



**OPEN HOUSE AND TOUR OF THE CITY OF OLATHE EMERGENCY
OPERATIONS CENTER, GARDEN LEVEL OF CITY HALL, 5:30 P.M. - 6:45
P.M.**

1. CALL TO ORDER

2. BEGIN TELEVISED SESSION – 7:00 P. M.

3. PLEDGE OF ALLEGIANCE

4. SPECIAL BUSINESS

- A.** Recognition of Alyssa Klinzing, Miss Kansas USA 2019.

Staff Contact: Liz Ruback

- B.** Recognition of 2019 Olathe Civic Academy graduates.

Staff Contact: Brenda Long

5. PUBLIC HEARINGS

- A.** Consideration of a public hearing regarding the establishment of a tax increment financing redevelopment district located at the northwest corner of 151st Street and Harrison Street.

Staff Contact: Ron Shaver, Dianna Wright and Emily Vincent

Action needed: Consider motion to close hearing.

6. CONSENT AGENDA

The items listed below are considered to be routine by the City Council and may be approved in one motion. These may include items that have been reviewed by the City Council in a prior planning session. There will be no separate discussion unless a Councilmember requests that an item be removed from the consent agenda and considered separately.

- A.** Consideration of approval of the City Council meeting minutes of March 5, 2019.

Staff Contact: Dianna Wright and David Bryant

- B. Consideration of new cereal malt beverage license applications for calendar year 2019.
Staff Contact: Dianna Wright and Brenda Long
- C. Consideration of business expense statement for City Manager Michael Wilkes for expenses incurred to attend the NLC Conference in DC March 9-12, 2019.
Staff Contact: Liz Ruback
- D. Consideration of ratifying an Addendum to the Interlocal Cooperation Agreement between the Olathe Public Library and the Johnson County Library for automated circulation, patron and bibliographic services.
Staff Contact: Emily Baker
- E. Consideration of Consent Calendar.
Staff Contact: Mary Jaeger and Beth Wright
- F. Consideration of an Agreement with Turner Construction for construction management services for the Fire Station #8 Improvements Project, PN 6-C-009-18.
Staff Contact: Mary Jaeger and Beth Wright
- G. Consideration of Engineer's Estimate, acceptance of bids and award of contract to Freeman Concrete Construction, LLC for construction of the Wabash Street Improvements Project, PN 3-R-003-19.
Staff Contact: Mary Jaeger and Beth Wright
- H. Acceptance of bid and consideration of award of contract to Roberts Chevrolet for the replacement of nine (9) SUV's for 2019 for the Olathe Police & Fire Departments.
Staff Contact: Steven Menke, Jeff DeGraffenreid and Amy Tharnish
- I. Acceptance of bid and consideration of award of contract to Ennis-Flint, Inc. for traffic marking paint for the Traffic Division of Public Works .
Staff Contact: Mary Jaeger and Amy Tharnish
- J. Consideration of contract renewal to Hydro-Klean, LLC for Specialty Tank Cleaning and Inspection Services for the Environmental Services Division of Public Works.
Staff Contact: Mary Jaeger and Amy Tharnish
- K. Acceptance of renewal of contract to Stericycle Environmental Solutions for household hazardous waste disposal.
Staff Contact: Mary Jaeger and Amy Tharnish

- L. Acceptance of renewal of contract to K & W Underground, Inc. for directional drilling services for the Field Operations Division of Public Works.
Staff Contact: Mary Jaeger and Amy Tharnish
- M. Acceptance of bids and consideration of award of contracts to Gades Sales Company, Inc., Electronic Technology, Inc., Traffic Control Corporation and Traffic Signal Controls, Inc. for the purchase of traffic signal supplies for the Traffic Operations Division of Public Works.
Staff Contact: Mary Jaeger and Amy Tharnish
- *N. Consideration of a new drinking establishment license for RCBC, LLC. at 1062 W. Santa Fe.
Staff Contact: Dianna Wright and Brenda Long

7. NEW BUSINESS-PUBLIC WORKS

- A. Consideration of Ordinance No. 19-10 authorizing payment by the City Treasurer of an eminent domain award and court appointed appraisers' fees in the eminent domain case of The City of Olathe, Kansas vs. Wal-Mart Real Estate Business Trust, et al., Case No. 18CV06665 for the Stag's Ridge Project, PN 7-C-047-18.
Staff Contact: Ron Shaver, Mary Jaeger and Beth Wright

Action Needed: Consider motion to approve or deny.

8. NEW CITY COUNCIL BUSINESS

9. END OF TELEVISED SESSION

10. GENERAL ISSUES AND CONCERNS OF CITIZENS

11. CONVENE FOR PLANNING SESSION

A. DISCUSSION ITEMS

- 1. Discussion regarding Proposed Amendments to Chapter 18.40 of the Unified Development Ordinance (UDO18-0002 A). (30 mins)
Staff Contact: Aimee Nassif and Shelby Ferguson
- 2. Discussion on the Park Maintenance Facilities Improvements Project, PN 6-C-001-18. (15 mins)
Staff Contact: Mary Jaeger and Beth Wright

3. Fire Department Activities & Initiatives (15 mins)

Staff Contact: Jeff DeGraffenreid

12. EXECUTIVE SESSION

Consideration of motion to recess into an executive session to discuss the following items:

- A. To discuss personnel matters of non-elected personnel pursuant to the exception provided in K.S.A.75-4319(b)(1) regarding the Internal Auditor position. (City Council)

Staff Contact: Dianna Wright

- B. To discuss personnel matters of non-elected personnel pursuant to the exception provided in K.S.A.75-4319(b)(1) regarding the evaluation of the City Manager. (City Council)

13. RECONVENE FROM EXECUTIVE SESSION

14. ADDITIONAL ITEMS

15. ADJOURNMENT



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: City Manager's Office

STAFF CONTACT: Liz Ruback

SUBJECT: Recognition of Alyssa Klinzing, Miss Kansas USA 2019

ITEM DESCRIPTION:

Recognition of Alyssa Klinzing, Miss Kansas USA 2019

SUMMARY:

The Miss Kansas USA competition selects the representative for the state of Kansas for the Miss USA pageant. Alyssa Klinzing was crowned November 25, 2018. She will represent Kansas in the upcoming Miss USA pageant.

FINANCIAL IMPACT:

N/A

ACTION NEEDED:

Recognize Alyssa Klinzing for being named Miss Kansas USA 2019.

ATTACHMENT(S):

N/A



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: City Manager's Office

STAFF CONTACT: Brenda Long

SUBJECT: Recognition of 2019 Olathe Civic Academy graduates

ITEM DESCRIPTION:

Recognition of 2019 Olathe Civic Academy graduates

SUMMARY:

The City of Olathe just completed its twelfth Civic Academy. Olathe Civic Academy is a program offered to citizens who live or work in Olathe and provides an in-depth look at municipal government.

Thirty-two citizens were enrolled, and thirty-one participants completed the program and will be recognized and presented with a certificate at the City Council meeting. The graduates are:

Brett Balkenbush, Barbara Carter, Katelyn Clark, Stacy Cope, Clayton Duffin, Jeffery Eppler, Michelle Graham, Joseph Graham, Terry Harrison, Jeffery Hayes, Roger Hobbs, Dana Hobbs, Dee Hudgens, Stephanie James, John McCauley, Ricki McCauley, Nikki McDonald, Dustin Morris, Doug Mounday, Ronnita Paul, Kathy Paul, Claire Reagan, Harvey Reinblatt, Barbara Siefken, Jaskaran Singh, Twila Smith, Tom Smith, Mary Wirtz, Patrick Wirtz and Jane Zaccardi

Claire Regan has been selected to speak for the class at the Council meeting.

The Civic Academy consisted of ten sessions beginning January 10th, concluding on March 7th, providing an overview of Olathe city government, including presentations from each department and tours of various City facilities (Attachment A - Schedule).

As part of the commitment to participate in the Civic Academy, each member attended a City Council or Planning Commission meeting.

Prior to this class, 193 citizens have graduated from Civic Academy and 41 have served or are serving on City boards, commissions and committees (Attachment B). Many other graduates have served in volunteer capacities for City activities or City departments.

A reception for graduates and their families will follow the City Council presentation.

FINANCIAL IMPACT:

N/A

ACTION NEEDED:

Recognize and congratulate individuals who have completed the 2019 Olathe Civic Academy.

ATTACHMENT(S):

A: 2019 Civic Academy Schedule

MEETING DATE: 3/19/2019

B: Civic Academy Alumni Involvement

SCHEDULE FOR 2019 CIVIC ACADEMY

Session 1 – January 10 (City Hall)

Council Member: Karin Brownlee

- A. Icebreaker
- B. City Manager's Office
(including Overview of Local Government & City Council)
- C. Direction Finder; ETC Institute – Ed Foley

Session 2 – January 17 (Community Center)

Council Member: Marge Vogt

- A. Parks & Recreation – Michael Meadors
- B. Class Photo

Session 3 – January 24 (City Hall & Library)

Council Member: No Council Member

- A. Boards & Commissions – Brenda Long
- B. Volunteers – Rosetta Smith
- C. Olathe Public Library – Emily Baker

Session 4 – January 31 (City Hall)

Council Member: Mayor Copeland

- A. Resource Management – Dianna Wright

Session 5 – February 7 (Municipal Court)

Council Member: Wes McCoy

- A. Legal- Ron Shaver
- B. Municipal Court- Kristi Orbin, Kate McElhinney

Session 6 – February 14 (Police Headquarters)

Council Member: Larry Campbell

- A. Police – Chief Menke

Session 7 – February 21 (Fire Administration Building)

Council Member: No Council Member BOE/Council Meeting

- A. Fire – Chief DeGraffenreid

Session 8 – February 28 (Public Works)

Council Member: No Council Member

- A. Public Works Part 1: – Mary Jaeger

Session 9 – March 2 (City Hall)

Council Member: No Council Member

- A. Public Works Part 2: Planning Services – Mary Jaeger
- B. Bus Tour (brief stop at the Traffic Operations Center)

Session 10– March 7 (City Hall)

Council Member: Jim Randall

- A. ITS – Mike Sirna
- B. Communications & Customer Service – Tim Danneberg

Session 11 – March 19 (City Hall)

- A. Graduation and City Council Meeting

CIVIC ACADEMY ALUMNI INVOLVEMENT

2002

John Andrade	150 th Steering Committee, Parks & Recreation Foundation, Street Maintenance Sales Tax Finance Oversight Committee, Library Advisory Board
Geoff Hetley	Strategic Planning Committee
Roger Mason	Strategic Planning Committee
Harry Pell	Library Advisory Board

2003

Andy Darling	Citizens Police Advisory Council
Jennifer Doyle	Parks & Recreation Foundation
Karen Hicks	Public Art & Culture Committee
Carole Ladd	Public Art & Culture Committee
Wade Ladd	Human Relations Commission
Ruth Nelson	Sister Cities Committee, Mayor's Christmas Tree Fund Board
Wanda Procaccini	Citizens Police Advisory Council
Doug Svatos	Parks & Recreation Foundation

2004

Bruce Anderson	SPIG – Economic Sustainability
Jon Campbell	Planning Commission
Jack Hansen	Library Advisory Board
Phyllis Pacheco	Board of Zoning Appeals

2005

Sandra Danforth	Citizens Police Advisory Council, 150 th Committee Member
Mike Kohler	Planning Commission
Pam McNicoll	150 th Committee Member

2006

Brandon Hansel	Human Relations Commission
Burke Jones	Board of Zoning Appeals
Susan Richart	150 th Committee Member

2008

Eric Green
Vivian Avery

Parks & Recreation Foundation
Human Relations Commission

2010

Robert Cantin
Karla Davis
Shakil Haider
Ken Oziah
Jim Terrones

Persons with Disabilities Board
Teen Council
Human Relations Commission
Board of Housing Commissioners
Human Relations Commission; Citizens
Police Advisory Council; Olathe Public
Library Task Force, City Council
Parks & Recreation Foundation
Human Relations Commission

2015

Ryan Freeman
Dennis Vaverka
Vince Donofrio

Planning Commission
Police Advisory Council
Board of Housing Commissioners

2017

Darnell Hunt
Carrie Rezac

Ben Hillman
Greg Mosley

Human Relations Commission
Street Maintenance Sales Tax Finance
Oversight Committee
Human Relations Commission
Strategic Planning Advisory Committee

2018

Maggie Truitt
Alan Marston
Jimmy Gaona

Citizens Police Advisory Board
Strategic Planning Advisory Committee
Strategic Planning Advisory Committee



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Legal and Resource Management

STAFF CONTACT: Ron Shaver, Dianna Wright, Emily Vincent

SUBJECT: Consideration of a public hearing regarding the establishment of a tax increment financing redevelopment district located at the northwest corner of 151st Street and Harrison Street.

ITEM DESCRIPTION:

Consideration of a public hearing regarding the establishment of a tax increment financing redevelopment district located at the northwest corner of 151st Street and Harrison Street

SUMMARY:

On January 31, 2019, the City received an application (Attachment A) for the creation of a tax increment financing (TIF) district at the northwest corner of 151st Street and Harrison Street (the former Great Mall of the Great Plains site) (the "Property") from the developer of the land in the area, Mentum Olathe, L.L.C. (Woodbury Corporation). Resolution 19-1014 (Attachment B) was adopted on February 5, 2019 and called for the public hearing to be conducted this evening.

Creation of the TIF district would establish a base assessed value of all real property within the district. The incremental property taxes levied on the property after creation of the TIF district would be used to pay the costs of eligible projects in accordance with the Kansas TIF Act (K.S.A. 12-1770 et seq., the "Act").

Notice of the public hearing was published in the Gardner news on March 6, 2019. Notice was mailed to Johnson County, Olathe School District, and the property owners in the proposed district.

No privately-owned property may be acquired or redeveloped under the Act if the County or School District determines by resolution adopted within 30 days following the conclusion of the public hearing that the proposed TIF district will have an adverse effect on the county or school district.

FINANCIAL IMPACT:

All costs of notice of the public hearing are paid by the Applicant.

ACTION NEEDED:

Conduct the public hearing.

ATTACHMENT(S):

Attachment A: TIF Application Attachment B: Resolution No 19-1014

CITY OF OLATHE, KANSAS

REDEVELOPMENT DISTRICTS - TAX INCREMENT FINANCING

Application Procedures and Application Form



Approved

May 6, 2003 - Resolution No. 03-1053

(Application Updated in January 2018, in accordance with Resolution 17-1087)

Important Notice and Disclaimer

The attached procedures, policies and forms have been prepared by the City of Olathe, Kansas (the "City") and The Economic Development Committee of the City of Olathe, Kansas (the "Economic Development Committee") for the purpose of assisting private developers in the consideration of whether a Redevelopment District and Tax Increment Financing ("TIF") for prospective projects is a realistic possibility. The authority to make the legislative findings and determinations necessary for the compliance with the TIF Statutes is vested solely and only in the City's Governing Body. Applicants and Projects are cautioned that the attached materials have been prepared primarily for informational purposes to inform Applicants of the types of projects the City would consider for TIF assistance. The City reserves the right to reject any and all projects, even those which satisfy all of the attached criteria for the use of TIF, for any reason whatsoever, without regard for the viability of the project. Furthermore, the City reserves the right to waive any non-conformance to these policies and approve any project the City deems favorable to the City.

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JAN 31 2019

**CITY OF OLATHE
CITY CLERK OFFICE**

Resolution No. 17-1087

Overview of the Redevelopment (TIF) Process

- 1. Pre-application meeting(s) with the City's Economic Development Committee and the City's Development Review Team.**
- 2. An Application is submitted by Applicant to City's Economic Development Committee. A blight study shall be submitted, if necessary. (* Fees Due)**
- 3. The City's Economic Development Committee will review the Application and determine whether the Application is complete and whether the proposed project is eligible under the City's Tax Increment Financing policy.**
- 4. After approval by the City's Economic Development Committee, the Committee will forward the Application with a recommendation to the City Council for discussion and/or consideration.**
- 5. The City Council calls for a public hearing on the creation of the district.**
- 6. The City conducts hearings, sends notices and completes other requirements as prescribed by state law; City Council considers creation of the district and creates the district by Ordinance.**
- 7. The developer prepares a Redevelopment Plan pursuant to state law and City requirements. A Redevelopment Agreement is also prepared.**
- 8. The Economic Development Committee reviews the Plan and Agreement and submits to the City Council with a recommendation. (* Fees Due)**
- 9. The City Council reviews and considers the Redevelopment Plan and the Redevelopment Agreement at a Study Session.**
- 10. The City Council considers an Ordinance making necessary findings and approving the Redevelopment Plan and Redevelopment Agreement. Authorization of the issuance of bonds or reimbursement of TIF eligible costs is also considered at this time. (* Fees Due)**
- 11. Execution of the Redevelopment Agreement between the City and Applicant.**

Application Procedures

1. APPLICATION:

Submission: The Redevelopment District-TIF Application form, policies, and procedures are available here at www.olatheks.org or the City Clerk's office. Not less than one (1) paper copy and one (1) electronic copy of the completed Application should be submitted to the Economic Development Committee, together with the required Application fee. The completed Application shall be submitted to City Manager, City of Olathe, 100 E. Santa Fe, P O Box 768, Olathe, Kansas 66051.

Application Fee: Each Application shall be accompanied with a non-refundable Application fee made payable to the City of Olathe. The Application fee will be used by the City to pay the costs incurred by the City in the review of the Application. Bond Counsel and Financial Advisor fees are paid from bond and/or incremental TIF proceeds, if necessary. The City has established a phased Application fee as outlined below. Any amendments to a TIF Plan require a non-refundable reapplication fee as indicated below. The Applicant shall be required to pay additional costs such as outside consultant and attorney fees and publication costs.

TIF APPLICATION FEE

<u>Non-Refundable TIF Fee</u>	<u>1% of total TIF assistance authorized</u>
Initial Application Fee (Due at the time of submittal of the application)	5%, or \$5,000, whichever is less
Redevelopment Plan Fee (Due one (1) week prior to consideration of the Redevelopment Plan by the City Council)	15%, or \$10,000, whichever is less
Ordinance Approving Redevelopment Agreement and Issuance of Bonds	80%, or \$85,000, whichever is less
Maximum Fee	1% of total TIF assistance, or \$100,000, whichever is less

Reapplication fees for substantial changes will be charged at the same rate as the schedules shown above.

TIF ADMINISTRATIVE SERVICE FEE

The following administrative service fees shall be paid to the City from the tax increment generated from the project prior to disbursement of the increment to the developer or bond trustee to cover the administrative costs incurred by the City for the administration of and other City costs associated with each approved TIF Project. Such administrative service fee shall be in addition to the TIF application fee and any other fees associated with the TIF Project.

Property tax increment projects only	.5% of the annual increment
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Property tax, sales tax and other tax increment projects	2.5% of the annual increment
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The applicant may be required to pay additional costs such as outside consultant and attorney fees as required for the City to fully analyze the TIF application. TIF application fees (excluding non-refundable), additional consultant and attorney fees may be reimbursed to applicant or paid to City from bond proceeds or TIF revenues. However, City bond issuance costs may not be reimbursed from TIF project revenue if TIF project reimbursable costs are payable from City sales tax or transient guest tax.

Preliminary Determination of Completeness: Upon submission, the Application will be reviewed to determine if it is complete. If the Application is incomplete or if additional information is needed, the Applicant will be notified in writing that the Application is not complete and the reasons will be stated referring to the specific criteria that are not met, additional information required, or financial, legal, planning, and development concerns.

Requests for Proposals: The City may initiate a Request for Proposals for a redevelopment project. The fees shown above are for both City initiated and non-City initiated redevelopment projects. The City reserves the right to reduce or waive the above fees if a redevelopment project is determined to be in the best interest of the City to do so. Upon the filing of an Application that is non-City initiated, the City reserves the right to cause a public notice to be inserted in a newspaper of general circulation in the City or on the City's website requesting proposals for development in the proposed project area.

2. STAFF REVIEW:

Review of the Application will be conducted by the City's Economic Development Committee, and if necessary by other City Staff, the City's Financial Advisor, City Bond Counsel and any other outside consultant deemed necessary for review of the Application. Initial review time will be approximately 30 days from the date the completed Application is submitted to the City. However, more or less time may be required for particular Applications. Upon receipt of a complete Application and after review by the City's Economic Development Committee, the Economic Development Committee shall forward a recommendation to the City Council

for consideration. The recommendation of the City's Economic Development Committee may be approved, denied, or amended by the City Council. Applicants will be notified of the City's Economic Development Committee forwarding the Application to the Council Study Session.

Applications that are determined to be incomplete or do not conform to the City's policy will not be forwarded to the City Council. Applicants will be notified of the determination that the Application will not be forwarded and should be modified before being considered in the future.

3. REDEVELOPMENT CONSIDERATION:

The City Council may desire to hold one or more study sessions before any public hearing is held. During this period the Applicant may be required to submit additional information as requested and/or appear before the City Council to present information regarding the Application. The City Council considers making all findings and determinations required by the TIF Statute (K.S.A. 12-1770).

The City Council conducts hearings and other requirements as prescribed by state law. The proposed developer prepares a Redevelopment Plan pursuant to state law and City requirements. The cost of all such studies shall be paid by the Applicant and should be prepared by a professional consultant having a favorable reputation for the preparation of such studies. The studies shall be submitted to the City in a timely manner for review by Staff prior to any City Council meetings or study sessions. Additionally, consideration of the Redevelopment Plan shall adhere to the requirements of the TIF Policy and may require additional studies as necessary. The City's Economic Development Committee reviews the Redevelopment Plan and submits it to the City Council with comments.

After creation of the District and as part of the negotiation of the Redevelopment Plan, the City and Applicant shall prepare a Redevelopment Agreement. Additional requirements and costs, as needed, may be included in the Redevelopment Agreement.

The City Council may review and discuss the Redevelopment Plan and Redevelopment Agreement at Study Sessions. The City Council may consider an Ordinance making necessary findings and approving the Redevelopment Plan and Redevelopment Agreement. Authorization of the issuance of bonds or reimbursement of TIF eligible costs is also considered at this time.

4. NOTIFICATION / PUBLICATION RESPONSIBILITIES:

Legal notices and mailings to taxing districts and property owners shall be prepared or caused to be prepared, delivered, and mailed by the City pursuant to state law. Copies of certifications of mailing, signed delivery certifications, or other proofs of notifications shall be forwarded to the City Clerk. The City shall also prepare or cause to be prepared any Notices of Public Hearings to be published and forward to the City Clerk for publication in a timely manner as required by state law. The Applicant is responsible for all costs associated with publications, mailings, certifications, delivery, and preparation of notices. The City shall be reimbursed for any expenses associated with Application and the redevelopment (TIF) process.

5. OTHER COSTS OR EXPENSES:

Applicant shall reimburse the City for all reasonable documented, out-of-pocket expenses incurred in connection with the Redevelopment TIF District, including attorney's fees and other City consultant fees. Said reimbursements to the City shall be deemed Reimbursable Expenditures.

CITY OF OLATHE, KANSAS
APPLICATION FOR TAX INCREMENT FINANCING ("TIF")

APPLICANT: _____ Mentum Olathe L.L.C. _____

ADDRESS: _____ Attn: Josh Woodbury, 2733 East Parleys Way, Ste. 300, Salt Lake City, UT 84109 _____

PHONE #: _____ 801.485.7770 _____

FAX #: _____

E-MAIL ADDRESS: _____ josh_woodbury@woodburycorp.com _____

CONTACT PERSON: _____ Josh Woodbury _____

PROJECT NAME: _____ Mentum _____

Please complete the following items.

1. As Exhibit A, provide attachments of relevant information on the Applicant's background and development experience. Include resumes of key individuals assigned to the project, as well as other projects completed, including location and contact persons from local governments and bank references. Also, include a copy of the development company's organizational structure.

2. Identify the Applicant's consultants involved, or proposed to be involved, in the project noting relevant experience on similar projects (i.e., civil engineer, land use planner, Applicant's legal counsel, Applicant's financial advisor).

<u>CONSULTANT TYPE</u>	<u>CONSULTANT NAME, ADDRESS, PHONE, CONTACT PERSON, EMAIL</u>	<u>EXPERIENCE</u>
Developer	Woodbury Corporation Attn: Josh Woodbury 2733 East Parleys Way, Ste. 300 Salt Lake City, UT 84109 801.482.7447 josh_woodbury@woodburycorp.com	See attached Exhibit A
Legal / Outside Counsel	Polsinelli PC Attn: Korb Maxwell 900 W 48th Place, Suite 900 Kansas City, MO 64112 816.360.4327 kmaxwell@polsinelli.com	See attached Exhibit A-1

3. Describe the proposed project, including the size and scope, phasing and anticipated timing of the project. Specifically outline residential development, if any, to be included in the project.

The Project to be constructed within the TIF District (the "Project") will consist of some or all of the following uses, without limitation: major multi-sport athletic complex, sports, entertainment, restaurants, retail, office, medial office, hotel and hospitality, residential (senior-living, independent-living, condo, and/or other residential uses), public space, open space, and/or other similar, related or appurtenant uses, any other structure or use (including, but not limited to, commercial, residential, non-profit, governmental and/or community uses), along with all associated site work, infrastructure, utilities, storm water control, access, street improvements, landscaping, lighting, parking facilities, and any other items allowable under K.S.A. 12-1770 et seq., as amended.

Specifically regarding residential development, the Project includes a residential component taking the form of approximately 300 rental apartments. The apartment buildings are envisioned to be 3 to 5 stories in height with interior corridors, elevator service, and surface parking.

The Project is envisioned to be developed in 3 phases. Phase 1 would include approximately 388,489 square feet of building area including the Arena, interactive golf concept, fitness gym, movie theater, rock climbing venue, volleyball, 60,000 square feet of retail space, 20,000 square feet of restaurant space, a 135-room hotel, and 300 rental apartments. Phase 2 is designed for 36,500 square feet of retail space, 20,000 square feet of restaurant space, and 70,000 square feet of office space. Phase 3 includes a 135-room hotel and 130,000 square feet of office space.

The anticipated timing for build-out of the Project is as follows:

Phase 1: Commence - 2019; Complete - 2020-2021

Phase 2: Commence - 2021; Complete - 2022-2023

Phase 3: Commence - 2023; Complete - 2024-2025

4. Describe the impacts of the proposed development on the existing and proposed infrastructure and services including, but not limited to: water, sanitary sewer, storm water, solid waste, streets and schools. *Please note that where available, City services shall be utilized.

The Project involves redevelopment of the former Great Mall of the Great Plains property. As such, all or substantially all of the infrastructure needed to support the Project is expected to already be in place. The Applicant will cooperate with the city to determine any additional infrastructure that may be necessary or required as part of the Project.

5. As Exhibit B, define the boundaries of the proposed TIF area by legal description, address and locator number(s). Also, include a map of the proposed TIF area.
6. Identify the property that is currently in the control of the Applicant, via ownership or option. If under option, note the option expiration date.

The Applicant is currently under contract to acquire all or substantially all of the property within the proposed TIF area.

7. Is the property currently zoned for the proposed use? Yes. If not, what zoning change will be required?

The property is currently zoned to allow for commercial uses; however, the Applicant intends to submit (or has already) a rezoning application for a Planned Development District in accordance with the Development Agreement between the Applicant and the City.

8. Will the proposed project result in the relocation of residential, commercial, industrial or public facilities? See below. If so, discuss the nature of any anticipated relocations.

The Applicant will privately purchase any portion of the TIF area necessary to implement the redevelopment project via a purchase and sale agreement negotiated at arm's length. Thus, any relocation required by the Project will be coordinated and funded by private arms-length transactions, which the Applicant acknowledges will meet or exceed the requirements set forth in the TIF Act.

9. As Exhibit C, state the need and justification for TIF assistance and the type and amount of assistance being requested. Provide a project proforma containing assumptions for TIF assistance, including internal rate of return with, and without, public assistance. Explain how the Applicant intends to demonstrate that but for TIF assistance, this project will be unable to proceed due to extraordinary economic conditions. Substantiate that other alternative methods of financing have been thoroughly explored, as well as why TIF assistance is necessary.

10. Will the applicant be in direct competition with other local firms? No. If so, name the firms and describe the nature of the competition.

The Project's retail and hotel components are designed to create a unique shopping, dining, entertainment and lodging destination leveraging off the crowds drawn by the on-site attractions and office space. The fitness gym will provide members with a comprehensive health and wellness experience. Eating and drinking establishments will occupy much of the retail space, offering unique "components" not currently available in the area, creating destination attractions and minimizing direct competition with existing area businesses. Additionally, the arena within the Project is positioned to host different market segments of the sports and entertainment industries than existing venues, thus also minimizing the level of direct competition.

11. Identify sources, amounts and status of all debt financing and/or equity funding available to complete the project. Does the Applicant anticipate the debt to be privately financed by the construction lender, developer or publicly sold? Please list all information in the following table format.

Please refer to the Project sources & uses attached as Exhibit G. Additional information can be provided upon request.

<u>Financial Resource</u>	<u>Amount</u>	<u>Term</u>	<u>Status</u>	<u>Contact Person</u>	<u>Contact Telephone #</u>

12. As Exhibit D, on a revenue worksheet, estimate the incremental property taxes and economic activity taxes to be generated by the project, including underlying assumptions. This information, along with the expected return on investment, shall be included in the proforma.
13. As Exhibit E, attach a letter from a financial institution indicating that the Applicant has sufficient financial resources to obtain the private financing for the project.
14. Discuss the condition(s) that would qualify the proposed TIF District as an eligible area, as defined within Kansas State law. If required, provide a blight study as Exhibit F.

The proposed TIF District is an eligible area as defined in K.S.A. 12-1770a(g), in that it is located within an area of the City that was designated as an "enterprise zone" (as defined in K.S.A. 12-1770a(h)) prior to July 1, 1992, pursuant to K.S.A. 12-17,107 through 12-17,113, and amendments thereto, prior to its repeal and the conservation development or redevelopment of the area is necessary to promote the general and economic welfare of the City.

15. As Exhibit G, provide an outline of the costs associated with the development of the proposed project(s) and related parcel, or parcels, located within the TIF area. Identify in the outline, those costs proposed to be funded with TIF financing and the proposed payback timeframe (provide a debt service schedule showing rates and assumptions). The information shall include interest rates and all assumptions.
16. As Exhibit H, in one page or less, discuss and document information used to describe the market feasibility of each element of the proposed project. If a formal feasibility or comparable studies have been prepared (or will be prepared soon after submission of the application), please identify the firm who has prepared, or will prepare the study, including the qualifications and prior experience of such firm in preparing similar studies, and attach such reports.

17. Identify any proposed tenants of the project. Have lease(s) been negotiated or signed? What type of lease(s) is contemplated?

The Applicant is engaged in ongoing discussions with a number of interested and prospective tenants; Tenant names will be released to the City on a confidential basis upon lease execution.

18. Who will own the developed property?

It is anticipated that the Applicant will own all or substantially all of the developed property within the Project area; provided, however, the City may continue to be the fee owner of the underlying real property on which the arena is to be constructed, and enter into a long-term ground lease with the Applicant.

19. Briefly describe the "economic and quality of life" benefits of the proposed project to the City.

This Project contemplates a major commercial entertainment and tourism area, and the unique mix of uses within the Project will create substantial tourism, entertainment, and retail opportunities not presently available in the City. It will also create a vibrant, mixed-use environment that will promote, stimulate and develop the general and economic welfare of the City and assist in the development and redevelopment of eligible areas therein, thereby promoting the general welfare of the citizens of the State of Kansas and of the City.

1. CERTIFICATION OF APPLICANT

APPLICANT HAS RECEIVED AND REVIEWED THE CITY'S TAX INCREMENT FINANCING POLICY (POLICY NO. F-7, RESOLUTION NO. 17-1087) AND THE APPLICANT UNDERSTANDS AND AGREES TO THE TERMS OF THE POLICY, INCLUDING PAYMENT OF THE REQUIRED FEES.

APPLICANT AGREES TO COMPLY WITH THE PROVISIONS OF CHAPTER 2.82 OF THE OLATHE MUNICIPAL CODE (THE "CODE"), INCLUDING PARTICULARLY 2.82.130, REGARDING PUBLIC ART FOR THE PROJECT OR TO PAY THE NECESSARY PAYMENT TO THE CITY'S PUBLIC ART FUND.

AS OF THE DATE OF APPLICANT'S EXECUTION OF THIS APPLICATION, TO THE BEST OF THE APPLICANT'S KNOWLEDGE, THE INFORMATION CONTAINED WITHIN THIS APPLICATION IS TRUE AND CORRECT.

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

Mentum Olathe L.L.C.

(Name of Business)

a Utah Limited Liability Company

(Business Structure)

By: 
Signature of Authorized Agent for Entity

Title: VICE PRESIDENT OF ITS MANAGER

Date: 1/30/2019

NOTARY ACKNOWLEDGMENT

STATE OF Utah)
) ss.
COUNTY OF Salt Lake)

BE IT REMEMBERED, that on this 30th day of January, 2019 before me, the undersigned, a Notary Public in and for said County and State, came Joshua Woodbury, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

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

(Seal)

Denise Marie Walker
Notary Public in and for said
County and State

My Commission Expires:

August 7, 2019

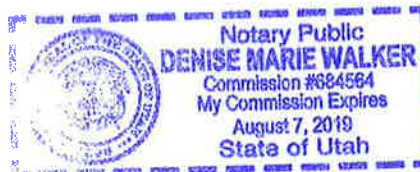


EXHIBIT A

Applicant's Background and Experience

Woodbury Corporation, the Applicant's parent/holding company, is a privately held family-owned company, headquartered in Salt Lake City, Utah. Founded in 1919, it is a multi-disciplined, full-service real estate development and investment company offering professional brokerage, management, development, legal, consulting and architectural services for all types of commercial, retail, office hospitality, research park and other land developments throughout the Midwest and Western United States.

Since its inception in 1919, Woodbury Corporation has gained a reputation as the region's foremost real estate developer. Woodbury specializes in creating long-term value for both partners and tenants, by developing and managing properties with their 98 years of tried experience. In their company's history, Woodbury has never defaulted on any loan or breached any contract. With over 170 successful projects, Woodbury has demonstrated its capability to efficiently deliver a quality produce on a timely basis. Woodbury Corporation and its principals own, control, and/or manage more than 15 million square feet of productive buildings in 15 states.

Through Woodbury, the Applicant and its principals have substantial experience in developing large-scale commercial and mixed-use projects, including destination attraction-based projects utilizing public bond financing and other public-private partnership tools. Specifically, the Developer's relevant experience includes:

- University Place in Orem Utah, an approximately 1.5 million square-foot, \$500 million regional shopping center and mixed-use development on approximately 130+/- acres;
- Falcon Hill Aerospace Research Park at Hill Air Force Base in Utah, where Woodbury Corporation is the lead owner/developer of an approximately 2 million square-foot, mixed-use research park to be developed across approximately 550+/- acres over the next 50 years (with 350,000 square feet already constructed); and
- The University of Nebraska Innovation Campus at Lincoln, Nebraska, where Woodbury Corporation was the lead master-developer of an approximately 160+/- acre research park adjacent to the University of Nebraska-Lincoln.

EXHIBIT A-1

Polsinelli, Legal Services

Polsinelli is an Am Law 100 firm with more than 825 attorneys in 21 offices. The firm's Real Estate Development and Finance attorneys possess diverse experience representing public and private entities in a multitude of projects, including large-scale hotel and convention centers, destination retail properties, and mixed-use entertainment districts, to name a few. Polsinelli's real estate attorneys are well-versed in a breadth of financing channels—including Tax Increment Financing, Community Improvement District financing, Industrial Revenue Bond financing, STAR Bond financing, and other creative-financing mechanisms and public-private partnership tools—and are practiced in smoothly navigating the oversight, compliance, and approvals that often accompany high-profile development projects, including several in the City of Olathe and Johnson County. Polsinelli's Real Estate practice rankings include:

- ☐ Recognized as a national Real Estate practice by *Chambers USA*, 2018;
- ☐ National Tier One ranking in Real Estate Law by *U.S. News and World Report's* 2018 "Best Law Firms";
- ☐ Top 10 Real Estate Practice Group by *Real Estate Law360* in 2014; and
- ☐ The number one Real Estate Law Firm in 2013 by *Midwest Real Estate News*.

EXHIBIT B

Legal Description of TIF District

TRACT 1:

TRACT A, THE GREAT MALL, A SUBDIVISION IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF, FILED OCTOBER 31, 1996 IN PLAT BOOK 97 PAGE 31.

