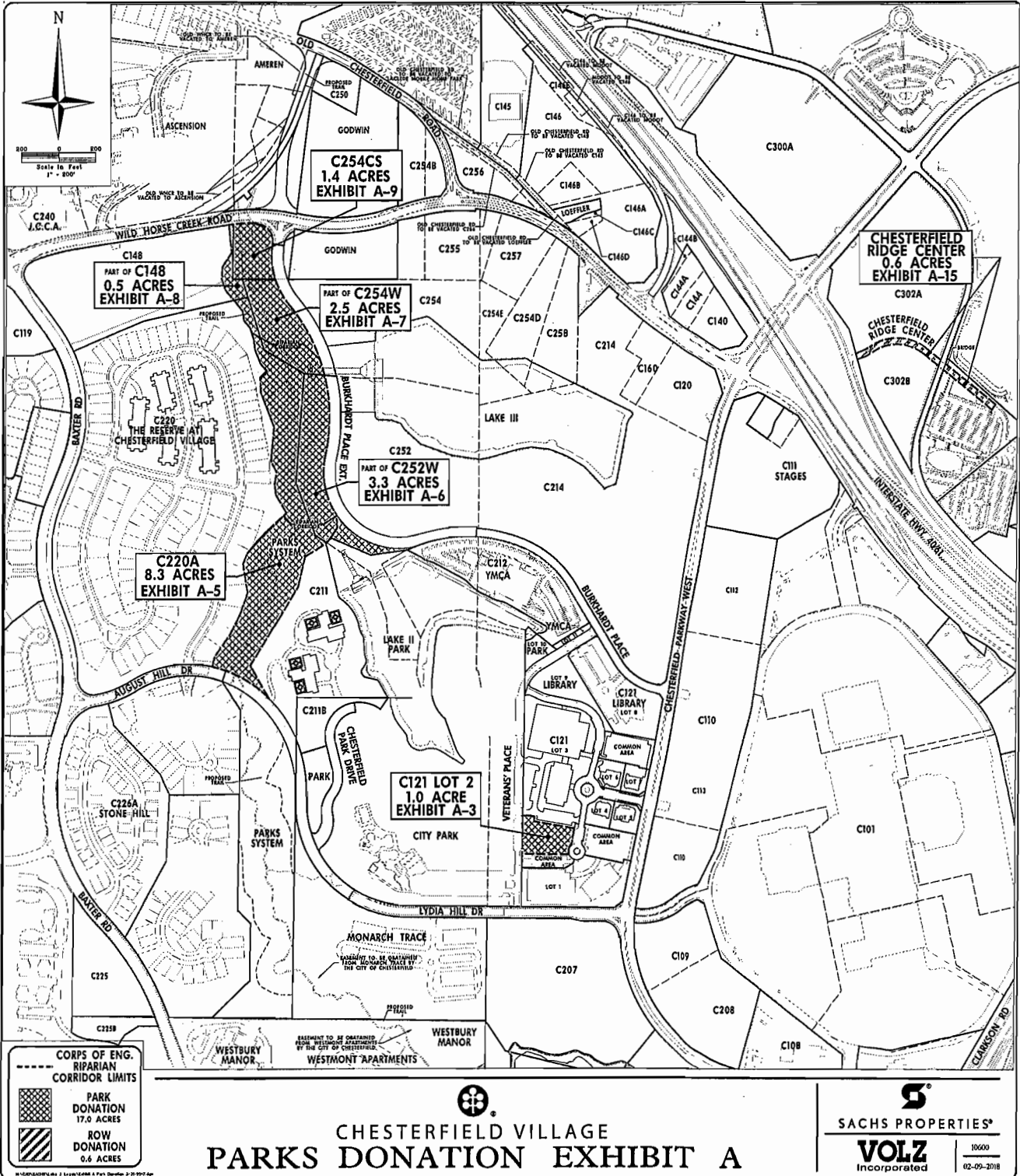
Notary Public

My Commission Expires:

EXHIBIT A

DEPICTION OF PROPERTIES

DRAFT



N



Scale In Feet
1" = 800'

C148
PART OF
0.5 ACRES
EXHIBIT A-8

C254CS
1.4 ACRES
EXHIBIT A-9

PART OF **C254W**
2.5 ACRES
EXHIBIT A-7

PART OF **C252W**
3.3 ACRES
EXHIBIT A-6

C220A
8.3 ACRES
EXHIBIT A-5

C121 LOT 2
1.0 ACRE
EXHIBIT A-3

CHESTERFIELD RIDGE CENTER
0.6 ACRES
EXHIBIT A-15

CORPS OF ENG.
RIPARIAN
CORRIDOR LIMITS

PARK
DONATION
17.0 ACRES

ROW
DONATION
0.6 ACRES

CHESTERFIELD VILLAGE
PARKS DONATION EXHIBIT A

SACHS PROPERTIES[®]

VOLZ
Incorporated

10600
02-09-2018

11/06/2018 11:00 AM 1:11 PM 11/06/2018 11:00 AM 1:11 PM

EXHIBIT A-3

PARCEL C121 LOT 2 LEGAL DESCRIPTION

DRAFT

EXHIBIT A-5

PARCEL C220A LEGAL DESCRIPTION

DRAFT

EXHIBIT A-6

PARCEL C252W LEGAL DESCRIPTION

DRAFT

EXHIBIT A-7

PARCEL C254W LEGAL DESCRIPTION

DRAFT

EXHIBIT A-8

PARCEL C148 LEGAL DESCRIPTION

DRAFT

EXHIBIT A-9

PARCEL C254CS LEGAL DESCRIPTION

DRAFT

EXHIBIT A-15

BRIDGE PROPERTY LEGAL DESCRIPTION

DRAFT



690 Chesterfield Pkwy W • Chesterfield MO 63017-0760
Phone: 636-537-4000 • Fax 636-537-4798 • www.chesterfield.mo.us

I, Judith A. Naggiar, City Clerk for the City of Chesterfield, do hereby certify that the document attached hereto is a full, true and correct copy of Ordinance No. 2607 adopted by City Council on May 17, 2010, at an official meeting of said City Council. I further certify that the signatures contained therein are genuine signatures of persons authorized to act on behalf of the City of Chesterfield.

In witness whereof, I have hereunto set my hand as City Clerk this 24th day of May, 2010.

A handwritten signature in cursive script, reading "Judith A. Naggiar", is written over a horizontal dashed line.

Judith A. Naggiar, City Clerk

BILL NO. 2791

ORDINANCE NO. 2607

AN ORDINANCE APPROVING AN AGREEMENT TO ACCEPT THE DONATION OF LAND FOR THE RIPARIAN TRAIL AND PARKS, TO AUTHORIZE THE EXPENDITURE OF FUNDS TO BUILD A ROAD TO CONNECT LYDIA HILL DRIVE AND AUGUST HILL DRIVE AND TO PROVIDE DEVELOPMENT CREDITS FOR THE DONATED LAND

WHEREAS, the City of Chesterfield wishes to provide recreational trail and park facilities for the use of the residents, and is desirous of entering into an agreement, to accept the donation of land for the construction of the Riparian Trail and to add land to the City's Parks; and

WHEREAS, the City of Chesterfield desires to connect Lydia Hill Drive and August Hill Drive in order to improve the flow of traffic within the City of Chesterfield; and

WHEREAS, Proposition P Bond proceeds are available to pay for the City's costs to connect Lydia Hill Drive and August Hill Drive; and

WHEREAS, the City can modify certain definitions in its ordinances to provide development credits for the donated lands.

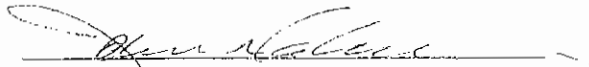
NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The Mayor of the City of Chesterfield is hereby authorized to sign an Agreement Re: Contribution of Land to the City of Chesterfield, Missouri for its Parks and Trails System, in a form similar to that which is attached hereto and marked Exhibit 1 and undertake all other actions, including connecting Lydia Hill Drive and August Hill Drive, as are needed to fulfill the City's obligations under the agreement.

Section 2. City Staff is authorized to expend up to One Million Two Hundred Ninety-Two Thousand Dollars (\$ 1,292,000.00) from funds remaining within the Parks Construction Fund to pay for the City's cost to connect Lydia Hill Drive and August Hill Drive.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 17th day of August, 2010.


MAYOR

ATTEST:


CITY CLERK

FIRST READING FILED: 8/17

**AGREEMENT RE: CONTRIBUTION OF LAND
TO THE CITY OF CHESTERFIELD, MISSOURI
FOR ITS PARKS AND TRAILS SYSTEM**

AGREEMENT made as of this ____ day of _____, 2010, by and between THE CITY OF CHESTERFIELD, MISSOURI, a municipal corporation ("City"), and CHESTERFIELD VILLAGE INC., a Missouri corporation ("CVI").

RECITALS:

A. CVI and its affiliates (collectively, "CVI") has and is continuing to develop a large mixed-use urban area known as Chesterfield Village located wholly within the limits of City. CVI currently owns properties identified on Exhibit B and may hereafter acquire properties (collectively, the "CVI Properties").

B. City's parks and trails system includes City's existing Central Park and Lake No. 2.

C. CVI desires to contribute properties identified herein to the City to become part of City's evolving parks and trails system (sometimes referred to herein as "Park Sites").

D. It is contemplated but not required that other properties will subsequently be contributed to the City's parks and trails system by CVI. Those other properties shall be contributed in accordance with the terms and conditions set forth in amendments to this Agreement.

E. CVI is prepared to contribute the following tract of land to the City for the purpose of building a road and necessary improvement abutting the road (the "Road Property"):

Parcel consisting of approximately 0.8 acre designated as the road connecting Lydia Hill Drive to August Hill Drive, as described in Exhibit A-1 and as shown on Exhibit A.

F. CVI is prepared to contribute the following tract of land to the City to become part of City's parks and trails system (collectively, the "Trail Property"):

- (i) Parcel C226B containing approximately 10.5 acres, as described in Exhibit A-2 and as shown on Exhibit A;
- (ii) Parcel C204 containing approximately 1.0 acres, as described in Exhibit A-3 and as shown on Exhibit A; and

- (iii) Parcel C207 containing approximately 0.9 acres, as described in Exhibit A-4 and as shown on Exhibit A.

The above-referenced Parcels are sometimes collectively referred to herein as the Park Sites or “Park and Trails Properties.”

NOW, THEREFORE, it is agreed as follows:

- 1. The Recitals are incorporated herein by this reference.
- 2. Properties to Be Contributed Currently. CVI shall at Closing (as defined below) convey to the City the Trail Property and the Road Property.

A. Upon execution of this Agreement, CVI shall order a title insurance commitment from a title company mutually acceptable to City and CVI (the “Title Company”) covering the Park and Trails Properties and the Road Property, which commitment(s) shall be sent to City and to CVI upon issuance. Within fifteen (15) days following the receipt of the commitment by City, City shall notify CVI in writing of any objections it has to the titles, and CVI shall have fifteen (15) days thereafter to remove or otherwise satisfy City as to the objections raised; provided, however, that City agrees to take title subject to the Conservation Easement encumbering all or portions of the Park and Trails Properties and the Road Property as shown on and described in that certain instrument recorded in Plat Book 352, Pages 93 through 95 of the St. Louis County Records (the “Conservation Easement”). If City’s other objections are not satisfied within said 15 day period, City may refuse to accept all of the Park and Trails Properties and the Road Property or any individual property, or waive its objections, or accept all or any of the Park and Trails Properties and the Road Property subject to the title exceptions, including the Conservation Easement (“Permitted Exceptions”). CVI will exercise its commercially reasonable efforts to satisfy City’s objections.

B. Title to the Park and Trails Properties and the Road Property shall be marketable in fact, shall be conveyed by special warranty deeds free of all liens and encumbrances, and shall be title insured by the Title Company, at CVI’s expense, subject only to existing utility easements, rights of way of record, and Permitted Exceptions.

- 3. City’s Obligations and Undertakings Relative to These and Future Contributions of Land by CVI to the City’s Parks and Trails System and Construction of Roads.

A. City will, as the need arises, grant utility easements on and over Park Sites to or for the benefit of all properties abutting Park Sites contributed to City by CVI and to and for the benefit of properties in the vicinity of such Park Sites which require such utility easements. Such easements shall meet the requirements of the purpose for

which they are intended and shall further provide that any damage done to Park Sites during the installation, maintenance or replacement of the affected utility be repaired to its prior condition at no cost to City.

B. City acknowledges that Park Sites contributed by CVI to City create desirable open spaces which benefit City and its citizens and which enhance and add value to properties within the City. City will develop plans for the parks and trails and any such plans including the Park and Trail Properties shall be approved by CVI, which approval shall not be unreasonably denied or delayed. In consideration for such contributions by CVI, City will create three (3) development accounts for the benefit of CVI and its successors and assigns with respect to CVI Properties as follows:

(i) City will place the aggregate of the acres contained in all Park Sites contributed by CVI to City (including, for these purposes, 3.75 acres of Chesterfield Lake No. 2) in a space account ("Space Account"), the purpose of which is to provide credits to be used by CVI to comply with green or open space requirements, whichever is applicable, for commercial or mixed use developments or redevelopments of either on CVI Properties.

Currently, "Greenspace Percentage" is calculated for any proposed preliminary, site development, site development concept or site development section plan pursuant to Section 1003.020 (79.1) of the City's Zoning Ordinance. Acreage in the Space Account may be withdrawn at the petitioner's/developer's discretion and added to the numerator in Section 1003.020 (79.1) to effectively increase the greenspace percentage for any such plan in order to comply with the greenspace percentage requirement applicable to the proposed development reflected by such plan. Such increase shall be limited to fifty percent (50%) of the greenspace percentage requirement. This procedure shall apply to any calculation of greenspace percentage whether pursuant to Section 1003.020 (79.1) or any revised, successor or similar provision in the City's Zoning Ordinance.