TRACT 2:

LOTS 9, 10, 11 AND 12, THE GREAT MALL, A SUBDIVISION IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF, FILED OCTOBER 31, 1996 IN PLAT BOOK 97 PAGE 31.

TRACT 3:

LOT 1, THE GREAT MALL, 2ND PLAT, A SUBDIVISION IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS, A REPLAT OF LOT 7 AND 8 OF THE GREAT MALL SUBDIVISION, ACCORDING TO THE RECORDED PLAT THEREOF, FILED JUNE 24, 2004 AS DOCUMENT NO. 20040624-0011867, IN BOOK 200406 PAGE 11867.

EXHIBIT B-1

Map of Proposed TIF District



EXHIBIT C

TIF Assistance

The Applicant is requesting 100% of the incremental real property taxes generated within the proposed TIF district, uncapped for a period of twenty (20) years, to pay for any and all costs of the Project that constitute redevelopment project costs (as defined in the TIF Act). Additional information regarding the justification and need for TIF assistance can be provided upon request.

EXHIBIT D

Incremental Property Tax Estimates*

[SEE ATTACHED]

*NOTE: This Application sets forth incremental property tax estimates only. It does not include economic activity tax estimates since those will not be captured by TIF and will instead be subject to STAR bond capture.

TIF PROJECTIONS						
Year	Base Assessed Value	Phase 1 Assessed Value	Phase 2 Assessed Value	Phase 3 Assessed Value	Total Projected Assessed Value	TOTAL PROPERTY TAX TIF REVENUES
1	\$ 994,708	\$ -	\$ -	\$ -	\$ -	\$ -
2	\$ 994,708	\$ -	\$ -	\$ -	\$ -	\$ (94,856)
3	\$ 994,708	\$ 6,252,988	\$ -	\$ -	\$ 6,252,988	\$ 501,435
4	\$ 994,708	\$ 12,505,975	\$ -	\$ -	\$ 12,505,975	\$ 1,097,726
5	\$ 994,708	\$ 12,631,035	\$ 3,663,250	\$ -	\$ 16,294,285	\$ 1,458,983
6	\$ 994,708	\$ 12,757,345	\$ 7,326,500	\$ -	\$ 20,083,845	\$ 1,820,359
7	\$ 994,708	\$ 12,884,919	\$ 7,399,765	\$ 3,965,625	\$ 24,250,309	\$ 2,217,677
8	\$ 994,708	\$ 13,013,768	\$ 7,473,763	\$ 7,931,250	\$ 28,418,780	\$ 2,615,187
9	\$ 994,708	\$ 13,143,905	\$ 7,548,500	\$ 8,010,563	\$ 28,702,968	\$ 2,642,287
10	\$ 994,708	\$ 13,275,344	\$ 7,623,985	\$ 8,090,668	\$ 28,989,998	\$ 2,669,659
11	\$ 994,708	\$ 13,408,098	\$ 7,700,225	\$ 8,171,575	\$ 29,279,898	\$ 2,697,304
12	\$ 994,708	\$ 13,542,179	\$ 7,777,227	\$ 8,253,291	\$ 29,572,697	\$ 2,725,226
13	\$ 994,708	\$ 13,677,601	\$ 7,855,000	\$ 8,335,823	\$ 29,868,424	\$ 2,753,426
14	\$ 994,708	\$ 13,814,377	\$ 7,933,550	\$ 8,419,182	\$ 30,167,108	\$ 2,781,909
15	\$ 994,708	\$ 13,952,520	\$ 8,012,885	\$ 8,503,374	\$ 30,468,779	\$ 2,810,677
16	\$ 994,708	\$ 14,092,046	\$ 8,093,014	\$ 8,588,407	\$ 30,773,467	\$ 2,839,732
17	\$ 994,708	\$ 14,232,966	\$ 8,173,944	\$ 8,674,291	\$ 31,081,202	\$ 2,869,078
18	\$ 994,708	\$ 14,375,296	\$ 8,255,684	\$ 8,761,034	\$ 31,392,014	\$ 2,898,717
19	\$ 994,708	\$ 14,519,049	\$ 8,338,240	\$ 8,848,645	\$ 31,705,934	\$ 2,928,653
20	\$ 994,708	\$ 14,664,239	\$ 8,421,623	\$ 8,937,131	\$ 32,022,993	\$ 2,958,888
Total						\$ 43,192,068
NPV						\$ 21,308,821
Gross Bond Proceeds (NPV / DSCR)						\$ 17,047,057
Less Issuance Costs						\$ (1,704,706)
Net TIF Bond Proceeds						\$ 15,342,351

EXHIBIT D-1

Incremental Property Tax Assumptions

[SEE ATTACHED]

Project Component	SF / Units	Rooms	Units	Sales Per SF / Unit	Total Sales	PROJECT ASSUMPTIONS BY PHASE						
						Appraised Per SF / Unit	Assessed Per SF / Unit	Total Appraised	Total Assessed	*Base Assessed	Taxes Per SF / Unit	Total Taxes
PHASE 1												
Major Multi-Sport Athletic Complex	130,000			\$ 119	\$ 15,457,626	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interactive Golf Concept	32,000			\$ 406	\$ 13,000,000	\$ 250	\$ 63	\$ 8,000,000	\$ 2,000,000	\$ 71,655	\$ 8.00	\$ 255,898
Fitness	50,000			\$ 150	\$ 7,500,000	\$ 100	\$ 25	\$ 5,000,000	\$ 1,250,000	\$ 44,785	\$ 3.20	\$ 159,936
Movie Theatre	33,489			\$ 200	\$ 6,697,800	\$ 100	\$ 25	\$ 3,348,900	\$ 837,225	\$ 29,996	\$ 3.20	\$ 107,122
Restaurants	25,000			\$ 500	\$ 12,500,000	\$ 300	\$ 75	\$ 7,500,000	\$ 1,875,000	\$ 67,177	\$ 9.60	\$ 239,904
Mid-Box	42,000			\$ 300	\$ 12,600,000	\$ 100	\$ 25	\$ 4,200,000	\$ 1,050,000	\$ 37,619	\$ 3.20	\$ 134,346
Big-Box	35,000			\$ 300	\$ 10,500,000	\$ 100	\$ 25	\$ 3,500,000	\$ 875,000	\$ 31,349	\$ 3.20	\$ 111,955
Shop Retail	10,000			\$ 300	\$ 3,000,000	\$ 100	\$ 25	\$ 1,000,000	\$ 250,000	\$ 8,957		\$ 31,987
Hotel	71,550	135		\$ 26,828	\$ 3,621,713	\$ 55,000	\$ 13,750	\$ 7,425,000	\$ 1,856,250	\$ 66,505	\$ 1,759.30	\$ 237,505
Volleyball	20,000			\$ 100	\$ 2,000,000	\$ 100	\$ 25	\$ 2,000,000	\$ 500,000	\$ 17,914	\$ 3.20	\$ 63,975
Multi-Family (250k SF @ 1,000 SF/unit)	250,000		250	\$ -	\$ -	\$ 70,000	\$ 8,050	\$ 17,500,000	\$ 2,012,500	\$ 72,103	\$ 1,029.99	\$ 257,497
Subtotals - Phase 1	699,039	135	250		\$ 86,877,139			\$ 59,473,900	\$ 12,505,975	\$ 448,059		\$ 1,600,127
PHASE 2												
Rock Climbing Attraction	20,000			\$ 200	\$ 4,000,000	\$ 100	\$ 25	\$ 2,000,000	\$ 500,000	\$ 17,914	\$ 3.20	\$ 63,975
Restaurants	15,000			\$ 500	\$ 7,500,000	\$ 300	\$ 75	\$ 4,500,000	\$ 1,125,000	\$ 40,306	\$ 9.60	\$ 143,943
Shop Retail	22,000			\$ 300	\$ 6,600,000	\$ 100	\$ 25	\$ 2,200,000	\$ 550,000	\$ 19,705	\$ 3.20	\$ 70,372
Mixed-Use Retail	19,500			\$ 300	\$ 5,850,000	\$ 100	\$ 25	\$ 1,950,000	\$ 487,500	\$ 17,466	\$ 3.20	\$ 62,375
Mixed-Use Office	33,280			\$ -	\$ -	\$ 200	\$ 50	\$ 6,656,000	\$ 1,664,000	\$ 59,617	\$ 6.40	\$ 212,907
Office/Medical Office	60,000			\$ -	\$ -	\$ 200	\$ 50	\$ 12,000,000	\$ 3,000,000	\$ 107,483	\$ 6.40	\$ 383,847
Subtotals - Phase 2	169,780	-	-		\$ 23,950,000			\$ 29,306,000	\$ 7,326,500	\$ 262,491		\$ 937,418
PHASE 3												
Restaurants	5,000			\$ 500	\$ 2,500,000	\$ 300	\$ 75	\$ 1,500,000	\$ 375,000	\$ 13,435	\$ 9.60	\$ 47,981
Mid-Box	40,000			\$ 300	\$ 12,000,000	\$ 100	\$ 25	\$ 4,000,000	\$ 1,000,000	\$ 35,828	\$ 3.20	\$ 127,949
Shop Retail	7,500			\$ 300	\$ 2,250,000	\$ 100	\$ 25	\$ 750,000	\$ 187,500	\$ 6,718	\$ 3.20	\$ 23,990
Mixed-Use Retail	20,000			\$ 300	\$ 6,000,000	\$ 100	\$ 25	\$ 2,000,000	\$ 500,000	\$ 17,914	\$ 3.20	\$ 63,975
Mixed-Use Office	40,000			\$ -	\$ -	\$ 200	\$ 50	\$ 8,000,000	\$ 2,000,000	\$ 71,655	\$ 6.40	\$ 255,898
Hotel	71,500	135		\$ 26,828	\$ 3,621,713	\$ 55,000	\$ 13,750	\$ 7,425,000	\$ 1,856,250	\$ 66,505	\$ 1,759.30	\$ 237,505
Multi-Family (250k SF @ 1,000 SF/unit)	250,000		250	\$ -	\$ -	\$ 70,000	\$ 8,050	\$ 17,500,000	\$ 2,012,500	\$ 72,103	\$ 1,029.99	\$ 257,497
Subtotals - Phase 3	434,000	135	250		\$ 26,371,713			\$ 41,175,000	\$ 7,931,250	\$ 284,158		\$ 1,014,796
TOTALS (ALL 3 PHASES)	1,302,819	270	500		\$ 137,198,851			\$ 129,954,900	\$ 27,763,725	\$ 994,708		\$ 3,552,341

Sales Assumptions for Major Multi-Sport Athletic Complex	
Component	Sales
Tickets	\$ 8,760,000
Public Skate/Rentals/Youth Hockey/Ice Time	\$ 2,000,000
Sports Bar	\$ 2,000,000
Concessions	\$ 1,729,960
Novelties	\$ 563,380
Team Store	\$ 214,286
Premium Seat Fees	\$ 190,000
Total Sales	\$ 15,457,626

Phase 1 Hotel Sales Assumptions	
Input	Assumption
Number of Rooms	135
Available Room Nights	49,275
Avg. Nightly Rate	\$ 105
Avg. Occupancy	70%
Hotel Sales	\$ 3,621,713

Phase 3 Hotel Sales Assumptions	
Input	Assumption
Number of Rooms	135
Available Room Nights	49,275
Avg. Nightly Rate	\$ 105
Avg. Occupancy	70%
Hotel Sales	\$ 3,621,713

Financing Assumptions	
Input	Assumption
Commercial Assessment Rate	25.000%
Residential Assessment Rate	11.500%
Annual Sales Growth Rate	2.000%
NPV Rate	6.000%
Debt Service Coverage Ratio	125.000%
Issuance Costs	10.000%
Annual Assessed Value Growth Rate	1.000%

Base Assessed Values				
Parcel ID	Quick Ref #	2018 Appraised	2018 Assessed	Owner
DP73740000 070A	R37212	\$ 4,433,920	\$ 990,875	Great Olathe Center, LLC
DP73740000 070A1	R37213	\$ 1,020	\$ 306	Great Olathe Center, LLC
DP73740000 0012	R37225	\$ 110	\$ 33	Great Olathe Center, LLC
DP73740000 0011	R37224	\$ 210	\$ 63	Great Olathe Center, LLC
DP73740000 0010	R37223	\$ 310	\$ 93	Great Olathe Center, LLC
DP73740000 0009	R37222	\$ 110	\$ 33	Great Olathe Center, LLC
DP73750000 0001	R197771	\$ 27,480	\$ 3,305	Great Olathe Center, LLC
Totals		\$ 4,463,160	\$ 994,708	

Mill Levy Rates			
Jurisdiction	Rate	Not Subject to Capture	Net for TIF
State of Kansas	1.500	1.500	-
Johnson County	19.024	-	19.024
Johnson County Community College	9.266	-	9.266
City of Olathe	24.406	-	24.406
Olathe School District	70.665	28.000	42.665
JoCo Park	3.088	-	-
Totals	127.949	29.500	95.361

EXHIBIT E

Financial Resources

To be discussed. Information regarding the Applicant's financial strength may be provided for review under appropriate circumstances and/or on a confidential basis to City consultants.

EXHIBIT G

Project Costs / Sources & Uses

Sources	
STAR Bond Proceeds (incl. CID)	\$69,500,000
Private Debt & Private Equity	\$239,342,068
Equity with PAYG TIF Reimbursement	\$10,000,000
Total Sources:	\$318,842,068

Uses	
Land Costs	\$21,701,329
Infrastructure/Public Improvements	\$38,460,634
Multi-Sport Arena Construction	\$35,000,000
Other Construction	\$167,760,079
Soft Costs & Contingency	\$55,920,026
Total Uses:	\$318,842,068

EXHIBIT H

Market / Feasibility Study

Canyon Research Southwest, Inc., a qualified third-party consultant that has evaluated numerous public financing projects across the State, prepared a STAR Bond Feasibility Study, dated October 2018 in relation to the STAR Bond District that encompasses the entirety of the proposed TIF area. The analysis was based on Canyon's experience, expertise, and access to research data regarding the actual design, development, financing, management, and leasing of projects of similar nature and scope. This feasibility study is contained in the Olathe 151st Street STAR Bond District STAR Bond Project Plan, submitted as of October 15, 2018, a copy of which is already on file with the City.

RESOLUTION NO. 19-1014

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS ESTABLISHING THE DATE AND TIME OF A PUBLIC HEARING REGARDING THE ESTABLISHMENT OF A REDEVELOPMENT DISTRICT PURSUANT TO K.S.A. 12-1770 *ET SEQ.*

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

Section 1. The City of Olathe, Kansas (the “City”) is considering the establishment of a redevelopment district pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “Act”).

Section 2. Notice is hereby given that a public hearing will be held by the City to consider establishment of a redevelopment district on **March 19, 2019** in the City Council Chambers located in Olathe City Hall, 100 E. Santa Fe Street, Olathe, Kansas, commencing at 7:00 p.m., or as soon thereafter as may be heard.

Section 3. A map of the proposed redevelopment district is attached hereto as **Exhibit A**. The boundaries of the proposed redevelopment district are legally described as shown on **Exhibit B** hereto.

Section 4. The proposed redevelopment district plan for the proposed redevelopment district (the “District Plan”) consists of one or more redevelopment project areas, the name(s) and boundaries of which will be defined at the time of the redevelopment project plan(s), and is described in a general manner as follows:

Acquisition of real property, demolition of certain existing improvements thereon, and the development and redevelopment thereof to consist of some or all of the following uses and improvements, without limitation: major multi-sport athletic complex, sports, entertainment, restaurant, retail, office, medical office, hotel and hospitality, residential (multi-family, senior-living, independent-living, condo, and/or other residential uses), public space, open space, and/or other similar, related or appurtenant uses, any other structure or use (including, but not limited to, commercial, residential, non-profit, governmental and/or community uses), along with all associated site work, infrastructure, utilities, storm water control, access, street improvements, landscaping, lighting, parking facilities, and any other items allowable under K.S.A. 12-1770 *et seq.*, as amended.

Section 5. A description and map of the proposed redevelopment district are available for inspection and copying in the offices of the City Clerk, Olathe City Hall, 100 E. Santa Fe Street, Olathe, Kansas, Monday through Friday (other than holidays) between 8:00 a.m. and 5:00 p.m.

Section 6. The governing body of the City will consider the findings necessary for the establishment of a redevelopment district after conclusion of the public hearing.

Section 7. The City Clerk is hereby authorized and directed to publish this resolution once in the official city newspaper not less than one week or more than two weeks preceding the date set for the public hearing. The City Clerk is also authorized and directed to mail a copy of this resolution via certified mail, return receipt requested to the board of county commissioners, the board of education of any school district levying taxes on property within the proposed redevelopment district, and to each

owner and occupant of land within the proposed redevelopment district, not more than 10 days following the date of the adoption of this Resolution.

Section 8. This Resolution shall become effective upon its adoption by the Governing Body.

[Balance of page intentionally left blank]

ADOPTED this 5th day of February, 2019.

[SEAL]



Attest:

Emily Vincent
City Clerk

[Signature]
Mayor

EXHIBIT A

MAP OF PROPOSED REDEVELOPMENT DISTRICT



EXHIBIT B

LEGAL DESCRIPTION OF PROPOSED REDEVELOPMENT DISTRICT

TRACT 1:

TRACT A, THE GREAT MALL, A SUBDIVISION IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF, FILED OCTOBER 31, 1996 IN PLAT BOOK 97 PAGE 31.

TRACT 2:

LOTS 9, 10, 11 AND 12, THE GREAT MALL, A SUBDIVISION IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF, FILED OCTOBER 31, 1996 IN PLAT BOOK 97 PAGE 31.

TRACT 3:

LOT 1, THE GREAT MALL, 2ND PLAT, A SUBDIVISION IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS, A REPLAT OF LOT 7 AND 8 OF THE GREAT MALL SUBDIVISION, ACCORDING TO THE RECORDED PLAT THEREOF, FILED JUNE 24, 2004 AS DOCUMENT NO. 20040624-0011867, IN BOOK 200406 PAGE 11867.



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Resource Management
STAFF CONTACT: Dianna Wright and David Bryant
SUBJECT: Approval of City Council Meeting Minutes

ITEM DESCRIPTION:

Consideration of approval of the City Council meeting minutes of March 5, 2019

SUMMARY:

Attached are the City Council meeting minutes of March 5, 2019 for Council consideration of approval.

FINANCIAL IMPACT:

None

ACTION NEEDED:

Approval of the City Council meeting minutes of March 5, 2016.

ATTACHMENT(S):

A. 3-05-19 Council Minutes



City of Olathe City Council
100 E. Santa Fe | Council Chamber
Tuesday | March 5, 2019 | 5:30 PM

1. CALL TO ORDER

Present: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland
Absent: Campbell

Others in attendance were City Manager Wilkes, Assistant City Manager Sherman and City Attorney Shaver.

2. EXECUTIVE SESSION - 5:34 p.m.

Consideration of motion to recess into an executive session to discuss the following items:

- A.** Recess into an executive session to discuss personnel matters of non-elected personnel pursuant to the exception provided in K.S.A.75-4319(b)(1) regarding the Internal Auditor position. (City Council)

Motion by Bacon, seconded by Vogt, to recess into an executive session for 60 minutes to discuss personnel matters of non-elected personnel pursuant to the exception provided in K.S.A.75-4319(b)(1) regarding the Internal Auditor position. The motion carried by the following vote:

Yes: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland
Absent: Campbell

6:34 p.m. The City Council extended the executive session for 20 additional minutes.

Motion by Randall, seconded by Bacon, to extend the executive session 20 minutes. The motion carried by the following vote:

Yes: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland
Absent: Campbell

3. RECONVENE FROM EXECUTIVE SESSION

The meeting reconvened at 6:54 p.m.

Executive Session Item A - Motion by Randall, seconded by Bacon to proceed with the direction as decided as a City Council in executive session. Motion

passed 6-0

4. BEGIN TELEVISED SESSION – 7:00 P. M.

5. PLEDGE OF ALLEGIANCE

6. SPECIAL BUSINESS

- A.** Proclamation declaring Olathe as “Qlathe, Kansas for the first Qlathe BBQ Championship, sanctioned by the Kansas City Barbecue Society.”

Mayor Copeland read the proclamation and presented it to Adrienne Lund, Olathe Parks and Recreation Communications Specialist.

- B.** Consideration of Resolution No. 19-1020 reappointing members to serve on the Street Maintenance Sales Tax (SMST) Finance Oversight Committee.

Mayor Copeland presented a certificate of reappointment to Tom Grady. Also reappointed but not present were Steven Smith and Rebecca Feller.

Motion by Randall, seconded by Bacon, to approve Resolution No. 19-1020. The motion carried by the following vote:

Yes: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

Absent: Campbell

- C.** Consideration of Resolution No. 19-1021 reappointing a member to the Olathe Public Art Committee.

Mayor Copeland presented a certificate of reappointment to Whitney Williamson.

Motion by Randall, seconded by Bacon, to approve Resolution No. 19-1021. The motion carried by the following vote:

Yes: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

Absent: Campbell

- D.** Presentation of checks to Mayor’s Christmas Tree Fund beneficiaries.

Mayor Copeland stated the 2018 Mayor's Christmas Tree Fund raised more than \$150,000.00 and expressed his sincere thanks to the Olathe residents and businesses for making this possible.

Mayor Copeland invited 2018 campaign Board Chair, Ed Roche forward to present checks to the following beneficiaries:

Boys and Girls Club of Greater Kansas City, Catholic Charities, Center of Grace Children's Shoe Fund, Center of Grace Clothing Project, El Centro, Friends of the Olathe Public Library, Health Partnership Clinic, Johnson County Christmas Bureau, KVC Kansas, Mission Southside, Olathe Public Schools Foundations and the Salvation Army.

7. CONSENT AGENDA

Mayor Copeland requested Item H be removed for separate consideration and vote. Motion by Randall, seconded by Bacon, to approve the consent agenda with the exception of item H. The motion carried by the following vote:

Yes: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

Absent: Campbell

- A.** Consideration of approval of the City Council meeting minutes of February 19, 2019 and the Joint City Council and Olathe Board of Education meeting minutes of February 21, 2019.
Approved.
- B.** Consideration of new drinking establishment license applications for Chipotle Mexican Grill, 14317 W. 135th Street and MCM Restaurant Group, LLC d/b/a Don Manuel's Cantina & Grill, 920 E. Old 56 Hwy.
Approved.
- C.** Consideration of drinking establishment license renewal applications for AMC ITD LLC. d/b/a AMC Theatres 28, 12075 Strang Line Road and Austin's Bar & Grill, 11180 S. Lone Elm Rd.
Approved.
- D.** Consideration of new cereal malt beverage license applications for CVS #5156, CVS #5257 and CVS #5274.
Approved.
- E.** Consideration of authorization for Michael Wilkes to attend the TLG Conference in Reno, NV, April 8-12, 2019.
Approved.
- F.** Consideration of Resolution No. 19-1022 authorizing the public sale of Water and Sewer System Improvement and Refunding Revenue Bonds, Series 2019.
Approved.
- G.** Consideration of Resolution No. 19-1023 adopting the City's Policy on Boards, Commissions, and Committees of the City Council.
Approved.

- H. Consideration of Resolution No. 19-1024 declaring it to be the policy of the City of Olathe, Kansas, to promote diversity and equality in our community.

Mayor Copeland asked City Attorney Shaver to discuss the provision regarding the Olathe Community Mediation Program.

City Attorney Ron Shaver stated the Community Mediation Program is part of our City Prosecutor's Office. The office has a certified mediator who is certified by the Kansas Supreme Court to offer mediation services to residents. Mr. Shaver stated the mediator is a neutral third party to help parties that have a dispute to arrive at resolution without need for litigation. Mr. Shaver stated the program is unique to our organization and does not believe there are any other established programs like this in Johnson County.

Mayor Copeland stated in section 3 of the resolution we encourage the Legislature to debate legislation. Mr. Copeland suggested this should read we encourage the Legislature to pass legislation as more appropriate.

Councilmember Brownlee stated she looked at the State statute that declares those things that are not to be discriminated against and stated the first section has not been ammended since 1991. Ms. Brownlee stated that is certainly something that the Legislature doesn't frequent. Ms. Brownlee continued there are other sections in that particular area that have been amended. Ms. Brownlee stated we can't dictate what they do.

Mayor Copeland stated we can express the sentiment of the Council though.

Councilmember Brownlee said we could, but they do not change it frequently.

Motion by Mayor Copeland, seconded by Randall, to amend Resolution No. 19-1024, Section Three by removing the word "debate" and replacing with the word "pass". The motion failed by the following votes:

Yes: Randall, McCoy, and Copeland

No: Bacon, Brownlee, and Vogt

Absent: Campbell

Mayor Copeland entertained a motion for Resolution No. 19-1024.

Motion by Randall, seconded by Vogt, to approve Resolution No. 19-1024 declaring it to be the policy of the City of Olathe, to promote diversity and equality in our community. The motion passed by the following votes:

Yes: Randall, McCoy, Vogt, and Copeland

No: Bacon, and Brownlee

Absent: Campbell

Mayor Copeland stated after passage of Resolution No. 19-1024 should the Legislature not take this up before they adjourn that he would like to revisit this and put forth something we can agree to, in our community, as it relates to housing, accommodations and employment.

Councilmember Brownlee asked if the current landlord tenant act in the State statutes provides adequate protection and does our current employment laws not provide adequate protection. Ms. Brownlee commented it would be her sense that those statutes do provide adequate protection and that we all live under those.

Mayor Copeland stated our Human Relations Commission has been talking about this for some time and asked the City Attorney to bring us up to speed on this topic.

City Attorney Shaver stated we have been and continue to do a great deal of research on this using the Kansas Housing Act, Federal Fair Housing Act and Kansas Religious Freedom Act as well as reviewing ordinances adopted by other cities for compatibility with existing statutes and where there might be any gaps. Mr. Shaver stated we continue studying this and follow the request of Mayor Copeland.

Councilmember Randall agrees with Mayor Copeland and stated should the Legislature not pass legislation that it would be appropriate for this Council to pass legislation in the form of an ordinance that makes it very clear there is not going to be discrimination in this City for any reason and includes the folks that

have shared their thoughts with us in recent Council meetings. Mr. Randall continued there have been other moving pieces with this which is why it is taking us time to figure this out so that everyone knows there is not discrimination in this City.

Councilmember Vogt agreed and stated if the Legislature does not take it up to meet the needs of our community then we need to do that.

- I.** Consideration of acceptance of sculptures for the 2019 Downtown Outdoor Sculpture Exhibit.
Approved.
- J.** Consideration of Resolution No. 19-1025, acknowledging and supporting the First Suburbs Coalitions, KC Communities for All Ages, and Mid-America Regional Council's Communities for All Ages initiative and expressing the City of Olathe's commitment to be recognized as a Community for All Ages.
Approved.
- K.** Request for the acceptance of the dedication of land for public easements for a final plat for Parkview Apartments (FP18-0047) containing 1 lot and 1 tract for Apartments on 29.87± acres; located in the vicinity of 124th Street and South Aurora Street. Planning Commission recommends approval 7-0.
Approved.
- L.** Consideration of Consent Calendar.
Approved.
- M.** Consideration of Engineer's Estimate, acceptance of bids and award of contract to Phoenix Concrete, LLC for construction of the Heatherstone and Bradford Falls Local and Collector Street Mill and Overlay Project, PN 3-P-008-19.
Approved.
- N.** Consideration of Engineer's Estimate, acceptance of bids and award of contract to Freeman Concrete Construction, LLC for construction of the 2019 Local and Collector Street Mill and Overlay Project, PN 3-P-006-19.
Approved.
- O.** Consideration of Engineer's Estimate, acceptance of bids and award of contract to O'Donnell & Sons Construction Co., Inc. for construction of the Lone Elm Road Arterial Mill and Overlay Project, PN 3-P-003-19.
Approved.
- P.** Consideration of an Agreement with Johnson County for design of the Lake Side Acres Street Reconstruction Project, PN 3-R-002-20; the

Lake Side Acres Sanitary Sewer Rehabilitation Project, PN 1-R-104-17; and the Stevenson Street Stormwater Improvements Project, PN 2-C-014-18.

Approved.

- Q.** Acceptance and consideration of award of contract to Sound Products for AV Audio Equipment for the Marina and Landing facilities at Lake Olathe for the Parks & Recreation Department.

Approved.

- R.** Acceptance of bid and consideration of award of contract to Olathe Winwater Works Co. for the purchase of fire hydrants, extensions and repair kits for the Field Operations Division of Public Works.

Approved.

- S.** Acceptance of bid and consideration of award of contracts to Industrial Sales Company and Ferguson Waterworks, Inc. for the purchase of high-density polyethylene (HDPE) storm sewer pipe.

Approved.

8. NEW BUSINESS-PUBLIC WORKS

- A.** Consideration of Ordinance No. 19-07, RZ18-0022, requesting approval for a rezoning from County RUR to R-3 District and preliminary site development plan for Brentwood Senior Apartments on 4.23± acres; located in the vicinity of 155th Street and Brentwood Street. Planning Commission recommends approval 6-0.

Planner II Dan Fernandez completed a presentation describing the rezoning and proposed development.

Applicant Kim Lingle, MBL Development Company, 16405 Turnberry, addressed questions from the Governing Body.

Motion by Randall, seconded by Bacon to approve Ordinance No. 19-07. The motion passed by the following votes:

Yes: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

Absent: Campbell

- B.** Consideration of Ordinance No. 19-08 approving an engineer's survey and authorizing the acquisition of land for the Lakeview Avenue Sanitary Sewer Improvements Project, PN 1-C-024-18.

Motion by Randall, seconded by Bacon to approve Ordinance No. 19-08. The motion passed by the following votes:

Yes: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

Absent: Campbell

- C.** Consideration of Electric Line Modification/Relocation Agreement with Westar Energy, Inc. for the Mahaffie Circle Improvements Project, PN 3-C-107-17.

Assistant City Engineer Nate Baldwin completed a presentation concerning the project.

Motion by Randall, seconded by Bacon to approve the electric line modification/relocation agreement with Westar Energy, Inc. for the Mahaffie Circle Improvements Project, PN 3-C-107-17. The motion passed by the following votes:

Yes: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

Absent: Campbell

- D.** Consideration of Supplemental Agreement No. 1 with HNTB Corporation for design of the Mahaffie Circle Improvements Project, PN 3-C-107-17.

Motion by Randall, seconded by Bacon to approve supplemental agreement no. 1. The motion passed by the following votes:

Yes: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

Absent: Campbell

9. NEW BUSINESS-ADMINISTRATION

- A.** Consideration of Ordinance No. 19-09 concerning amendments to Olathe Liquor Ordinances, O.M.C. Title 7.

Councilmember Randall asked what the proposed changes are regarding the City liquor code.

Assistant City Attorney Daniel Yoza stated there are two changes to the current Olathe liquor code. The first concerns the sale of cereal malt beverage. The proposed ordinance change would allow licensed cereal malt beverage retailers to sell beer up to 6% alcohol by volume. The second change would allow the City to issue a sidewalk premise permit, which allows a City licensed drinking establishment to extend its premise onto an enclosed area of public right-of-way or sidewalk with permission of the City.

Motion by Randall, seconded by Bacon to approve Ordinance No. 19-09. The motion passed by the following votes:

Yes: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

Absent: Campbell

- B.** Acceptance of proposal and consideration of award of contract to Connelly Skis, Inc DBA Aquaglide for the design, installation, and maintenance for a floating water park at Lake Olathe for the Parks & Recreation Department.

Recreation Division Superintendent Kent Rettig gave a presentation and answered questions from the Governing Body.

Motion by Randall, seconded by Bacon to approve award of contract to Connelly Skis, Inc DBA Aquaglide for the design, installation, and maintenance for a floating water park. The motion passed by the following votes:

Yes: Bacon, Brownlee, Randall, McCoy, Vogt, and Copeland

Absent: Campbell

10. NEW CITY COUNCIL BUSINESS

Councilmember McCoy commented on the recent employee recognition breakfast that featured the results of the annual DirectionFinder survey for the City. Mr. McCoy thanked management and staff for the work they do.

Mayor Copeland asked City Manager Wilkes to tell about the three areas that we bonus on and results from the DirectionFinder survey.

City Manager Wilkes stated the first is how people perceive the value for the tax dollars that they pay. Mr. Wilkes stated all of our bonus measures target to be in the top ten percent of all local governments in the country that do the DirectionFinder survey. The City of Olathe met that standard and were number one last year for cities over 100,000 population and were in the top ten this year. The second area is how people rate the customer service we do. Mr. Wilkes stated for the second year in a row we were number one in all cities over 100,000. The third area is how people perceive the quality of the service that we provide. Mr. Wilkes stated last year we were number one in cities over 100,000 and this year we were number one in all cities across the country.

Councilmember Vogt commented she wanted to recognize Police Chief Menke on his upcoming retirement. Ms. Vogt expressed her gratitude for his service and leadership provided making our city one of the safest in the country. Ms. Vogt wished Chief Menke and his family the very best.

Councilmember Randall also wished Police Chief Menke well on his upcoming retirement later this month. Mr. Randall commented on the one statistic concerning how your city is doing and the value for tax dollars paid. Last year we were number one in the country and this year in the top ten, which says a lot. Mr. Randall also gave kudos to the snow removal crews for all their work this winter.

Councilmember Bacon stated the snow crews cleared what was scheduled to take 48 hours and completed in 9 hours, which is fantastic.

11. END OF TELEVISED SESSION

12. GENERAL ISSUES AND CONCERNS OF CITIZENS

Robynn Andracsek, 11526 S. Roundtree Street, Olathe, spoke in support of placing a non-discrimination ordinance on the agenda that addresses LGBTQ issues.

Brett Hoedl, 17446 W. 161st Street, Olathe, expressed frustration over the passage of the diversity and equality resolution tonight as he believes it will be harmful as it suggests using mediation to solve a discrimination suit. Mr. Hoedl stated mediation is voluntary. Mr. Hoedl spoke in support of the LGBTQ comprehensive non-discrimination ordinance.

Wendy Budetti, 17446 W. 161st Street, Olathe, spoke in support of the LGBTQ non-discrimination ordinance as there are no State protections.

Chad Palmer, 16012 W. 136th Street, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Amy Diediker, 12528 S. Gleason Road, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Jason Rozelle, 1015 N. Troost Avenue, Olathe, addressed the Governing Body with concerns of not getting a response back from the City over questions he has on how he was treated at a business recently as well as the police department. Mr. Rozelle stated he would like to get help from someone in the City.

Mayor Copeland stated it is his understanding staff attempted to reach out to

him, but did not have a correct phone number and asked that he provide us with one. Mr. Copeland also asked before Mr. Rozelle leaves tonight that he would like for Mr. Rozelle, the City Manager and Chief of Police to meet and arrange a time for them to get together to work on this.

Lisa Lero, 410 E. Cedar Street, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Cassandra Peters, 1105 N. Walker Lane, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Mitch Peters, 1105 N. Walker Lane, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Bridgette Moore, 1305 N. Leeview Drive, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Keith Esau, 11702 S. Winchester Street, Olathe, spoke against a non-discrimination ordinance.

Grant Owens, 13083 S. Summit Street, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Chris Haulmark, 600 S. Harrison Street, Apt. 11, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Angie Powers, 1721 W. Spruce Street, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Mary Wirtz, 2114 E. Mohawk Court, Olathe, spoke against a non-discrimination ordinance.

Joann Barber, 129 S. Emma Street, Olathe, spoke against a non-discrimination ordinance.

Evan Lovelace, 12475 S. Ortega Drive, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Scott Harvey, 1107 E. Elizabeth Street, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Matthew Calcara, 14362 W. 118th Street, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Jorge Santana, 15954 W. Mur-Len Road, No. 163, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Angelica Wilcox, 12145 S. Black Bob Road, Apartment 102, Olathe, spoke in support of the LGBTQ non-discrimination ordinance.

Terryl Westerhold, 12488 S. Valley Circle, Olathe, expressed concerns over the UDO not having a statute of limitations on approved plans, the changing of approved developers without residents having the opportunity to weigh in on it, and the 500 foot notification requirement, which should be greater as this impacts people outside of that range. Mr. Westerhold also expressed concerns over traffic management.

13. ADDITIONAL ITEMS

Councilmember Randall thanked all of the speakers this evening for speaking in a civil manner.

Councilmember Bacon asked staff how we let citizens know about things like the national weather drill that occurred earlier today. City Manager Wilkes stated he believes additional notice is placed via social media. Mr. Bacon also asked staff to report back about a recent media report on human trafficking as he does not want to ignore this type of issue in our city.

14. ADJOURNMENT

The meeting adjourned at 9:50 p.m.

David F. Bryant III, MMC
Deputy City Clerk



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Resource Management
STAFF CONTACT: Dianna Wright/Brenda Long
SUBJECT: New Cereal Malt Beverage License Application

ITEM DESCRIPTION:

Consideration of new cereal malt beverage license applications for calendar year 2019.

SUMMARY:

The applications for the following businesses have met the necessary requirements for issuance of a cereal malt beverage license and is recommended for approval by staff. The application is available for review in the City Clerk's Office.

<u>Name</u>	<u>License</u>	<u>Site</u>
Aldi #95	19-68	15290 W. 119 th Street
Aldi #94	19-69	20250 W. 154 th Street

FINANCIAL IMPACT:

License fees as established in Title 7 of the Olathe Municipal Code in the amount of \$50 for sale at retail and a separate \$25 stamp fee for the State of Kansas have been collected for these licenses.

ACTION NEEDED:

Approve the application for license as part of the consent agenda.

ATTACHMENT(S):

- A. CMB - ALDI #95 119TH
- B. CMB - ALDI #94 154TH

From: [Rachelle Breckenridge](#)
To: [Brenda Long](#)
Subject: RE: CMB - Aldi #95 119th St 02-28-19
Date: Tuesday, March 5, 2019 7:21:56 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Approved.

Thanks.

[Rachelle Breckenridge](#), *Assistant City Attorney II*

(913) 971-8727 | [OlatheKS.org](#)

Legal | City of Olathe, Kansas

Setting the Standard for Excellence in Public Service



From: Brenda Long <BDLong@OLATHEKS.ORG>

Sent: Tuesday, March 05, 2019 8:14 AM

To: Rachelle Breckenridge <RRBreckenridge@OLATHEKS.ORG>

Subject: FW: CMB - Aldi #95 119th St 02-28-19

Rachelle, I have the necessary approvals for the CMB license for Aldi #95.

[Brenda Long](#), *Assistant City Clerk*

(913) 971-8675 | [OlatheKS.org](#)

Resource Mgmt | City of Olathe, Kansas

Setting the Standard for Excellence in Public Service



From: Benjamin Laxton

Sent: Monday, March 4, 2019 9:48 AM

To: Brenda Long <BDLong@OLATHEKS.ORG>

Cc: Timothy Linot <TALinot@OLATHEKS.ORG>; Marcia Cline <MCline@OLATHEKS.ORG>

Subject: Approve: CMB - Aldi #95 119th St 02-28-19

Brenda,

I recommend approval.

The most recent inspection is dated **11/29/2018** and is less than one (1) year from today's date. However, this business has not been inspected this year and will require a new inspection for this

Brenda Long

From: Brenda Long
Sent: Friday, March 1, 2019 6:33 PM
To: Benjamin Laxton; Curtis Bowman; David Bryant; GIS Shared; Jo Prochko; Rachelle Breckenridge
Subject: CMB - Aldi #95 119th St 02-28-19
Attachments: CMB - Aldi #95 119th St 02-28-19.pdf

Tracking:	Recipient	Response
	Benjamin Laxton	Approve: 3/4/2019 9:48 AM
	Curtis Bowman	Approve: 3/4/2019 11:02 AM
	GIS Shared	Approve: 3/4/2019 9:23 AM

Please use the voting tab to make comments and recommendations for the attached CMB application for Aldi, Inc, located at 15290 W. 119th Street by March 11, 2019.

[Brenda Long](#), Assistant City Clerk

(913) 971-8675 | OlatheKS.org

Resource Mgmt | City of Olathe, Kansas

Setting the Standard for Excellence in Public Service



year. Tim Linot or Marcia Cline (cc'd) will schedule a current inspection.

[Benjamin Laxton](#), P.E., *Fire Protection Engineer*

(913) 971-9849 | OlatheKS.org

Fire | City of Olathe, Kansas

Setting the Standard for Excellence in Public Service



Robert E. Duncan II
Attorney at Law
212 SW 8th Avenue, Suite 202
Topeka, Kansas 66603
785-233-2265 Fax: 785-233-5659
tuckduncanlaw@yahoo.com

Memorandum

To: City of Olathe
Attn: David Bryant, Deputy City Clerk
P.O. Box 786
Olathe, Kansas 66051-0768

From: Robert E. Duncan II, Attorney/Process Agent 

Re: CMB License Application

Date: February 28, 2019

Please find enclosed the CMB Corporate Application for ALDI INC. (Kansas) number 95 at 15290 West 119th Street and # 94 at 20250 West 154th Street with a check for \$150.00. Please send a copy of the new license to my office at the e-mail above.

If you have any questions, please call my office.

Thank you for your attention to and consideration of this matter.

Cash Receipt



Receipt #: 46344
User: JOLENEP
Dept: CC
Date: 02/28/2019
Time: 10:53:27

CITY OF OLATHE - CITY CLERK CASH RECEIPT
PO BOX 768
OLATHE KS 66061

Customer: Aldi, INC

THANK YOU FOR YOUR PAYMENT

ON BEHALF OF CITY TREASURER, DIANNA WRIGHT _____

Item	Description	Notes	Amount
CMB LICENSE	ALDI #95 119th Street	431105	\$50.00
CMB STATE STAMP	ALDI #95 119th Street	431105	\$25.00
CMB LICENSE	ALDI #94 154th Street	431105	\$50.00
CMB STATE STAMP	ALDI #94 154th Street	431105	\$25.00
Final Total Received			\$150.00

From: [Rachelle Breckenridge](#)
To: [Brenda Long](#)
Subject: RE: CMB - Aldi #94 154th St 02-28-19
Date: Tuesday, March 5, 2019 7:07:49 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Good evening,

Approve.

Thanks.

[Rachelle Breckenridge](#), *Assistant City Attorney II*

(913) 971-8727 | [OlatheKS.org](#)

Legal | City of Olathe, Kansas

Setting the Standard for Excellence in Public Service



From: Brenda Long <BDLong@OLATHEKS.ORG>

Sent: Tuesday, March 05, 2019 8:15 AM

To: Rachelle Breckenridge <RRBreckenridge@OLATHEKS.ORG>

Subject: FW: CMB - Aldi #94 154th St 02-28-19

Rachelle, I have the necessary approvals for Aldi #94 CMB license.

[Brenda Long](#), *Assistant City Clerk*

(913) 971-8675 | [OlatheKS.org](#)

Resource Mgmt | City of Olathe, Kansas

Setting the Standard for Excellence in Public Service



From: Benjamin Laxton

Sent: Monday, March 4, 2019 9:47 AM

To: Brenda Long <[BDLong@OLATHEKS.ORG](#)>

Cc: Timothy Linot <[TALinot@OLATHEKS.ORG](#)>; Marcia Cline <[MCline@OLATHEKS.ORG](#)>

Subject: Approve: CMB - Aldi #94 154th St 02-28-19

Brenda,

I recommend approval.

Brenda Long

From: Brenda Long
Sent: Friday, March 1, 2019 6:32 PM
To: Benjamin Laxton; Curtis Bowman; David Bryant; GIS Shared; Jo Prochko; Rachelle Breckenridge
Subject: CMB - Aldi #94 154th St 02-28-19
Attachments: CMB - Aldi #94 154th St 02-28-19.pdf

Tracking:	Recipient	Response
	Benjamin Laxton	Approve: 3/4/2019 9:47 AM
	Curtis Bowman	Approve: 3/4/2019 11:03 AM
	GIS Shared	Approve: 3/4/2019 9:35 AM

Please use the voting tab to make comments and recommendations for the attached CMB application for Aldi, Inc, located at 20250 W. 154th Street by March 11, 2019.

[Brenda Long](#), Assistant City Clerk

(913) 971-8675 | OlatheKS.org

Resource Mgmt | City of Olathe, Kansas

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The most recent inspection is dated **06/14/2018** and is less than one (1) year from today's date. However, this business has not been inspected this year and will require a new inspection for this year. Tim Linot or Marcia Cline (cc'd) will schedule a current inspection.

[Benjamin Laxton](#), P.E., *Fire Protection Engineer*

(913) 971-9849 | OlatheKS.org

Fire | City of Olathe, Kansas

Setting the Standard for Excellence in Public Service



Robert E. Duncan II
Attorney at Law
212 SW 8th Avenue, Suite 202
Topeka, Kansas 66603
785-233-2265 Fax: 785-233-5659
tuckduncanlaw@yahoo.com

Memorandum

To: City of Olathe
Attn: David Bryant, Deputy City Clerk
P.O. Box 786
Olathe, Kansas 66051-0768

From: Robert E. Duncan II, Attorney/Process Agent 

Re: CMB License Application

Date: February 28, 2019

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If you have any questions, please call my office.

Thank you for your attention to and consideration of this matter.

Cash Receipt



Receipt #: 46344
User: JOLENEP
Dept: CC
Date: 02/28/2019
Time: 10:53:27

CITY OF OLATHE - CITY CLERK CASH RECEIPT
PO BOX 768
OLATHE KS 66061

Customer: Aldi, INC

THANK YOU FOR YOUR PAYMENT

ON BEHALF OF CITY TREASURER, DIANNA WRIGHT _____

Item	Description	Notes	Amount
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CMB STATE STAMP	ALDI #95 119th Street	431105	\$25.00
CMB LICENSE	ALDI #94 154th Street	431105	\$50.00
CMB STATE STAMP	ALDI #94 154th Street	431105	\$25.00
Final Total Received			\$150.00



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: City Manager's Office

STAFF CONTACT: Liz Ruback

SUBJECT: Consideration of business expense statement for City Manager Michael Wilkes for expenses incurred to attend the NLC Conference in DC March 9-12, 2019.

ITEM DESCRIPTION:

Consideration of business expense statement for City Manager Michael Wilkes for expenses incurred to attend the NLC Conference in DC March 9-12, 2019.

SUMMARY:

Expense statements are presented for Council review and approval in accordance with Administrative Guidelines F-01, which requires that all travel expenses for the City Manager be placed on the Council agenda for approval.

FINANCIAL IMPACT:

Funding is included in the 2019 budget.

ACTION NEEDED:

Consider approval of the attached Travel Request and Authorization form for the City Manager as part of the Consent Agenda.

ATTACHMENT(S):

Attachment A: 3-19-19 JMW NLC BES



Complete the yellow cells

Business Expense Statement (BES)

Attachment A

Statement to be completed according to Admin. Reg. F-01

Form must be submitted by the 15th of the following month. Attach a memo to the Approving Authority with their approval if late or grand total exceeds 10% of Travel Authorized.

BES expenses must be within 10% of Travel Request Authorization(TRA).

Name:	Michael Wilkes	Employee #	124702	Department:	CMO
Business Expense Purpose:	National League of Cities			Destination:	Washington DC
Departure Date:	3/9/19	Return Date:	3/12/19		
Comments:	0			E1 Budgeted Acct #	1001020.62220
Sharing hotel room? Whom with: 0					

Total Expenses from TRA		BES	Paid with City PCard	Paid to Vendor	Paid to Employee	
Registration:	100.00	Registration:	100.00	✓		
Airfare:	400.00	Airfare:			782.98	✓
Lodging:	1,329.40	Lodging:			982.27	✓ Include all cost & fees - Itemized receipt for Lodging required
Car Rental:	-	Car Rental:				
KCI Airport parking:	40.00	KCI Airport parking:			\$36.00	✓
		Meals Overnight Travel Search for City - GSA.gov website if city is not listed search for the county gsa.gov link "Nat'l Assn of Counties" (NACO) Enter Per Diem Rate (cell H19) # of days (cell I19) M&IE Meal breakdown will auto populate			Per Diem: Rate # of days \$76 4.0 304.00 Meals Provided will deduct from per diem: Breakfast 18.00 - Lunch 19.00 - Dinner 34.00 -	
Per Diem for Meals:	346.00	Per Diem for Meals:	No receipts required		304.00	✓
STOP Go to Page 2 Now and complete then RETURN here to allocate expense & complete the BES						
		Allocate Page 2 Totals to yellow cells	Paid with City PCard	Paid to Vendor	Paid to Employee	Totals from page 2
Private Vehicle Mileage:	43.60	Mileage:			46.40	✓ 46.40
Cab/Shuttle fares/		Cab/Shuttle fares/				
Tolls/Baggage fees:	150.00	Tolls/Baggage fees:			62.75	✓ 62.75
Fuel - City Vehicle:	-	Fuel - City Vehicle:				-
Meals Local:	-	Local Meals:				-
		Business Meeting:				-
Miscellaneous Expense:	-	Miscellaneous Expense:			21.29	✓ 21.29
TOTAL TRA ESTIMATED EXPENSES	2,409.00	TOTAL EXPENSES	2,335.89		2,335.89	
		Total Expensed paid by employee	2,235.89		✓	
		Travel Advance issued to Employee	389.60		✓	
		Amount owed Employee/ (owed to City)	1,846.29		✓	

REVIEWED

By Tracy Fiorini at 8:17 am, Mar 14, 2019

I certify that I have incurred all of the expenses listed above on behalf of the City and that they are directly related to the active conduct of the City's business.

Page 1 of 2

Employee Signature

Date

Division Manager Signature

Date

Department Manager

Date

City Manager Signature (if required)

Date

ACH direct deposit rather than a check can be provided. Complete and submit [AP ACH form](#)

Business Expense Statement continued

Name: Michael Wilkes
 Business Expense Purpose: Washington DC

Department: CMO

Mileage Calculation:

Mileage log may be used for detail		Rate	\$0.58
Date	Destination	Miles	Amount
3/9/19	City Hall to MCI	40	23.20
3/12/19	MCI to City Hall	40	23.20
			-
			-
			-
Total			46.40

Cab/Shuttle fares/Tolls:

Date	Description	Amount
3/9/19	Uber	\$17.13
3/9/19	Uber	\$5.00
3/11/19	Taxi	\$12.00
3/11/19	VIP Cab	\$9.29
3/12/19	VIP Cab	\$19.33
Total		62.75

Fuel - City Vehicle:

Date	Amount
Total	-

Meals Local:

Date	Breakfast	Lunch	Dinner	Maximum allowed:
				Breakfast 15.00
				Lunch 16.00
				Dinner 28.00
				Receipts are required
Total	-			

Business Meeting & Guests:

Date	Purpose	Firm & Persons Present	Amount

Total -

Miscellaneous Expense:

Date	Description	Amount
3/9-3/12	Tips for baggage, etc. (Expenditure Affidavit)	\$3.00
3/12/19	SQ UVC Inc (Cab)	\$18.49 \$18.39
Total		21.39 \$21.49



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Library

STAFF CONTACT: Emily Baker

SUBJECT: Addendum to the Interlocal Cooperation Agreement between the Olathe Public Library and the Johnson County Library.

ITEM DESCRIPTION:

Consideration of ratifying an Addendum to the Interlocal Cooperation Agreement between the Olathe Public Library and the Johnson County Library for automated circulation, patron and bibliographic services

SUMMARY:

The Addendum to the Interlocal Cooperation Agreement is reviewed and renewed on an annual basis between the Olathe Public Library and the Johnson County Library. This partnership allows the two libraries to offer the same automated checkout procedures and policies, merged collections, shared databases and downloadable content. This agreement also represents cost savings, increased access to more materials for city and county residents and professional collaboration.

FINANCIAL IMPACT:

The library's 2019 budget will pay for services:

\$295,000	downloadable content/databases
\$ 90,000	administration of e-Content
\$385,000	

ACTION NEEDED:

Approve ratification of the Addendum to the Interlocal Cooperation Agreement as part of the consent agenda.

ATTACHMENT(S):

A: Addendum to the Interlocal Cooperation Agreement

**ADDENDUM TO THE INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE BOARD OF DIRECTORS OF THE JOHNSON COUNTY
LIBRARY AND THE OLATHE PUBLIC LIBRARY ADVISORY BOARD FOR
AUTOMATED CIRCULATION, PATRON, AND BIBLIOGRAPHIC SERVICES**

This Renewal Memorandum (the "Renewal" hereinafter) is made this 10th day of January 2019, by and between the Board of Directors of the Johnson County Library ("JCL" hereinafter) and the Olathe Public Library Advisory Board ("OPL" hereinafter) to amend the Interlocal Cooperation Agreement between the parties on the sharing of automated services (the "Agreement" hereinafter).

The parties agree as follows:

1. Memorandum of Renewal. On May 17, 1989, the parties entered into the Agreement and have renewed it on an annual basis since that date. The Agreement has been amended and supplemented several times. The Agreement, as amended and supplemented, has worked well for the parties, is of substantial benefit to the patrons of both institutions, and the parties accordingly renew said Agreement, as amended and supplemented, under the existing terms, pursuant to paragraph II.2, for the period of January 1, 2019 through December 31, 2019 with Sections 10 and 10A as set forth below.
2. Amended Section 10 of the Agreement. Section 10 of the Agreement, as amended, reads as follows:
 10. ACCESS TO INFORMATION IN BIBLIOGRAPHIC AND CIRCULATION DATA BASE: SERVICE FEES.
 - A. Access to Information. JCL and OPL agree that, subject to paragraph 11, full access shall be allowed to information stored in the JCL automated system relating to books and library materials at both libraries and relating to the holdings, availability and circulation status of such books and library materials. The parties agree to use the JCL automated system to permit patrons of one library system to "reserve" an item in the other library's collections. Staff from OPL and JCL has developed procedures for the delivery of such material.
 - B. Internet Access Service. JCL and OPL agree that JCL no longer provides OPL with Internet Access Service and that no fee is accordingly charged for that service.
 - C. Service Fees. The parties agree that OPL will pay to JCL a service fee in the amount of 23% of Integrated Library System Coordinator services costs, 23% of .5 FTE for E-content Selector negotiation services, plus 23% additional costs for database subscriptions for the

period of January 1, 2019 through December 31, 2019. If additional services are added throughout the year, additional service fees will be assessed at the 23% rate.

- D. Confidentiality of Records. JCL and OPL both have regulations or policies in place that protect the confidentiality of their respective patrons' library records. JCL and OPL mutually and reciprocally agree to maintain the confidentiality of their respective patrons' library records and to make no disclosure of the other institution's confidential library patron records.

3. Amended Section 10A of the Agreement. Section 10A of the Agreement, as added by way of addendum approved December 17, 2003, shall read as follows:

10A. LEASE OR PURCHASE OF DATA BASES AND E-CONTENT FOR REMOTE USE. JCL and OPL agree to act in concert to lease or purchase databases and e-content for remote use by their patrons on the terms set forth in this paragraph 10A.

- A. Each library shall be financially responsible for its share of the cost of leasing or purchasing such data bases and e-content as follows:

1. OPL will be responsible for 23% of the total cost in 2019 plus additional costs associated with OPL being made a party to any applicable leases.
2. JCL will be responsible for 77% of the total cost of leasing or purchasing such databases in 2019.
3. In 2019, databases will be billed from 10/1/18 – 9/30/19 and will continue billing on an October – September cycle thereafter.
4. In 2019, e-books will be billed from 10/1/18 – 9/30/19 and will continue billing on an October – September cycle thereafter.

- B. JCL shall provide OPL with the following services at no additional cost: JCL staff shall provide the necessary equipment and software to perform use authentication; and JCL staff shall provide support desk services relating to remote data base and e-content access.

OPL will pay 23% of .5 FTE for E-content Selector to negotiate data base and e-content contracts on behalf of JCL and OPL.


- C. OPL shall appoint a representative to assist in the selection and licensing of databases leased or purchased for remote use pursuant to the terms of this Agreement.
 - D. In the event of severance of the Inter local Agreement between JCL and OPL, 23% of the mutual e-book and e-audio book content will remain the property of OPL. The specific titles retained will be determined by OPL.
4. Added Section 10B of the Agreement. Section 10B of the Agreement, as added by way of addendum approved July 21, 2004, shall read as follows:
- 10B. USE OF COMPUTER RESERVATION SERVICE. JCL agrees to allow OPL to access and use its online computer reservation system. This service will be provided to OPL by JCL, and JCL will be the sole owner of all hardware, software, and other components related to the proper operation of the system. JCL will provide regular maintenance to all components of the service. The agreed support fee for this service is included in the fee set forth in paragraph 10.A above.
5. Addendum to Section 10C of the Agreement Section 10C of the agreement, as added by way of addendum approved December 15, 2010, shall read as follows:
- 10 C. LEASES OR PURCHASE OF WEB CATALOG INTERFACE. JCL and OPL agree to act in concert to lease or purchase a presentation layer interface to provide public access to the Bibliographic and Patron account database via the Web on the terms set forth in this paragraph 10C.
- A. Each library shall be financially responsible for its share of the costs of leasing or purchasing a presentation layer interface as follows:
 - 1. OPL will be responsible for 23% of the total cost in 2019, plus additional costs associated with OPL being made a party to any applicable leases.
 - 2. JCL will be responsible for 77% of the total cost of leasing or purchasing such an interface.

- B. JCL shall provide OPL with the following services at no additional cost: JCL staff will be responsible for negotiation of contracts or leases with interface vendors; JCL staff shall provide the necessary equipment and software to perform authentication and interface with the ILS; and JCL staff shall provide support desk services relating to online interface access.
- C. JCL and OPL shall appoint members to a committee that will select and mutually agree upon an interface to be leased or purchased pursuant to the terms of this Agreement.

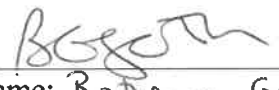
COURIERS JCL shall pay 77% of Monday through Saturday courier service between OPL and JCL.

IN WITNESS WHEREOF, the parties have hereunto set their hands.

ADVISORY BOARD OF THE
OLATHE PUBLIC LIBRARY

BY: 
Name: Thomas A. Glavin
Title: Chairman

BOARD OF DIRECTORS OF THE
JOHNSON COUNTY LIBRARY

BY: 
Name: Bethany Griffith
Title: Vice Chair



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Public Works

STAFF CONTACT: Mary Jaeger/Beth Wright

SUBJECT: Consideration of Consent Calendar

ITEM DESCRIPTION:

Consideration of Consent Calendar.

SUMMARY:

Consent Calendar consists of Project Completion Certificates for Public Works projects.

FINANCIAL IMPACT:

N/A

ACTION NEEDED:

Approve Consent Calendar for March 19, 2019.

ATTACHMENT(S):

A: Consent Calendar

City Council Information Sheet

Date: March 19, 2019

ISSUE: Consent Calendar for: March 19, 2019

DEPARTMENT: Public Works

SUMMARY:

1) PROJECT COMPLETION CERTIFICATES

- a) Crestwood Village, 1st Plat – 1-D-034-17 – Sanitary Sewer
- b) Willow Crossing East, 1st Plat – 5-D-012-18 – Waterlines

2) CHANGE ORDERS

- a) none

3) FINAL PAYMENT TO CONTRACTORS

- a) none

Submitted by: Mary Jaeger, Director / Beth Wright, Deputy Director



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Public Works

STAFF CONTACT: Mary Jaeger/Beth Wright

SUBJECT: Contract with Turner Construction for construction management services the Fire Station #8 Improvements Project, PN 6-C-009-18.

ITEM DESCRIPTION:

Consideration of an Agreement with Turner Construction for construction management services for the Fire Station #8 Improvements Project, PN 6-C-009-18.

SUMMARY:

Improved Fire Department coverage is needed to better serve the growing southwestern portion of the community, including increasing residential density, Mission Trail Middle School and the I-35 Logistics Park. This project is for the planning, design, construction, and equipping of a new fire station. In coordination with the Parks & Recreation department, this will be the initial phase of development of the approximately 12 acres of property recently purchased at 148th Street & Lakeshore Drive.

Design and construction of the Fire Station #8 project will utilize the Construction Manager At-Risk contract method. On November 16, 2018, staff issued a Request for Qualifications (RFQ) to firms seeking to be considered for providing construction management services for this project. On December 18, 2018, Statements of Qualifications were received from five (5) construction firms. The evaluation and selection committee identified two (2) teams to be interviewed and provide fee proposals. Following the interviews on January 28, 2019, the committee identified Turner Construction as the preferred firm for this project.

Approval of the Agreement is a two-step process. Initial approval of the Agreement authorizes Turner Construction for pre-construction services and establishes their construction management fee at 3.5%. As part of pre-construction services, Turner Construction will immediately begin partnering with staff and our design team throughout design to advise on matters affecting cost, materials and quality, schedule, constructability, etc. At specific stages during the design phase, Turner Construction will be responsible to develop cost estimates for the construction of the project.

This Agreement stipulates compensation for the pre-construction services provided by Turner Construction will be a lump sum cost of \$20,000. The pre-construction phase is anticipated to conclude in approximately 9 months. As construction documents are developed by our architect to an agreed upon level of completeness, Turner Construction will be asked to bid the project and provide the City with a Guaranteed Maximum Price (GMP) for the construction of the project. Specific requirements of the project as well as the GMP to construct the project will be documented in an amendment to this agreement, and the amendment will be presented to Council for approval. Only at that time will Council be considering approval of a contract for construction. Staff currently anticipates returning to Council with a GMP amendment in November 2019.

The following is the tentative schedule for the design and construction of the project:

Complete Design:	October 2019
Bidding	November 2019

MEETING DATE: 3/19/2019

Begin Construction: December 2019

Complete Construction: October 2020

FINANCIAL IMPACT:

Funding for the Fire Station #8 Improvements Project, as approved in the 2019 Capital Improvement Plan, includes:

<u>GO Bonds</u>	<u>\$7,055,000</u>
Total	\$7,055,000

ACTION NEEDED:

Approval of an Agreement with Turner Construction for construction management services for the Fire Station #8 Improvements Project, PN 6-C-009-18.

ATTACHMENT(S):

A: Agreement

B: Project Fact Sheet

C: Project Location Map



AIA[®] Document A133[™] – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the _____ day of _____ in the year _____
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

City of Olathe, Kansas
100 E. Santa Fe
P.O. Box 768
Olathe, KS 66061

and the Construction Manager:
(Name, legal status and address)

Turner Construction
1220 Washington St., Suite 100
Kansas City, MO 64105
816-283-0555

for the following Project:
(Name and address or location)

Fire Station No. 8
14700 S. Lakeshore Drive
Olathe, Kansas 66061
Project No. 6-C-009-18

The Architect:
(Name, legal status and address)

Finkle Williams, Inc.
7007 College Blvd., Suite 415
Overland Park, KS 66211
913-498-1550

The Owner's Designated Representative:
(Name, address and other information)

Chad Foster
City of Olathe, Kansas
1385 S. Robinson Drive
Olathe, KS 66061
Telephone Number: 913-971-9107 (office)
Email Address: ccfooster@olatheks.org

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

The Construction Manager's Designated Representative:
(Name, address and other information)

Karen Hogan
Turner Construction
1220 Washington St., Suite 100
Kansas City, MO 64105
816-283-0555
khogan@tcco.com

The Architect's Designated Representative:
(Name, address and other information)

Ellen Foster
Finkle Williams, Inc.
7007 College Blvd., Suite 415
Overland Park, KS 66211
913-498-1550
efoster@finklewilliams.com

The Owner and Construction Manager agree as follows.

Init.

/

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, as amended, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, as amended, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager. The term Contract Sum as used in AIA 201-2007 shall mean the guaranteed Maximum Price.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The schedule of such meetings shall be coordinated and mutually agreeable with the Owner, Architect, and Construction Manager. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Owner's and Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Owner's and Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Owner's and Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Owner's and Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of

construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and ~~Specifications~~Specifications. All such clarifications and assumptions shall take precedence over the Architect's documents used to establish the Guaranteed Maximum Price only to the extent the clarifications and assumptions are clearly annotated in writing (including annotations on the Architect's documents if necessary) and submitted to the Owner and Architect, and subsequently approved in writing by the Owner;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information

presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate Construction Manager shall submit to the Owner and Architect for the Owner's and Architect's review, documentation identifying any subcontractor pre-qualification process utilized by the Construction Manager. The Construction Manager shall also submit for the Owner's and Architect's review a list of pre-qualified subcontractors which the Construction Manager intends to obtain bids. The Owner and Architect may suggest specific persons from whom, or entities from which, the Construction Manager shall obtain bids. In such an instance, and provided the Construction Manager has no objection to a particular person or entity suggested by the Owner or Architect, the Construction Manager shall provide these persons or entities with the Construction Manager's pre-qualification documentation in order to provide an opportunity for these persons or entities to become pre-qualified. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect, after analyzing such bids, shall deliver to the Owner and Architect for review a summary of all bids received. Additionally, the Construction Manager shall, if so requested by the Owner, deliver copies of all bids received to the Owner and Architect for their review. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has the Construction Manager has reasonable objection, and the Construction Manager shall not contract with anyone to whom the Owner has a reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity

recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The authority of the Owner's authorized representative to make decisions on behalf of the Owner shall be limited to those decisions customarily allowed in the capacity of the representative's position. Certain decisions of the Owner may require action or approval by other staff, commissions, or the governing body of the City of Olathe. The Owner's Representative shall not be required to make decisions on matters which the representative is not authorized to make. It is the responsibility of the Owner's Representative to determine which action or approval can be made by the Owner's Representative or is required to be made by others. The Construction Manager is entitled to rely upon the action or approval provided by the Owner's Representative as binding and authorized action or approval.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. However, in no event shall any Owner-related legal, insurance, accounting, and/or audit services be provided on behalf of the Construction Manager providing such services to the Owner, nor shall the Construction Manager serve any other role than as an independent contractor of the Owner.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, ~~duties~~, and responsibilities as described in AIA Document B133™–2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. Such additional services shall be provided in accordance with the time schedules discussed and agreed to by the Owner, Architect, and Construction Manager. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

Compensation for Preconstruction Phase services shall be fixed as a lump sum amount for the services anticipated to be provided, including all customary and routine reimbursable expenses, all as further defined in **Exhibit 1**.

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(*Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.*)

The total cost of compensation for Preconstruction Phase services including all customary and routine reimbursable expenses, all further outlined in **Exhibit 1**, is Twenty Thousand dollars (\$20,000.00).

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within nine (9) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably ~~adjusted~~ adjusted for any additional services provided by the Construction Manager based upon the actual hours incurred by the Construction Manager's staff multiplied by the hourly rates for the staff as shown in the Construction Manager's Hourly Rate Schedule identified as **Exhibit 2**.

~~§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.~~

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (~~—~~ days after the invoice date thirty (30) days after the date the invoice is received and approved by the Owner shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(*Insert rate of monthly or annual interest agreed upon.*)

~~% —One and one-half percent (1.50%) (or the maximum allowable by law, whichever is lower) of the past due amount per month (18% annual interest rate) from the invoice date.~~

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(*State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.*)

The Construction Manager's fee shall be computed based upon the Cost of the Work as defined in Article 6 multiplied by Three and One-Half percent (3.5%). The Owner and Construction Manager agree the amount of the Construction

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Manager's fee will be computed at the time the GMP is developed and the amount will be identified in the GMP Amendment. The fee shall be identified in a schedule of values, earned as work progresses, and billed monthly as part of the Construction Manager's applications for payment.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

For changes in the Work that either increase or decrease the Guaranteed Maximum Price, the fee paid to the Construction Manager shall equitably adjust at the rate identified in Section 5.1.1 as the Guaranteed Maximum Price adjusts.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

For Subcontractor's increase in the Cost of the Work, the Subcontractor's overhead shall be limited to Ten percent (10.00%) of the actual cost of the work and the Subcontractor's profit shall be limited to five percent (5.00%) of the actual cost of the work.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ninety percent (90 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval, ~~approval, and wages and salaries of the Construction Manager's supervisory and administrative personnel stationed at the Construction Manager's principal office and other locations, but only for that portion of their time required to perform the Work of this Agreement.~~ Costs for such Work shall be computed based on actual time worked by the personnel multiplied by the hourly rates shown in the Construction Manager's Hourly Rate Schedule identified as Exhibit 2.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Insurance and bonds provided by the Construction Manager shall be included in the GMP at the following rates: General Liability Insurance and Builders Risk Insurance at 1.1%; Bonds at 0.90%.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Owner and Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Owner and Architect not later than the first day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner and Architect receives the Application for Payment. The Owner will provide the Construction Manager with a schedule identifying dates established by the Owner for the issuance of progress payments. The Owner, Architect, and Construction Manager will review this schedule and develop a project specific schedule identifying dates for the submittal and review of the Construction Manager's Applications for Payment, and the Owner's subsequent payment to the Construction Manager.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall be prepared to make available to the Owner but not submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner and Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent (5.00 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5.00 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.
- .8 Subtract retainage of five percent (5.00%) from that portion of the Work performed by the Construction Manager's Subcontractors.

§ 7.1.8 The Owner and Construction Manager shall agree upon ~~(1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.~~ Subcontractors.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Owner or Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Owner or Architect has made exhaustive or continuous on-site inspections; or that the Owner or Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

8.1 Insurance

The Construction Manager shall be required to maintain and carry in force for the duration of the contract, insurance coverage of the types and meeting the or exceeding the minimum coverage amounts identified in **Exhibit 3**, City of Olathe, Kansas Insurance Requirements for Contractors.

8.2 Bonds

The Construction Manager shall furnish a Performance and Maintenance Bond (form as provided in **Exhibit 4**) and a Statutory Bond (form as provided in **Exhibit 5**) covering faithful performance of the Contract and payment of obligations arising thereunder as per the requirements stated in the General Conditions. The cost of such Bonds shall

be included in the Cost of the Work. The amount of each bond shall be equal to One-Hundred percent (100%) of the Guaranteed Maximum Price.

- .1 The Construction Manager shall deliver the required bonds to the Owner no later than Ten (10) days after the Owner's approval of the Guaranteed Maximum Price Amendment. In no case shall the Construction Manager commence Work at the project site until such time as the bonds have been received and approved by the Owner.

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

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- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other ~~provisions:~~Provisions:

.1 Licensing Requirements

The Construction Manager must be authorized to do business in the State of Kansas. If the Construction Manager is a corporation organized outside the State of Kansas it shall review its authorization with the State of Kansas and if necessary file the required documentation with the State of Kansas in order to receive authorization to do business in the State of Kansas. The Construction Manager, if organized outside the State of Kansas, must furnish evidence to the Owner of their authority to do business in the State of Kansas. Such evidence must be furnished to the Owner prior to any Contract award.

The Construction Manager and all Subcontractors performing construction work on this project shall meet all licensing requirements of the City of Olathe for the work which they intend to perform.

.2 Appointment of Process Agent

The Construction Manager, if not a resident of Johnson County, Kansas, shall appointment a Process Agent being a resident of Johnson County, Kansas. The Construction Manager shall submit with the Guaranteed Maximum Price proposal the Appoint of Process Agent form as provide in **Exhibit 6**. This Process Agent form will be filed by the Owner with the Clerk of District Court of Johnson County, Kansas, as provided by law.

.3 Non-Collusive Affidavit

The Construction Manager shall submit with the Guaranteed Maximum Price proposal the Non-Collusive Affidavit as provided in **Exhibit 7**.

.4 Tax Exemption

All applicable taxes, sales, consumer, use and other similar taxes, imposed by any taxing authority, on materials, equipment or supplies to be incorporated in the work shall be tax exempt.

The Construction Manager shall be required to furnish taxing authorities any necessary information or reports pertaining thereto, as required.

Pursuant to KSA 79-3606, both services and materials for this project are exempt from the Kansas Retailers' Sales Tax and the Kansas Compensating Tax. Within fifteen (15) days after the date of Contract approval, Owner will provide a Kansas Sales tax exemption certificate number to the Construction Manager. The Construction Manager and each Subcontractor or repairman must furnish the exemption certificate number to each supplier on Kansas Sales Tax Division Form STD 74. The exemption certificate number shall be placed on all invoices for material to be incorporated in the work. All invoices shall be held by Construction Manager for 5 years, and shall be subject to audit by the Director of Taxation. Upon completion of the work, Construction Manager shall file with the Owner on a form provided by the Director of Taxation, a sworn statement that all purchases made under the exemption certificate were entitled to be exempt from the Kansas Retailers' Sales Tax and the Kansas Compensating Tax. Construction Manager shall assume full responsibility for proper use of the exemption certificate number and shall pay all legally assessed penalties for improper use of the certificate number.