Currently, "Openspace" is defined in the City's Tree Preservation and Landscape Requirements. Openspace percentage is calculated pursuant to this definition for any proposed preliminary, site development, site development concept or site development section plan. Acreage in the Space Account may be withdrawn at the petitioner's/developer's discretion and added to the numerator to effectively increase the openspace percentage for any such plan in order to comply with the openspace percentage requirement applicable to the proposed development reflected by such plan. Such increase shall be limited to fifty percent (50%) of the openspace percentage requirement. This procedure shall apply to any calculation of openspace percentage whether pursuant to the "Openspace" definition in the City's Tree Preservation and Landscape Requirements or any revised, successor or similar provision in the City's Zoning Ordinance.

Notwithstanding the foregoing limitation on increase in percentage, a petitioner/developer may, in addition, request and obtain from the Planning Commission a modification or elimination of the foregoing fifty percent (50%) limitation upon a showing of good planning and design with respect to a specific proposed development, and/or request a reduction in the greenspace or openspace requirement pursuant to applicable procedures in the City Code.

(ii) City will place the aggregate of the acres contained in all Park Sites contributed by CVI to City (including for these purposes, 3.75 acres of Chesterfield Lake No. 2) in a floor area ratio account ("F.A.R. Account"), the purpose of which is to provide credits to be used by CVI for commercial or mixed use developments or redevelopments of either on CVI Properties. Currently, "Floor area ratio" is defined in Section 1003.020 (72.1). A specific "floor area ratio" ("F.A.R.") may be required with respect to a proposed development. Acreage in the F.A.R. Account may be withdrawn at the petitioner's/developer's discretion and added to the total lot area in Section 1003.020 (72.1) to effectively decrease the F.A.R. for such proposed development as reflected by the preliminary, site development, site concept or site section plan in order to comply with the required F.A.R. This procedure shall apply to any calculation of F.A.R. whether pursuant to Section 1003.020 (72.1) or any revised, successor or similar provision in the City's Zoning Ordinance.

(iii) City will place seventy percent (70%) of any tree canopy contained in all Park Sites contributed by CVI to City in a canopy account ("Canopy Account"), the purpose of which is to provide credits to be used by CVI for any developments or redevelopments on CVI Properties. Currently, the Tree Preservation and Landscape Requirements require that a Tree Preservation Plan ("TPP") show that "A minimum 30% of any wooded area shall be maintained as protected wooded area . . ." ("protected area"). Tree canopy in the Canopy Account may be withdrawn at the petitioner's/developer's discretion to add to the protected area shown on the TPP in order to comply with the 30% protected area requirement. This procedure shall apply to any TPP whether pursuant to the codified Tree Preservation and Landscape Requirements or any revised, successor or similar provision in the City's Zoning Ordinance

C. Notwithstanding any ordinance of the City to the contrary, there shall be no setback requirements greater than ten (10) feet from any contributed Park Site required for any new developments by CVI on any property abutting any Park Site contributed by CVI to City for its parks and trails system.

D. Notwithstanding any ordinance of the City to the contrary, City will not require a special review process for any development on property abutting any Park Site contributed by CVI to City under this Agreement.

E. City will construct, at its cost, the road connecting Lydia Hill Road to August Hill Road ("Hill Road Extension") as shown on Exhibit A. To the extent necessary, City will, at its cost, (i) remove any part of the existing road which is necessary to construct the Hill Road Extension, and (ii) build the road in compliance with Exhibit A. Lydia Hill Road will afford means of ingress and egress to and from the City's parks and Parcels C211, C220 and C226.

F. As a condition to and in consideration for the undertakings of CVI under this Agreement, the City Council of City must pass an ordinance approving execution of this Agreement by City.

4. Insurance.

A. During construction of any work, if any, by CVI on the City's parks and trail systems (the "Work"), CVI will cause its contractors to carry, at no cost to City, Builders' Risk Insurance with limits of no less than \$3,000,000 per occurrence, naming City as additional insured. In addition, CVI will cause its contractors to carry workers' compensation insurance as required by law.

5. Representations. CVI represents to City that execution of this Agreement has been duly authorized by its board of directors, and City represents to CVI that this Agreement has been duly authorized by ordinances of the City Council of City.

6. Closing. Closing of the conveyance of properties by CVI to City under this Agreement shall take place at the office of the Title Company, at 10:00 a.m. on the thirtieth (30th) day following the date on which City approves in writing the surveys and title insurance commitments on the properties.

7. Notices. Any notice required or permitted to be given hereunder shall be deemed given (i) on the date when it is personally delivered; or (ii) on the date when it is sent by facsimile transmission with confirmation of receipt of transmission; or (iii) when deposited with the United States Postal Service, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to CVI: Chesterfield Village, Inc.
 c/o Sachs Properties, Inc.
 Attn: Kathleen Higgins, Vice President
 400 Chesterfield Center, Suite 600
 Chesterfield, Missouri 63017-4890
 Telecopier or facsimile: (636) 537-0718
 Email: khiggins@sachsproperties.com

If to City: City of Chesterfield, Missouri

Attn: Michael Herring, City Administrator
690 Chesterfield Parkway West
Chesterfield, Missouri 63017-0760
Telecopier or facsimile: (636) 537-4798
Email: mherring@chesterfield.mo.us

or to such other address as contained in a notice to the other party.

8. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of City and of CVI and its successors and assigns. Provisions in this Agreement for the benefit of the CVI Properties abutting Park Sites shall follow the land.

9. Construction and Interpretation. This Agreement has been made and entered into in the County of St. Louis, State of Missouri, and shall be governed and construed by and in accordance with the laws of the State of Missouri without giving effect to conflict of laws principles.

10. Computation of Time. If the last day for the giving of notice or performance of any obligation or condition hereunder is a Saturday, Sunday or legal holiday in the State of Missouri, then such last day shall be extended to the next succeeding business day thereafter.

11. Paragraph Headings. The headings of the paragraphs in this Agreement are inserted solely for convenience of reference and are not intended to govern, limit, or aid the construction of any term or provision hereof.

12. Waiver. Except as otherwise provided herein, no claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be made against any party hereto except on the basis of a written instrument executed by or on behalf of such party.

13. Further Actions. CVI and City agree to execute such further documents and take such further actions as may reasonably be required to carry out the provisions and intent of this Agreement or any agreement or document related hereto or entered into in connection herewith.

14. Counterparts. This Agreement may be signed in any number of counterparts and signature to any one counterpart shall be deemed signature to all counterparts, which when taken together shall constitute one contract.

15. Exhibits. All Exhibits attached hereto are incorporated herein by reference.

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

CVI:

Chesterfield Village Inc.

By: _____

Name: _____

Title: _____

Date: _____

City:

City of Chesterfield, Missouri

By:  _____

Name: *Scott R. ...* _____

Title: *Mayor* _____

Date: *May 1, 2014* _____

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this ____ day of _____, 2010, before me appeared _____, to me personally known, who, being duly sworn did say that she/he is the _____ of CHESTERFIELD VILLAGE INC., a corporation of the State of Missouri, and that said instrument was signed in behalf of said corporation, by authority of its Board of Directors; and said _____ acknowledged said instrument to be the free act and deed of said corporation.

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

Notary Public

My Commission Expires:

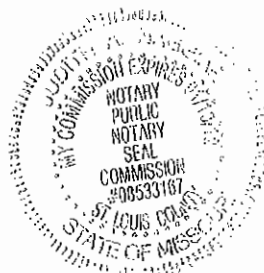
STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 14th day of August, 2010 before me appeared Debra A. [unclear] to me personally known, who, being duly sworn did say that she/he is the Mayor of the CITY OF CHESTERFIELD in the State of Missouri, a municipal corporation, and that said instrument was signed in behalf of said City, by authority of its City Council; and said Mayor acknowledged said instrument to be the free act and deed of said City

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

Notary Public

My Commission Expires: 11/1/11



A strip of land 60 feet wide being part of Tract C262 of the plat "C148, C220 & C226 Boundary Adjustment Plat" according to the plat as recorded in Plat Book 354 page 1044 of the St. Louis County Records, being in Part of Lot 7 of Thomas K. Humphrey's Estate, Part of Lots 1, 3 & 4 of the John Long Estate, in Fractional Section 9 and in U.S. Survey 415, Township 45 North -- Range 4 East, City of Chesterfield, St. Louis County, Missouri and being more particularly described as follows:

Beginning at the Northeastern corner of Lot 36C of "Stonehill Village C," according to the plat thereof recorded in Plat Book 347 page 511 of the St. Louis County Records, said point also being the Southeast corner of August Hill Drive, 60 feet wide, as shown on the plat of "August Hill Drive, Road Dedication and Easement Plat" according to the plat thereof recorded in Plat Book 344 pages 365-366 of the St. Louis County Records; thence North 19 degrees 23 minutes 58 seconds East 60.00 feet along a radial line to the Northeast corner of August Hill Drive, as shown on the aforementioned plat; thence along a curve to the right, whose radius point bears South 19 degrees 23 minutes 58 seconds West 605.00 feet from the last mentioned point, a distance of 265.66 feet to a point; thence along a curve to the right, whose radius point bears South 44 degrees 33 minutes 31 seconds West 699.40 feet from the last mentioned point, a distance of 271.37 feet to the West line of property described in deed to the City of Chesterfield as recorded in Book 11138 page 430 of the St. Louis County Records, being also the East line of Lydia Hill Drive, 60 feet wide, per plat recorded in Plat Book 345 pages 305 and 306 of the St. Louis County Records; thence along said line South 00 degrees 36 minutes 53 seconds West 279.05 feet to a point in the West line of the aforementioned Lydia Hill Drive; thence along a curve to the left, whose radius point bears North 89 degrees 52 minutes 18 seconds West 644.37 feet from the last mentioned point, a distance of 262.48 feet to a point; thence along a curve to the left, whose radius point bears South 66 degrees 47 minutes 24 seconds West 639.40 feet from the last mentioned point, a distance of 248.09 feet to a point; thence along a curve to the left, whose radius point bears South 44 degrees 33 minutes 31 seconds West 545.00 feet from the last mentioned point, a distance of 239.31 feet to the point of beginning and containing 0.8 Acres according to calculations by Volz Inc. during February 2009.

August 20, 2009

EJK

Re: C226B
(includes Riparian Corridor)
Parks Donation

A tract of land being part of Lot 7 of the Thomas K. Humphrey's Estate and Part of Lot 4 of the Subdivision of the West One Half of U.S. Survey 415, in U.S. Survey 415 and Section 9, Township 45 North - Range 4 East, City of Chesterfield, St. Louis County, Missouri and being more particularly described as follows:

Beginning at the intersection of the South right-of-way line of August Hill Drive, 60 feet wide, as dedicated in Plat Book 344 pages 365 and 366 of the St. Louis County Records, with the East line of "Stonehill Village C," as recorded in Plat Book 347 pages 511 and 512 of the St. Louis County Records; thence leaving said East line of said "Stonehill Village C," along a curve to the right, whose radius point bears South 19 degrees 23 minutes 58 seconds West 545.00 feet from the last mentioned point, a distance of 239.31 feet to a point; thence along a curve to the right, whose radius point bears South 44 degrees 33 minutes 31 seconds West 639.40 feet from the last mentioned point, a distance of 248.09 feet to a point; thence along a curve to the right, whose radius point bears South 66 degrees 47 minutes 24 seconds West 644.37 feet from the last mentioned point, a distance of 268.28 feet to the East line of said Lot 7 of the Thomas K. Humphrey's Estates; thence South along said East line of the Thomas K. Humphrey's Estate, South 00 degrees 36 minutes 53 seconds West 1,184.78 feet to the South line of said Section 9; thence Westwardly along said South line of Section 9, North 89 degrees 10 minutes 59 seconds West 429.93 feet to the East line of "Stonehill Village A" a subdivision according to the plat thereof recorded in Plat Book 347 pages 515 and 516; thence Northwardly along said East line of "Stonehill Village A" and along the East line of said "Stonehill Village C" the following courses and distances: North 45 degrees 49 minutes 04 seconds East 281.87 feet, North 00 degrees 37 minutes 15 seconds East 300.00 feet, North 44 degrees 22 minutes 41 seconds West 99.00 feet, North 00 degrees 37 minutes 16 seconds East 1,050.75 feet and North 32 degrees 47 minutes 18 seconds West 179.90 feet to the point of beginning and containing 10.5 acres according to calculations by Volz Inc. during December 2007.