.5 Affirmative Action / Other Laws

During the performance of this Agreement, the Construction Manager agrees that:

a. Construction Manager shall observe the provisions of the Kansas Act Against Discrimination

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(K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;

- b. in all solicitations or advertisements for employees, the Construction Manager shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;
- c. if the Construction Manager fails to comply with the manner in which the Construction Manager reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Construction Manager shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City without penalty;
- d. if the Construction Manager is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, the Construction Manager shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
- e. the Construction Manager shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by the City with Construction Manager if:

- a. Construction Manager employs fewer than four employees during the term of such contract; or
- b. Construction Manager's contract with the City total \$10,000 or less in aggregate.

The Construction Manager further agrees and acknowledges that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

.6 No Third Party Beneficiaries

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

.7 Independent Contractor

The Construction Manager is an independent contractor and as such is not an agent or employee of the City of Olathe, Kansas.

.8 Covenant Against Contingent Fees

Construction Manager warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

.9 Compliance with Laws

Construction Manager shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Work or the Project at the time Services are rendered, including but not limited to The Kansas Fairness in Public Construction Contract Act, K.S.A. 16-1901 et seq. Construction Manager shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this Agreement.

.10 Titles, Subheads, and Capitalization

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

.11 Severability Clause

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

.12 Construction Manager's Warranty Period

All WORK completed by the Construction Manager under the terms of this Agreement shall be warranted by the Construction Manager for a period of one (1) year unless otherwise specifically stated in the Contract Documents to be warranted for a longer period of time, including any extended warranty or special warranty period if specified in the Contract Documents. The commencement of the warranty period is the date of Substantial Completion unless specifically stated otherwise.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for ~~Construction~~Construction, as amended
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

.4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

.5 Other documents:
(List other documents, if any, forming part of the Agreement.)

Exhibit 1 – Preconstruction Services (required for approval of the Agreement)

Exhibit 2 – Construction Manager Hourly Rate Schedule (required for approval of the Agreement)

Exhibit 3 – Insurance Requirements (insurance documents required for approval of the Agreement)

Exhibit 4 – Performance and Maintenance Bond (required with submission of GMP proposal)

Exhibit 5 – Statutory Bond (required with submission of GMP proposal)

Exhibit 6 – Appointment of Process Agent (required with submission of GMP proposal)

Exhibit 7 – Non-Collusive Affidavit (required with submission of GMP proposal)

This Agreement is entered into as of the day and year first written above.

City of Olathe, Kansas

Turner Construction

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name)

(Printed name)

(Printed name and title) (Title)

(Printed name and title) (Title)

ATTEST

(City Clerk/Deputy City Clerk)

APPROVED AS TO FORM

*(City Attorney/Deputy City Attorney/
Assistant City Attorney)*

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chad C Foster, AIA, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 11:25:47 ET on 03/11/2019 under Order No. 0177611464 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)



AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Fire Station No. 8
14700 S. Lakeshore Drive
Olathe, KS 66061

THE OWNER:

(Name, legal status and address)

City of Olathe, Kansas
100 E. Santa Fe
P.O. Box 768
Olathe, KS 66051-0768

THE ARCHITECT:

(Name, legal status and address)

Finkle Williams, Inc.
7007 College Blvd., Suite 415
Overland Park, KS 66211

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes:

(1194471745)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and ~~certify termination of the Agreement under Section 14.2.2.~~
15.2.

§ 1.1.9 SITE

The term Site refers to that portion of the property on which the Work is to be performed or which has been otherwise set aside for use by the Contractor.

§ 1.1.10 PUNCH LIST

The term Punch List means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within thirty (30) days of Substantial Completion, subject to the availability of special order parts and materials.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.2 In the event of conflict among the various provisions of the Contract Documents, the terms shall be interpreted in the following order of priority:

- .1 Modifications to the Contract
- .2 The Contract
- .3 Special Conditions, if any
- .4 General Conditions

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, ~~and will retain all common-law, statutory and other reserved rights, including copyrights. Specifications..~~ Provided all payments have been made to Architect in accordance with its agreement with Owner, the Instruments of Service are the Owner's exclusive property. The Owner owns all copyrights in and to the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants'~~ Owner's reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the ~~Owner, Architect and the Architect's consultants.~~ Owner.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, ~~usually referred to as the site,~~ and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for ~~trade~~ permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the ~~site.~~ Site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner (or such shorter time as may be reasonable under the circumstances) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. ~~Such action by the Owner and amounts~~

charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

~~§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.~~

~~§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~

~~§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.~~

~~§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~

§ 3.2.1 By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified

the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

§ 3.2.2 The Contractor must carefully study and compare the Contract Documents among themselves and further compare the Contract Documents with any other information furnished by the Owner pursuant to Section 3.2 before commencing Work at the Site and at frequent intervals during its progress.

§ 3.2.3 The Contractor must take field measurements and verify Site conditions, and must carefully compare such field measurements and Site conditions and other information known to the Contractor with the Contract Documents, before ordering any material or doing any Work at the Site.

§ 3.2.4 The Contractor must make frequent inspections during the progress of the Work to confirm that Work previously performed by the Contractor is in compliance with the Contract Documents and applicable laws and regulations bearing on the performance of the Work and Referenced Standards and that portion of Work previously performed by the Contractor or by others are in proper condition to receive subsequent Work.

§ 3.2.5 If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

§ 3.2.6 The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

§ 3.2.7 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

§ 3.2.8 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of

changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Persons permitted to perform Work under Contractor or any Subcontractor or Sub-Subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by law.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, or are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.

§ 3.5.3 The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

§ 3.6 TAXES

~~The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~ § 3.6.1 The Owner enjoys tax exempt status. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that certificate to exempt any purchases made for the Work from taxes. Contractor will pass on all savings for the tax-exempt status to the Owner. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

§ 3.6.2 The Contractor will require all Subcontractors and bidders to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to verify that no taxes are to be paid on material procurement and that such savings shall be passed on to the Owner.

§ 3.6.3 The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable time frame after receipt of such request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.

.1 The Contractor will require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.

.2 The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as Contractor is bound to the Owner.

§ 3.6.4 The Contractor shall pay sales, consumer, use and similar taxes, including unemployment compensation taxes, for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner shall (if required) pay for the building permit. Contractor shall secure the building permit, and shall secure and pay for ~~the building permit-trade permits and fees~~ as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the ~~site~~ Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~24~~ seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent must provide his or her email address and cell phone number to Owner and Architect and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, ~~promptly within twenty-one (21) days~~ after being awarded the Contract, shall prepare and submit for the Owner's and Architect's ~~information review and approval~~ a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal ~~schedule, promptly schedule within twenty-one (21) days~~ after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's and Architect's approval. The Owner's and Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules ~~submitted to approved by~~ the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Current Construction Schedule, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples

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and similar required submittals. The Contractor shall display a Current Construction Schedule at the site for reference and reliance by the Owner and Architect. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor must provide the Owner and the Architect with copies of all submittals made to regulatory agencies.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to

provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~
§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security as a cost of the Work. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP, WORKING HOURS, AND NOISE

~~§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.~~

Work will be performed in accordance with the Contract Documents and the Codes, Ordinances, and other applicable law governing the Contractor's performance of the Work. No delays resulting from compliance with applicable laws or regulations may form the basis for any claim by the Contractor for delay damages or additional compensation or for any extensions of the Contract Time.

§ 3.15.2 If the Contractor fails to clean up as provided in The Contractor must keep the Site and adjacent areas free from accumulation of waste materials or rubbish caused by operations under the Contract, and must keep tools, construction equipment, machinery and surplus materials suitably stored when not in use. If the Contractor fails to do so in a manner reasonably satisfactory to the Owner or the Architect within forty-eight (48) hours after notice or as otherwise required by the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor, clean the Site and back charge the Contractor for all costs associated with the cleaning. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.3 The Contractor must not permit work outside of hours established in the Contract Documents or on holiday observed by the Owner without the consent of the Owner. The Contractor must notify the Owner as soon as possible if Work must be performed outside such times established in the Contract Documents. In no event shall the Contractor permit Work to be performed at the Site without the presence of the Contractor's superintendent, other assigned project staff, or a designated representative of the Contractor, all whom must be knowledgeable of the Work required for the Project.

§ 3.15.4 The Contractor must comply with all Codes, Ordinances, and other applicable law covering the regulation of noise levels. It is the duty of the Contractor to familiarize itself with those provisions and perform the Work in compliance with those provisions.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

~~§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them~~ indemnify, defend, and hold harmless the Owner and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than ~~the Work itself~~), (a) the Work itself and/or (b) the materials and equipment to be incorporated therein), but only to the extent caused by the ~~negligent acts or omissions~~ intentional misconduct, recklessness, negligence, or other actionable fault of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the ~~site~~Site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

~~Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the~~ The Owner and Contractor shall endeavor to ~~communicate with each other through the Architect~~ include the Architect in communications about matters arising out of or relating to the ~~Contract.~~ aspects of the Contract which involve the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~ Architect shall consult with the Owner on matters of aesthetic effect, but the Owner shall have the final decision on such matters.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall update this list throughout the Project and keep Owner and the Architect advised of any new Subcontractors employed.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor met all criteria set forth in the Contract Documents and was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Change Proposals The Contractor must submit change proposals (in the form and manner agreed to by the Owner, Architect, and Contractor) covering a contemplated change in the Work within ten (10) days after request of the Owner or the Architect, or within ten (10) days of the event giving rise to the Contractor's claim for a change in the Work. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including but not limited to: cost (properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost) plus a fixed fee for profit and overhead which includes office overhead and site-specific overhead and general conditions. The limits of the percent charged for overhead and profit shall be as stated in the Agreement between the Owner and Contractor. Change proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor to proceed with the Work involved in the change proposal in accordance with this Section 7.2.2 without accepting the change proposal in its entirety.

§ 7.2.3 If the Owner determines that a change proposal is appropriate, the Owner, Architect, and Contractor will coordinate on the preparation of the appropriate form as required by the Owner to properly document the change in the Work. The form will be submitted to the Owner for signature(s) and approval. No such change is effective until the form documenting the change in the Work is signed by the Owner and/or Architect, whichever is required for the particular form.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, Architect (after having been reviewed and approved by the Owner), directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and ~~Owner~~. Owner, or prior to approval of Certificates of Insurance, and Additional Insured Endorsement and Notice of Cancellation Endorsement required to be submitted to Owner under the Agreement. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If Contractor's Work shall fall behind schedule for reasons that are not excused under the terms of the Contract, Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Construction Schedule as a cost of the Work.

§ 8.2.4 The Contractor must conform to the most recently approved Construction Schedule. The Contractor must complete the indicated Work or achieve the required percentage of completion, as applicable, within any interim completion dates established in the most recently approved Construction Schedule.

§ 8.2.5 The Contractor must maintain at the Site, available to the Owner and the Architect for their reference during the progress of the Work, a copy of the approved Construction Schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved Construction Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Construction Schedule.

§ 8.2.6 The Contractor represents that its bid includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and final Completion. Accordingly, the Contractor may not make any claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

§ 8.2.7 If the Contractor's progress is not maintained in accordance with the approved Construction Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Construction Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner.

§ 8.2.8 The Owner reserves the right to issue a written directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. If the Owner requires an acceleration of the Construction Schedule and no adjustment is made in the Contract Sum, or if the Contractor disagrees with any adjustment made, the Contractor must file a claim as provided in Article 15 or the same will be deemed to be conclusively waived.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other

causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.1 Excusable delays are delays in the progress of the Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule, or delays to Work not previously identified as critical path activities as shown on the most recently approved Construction Schedule but which become critical path activities as a result of a delay, and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time, caused by conditions which could not reasonably be anticipated by, are beyond the control of, and are without the fault or negligence of the Owner, as set forth in Section 8.3.2, the Contractor or anyone for whose acts the Contractor is responsible. Excusable delays do not include any delays caused in whole or in part by any Subcontractors, Sub-subcontractors or suppliers. There shall be no compensation whatsoever for excusable delays. Excusable delays may, but do not necessarily, include:

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| .1 | weather delays as further defined in Section 8.3.6; |
| .2 | acts of government and regulatory agencies and officials (other than the Owner in its capacity as Owner); |
| .3 | catastrophic events such as fire, flood and unavoidable casualties; and |
| .4 | strikes or labor disputes. |

§ 8.3.2 Compensable delays are limited to delays in the progress of the Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule, or delays to Work not previously identified as critical path activities as shown on the most recently approved Construction Schedule but which become critical path activities as a result of a delay, and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time, caused solely and exclusively by acts or omissions of the Owner (except actions taken by the Owner acting as a regulatory authority to protect the public health or safety or to conform to law).

§ 8.3.3 Unexcused delays are delays in Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule, or delays to Work not previously identified as critical path activities as shown on the most recently approved Construction Schedule but which become critical path activities as a result of a delay, and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time, and which are not excusable delays or compensable delays. No increase in the Contract Sum or extension of the Contract Time will be made for an unexcused delay.

§ 8.3.4 The Contractor must provide written notice of any actual or prospective delay promptly, and in no event later than ten (10) days after the occurrence of the event giving rise to such delay. The notice must be given to the Owner and Architect within the specified time. In the case of a continuing delay, the Contractor must provide an initial notice and a further notice at each progress meeting throughout the duration of the delay. The notice must contain all of the specific information required in Section 8.3.5. The Contractor's failure to provide the written notice containing the information specified in Section 8.3.5 within the ten (10) days prescribed above will be conclusively deemed a waiver of any claim for delay arising from such occurrence.

§ 8.3.5 The Contractor's notice must identify those portions of the Construction Schedule affected by the delay and must include an estimate of the cost and probable effect of the delay, if any, on the progress of the Work. Supporting documentation must include, but is not limited to:

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| .1 | A written detailed statement of the reasons and causes for the delay; |
| .2 | inclusive dates of the delay; |
| .3 | specific trades and portions of the Work affected by the delay; |
| .4 | status of Work affected before commencement of the delay; |
| .5 | effect of the delay on available "float" time; |

- .6 a critical path method (CPM) analysis demonstrating that the delay has affected an activity then on the critical path at the time of the occurrence of the delay as shown on the most recently approved Construction Schedule, or that the delay has an effect on an activity not previously on the critical path as shown on the most recent approved Construction Schedule, but which becomes a critical path activity as a result of a delay; and
- .7 if the Contractor claims that the delay is an excusable delay or compensable delay, evidence that the delay was unforeseeable, beyond the Contractor's control, and without the fault or negligence of the Contractor or the negligence of anyone for whose acts the Contractor is responsible including any Subcontractor, Sub-subcontractor or supplier; and in the case of a compensable delay, was caused solely and exclusively by the acts or omissions of the Owner (excepting actions taken by the Owner to protect the public health or safety or to conform to law) or anyone for whose acts the Owner is responsible, and which are unreasonable under the circumstances involved and not reasonably within the contemplation of the parties.

§ 8.3.6 In order for the Contractor to be entitled to an extension of the Contract Time for unusually severe weather, the following conditions must be satisfied:

- .1 The weather experienced at the Site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month;
- .2 The unusually severe weather must delay Work which at the time of the unusual severe weather was a critical path activity as shown on the most recently approved Construction Schedule, or delays Work not previously identified as critical path activity as shown on the most recently approved Construction Schedule but which become critical path activity as a result of a delay, and which prevents the Contractor from achieving Substantial Completion before expiration of the Contract Time. The delay must be beyond the control and without the fault or negligence of the Contractor. For example, the impacted activity must not have occurred during unusually severe weather due to previous unexcused delays; and
- .3 The Contractor must have provided written notice of the weather-related delay complying with Sections 8.3.4 and 8.3.5 above.

The following schedule of monthly anticipated adverse weather delays constitute the base line for monthly weather time evaluations. The Contractor's Construction Schedule must reflect these anticipated adverse weather delays in all-weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY.

Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
6	4	3	3	3	3	2	2	2	2	3	3

Upon acknowledgement of the Notices to Proceed and continuing throughout the Contract, the Contractor must record on the daily superintendent report, the occurrence of adverse weather and resultant impact to normally scheduled Work. Actual adverse weather delay days must prevent Work on critical path activities, or must prevent Work not previously identified as a critical path activity as shown on the most recent approved Construction Schedule but which becomes a critical path activity as a result of a delay, for fifty (50) percent or more of the Contractor's scheduled workday. The number of actual adverse weather delays must include Contractor's scheduled workdays impacted by actual adverse weather (even if the adverse weather occurred in the previous month), be calculated chronologically from the first to the last day each month, and be recorded as full days. If the Contractor has complied with Sections 8.3.4 and 8.3.5 and the provisions of this Section 8.3.6 and the number of actual adverse weather delay workdays exceeds the number of days anticipated in the table above, and have adversely affected critical path weather-dependent activities, the Contractor is entitled to a Modification of the Contract Time but not the Contract Sum.

§ 8.3.7 If strikes or labor disputes are to be considered as the basis for an excusable delay, they must be documented by data evidencing (i) the trades directly and indirectly involved in or affected by the strike or labor dispute, (ii) reasons for the strike or labor dispute, (iii) the onset and duration of the strike or labor dispute, and (iv) the measures taken by the Contractor to avoid or overcome the effects of any delay.

§ 8.3.8 Upon receipt of a notice from the Contractor of the occurrence of a delay complying with Sections 8.3.4 and 8.3.5 (and if applicable 8.3.6 and 8.3.7), the Owner will review the most recently approved Construction Schedule to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Construction Schedule, including the application of any unused "float" time available in the schedule. The Owner may require the Contractor to submit a more detailed Construction Schedule than previously required in order to permit the Owner to evaluate the delay. Based on such review, the Contractor must, if required by the Owner, submit for the Owner's approval a revised Construction Schedule which minimizes the adverse effects of the delay.

§ 8.3.9 No extension of the Contract Time or increase in the Contract Sum will be allowed for any delay or part thereof occurring more than ten (10) days before written notice of the delay is provided by the Contractor. No extension of the Contract Time or increase in the Contract Sum will be made to the extent that performance is, was or would have been suspended, delayed or interrupted by another cause for which the Contractor is responsible. No increase in the Contract Sum will be made to the extent performance was or would have been suspended, delayed or interrupted by another cause for which the Owner is not solely and exclusively responsible.

§ 8.3.10 The Contractor acknowledges and agrees that the profit, additional bond cost and overhead (which includes extended office overhead and site-specific overhead and general conditions) if any, incurred by the Contractor in performing work beyond the Work required by the Contract Documents and any and all other costs, compensation or damages due Contractor (including any of its Subcontractors or suppliers), is included in, and payable to the Contractor as part of the Change Order or Construction Directive. Contractor waives any and all other damages and cost of any nature or kind whatsoever including claims for local and cumulative impacts as a result of such Change Order or Construction Directive Work and any and all other claims of any type or nature whatsoever including any claim for loss of productivity or loss of efficiency. The Contractor will be compensated for compensable delays only for actual and direct damages resulting from such compensable delays. Actual direct damages are limited to site specific general conditions and do not include any indirect costs such as home office overhead. The Contractor will be compensated for such actual and direct damages for compensable delays not attributable to performance of Change Order.

§ 8.3.11 In the event the Owner denies the Contractor's request for a change in the Contract Time or, in the case of a compensable delay, a change in the Contract Sum, the Contractor may, within ten (10) days after such denial, submit a Claim as provided in Article 15. Submissions made prior to the denial must be resubmitted after the denial. Any Claim on account of denial of a change that is not made within such ten (10) days of the denial is deemed waived.

§ 8.3.12 DELAY DAMAGES

- .1 By executing a Change Order or Contract Amendment, the Contractor represents that the Contractor is not entitled to an increase in the Contract Sum or an extension of the Contract Time beyond that specified in the Change Order or Contract Amendment for the Work performed or to be performed under the Change Order. The Contractor is not entitled to an increase in the Contract Sum or extension of the Contract Time as a result of the issuance by the Owner of Construction Change Directive unless the Contractor asserts a claim as required by this Article 8 and Article 15;
- .2 The provisions of the Section 8.3.12.1 do not apply to claims that meet all of the following conditions: (i) the claim arises under the Contract; (ii) the claim is limited to actual and direct damages (i.e. profit, additional bond and insurance cost (if any) and overhead (only site-specific overhead and not including home office overhead)) incurred as a result of a delay in completing the Project which the Contractor acknowledges are fully compensated for by payment of the adjustment amount specified in Section 8.3.11; (iii) the Contract establishes a time limit for achieving Substantial Completion and the claim is for delays that prevent achievement of Substantial Completion of the Contract within that time limit; (iv) the delay for which damages are claimed is caused solely and exclusively by the Owner, Architect, or anyone for whom they are responsible; (v) the delay is not caused by actions taken by the Owner to protect the public health or safety or to conform to law; and (vi) the Contractor has fully complied with Sections 8.3.4 and 8.3.5; and
- .3 A time extension may be granted only for an excusable delay that is beyond the Contractor's control and occurs without the Contractor's fault or negligence. No time extension will be granted in the absence of a written claim for the time extension complying with Sections 8.3.4 and 8.3.5 (and if applicable, 8.3.6 and 8.3.7).

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner and Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.1 In accordance with the procedures outline in the Agreement, the Contractor must submit to the Architect itemized Applications for Payment for Work completed on a monthly basis in accordance with a schedule approved by the Owner. Each Application for Payment must be consistent with the approved Schedule of Values. In order to

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expedite the review and approval of Applications for Payment, the Contractor agrees to coordinate with the Owner and Architect on a schedule to review with the Owner and Architect a draft Application for Payment prior to submitting a formal Application for Payment.

§ 9.3.2 The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. The application must be notarized and supported by sufficient data to demonstrate the Contractor's right to payment and compliance with the payment provisions of the Contract to the satisfaction of the Owner and Architect, such as copies of requisitions from Subcontractors and material suppliers, partial lien waivers, releases and other documents. Each Application for Payment must reflect approved Contract Modifications and the Contract retainage provided for in the Contract Documents.

§ 9.3.3 Applications for Payment may include materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. The Owner has no obligation or responsibility to pay for materials stored off the Site. If specifically approved in writing in advance by the Owner, an Application for Payment may include materials and equipment stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site is conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to protect the Owner's interests. Payment for materials and equipment stored off the Site will, in addition, be conditioned upon the Contractor's provision of applicable insurance, storage and transportation to the Site.

§ 9.3.4 Until the conditions set forth in this Section have been satisfied by Contractor, the amount of each monthly Application for Payment must include the value of each line item as indicated on the approved Schedule of Values, to the extent completed, less retainage as stated in the Agreement. The retainage will not be paid to the Contractor until thirty (30) days after all of the following conditions have been satisfied: (A) the Contractor has fully performed the Contract to the point of achieving final completion of the Work; (B) the Contractor has completed all Punch List items to the satisfaction of the Owner and the Architect; (C) the Contractor has delivered to the Owner all Project close-out documents as required by the Agreement, including (1) all maintenance and operating manuals; (2) marked sets of as-built drawings and/or other electronic media documenting as-built conditions; (3) all guarantees and warranties required under the Contract Documents; (4) a list of names, addresses, and telephone numbers for all subcontractors and others providing guarantees and warranties; and (D) the applicable governmental authorities have issued to the Owner the final use and occupancy permit for the Project.

§ 9.3.5 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner, no later than the time of payment. By submitting an Application for Payment, the Contractor further warrants that all Work for which payments have previously been received from the Owner are free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities having provided labor, materials and equipment relating to the Work.

§ 9.3.6 Before the Contractor receives a progress payment, the Contractor must certify in writing that, in accordance with contractual arrangements, Subcontractors and suppliers:

- .1 have been paid from the proceeds of previous progress payments; and
- .2 will be paid in a timely manner from the proceeds of the progress payment currently due.

In the event the Contractor has not paid or does not pay as certified, such failure constitutes a ground for termination under terms of the Contract.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner for review and approval a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of

the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact

Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list (Punch List) of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, reduction in liquidated damages if appropriate, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are

made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.1 When the Contractor has completed or corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the Owner and the Architect and request a final inspection of the Work as provided in Section 9.10.2. The Contractor's notice and request for a final inspection must be accompanied by a final Application for Payment and the Submittals required by Section 9.10.3.

§ 9.10.2 Upon receipt of the Contractor's notice and request for final inspection, the Owner and the Architect will promptly make such inspection and, when the Owner and the Architect concur that the Work has been fully completed and is acceptable under the Contract Documents, the Architect will issue a Certificate of Final Completion to the Owner. The Contractor's notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be finally complete.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. Neither final payment nor any remaining retained percentage will become due until the Contractor submits the following documents to the Architect:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner), have been paid or otherwise satisfied, submitted on AIA Document G706, Affidavit of Payment of Debts and Claims (latest edition) or such other form as may be prescribed by the Owner;
- .2 a release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier, accompanied by AIA Document G706A, Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;
- .3 a certificate evidencing that the Contractor's liability insurance and Performance Bond remain in effect during the correction period (as stated in the Agreement) following Substantial Completion as set forth in Section 12.2.2.1 and 12.2.2.2;
- .4 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .5 consent of surety to final payment, submitted on AIA Document G707 (latest edition) or other form prescribed by the Owner;
- .6 other data required by the Owner establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be prescribed by the Owner;
- .7 an as-built site plan in the form and number required by the Contract Documents;
- .8 all warranties and bonds required by the Contract Documents;
- .9 Record Documents as provided in Section 3.11 and return of Contract Documents as provided therein;
- .10 Attic stock items as required by the Contract Documents; and
- .11 As applicable, documentation of approval by the agency having jurisdiction for all Storm Water Management (SWM) work as to allow closeout of the SWM Permit. Approval by the appropriate agency will be based on satisfying all Permit requirements including the submission of all required SWM documentation.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 — failure of the Work to comply with the requirements of the Contract Documents; or

~~.3 — terms of special warranties required by the Contract Documents. If the Contractor is unable to secure from any Subcontractor or supplier a release or waiver required under the Contract, the Contractor must furnish a bond satisfactory to the Owner to indemnify the Owner and any co-obligees under the bond against any lien or claim from such Subcontractor or supplier. The Contractor must also indemnify the Owner for all costs incurred by the Owner in removing, discharging or otherwise settling all Subcontractor or supplier liens or claims, including all personnel and consultant costs and reasonable attorneys' fees.~~

~~§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.~~

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- ~~.1 — employees on the Work and other persons who may be affected thereby;~~
- ~~.2 — the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and~~
- ~~.3 — other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.~~

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone

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directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.1 The Contractor must take reasonable precautions for the safety of, and must provide reasonable protection to prevent damage, injury or loss to:

- .1 All persons at the Site and other persons who may be affected by the Work or other operations of the Contractor;
- .2 the Work and materials and equipment to be incorporated therein or otherwise utilized in the performance of the Contract, whether in storage on or off the Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the Site or adjacent thereto and not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor must implement and maintain, as required by the Contract Documents, applicable laws and regulations and orders of public authorities having jurisdiction, manufacturers' instructions or recommendations, existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including issuing appropriate notices, distributing material safety data sheets and other hazard communication information, providing protective clothing and equipment, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 The Contractor must not load nor permit any part of any structure at the Site to be loaded or subjected to stresses or pressures so as to endanger its safety or that of adjacent structures or property.

§ 10.2.5 When explosives or other hazardous materials or equipment are stored or used or unusual methods are employed in the performance of the Work, the Contractor must exercise utmost care and conduct such activities under supervision of properly qualified personnel.

§ 10.2.6 If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of any of the Owner's employees or agents, or of others for whose acts it is contended that the Owner is liable, written notice of such injury or damage, whether or not insured, must be given to the Owner within a reasonable time not exceeding ten (10) days after the onset or occurrence of such damage or injury or such shorter time as may be required by the Occupational Safety Hazards Administration (OSHA). The notice must provide sufficient detail to enable the Owner to investigate the matter. If notice is not received by the Owner within the time specified, any claim arising from the occurrence will be deemed to be conclusively waived, except to the extent of any applicable insurance (excluding self-insurance) coverage covering such occurrence. The provisions of this Section may not be used by the Contractor in lieu of the requirements of Article 7 when the Contractor is seeking an adjustment in the Contract Sum and are in addition to the requirements of Article 8 when the Contractor is seeking an adjustment in the Contract Time.

§ 10.2.7 The Contractor must promptly remedy, at its sole cost and expense, damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, unless otherwise instructed in writing by the Owner. This obligation is in addition to, and not in limitation of, the Contractor's obligations for indemnification under Section 3.18 and the Contractor's responsibility to repair and or replace that portion of the Work and any materials and equipment to be incorporated therein which are damaged as a result of criminal mischief as specified in Section 10.2.10.

§ 10.2.8 The Contractor is responsible for taking all reasonable and necessary precautions to secure and protect the Site, the Work, materials and equipment to be incorporated therein, and any tools or equipment of the Contractor necessary or beneficial to the performance of the Work from damage due to vandalism, theft, or other criminal mischief. The Contractor must repair and/or replace that portion of the work and any materials or equipment to be incorporated therein and any tools or equipment of the Contractor necessary or beneficial to performance of the Work which are damaged or stolen due to vandalism, theft or any other criminal mischief at its expense whether or not covered by insurance. No increase in the Contract Sum will be granted to the Contractor as a consequence of any delay, impacts or inefficiencies resulting from any act of vandalism, theft or other criminal mischief whether or not caused or contributed to by the Contractor's negligence.

§ 10.2.9 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.10 The Owner, Architect, designated representatives, or visitors must comply with the Contractor's safety policies and programs at all times while on Site.

§ 10.2.11 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party as soon as reasonably possible but not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if in the event the Contractor encounters on the Site material reasonably believed to be a Hazardous Material (other than those for which the Contractor may have specific responsibility for remediation under the Contract), and the Contractor's reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area damage or injury and the Contractor cannot proceed with the Work in the absence of the removal, containment or remediation of the Hazardous Material, the Contractor must immediately stop Work in the area affected and report the condition to the Owner and Architect in writing: the Architect, in writing, within 24 hours of discovery.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities

proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

notice of suspected Hazardous Materials, Owner will cause an investigation to be made to verify the presence and extent of such materials, to determine whether such materials are in fact hazardous, and the steps necessary for their removal, containment or remediation.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

If the Owner's investigation confirms the presence of Hazardous Materials which present a risk of injury or damage which will not be adequately protected against by the Contractor's reasonable precautions, then the Work in the affected area must not thereafter be resumed except at the written direction of the Owner. The Work in the affected area will be resumed promptly (i) in the absence of a finding of Hazardous Material by the Owner, (ii) upon the removal, containment or remediation of the Hazardous Materials, or (iii) upon the establishment of appropriate safety precautions.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

Contractor may request a change in the Contract Sum or Contract Time if the Contractor incurs additional costs on account of or is delayed by the need to remove, contain or remediate Hazardous Materials which has not been rendered harmless at the Site unless the Contractor is responsible for same under the Contract. Any such requested change in the Contract Sum or Contract Time must be made in writing within ten (10) days of discovery of any Hazardous Materials, which has not been rendered harmless giving rise to the request for the change and must fully comply with Articles 7, 8, and 15 or any claim will be deemed conclusively waived by the Contractor.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.3. 5 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3. 6 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3. 7 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, ~~at the Contractor's discretion, must~~ take all necessary action, without the necessity for any special instruction or authorization from the Owner or Architect, to prevent threatened damage, injury or loss. ~~Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.~~ The Contractor must promptly, but in all events within twenty-four (24) hours of the emergency, report such action in writing to the Owner and Architect. If the Contractor incurs additional costs on account of or is delayed by such emergency, the Contractor may request a change in the Contract Sum or Contract Time to account for such additional costs or delay in accord with Articles 7, 8 and 15. The Contractor must file any such request within ten (10) days of the emergency or it is deemed waived. Any adjustment in the Contract Sum or Contract Time shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the ~~Owner.~~ Contractor. The Contractor must notify the Owner as soon as practicable of said cancellation. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the ~~Owner-Contractor~~ shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and ~~Contractor's~~ Owner's services and expenses required as a result of such insured loss.

§ 11.3.1.2 ~~If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~

§ 11.3.1.3 If the property insurance requires deductibles, the ~~Owner-Contractor~~ shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The ~~Owner-Contractor~~ shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

~~§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the ~~Owner-Contractor~~ shall file with the ~~Contractor-Owner~~ a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor. Contractor must notify Owner as soon as practicable of said cancellation or if any policy is allowed to expire or coverage limits fall below the minimum amounts required herein.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the ~~Owner's-Contractors~~ property insurance shall be adjusted by the ~~Owner-Contractor~~ as fiduciary and made payable to the ~~Owner-Contractor~~ as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the ~~Owner-Contractor~~ as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the ~~Owner's-Contractor's~~ duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The ~~Owner-Contractor~~ shall deposit in a separate account proceeds so received, which the ~~Owner-Contractor~~ shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The ~~Owner-Contractor~~ as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the ~~Owner's-Contractor's~~ exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the ~~Owner-Contractor~~ as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The bonds shall be issued by a United States Department of Treasury listed corporate surety, accompanied by current powers of attorney, on a form acceptable to Owner.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, and upon written authorization from the Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may ~~request request~~, upon written authorization from the Owner to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within ~~one year~~ the period of time as agreed to by the Owner and Contractor and as set forth in the Contract after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period (or the period as agreed to by the Owner and Contractor and set forth in the Contract) for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The ~~one-year period~~ period of time as agreed to by the Owner and Contractor and set forth in the Contract for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The ~~one-year period~~ period of time as agreed to by the Owner and Contractor and set forth in the Contract for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the ~~one-year period~~ period of time as agreed to by the Owner and Contractor and set forth in the Contract for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located ~~except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws provisions.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

~~Written notice shall be~~ notices are to be provided to the representatives of the parties designated in this Contract. Written notices are deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice; addressee for whom it was intended, or if delivered by overnight courier. The date of any notice is deemed to be the earlier of the date of personal delivery or the delivery by overnight courier.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor must schedule all tests, inspections or specific approvals required by law or the Contract Documents so as to avoid any delay in the Work. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner and Architect.

§ 13.5.5 If the Owner and Architect is to observe tests, inspections or approvals required by the Contract Documents, the Owner and/or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 In addition to the tests required by this Section 13.5, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the ~~requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.~~ The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7 time period specified by applicable law.

§ 13.8 DOCUMENT RETENTION AND AUDIT PROVISIONS

Contractor shall account for all materials, equipment and labor entering into the Work and must keep such full and detailed records as may be necessary for proper financial management pursuant to the Contract Documents for a

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period of five (5) years after final payment. Furthermore, the Owner has the right to examine the Contractor's records directly or indirectly pertaining or relating to the Work or the Contract and the Contractor must grant the Owner access to and an opportunity to copy such records at all reasonable times during the Contract period and for five (5) years after final payment.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract for cause if the ~~Contractor~~ Contractor:

- .1 ~~repeatedly refuses or fails to supply enough~~ Fails to supply adequate properly skilled workers or proper materials;
- .2 ~~fails~~ Fails to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and the ~~Subcontractors;~~ Subcontractors or Suppliers;
- .3 ~~repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or~~ Fails to comply with any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 ~~otherwise is guilty of substantial breach of a provision of the Contract Documents.~~ Fails to perform the Work in accordance with the Contract Documents or otherwise breaches any provision of the Contract Documents;
- .5 Anticipatorily breaches or repudiates the Contract;
- .6 Fails to make satisfactory progress in the prosecution of the Work required by the Contract; or
- .7 Endangers the performance of this Contract.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 ~~Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;~~
- .2 ~~Accept assignment of subcontracts pursuant to Section 5.4; and~~
- .3 ~~Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.2 The Owner may terminate the Contract, in whole or in part, whenever the Owner determines that sufficient grounds for termination exist as provided in Subsection 14.2.1. The Owner will provide the Contractor with a written notice to cure the default. If the default is not cured, the termination for default is effective on the date specified in the Owner's written notice. However, if the Owner determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Owner may terminate the Contract immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the Contract, the Contractor must compensate the Owner for additional costs that foreseeably would be incurred by the Owner, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

§ 14.2.3 Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 cease operations as directed by the Owner in the notice and, if required by the Owner and County, participate in an inspection of the Work with the Owner, County and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 except as directed by the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.