A tract of land being part of Parcel C-204 and part of Parcel C-203 conveyed to Chesterfield Village, Inc., by Deed recorded in Deed Book 7768, Page 1382, of the St. Louis County Records, situated in U.S. Survey 2002, Township 45 North, Range 4 East, in the City of Chesterfield, St. Louis County, Missouri, being more particularly described as follows:

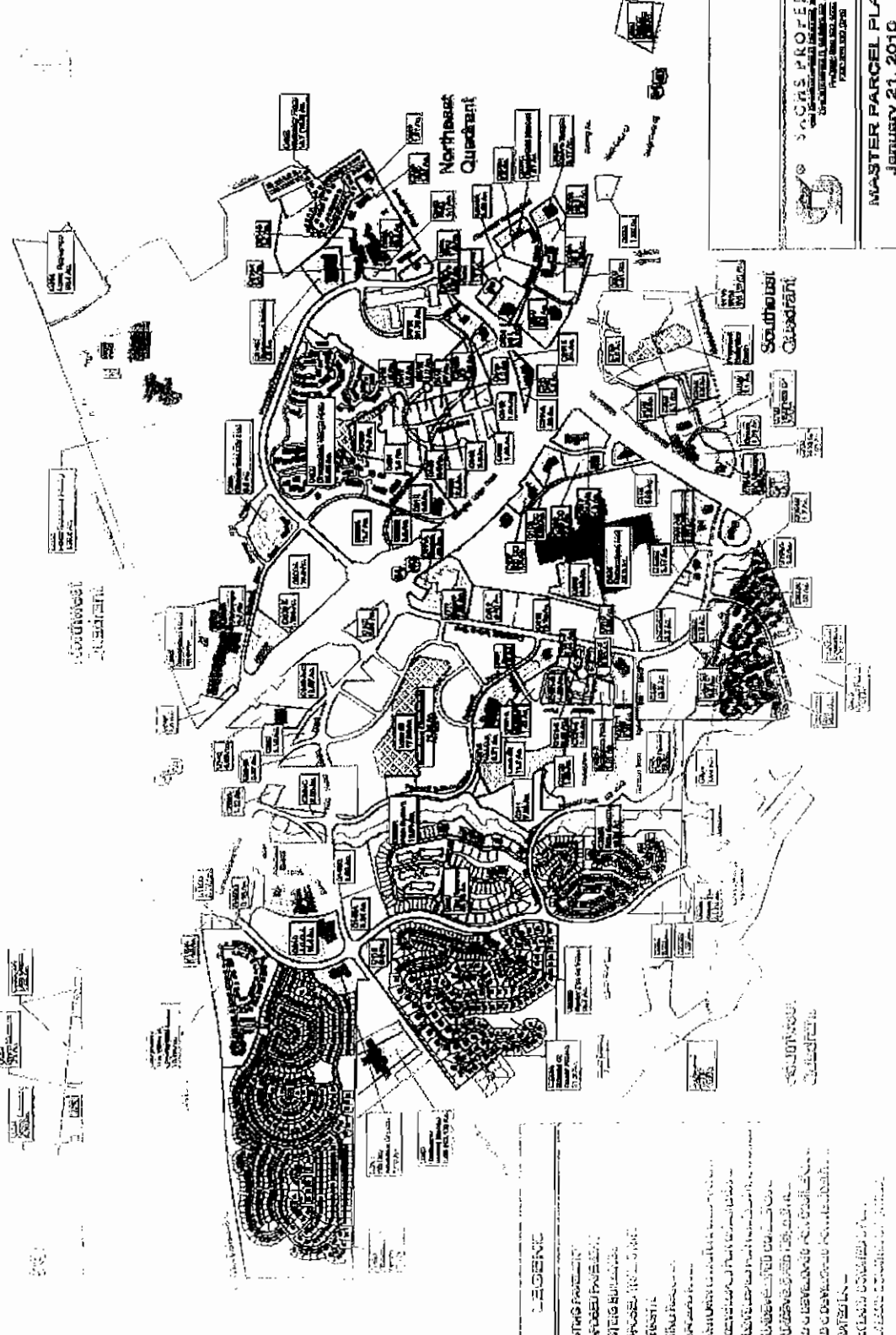
Commencing at a point on the Western Right-Of-Way Line of Justus Post Road, 43 feet wide, at its intersection with a point on the Northeastern Line of "Oak Plat No. 1", a Subdivision according to the plat thereof recorded in Plat Book 172, Pages 30 through 33 of the St. Louis County Records; thence Northwesterly, along the Northeastern Line of said subdivision, North 53 degrees 13 minutes 00 seconds West 457.01 feet to the most Northern corner thereof and being the Point Of Beginning of the tract of land herein described; thence Southwesterly, along the Northwestern Line of said Oak Plat No 1, South 36 degrees 47 minutes 00 seconds West 62.00 feet to a point; thence Northwesterly, along the Northern Line of "Oak Plat No. 4", a Subdivision according to the Plat thereof recorded in Plat Book 187, Page 100, of the St. Louis County Records, North 82 degrees 13 minutes 00 seconds West 20.63 feet to a point; thence Northwesterly, along the Southern Line of property conveyed to Chesterfield Village Association by Deed recorded in Deed Book 8920, Page 2321, of the St. Louis County Records, North 53 degrees 13 minutes 00 seconds West 156.07 feet to a point; thence North 19 degrees 19 minutes 31 seconds West 120.93 feet to a point; thence North 36 degrees 47 minutes 00 seconds East 73.00 feet to a point; thence South 66 degrees 57 minutes 42 seconds East 195.62 feet to a point; thence South 86 degrees 17 minutes 01 second East 64.30 feet to a point; thence South 53 degrees 13 minutes 00 seconds East 49.16 feet to a point; thence Southwesterly, departing the Southern Line of said property conveyed to Chesterfield Village Association, South 45 degrees 00 minutes 00 seconds West 36.47 feet to a point on curve; thence Northwesterly, along a curve to the left having a radius of 86.00 feet, an arc distance of 8.45 feet (North 86 degrees 17 minutes 12 seconds West 8.45 feet on its chord) to a point of compound curvature; thence Southwesterly, along a curve to the left having a radius of 56.00 feet, an arc distance of 87.77 feet (South 46 degrees 00 minutes 00 seconds West 79.06 feet on its chord) to a point of reverse curvature; thence Southwesterly, along a curve to the right having a radius of 34.00 feet, an arc distance of 21.17 feet (South 18 degrees 56 minutes 32 seconds West 20.83 feet on its chord) to a point of tangency; thence South 36 degrees 47 minutes 00 seconds West 11.43 feet to the point of beginning, containing 1.0 acres, more or less, according to a survey made by Volz Inc., during the month of May, 2006.

EXHIBIT
A-3

A tract of land being in Parcel C-207, as shown on the plat of "Lake Post Commons Recreation Facility Easement Plat" as recorded in Plat Book 333 pages 568 – 569 of the St. Louis County Records, being in U.S. Survey 2002, Township 45 North – Range 4 East, City of Chesterfield, St. Louis County, Missouri and being more particularly described as follows:

Commencing at the Northeastern corner of said Parcel C-207 where the aforementioned corner intersects the Southwestern line of Chesterfield Village Parkway, 73 feet wide, at the Northwestern corner of the Lake Post Commons Recreational Facility as shown on the "Boundary Adjustment Plat of Lake Post Commons Recreational Facility" and tracts of land in U.S. Survey 2002, Township 45 North – Range 4 East, per the recorded plat recorded in Plat Book 196 page 77 of the St. Louis County Records; thence along the Eastern line of Parcel C-207, South 38 degrees 22 minutes 25 seconds West 231.91 feet to the point of beginning of tract herein described; thence continuing along the aforementioned line, South 38 degrees 22 minutes 25 seconds West 97.32 feet to a point; thence North 77 degrees 36 minutes 45 seconds West 592.15 feet to a point; thence along a curve to the right, whose radius point bears North 84 degrees 47 minutes 24 seconds East 25.00 feet from the last mentioned point, a distance of 15.92 feet to a point; thence North 31 degrees 16 minutes 48 seconds East 30.03 feet to a point; thence along a curve to the right, whose radius point bears South 58 degrees 43 minutes 12 seconds East 15.00 feet from the last mentioned point, a distance of 27.68 feet to a point; thence South 43 degrees 00 minutes 36 seconds East 18.00 feet to a point; thence along a curve to the left, whose radius point bears North 46 degrees 59 minutes 24 seconds East 25.00 feet from the last mentioned point, a distance of 20.19 feet to a point; thence South 89 degrees 17 minutes 55 seconds East 24.68 feet to a point; thence along a curve to the right, whose radius point bears South 00 degrees 42 minutes 05 seconds West 180.00 feet from the last mentioned point, a distance of 61.83 feet to a point; thence South 69 degrees 37 minutes 01 second East 29.17 feet to a point; thence along a curve to the left, whose radius point bears North 20 degrees 22 minutes 59 seconds East 170.00 feet from the last mentioned point, a distance of 54.37 feet to a point; thence South 87 degrees 56 minutes 26 seconds East 17.96 feet to a point; thence along a curve to the left, whose radius point bears North 02 degrees 03 minutes 34 seconds East 95.00 feet from the last mentioned point, a distance of 29.51 feet to a point; thence North 74 degrees 15 minutes 17 seconds East 35.84 feet to a point; thence North 70 degrees 21 minutes 01 second East 21.06 feet to a point; thence along a curve to the right, whose radius point bears South 19 degrees 38 minutes 59 seconds East 55.00 feet from the last mentioned point, a distance of 46.23 feet to a point; thence South 61 degrees 29 minutes 22 seconds East 12.43 feet to a point; thence along a curve to the left, whose radius point bears North 28 degrees 30 minutes 38 seconds East 45.00 feet from the last mentioned point, a distance of 19.12 feet to a point; thence South 85 degrees 50 minutes 23 seconds East 3.78 feet to a point; thence along a curve to the right, whose radius point bears South 04 degrees 09 minutes 37 seconds West 55.00 feet from the last mentioned point, a distance of 34.70 feet to a point; thence South 49 degrees 41 minutes 35 seconds East 13.89 feet to a point; thence along a curve to the left, whose radius point bears North 40 degrees 18 minutes 25 seconds East 70.00 feet from the last mentioned point, a distance of 18.66 feet to a point; thence South 64 degrees 57 minutes 56 seconds East 32.49 feet to a point; thence along a curve to the left, whose radius point bears North 25 degrees 02 minutes 04 seconds East 55.00 feet from the last mentioned point, a distance of 38.28 feet to a point; thence North 75 degrees 09 minutes 21 seconds East 52.21 feet to a point; thence along a curve to the right, whose radius point bears South 14 degrees 50 minutes 39 seconds East 50.00 feet from the last mentioned point, a distance of 39.59 feet to a point; thence South 59 degrees 28 minutes 51 seconds East 8.81 feet to the point of beginning, said tract containing 0.9 acres according to calculations by Volz Inc. during the month of October 2009.

EXHIBIT
A-4



SOONS PROPERTIES
 10000 S. W. 10th St., Suite 100
 Miami, FL 33156
 Phone: (305) 555-1000

MASTER PARCEL PLAN
 January 21, 2010

LEGEND

[Symbol]	EXISTING PROPERTIES
[Symbol]	PROPOSED PROPERTIES
[Symbol]	EXISTING BUILDINGS
[Symbol]	PROPOSED BUILDINGS
[Symbol]	EXISTING PAVEMENT
[Symbol]	PROPOSED PAVEMENT
[Symbol]	EXISTING DRIVEWAYS
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[Symbol]	EXISTING SIDEWALKS
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[Symbol]	EXISTING OTHER
[Symbol]	PROPOSED OTHER

EXHIBIT
 3



CONFIDENTIAL

**CHESTERFIELD CITY COUNCIL
EXECUTIVE SESSION (closed meeting)
Monday, May 17, 2010**

A motion was made by Councilmember Flachsbart, seconded by Councilmember Geiger to go into Executive Session (closed meeting), as provided by RSMO 610.021(1) and (2), for the purpose of discussing property acquisition and confidential communication from the City Attorney. A roll call vote was taken, with the following affirmative result: AYES: Flachsbart, Logan, Casey, Fults, Geiger, Erickson; NAYS: None. Mayor Nations then called the meeting to order, at 6:06PM. Those also in attendance included City Attorney Rob Heggie, City Administrator Mike Herring and Director of Planning/Public Works Mike Geisel. Councilmembers Segal and Nation were absent.

Mayor Nations recognized Mr. Geisel who, again, discussed the City's plans to build a "Riparian Corridor" and the opportunity presented to the City, by the proposed AGREEMENT, which has been negotiated with Sachs Properties and forwarded to City Council for review/approval during this meeting. Discussion followed regarding both the cost and legal effect of the proposed AGREEMENT.

BILL NO 2791 - APPROVES AN AGREEMENT TO ACCEPT THE DONATION OF LAND FOR THE RIPARIAN TRAIL AND PARKS, TO AUTHORIZE THE EXPENDITURE OF FUNDS TO BUILD A ROAD TO CONNECT LYDIA HILL DRIVE AND AUGUST HILL DRIVE AND TO PROVIDE DEVELOPMENT CREDITS FOR THE DONATED LAND (FIRST AND SECOND READINGS)

A motion was made by Councilmember Flachsbart for the FIRST READING of **Bill No. 2791**. The motion was seconded by Councilmember Geiger. A voice vote was taken, with a unanimous affirmative result and **Bill No. 2791** was read for the first time.

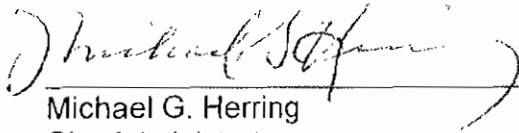
A motion was made by Councilmember Flachsbart, seconded by Councilmember Geiger, for the SECOND READING of **Bill No. 2791**. Additional discussion followed. It was noted, by Mr. Geisel, that a separate agreement with Sachs Properties, regarding cross-access and parking, was still being negotiated. He voiced his optimism that negotiations regarding this separate agreement would soon be concluded. Mr. Herring commended Mr. Geisel for the work of his Staff, both Aimee Nassif and Justin Wyse, in creating documents to fully-explain the

zoning implications of the proposed AGREEMENT. There being no further discussion, a voice vote was taken, with a unanimous affirmative result and **Bill No. 2791** was read for the second time.

A roll call vote was then taken, for passage and approval of **Bill No. 2791**, with the following results: AYES: Casey, Erickson, Fults, Flachsbart, Logan, Geiger; NAYS: None. Mayor Nations declared the Bill as passed and approved and it became **Ordinance No. 2607**.

There being no further business to discuss, the meeting was adjourned at 6:24PM.

Respectfully submitted,



Michael G. Herring
City Administrator

POSTED

10-12-10P01155 RCV5



CITY OF CHESTERFIELD
PUBLIC NOTICE - Exccutive Session (closed meeting)
May 17, 2010

Notice is hereby provided that the Mayor and City Council, for the City of Chesterfield, plan to hold an EXECUTIVE SESSION (closed meeting), at the end of the AGENDA REVIEW MEETING, which is scheduled to begin at 6:00 PM, on Monday, 5/17/10. This EXECUTIVE SESSION is authorized by RSMo 610.021 (1) (2) and is being held for the purpose of discussing Property Acquisition.

A handwritten signature in black ink, appearing to read "Michael G. Herring", written over a horizontal line.

Michael G. Herring
City Administrator

POSTED THIS 12th Day of May, 2010

EXECUTIVE SESSION

As you are probably already aware, Mayor Nations, City Attorney Rob Heggic, Director of Planning/Public Works Mike Geisel and I have been negotiating with Sachs Properties to secure the land necessary for the construction of the "Riparian Corridor" project, which will ultimately link the Chesterfield Parkway/Central Park with the Monarch/Chesterfield Valley Levee Trail. At Monday's meeting, Mayor Nations, Mr. Heggic, Mr. Geisel and I will lead a discussion regarding the successful conclusion to our negotiations. The following are highlights of what is now being forwarded to City Council, for your review AND approval:

- Given City Council's approval of our plan to build the Riparian Corridor, Staff has secured a grant, from the Metropolitan Parks Grant Commission.....totaling \$619,500. Those grant funds must be expended during calendar year 2010.
- Sachs Properties (CVI) has agreed to "donate" 13.2 acres of land to the City, which are all directly or indirectly related to our ability to construct the Riparian Corridor.
- The City will be required to pay for the cost of extending Lydia Hill and connecting same to August Hill. FYI, the Riparian Corridor is intimately connected with the stormwater improvements associated with this construction project and, while the road can be built without the trail, the trail cannot be completed, without the road.
- The estimated cost to construct this road is approx. \$1.3 million. Fortunately, approx. \$1.292 million remains in CITY FUNDS, previously allocated by City Council, as a supplement to the original \$25 million bond issue, for PARKS. Those bond proceeds, which have ALL NOW BEEN SPENT (confirmed this with Ms. Vaughn, our Financial Advisor, Michelle Bock and our Bond Counsel (Bob Balsrud), were used to acquire multiple parcels of land and to construct a variety of improvements. All of the land, originally identified by City Council has been acquired and all of the construction projects have been completed. As work to construct these projects was taking place, City Council voted to appropriate an additional \$4,169,705. \$2,812,705 (67.5%) came from the Parks Fund Fund Reserves and \$1,357,000 (32.5%) came from the General Fund Fund Reserves. Due to Mr. Geisel's efforts to successfully manage the various construction projects under his supervision, we have ended with a balance of approx. \$1,292,000 (67.5%, or approx. \$872,000 from the Parks Fund and 32.5%, or approx. \$420,000 from the General Fund). Given the inter-relationship of this road project and the Riparian Corridor, these funds can be used for this road project, without the need for further appropriation of City funds.
- Both the connection of Lydia Hill and August Hill and the construction of the Riparian Corridor trail project have clear PUBLIC BENEFITS!
- The City is being asked to agree to several "conditions", in exchange for the donation of the land identified above. (1) The City is being asked to NOT establish any setbacks from the donated properties, in excess of 10 feet. (2) The City is being asked to establish three development credit accounts, for greenspace/open space, floor area ratio and tree preservation. Although these "credits" will have some impact on the development of individual sites, none of the credits awarded will increase the total number of units or developed square footage currently authorized by existing zoning ordinances, within Chesterfield Village.
- Sachs Properties will agree to grant a full/complete "cross-access" to the City, for use of all surface parking, as well as the upper decks of all parking structures, either currently in place or to be constructed, Monday - Friday (after 5pm) and all day on Saturday and Sunday, for those visiting Central Park, for any purpose (general recreation or a special event, at the Amphitheater, for example).

Approval of the terms/conditions set forth above and authorization for Mayor Nations to sign the agreement will come via the passage of legislation, which I have included within a CONFIDENTIAL packet, for your information/review, prior to this meeting. With City Council's concurrence, following our discussion Monday night, we will schedule both the **FIRST AND SECOND READING** approval of this proposed ordinance, in **EXECUTIVE SESSION, ON MAY 17, 2010.**

Mike Geisel

From: Michael Herring
Sent: Tuesday, May 18, 2010 9:36 AM
To: Rob Heggie ; Darren Dunkle; Kelly Vaughn; Libbey Malberg; Mike Geisel; Ray Johnson
Cc: Judy Naggiar; Vickie Hass; Pam Shelton; Keri Zimmermann; Brian McGownd; Aimee Nassif
Subject: Summary - 5/17/10 City Council meeting

[NOTE: **Bill No. 2791**, which approves an AGREEMENT with Sachs Properties, became **Ord. No. 2607**, in Executive Session (closed meeting).]

The regular City Council meeting was called to order at 7PM, by Acting-Mayor/President Pro Tem Barry Flachsbart, in the absence of Mayor Nations. Councilmembers Matt Segal, Ward 1, and Bob Nation, Ward 4, were also absent.

****By 6-0 votes, City Council approved the re-appointment of Matt Adams, as a member of the Architectural Review Board (his term will expire 1/2/2011) and the re-appointment of Elliott Grissom, as a member of the Planning Commission (his term will expire 6/3/2014).

****By 6-0 votes, City Council approved both **T.S.P. 15-2009** and **T.S.P. 20-2010**...Clearwire US LLC (18620 Olive Street Road and Kinkead Estates/Parkway Central High School, respectively)

******Bill No. 2787** - P.Z. 02-2010, Spirit Trade Center, Lot 30, was given 2nd reading approval and became **Ord. No. 2608**, by a 6-0 vote. [NOTE: As noted above, Ord. No. 2607 was assigned In Executive Session.]

******Bill No. 2788** - P.Z. 18-2008, City of Chesterfield/Architectural Review Board, was given 2nd reading approval and became **Ord. No. 2609**, by a 6-0 vote.

******Bill No. 2792** - Approves a boundary adjustment plat for Walden Pond, Lot 9, was given 1st and 2nd reading approval and became **Ord. No. 2610**, by a 6-0 vote.

Meeting was adjourned at 7:18pm. If you have any questions, please let me know.

Michael G. Herring, ICMA-CM

City Administrator

City of Chesterfield

690 Chesterfield Parkway West

Chesterfield, MO 63017

(636) 537-4711

(636) 537-4798 (FAX)

EXECUTIVE SESSION (CLOSED MEETING)

As was discussed on May 3, an Executive Session (closed meeting) has been scheduled for Monday, May 17, to consider both the FIRST and SECOND READING approval of the following proposed legislation:

Bill No. 2791 - APPROVES AN AGREEMENT TO ACCEPT THE DONATION OF LAND FOR THE RIPARIAN TRAIL AND PARKS, TO AUTHORIZE THE EXPENDITURE OF FUNDS TO BUILD A ROAD TO CONNECT LYDIA HILL DRIVE AND AUGUST HILL DRIVE AND TO PROVIDE DEVELOPMENT CREDITS FOR THE DONATED LAND (FIRST AND SECOND READINGS)

If you have any questions, please contact either Mr. Heggie, Mr. Geisel or me, prior to next Monday's meeting.

POSTED

05-12-10 3:55 PM RCVD



**CITY OF CHESTERFIELD
PUBLIC NOTICE - Executive Session (closed meeting)
May 17, 2010**

Notice is hereby provided that the Mayor and City Council, for the City of Chesterfield, plan to hold an EXECUTIVE SESSION (closed meeting), at the end of the AGENDA REVIEW MEETING, which is scheduled to begin at 6:00 PM, on Monday, 5/17/10. This EXECUTIVE SESSION is authorized by RSMo 610.021 (1) (2) and is being held for the purpose of discussing Property Acquisition.

A handwritten signature in black ink, appearing to read "Michael G. Herring", written over a horizontal line.

Michael G. Herring
City Administrator

POSTED THIS 12th Day of May, 2010

EXECUTIVE SESSION

As you are probably already aware, Mayor Nations, City Attorney Rob Heggie, Director of Planning/Public Works Mike Geisel and I have been negotiating with Sachs Properties to secure the land necessary for the construction of the "Riparian Corridor" project, which will ultimately link the Chesterfield Parkway/Central Park with the Monarch/Chesterfield Valley Levee Trail. At Monday's meeting, Mayor Nations, Mr. Heggie, Mr. Geisel and I will lead a discussion regarding the successful conclusion to our negotiations. The following are highlights of what is now being forwarded to City Council, for your review AND approval:

- Given City Council's approval of our plan to build the Riparian Corridor, Staff has secured a grant, from the Metropolitan Parks Grant Commission.....totaling \$619,500. Those grant funds must be expended during calendar year 2010.
- Sachs Properties (CVI) has agreed to "donate" 13.2 acres of land to the City, which are all directly or indirectly related to our ability to construct the Riparian Corridor.
- The City will be required to pay for the cost of extending Lydia Hill and connecting same to August Hill. FYI, the Riparian Corridor is intimately connected with the stormwater improvements associated with this construction project and, while the road can be built without the trail, the trail cannot be completed, without the road.
- The estimated cost to construct this road is approx. \$1.3 million. Fortunately, approx. \$1.292 million remains in CITY FUNDS, previously allocated by City Council, as a supplement to the original \$25 million bond issue, for PARKS. Those bond proceeds, which have ALL NOW BEEN SPENT (confirmed this with Ms. Vaughn , our Financial Advisor, Michelle Bock and our Bond Counsel (Bob Balsrud), were used to acquire multiple parcels of land and to construct a variety of improvements. All of the land, originally identified by City Council has been acquired and all of the construction projects have been completed. As work to construct these projects was taking place, City Council voted to appropriate an additional \$4,169,705. \$2,812,705 (67.5%) came from the Parks Fund Fund Reserves and \$1,357,000 (32.5%) came from the General Fund Fund Reserves. Due to Mr. Geisel's efforts to successfully manage the various construction projects under his supervision, we have ended with a balance of approx. \$1,292,000 (67.5%, or approx. \$872,000 from the Parks Fund and 32.5%, or approx. \$420,000 from the General Fund). Given the inter-relationship of this road project and the Riparian Corridor, these funds can be used for this road project, without the need for further appropriation of City funds.
- Both the connection of Lydia Hill and August Hill and the construction of the Riparian Corridor trail project have clear PUBLIC BENEFITS!
- The City is being asked to agree to several "conditions", in exchange for the donation of the land identified above. (1) The City is being asked to NOT establish any setbacks from the donated properties, in excess of 10 feet. (2) The City is being asked to establish three development credit accounts, for greenspace/open space, floor area ratio and tree preservation. Although these "credits" will have some impact on the development of individual sites, none of the credits awarded will increase the total number of units or developed square footage currently authorized by existing zoning ordinances, within Chesterfield Village.
- Sachs Properties will agree to grant a full/complete "cross-access" to the City, for use of all surface parking, as well as the upper decks of all parking structures, either currently in place or to be constructed, Monday - Friday (after 5pm) and all day on Saturday and Sunday, for those visiting Central Park, for any purpose (general recreation or a special event, at the Amphitheater, for example).

Approval of the terms/conditions set forth above and authorization for Mayor Nations to sign the agreement will come via the passage of legislation, which I have included within a CONFIDENTIAL packet, for your information/review, prior to this meeting. With City Council's concurrence, following our discussion Monday night, we will schedule both the **FIRST AND SECOND READING** approval of this proposed ordinance, in **EXECUTIVE SESSION, ON MAY 17, 2010.**



CONFIDENTIAL

CHESTERFIELD CITY COUNCIL
EXECUTIVE SESSION (closed meeting)
Monday, May 3, 2010

At 7:53PM, a motion was made Councilmember Geiger, seconded by Councilmember Logan, to adjourn the regular City Council meeting and go into an Executive Session (closed meeting), as provided by RSMo 610.021 (1) and (2), for the purpose of discussing property acquisition and confidential communication from the City Attorney. A roll call vote was taken and passed unanimously. A brief recess was taken.

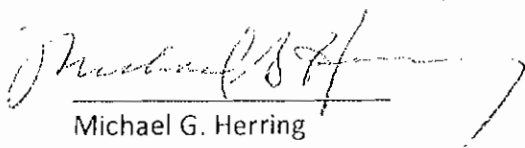
At 7:58pm, Mayor Nations called the meeting to order. Those others in attendance included Councilmembers Flachsbart, Segal, Geiger, Erickson, Casey, Logan, Fults and Nation, City Administrator Herring, City Attorney Heggie and Director of Planning/Public Works Mike Geisel.

Mayor Nations recognized Mr. Geisel who made a presentation regarding the opportunity currently available to the City, regarding construction of the "Riparian Corridor" that involved the City acquiring about 13.2 acres of property. Discussion ensued and additional information/explanation was provided, in response to questions by Council, by both Mr. Geisel and Mr. Heggie, regarding an agreement that had been negotiated, between both Sachs Properties and the City of Chesterfield (see attached summary) and the cost and legal effect of the agreement. Various members of City Council spoke in complimentary terms regarding the proposed agreement.

Following additional discussion, City Council unanimously agreed to place this ordinance/agreement on the AGENDA, in Executive Session, at the May 17 City Council meeting, for consideration of both FIRST and SECOND READING approval.

There being no further business to discuss, the meeting was adjourned at 8:28PM.

Respectfully submitted:



Michael G. Herring
City Administrator

**AGREEMENT RE: CONTRIBUTION OF LAND
TO THE CITY OF CHESTERFIELD, MISSOURI
FOR ITS PARKS AND TRAILS SYSTEM**

AGREEMENT made as of this ____ day of _____, 2010, by and between THE CITY OF CHESTERFIELD, MISSOURI, a municipal corporation ("City"), and CHESTERFIELD VILLAGE INC., a Missouri corporation ("CVI").

RECITALS:

A. CVI and its affiliates (collectively, "CVP") has and is continuing to develop a large mixed-use urban area known as Chesterfield Village located wholly within the limits of City. CVI currently owns properties identified on Exhibit B and may hereafter acquire properties (collectively, the "CVI Properties").

B. City's parks and trails system includes City's existing Central Park and Lake No. 2.

C. CVI desires to contribute properties identified herein to the City to become part of City's evolving parks and trails system (sometimes referred to herein as "Park Sites").

D. It is contemplated but not required that other properties will subsequently be contributed to the City's parks and trails system by CVI. Those other properties shall be contributed in accordance with the terms and conditions set forth in amendments to this Agreement.

E. CVI is prepared to contribute the following tract of land to the City for the purpose of building a road and necessary improvement abutting the road (the "Road Property"):

Parcel consisting of approximately 0.8 acre designated as the road connecting Lydia Hill Drive to August Hill Drive, as described in Exhibit A-1 and as shown on Exhibit A.