§ 14.2.4 Following written notice from the Owner of termination, the Owner may:

- .1 take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 accept assignment of subcontracts and purchase orders, and
- .3 complete the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.5 Upon termination for cause,

- .1 the Contractor must take those actions described in Section 14.2.3, and the Owner may take those actions described in Section 14.2.4, subject to the prior rights of the Contractor's Surety.
- .2 If the Contractor files for Bankruptcy protection, or a petition is filed against it, under applicable Bankruptcy laws, and Contractor wishes to affirm the Contract, Contractor shall immediately file with the Bankruptcy Court a motion to affirm the Contract and shall provide satisfactory evidence to Owner and to the Court of its ability to cure all present defaults and its ability to timely and successfully complete the Work. If Contractor does not make such an immediate filing, Contractor accepts that Owner may petition the Bankruptcy Court to lift the Automatic Stay and permit Owner to terminate the Contract.

§ 14.2.6 When the Owner terminates the Contract for cause, the Contractor is not entitled to receive further payment until the Work is completed and the costs of completion have been established.

§ 14.2.7 If the unpaid balance of the Contract Sum less amounts which the Owner is entitled to offset from the unpaid Contract balance including actual or Liquidated Damages, exceeds the costs of completing the Work, including compensation for the Owner's and the Architect's services made necessary thereby, such excess will be paid to the Contractor or Surety, as directed by the Surety. If such costs exceed the unpaid Contract balance, the Contractor must pay the difference to the Owner upon written demand. This obligation for payment survives termination of the Contract.

§ 14.2.8 In completing the Work following termination for cause, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of sole source procurement and negotiated compensation.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall not include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

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§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

~~§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.~~

~~§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall~~

- ~~.1 — cease operations as directed by the Owner in the notice;~~
- ~~.2 — take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and~~
- ~~.3 — except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.~~

~~§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~

§ 14.4.1 The Owner may, at any time, terminate the Contract or any portion thereof or of the Work for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 Cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner and the Architect/Engineer to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 Complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 Unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 Except as directed by the Owner, terminate all existing subcontracts and purchase orders related to the Work and enter into no further subcontracts or purchase orders therefor.

§ 14.4.3 Following written notice from the Owner of termination, the Owner may:

- .1 Take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 Accept assignment of subcontracts and purchase orders; and
- .3 Complete the Work by whatever reasonable method the Owner may deem expedient.

§ 14.4.4 In case of termination for the Owner's convenience, the Contractor will be entitled to compensation only for the following items:

- .1 Payment for acceptable Work performed up to the date of termination;
- .2 The costs of preservation and protection of the Work if requested to do so by the Owner;
- .3 The cost of terminating the following contracts including:

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- (i.) Purchased materials but only if not returnable and provided to the Owner, or the restocking or return charge, if any, if returnable at the Owner's written election;
- (ii.) Equipment rental contracts if not terminable at no cost but not to exceed an amount equal to thirty (30) days rental;
- .4 Documented transportation costs associated with removing Contractor-owned equipment;
- .5 Documented demobilization and close-out costs; and
- .6 Overhead and profit on the foregoing not to exceed ten (10%) percent.

The Contractor is not entitled to any other costs or compensation (including lost or expected profit, uncompensated overhead or related expenses, or the cost of preparing and documenting its compensable expenses under this Subsection 14.4.4 as a consequence of the Owner's termination of the Contract for convenience. The Contractor conclusively and irrevocably waives its right to any other compensation or damages (compensatory or punitive) arising from termination of the Contract. If the Owner and the Contractor are unable to agree upon the amounts specified in this subsection, the Contractor may submit a Claim as provided in Article 15. The Claim must be limited to resolution of the amounts specified in Subsections 14.4.4.1, 14.4.4.2, 14.4.4.3 and 14.4.4.4 of this Subsection 14.4.4. No other cost, damages or expenses may be claimed or paid to the Contractor or considered as part of the Claim, the same being hereby conclusively and irrevocably waived by the Contractor. Any such Claim must be delivered to the Owner within thirty (30) days of the termination of the Contract and must contain a written statement setting forth the specific reasons and supporting calculations and documentation as to the amounts the Contractor claims to be entitled to under this Subsection as a result of the termination of the Contract.

§ 14.4.5 The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a written demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within ~~24~~ten (10) days after occurrence of the event giving rise to such Claim or within ~~24~~ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for actual costs is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten-percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a subcontractor, as applicable.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction critical path of construction, or had an adverse effect on Work not previously on the most recent approved Construction Schedule but which become critical path activities as a result of a delay.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, part and advise the Owner of such rejection, (3) approve the Claim and forward to the Owner, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision

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Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to ~~binding dispute resolution litigation.~~

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to ~~binding dispute resolution~~ the institution of legal or equitable proceedings by either party.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. ~~The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution~~ Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any dispute under the Agreement not resolved by mediation shall be litigated in the District Court of Johnson County, Kansas, or the closest Court of competent jurisdiction thereto as a bench trial, provided however, that a bench trial does not violate any provisions of the Fairness in Public Construction Contracting Act.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 11:28:07 ET on 03/11/2019 under Order No. 7264962040 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

EXHIBIT 1**Preconstruction Services**

The following outlines the primary services anticipated to be provided by Turner Construction throughout the Preconstruction Phase of the project. Preconstruction Phase services are anticipated to be a nine (9) month duration, beginning with Pre-Design services and concluding with the submission of the Guaranteed Maximum Price (GMP) proposal.

Pre-Design Services

- Participate in planning workshops with the Owner and Architect.
- Participate in project kick-off meeting with Owner and Architect.
- Participate in meetings with the Owner and Architect to understand project scope and expectations.
- Participate in meetings with the Owner and Architect to understand and evaluate the project budget.
- Provide the Owner and Architect with a magnitude of cost for the facility being contemplated.
- Provide the Owner and Architect with a review of the project scope and magnitude of cost budget as needed to present to the Olathe City Council.

Design Phase Services

- Participate in design meetings with the Owner and Architect as scheduled.
- Conduct material and constructability reviews as the project design evolves.
- Participate in value engineering discussions and provide necessary cost options.
- Participate in life cycle cost discussions and provide costs analysis as necessary.
- Develop detailed cost estimates at specific stages throughout the design phase. Cost estimates are anticipated at schematic design, design development, and 50% construction documents.
- Provide the Owner and Architect with updated budget analysis as design evolves.
- Develop a master project schedule incorporating Owner and Architect processes. Provide weekly updates as necessary.
- Advise the Owner and Architect on options to accelerate the construction schedule, including options such as fast track construction, multiple bid packages, etc.

Bidding and GMP Development

- As plans and specifications are developed to sufficient detail, and when requested by the Owner, conduct bidding of the project and provide the Owner with a Guaranteed Maximum Price (GMP) for the construction of the project.

Turner Construction Staffing Expectations

- Turner Construction's team that will be involved in the preconstruction phase services summarized above are anticipated to include:
 - Karen Hogan – Division Manager
 - Jason Brown – Estimating Manager
 - Robbie Tinker – Estimating Engineer
 - Matt Johnson – Project Manager
 - Ron Newkirk – Project Superintendent

Cost of Preconstruction Phase Services

Turner Construction proposes to provide the preconstruction phase services require for this project, including but not limited to those specifically outlined above, for a lump sum cost of Twenty Thousand dollars (\$20,000). Included in this cost are reimbursable expenses incurred as a result of providing the pre-design phase services as well as expenses considered customary and routine as related to providing the preconstruction phase services, including but not limited to local travel for project meetings, document reproduction services (not including printing of bid documents), facsimile transmission and long-distance telephone calls, postage and parcel delivery charges, etc.

Expenses not typically consider customary and routine for preconstruction services, such as out of town travel (transportation, lodging, meals), and printing of bid documents, shall be considered an additional expense if incurred as a result of providing additional services requested by the Owner.



Olathe Fire Station No. 8

2019/2020 HOURLY RATE SCHEDULE

<u>TITLE</u>	<u>HOURLY RATE *</u>
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Division Manager	150.00
Procurement Manager	150.00
Estimating Manager	120.00
Estimating Engineer	110.00
Senior Project Manager	125.00
Project Superintendent	105.00
Project Engineer	90.00
Safety Director	90.00
Cost/Accounting	85.00
Assistant Engineer	80.00
Field Engineer	75.00
Purchasing Admin	61.00
Intern	25.00
** Carpenter Foreman	76.00
** Carpenter	72.00
** Carpenter Premium Time Add	28.00
** Carpenter Double Time Add	56.00
** Laborer General Foreman	72.00
** Labor Foreman	66.00
** Laborer	62.00
** Laborer Premium Time Add	24.00
** Laborer Double Time Add	48 .00

Hourly rate include salaries, benefits, all payroll taxes and all payroll insurance.
Rates are effective through April 1, 2020. Rates are subject to increase
starting April 1, 2020

** These are hourly employees so overtime and double time rates will apply.

CITY OF OLATHE KANSAS
INSURANCE REQUIREMENTS FOR CONTRACTORS

FIRE STATION NO. 8, PROJECT NO. 6-C-009-18

Contractor shall procure, and maintain as required, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the project. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office form Commercial General Liability coverage "occurrence" form CG 0001 or its equivalent.
2. Insurance Services Office form, Business Auto Coverage, code 1 "any auto".
3. Workers Compensation and Employers Liability: Workers compensation limits as required by the statutes of the state of Kansas and employers liability.
4. Contractor shall maintain an all risk, builder's risk insurance policy including the perils of flood and earthquake, in an amount equal to the contract price for the duration of the project. All deductibles will be the responsibility of the contractor.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence, product - completed operations. The general aggregate limit shall be at least \$2,000,000 with a per site/project endorsement.
2. Business Auto Coverage: \$1,000,000 per occurrence.
3. Workers Comprehensive and Employers Liability: Workers compensation as required by the statutes of the state of Kansas and employers liability limits of \$500,000/\$500,000. When workers compensation insurance is applicable "other states" coverage is required.
4. Umbrella Liability: minimum limit of \$1,000,000.
5. Coverage Limits. Coverage limits for General and Auto Liability exposures may be met by a combination of primary policy limits and umbrella policy limits.
6. Exposure Limits: The above are minimum acceptable coverage limits and do not infer or place a limit on the liability of the Contractor nor has the CITY assessed the risk that may be applicable to Contractor. Contractor shall assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverages. The contractor's insurance shall be primary and any insurance or self-insurance maintained by the City shall be excess and not contribute with the coverage maintained by contractor.

C. Self-Insured Retentions. Self-insured retentions must be declared to and approved by the City. This may be on the certificate of insurance or a separate attached document. Any and all deductibles or self-insurance in the above describes coverages shall be the responsibility and at the sole risk of the Contractor. The City may require written guarantees for payment procedures of self-insured losses and related investigations, claims administration and cost of defense.

D. Acceptability of Insurers. Insurance is to be placed with Kansas-admitted insurers with a Best's rating of no less than A VII; or an insurer(s) approved by the City.

E. Verification of Coverage. Contractor shall furnish the City, certificates of insurance accompanied by additional insured endorsements (ISO Form CG 20 10; and CG 20 37) or equivalent effecting the coverage required by the City to include products and completed operations. The endorsements and certificate for each insurance policy are to be executed by a person authorized by the insurer to bind coverage. The certificates are to be on forms received and approved by the City before work commences. The City reserves the right, at any time, to require complete, certified copies of all required insurance policies.

F. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability.
 - a. Contractor shall furnish the City, certificates of insurance accompanied by additional insured endorsements ISO Form as specified or equivalent for coverage required by the City.
 - b. Contractor's insurance shall be primary and any insurance or self-insurance maintained by the City shall be separate and excess and shall not contribute with it.
 - c. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
 - d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. The commercial general liability policy shall not contain an endorsement excluding contractual or completed operations liability.
2. Umbrella Liability. This coverage may be obtained by a following form excess liability policy.
3. All Coverages. Each insurance policy(ies) required shall not be suspended, voided, or canceled; except after thirty (30) days' advance written notice has been given to the City.
4. When any of the foregoing insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage shall be submitted along with the application for final payment.
5. Any coverage provided by a Claims-Made form policy must contain a three year tail option, extended reporting period, or must be maintained for three years post contract.

G. Subcontractors. The contractor shall include all subcontractors as additional insureds under its insurance policies or shall submit to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**CITY OF OLATHE, KANSAS
PERFORMANCE & MAINTENANCE BOND**

_____, as surety ("Surety"), and
_____, as principal ("Contractor"), enter into and execute this Bond ("Performance Bond"), and bind themselves in favor of the City of Olathe, Kansas as obligee ("Owner"), in the initial amount of \$_____, which amount is one hundred percent (100%) of the Contract Sum, or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and Owner, (the "Penal Sum").

WHEREAS, the Contractor has executed a contract with the Owner dated _____ under City Project No. 6-C-001-18 to timely and fully provide all labor, tools, equipment and materials or supplies in conformance with generally accepted standards for quality, skill and construction of similar projects in a workmanlike manner, as designated, described and required by the Instruction to Bidders, Bid Proposal, the Contract Documents, General and Technical or Special Specifications of the Contract, Plans, and any Written Addendum's or Change Orders, (hereinafter collectively referred to as the "Contract"), as may be necessary to ensure the timely completion of the Park Maintenance Facilities Project in the City of Olathe, Johnson County, Kansas (the "Project");

WHEREAS, the Owner has required the Contractor to furnish this Performance and Maintenance Bond as a condition to executing the Contract with the Contractor, and has further required the Contractor to guarantee and maintain the Project work in accordance with the Contract for the period as stated in the Contract from the date of final payment.

It is agreed if the Contractor shall in all particulars promptly and faithfully perform each and every covenant, condition, and part of the Contract, according to the true intent and meaning in each case, and the Project improvements shall be constructed in accordance with the Contract so as to endure without defect and need of repair for the period(s) as stated in the Contract Documents, then this obligation shall be and become null and void; otherwise it shall remain in full force and effect.

The Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree:

- 1) The Contract is incorporated by reference and made a part of this Bond. The Surety and the Contractor are bound for the full performance of the Contract including without exception all of the Contract Documents as designated, defined and described in the Contract, and in accordance with the Olathe Technical Specifications and Design Criteria Manual) and all terms and conditions, both express and implied.
- 2) If the Owner shall provide to Surety the written notice of the Owner stating that the Contractor is in breach or default of the Contract, and that such breach or default remains uncured by the Contractor, then upon delivery of such notice to the Surety in the method for providing notices as set forth in Paragraph 7 below, Surety must promptly notify the Owner in writing which action it will take as permitted in Paragraph 3.

- 3) Upon the delivery of the Owner's written notice of breach or default by the Contractor as provided in Paragraph 2 above, the Surety may promptly remedy the breach or default or must, within ten (10) days, proceed to take one of the following courses of action:
- a. **Proceed Itself.** Complete performance of the Contract including correction of defective and nonconforming Work through its own contractors or employees, approved as being acceptable to the Owner, in the Owner's sole discretion, provided, however, that Contractor will not be retained, and provided further that Owner's discretion to approve Surety's contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract and is not affiliated with the Contractor. During this performance by the Surety the Owner will pay the Surety from its own funds only those sums as would have been due and payable to the Contractor under the Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the remaining Contract balance less any sums due the Owner under the Contract. During this performance Surety's payment and performance bond must remain in full force and effect; or
 - b. **Tender a completing contractor acceptable to Owner.** Tender a contractor, approved as being acceptable to the Owner (in the Owner's sole discretion), together with a contract for fulfillment and completion of the Contract executed by the completing contractor, to the Owner for the Owner's execution. Owner's discretion to approve Surety's completing contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract and is not affiliated (as defined in the General Conditions of Contract) with the Contractor. Owner's discretion to approve Contractor as the completing contractor, however, shall be in Owner's sole subjective discretion. Upon execution by the Owner of the contract for fulfillment and completion of the Contract, the completing contractor must furnish to the Owner a performance and maintenance bond and a separate statutory payment bond, each in the form of those bonds previously furnished to the Owner for the Project by the Contractor. Each such bond must be in the Penal Sum of the full cost to complete the Contract. The Owner will pay the completing contractor from its own funds only those sums as would have been due and payable to the Contractor under the Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the remaining Contract balance less any sums due the Owner under the Contract. To the extent that the Owner is obligated to pay the completing contractor sums which would not have then been due and payable to the Contractor under the Contract (any sums in excess of the then remaining Contract balance less any sums due the Owner under the Contract), the Surety must pay to the Owner the full amount of those sums at the time the completing Contractor is tendered to the Owner so that the Owner can utilize those sums in making timely payment to the completing contractor; or
 - c. **Tender the Full Penal Sum.** Tender to the Owner the full Penal Sum of the surety bond. The Owner will refund to the Surety without interest any unused portion not spent by the Owner procuring and paying a completing contractor or completing the construction contract itself, plus the cost allowed under Section 4, after completion of the contract for fulfillment and completion of the Contract and the expiration of any applicable warranties; or

- d. **Other Acts.** Take any other acts mutually agreed upon in writing by the Owner and the Surety.
- e. **IT SHALL BE NO DEFENSE TO SURETY'S OBLIGATION TO UNDERTAKE ONE OF THE PRECEDING COURSES OF ACTION THAT THE CONTRACTOR CONTENDS THAT IT IS NOT IN BREACH OR DEFAULT OF THE CONTRACT, OR THAT THE NOTICE OF BREACH OR DEFAULT WAS DEFECTIVE, OR THAT THE CONTRACTOR HAS RAISED ANY OTHER CLAIM OF DEFENSE OR OFFSET, PROVIDED ONLY THAT SURETY HAS RECEIVED THE WRITTEN NOTICE OF THE OWNER AS SPECIFIED IN PARAGRAPH 2.**
- 4) In addition to those duties set forth herein above, the Surety must promptly pay the Owner (i) all losses, costs and expenses resulting from the Contractor's breach(es) or default(s), including, without limitation, fees, expenses and costs for architects, engineers, consultants, testing, surveying and attorneys, plus (ii) liquidated or actual damages, whichever may be provided for in the contract, for lost use of the Project, plus (iii) re-procurement costs and fees and expenses, plus (iv) costs incurred at the direction, request, or as a result of the acts or omissions of the Surety; provided that in no event shall Surety's liability exceed the Penal Sum of this Bond.
- 5) The Surety waives notice of any Modifications to the Contract, including changes in the Contract Time, the Contract Sum, the amount of liquidated damages, or the Work to be performed. The parties expressly agree that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract Sum more than 25 percent (25%), so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement so amended. The term "*amendment*" or "*modification*" wherever used in this Bond, and whether referring to this Bond or the Contract, shall include any alteration, addition, extension, or modification of any character whatsoever.
- 6) The Surety provides this Performance and Maintenance Bond for the sole and exclusive benefit of the Owner and, if applicable, any dual obligee designated by attached rider, together with their heirs, administrators, executors, successors, and assigns. No other party, person or entity has any rights against the Surety.
- 7) All notices to the Surety, the Contractor or the Owner must be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

SURETY

Name: _____

Attention: _____

Street: _____

City, State, _____

ZIP: _____

CONTRACTOR

Name: _____

Attention: _____

Street: _____

City, State, ZIP: _____

OWNER

City of Olathe, Kansas
Attn: Jeff Blakeman, Sr. Building Design Project Manager
P.O. Box 768
Olathe, KS 66051-0768

with a copy to:

City Attorney's Office
P.O. Box 768
Olathe, KS 66051-0768

- 8) The recitals contained in this Performance and Maintenance Bond are incorporated by reference herein and are expressly made part of this Performance and Maintenance Bond.
- 9) This Performance and Maintenance Bond shall be governed by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws provisions.
- 10) In the event any legal action shall be filed upon this Performance and Maintenance Bond, venue shall lie exclusively in the District Court of Johnson County, Kansas.

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IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at

_____ ,

on this, the _____ day of _____, 20__.

Contractor

Surety

(Typed Firm Name)

(Typed Firm Name)

(Seal)

(Seal)

By:

By:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Address)

(Address)

(Phone Number)

(Phone Number)

(Date of Execution)

(Date of Execution)

(Accompany this bond with Attorney-in-Fact's authority from the Surety Company certified to include the date of the bond.)

STAFF NOTES:

1. Date of bond must not be prior to date of contract.
2. If Contractor is partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the Treasury Departments most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
4. Accompany this bond with Attorney-in-Facts Authority from the surety company certified to include the date of the bond.

**CITY OF OLATHE, KANSAS
STATUTORY BOND**

_____, a _____, organized under the laws of the state of _____, and authorized to do business in the state of Kansas, as surety ("Surety"), and _____, as principal ("Contractor"), enter into and execute this Bond ("Statutory Bond"), and bind themselves unto the City of Olathe, Kansas and any Beneficiary of this Statutory Bond, in the initial amount of \$_____, which amount is one hundred percent (100%) of the Contract Sum, or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and the City of Olathe as Owner, (the "Penal Sum").

WHEREAS, the Contractor has executed a contract with the Owner dated _____ under City Project No. 6-C-001-18 to timely and fully provide all labor, tools, equipment and materials or supplies in conformance with generally accepted standards for quality, skill and construction of similar projects, in a workmanlike manner, designated, described and required by the Instruction to Bidders, Bid Proposal, the Contract, General and Technical or Special Specifications of the Contract, and any Written Addendum's or Change Orders, (the "Contract"), used or consumed in connection with or in or about the Park Maintenance Facilities Project in the City of Olathe, Johnson County, Kansas (the "Project");

WHEREAS, the Owner has required the Contractor to guarantee payment of all labor, materials, tools, equipment or supplies furnished pursuant to the Contract for the Project that were used or consumed in connection with or in or about the Project, and all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project, and

WHEREAS, the Owner has required the Contractor to furnish this Statutory Bond as a condition to awarding and executing the Contract with the Contractor, to guarantee the stated obligations.

NOW THEREFORE, if the Contractor and the subcontractors of the Contractor shall pay all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project, or the making of the Project improvements described in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect;

The Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree:

- 1) The Contract is incorporated by reference and made a part of this Bond. The Surety and the Contractor are bound for the full performance of the Contract and all of the terms and conditions, both express and implied, and, without limitation, specifically including the Contractor's obligation to pay all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project.
- 2) For purposes of this Statutory Bond, "Beneficiary" is defined as any person or entity to whom there is due any sum for labor, materials, tools, equipment or supplies furnished pursuant to the Contract for the Project that were used or consumed in connection with or in or about the Project, or whom otherwise incurred indebtedness for labor furnished, materials, tools,

equipment or supplies, used or consumed in connection with or in or about the Project, and any such person or entity's assigns.

- 3) In no event is the Surety obligated hereunder for sums in excess of the Contract Sum or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and Owner.
- 4) Upon receipt of a claim from a Beneficiary hereunder, the Surety must promptly, and in no event later than thirty (30) days after receipt of such claim, respond to such claim in writing (furnishing a copy of such response to the Owner) by:
 - a. making payment of all sums not in dispute; and
 - b. stating the basis for disputing any sums not paid.
- 5) The Surety waives notice of any Modifications to the Contract, including changes in the Contract Time, the Contract Sum, the amount of liquidated damages, or the Work to be performed in connection with the Project. The parties expressly agree that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract Sum more than 25 percent (25%), so as to bind the Contractor and the Surety to the full and faithful performance of the Contract so amended. The term "*amendment*" or "*modification*" wherever used in this Bond, and whether referring to this Bond or the Contract, shall include any alteration, addition, extension, or modification of any character whatsoever.
- 6) METHOD OF NOTICE. All notices to the Surety, the Contractor or the Owner must be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

SURETY

Name: _____
 Attention: _____
 Street: _____
 City, State, _____
 ZIP: _____

CONTRACTOR

Name: _____
 Attention: _____
 Street: _____
 City, State, _____
 ZIP: _____

OWNER

City of Olathe, Kansas
 Attn: Jeff Blakeman, Sr. Building Design Project Manager
 P.O. Box 768
 Olathe, Kansas 66051-0768

with a copy to:

City Attorney's Office
P.O. Box 768
Olathe, KS 66051-0768

- 7) The recitals contained in this Statutory Bond are expressly made part of this Statutory Bond.
- 8) This Statutory Bond shall be governed by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws provisions.
- 9) In the event any legal action shall be filed upon this Statutory Bond, venue shall lie exclusively in the District Court of Johnson County, Kansas.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at

_____ ,

on this, the _____ day of _____, 20__.

Contractor**Surety**

(Typed Firm Name)

(Typed Firm Name)

(Seal)

(Seal)

By:

By:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Address)

(Address)

(Phone Number)

(Phone Number)

(Date of Execution)

(Date of Execution)

(Accompany this bond with Attorney-in-Fact's authority from the Surety Company certified to include the date of the bond.)

APPOINTMENT OF PROCESS AGENT

KNOW ALL MEN BY THESE PRESENTS:

That pursuant to K.S.A. 16-113, as amended, Turner Construction Company ("Contractor") does hereby appoint and designate Mark Iammarino, VP/General Manager, a resident of the State of Kansas, as and for their process agent, and hereby consents, without power of revocation, that actions may be commenced against said Contractor in any court of competent jurisdiction in Johnson County, Kansas, which might arise out of a contractual relationship with the State of Kansas or any political or taxing subdivision or unit thereof by service of process on said Contractor, and said Contractor stipulates and agrees that such service shall be taken and held in all courts to be as valid and binding as if service of process had been made upon the President or any other chief official of said corporation.

IN WITNESS WHEREOF the above named Contractor has caused these presents to be executed by its president and its secretary, and authenticated by its corporate seal at Kansas City, in said State of MISSOURI, this 8 day of March, 2019.

CORPORATE NAME Turner Construction Company

By Mark Iammarino

Vice President/General Manager

SEAL



ATTEST:

Secretary

Claudia LaFleur-Thrash
Assistant Corporate Secretary

NONCOLLUSIVE AFFIDAVIT OF PRIME BIDDER

STATE OF Missouri)
COUNTY OF Jackson) ss.

Mark Iammarino, being first duly sworn, deposes and states that:

(1) He/she is Vice President/General Manager (owner, partner, officer, representative or agent) of Turner Construction Company, (company) the bidder having submitted the attached bid:

(2) He/she is fully informed of the contents of the attached bid and of all the circumstances surrounding the preparation of such bid;

(3) Such bid is genuine and is not a collusive or sham bid;

(4) Neither the said bidder nor any of its officers, partners, owners, representatives, employees, or parties interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other bidder, firm, or person to:

- (a) submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted;
- (b) refrain from bidding in connection with such contract;
- (c) fix the price or prices in the attached bid, or the price or prices of any other bidder;
- (d) fix any overhead, profit, or cost element of the bid price, or the bid prices of any other bid;
- (e) secure an unlawful advantage against the City of Olathe, Kansas, or any person interested in the proposed contract.

(5) The price or prices quoted in the attached bid are fair and proper and not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties interest, including this affiant.

By [Signature]

Title Vice President/General Manager

Subscribed to and sworn to before me, the undersigned, a Notary Public, this 8 day of March, 2019.

(Seal)

My Commission Expires



TIFFANY ANN CORBET
My Commission Expires
July 30, 2020
Buchanan County
Commission #12412153

[Signature]
Notary Public



Project Fact Sheet
Fire Station #8 Improvements
PN 6-C-009-18
March 19, 2019

Project Manager: Beth Wright / Chad Foster

Description: This project is for the planning, design, construction, and equipping of a new fire station near 148th Street and Lakeshore Drive.

Justification: Improved Fire Department coverage is needed to better serve the growing southwestern portion of the community, including increasing residential density, Mission Trail Middle School and the I-35 Logistics Park.

Schedule:	Item	Date
Guaranteed Maximum Price (GMP)		Nov. 2019 – Est.
Construction Start		Dec. 2019 – Est.
Construction Completion		Oct. 2020 – Est.

Council Actions:	Date	Amount
Funding Resolution	10-16-2018	\$7,055,000
Design Agreement	1-22-2019	\$363,400
Construction Management Agreement	3-19-2019	\$20,000

Funding Sources:	Amount	CIP Year
General Obligation Bonds	\$ 7,055,000	2021

Expenditures:	Budget	Amount to Date
Staff Costs	\$120,000	\$0
Land Acquisition	\$75,000	\$231,420
Planning and Design Services	\$500,000	\$0
Building Construction	\$3,500,000	\$0
Equipment/Apparatus	\$1,575,000	\$0
Inspection/Testing	\$50,000	\$0
FF&E/IT/Miscellaneous & Contingency	\$1,235,000	\$0
Total	\$ 7,055,000	\$231,420

FIRE STATION #8 IMPROVEMENT PROJECT
PN 6-C-009-18
PROJECT LOCATION MAP





City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Public Works

STAFF CONTACT: Mary Jaeger / Beth Wright

SUBJECT: Contract with Freeman Concrete Construction, LLC for construction of the Wabash Street Improvements Project, PN 3-R-003-19.

ITEM DESCRIPTION:

Consideration of Engineer's Estimate, acceptance of bids and award of contract to Freeman Concrete Construction, LLC for construction of the Wabash Street Improvements Project, PN 3-R-003-19.

SUMMARY:

On March 6, 2019, five (5) bids were received and opened for the above referenced project. The bids ranged from \$ 468,860.70 to \$ 604,382.00 with the Engineer's Estimate at \$ 588,088.00. Freeman Concrete Construction, LLC submitted the low and responsible bid in the amount of \$ 468,860.70. The following is a tabulation of the bids received:

Freeman Concrete Construction, LLC	\$ 468,860.70
Linaweaver Construction, Inc.	\$ 535,786.00
Amino Brothers Co., Inc.	\$ 552,608.45
Gunter Construction Company	\$ 562,279.00
Engineer's	\$ 588,088.00
O'Donnell & Sons Construction Co., Inc.	\$ 604,382.00

This Street Reconstruction project will include replacement of the existing pavement section, concrete curb and gutter, ADA sidewalk ramps, sidewalk, city street light installation, stormwater improvements and pavement markings on Wabash Street between Parker Street and Troost Street (see attached Project Location Map).

Construction is scheduled to begin in Spring 2019 and will be completed in Fall 2019.

FINANCIAL IMPACT:

This project is funded from the City of Olathe's 2019 Street Reconstruction Program authorized on September 4, 2019. Authorized revenue for the 2019 Street Reconstruction Program includes:

<u>General Obligation Bonds</u>	<u>\$ 5,100,000</u>
Total	\$ 5,100,000

ACTION NEEDED:

Approval of Engineer's Estimate, acceptance of bids and award of contract to Freeman Concrete Construction, LLC for construction of the Wabash Street Improvements Project, PN 3-R-003-19.

MEETING DATE: 3/19/2019

ATTACHMENT(S):

A: Engineer's Estimate and Affidavit of Estimate

B: Project Location Map

C: Resolution 18-1078

AFFIDAVIT OF ESTIMATE OF COST

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

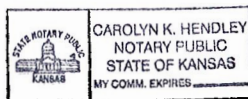
Elizabeth Wright, P.E., of lawful age, being first duly sworn upon her oath,
states:

1. I am the City Engineer for the City of Olathe, Kansas.
2. The attached detailed estimate of the cost for the Wabash Street Improvements Project, PN 3-R-003-19 is attached and I am providing the estimate of the cost under oath (Exhibit A).




Elizabeth Wright

Subscribed in my presence and sworn under oath before me this 7th
day of March, 2019.



12-11-20



Notary Public

My Appointment Expires

December 11, 2020

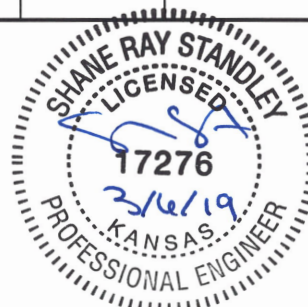
Wabash Street - Parker to Troost
 Bid Opening Cost Estimate
 City of Olathe, Kansas
 City Project No. 3-R-003-19

Date March 6, 2019

Quantities KWR
 Estimate SRS

Engineer's Opinion of Probable Cost

Item No.	Item Description	Unit	Approx. Quantity	Unit Price	Item Total
1	Mobilization	Lump Sum	1	\$30,000.00	\$30,000.00
2	Remove Existing Pavement	Sq. Yds.	3453	\$10.00	\$34,530.00
3	Remove Existing Drive	Sq. Yds.	858	\$10.00	\$8,580.00
4	Remove Existing Sidewalk	Sq. Yds.	398	\$8.00	\$3,184.00
5	Removal of Existing Structures	Lump Sum	1	\$5,000.00	\$5,000.00
6	Tree Removal (EST)	Each	2	\$600.00	\$1,200.00
7	Linear Grading	Lin. Ft.	1140	\$55.00	\$62,700.00
8	Sub-Grade Repair (EST)	Sq. Yds.	250	\$15.00	\$3,750.00
9	Concrete Curb & Gutter (Type A)	Lin. Ft.	39	\$18.00	\$702.00
10	Concrete Curb & Gutter (Type B)	Lin. Ft.	2129	\$18.00	\$38,322.00
11	Asphaltic Concrete Surface (2") (BM-2FR)	Tons	378	\$65.00	\$24,570.00
12	Asphaltic Concrete Base (6") (BM-2BFR)	Tons	1134	\$62.00	\$70,308.00
13	Aggregate Base Course (6") (AB-3 O.P. Modified)	Sq. Yds.	3826	\$8.00	\$30,608.00
14	Sidewalk Construction (4")	Sq. Ft.	4276	\$5.00	\$21,380.00
15	Sidewalk Ramp (Type 1)	Each	3	\$1,250.00	\$3,750.00
16	Sidewalk Ramp (Type 3)	Each	1	\$2,000.00	\$2,000.00
17	Concrete Driveway (6") (Residential)	Sq. Yds.	872	\$55.00	\$47,960.00
18	Storm Sewer (15") (RCP Class III)	Lin. Ft.	141	\$100.00	\$14,100.00
19	Curb Inlet (4'x4') (Setback)	Each	2	\$5,000.00	\$10,000.00
20	Curb Inlet (4'x4') (Non-Setback)	Each	1	\$5,000.00	\$5,000.00
21	Curb Inlet Adjustment (Type I)	Each	2	\$2,000.00	\$4,000.00
22	Modification of Storm Structure	Each	2	\$2,000.00	\$4,000.00
23	Drain Tile Connection (EST)	Lin. Ft.	100	\$25.00	\$2,500.00
24	Water Main Relocation (6") (HDPE) (EST)	Lin. Ft.	15	\$150.00	\$2,250.00
25	Water Main Relocation (8") (HDPE) (EST)	Lin. Ft.	85	\$150.00	\$12,750.00
26	Adjustment of Manhole	Each	1	\$1,200.00	\$1,200.00
27	Permanent Signing	Each	8	\$350.00	\$2,800.00
28	Flashing Beacon Foundation & Installation	Lump Sum	1	\$2,500.00	\$2,500.00
29	Traffic Control	Lump Sum	1	\$7,500.00	\$7,500.00
30	6" Solid White Preformed Thermoplastic	Lin. Ft.	132	\$6.00	\$792.00
31	12" Solid White Preformed Thermoplastic	Lin. Ft.	96	\$12.00	\$1,152.00
32	Street Lighting Installation	Lump Sum	1	\$65,000.00	\$65,000.00
33	Tree Replacement (EST)	Each	2	\$500.00	\$1,000.00
34	Shrub Replacement (EST)	Each	15	\$100.00	\$1,500.00
35	Lawn Sprinkler System (EST)	Each	1	\$1,500.00	\$1,500.00
36	Erosion Control	Lump Sum	1	\$5,000.00	\$5,000.00
37	Sod (All Types)	Sq. Yds.	4500	\$6.00	\$27,000.00
38	Landscaping Reconstruction (Tract No. 19)	Lump Sum	1	\$1,000.00	\$1,000.00
39	Contractor Construction Staking	Lump Sum	1	\$7,000.00	\$7,000.00
Subtotal					\$568,088.00
Owner's Contingency Allowance					\$20,000.00
3-R-003-19 Project Total					\$588,088.00



Wabash Street Improvements Project
PN 3-R-003-19
Project Location Map

Attachment B



RESOLUTION NO. 18-1078**A RESOLUTION AUTHORIZING THE 2019 STREET RECONSTRUCTION PROGRAM,
PROJECT NUMBER 3-R-000-19.**

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OLATHE,
KANSAS:**

SECTION ONE: Pursuant to the authority of Charter Ordinance No. 74 of the City, the Governing Body of the City of Olathe ("City") hereby authorizes the 2019 Street Reconstruction Program, PN 3-R-000-19 ("Program"). Such Program shall rehabilitate the following streets in the City of Olathe:

S. Church Street, from Park Street to Church Circle
 S. Church Circle, from Church Street to Sunset Drive
 S. Church Circle, from Church to West End of Cul-de-sac
 N. Parker Terrace, from Forest Drive to South End Cul-de-sac
 W. Wabash Street, from Parker Street to Troost Street
 S. Timberlane Boulevard, 122nd Street to North End
 W. 122nd Street, Nelson Road to West End
 W. 110th Street, 110th Terrace to West End Cul-de-sac
 W. 102nd Street, Shadow Circle to Highland Circle (alternate)
 S. Highland Lane, 102nd Street to West End Cul-de-sac (alternate)

Each location will include removing the existing pavement section, grading and placement of aggregate base subgrade, asphalt pavement, and where necessary concrete curb and gutter, concrete ADA ramps and sidewalks, City street light installation or LED upgrades. The project locations may include utility rehabilitation where necessary, and could include waterline, sanitary sewer and stormwater.

SECTION TWO: The cost for completing the Program projects listed in Section One is \$5,100,000. Funds to pay for the Program shall come from the following sources:

General Obligation Bonds	<u>\$5,100,000</u>
TOTAL	\$5,100,000

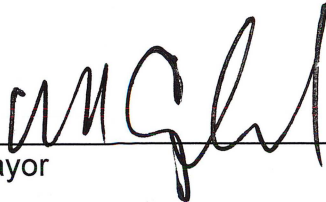
SECTION THREE: Pursuant to the authority of Charter Ordinance No. 74, the Governing Body hereby authorizes the issuance of not to exceed \$5,100,000 of general obligation bonds, all exclusive of issuance costs and interest on any temporary financing.

SECTION FOUR: The City intends to reimburse itself for capital expenditures made on or after the date which is 60 days before the date of this Resolution in connection with the Program, pursuant to Treasury Regulation § 1.150-2, with the proceeds of bonds and/or notes in the maximum principal amount of \$5,100,000 exclusive of issuance costs and any interest costs for temporary financing.

SECTION FIVE: This Resolution shall take effect immediately.

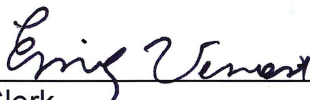
ADOPTED by the Governing Body this 4th day of September, 2018.

SIGNED by the Mayor this 4th day of September, 2018.



Mayor

ATTEST:

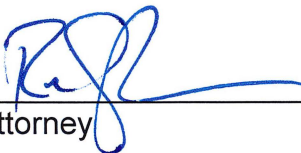


City Clerk

(SEAL)



APPROVED AS TO FORM:



City Attorney



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Resource Management

STAFF CONTACT: Steve Menke/Jeff DeGraffenreid/Amy Tharnish

SUBJECT: Acceptance of bid and consideration of award of contract to Roberts Chevrolet for the replacement of nine (9) SUV's for 2019 for the Olathe Police & Fire Departments.

ITEM DESCRIPTION:

Acceptance of bid and consideration of award of contract to Roberts Chevrolet for the replacement of nine (9) SUV's for 2019 for the Olathe Police & Fire Departments

SUMMARY:

On October 4, 2016 eighteen (18) bids were received for the purchase of vehicles for the City's fleet. Johnson County, Kansas, acted as lead agency for a Kansas City area metro-wide cooperative vehicle bid that included the City and ten (10) other agencies: Raytown, MO Police Department; City of Lee's Summit, MO; City of Raytown, MO; City of Independence, MO; City of Kansas City, MO; City of Merriam, KS; Douglas County, KS; Jackson County, MO and Unified Government of Wyandotte County.

- Nine (9) Chevrolet Tahoe SUV's. Eight (8) replacements will be used by the Police Department for Patrol vehicles. One (1) replacement will be used by the Fire Department for will be used by Fire Administration for emergency response, scene management and safety officer functions.

The vehicles are being replaced as part of the regular vehicle replacement process and are fully amortized. The vehicles have paid \$304,805 through lease fees into the VERF. VERF fund balance will cover the additional \$28,475.

There were no Olathe vendors that bid on the Chevrolet Tahoe SUVs.

FINANCIAL IMPACT:

\$333,280.20. Funding will come from the Vehicle Equipment Replacement Fund (VERF).

ACTION NEEDED:

Award of contract to Roberts Chevrolet for the replacement of nine (9) vehicles for 2019 for the Olathe Police & Fire Departments.

ATTACHMENT(S):

- A. Vehicle Replacement Summary
- B. Bid Tabulation

Award To	Description	Department/Division	Unit Number Being Replaced	Year/Make/Model of Vehicle Being Replaced	Mileage/Hours	Requisition Number
Roberts Chevrolet	Full Size SUV with options	Police	2050045	2013 Chevrolet Tahoe	99176	15925
Roberts Chevrolet	Full Size SUV with options	Police	2050914	2015 Ford Explorer	86768	15925
Roberts Chevrolet	Full Size SUV with options	Police	2050916	2000 Ford Explorer	88565	15925
Roberts Chevrolet	Full Size SUV with options	Police	2050917	2000 Ford Explorer	88033	15925
Roberts Chevrolet	Full Size SUV with options	Police	2050918	2000 Ford Explorer	83694	15925
Roberts Chevrolet	Full Size SUV with options	Police	2050919	2000 Ford Explorer	91890	15925
Roberts Chevrolet	Full Size SUV with options	Police	2050921	2000 Ford Explorer	83127	15925
Roberts Chevrolet	Full Size SUV with options	Police	2050922	2000 Ford Explorer	87896	15925
Roberts Chevrolet	Full Size SUV with options	Fire	2050857	2007 Ford Explorer	89228	15909

City of Olathe

IFB 17-4001 - 2019 Vehicles (Johnson County, KS Bid #2016-002)

					Roberts Chevrolet Buick Platte City, MO	
Item	Description	Requisition Number	Quantity	Unit	Unit Price	Total Price
1	Chevy Tahoe Pursuit SUV with options	15925	8	each	\$36,995.45	\$295,963.60
2	Full Size SUV with options	15909	1	each	\$37,316.60	\$37,316.60

Recommended Award



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Resource Management

STAFF CONTACT: Mary Jaeger/Amy Tharnish

SUBJECT: Acceptance of bid and consideration of award of contract to Ennis-Flint, Inc. for traffic marking paint for the Traffic Division of Public Works

ITEM DESCRIPTION:

Acceptance of bid and consideration of award of contract to Ennis-Flint, Inc. for traffic marking paint for the Traffic Division of Public Works

SUMMARY: On February 13, 2019, two (2) bids were received for traffic marking paint. This paint is used for roadway striping within the City of Olathe.

Staff recommends award of a three (3) year contract to Ennis-Flint, Inc., with the option for additional renewals. LBS Enterprises, LLC was the lowest bidder, but their paint is untested in City of Olathe equipment, on pavement, or in City weather conditions. To address these unknown variables for future consideration of this commodity, LBS will provide a sample of their paint for the City to lab test and field test for 12-months.

One (1) local vendor was notified of this solicitation. They do not provide this type of material.

FINANCIAL IMPACT:

\$150,000 for three (3) years to be paid from the Traffic Operations operating budget.

ACTION NEEDED:

Acceptance of bid and consideration of award of contract to Ennis-Flint, Inc..

ATTACHMENT(S):

A. Bid Tab

City of Olathe, KS
 IFB #19-0024 - Traffic Marking Paint
 February 13, 2019 - 3:00 PM

Item	Description	Qty	Unit	Ennis-Flint, Inc. Greensboro, NC		LBS Enterprises, L.L.C. Gladewater, TX	
				Unit Price	Total Price	Unit Price	Total Price
1	White traffic marking paint, water-borne, in 55-gallon drums	50	drums	\$ 577.50	\$ 28,875.00	\$ 547.25	\$ 27,362.50
2	Yellow traffic marking paint, water-borne, in 55-gallon drums	35	drums	\$ 577.50	\$ 20,212.50	\$ 557.70	\$ 19,519.50
	TOTAL				\$ 49,087.50		\$ 46,882.00 *

Recommended award

* This vendor's paint has not gone through testing by the City, therefore, the vendor will provide a sample of paint to be used for testing for 12 months.



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Resource Management

STAFF CONTACT: Mary Jaeger/Amy Tharnish

SUBJECT: Consideration of contract renewal to Hydro-Klean, LLC for Specialty Tank Cleaning and Inspection Services for the Environmental Services Division of Public Works.

ITEM DESCRIPTION:

Consideration of contract renewal to Hydro-Klean, LLC for Specialty Tank Cleaning and Inspection Services for the Environmental Services Division of Public Works.

SUMMARY: On February 28, 2018, one (1) qualification packet was received for Specialty Tank Cleaning and Inspection Services. These services are used for the cleaning and disinfection of finished water storage tanks; cleaning and inspection of treatment chemical storage tanks; cleaning of wastewater treatment oxidation ditches and cleaning water treatment clarifier mechanisms.

Staff reviewed Hydro-Klean, LLC statement of qualifications and determined that they were a qualified vendor to work on City of Olathe projects. Their scope of services as a Specialty Tank Cleaning vendor makes specific trade skills and equipment to available to maintain the City's water and wastewater plants.

Staff recommends renewal for a three-year contract term.

Eight (8) Olathe vendors were notified of the bid. No Olathe vendors perform this type of service.

FINANCIAL IMPACT:

Expenditures are estimated at \$300,000 per year for contract years 2019 through 2021, to be paid from the Environmental Services operating budget.

ACTION NEEDED:

Consideration of contract renewal to Hydro-Klean, LLC.

ATTACHMENT(S):

None



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Resource Management

STAFF CONTACT: Mary Jaeger/Amy Tharnish

SUBJECT: Acceptance of renewal of contract to Stericycle Environmental Solutions for household hazardous waste disposal.

ITEM DESCRIPTION:

Acceptance of renewal of contract to Stericycle Environmental Solutions for household hazardous waste disposal

SUMMARY:

The City of Olathe's Household Hazardous Waste (HHW) program diverted over 434 tons of potentially dangerous materials from the waste stream in 2018, with 9,355 households participating. A cooperative effort with Johnson County (contract 2014-114) for storm water management requirements has led to more participation at collection events and a new supplemental funding source for our HHW program. The maturity of this program over the past couple of years has started to bring to this program a higher level of expectations for public education and involvement in this environmental protection and waste reduction program. The City has expanded hours to include all Saturdays with drop-offs being scheduled except for the 2nd Saturday of the month "open" collection events.

In 2014, Johnson County Government competitively solicited for household hazardous waste disposal. City of Olathe staff participated on the evaluation team for award recommendation. The contract award was made to Stericycle Environmental Solutions and allows for this additional renewal period.

Staff recommends renewal of contract to Stericycle Environmental Solutions.

There are no Olathe vendors that perform this service.

FINANCIAL IMPACT:

Anticipated expenditures for 2019 are \$180,500 and are charged to the Solid Waste Fund.

ACTION NEEDED:

Acceptance of renewal of contract to Stericycle Environmental Solutions

ATTACHMENT(S):

None



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Resource Management

STAFF CONTACT: Mary Jaeger/Amy Tharnish

SUBJECT: Acceptance of renewal of contract to K & W Underground, Inc. for directional drilling services for the Field Operations Division of Public Works.

ITEM DESCRIPTION:

Acceptance of renewal of contract to K & W Underground, Inc. for directional drilling services for the Field Operations Division of Public Works.

SUMMARY: On January 31, 2018, three (3) bids were received for directional drilling services. These services include the installation of water and sewer mains ranging from 6-inch to 12-inch, installation of water service laterals ranging in size from ¾-inch to 4-inch and all necessary preparation work needed for the performance of this service. The directional drilling service is utilized when open-cut installation of a water or sewer main would be too disruptive to the surrounding area. The impact to our residents is less when the City can use the directional drilling services. K & W Underground, Inc. was the lowest most responsible and responsive vendor and was awarded the contract.

Staff recommends renewal of the contract with K & W Underground, Inc. for directional drilling services for 2019-2021.

FINANCIAL IMPACT: The contract with K & W Underground, Inc. will be for a maximum of \$750,000 for the three-year contract term. This service will be funded from the 2019, 2020, & 2021 Waterline Rehabilitation Project, PN 5-R-000-19, 5-R-000-20, & 5-R-000-21.

Funding for the 2019, 2020, & 2021 Waterline Rehabilitation Project, as approved in the 2019-2023 Capital Improvement Plan, includes:

2019	
Revenue Bonds	\$ 800,000
Water & Sewer Fund	\$ 200,000
2020	
Revenue Bonds	\$ 800,000
Water & Sewer Fund	\$ 200,000
2021	
Revenue Bonds	\$ 1,000,000
Total	\$ 3,000,000

ACTION NEEDED:

Acceptance of renewal of contract to K & W Underground, Inc.

ATTACHMENT(S):

None



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Resource Management

STAFF CONTACT: Mary Jaeger/Amy Tharnish

SUBJECT: Acceptance of bids and consideration of award of contracts to Gades Sales Company, Inc., Electronic Technology, Inc., Traffic Control Corporation and Traffic Signal Controls, Inc. for the purchase of traffic signal supplies for the Traffic Operations Division of Public Works.

ITEM DESCRIPTION:

Acceptance of bids and consideration of award of contracts to Gades Sales Company, Inc., Electronic Technology, Inc., Traffic Control Corporation and Traffic Signal Controls, Inc. for the purchase of traffic signal supplies for the Traffic Operations Division of Public Works.

SUMMARY: On February 13, 2019, three (3) bids were received for the annual supply of traffic signal supplies for the Traffic Operations Division of Public Works. These supplies are used by staff to repair and maintain traffic signals, school crossing beacons, and other related equipment throughout the City.

Staff recommends award of a three (3)-year contract to Gades Sales Company, Inc., as they were the most responsible responsive bidder. See Attachment A for the bid tabulation and summary of items awarded to Gades Sales Company.

In addition to the items purchased under the bid referenced above, the City purchases traffic signal supplies that are considered sole source items. These items are available only from a specific vendor. City staff recommends award of three (3)-year contracts to Electronic Technology, Inc., Traffic Control Corporation. and Traffic Signal Controls, Inc. for the sole source items.

18 Vendors were notified of this solicitation. No Olathe vendors offer this type of equipment and supplies.

FINANCIAL IMPACT:

\$750,000 over a period of three years to be paid from the Traffic Operations operating budget and various CIP projects.

ACTION NEEDED:

Acceptance of bids and consideration of award of contracts to Gades Sales Company, Inc., Electronic Technology, Inc., Traffic Control Corporation and Traffic Signal Controls, Inc.

ATTACHMENT(S):

- A. Bid Tabulation

Attachment A

City of Olathe, KS
 IFB #19-0025 - Traffic Signal Supplies
 February 13, 2019 - 11:00 AM

Item	Description		Qty	Unit	GADES SALES CO. INC. Wichita, KS		Traffic Control Corporation Woodridge, IL		Traffic Signal Controls, Inc. Longmont, CO	
					Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	3 Section Signal Head	LED's.	1	each	\$ 185.00	\$ 185.00	\$ 187.00	\$ 187.00	\$ 136.63	\$ 136.63
2	4 Section Signal Head	12" indication; yellow body and Black Doors; or all black; visors; GGI (quick change kit); 2 terminal blocks;without LED's.	1	each	\$ 236.00	\$ 236.00	\$ 260.00	\$ 260.00	\$ 185.68	\$ 185.68
3	5 Section Signal Head	12" indication; yellow body and Black Doors; or all black; visors; GGI (quick change kit); 2 terminal blocks;without LED's.	1	each	\$ 307.00	\$ 307.00	\$ 326.00	\$ 326.00	\$ 230.00	\$ 230.00
4	Pedestrian Signal	16"X18" Polycarbonate 16-inch Pedestrian Signal yellow or black.Housing has the top and bottom holes plugged and accommodates for clamshell mounting. Without LED.	1	each	\$ 143.50	\$ 143.50	\$ 94.00	\$ 94.00	\$ 97.70	\$ 97.70
5	Pole Mounting Brackets	One piece polycarbonate traffic signal bracket; Double sided mounting with standard serrations- both sides; Polycarbonate chase nipples and closure caps. Yellow or Black.	1	each	\$ 54.00	\$ 54.00	\$ 41.00	\$ 41.00	\$ 25.90	\$ 25.90
6	3 Section Mounting Hardware	Sky Bracket band clamp w/ 69" Stainless steel bands,hardware, arm kit, and tube	1	each	\$ 118.00	\$ 118.00	\$ 133.00	\$ 133.00	\$ 113.10	\$ 113.10
7	4 Section Mounting Hardware	Sky Bracket band clamp w/ 69" Stainless steel bands,hardware, arm kit, and tube	1	each	\$ 125.00	\$ 125.00	\$ 139.00	\$ 139.00	\$ 149.58	\$ 149.58
8	3 Section Mounting Hardware	BLACK-Sky Bracket band clamp w/ 69" coated black steel bands,hardware, arm kit, and tube.	1	each	\$ 159.00	\$ 159.00	\$ 159.00	\$ 159.00	\$ 120.10	\$ 120.10
9	4 Section Mounting Hardware	BLACK- Sky Bracket band clamp w/ 69" coated black steel bands,hardware, arm kit, and tube.	1	each	\$ 167.00	\$ 167.00	\$ 166.00	\$ 166.00	\$ 159.58	\$ 159.58
11	Poles	9 ft long, 4.5" O.D. X .237" wall; Schedule 40-3.73lb/ft; aluminum, spun finish; 15" tall x 13 5/8" aluminum square base; 4.5" pole to thread into base; 12" min to 14.75" max bolt circle; Pelco or equal	1	each	\$ 356.00	\$ 356.00	\$ 340.00	\$ 340.00	\$ 700.00	\$ 700.00
12	Poles	BLACK 9 ft long, 4.5" O.D. X .237" wall; Schedule 40-3.73lb/ft; aluminum, spun finish; 15" tall x 13 5/8" aluminum square base; 4.5" pole to thread into base; 12" min to 14.75" max bolt circle; Pelco or equal	1	each	\$ 456.00	\$ 456.00	\$ 380.00	\$ 380.00	\$ 755.00	\$ 755.00
13	Flasher Model 204	120 volts AC, cube style; 50 to 60 flashes per minute; NO SUBSTITUTES	10	each	\$ 28.00	\$ 280.00	\$ 23.00	\$ 230.00	\$ 27.20	\$ 272.00
14	Switchpack (Load Switch)	Dual L.E.D. indications show both input and output; PDC model SSS-87-I/O or equal	10	each	\$ 28.00	\$ 280.00	\$ 23.00	\$ 230.00	\$ 29.55	\$ 295.50
15	Detector card	EDI Oracle 2 E detector two channel	5	each	\$ 190.00	\$ 950.00	\$ 233.00	\$ 1,165.00	\$ 153.52	\$ 767.60
16	Dual Isolation Modules	Direct current; No. 242; Type 170 compatible; PDC or equal	5	each	\$ 34.90	\$ 174.50	\$ 34.00	\$ 170.00	\$ 27.84	\$ 139.20
TOTAL						\$ 3,991.00		\$ 4,020.00		\$ 4,147.57

Recommended award



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Resource Management

STAFF CONTACT: Dianna Wright/Brenda Long

SUBJECT: Consideration of a new drinking establishment license for RCBC, LLC.

ITEM DESCRIPTION:

Consideration of a new drinking establishment license for RCBC, LLC. at 1062 W. Santa Fe

SUMMARY:

The application for the business noted below has been submitted for a drinking establishment license in accordance with Title 7, Liquor Laws, of the Olathe Municipal Code (OMC). The application is available in the City Clerk's office for review.

- Red Crow Brewing Company

1062 W. Santa Fe

Olathe, KS 66061

This approval would be conditional upon all required department approvals being processed and received.

FINANCIAL IMPACT:

The license fees as established in Title 7 of the Olathe Municipal Code in the amount of \$500.00 for drinking establishments has been collected for the license application.

ACTION NEEDED:

Conditionally approve this application for a license as part of the consent agenda with the stipulation that all department approvals are received and documented.

ATTACHMENT(S):

None



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Legal & Public Works

STAFF CONTACT: Ron Shaver / Mary Jaeger / Beth Wright

SUBJECT: Authorizing payment of eminent domain award and court appointed appraisers' fees in case of *The City of Olathe, Kansas vs. Wal-Mart Real Estate Business Trust, et al.*, Case No. 18CV06665 for the Stag's Ridge Project, PN 7-C-047-18.

ITEM DESCRIPTION:

Consideration of Ordinance No. 19-10 authorizing payment by the City Treasurer of an eminent domain award and court appointed appraisers' fees in the eminent domain case of *The City of Olathe, Kansas vs. Wal-Mart Real Estate Business Trust, et al.*, Case No. 18CV06665 for the Stag's Ridge Project, PN 7-C-047-18.

SUMMARY:

This project involves the conversion of private streets to public streets in the West Village shopping center on the west side of K-7 Highway at Spruce Street in west Olathe to provide public street access to the tract of land north of the West Village shopping Center. Attachment A is a map of the project area.

The City Council adopted Resolution No. 18-1104 on November 20, 2018, which authorized an engineer's survey of the property to be taken. The City Council passed Ordinance No. 18-57 on November 20, 2018, which approved the survey and authorized the filing of a petition for eminent domain.

On January 7, 2019, the Johnson County District Court appointed John Moser, Robin Marx, and former Johnson County District Court Judge Larry McClain as court appointed appraisers. The appraisers' hearing was held on February 12, 2019.

On February 27, 2019, the court appointed appraisers awarded \$93,250 in total taking damages and \$9,150 as appraisers' fees. The breakdown of the awards by tract is:

Tract	Owner	Easement	Sq. Feet	City Appraisal	Appraisers' Award
1	Wal-Mart Real Estate Business Trust	ROW	990.20	\$4,250	\$4,250
2	Olathe West Developers, Inc.	ROW	46,839.10	\$12,200	\$80,000
3	Olathe West Developers, Inc.	TCE	626.70	\$1,600	\$1,600
4	The Paskevic Family Trust	TCE	2,402.00	\$7,400	\$7,400

Staff recommends accepting the awards and approving the Ordinance.

FINANCIAL IMPACT:

Total awards equal \$93,250. Court costs (appraisers' fees) equal \$9,150 for a total of \$102,400.

MEETING DATE: 3/19/2019

There are adequate funds in the project account.

ACTION NEEDED:

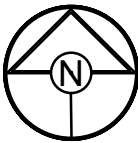
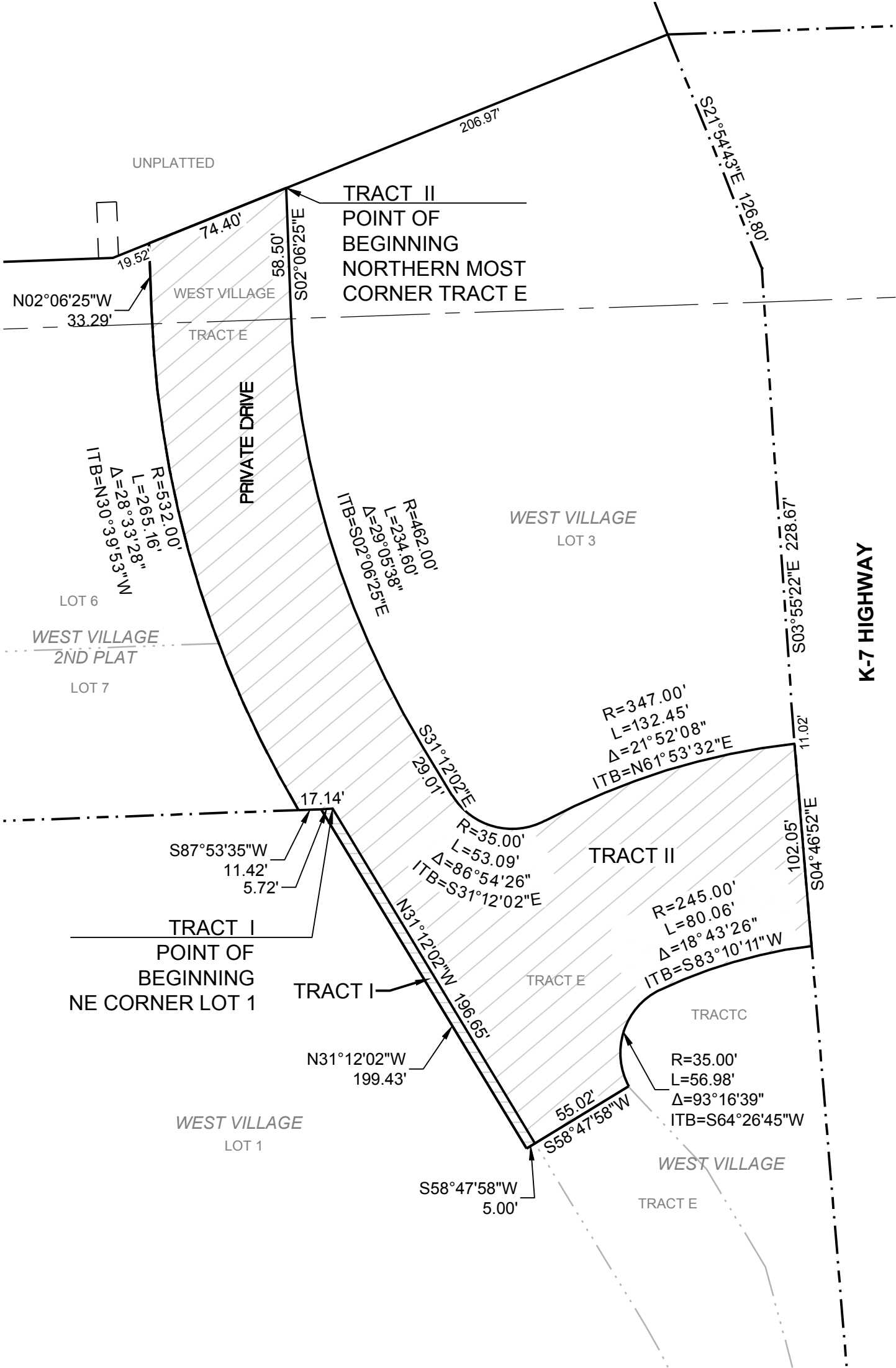
Adopt Ordinance No. 19-10 authorizing payment by the City Treasurer of an eminent domain award and court appointed appraisers' fees in the eminent domain case of *The City of Olathe, Kansas vs. Wal-Mart Real Estate Business Trust, et al.*, Case No. 18CV06665 and approval of payment for the Stag's Ridge Project, PN 7-C-047-18.

ATTACHMENT(S):

A: Project Maps

B: Ordinance

Attachment A



DRAWN BY:	JWT
CHECKED BY:	AR
DATE:	9-5-218
PROJECT NO:	1-8074
SCALE:	1" = 60'
SHEET	1 OF 1



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PROPERTY EXHIBIT



ORDINANCE NO. 19-10

AN ORDINANCE AUTHORIZING PAYMENT BY THE CITY TREASURER OF A CONDEMNATION AWARD AND COURT APPOINTED APPRAISERS' FEES FOR THE CONSTRUCTION, RECONSTRUCTION, WIDENING, IMPROVEMENT AND MAINTENANCE OF THE STAG'S RIDGE PROJECT, PN 7-C-047-18, AS DESIGNATED IN ORDINANCE NO. 18-57, PASSED AND APPROVED BY THE GOVERNING BODY ON NOVEMBER 20, 2018.

WHEREAS, on November 30, 2018, the City of Olathe, Kansas, filed a Petition for Eminent Domain Proceedings pertaining to the construction, reconstruction, widening, improvement and maintenance of the Stag's Ridge Project, PN 7-C-047-18, as designated in Ordinance No. 18-57, passed and approved by the Governing Body on the November 20, 2018; and

WHEREAS, the Appraisers' Report was filed with the Clerk of the District Court on February 27, 2019, and said appraisers notified the City of the filing of said report; and

WHEREAS, the Governing Body of the City of Olathe, Kansas, deems it advisable to authorize the City Treasurer to pay the Clerk of the District Court the amount of the awards and the Court costs.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

SECTION ONE: The City Treasurer is hereby authorized to pay the Clerk of the District Court the sum of \$93,250 to pay the condemnation award and \$9,150 for the court appointed appraisers' fees for a total of \$102,400 in the case of *The City of Olathe, Kansas vs. Wal-Mart Real Estate Business Trust, et al.*, Case No. 18CV06665.

SECTION TWO: This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

PASSED by the Governing Body this 19th day of March, 2019.

SIGNED by the Mayor this 19th day of March, 2019.

Michael E. Copeland
Mayor

ATTEST:

Emily K. Vincent
City Clerk

APPROVED AS TO FORM:

Ronald R. Shaver
City Attorney

Publish one time and return one Proof of Publication to the City Clerk, one to Public Works and one to the City Attorney.



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Public Works, Planning Division

STAFF CONTACT: Aimee Nassif, Chief Planning and Development Officer; Shelby Ferguson, Planning Consultant

SUBJECT: UDO18-0002(A) Amendments to Chapters 18.40

ITEM DESCRIPTION:

Discussion regarding Proposed Amendments to Chapter 18.40 of the *Unified Development Ordinance* (UDO18-0002 (A)).

SUMMARY:

On December 4, 2018, staff presented updates to the *Unified Development Ordinance (UDO)* pertaining to Chapters 18.30, 18.40, and 18.50 for consideration. During the meeting, several speakers addressed the Council with concerns involving updates for development plans, plats, and vibration standards. The Council requested that this item return to a future Council agenda for further collaboration with community stakeholders.

This evening, staff will present all updates except for the vibration standards (18.30) and blasting (18.50) updates. Staff is completing additional research and collaboration with stakeholders for these two items and will return later for that discussion.

The draft language for the updates involving plans, plats and procedures is included in tonight's meeting packet and this language has not changed since the December meeting. Staff has used this time to have further discussions with interested parties, performed additional research, and prepared a new presentation to help clarify and explain the draft proposal.

This UDO review and update process began in June 2018 and staff had numerous meetings, correspondence, and collaboration with a variety of stakeholders. We have achieved consensus and received draft language from stakeholders which has been incorporated into several updates. These include:

1. Public Hearing Procedures
2. Phasing Plans
3. Time period for Preliminary Plats resets with every phased final plat approval.

Despite several months of conversations, rewrites, and revisions to address concerns we heard, full consensus from our stakeholder group was not achieved for the remaining updates. Staff is presenting these draft updates to you as well as they will assist with ensuring compliance with UDO

standards and the City's vision for growth and development. To assist in explaining the history and evolution of time expirations for plans and plats in the UDO, a timeline is also attached (Attachment A). Amendments made throughout the years are indicated in red font for you.

In addition, staff has prepared a table which displays the current requirements for time expirations for plans and plats along with a brief summary of the proposed updates. Existing language is in black font with proposed changes shown highlighted.

Document Type	Time Period	Action Needed Before Expiration	Extension Method
Preliminary Development Plans	5 years	Submit and obtain approval of final development plan.	Renewal administratively reviewed for up to twelve (12) months. Or, renewal for any length of time by the Governing Body.
Final Development Plans	2 years	Commence construction with building permit.	Renewal administratively reviewed for up to twelve (12) (not 6) months. Or, renewal for any length of time by the Governing Body.
Preliminary Plats	2 years	Submit final plat for approval.	Renewal for 1 year only if over 40 acres. Clock resets 2 years for every final plat approval in a phased development. Or, renewal administratively reviewed for 1 year.
Final Plats	2 years	Record after approval.	Administratively reviewed/renewed for 1 year. Adhere to the Municipal Code which includes title 18 for the UDO. Direct reader to UDO specifically. (no difference in requirements)

Staff will provide detailed information during the meeting on how these proposed updates were generated, why they are necessary, requests from our stakeholder group, and impacts if they are not approved.

Updates for your consideration involve the following sections of the UDO:

1. Chapter 18.40 Procedures

a. Section 18.40.110 Site Development Plans.

- i. Subsection (D.1.a) remove inconsistent language pertaining to notice requirements.
- ii. Subsection (D.1.b) add language clarifying notice requirements for preliminary site plans.
- iii. Subsection (G.1) add language expiring preliminary site development plans if a final development plan is not approved within five (5) years.

- iv. Subsection (G.2) add language requiring a phasing pattern for site development plans over forty (40) acres.
- v. Subsection (G.3) add language clarifying the applicant must submit and obtain approval for a final site development plan within the designated time period for the plan to remain valid.
- vi. Subsection (G.4) add the word “construction” to clarify construction must commence following approval and issuance of building permit.
- vii. Subsection (G.5) clarify the review authority for site development plan time period extensions.
- viii. Subsection (G.5) clarify how a preliminary or final development plans expiration time period may be extended.
- ix. Subsection (G.5) remove inconsistent language pertaining to RP-1 plats and plans.

b. Section 18.40.150 Preliminary Plat.

- i. Subsection (F.2) add language allowing the applicant to request a one (1) year extension on for preliminary plats, approved administratively.
- ii. Subsection (F.2) add language stating that time period for a preliminary plat resets with submittal and approval of each final plat for any phase on the preliminary plat.
- iii. Subsection (F.3) strengthen and clarify phasing plan requirements for preliminary plats over forty (40) acres.
- iv. Subsection (F.4) remove inconsistent language pertaining to RP-1 plats and plans.

c. Section 18.40.160 Final Plat.

- i. Subsection (E.1.b) clarify that final plats must conform to all requirements of the UDO.

Attachment B is the red-line version of all updates as part of UDO18-0002(A) for consideration. Attachment C is a copy of the previous CAI prepared for the December 4, 2018 meeting. The Planning Commission recommended approval of all proposed UDO updates associated with UDO18-0002(A) on November 26, 2018 by a vote of 7-0.

FINANCIAL IMPACT:

MEETING DATE: 3/19/2019

None

ACTION NEEDED:

1. Discuss the proposed amendments. Unless otherwise directed, staff will place Ordinance No. 19-XX (UDO-0002 (A)), on the April 2, 2019 City Council agenda for formal consideration."

ATTACHMENT(S):

- A. UDO History for Plans and Plats
- B. UDO Chapters with redline draft
- C. December 4, 2018 City Council Packet

History of UDO Amendments for Plats and Plans

1985

- Preliminary Plans - expire in 1 year with two - 6 month extensions.
- Final Plans - expire in 2 years with 1 year extensions.
- Preliminary Plats - no expiration.
- Final Plats - no expiration.

1992

- Preliminary Plans - expire in 1 year with 1 year extension.
- Final Plans - expire in 18 months with no extensions.
- Preliminary Plats - expire in 1 year, no extensions if less than 40 acres.
- Final Plats - expire in 18 months with no extensions.

2002

- Preliminary Plans - no expiration.
- Final Plans - expire in 1 year with 1 year extension.
- Preliminary Plats - expire in 1 year, no extensions if less than 40 acres.
- Final Plats - expire in 18 months, with 1 year extension.

2011

- Preliminary Plans - no expiration.
- Final Plans - expire in 2 years, no extensions.
- Preliminary Plats - expire in 1 year, no extensions if less than 40 acres.
- Final Plats - expire in 2 years, with 1 year extension.

2014

- Preliminary Plans - no expiration.
- Final Plans - expire in 2 years, with 6 month extensions.
- Preliminary Plats - expire in 1 year, no extensions if less than 40 acres.
- Final Plats - expire in 2 years, with 1 year extensions.
- All RP-1 approvals with no finals expire if approved prior to June 17, 2014.

2017
Existing

- Preliminary Plans - no expiration.
- Final Plans - expire in 2 years, with 6 month extensions.
- Preliminary Plats - expire in 2 years, no extensions if less than 40 acres.
- Final Plats - expire in 2 years, with 1 year extensions.
- All RP-1 approvals with no finals expire if approved prior to June 17, 2014.