F. CVI is prepared to contribute the following tract of land to the City to become part of City's parks and trails system (collectively, the "Trail Property"):

- (i) Parcel C226B containing approximately 10.5 acres, as described in Exhibit A-2 and as shown on Exhibit A;
- (ii) Parcel C204 containing approximately 1.0 acres, as described in Exhibit A-3 and as shown on Exhibit A; and

- (iii) Parcel C207 containing approximately 0.9 acres, as described in Exhibit A-4 and as shown on Exhibit A.

The above-referenced Parcels are sometimes collectively referred to herein as the Park Sites or "Park and Trails Properties."

NOW, THEREFORE, it is agreed as follows:

1. The Recitals are incorporated herein by this reference.
2. Properties to Be Contributed Currently. CVI shall at Closing (as defined below) convey to the City the Trail Property and the Road Property.

A. Upon execution of this Agreement, CVI shall order a title insurance commitment from a title company mutually acceptable to City and CVI (the "Title Company") covering the Park and Trails Properties and the Road Property, which commitment(s) shall be sent to City and to CVI upon issuance. Within fifteen (15) days following the receipt of the commitment by City, City shall notify CVI in writing of any objections it has to the titles, and CVI shall have fifteen (15) days thereafter to remove or otherwise satisfy City as to the objections raised; provided, however, that City agrees to take title subject to the Conservation Easement encumbering all or portions of the Park and Trails Properties and the Road Property as shown on and described in that certain instrument recorded in Plat Book 352, Pages 93 through 95 of the St. Louis County Records (the "Conservation Easement"). If City's other objections are not satisfied within said 15 day period, City may refuse to accept all of the Park and Trails Properties and the Road Property or any individual property, or waive its objections, or accept all or any of the Park and Trails Properties and the Road Property subject to the title exceptions, including the Conservation Easement ("Permitted Exceptions"). CVI will exercise its commercially reasonable efforts to satisfy City's objections.

B. Title to the Park and Trails Properties and the Road Property shall be marketable in fact, shall be conveyed by special warranty deeds free of all liens and encumbrances, and shall be title insured by the Title Company, at CVI's expense, subject only to existing utility easements, rights of way of record, and Permitted Exceptions.

3. City's Obligations and Undertakings Relative to These and Future Contributions of Land by CVI to the City's Parks and Trails System and Construction of Roads.

A. City will, as the need arises, grant utility easements on and over Park Sites to or for the benefit of all properties abutting Park Sites contributed to City by CVI and to and for the benefit of properties in the vicinity of such Park Sites which require such utility easements. Such easements shall meet the requirements of the purpose for

which they are intended and shall further provide that any damage done to Park Sites during the installation, maintenance or replacement of the affected utility be repaired to its prior condition at no cost to City.

B. City acknowledges that Park Sites contributed by CVI to City create desirable open spaces which benefit City and its citizens and which enhance and add value to properties within the City. City will develop plans for the parks and trails and any such plans including the Park and Trail Properties shall be approved by CVI, which approval shall not be unreasonably denied or delayed. In consideration for such contributions by CVI, City will create three (3) development accounts for the benefit of CVI and its successors and assigns with respect to CVI Properties as follows:

(i) City will place the aggregate of the acres contained in all Park Sites contributed by CVI to City (including, for these purposes, 3.75 acres of Chesterfield Lake No. 2) in a space account ("Space Account"), the purpose of which is to provide credits to be used by CVI to comply with green or open space requirements, whichever is applicable, for commercial or mixed use developments or redevelopments of either on CVI Properties.

Currently, "Greenspace Percentage" is calculated for any proposed preliminary, site development, site development concept or site development section plan pursuant to Section 1003.020 (79.1) of the City's Zoning Ordinance. Acreage in the Space Account may be withdrawn at the petitioner's/developer's discretion and added to the numerator in Section 1003.020 (79.1) to effectively increase the greenspace percentage for any such plan in order to comply with the greenspace percentage requirement applicable to the proposed development reflected by such plan. Such increase shall be limited to fifty percent (50%) of the greenspace percentage requirement. This procedure shall apply to any calculation of greenspace percentage whether pursuant to Section 1003.020 (79.1) or any revised, successor or similar provision in the City's Zoning Ordinance.

Currently, "Openspace" is defined in the City's Tree Preservation and Landscape Requirements. Openspace percentage is calculated pursuant to this definition for any proposed preliminary, site development, site development concept or site development section plan. Acreage in the Space Account may be withdrawn at the petitioner's/developer's discretion and added to the numerator to effectively increase the openspace percentage for any such plan in order to comply with the openspace percentage requirement applicable to the proposed development reflected by such plan. Such increase shall be limited to fifty percent (50%) of the openspace percentage requirement. This procedure shall apply to any calculation of openspace percentage whether pursuant to the "Openspace" definition in the City's Tree Preservation and Landscape Requirements or any revised, successor or similar provision in the City's Zoning Ordinance.

Notwithstanding the foregoing limitation on increase in percentage, a petitioner/developer may, in addition, request and obtain from the Planning Commission a modification or elimination of the foregoing fifty percent (50%) limitation upon a showing of good planning and design with respect to a specific proposed development, and/or request a reduction in the greenspace or openspace requirement pursuant to applicable procedures in the City Code.

(ii) City will place the aggregate of the acres contained in all Park Sites contributed by CVI to City (including for these purposes, 3.75 acres of Chesterfield Lake No. 2) in a floor area ratio account ("F.A.R. Account"), the purpose of which is to provide credits to be used by CVI for commercial or mixed use developments or redevelopments of either on CVI Properties. Currently, "Floor area ratio" is defined in Section 1003.020 (72.1). A specific "floor area ratio" ("F.A.R.") may be required with respect to a proposed development. Acreage in the F.A.R. Account may be withdrawn at the petitioner's/developer's discretion and added to the total lot area in Section 1003.020 (72.1) to effectively decrease the F.A.R. for such proposed development as reflected by the preliminary, site development, site concept or site section plan in order to comply with the required F.A.R. This procedure shall apply to any calculation of F.A.R. whether pursuant to Section 1003.020 (72.1) or any revised, successor or similar provision in the City's Zoning Ordinance.

(iii) City will place seventy percent (70%) of any tree canopy contained in all Park Sites contributed by CVI to City in a canopy account ("Canopy Account"), the purpose of which is to provide credits to be used by CVI for any developments or redevelopments on CVI Properties. Currently, the Tree Preservation and Landscape Requirements require that a Tree Preservation Plan ("TPP") show that "A minimum 30% of any wooded area shall be maintained as protected wooded area . . ." ("protected area"). Tree canopy in the Canopy Account may be withdrawn at the petitioner's/developer's discretion to add to the protected area shown on the TPP in order to comply with the 30% protected area requirement. This procedure shall apply to any TPP whether pursuant to the codified Tree Preservation and Landscape Requirements or any revised, successor or similar provision in the City's Zoning Ordinance

C. Notwithstanding any ordinance of the City to the contrary, there shall be no setback requirements greater than ten (10) feet from any contributed Park Site required for any new developments by CVI on any property abutting any Park Site contributed by CVI to City for its parks and trails system.

D. Notwithstanding any ordinance of the City to the contrary, City will not require a special review process for any development on property abutting any Park Site contributed by CVI to City under this Agreement.

E. City will construct, at its cost, the road connecting Lydia Hill Road to August Hill Road ("Hill Road Extension") as shown on Exhibit A. To the extent necessary, City will, at its cost, (i) remove any part of the existing road which is necessary to construct the Hill Road Extension, and (ii) build the road in compliance with Exhibit A. Lydia Hill Road will afford means of ingress and egress to and from the City's parks and Parcels C211, C220 and C226.

F. As a condition to and in consideration for the undertakings of CVI under this Agreement, the City Council of City must pass an ordinance approving execution of this Agreement by City.

4. Insurance.

A. During construction of any work, if any, by CVI on the City's parks and trail systems (the "Work"), CVI will cause its contractors to carry, at no cost to City, Builders' Risk Insurance with limits of no less than \$3,000,000 per occurrence, naming City as additional insured. In addition, CVI will cause its contractors to carry workers' compensation insurance as required by law.

5. Representations. CVI represents to City that execution of this Agreement has been duly authorized by its board of directors, and City represents to CVI that this Agreement has been duly authorized by ordinances of the City Council of City.

6. Closing. Closing of the conveyance of properties by CVI to City under this Agreement shall take place at the office of the Title Company, at 10:00 a.m. on the thirtieth (30th) day following the date on which City approves in writing the surveys and title insurance commitments on the properties.

7. Notices. Any notice required or permitted to be given hereunder shall be deemed given (i) on the date when it is personally delivered; or (ii) on the date when it is sent by facsimile transmission with confirmation of receipt of transmission; or (iii) when deposited with the United States Postal Service, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to CVI: Chesterfield Village, Inc.
 c/o Sachs Properties, Inc.
 Attn: Kathleen Higgins, Vice President
 400 Chesterfield Center, Suite 600
 Chesterfield, Missouri 63017-4890
 Telecopier or facsimile: (636) 537-0718
 Email: khiggins@sachsproperties.com

If to City: City of Chesterfield, Missouri

Attn: Michael Herring, City Administrator
690 Chesterfield Parkway West
Chesterfield, Missouri 63017-0760
Telecopier or facsimile: (636) 537-4798
Email: mherring@chesterfield.mo.us

or to such other address as contained in a notice to the other party.

8. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of City and of CVI and its successors and assigns. Provisions in this Agreement for the benefit of the CVI Properties abutting Park Sites shall follow the land.

9. Construction and Interpretation. This Agreement has been made and entered into in the County of St. Louis, State of Missouri, and shall be governed and construed by and in accordance with the laws of the State of Missouri without giving effect to conflict of laws principles.

10. Computation of Time. If the last day for the giving of notice or performance of any obligation or condition hereunder is a Saturday, Sunday or legal holiday in the State of Missouri, then such last day shall be extended to the next succeeding business day thereafter.

11. Paragraph Headings. The headings of the paragraphs in this Agreement are inserted solely for convenience of reference and are not intended to govern, limit, or aid the construction of any term or provision hereof.

12. Waiver. Except as otherwise provided herein, no claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be made against any party hereto except on the basis of a written instrument executed by or on behalf of such party.

13. Further Actions. CVI and City agree to execute such further documents and take such further actions as may reasonably be required to carry out the provisions and intent of this Agreement or any agreement or document related hereto or entered into in connection herewith.

14. Counterparts. This Agreement may be signed in any number of counterparts and signature to any one counterpart shall be deemed signature to all counterparts, which when taken together shall constitute one contract.

15. Exhibits. All Exhibits attached hereto are incorporated herein by reference.

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

CVI:

Chesterfield Village Inc.

By: _____

Name: _____

Title: _____

Date: _____

City

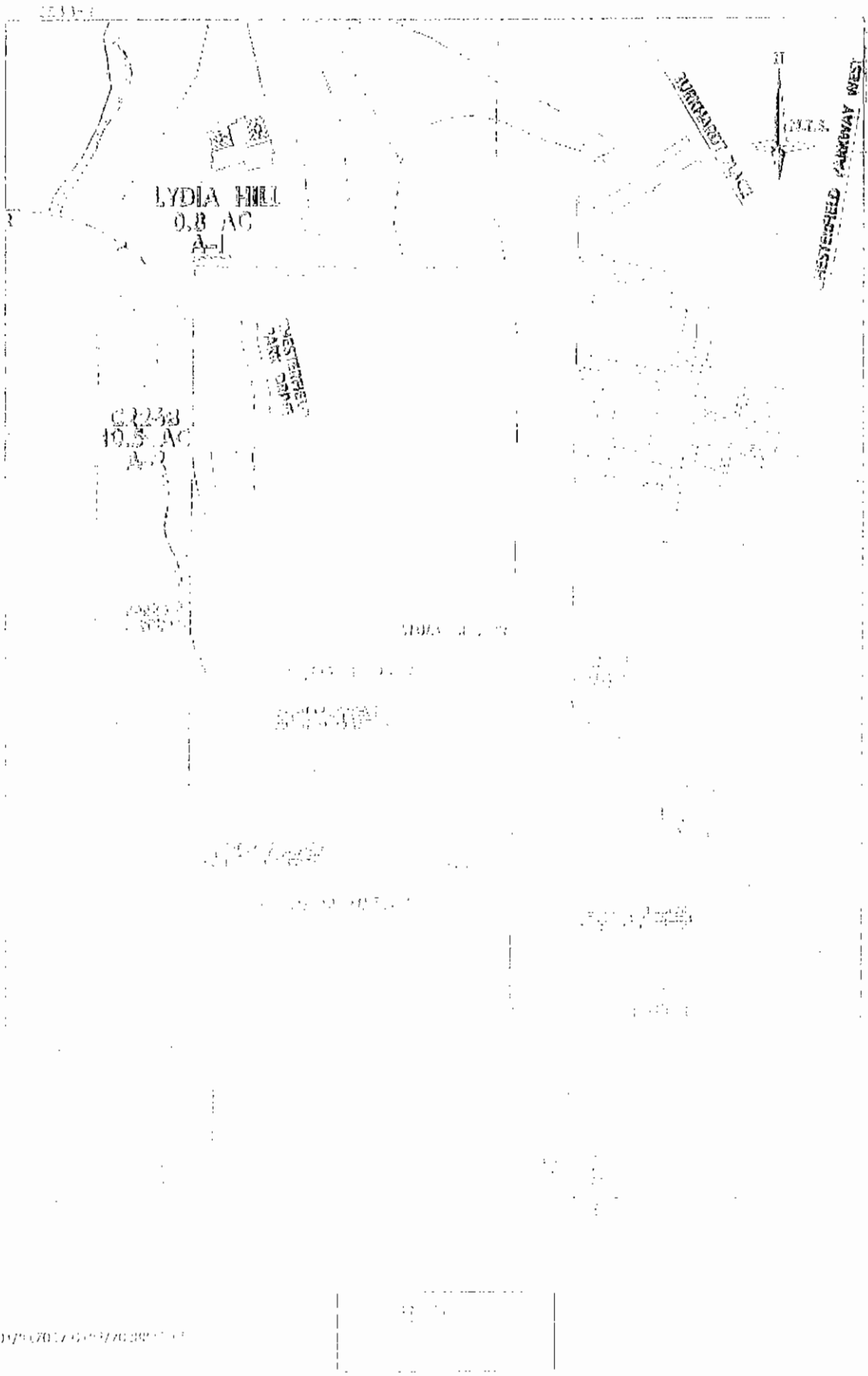
City of Chesterfield, Missouri

By:  _____

Name: _____

Title: _____

Date: _____



LYDIA HILL
0.8 AC
A-1

C223B
10.5 AC
A-1

CHESTERFIELD
CARWAY WEST

BURRARD PLACE

CHESTERFIELD
CARWAY WEST

1000 1:1000

1000 1:1000

1000 1:1000

1000 1:1000

1000 1:1000

1000 1:1000

1000 1:1000

A strip of land 60 feet wide being part of Tract C262 of the plat "C148, C220 & C226 Boundary Adjustment Plat" according to the plat as recorded in Plat Book 354 page 1044 of the St. Louis County Records, being in Part of Lot 7 of Thomas K. Humphrey's Estate, Part of Lots 1, 3 & 4 of the John Long Estate, in Fractional Section 9 and in U.S. Survey 415, Township 45 North - Range 4 East, City of Chesterfield, St. Louis County, Missouri and being more particularly described as follows:

Beginning at the Northeastern corner of Lot 36C of "Stonehill Village C," according to the plat thereof recorded in Plat Book 347 page 511 of the St. Louis County Records, said point also being the Southeast corner of August Hill Drive, 60 feet wide, as shown on the plat of "August Hill Drive, Road Dedication and Easement Plat" according to the plat thereof recorded in Plat Book 344 pages 365-366 of the St. Louis County Records; thence North 19 degrees 23 minutes 58 seconds East 60.00 feet along a radial line to the Northeast corner of August Hill Drive, as shown on the aforementioned plat; thence along a curve to the right, whose radius point bears South 19 degrees 23 minutes 58 seconds West 605.00 feet from the last mentioned point, a distance of 265.66 feet to a point; thence along a curve to the right, whose radius point bears South 44 degrees 33 minutes 31 seconds West 699.40 feet from the last mentioned point, a distance of 271.37 feet to the West line of property described in deed to the City of Chesterfield as recorded in Book 11138 page 430 of the St. Louis County Records, being also the East line of Lydia Hill Drive, 60 feet wide, per plat recorded in Plat Book 345 pages 305 and 306 of the St. Louis County Records; thence along said line South 00 degrees 36 minutes 53 seconds West 279.05 feet to a point in the West line of the aforementioned Lydia Hill Drive; thence along a curve to the left, whose radius point bears North 89 degrees 52 minutes 18 seconds West 644.37 feet from the last mentioned point, a distance of 262.48 feet to a point; thence along a curve to the left, whose radius point bears South 66 degrees 47 minutes 24 seconds West 639.40 feet from the last mentioned point, a distance of 248.09 feet to a point; thence along a curve to the left, whose radius point bears South 44 degrees 33 minutes 31 seconds West 545.00 feet from the last mentioned point, a distance of 239.31 feet to the point of beginning and containing 0.8 Acres according to calculations by Volz Inc. during February 2009.

EXHIBIT

A-1

August 20, 2009

EJK

Re: C226B
(includes Riparian Corridor)
Parks Donation

A tract of land being part of Lot 7 of the Thomas K. Humphrey's Estate and Part of Lot 4 of the Subdivision of the West One Half of U.S. Survey 415, in U.S. Survey 415 and Section 9, Township 45 North – Range 4 East, City of Chesterfield, St. Louis County, Missouri and being more particularly described as follows:

Beginning at the intersection of the South right-of-way line of August Hill Drive, 60 feet wide, as dedicated in Plat Book 344 pages 365 and 366 of the St. Louis County Records, with the East line of "Stonehill Village C," as recorded in Plat Book 347 pages 511 and 512 of the St. Louis County Records; thence leaving said East line of said "Stonehill Village C," along a curve to the right, whose radius point bears South 19 degrees 23 minutes 58 seconds West 545.00 feet from the last mentioned point, a distance of 239.31 feet to a point; thence along a curve to the right, whose radius point bears South 44 degrees 33 minutes 31 seconds West 639.40 feet from the last mentioned point, a distance of 248.09 feet to a point; thence along a curve to the right, whose radius point bears South 66 degrees 47 minutes 24 seconds West 644.37 feet from the last mentioned point, a distance of 268.28 feet to the East line of said Lot 7 of the Thomas K. Humphrey's Estates; thence South along said East line of the Thomas K. Humphrey's Estate, South 00 degrees 36 minutes 53 seconds West 1,184.78 feet to the South line of said Section 9; thence Westwardly along said South line of Section 9, North 89 degrees 10 minutes 59 seconds West 429.93 feet to the East line of "Stonehill Village A" a subdivision according to the plat thereof recorded in Plat Book 347 pages 515 and 516; thence Northwardly along said East line of "Stonehill Village A" and along the East line of said "Stonehill Village C" the following courses and distances: North 45 degrees 49 minutes 04 seconds East 281.87 feet, North 00 degrees 37 minutes 15 seconds East 300.00 feet, North 44 degrees 22 minutes 41 seconds West 99.00 feet, North 00 degrees 37 minutes 16 seconds East 1,050.75 feet and North 32 degrees 47 minutes 18 seconds West 179.90 feet to the point of beginning and containing 10.5 acres according to calculations by Volz Inc. during December 2007.

A tract of land being part of Parcel C-204 and part of Parcel C-203 conveyed to Chesterfield Village, Inc., by Deed recorded in Deed Book 7768, Page 1382, of the St. Louis County Records, situated in U.S. Survey 2002, Township 45 North, Range 4 East, in the City of Chesterfield, St. Louis County, Missouri, being more particularly described as follows:

Commencing at a point on the Western Right-Of-Way Line of Justus Post Road, 43 feet wide, at its intersection with a point on the Northeastern Line of "Oak Plat No. 1", a Subdivision according to the plat thereof recorded in Plat Book 172, Pages 30 through 33 of the St. Louis County Records; thence Northwesterly, along the Northeastern Line of said subdivision, North 53 degrees 13 minutes 00 seconds West 457.01 feet to the most Northern corner thereof and being the Point Of Beginning of the tract of land herein described; thence Southwesterly, along the Northwestern Line of said Oak Plat No 1, South 36 degrees 47 minutes 00 seconds West 62.00 feet to a point; thence Northwesterly, along the Northern Line of "Oak Plat No. 4", a Subdivision according to the Plat thereof recorded in Plat Book 187, Page 100, of the St. Louis County Records, North 82 degrees 13 minutes 00 seconds West 20.63 feet to a point; thence Northwesterly, along the Southern Line of property conveyed to Chesterfield Village Association by Deed recorded in Deed Book 8920, Page 2321, of the St. Louis County Records, North 53 degrees 13 minutes 00 seconds West 156.07 feet to a point; thence North 19 degrees 19 minutes 31 seconds West 120.93 feet to a point; thence North 36 degrees 47 minutes 00 seconds East 73.00 feet to a point; thence South 66 degrees 57 minutes 42 seconds East 195.62 feet to a point; thence South 86 degrees 17 minutes 01 second East 64.30 feet to a point; thence South 53 degrees 13 minutes 00 seconds East 49.16 feet to a point; thence Southwesterly, departing the Southern Line of said property conveyed to Chesterfield Village Association, South 45 degrees 00 minutes 00 seconds West 36.47 feet to a point on curve; thence Northwesterly, along a curve to the left having a radius of 86.00 feet, an arc distance of 8.45 feet (North 86 degrees 17 minutes 12 seconds West 8.45 feet on its chord) to a point of compound curvature; thence Southwesterly, along a curve to the left having a radius of 56.00 feet, an arc distance of 87.77 feet (South 46 degrees 00 minutes 00 seconds West 79.06 feet on its chord) to a point of reverse curvature; thence Southwesterly, along a curve to the right having a radius of 34.00 feet, an arc distance of 21.17 feet (South 18 degrees 56 minutes 32 seconds West 20.83 feet on its chord) to a point of tangency; thence South 36 degrees 47 minutes 00 seconds West 11.43 feet to the point of beginning, containing 1.0 acres, more or less, according to a survey made by Volz Inc., during the month of May, 2006.

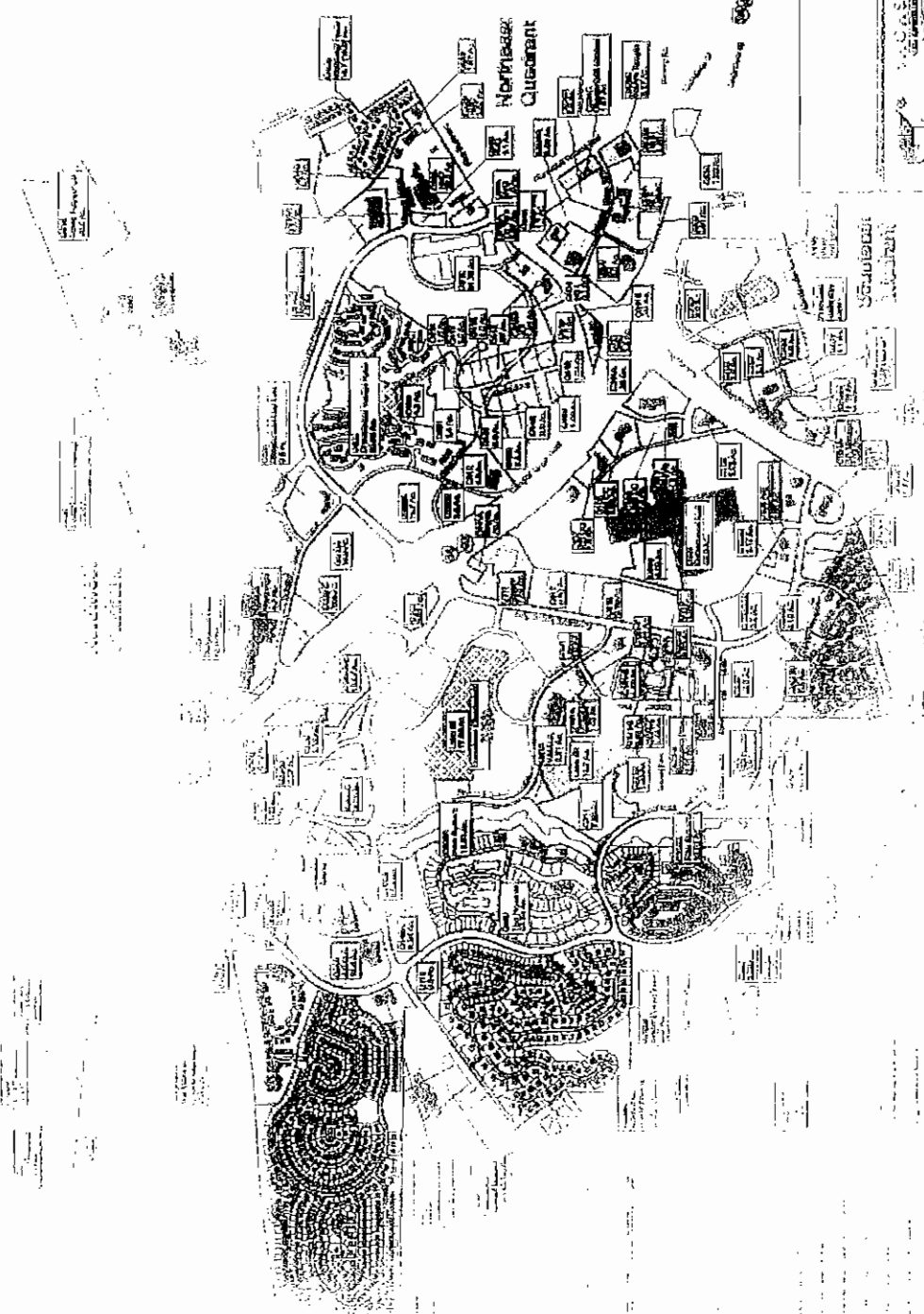
EXHIBIT
A-3

A tract of land being in Parcel C-207, as shown on the plat of "Lake Post Commons Recreation Facility Easement Plat" as recorded in Plat Book 333 pages 568 – 569 of the St. Louis County Records, being in U.S. Survey 2002, Township 45 North – Range 4 East, City of Chesterfield, St. Louis County, Missouri and being more particularly described as follows:

Commencing at the Northeastern corner of said Parcel C-207 where the aforementioned corner intersects the Southwestern line of Chesterfield Village Parkway, 73 feet wide, at the Northwestern corner of the Lake Post Commons Recreation Facility as shown on the "Boundary Adjustment Plat of Lake Post Commons Recreation Facility" and tracts of land in U.S. Survey 2002, Township 45 North – Range 4 East, per the recorded plat recorded in Plat Book 196 page 77 of the St. Louis County Records; thence along the Eastern line of Parcel C-207, South 38 degrees 22 minutes 25 seconds West 231.91 feet to the point of beginning of tract herein described; thence continuing along the aforementioned line, South 38 degrees 22 minutes 25 seconds West 97.32 feet to a point; thence North 77 degrees 36 minutes 45 seconds West 592.15 feet to a point; thence along a curve to the right, whose radius point bears North 84 degrees 47 minutes 24 seconds East 25.00 feet from the last mentioned point, a distance of 15.92 feet to a point; thence North 31 degrees 16 minutes 48 seconds East 30.03 feet to a point; thence along a curve to the right, whose radius point bears South 58 degrees 43 minutes 12 seconds East 15.00 feet from the last mentioned point, a distance of 27.68 feet to a point; thence South 43 degrees 00 minutes 36 seconds East 18.00 feet to a point; thence along a curve to the left, whose radius point bears North 46 degrees 59 minutes 24 seconds East 25.00 feet from the last mentioned point, a distance of 20.19 feet to a point; thence South 89 degrees 17 minutes 55 seconds East 24.68 feet to a point; thence along a curve to the right, whose radius point bears South 00 degrees 42 minutes 05 seconds West 180.00 feet from the last mentioned point, a distance of 61.83 feet to a point; thence South 69 degrees 37 minutes 01 second East 29.17 feet to a point; thence along a curve to the left, whose radius point bears North 20 degrees 22 minutes 59 seconds East 170.00 feet from the last mentioned point, a distance of 54.37 feet to a point; thence South 87 degrees 56 minutes 26 seconds East 17.96 feet to a point; thence along a curve to the left, whose radius point bears North 02 degrees 03 minutes 34 seconds East 95.00 feet from the last mentioned point, a distance of 29.51 feet to a point; thence North 74 degrees 15 minutes 17 seconds East 35.84 feet to a point; thence North 70 degrees 21 minutes 01 second East 21.06 feet to a point; thence along a curve to the right, whose radius point bears South 19 degrees 38 minutes 59 seconds East 55.00 feet from the last mentioned point, a distance of 46.23 feet to a point; thence South 61 degrees 29 minutes 22 seconds East 12.43 feet to a point; thence along a curve to the left, whose radius point bears North 28 degrees 30 minutes 38 seconds East 45.00 feet from the last mentioned point, a distance of 19.12 feet to a point; thence South 85 degrees 50 minutes 23 seconds East 3.78 feet to a point; thence along a curve to the right, whose radius point bears South 04 degrees 09 minutes 37 seconds West 55.00 feet from the last mentioned point, a distance of 34.70 feet to a point; thence South 49 degrees 41 minutes 35 seconds East 13.89 feet to a point; thence along a curve to the left, whose radius point bears North 40 degrees 18 minutes 25 seconds East 70.00 feet from the last mentioned point, a distance of 18.66 feet to a point; thence South 64 degrees 57 minutes 56 seconds East 32.49 feet to a point; thence along a curve to the left, whose radius point bears North 25 degrees 02 minutes 04 seconds East 55.00 feet from the last mentioned point, a distance of 38.28 feet to a point; thence North 75 degrees 09 minutes 21 seconds East 52.21 feet to a point; thence along a curve to the right, whose radius point bears South 14 degrees 50 minutes 39 seconds East 50.00 feet from the last mentioned point, a distance of 39.59 feet to a point; thence South 59 degrees 28 minutes 51 seconds East 8.81 feet to the point of beginning, said tract containing 0.9 acres according to calculations by Volz Inc. during the month of October 2009.

EXHIBIT

A-4



NORTHERN
CLUBBING

SOUTHERN
CLUBBING

PLANNING
CONSULTANTS
INCORPORATED
1000 WEST 10TH AVENUE
DENVER, COLORADO 80202
PHONE: 303.733.1100
FAX: 303.733.1101

MASTER PARCEL PLAN
JANUARY 21, 2012

1000 WEST 10TH AVENUE
DENVER, COLORADO 80202
PHONE: 303.733.1100
FAX: 303.733.1101

1000 WEST 10TH AVENUE
DENVER, COLORADO 80202
PHONE: 303.733.1100
FAX: 303.733.1101



Memorandum Department of Planning & Public Works

To: Michael O. Geisel, Director of Planning and Public Works
From: Aimee Nassif, Planning and Development Services Director
Date: March 22, 2010
RE: Sachs Park Land Agreement Summary

Attached is a copy of the latest land contribution agreement received from Sachs Properties on March 10, 2010. This land agreement establishes that certain properties identified as "Park and Trails Properties" and "Road Property" will be donated to the City of Chesterfield from Sachs Properties in exchange for certain land development credits. A quick overview of the property being donated per this agreement is as follows:

"Road Property"

1. Parcel consisting of 0.8 acres designated as the road connecting Lydia Hill Drive to August Hill Drive.

"Park and Trails Property" (or referred to as "Park Sites")

1. Parcel C226B; approximately 10.5 acres
2. Parcel C205; approximately 1.0 acres
3. Parcel C207; approximately .9 acres

Total amount of land contribution equals 13.2 acres

In exchange for property referenced above, this agreement states that the City will have the following obligations:

1. To grant any utility easement as the need may arise in the future.
2. The City will develop plans for the parks and trails and said plans shall be approved by Chesterfield Village Incorporated (CVI).
3. Notwithstanding any site specific ordinance to the contrary, there shall be no structure or parking setback greater than 10 feet for any development or redevelopment site abutting a "Park Site".
4. The City will construct, at our cost, a road connecting Lydia Hill to August Hill Road.

5. The City will create three (3) development accounts which can be used by CVI or its successors. These accounts are for a Space Account, F.A.R. Account and Canopy Account.

Space Account:

- The City of Chesterfield will place the aggregate of the acres contained in all Park Sites contributed by CVI into a Space Account. This also includes Chesterfield Lake Number 2.
- This acreage can then be used to satisfy any greenspace or openspace requirements for commercial or mixed use development or redevelopments.
- Acreage may be taken from the account and added to the numerator of a project site in order to increase greenspace/openspace percentage for any development plan.
- This increase is limited to 50% of the greenspace requirement.
- For example:

Size of Property	1 acre (43,560 sq ft)
Openspace required	30% (in this case = 13,068 sq ft)
Maximum amount of credits available	50% (in this case = 6,534 sq ft)

- However, any property zoned PCR District (Planned Commercial and Residential) such as Downtown Chesterfield may request to use more than 50% to satisfy greenspace or openspace requirements through approval of the Planning Commission. **this language was proposed by Sachs Properties. The City of Chesterfield may want to consider alternative language.*

Floor Area Ratio (FAR) Account:

- The City of Chesterfield will place the aggregate of the acres contained in all Park Site contributed by CVI into a FAR Account.
- This acreage can be used to satisfy any FAR requirement for commercial or mixed use development or redevelopment.
- Acreage may be taken from the account and added to the total lot area of a project site.
- No maximum or limitation on the amount of acreage that can be added to a site was offered by Sachs Properties.
- For example:

Size of Property	1 acre (43,560 sq ft)
Max FAR required	.55 (in this case = 23, 958 sq ft)
Max amount of credits available	unlimited amount can be added

**The City of Chesterfield may want to consider adding a maximum amount that can be used or a statement that the amount of credits that can be used on a given site are subject to review and approval of the City.*

Canopy Account.

- The City of Chesterfield will place 70% of any tree canopy contained in all Park Sites contributed by CVI in a Canopy Account.
- Credits in this account can be added for any type of development.
- Credits may be taken and added to the protection area on a Tree Preservation Plan (TPP) in order to comply with the 30% minimum preservation requirement.
- For example:

Size of Property	1 acre (43,560 sq ft)
Amount of existing Tree Canopy	.5 acre (21,780 sq ft)
Min Tree Preservation required	30% (in this case = 6,534 sq ft)
Max amount of credits available	unlimited amount can be added

****The City of Chesterfield may want to consider adding a maximum amount that can be used or a statement that the amount of credits that can be used on a given site are subject to review and approval of the City.***

****In addition, the City may want to request that CVI provide us with an account of the existing canopy coverage on the contributed Park Sites at the time the contribution is made. At this time, we do not have a study done to know how much tree canopy coverage currently exists therefore we do not have a beginning balance amount for this account which is needed.***

Summary

In exchange for approximately 13.2 acres of land being donated to the City; the City will create 3 development accounts (space, far, and canopy), modify setback requirements for property abutting a Park Site, and will construct a road connection from August Hill Drive to Lydia Hill Drive. As the agreement is currently written, the FAR Account and Space Account can only be used for commercial or mixed use development or redevelopment projects. Residential, commercial, or mixed use development or redevelopment projects are eligible to participate in the Canopy Account. Also, the new Exhibit A does not label August Hill Drive which we may want to have added for clarification. You may notice that with one exception, the actual process and procedures for implementing any credits has been omitted. This way, the City of Chesterfield has an opportunity to determine what the development process will be; which is not appropriate for inclusion in this land agreement.

MEMORANDUM

DATE: April 30, 2010
TO: Michael Geisel, Director of Planning and Public Works
Aimee Nassif, Planning and Development Services Director
FROM: Justin Wyse, Project Planner
RE: Sachs Park Land Agreement



As requested, Staff has looked at the potential impact to a site of the proposed Sachs Park Land Agreement. Specifically, Staff was asked to try and provide a better understanding of how the agreement could potentially affect undeveloped and developed properties currently in the area known as the Chesterfield Village and identified with a Sachs parcel number. The proposed agreement would create three “banks” of credits for open space, floor area ratio, and tree canopy.

The original intent of this assignment was to graphically modify approved site plans to graphically depict the decrease in open space that would be permitted, the potential loss of existing tree canopy, and the effect of the floor area ratio account. However, due to the nature of how open space is generally distributed around the site, the number of ordinances governing various sites that may or may not include regulations for open (or green) space or floor area ratio, and the fact that we allow plazas and other paved areas for non-motorized use to be counted as open space, graphically modifying the site plans proved to be inaccurate and did not provide the desired clarity. Therefore, this memorandum was put together to try and better demonstrate the potential effect that the agreement would have on various sites that would be eligible to use the credits under the proposed agreement. Each proposed credit bank proposed under the Sachs Park Land Agreement is presented below with examples and graphics shown for each. Developments were chosen that were located within the Chesterfield Village area and that display a range of requirements to show the impact of decreasing open (or green) space or modifying floor area ratio, analyze the proposed tree canopy bank impact, and the relationship of the proposal with the Comprehensive Plan.

Open Space Illustration

13 properties were chosen for analysis of the impacts of the space account. Under the proposed agreement, credits would be able to be used to decrease the amount of open space for each of the parcels above by up to one-half of the requirement. Table 1 below shows each of the developments analyzed and the amount of open space shown on the approved site development section plan.

Table 1: Open Space

Development	Lot	Open Space
Downtown Chesterfield	Lot 4 (C-121-4)	25.5%
Downtown Chesterfield	Lot 5 (C-121-5)	25.5%
Downtown Chesterfield	Lot 6 (C121-6)	25.5%
Downtown Chesterfield	Lot 7 (C-121-7)	25.5%
Herman Stemme Office Complex	Waterway (C-502)	27.1%
Stages St. Louis	C-111	31.0%
Downtown Chesterfield	Lot 1 (C-121-1)	34.5%
Downtown Chesterfield	Lot 3 (C-121-3)	38.9%
Herman Stemme Office Complex	Chesterfield Medical Institute (C-504C)	40.2%
Hilltown Village Center	Sherridan's (C-324)	41.3%
Junior Chamber International	C-313B	49.5%
Congregation Kol-Am *	C-506C	55%
Drury Plaza Hotel **	C-117	16%

* Green Space

** Entire development must contain 20% open space

Figures 1 - 4 below are provided to illustrate the aesthetic differences in the provided amount of open (or green) space provided on a site. As Stages of St. Louis is not yet constructed, Figure 3 is provided to show what the provided open space looks like on a site plan. It should be noted that there are two significant factors which have an impact on the amount of real or perceived open or green space on a site. First is the parking and building setbacks. Increased parking setbacks provide more green areas along the frontage and may increase the amount of open or green areas on a site. This difference can be seen when comparing Figure 1 and Figure 2.

Additionally, the amount of federal, state, or locally owned right-of-way can have a significant impact on the amount of perceived open space on a site. This can be seen on Figure 4. Between 14 and 20 feet of the frontage is open space for the site. The remainder of the area between the parking lot and the roadway is government owned right-of-way.



Figure 1: Congregation Kol-Am
(55% green space)

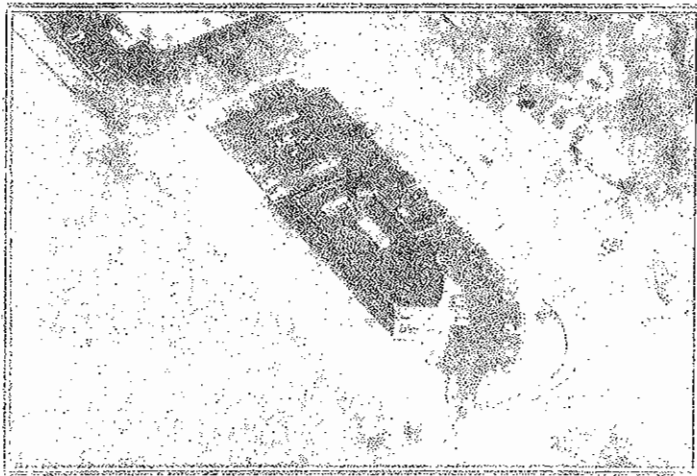


Figure 2: Chesterfield Medical Institute
(40.2% open space)

Table 2: F.A.R.

Property	Floor Area Ratio
Drury Plaza Hotel *	1.06
Chesterfield Ridge Center (16401 Swingley Ridge Road)	0.50
Downtown Chesterfield, Lot 1	0.50
1415 Elbridge Payne Office Park	0.39
Hilltown Village	0.26
Chellis and Romanus Macaroni Deli	0.20

* excludes future development

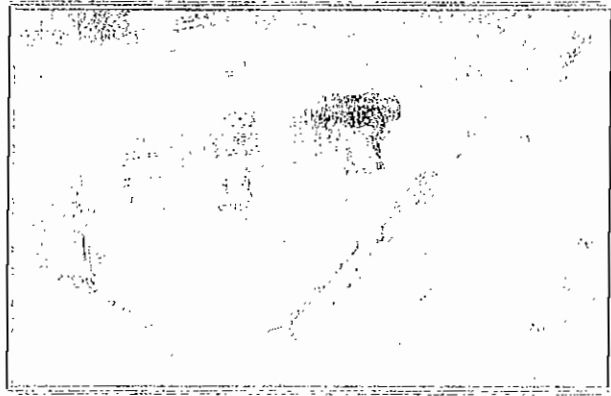


Figure 3: Drury Plaza Hotel (F.A.R. 1.06)

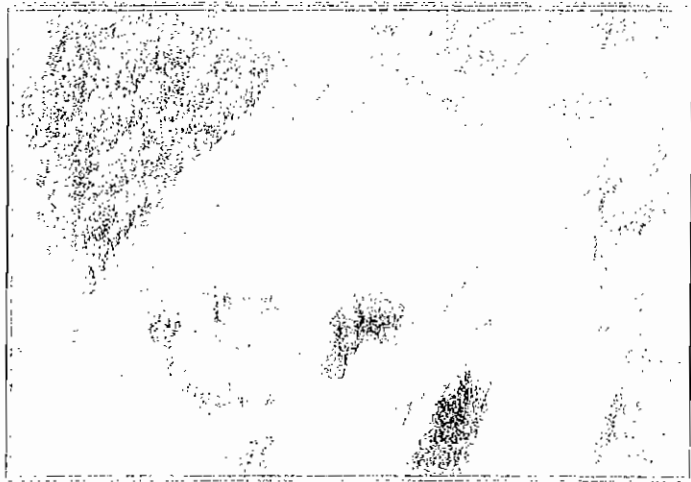


Figure 5: Chesterfield Ridge Center (F.A.R. 0.50) (includes future development)

Table 2: F.A.R.

Property	Floor Area Ratio
Drury Plaza Hotel *	1.06
Chesterfield Ridge Center (16401 Swingley Ridge Road)	0.60
Downtown Chesterfield, Lot 1	0.50
1415 Elbridge Payne Office Park	0.39
Hilltown Village	0.26
Chilis and Romanos Macaroni Grill	0.20

* excludes future development

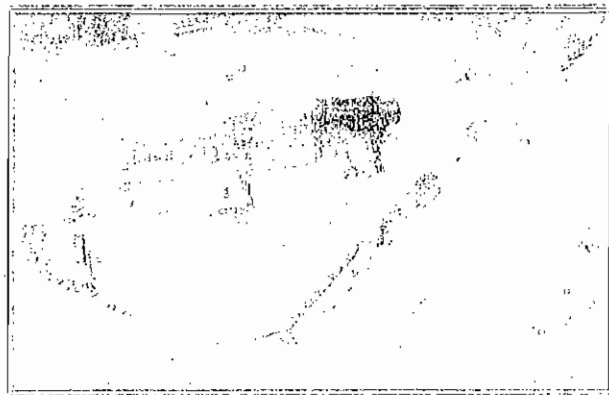


Figure 5: Drury Plaza Hotel (F.A.R. 1.06)

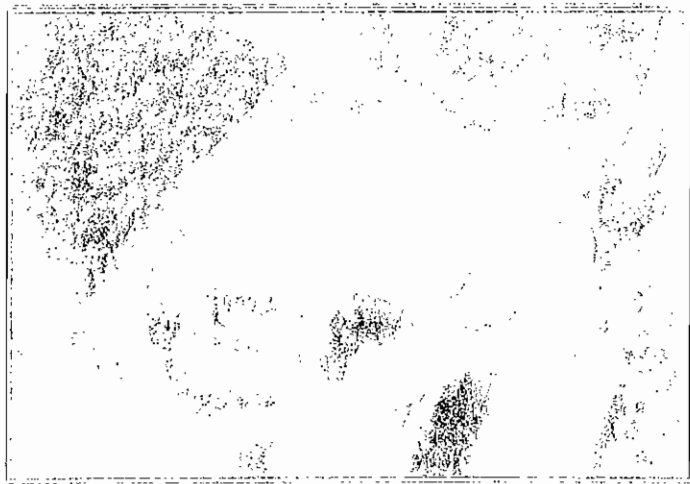


Figure 6: Chesterfield Ridge Center (16401 Swingley Ridge Road) (F.A.R. 0.60)

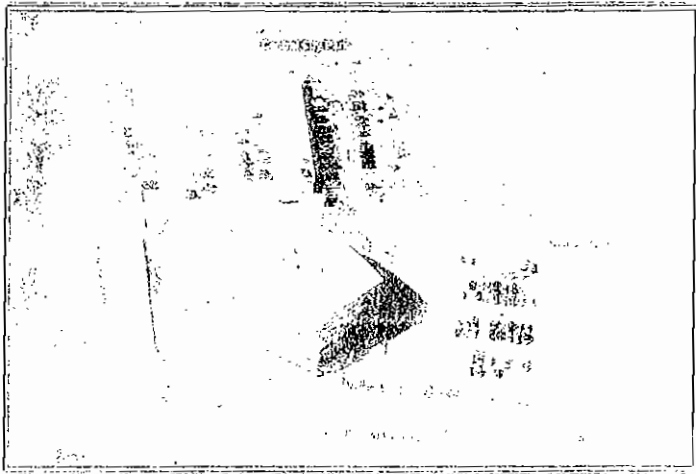


Figure 7: Downtown Chesterfield, Ohio
(F.A.R. 0.50)

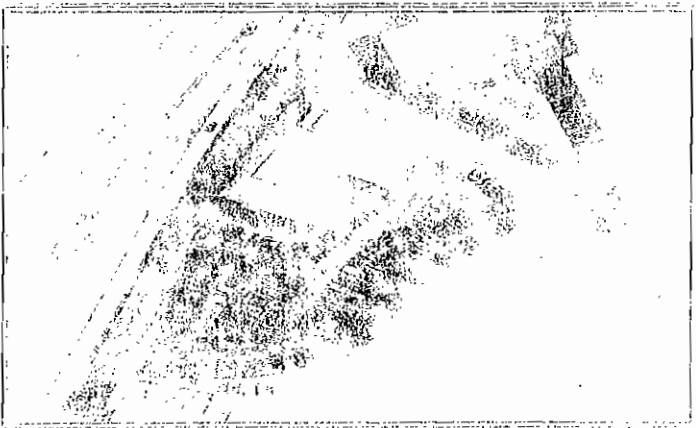


Figure 8: 1415 Elbridge Avenue Office
(F.A.R. 0.50)

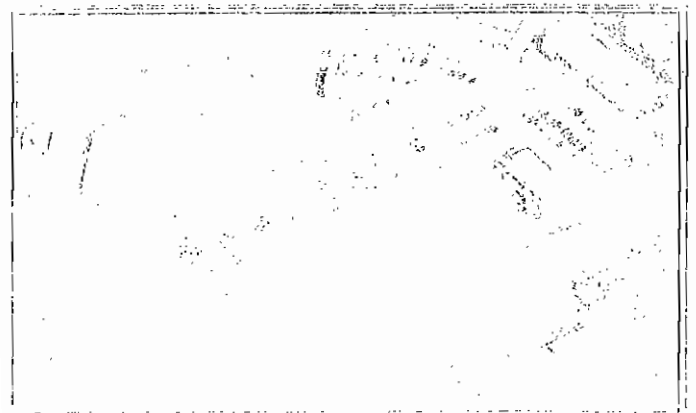


Figure 9: 1415 Elbridge Avenue Office
(F.A.R. 0.50)



Figure 10: Chilis And Romanos Macaroni Grill
(F.A.R. 0.09)

and was related over 30 properties located (see Appendix A) within the 0.10 mile area to look at the F.A.R. of existing and approved development. The results are in Table 3 below. F.A.R. range from 0.04 to 1.00 in 0.01 increments.

Table 3: Existing and Approved Development Floor Area Ratios

Development	Lot	F.A.R.
Hilltown Village Center	Sherridan's (C-324)	0.04
Herman Stemme Office Complex	Waterway (C-502)	0.08
Hilltown Village Center	Pizzeria Uno's (C-324)	0.10
Downtown Chesterfield	St. Louis County Library (C-121)	0.11
Downtown Chesterfield	Lot 7 (C-121-7)	0.13
Seventh Day Adventist Church	C-246	0.13
Downtown Chesterfield	Lot 6 (C121-6)	0.14
Junior Chamber International	C-313B	0.14
Downtown Chesterfield	Lot 4 (C-121-4)	0.15
West County YMCA	C-212	0.19
Downtown Chesterfield	Lot 5 (C-121-5)	0.21
Stages St. Louis	C-111	0.25
Hilltown Village Center	C-318	0.26
Herman Stemme Office Complex	Chesterfield Medical Institute (C-504C)	0.28
Elbridge Payne Office Park	C-702	0.39
Dierbergs Corporate Office	C-300B	0.47
Downtown Chesterfield	Lot 1 (C-121-1)	0.50
Homewood Suites	C-314C	0.52
Chesterfield Ridge Center	C-310	0.60
Downtown Chesterfield	Lot 3 (C-121-3)	0.69

To further this analysis, Staff put together Figure 11 on the next page. Figure 11 illustrates the spatial distribution of properties along with their corresponding F.A.R. value (depicted in ranges).

Tree Canopy Analysis

The proposed Sachs Park Land Agreement creates a bank of credits for the existing tree canopy located on the land to be donated to the City of Chesterfield. At this time it is unknown the existing tree canopy on these properties and the existing tree canopy on properties eligible for (re)development covered under the agreement. Additionally, this analysis is complicated due to the fact that existing tree canopy is often dispersed around a site. Therefore, attempting to illustrate the affects of the tree canopy account is difficult and any attempt to do so would likely provide an inaccurate representation of the potential impacts.

The City of Chesterfield Tree Preservation and Landscape Requirements state that 30% of the existing tree canopy on a site must be preserved and protected against construction impacts. If a developer is unable to meet this requirement, a mitigation plan along with a request for special conditions must be submitted to the Department for review. Under the proposed agreement, properties eligible to participate in the agreement would be permitted to reduce the required amount of preserved trees to 15% by utilizing credits from the tree canopy account.

Comprehensive Plan Analysis

The City of Chesterfield Comprehensive Plan contains guidance on how the development and redevelopment of the City is planned. The Plan Policies section of the Comprehensive Plan contains numerous policies that would both support and conflict with the proposed agreement. The Comprehensive Plan states that, "Development in Chesterfield Village should incorporate the vision of high density, mixed-use residential and non-residential development with pedestrian amenities.¹" The Comprehensive Plan also encourages multi-modal transportation opportunities, "such as pedestrian and bicycle paths."²

In addition to encouraging the above mentioned items, the Comprehensive Plan also contains several Plan Policies that encourage open space, preservation, the expansion of a trail system, and planned development. The Plan Policies³ are:

10.1 Open Space Preservation and Creation - Open space plays a major role in making the City a more desirable place to live. Preservation of open space and expansion of city parks and recreation opportunities should be encouraged. Public and private places should include design elements and features that create and add to the desirability of individual developments and the City of Chesterfield.

¹ City of Chesterfield Comprehensive Plan, Page 36, Plan Policy 3.6.5 Chesterfield Village

² City of Chesterfield Comprehensive Plan, Page 41, Plan Policy 2.3.3 Transportation Enhancement Projects

³ City of Chesterfield Comprehensive Plan, Page 45, Section 10.0 Parks and Open Space Policies

10.1.2 Encourage Clustering within Planned Environmental Units – Planned developments that cluster new construction while preserving natural features and open space should be encouraged by the City of Chesterfield.

10.2.1 Open Space/Public Space - Chesterfield should purchase or acquire through other means additional land to provide a complete range of active and passive recreational activities through open land, built facilities, and historic preservation.

10.2.3 Trail System - A trail system should be developed utilizing existing street right-of-ways, common ground when available, utility easements, flood plain areas, and additional property acquisition or private easements. Consideration should be given to cooperating with neighboring municipalities in developing portions of the trail system. Trail systems could include walking, jogging, bicycle, and equestrian trails. This System should be fully integrated with and connected to the transportation network.

Appendix A: Floor Area Ratio Research

Address	Street	Lot Size		Building Size	F.A.R.
		Acres	Sq. Feet		
300	Chesterfield Ctr	1.29	56,192	16,143	0.29
335	Chesterfield Ctr	3.8	165,528	176,086	1.06
400	Chesterfield Ctr	2.61	113,692	90,644	0.80
442	Chesterfield Ctr	2.97	129,373	27,815	0.21
500	Chesterfield Ctr	2.25	98,010	34,916	0.36
550	Chesterfield Ctr	3.51	152,896	11,419	0.07
1	Chesterfield Mall	13	566,280	175,821	0.31
7	Chesterfield Mall	20.2	879,912	555,110	0.63
49	Chesterfield Mall	13.45	585,882	267,016	0.46
100	Chesterfield Mall	16.68	726,581	296,720	0.41
150	Chesterfield Mall	10.84	472,190	77,073	0.16
909	Chesterfield Parkway	0.97	42,253	1,800	0.04
917	Chesterfield Parkway	2.08	90,605	14,634	0.16
1023	Chesterfield Parkway	2.17	94,525	21,005	0.22
1065	Chesterfield Parkway	2.84	123,710	51,342	0.42
1295	Chesterfield Parkway	1.559	67,910	7,670	0.11
16123	Chesterfield Parkway	3.72	162,043	7,032	0.04
15431	Conway Road	2.75	119,790	44,226	0.37
15455	Conway Road	2.62	114,127	50,364	0.44
1350	Elbridge Payne Road	1.68	73,181	28,976	0.40
1400	Elbridge Payne Road	3.46	150,718	29,412	0.20
15548	Olive Boulevard	1.13	49,223	2,152	0.04
15601	Olive Boulevard	2	87,120	5,568	0.06
15400	S. Outer 40 Road	2.01	87,556	31,716	0.36
15450	S. Outer 40 Road	4.76	207,346	104,410	0.50
16020	Swingley Ridge Road	2.85	124,146	49,410	0.40
16052	Swingley Ridge Road	3.29	143,312	49,410	0.34
16090	Swingley Ridge Road	6	261,360	108,144	0.41
16091	Swingley Ridge Road	3.1	135,036	50,966	0.38
16100	Swingley Ridge Road	1.68	73,181	41,314	0.56
16105	Swingley Ridge Road	1.7	74,052	13,012	0.18
16141	Swingley Ridge Road	1.693	73,747	63,851	0.87
16201	Swingley Ridge Road	1.92	83,635	43,470	0.52
16253	Swingley Ridge Road	4.258	185,478	79,860	0.43
16305	Swingley Ridge Road	3.218	140,176	144,766	1.03

Average	0.38
Median	0.37
Standard Deviation	0.26
25th Percentile	0.19
50th Percentile	0.37
75th Percentile	0.45
1st Quartile	0.19
2nd Quartile	0.37
3rd Quartile	0.45
4th Quartile	1.06