2019
Proposed

- Preliminary Plans - ~~no-expiration:~~ expire in 5 years with extensions.
- Final Plans - expire in 2 years, with ~~6-month~~ 1 year extensions.
- Preliminary Plats - expire in 2 years, with no extensions ~~if less than 40 acres:~~
- Final Plats - expire in 2 years, with 1 year extensions.
- ~~All RP-1 approvals with no finals expire if approved prior to June 17, 2014.~~

18.40.110 Site Development Plans

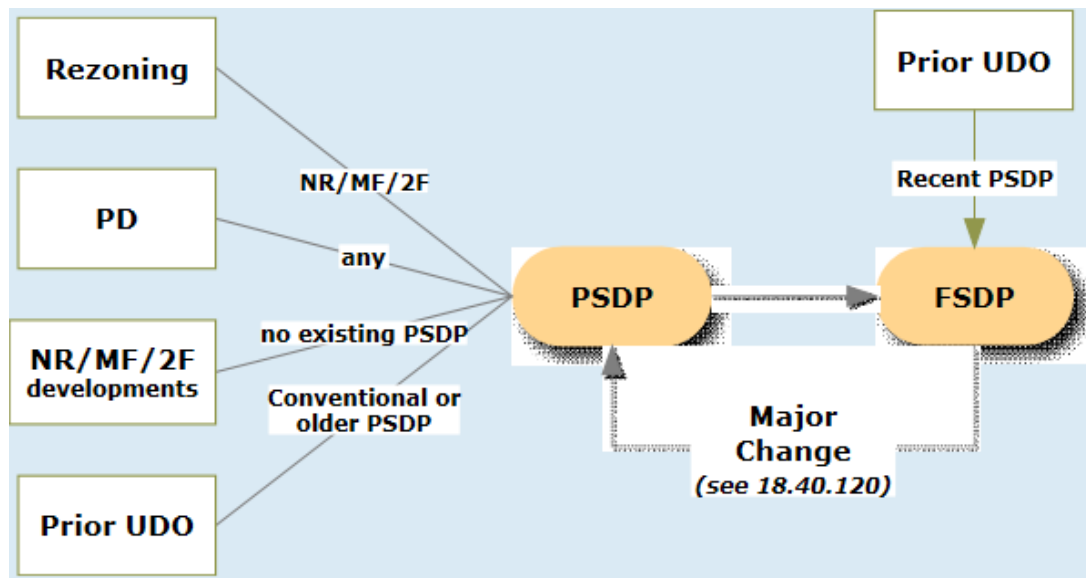
Purpose: A site development plan is a process that allows City staff and the Planning Commission to review significant developments and uses to ensure that they comply with the zoning and development standards in this title, have appropriate design and infrastructure, and comply with any conditions of rezoning, preliminary subdivision plat, or special use permit approval.

A. Applicability

- 1. A preliminary site development plan** is required for:
 - a.** Any application to rezone property:
 - (1)** to a district that allows nonresidential uses or multifamily or two-family dwellings, or
 - (2)** to an "A," "R-1" or "R-2" district where the applicant is proposing a nonresidential development
 - b.** All nonresidential uses, or developments with multifamily or two-family dwellings unless a preliminary site development plan for the proposed development was already approved as part of the existing zoning district, and
 - c.** Any application for approval of a planned development district.
- 2.** If a property is subject to an approved and unexpired preliminary site development plan, a **final site development plan** is required before a building permit application is filed.

B. Initiation

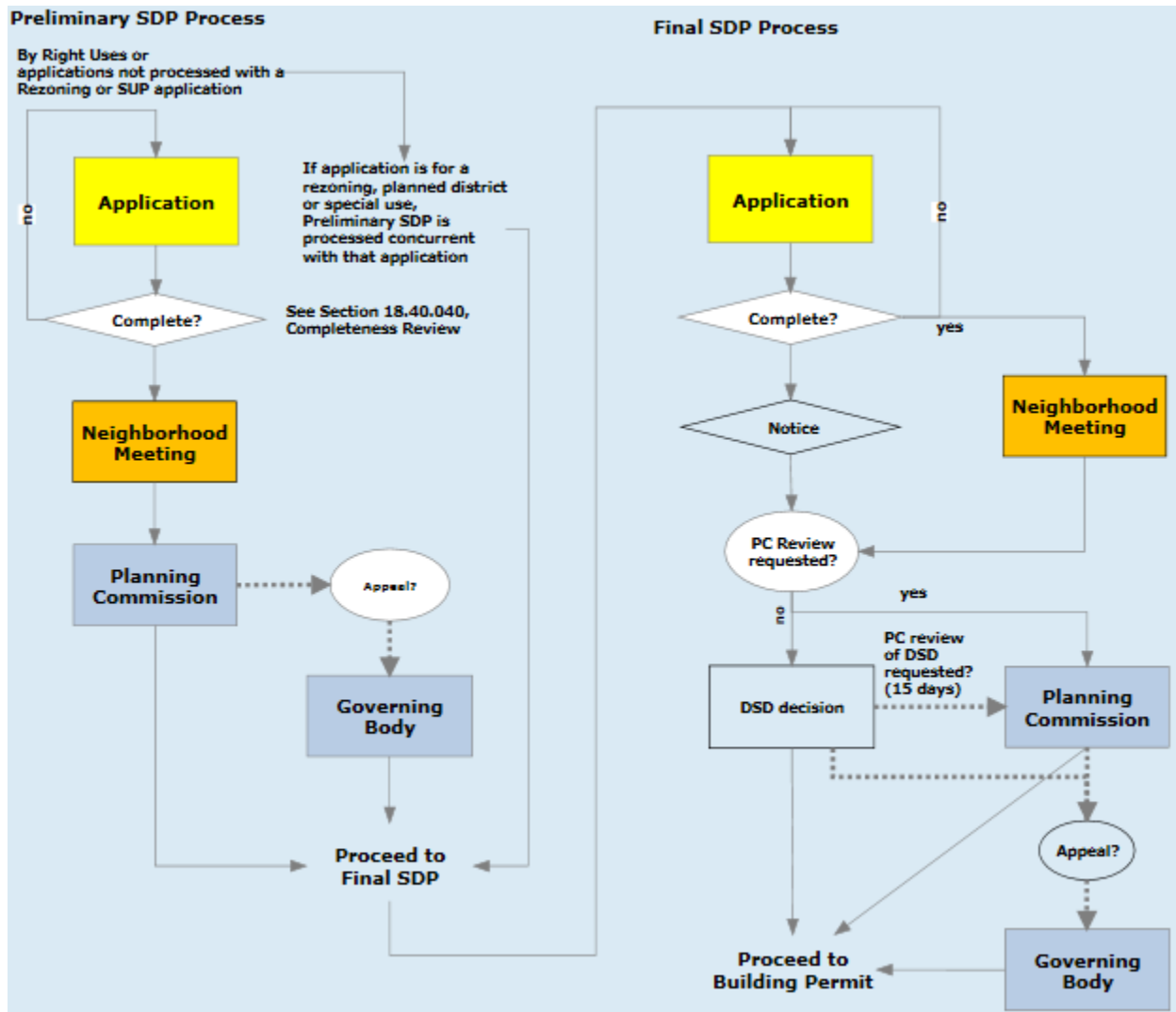
1. Preliminary and final site development plans shall be filed with the Planning Official, and shall include the information required by Chapter [18.94](#).



Editor's Note: This diagram referenced "Substantial Change" in Section [18.40.120](#). This terminology has been changed to "Major Change" to match the text of that section.

2. A neighborhood meeting is required for a preliminary and final site development plan (see Section [18.40.030](#)).

C. Review Process



D. Decision

1. Preliminary Site Development Plan Decision

- a. If the application involves a use that is **permitted by right** in the applicable zoning district, the Planning Commission will approve, conditionally approve, or deny a preliminary site development plan. ~~Notice to surrounding property owners is required (see Section 18.40.050.B).~~ The Planning Commission will render a decision within 30 days, unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.

b. If the application involves a **planned district**, a **rezoning**, or a **special use**, the preliminary site development plan is processed and approved as part of that application. [Notice to surrounding property owners is required \(see Section 18.40.050.B\)](#). The preliminary site development plan may be revised and resubmitted during the review period for the planned district/conditional rezoning or special use permit application review period and approved as part of the conditions of approval. In that case, the Approving Authority is the agency that approves that rezoning or special use.

2. Final Site Development Plan Decision

a. Authority

A final site development plan is approved by the Planning Official, unless the applicant requests Planning Commission review.

b. Planning Official Decisions

If the Planning Official renders a decision on the application:

- (1)** The Planning Official shall render its determination within thirty (30) days after the applicant submits a complete application (see Section [18.40.040](#)), unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.
- (2)** If the Planning Official fails to render a timely decision, the applicant or a surrounding property owner may request Planning Commission review (see subsection [D.2.c](#), below).
- (3)** If the applicant or surrounding property owner does not request Planning Commission review, the Planning Official's determination is final.
- (4)** If an administrative review application is without communication from the applicant for more than six (6) months, the applicant will be required to submit a new application and fees for the final site development plan review to continue.

c. Planning Commission Review

- (1)** The Planning Commission reviews the final site plan if the applicant asks the Planning Commission to review the final site plan within fifteen (15) days of the date of the Planning Official's decision.
- (2)** The Planning Commission will consider the application without a public hearing.
- (3)** The Planning Commission may approve, approve with conditions, or deny the preliminary or final site development plan.
- (4)** The Planning Commission shall render its decision within 30 days after the applicant requests a review. The Planning Commission may extend the time for making a decision if requested by the applicant.

E. Approval Criteria

- 1.** The following criteria apply to the approval, conditional approval or denial of a preliminary site development plan:
 - a.** The plan complies with all applicable requirements of Chapters [18.15](#), [18.20](#), and [18.30](#), and
 - b.** The plan represents an overall development pattern that is consistent with the Comprehensive Plan, the Major Street Map and other adopted planning policies.
- 2.** A final site development plan is approved if it is consistent with the preliminary site development plan as approved, including all conditions of approval, and complies with all applicable requirements of this title. A final site development plan shall not modify or expand the approved preliminary site development plan, except as provided in Section [18.40.120](#).

F. Subsequent Applications

- 1.** When an application for preliminary or final site plan is withdrawn by the applicant or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
- 2.** An application for a major modification to the withdrawn or denied application may be submitted at any time.

G. Scope of Approval

1. Approved preliminary site development plans or final site development plans are valid for ~~two~~five (25) years after ~~final~~ date of approval.

~~2. When a preliminary site development plan containing multiple lots is submitted for approval; the applicant will indicate the anticipated development or phasing pattern for final development. The phasing pattern for development shall include:~~ When a preliminary site development plan containing a gross land area in excess of forty (40) acres is submitted for approval, the applicant will indicate the anticipated development or phasing pattern for final development. For developments which will be built in phases with a gross area less than forty (40) acres the City may require submittal of a phasing plan. The phasing plan for development shall include the following:

- a) Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically (to avoid confusion with lot numbers), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The final phasing plan map should be drawn at the same scale as the preliminary site plan map.
- b) Any deviation from the approved phasing may be approved administratively by the Planning Official.

3. If the applicant fails to submit and obtain approvals for a final site development plan within the time period required in subsection G.1, above, the preliminary site development plan becomes null and void unless the time period is extended.

~~24.~~ If the ~~landowner~~ applicant fails to commence construction by means of issuance of a building permit ~~the planned development~~ within the time period required in subsection G.1, above, the final site development plan becomes null and void unless the time period is extended.

~~35.~~ The ~~Approving Authority~~ Chief Planning and Development Officer may extend the time period of a preliminary or final development plan upon written ~~application request~~ by the ~~landowner applicant~~. Unless otherwise required in a condition of approval, the ~~Approving Authority~~ Chief Planning and Development Officer may extend the time period administratively without a public hearing. The ~~Approving Authority~~ Chief Planning and Development Officer shall extend the time period of either site development plan for up to ~~six (6)~~ twelve (12) months. ~~After~~

~~this time period or at the time the original extension is requested,~~ Upon written request by the applicant, the ~~Approving Authority~~ Governing Body may extend the preliminary or final site development plan for any length of time for cause.

~~46.~~ The applicant may revise an approved final site development plan as provided in Section 18.40.120.

~~5. Any preliminary plat or preliminary development plan for a single-family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

H. Appeals

The applicant or aggrieved party may appeal the disapproval of a preliminary or final site development plan by the Planning Commission to the Governing Body. The applicant shall file a notice of appeal with the Planning Official within ten (10) days following the decision.

I. Recordkeeping

The Planning Division and the applicant shall maintain copies of the preliminary and final site development plan approvals, and all supporting documentation.

J. Abandonment of Final Site Development Plan

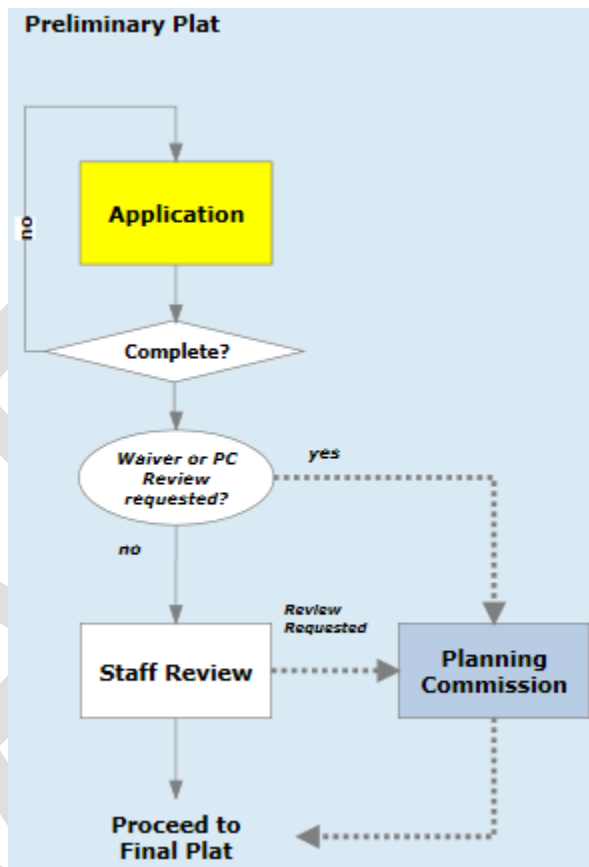
1. If the applicant abandons any part of a site development plan, then the applicant shall notify the City in writing.
2. If any part of a final site development plan is abandoned, no development shall take place on the property until a new final site development plan is approved. (*Ord. 17-52 §§ 22, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 15-16 § 3, 2015*)

18.40.150 Preliminary Plat

Purpose: The preliminary plat process examines the major features and elements of a proposed plat. This process determines whether the plat conforms to this title and the Comprehensive Plan, and any conditions of approval.

A. Applicability

1. The Planning Commission must approve a preliminary plat before a final plat application is filed.
2. A preliminary plat is not considered a "plat" for purposes of KSA [12-752](#). Instead, the preliminary plat is a preapplication process that is designed to ensure that that plat conforms to all applicable requirements of this title. The applicant may request that the City waive the preliminary plat process and proceed directly to the final plat process.



B. Initiation

1. An application for preliminary plat approval is filed with the Planning Official. Preapplication is required.
2. An applicant may substitute a preliminary development plan for a preliminary plat if the preliminary development plan contains all information required for preliminary plats as set forth in Chapter [18.94](#).
3. A neighborhood meeting is required (see Section [18.40.030](#))

⇒ Cross-Reference: [18.40.020](#) (Preapplication)

C. Completeness Review

See Section [18.40.040](#), Completeness Review.

D. Approval Criteria

The Approving Authority shall approve the preliminary plat if it finds that the following criteria are satisfied:

1. The proposed preliminary plat conforms to the requirements of Chapter [18.30](#), the applicable zoning district regulations and any other applicable provisions of the Municipal Code, subject only to acceptable rule exceptions.
2. The subdivision represents an overall development pattern that is consistent with the Comprehensive Plan, Major Street Map, Access Management Plan, and applicable corridor studies and plans.
3. The plat contains a sound, well-conceived parcel and land subdivision layout which is consistent with good land planning and site engineering design principles.
4. The spacing and design of proposed curb cuts, driveway approaches and intersection locations is consistent with the Access Management Plan, good traffic engineering design and public safety considerations.
5. The plat conforms to any existing, unexpired and valid conditions of rezoning, special use permit or site development plan approval.
6. All submission requirements are satisfied.

E. Subsequent Applications

1. When a preliminary plat application is withdrawn or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
2. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

F. Scope of Approval

1. Approval of a preliminary plat does not constitute acceptance of the subdivision, but authorizes preparation of the final plat. No improvements shall take place in the subdivision

prior to approval and recording of the final plat and submittal and approval of street, sanitary sewer, water line and storm sewer construction plans by the City Engineer.

2. Preliminary plat approval is effective for a period of two (2) years, ~~except approval of a final plat for any phase specifically indicated on the preliminary plat shall renew the two (2) year time period.~~ Where a final plat for the subdivision is not submitted for approval within the two (2) year time period, the preliminary plat becomes null and void and the developer shall resubmit a new preliminary plat for approval subject to the then effective regulations.

The Chief Planning and Development Officer may, upon written request by the applicant, administratively grant a one (1) year time extension. Consideration for a time extension shall be based upon, but not limited to:

- a) the developer's ability to adhere to any changes in the Olathe Municipal Code or other applicable regulations, that would impact the proposed development; or
- b) if the developer demonstrates substantial progress towards the design and engineering requirements necessary to submit a final plat.

3. When a preliminary plat containing a gross land area in excess of forty (40) acres is submitted for approval, the applicant ~~will~~ **may** indicate the **anticipated development or phasing pattern** for final platting. The applicant may receive an extension of the one (1) year time limit for submission of the final plat if each phase is constructed in accordance with the original phasing plan and subsequent final plats comply with all applicable regulations at the time of final platting. For developments which will be built in phases with a gross area less than forty (40) acres the City may require submittal of a phasing plan. The phasing plan for development shall include the following:

- a) Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically (to avoid confusion with lot numbers), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The final phasing plan map should be drawn at the same scale as the preliminary plat map.
- b) Any deviation from the approved phasing may be approved administratively by the Planning Official.

~~4. Any preliminary plat or preliminary development plan for a single family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014),~~

~~where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

G. Recordkeeping

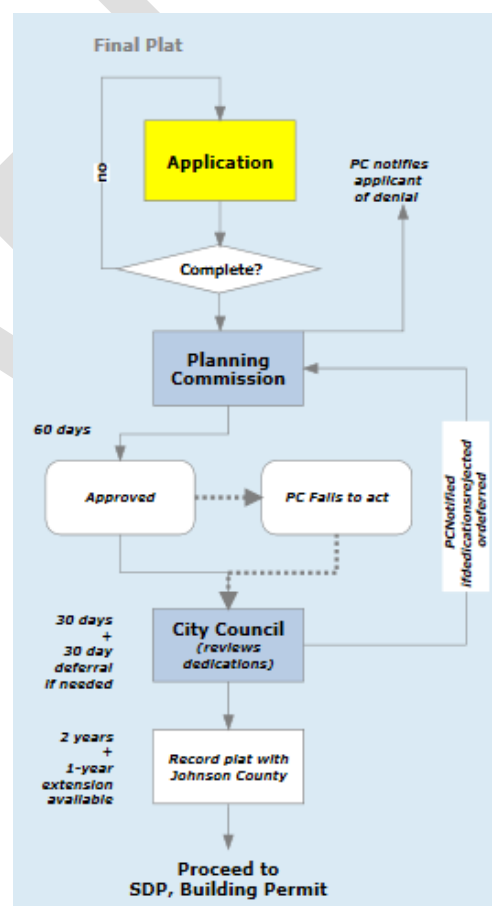
A preliminary plat application is not recorded. The Planning Official will maintain a record of approved preliminary plats. The applicant must maintain a copy of the approved preliminary plat, including any attachments. (Ord. 17-52 §§ 25, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 02-54 § 2, 2002)

18.40.160 Final Plat

Purpose: This section establishes the process to approve formal plats for recording with the Johnson County register of deeds.

A. Applicability

1. This section applies to any formal plat application. Final plat applications are filed after the preliminary plat is approved.
2. The applicant may file a final plat without first seeking preliminary plat approval. However, in that case the applicant must strictly observe all requirements of this title and may not request a modification of any standards established in Chapter [18.30](#). In addition, the Planning Commission will deny the plat if it does not conform to all applicable requirements within the statutory period for approving a plat.



B. Initiation

An application for final plat approval is filed with the Planning Official.

C. Completeness Review

See § [18.40.040](#) Completeness Review.

D. Decision

1. The Planning Commission will consider the final plat without a public hearing, unless the applicant requests a public hearing.
2. The Planning Commission may approve, approve with conditions, or deny the final plat.
3. The Planning Commission shall render its decision within 60 days after its first meeting after the plat is submitted to the Planning Official. If the Planning Commission fails to timely render its decision, the plat is deemed approved.
4. If the final plat is approved or the Planning Commission fails to render a timely decision, the Planning Official shall issue a certificate upon demand.
5. If the Planning Commission finds that the plat does not conform to subsection [E](#) below, it shall notify the owner or owners of that fact. The notice shall be in writing and shall specify in detail the reasons the plat does not conform to subsection E.
6. If the plat conforms to subsection E, the Planning Commission chair shall endorse on the plat the fact that the plat has been submitted to and approved by the Planning Commission. The secretary of the Planning Commission shall attest the chair's signature.
7. After the final plat is approved, the applicant shall submit it to the Governing Body for review if land is proposed to be dedicated for public purposes. The Governing Body shall approve or disapprove the dedication of land for public purposes within thirty (30) days after the first meeting of the Governing Body following the date of the submission of the plat to the City Clerk. The Governing Body may defer action for an additional thirty (30) days for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. No additional filing fees shall be assessed during that period. The Governing Body shall advise the Planning Commission of its reasons for any deferral or disapproval of any dedication. Acceptance of lands and easements dedicated for public purposes that are approved by the Governing Body shall be endorsed on the plat by the Mayor. The City Clerk shall attest the Mayor's signature. (*Ord. 02-54 § 2, 2002*)
8. No plat shall be filed with the Register of Deeds office unless it bears the endorsement that the land dedicated to public purposes is approved by the Governing Body.

9. All conditions to approval of a subdivision by the Planning Commission or the acceptance of dedications of land by the Governing Body, and all waivers granted by the Planning Commission, shall be clearly stated on the final plat prior to its recording. (*Ord. 02-54 § 2, 2002*)

E. Approval Criteria

1. The Planning Commission shall approve a final plat if it determines that:
 - a. The final plat substantially conforms to the approved preliminary plat and any applicable conditions of approval.
 - b. The plat conforms to all applicable requirements of the Municipal Code [and Unified Development Ordinance](#), subject only to approved waivers.
2. If the applicant chooses not to submit a preliminary plat, the final plat is subject to the criteria for approving a preliminary plat and to subsection 1, above.

F. Subsequent Applications

1. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

G. Scope of Approval

1. After the Governing Body endorses its acceptance of lands and easements dedicated for public purposes, the final plat shall be recorded with the Register of Deeds of Johnson County as provided by law. No plat shall be recorded with the Register of Deeds prior to its endorsement by the Mayor.
2. After the applicant provides public improvements assurances and records the final plat, the applicant may construct the improvements shown on the plat and proceed to the building permit approval process.

H. Recordkeeping

1. Final plats shall be recorded with the Register of Deeds office within two (2) years following Governing Body approval of land dedicated to public purposes. Final plats which are not timely recorded are null and void.
2. No plat shall be recorded before the applicant submits satisfactory assurances for construction of public improvements.

I. Final Plat Extensions

- 1.** Requests for final plat extension shall be made in writing to the Planning Official prior to the two (2) year expiration date provided above. Final plat extensions may only be granted by one of the following:
 - a.** The Planning Official may administratively grant a one (1) year extension if no changes are made to any City ordinance, regulation or approved plans that would require a change in the final plat. The applicant may appeal the Planning Official's denial of an extension to the Planning Commission.
 - b.** The Planning Commission, upon appeal from the Planning Official's decision to deny a final plat extension, may grant the one (1) year extension upon finding that the extension will not impact the City's ability to administer current ordinances or regulations.
- 2.** Final plat extensions are subject to all current excise taxes and/or development fees at the time of the extension approval. (*Ord. 15-16 §3, 2015*)

DEPARTMENT: Public Works, Planning Division

STAFF CONTACT: Aimee Nassif, Chief Planning and Development Officer; Shelby Ferguson, Planning Consultant

SUBJECT: UDO18-0002 Amendments to Chapters 18.30, 18.40, 18.50

ITEM DESCRIPTION:

Consideration of Ordinance 18-XX (UDO18-0002) for *Unified Development Ordinance* Amendments.

SUMMARY:

On November 26, 2018, the Planning Commission considered updates to the *Unified Development Ordinance (UDO)* pertaining to Chapters 18.30, 18.40 and 18.50. The November 26th meeting was a result of the City Council's November 1st request that the Planning Commission reconsider its October 22nd recommendation regarding UDO18-0002.

Staff's recommendations presented on November 26th were a result of collaboration with community stakeholders which began in August 2018. Staff's recommendations for reconsideration presented to the Planning Commission on November 26 are as follows:

1. Chapter 18.40 Procedures

a. Section 18.40.110 Site Development Plans

- i. Subsection (G.1) add language expiring preliminary site development plans, if a final development plan is not approved within two (2) years.
- ii. Subsection (G.2) add language requiring a phasing pattern for site development plans which include multiple lots.
- iii. Subsection (G.3) add language clarifying the applicant must submit and obtain approval for a final site development plan within the designated time period for the plan to remain valid.
- iv. Subsection (G.4) add the word "construction" to clarify construction must commence following approval and issuance of building permit.
- v. Subsection (G.5) clarify the review authority for site development plan time period extensions.
- vi. Subsection (G.5) clarify how a preliminary or final development plans expiration time period may be extended.

b. Section 18.40.150 Preliminary Plat

- i. Subsection (F.2) add language allowing the applicant to request a one (1) year extension on for preliminary plats, approved administratively.
- ii. Subsection (F.3) strengthen and clarify phasing plan requirements for preliminary plats over forty (40) acres.

Updates to the UDO for the expiration of preliminary plans and plats (18.40 Procedures) were originally presented to the City Council on June 19, 2018. On August 21, 2018 updates for vibration standards for Quarries and Mines (18.30 Development Standards and 18.50 Supplemental Use Regulations) were presented. After the June and August meetings, staff continued to research and seek input from community stakeholders.

The procedures updates will streamline the process, provide for additional time extensions, and clarify requirements for plans and plats. The amendments pertaining to quarries and mines will remove inconsistency in blasting regulations, consolidate all quarry and mine operation standards in a single section of code and clarify language for setbacks when near residential property lines.

Staff informed all stakeholders who had been engaged with us regarding future meeting dates and submission deadlines for agenda packets. Written comments received by staff were included in the November 26 Planning Commission packet pertaining to these updates.

While City Council requested specific sections of the UDO updates be reconsidered, for administrative purposes, all amendments, including those recommended for approval by the Planning Commission in October, have remained as a single, comprehensive UDO package known as UDO18-0002.

The following is the list of all UDO updates for consideration as part of UDO18-0002:

1. Chapter 18.30 Development Standards

Section 18.30.190 Performance Standards

- i. Subsection (C) add language directing the reader to Section 18.50.160.
- ii. Subsection (C) renumber section within subsection C.

2. Chapter 18.40 Procedures**a. Section 18.40.110 Site Development Plans.**

- i. Subsection (D.1.a) remove inconsistent language pertaining to notice requirements.
- ii. Subsection (D.1.b) add language clarifying notice requirements for preliminary site plans.
- iii. Subsection (G.1) add language expiring preliminary site development plans if a final development plan is not approved within five (5) years.
- iv. Subsection (G.2) add language requiring a phasing pattern for site development plans over forty (40) acres.
- v. Subsection (G.3) add language clarifying the applicant must submit and obtain approval for a final site development plan within the designated time period for the plan to remain valid.
- vi. Subsection (G.4) add the word “construction” to clarify construction must commence following approval and issuance of building permit.
- vii. Subsection (G.5) clarify the review authority for site development plan time period extensions.
- viii. Subsection (G.5) clarify how a preliminary or final development plans expiration time period may be extended.
- ix. Subsection (G.5) remove inconsistent language pertaining to RP-1 plats and plans.

b. Section 18.40.150 Preliminary Plat.

- i. Subsection (F.2) add language allowing the applicant to request a one (1) year extension on for preliminary plats, approved administratively.
- ii. Subsection (F.2) add language stating that time period for a preliminary plat resets with submittal and approval of each final plat for any phase on the preliminary plat.
- iii. Subsection (F.3) strengthen and clarify phasing plan requirements for preliminary plats over forty (40) acres.

- iv. Subsection (F.4) remove inconsistent language pertaining to RP-1 plats and plans.

c. Section 18.40.160 Final Plat.

- i. Subsection (E.1.b) clarify that final plats must conform to all requirements of the UDO.

3. Chapter 18.50 Supplemental Use Regulations

Section 18.50.160

- i. Subsection (B) add language referencing Title 16 of Municipal Code requirements shall be followed.
- ii. Subsection (D.1.b) increase setback requirements for above ground operations.
- iii. Subsection (D.4) remove unnecessary verbiage.
- iv. Subsection (D.5) add and clarify setback requirements removed from subsection D.4.
- v. Subsection (F) remove vibration standards for consistency with Title 16 of the Municipal Code.

After staff's presentation to the Planning Commission on November 26th, the Planning Commission discussed staff's recommendations. Commissioner Rinke noted that he was not in favor of removing a nuisance standard from the UDO pertaining to vibration levels for blasting at quarries and mines. The Planning Commission recommended approval by a vote of 7-0 of UDO18-0002 as presented. Attachment A is the Ordinance for UDO18-0002 which contains the red-line version of all amendments for consideration. The subsequent attachments provide a history of this process, including previous red-lines, public comments, and staff reports.

FINANCIAL IMPACT:

None

ACTION NEEDED:

1. Approve Ordinance No. 18-XX regarding the 2018 Update to the City of Olathe Unified Development Ordinance (UDO18-0002).
-

ATTACHMENT(S):

- A. Ordinance No. 18-XX (UDO18-0002)
- B. November 26, 2018 Planning Commission Packet
- C. November 26, 2018 Planning Commission Meeting Minutes
- D. October 22, 2018 Planning Commission Packet
- E. October 22, 2018 Planning Commission Meeting Minutes

ORDINANCE NO. 18-59

AN ORDINANCE AMENDING SECTIONS 18.01.020, 18.30.190, 18.40.110, 18.40.150, 18.40.160, AND 18.50.160, OF THE OLATHE MUNICIPAL CODE PERTAINING TO THE UNIFIED DEVELOPMENT ORDINANCE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

WHEREAS, on June 17, 2014, the Governing Body of the City of Olathe adopted Ordinance No. 14-39, the *Unified Development Ordinance*; and

WHEREAS, the Governing Body directed staff and the Planning Commission to proceed with consideration of amendments to the Unified Development Ordinance on an annual basis; and

WHEREAS, proposed amendments (UDO18-0002) to the *Unified Development Ordinance* were reviewed at a planning session with the Governing Body on June 19, 2018 and August 21, 2018; and

WHEREAS, proposed amendments to the *Unified Development Ordinance* were discussed at a Planning Commission workshop on October 8, 2018; and

WHEREAS, on October 22, 2018 the Planning Commission held a public hearing and recommended approval as presented for sections 18.30.190, 18.40.40110.G.5, 18.40.150F.4, 18.40.160 and 18.50.160 and recommend no updates for sections 18.40.110.G.1-5 and 18.40.150.F.2 & 3; and

WHEREAS, on November 1, 2018, the Governing Body returned UDO-18-0002 to the Planning Commission for reconsideration ; and

WHEREAS, on November 26, 2018, the Planning Commission reviewed and reconsidered the proposed amendments and recommended approval of the amendments as presented at that meeting; and

WHEREAS, the Governing Body reviewed the Planning Commission's November 26, 2018 recommendation and concurs with its recommendation.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

SECTION ONE: Section 18.01.020 of the Olathe Municipal Code (Unified Development Ordinance) is hereby amended to read as follows:

"18.01.020 Marked Copies of Ordinance on File. There shall not be less than three (3) copies of the Unified Development Ordinance, adopted by reference in Section 18.01.010 kept on file in the office of the City Clerk, to which shall be attached a copy of the incorporating ordinance, marked or stamped "Official Copies as Incorporated by Ordinance No. 14-39, as amended by Ordinance No. 15-16, Ordinance No. 16-20, Ordinance No. 16-51, Ordinance No. 17-01, Ordinance No. 17-52, Ordinance 18-48 [and Ordinance No. 18-59](#)," and open to inspection by the public at all reasonable hours. The police department, municipal judges, and all other departments of the City charged with the enforcement of the Unified Development Ordinance shall be supplied, at the cost of the City, with such number of official copies of such ordinance as may be deemed expedient."

SECTION TWO: Section 18.30.190 of the Olathe Municipal Code (Unified Development Ordinance) is hereby amended to read as follows:

“18.30.190 Performance Standards

In some districts, performance standards capable of quantitative measurement are established. Except to the extent modified in the specific zoning district regulations, the following general provisions apply to measure compliance with those performance standards.

A. Noise

See Noise Control Ordinance (Chapter [6.18](#) of the Municipal Code).

B. Smoke and Particulate Matter

1. The Ringlemann Chart, as adopted and published by the United States Department of Interior, Bureau of Mines, shall be used to determine the density of equivalent opacity of smoke. The Ringlemann number indicated as the performance standard in certain zoning districts refers to the number of the area of the Ringlemann Chart that coincides most nearly with the visual density of equivalent opacity of the emission of smoke observed.
2. Within the M-1, M-2 and M-3 zoning districts, no use shall be permitted or operated so that smoke darker than Ringlemann No. 1 is produced from any vent, stack or chimney. However, emission of smoke darker than Ringlemann No. 2 is allowed for a duration of up to four (4) minutes during any eight (8) hour period if the emission is located no closer than two hundred fifty (250) feet from property zoned AG, any residential zoning district, N, or the residential areas of planned developments.
3. Particulate matter emissions, in excess of the threshold limit values caused by the wind from open storage areas, yards, roads, etc., within lot lines shall be kept to a minimum by appropriate landscaping, paving, oiling, wetting and other means, or shall be eliminated.

C. Vibration

1. Vibration standards for any use, other than quarries and mines, are found within this section. For minimum standards for quarry and mine operations, see section 18.50.160 of this UDO.

~~1~~**2.** Within the M-1, M-2 and M-3 zoning districts, no use may generate any ground-transmitted vibration in excess of one tenth (.10) inch per second measured at the property line, or in excess of two-one hundredths (.02) inch per second measured at any residential property line. These values may be multiplied by two (2) for impact vibrations, i.e., discrete vibration pulsations not exceeding one (1) second in duration and having a pause of at least one (1) second between pulses.

Vibrations are measured in particle velocity and are to be measured at the property line or other designated location.

32. A three-component measuring system capable of simultaneous measurement of vibration in three mutually perpendicular directions shall be used to measure vibrations.

43. The vibration maximums indicated as the performance standard in certain zoning districts may be measured directly with suitable instrumentation or computed on the basis of displacement and frequency. When computed, the following formula shall be used:

$$PV = 6.28 F \times D$$

Where:

PV = particle velocity, inches-per second

F = vibration frequency, cycles-per second

D = single amplitude displacement of the vibration,
inches

54. The maximum particle velocity shall be in the maximum vector sum of three mutually perpendicular components recorded simultaneously.

65. Unless specifically indicated to the contrary in the zoning district regulations, vibration resulting from temporary construction activity that occurs between 7:00 AM and 7:00 PM is exempt from the indicated performance standard.

D. Glare

See Lighting (Section [18.30.135](#)).

1. Within the M-1, M-2 and M-3 districts, direct or sky-reflected glare, from floodlights or from high temperature processes such as combustion or welding, shall not be directed into any adjoining property.

E. Heat

Within the M-1, M-2 and M-3 districts, heat from furnaces, processing equipment, or other devices shall be contained so that the temperature of air or materials is raised no more than five (5) degrees Fahrenheit as measured at all property lines.

F. Emissions

Within the M-1, M-2 and M-3 districts, the maximum rate of emission of dust and other particulate matter from all sources within the boundaries of any lot or tract shall not exceed one (1) pound per hour per acre of lot area.

G. Air Contaminants (such as Odors and Fumes)

Within the M-1, M-2 and M-3 districts, the emission of air contaminants created by industrial processes shall comply with the Kansas Air Quality Act, K.S.A. § [65-3002](#) and any adopted state regulations. All air contaminants shall be contained so that no odors or fumes may be sensed at the property line of any residential zoning district.

H. Electrical Issues

Within the M-1, M-2 and M-3 districts, activity which creates any off-site electrical disturbance, or contributes to interference with electronic signals (including television and radio broadcasting transmissions) shall be prohibited.

I. Toxic or Flammable Liquids

Storage of toxic or flammable liquids such as gasoline, oil or grease, where not stored underground, shall occur in such a manner that a secondary storage system is provided with capacity as specified by the Fire Code.”

SECTION THREE: Section 18.40.110 of the Olathe Municipal Code (Unified Development Ordinance) is hereby amended to read as follows:

“18.40.110 Site Development Plans

Purpose: A site development plan is a process that allows City staff and the Planning Commission to review significant developments and uses to ensure that they comply with the zoning and development standards in this title, have appropriate design and infrastructure, and comply with any conditions of rezoning, preliminary subdivision plat, or special use permit approval.

A. Applicability

1. A preliminary site development plan is required for:

a. Any application to rezone property:

(1) to a district that allows nonresidential uses or multifamily or two-family dwellings,
or

(2) to an “A,” “R-1” or “R-2” district where the applicant is proposing a nonresidential development

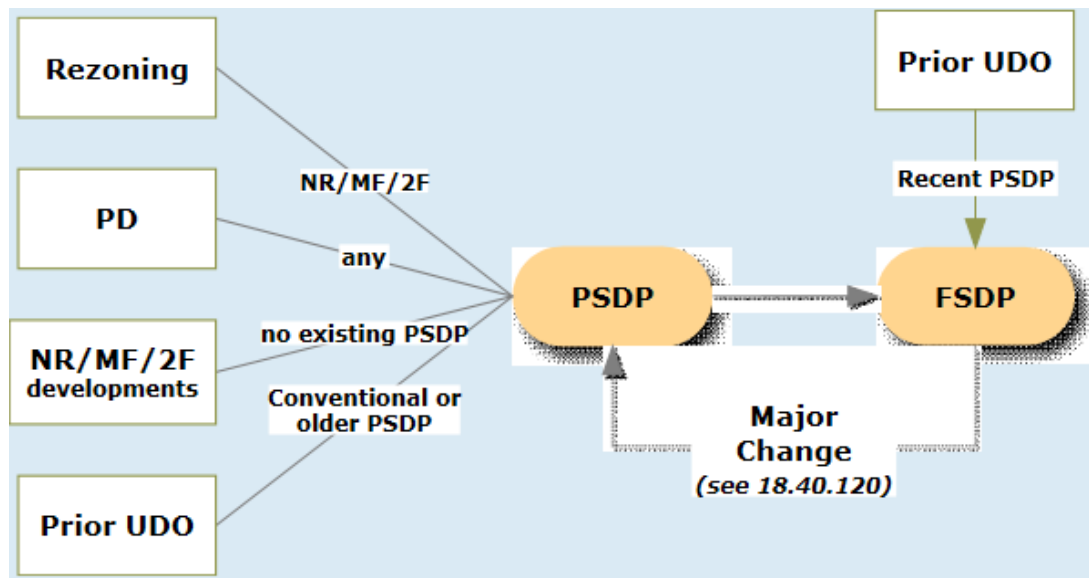
b. All nonresidential uses, or developments with multifamily or two-family dwellings unless a preliminary site development plan for the proposed development was already approved as part of the existing zoning district, and

c. Any application for approval of a planned development district.

2. If a property is subject to an approved and unexpired preliminary site development plan, a **final site development plan** is required before a building permit application is filed.

B. Initiation

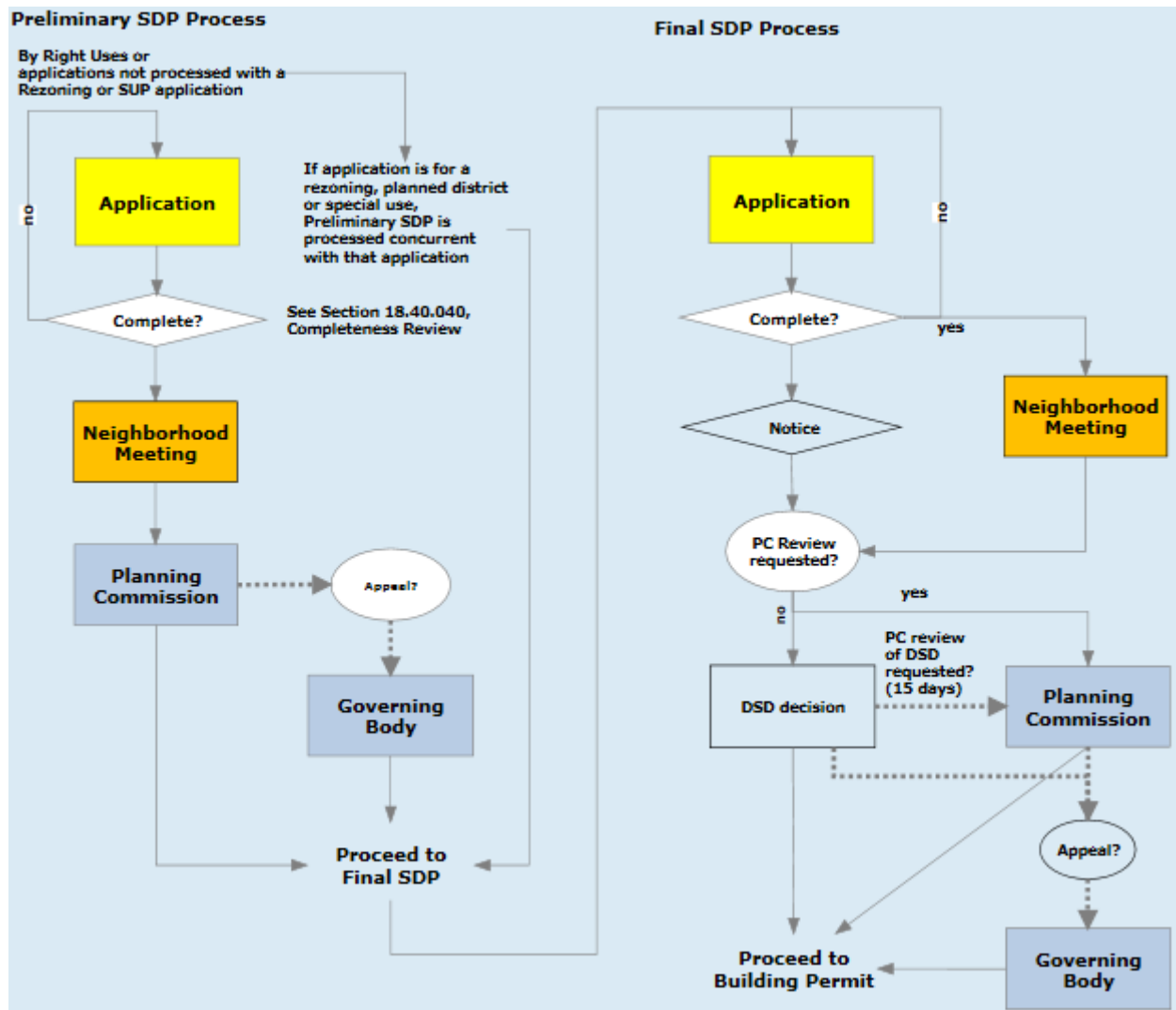
1. Preliminary and final site development plans shall be filed with the Planning Official, and shall include the information required by Chapter [18.94](#).



Editor’s Note: This diagram referenced “Substantial Change” in Section [18.40.120](#). This terminology has been changed to “Major Change” to match the text of that section.

2. A neighborhood meeting is required for a preliminary and final site development plan (see Section [18.40.030](#)).

C. Review Process



D. Decision

1. Preliminary Site Development Plan Decision

a. If the application involves a use that is **permitted by right** in the applicable zoning district, the Planning Commission will approve, conditionally approve, or deny a preliminary site development plan. ~~Notice to surrounding property owners is required (see Section 18.40.050.B).~~ The Planning Commission will render a decision within 30 days, unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.

b. If the application involves a **planned district**, a **rezoning**, or a **special use**, the preliminary site development plan is processed and approved as part of that application.

[Notice to surrounding property owners is required \(see Section 18.40.050.B\).](#) The preliminary site development plan may be revised and resubmitted during the review period for the planned district/conditional rezoning or special use permit application review period and approved as part of the conditions of approval. In that case, the Approving Authority is the agency that approves that rezoning or special use.

2. Final Site Development Plan Decision

a. Authority

A final site development plan is approved by the Planning Official, unless the applicant requests Planning Commission review.

b. Planning Official Decisions

If the Planning Official renders a decision on the application:

- (1) The Planning Official shall render its determination within thirty (30) days after the applicant submits a complete application (see Section [18.40.040](#)), unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.
- (2) If the Planning Official fails to render a timely decision, the applicant or a surrounding property owner may request Planning Commission review (see subsection [D.2.c](#), below).
- (3) If the applicant or surrounding property owner does not request Planning Commission review, the Planning Official's determination is final.
- (4) If an administrative review application is without communication from the applicant for more than six (6) months, the applicant will be required to submit a new application and fees for the final site development plan review to continue.

c. Planning Commission Review

- (1) The Planning Commission reviews the final site plan if the applicant asks the Planning Commission to review the final site plan within fifteen (15) days of the date of the Planning Official's decision.
- (2) The Planning Commission will consider the application without a public hearing.
- (3) The Planning Commission may approve, approve with conditions, or deny the preliminary or final site development plan.

(4) The Planning Commission shall render its decision within 30 days after the applicant requests a review. The Planning Commission may extend the time for making a decision if requested by the applicant.

E. Approval Criteria

1. The following criteria apply to the approval, conditional approval or denial of a preliminary site development plan:

- a. The plan complies with all applicable requirements of Chapters [18.15](#), [18.20](#), and [18.30](#), and
- b. The plan represents an overall development pattern that is consistent with the Comprehensive Plan, the Major Street Map and other adopted planning policies.

2. A final site development plan is approved if it is consistent with the preliminary site development plan as approved, including all conditions of approval, and complies with all applicable requirements of this title. A final site development plan shall not modify or expand the approved preliminary site development plan, except as provided in Section [18.40.120](#).

F. Subsequent Applications

- 1. When an application for preliminary or final site plan is withdrawn by the applicant or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
- 2. An application for a major modification to the withdrawn or denied application may be submitted at any time.

G. Scope of Approval

1. Approved [preliminary site development plans](#) or final site development plans are valid for [five](#) ~~(5)~~ ~~2-two~~ years after ~~final~~ [date of](#) approval.

[2. When a preliminary site development plan containing a gross land area in excess of forty \(40\) acres is submitted for approval, the applicant will indicate the anticipated development or phasing pattern for final development. For developments which will be built in phases with a gross area less than forty \(40\) acres the City may require submittal of a phasing plan. The phasing plan for development shall include the following:](#)

- a) [Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically \(to avoid confusion with lot numbers\), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The](#)

final phasing plan map should be drawn at the same scale as the preliminary site plan map.

- b) Any deviation from the approved phasing may be approved administratively by the Planning Official.

3. If the applicant fails to submit and obtain approvals for a final site development plan within the time period required in subsection G.1, above, the preliminary site development plan becomes null and void unless the time period is extended.

~~24.~~ If the ~~landowner~~ applicant fails to commence construction by means of issuance of a building permit ~~the planned development~~ within the time period required in subsection G.1, above, the final site development plan becomes null and void unless the time period is extended.

~~35.~~ The ~~Approving Authority~~ Chief Planning and Development Officer may extend the time period of a preliminary or final development plan upon written ~~application request~~ by the ~~landowner~~ applicant. Unless otherwise required in a condition of approval, the ~~Approving Authority~~ Chief Planning and Development Officer may extend the time period administratively without a public hearing. The ~~Approving Authority~~ Chief Planning and Development Officer shall extend the time period of either site development plan for up to ~~six (6)~~ twelve (12) months. ~~After this time period or at the time the original extension is requested,~~ Upon written request by the applicant, the ~~Approving Authority~~ Governing Body may extend the preliminary or final site development plan for any length of time for cause.

~~46.~~ The applicant may revise an approved final site development plan as provided in Section 18.40.120.

~~5. Any preliminary plat or preliminary development plan for a single-family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

H. Appeals

The applicant or aggrieved party may appeal the disapproval of a preliminary or final site development plan by the Planning Commission to the Governing Body. The applicant shall file a notice of appeal with the Planning Official within ten (10) days following the decision.

I. Recordkeeping

The Planning Division and the applicant shall maintain copies of the preliminary and final site development plan approvals, and all supporting documentation.

J. Abandonment of Final Site Development Plan

1. If the applicant abandons any part of a site development plan, then the applicant shall notify the City in writing.
2. If any part of a final site development plan is abandoned, no development shall take place on the property until a new final site development plan is approved. (Ord. 17-52 §§ 22, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 15-16 § 3, 2015)”

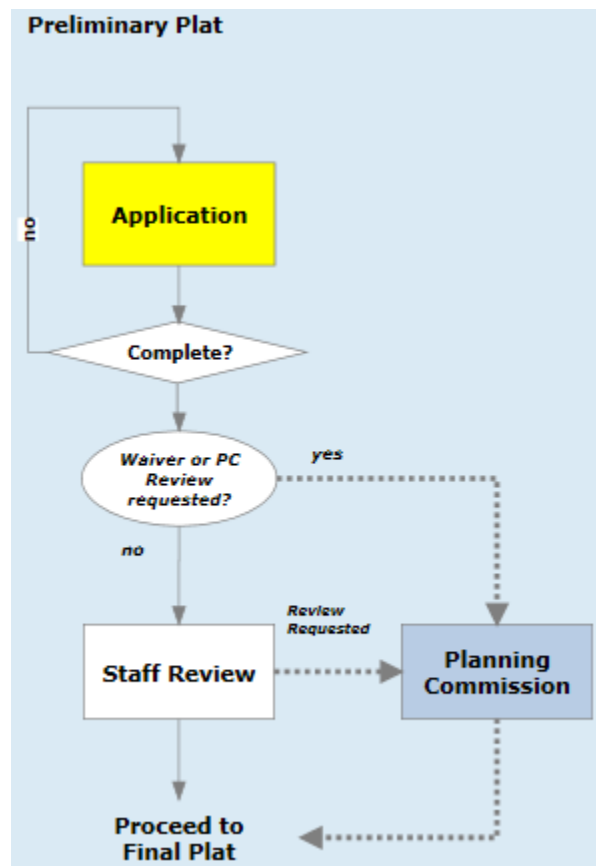
SECTION FOUR: Section 18.40.150 of the Olathe Municipal Code (Unified Development Ordinance) is hereby amended to read as follows:

“18.40.150 Preliminary Plat

Purpose: The preliminary plat process examines the major features and elements of a proposed plat. This process determines whether the plat conforms to this title and the Comprehensive Plan, and any conditions of approval.

A. Applicability

1. The Planning Commission must approve a preliminary plat before a final plat application is filed.
2. A preliminary plat is not considered a “plat” for purposes of KSA [12-752](#). Instead, the preliminary plat is a preapplication process that is designed to ensure that that plat conforms to all applicable requirements of this title. The applicant may request that the City waive the preliminary plat process and proceed directly to the final plat process.



B. Initiation

1. An application for preliminary plat approval is filed with the Planning Official. Preapplication is required.
2. An applicant may substitute a preliminary development plan for a preliminary plat if the preliminary development plan contains all information required for preliminary plats as set forth in Chapter [18.94](#).
3. A neighborhood meeting is required (see Section [18.40.030](#))

↔ *Cross-Reference:* [18.40.020](#) (*Preapplication*)

C. Completeness Review

See Section [18.40.040](#), Completeness Review.

D. Approval Criteria

The Approving Authority shall approve the preliminary plat if it finds that the following criteria are satisfied:

1. The proposed preliminary plat conforms to the requirements of Chapter [18.30](#), the applicable zoning district regulations and any other applicable provisions of the Municipal Code, subject only to acceptable rule exceptions.
2. The subdivision represents an overall development pattern that is consistent with the Comprehensive Plan, Major Street Map, Access Management Plan, and applicable corridor studies and plans.
3. The plat contains a sound, well-conceived parcel and land subdivision layout which is consistent with good land planning and site engineering design principles.
4. The spacing and design of proposed curb cuts, driveway approaches and intersection locations is consistent with the Access Management Plan, good traffic engineering design and public safety considerations.
5. The plat conforms to any existing, unexpired and valid conditions of rezoning, special use permit or site development plan approval.
6. All submission requirements are satisfied.

E. Subsequent Applications

1. When a preliminary plat application is withdrawn or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
2. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

F. Scope of Approval

1. Approval of a preliminary plat does not constitute acceptance of the subdivision, but authorizes preparation of the final plat. No improvements shall take place in the subdivision prior to approval and recording of the final plat and submittal and approval of street, sanitary sewer, water line and storm sewer construction plans by the City Engineer.
2. Preliminary plat approval is effective for a period of two (2) years, ~~except approval of a final plat for any phase specifically indicated on the preliminary plat shall renew the two (2) year time period.~~ Where a final plat for the subdivision is not submitted for approval within the two (2) year time period, the preliminary plat becomes null and void and the developer shall resubmit a new preliminary plat for approval subject to the then effective regulations.

The Chief Planning and Development Officer may, upon written request by the applicant, administratively grant a one (1) year time extension. Consideration for a time extension shall be based upon, but not limited to:

- a) the developer's ability to adhere to any changes in the Olathe Municipal Code or other applicable regulations, that would impact the proposed development; or
 - b) if the developer demonstrates substantial progress towards the design and engineering requirements necessary to submit a final plat.
3. When a preliminary plat containing a gross land area in excess of forty (40) acres is submitted for approval, the applicant ~~will~~ **may** indicate the **anticipated development or phasing pattern** for final platting. The applicant may receive an extension of the one (1) year time limit for submission of the final plat if each phase is constructed in accordance with the original phasing plan and subsequent final plats comply with all applicable regulations at the time of final platting. For developments which will be built in phases with a gross area less than forty (40) acres the City may require submittal of a phasing plan. The phasing plan for development shall include the following:
 - a) Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically (to avoid confusion with

lot numbers), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The final phasing plan map should be drawn at the same scale as the preliminary plat map.

- b) Any deviation from the approved phasing may be approved administratively by the Planning Official.

~~4. Any preliminary plat or preliminary development plan for a single-family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

G. Recordkeeping

A preliminary plat application is not recorded. The Planning Official will maintain a record of approved preliminary plats. The applicant must maintain a copy of the approved preliminary plat, including any attachments. (Ord. 17-52 §§ 25, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 02-54 § 2, 2002)”

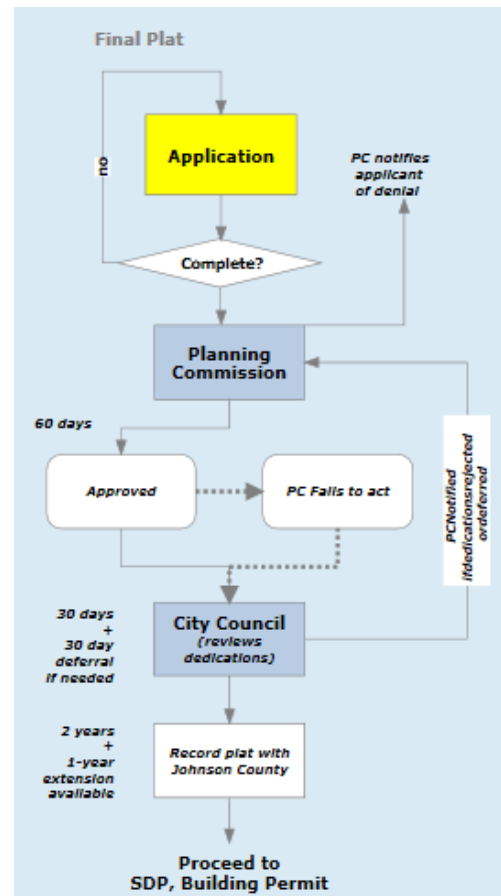
SECTION FIVE: Section 18.40.160 of the Olathe Municipal Code (Unified Development Ordinance) is hereby amended to read as follows:

“18.40.160 Final Plat

Purpose: This section establishes the process to approve formal plats for recording with the Johnson County register of deeds.

A. Applicability

1. This section applies to any formal plat application. Final plat applications are filed after the preliminary plat is approved.
2. The applicant may file a final plat without first seeking preliminary plat approval. However, in that case the applicant must strictly observe all requirements of this title and may not request a modification of any standards established in Chapter [18.30](#). In addition, the Planning Commission will deny the plat if it does not conform to all applicable requirements within the statutory period for approving a plat.



B. Initiation

An application for final plat approval is filed with the Planning Official.

C. Completeness Review

See § [18.40.040](#) Completeness Review.

D. Decision

1. The Planning Commission will consider the final plat without a public hearing, unless the applicant requests a public hearing.
2. The Planning Commission may approve, approve with conditions, or deny the final plat.
3. The Planning Commission shall render its decision within 60 days after its first meeting after the plat is submitted to the Planning Official. If the Planning Commission fails to timely render its decision, the plat is deemed approved.
4. If the final plat is approved or the Planning Commission fails to render a timely decision, the Planning Official shall issue a certificate upon demand.
5. If the Planning Commission finds that the plat does not conform to subsection [E](#) below, it shall notify the owner or owners of that fact. The notice shall be in writing and shall specify in detail the reasons the plat does not conform to subsection E.
6. If the plat conforms to subsection E, the Planning Commission chair shall endorse on the plat the fact that the plat has been submitted to and approved by the Planning Commission. The secretary of the Planning Commission shall attest the chair's signature.
7. After the final plat is approved, the applicant shall submit it to the Governing Body for review if land is proposed to be dedicated for public purposes. The Governing Body shall approve or disapprove the dedication of land for public purposes within thirty (30) days after the first meeting of the Governing Body following the date of the submission of the plat to the City Clerk. The Governing Body may defer action for an additional thirty (30) days for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. No additional filing fees shall be assessed during that period. The Governing Body shall advise the Planning Commission of its reasons for any deferral or disapproval of any dedication. Acceptance of lands and easements dedicated for public purposes that are approved by the Governing Body shall be endorsed on the plat by the Mayor. The City Clerk shall attest the Mayor's signature. (*Ord. 02-54 § 2, 2002*)
8. No plat shall be filed with the Register of Deeds office unless it bears the endorsement that the land dedicated to public purposes is approved by the Governing Body.

9. All conditions to approval of a subdivision by the Planning Commission or the acceptance of dedications of land by the Governing Body, and all waivers granted by the Planning Commission, shall be clearly stated on the final plat prior to its recording. (*Ord. 02-54 § 2, 2002*)

E. Approval Criteria

1. The Planning Commission shall approve a final plat if it determines that:
 - a. The final plat substantially conforms to the approved preliminary plat and any applicable conditions of approval.
 - b. The plat conforms to all applicable requirements of the Municipal Code [and Unified Development Ordinance](#), subject only to approved waivers.
2. If the applicant chooses not to submit a preliminary plat, the final plat is subject to the criteria for approving a preliminary plat and to subsection 1, above.

F. Subsequent Applications

1. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

G. Scope of Approval

1. After the Governing Body endorses its acceptance of lands and easements dedicated for public purposes, the final plat shall be recorded with the Register of Deeds of Johnson County as provided by law. No plat shall be recorded with the Register of Deeds prior to its endorsement by the Mayor.
2. After the applicant provides public improvements assurances and records the final plat, the applicant may construct the improvements shown on the plat and proceed to the building permit approval process.

H. Recordkeeping

1. Final plats shall be recorded with the Register of Deeds office within two (2) years following Governing Body approval of land dedicated to public purposes. Final plats which are not timely recorded are null and void.
2. No plat shall be recorded before the applicant submits satisfactory assurances for construction of public improvements.

I. Final Plat Extensions

1. Requests for final plat extension shall be made in writing to the Planning Official prior to the two (2) year expiration date provided above. Final plat extensions may only be granted by one of the following:

a. The Planning Official may administratively grant a one (1) year extension if no changes are made to any City ordinance, regulation or approved plans that would require a change in the final plat. The applicant may appeal the Planning Official's denial of an extension to the Planning Commission.

b. The Planning Commission, upon appeal from the Planning Official's decision to deny a final plat extension, may grant the one (1) year extension upon finding that the extension will not impact the City's ability to administer current ordinances or regulations.

2. Final plat extensions are subject to all current excise taxes and/or development fees at the time of the extension approval. (Ord. 15-16 §3, 2015)"

SECTION SIX: Section 18.50.160 of the Olathe Municipal Code (Unified Development Ordinance) is hereby amended to read as follows:

"18.50.160 Quarries and Mines

Purpose. This section regulates the externalities of quarries.

A. Applicability

This section applies to mines or quarries.

B. Generally

~~All M~~mines and quarries shall follow all Federal, State, and ~~local Olathe Municipal Code guidelines~~ and requirements, including those found in Title 16 of the Olathe Municipal Code as well as requirements found in any special use permit governing a specific site. for blasting and vibration. In the event that multiple requirements exist, including those for blasting and vibration, the stricter standard shall be controlling over the land use activity on the site.

C. Roads

1. Proposed quarry operations shall provide or have direct access to a public road.
2. Public and private roads shall be hard-surfaced and built to carry the heavy loads that are generated from quarry operations.

D. Setbacks for Above-Ground Operations

1. All above-ground operations shall be located at least:
 - a. One hundred (100) feet from any property line except as provided below.
 - b. One thousand (1,000) feet from an existing residence or [the nearest property line of](#) a residentially zoned property, [whichever achieves the greatest overall setback](#).
2. The Planning Commission or Governing Body may reduce the property line setback where it abuts a highway or railroad right-of-way by up to fifty (50) percent.
3. The Planning Commission or Governing Body may reduce the residential setback by up to ninety (90) percent if the applicant shows that compliance with the City ordinances related to noise, dust, visibility and operations will adequately protect the residents from the above-ground operations, or upon approval of the residence owner.
4. The above setbacks may be increased upon the City's determination that wider setbacks are warranted ~~in order~~ to mitigate adverse impacts. ~~All above-ground operations located next to existing mine or quarry operations require no setback, and may be immediately adjacent.~~
- [5. A setback for above-ground operation is not required when the operation is located contiguous to another existing mine or quarry operation.](#)

E. Setbacks for Below-Ground Operations

All below-ground operations shall be located at least two hundred (200) feet from the nearest property line, measured laterally.

~~F. Vibration~~

- ~~1. Ground-transmitted vibration shall not exceed two-tenths (0.20) inches per second at the property line or two-hundredths (0.02) inches per second measured at any residential property line.~~
- ~~2. These values may be multiplied by two (2) for impact vibrations; i.e., discrete vibration pulsations not exceeding one (1) second in duration and having a pause of at least one (1) second between pulses. (Ord. 16-51 § 3, 2016) "~~

SECTION SEVEN: Existing sections 18.01.020, 18.30.190, 18.40.110, 18.40.150, 18.40.160 and 18.50.160, are hereby specifically repealed.

SECTION EIGHT: This Ordinance shall take effect from and after its publication as provided by law.

PASSED by the Governing Body this 4th day of December 2018.

SIGNED by the Mayor this 4th day of December 2018.

Mayor

ATTEST:

City Clerk
(Seal)

APPROVED AS TO FORM:

City Attorney



Staff Report

Planning Commission Meeting: November 26, 2018

Application:	<u>UDO18-0002: Unified Development Ordinance Amendments</u>
Applicant:	City of Olathe, Public Works – Planning Services
Staff Contact:	Aimee Nassif, Chief Planning and Development Officer Shelby Ferguson, Planning Consultant

PROJECT OVERVIEW:

On October 22, 2018, a public hearing was held for staff to present a series of annual updates to the Unified Development Ordinance (UDO). During the meeting, community stakeholders spoke regarding several of these chapter updates. After much discussion, the Planning Commission recommended that the series of updates proceed to City Council for further review and discussion. A motion then passed by a vote of 4-2 to approve UDO18-0002 as presented for sections 18.30.190, 18.40.110.D, 18.40.110.G.5, 18.40.150.F.4, 18.40.160, and 18.50.160 while not recommending the proposed changes to sections 18.40.110.G.1 - 5 and 18.40.150.F.2 & 3.

Since the public hearing, staff continued working on the issues of concern at the hearing and met with those community stakeholders involved. On November 1st, Planning staff shared with City Council the results of the October 22nd Planning Commission meeting and the information that staff gathered from the stakeholders after the October 22nd meeting.

After discussing this information, the City Council directed the Planning Commission to reconsider its motion on UDO18-0002 to specifically address suggestions of staff and the development community pertaining to those sections not recommended by the Planning Commission.

As you know, the only changes that the Planning Commission originally did not recommend pertained to procedures for plans and plats found in Chapter 18.40. However, the entire package of UDO amendments in UDO18-0002 is being presented simply so that this project can continue to move through the process as a single, unified project. Therefore, staff's recommended language for the other chapters of UDO pertaining to final plats and quarries/mines (blasting), which the Planning Commission did recommend approval on, is part of this package but not being recommended for further review or changes.

This staff report is organized as follows. First, immediately below is a list and brief description of each of those updates as presented October 22, 2018. Those sections originally recommended by the Planning Commission to be removed from this series of updates are also provided below with “strikethrough” formatting. Next, the report reviews the UDO updates which the Planning Commission recommended for approval at the October 22 Public Hearing. Then, the report covers the UDO updates which the Planning Commission did not recommend for approval at the October 22 Public Hearing. In that section, Staff discusses some additional changes to these provisions. Finally, the report summarizes all of Staff’s recommended UDO updates.

Again, the same chapters which were presented at the October 22 Public Hearing are being presented this evening (November 26, 2018) for reconsideration with staff recommendations.

1. Chapter 18.30 Development Standards

a. Section 18.30.190 Performance Standards

- i. Subsection (C) add language directing the reader to Section 18.50.160.
- ii. Subsection (C) renumber section within subsection C.

2. Chapter 18.40 Procedures

a. Section 18.40.110 Site Development Plans

- i. Subsection (D.1.a) remove inconsistent language pertaining to notice requirements.
- ii. Subsection (D.1.b) add language clarifying notice requirements for preliminary site plans.
- ~~iii. Subsection (G.1) add language expiring preliminary site development plans, if a final development plan is not approved within two (2) years.~~
- ~~iv. Subsection (G.2) add language requiring a phasing pattern for site development plans which include multiple lots.~~
- ~~v. Subsection (G.3) add language clarifying the applicant must submit and obtain approval for a final site development plan within the designated time period for the plan to remain valid.~~
- ~~vi. Subsection (G.4) add the word “construction” to clarify construction must commence following approval and issuance of building permit.~~
- ~~vii. Subsection (G.5) clarify the review authority for site development plan time period extensions.~~

~~viii. Subsection (G.5) clarify how a preliminary or final development plans expiration time period may be extended.~~

ix. Subsection (G.5) remove inconsistent language pertaining to RP-1 plats and plans.

b. Section 18.40.150 Preliminary Plat

~~i. Subsection (F.2) add language allowing the applicant to request a one (1) year extension on for preliminary plats, approved administratively.~~

~~ii. Subsection (F.3) strengthen and clarify phasing plan requirements for preliminary plats over forty (40) acres.~~

iii. Subsection (F.4) remove inconsistent language pertaining to RP-1 plats and plans.

c. Section 18.40.160 Final Plat

i. Subsection (E.1.b) clarify that final plats must conform to all requirements of the UDO.

3. Chapter 18.50 Supplemental Use Regulations

a. Section 18.50.160 Quarries and Mines

i. Subsection (B) add language referencing Title 16 of Municipal Code requirements shall be followed.

ii. Subsection (D.1.b) increase setback requirements for above ground operations.

iii. Subsection (D.4) remove unnecessary verbiage.

iv. Subsection (D.5) add and clarify setback requirements removed from subsection (D.4).

v. Subsection (F) remove vibration standards for consistency with Title 16 of the Municipal Code.

UDO UPDATES RECOMMENDED FOR APPROVAL AT THE OCT. 22 PUBLIC HEARING:

Staff will begin the discussion with the UDO Updates recommended for approval by the Planning Commission on October 22, 2018. As stated previously in this report, no changes or updates are being presented or recommended for these sections.

1. Quarries and Mines

Chapter 18.30. Development Standards

18.30.190 Performance Standards

Recommendation: Add language to direct the reader to Section 18.50.160 for specific performance standards for operation of quarries and mines.

Reason: Section 18.30.190 of the UDO provides performance standards for activities in industrial districts. To improve readability and remove inconsistencies, staff recommends adding language directing the reader to Section 18.50.160 so that all standards specifically pertaining to quarries and mines are found in a single section of code.

Staff is not recommending any changes from what was originally presented and recommended for approval by the Planning Commission on October 22, 2018.

2. Blasting

Chapter 18.50. Supplemental Use Regulations

18.50.160 Quarries and Mines

Recommendation: Update vibration standards and setback language pertaining to quarries and mines in Section 18.50.160.

Reason: Staff collaborated with staff from the Public Works Department, the Fire Department, and Legal Department, and researched local communities, state regulations, the City Technical Specifications and the National Fire Protection Association (NFPA) Code. Staff is recommending referencing Title 16 of the Olathe Municipal Code for Fire Prevention for vibration standards for blasting as part of quarrying and mining operations. NFPA 495 establishes blasting vibration standards for structures and for drywall construction, sets the limit at .75 ips (inches per second), and for plaster construction, sets the limit at .50 ips.

Staff is not recommending any changes from what was originally presented and recommended for approval by the Planning Commission on October 22, 2018.

Included in this packet you will find a new comment letter provided by Randy Kriesel which the City received on November 19, 2018. Additional information and previous comments can be found in the Planning Commission October 22, 2018 meeting packet provided at the following link: <https://www.olatheks.org/government/boards-commissions-committees/planning-commission/planning-commission-documents/2018-planning-commission-packets>

3. Notification Requirements for Preliminary Site Development Plans

Chapter 18.40. Procedures

18.40.110.D.1 Site Development Plans

Recommendation: Clarify when public notice is necessary for preliminary site development plans.

Reason: Currently Section 18.40.110.D.1 states under “decision” that a public notice is required for preliminary site development plans if the use is permitted by right. Public hearings are only required for items related to a change in use such as rezonings or special use permits. This is not standard practice and would cause significant delays for the development community.

Staff is not recommending any changes from what was originally presented and recommended for approval by the Planning Commission on October 22, 2018.

4. Expiration of Prelim. Plans and Time Extensions for Plans and Plats

Chapter 18.40. Procedures

18.40.110.G Site Development Plans and 18.40.150.F Preliminary Plats

Recommendation: Remove inconsistent language pertaining to RP-1 plats and plans by deleting existing Sections 18.40.110.G.5 and 18.40.150.F.4.

Reason: Sections 18.40.110.G.5 and 18.40.150.F.4 currently state that only RP-1 zoned plans and plats expire and reference a date of June 2014 as that was the date of original adoption of the UDO. In addition, other language found here causes confusion because this requirement applies regardless of district boundaries

Staff is not recommending any changes from what was originally presented and recommended for approval by the Planning Commission on October 22, 2018.

5. Final Plats

Chapter 18.40. Procedures

18.40.160 Final Plat

Recommendation: Add language to Section 18.40.160.E.1.b to clarify all plats are required to meet UDO requirements.

Reason: Currently within the approval criteria for preliminary plats the UDO states preliminary plats are to conform to the development standards within Chapter 18.30. However final plats do not include specific language for conforming to the UDO. Language has been added to clarify final plats are also required to conform to the current standards and requirements set within the UDO.

Staff is not recommending any changes from what was originally presented and recommended for approval by the Planning Commission on October 22, 2018.

UDO UPDATES AND STAFF RECOMMENDATIONS PERTAINING TO SECTIONS NOT RECOMMENDED FOR APPROVAL AT THE OCT. 22 PUBLIC HEARING:

The following UDO updates were not recommended for approval by the Planning Commission, and staff is now presenting these provisions again for reconsideration. Several sections have been updated since the original meeting in October and those changes are provided below. These changes derive from continued discussions and meetings staff had following the October public hearing with community stakeholders and City Council.

6. Expiration of Prelim. Plans and Time Extensions for Plans and Plats

Chapter 18.40. Procedures

18.40.110.G.1 Site Development Plans

Recommendation: Add an expiration date on preliminary site development plans (not simply those zoned RP-1) if a final development plan is not approved within **five (5)** years.

Reason: Currently, preliminary development plans are the only type of plan or plat which does not have an expiration date associated with it. Including one helps to ensure compliance with current code regulations which can be difficult to maintain if long periods of time lapse between approvals and commencement of construction.

Original Recommendation: Originally, the recommendation was to have a two (2) year expiration period with these. Since our meeting, Staff is recommending the language be updated so that the time period for expiration if a final development plan is not submitted and approved be five (5) years. Staff has shared this update with community stakeholders that we have been in contact with throughout the process. While the desire from them would be for no time period to be established, a five (5) year term was one of the original, collaborative suggestions from the group.

7. Commencement of Construction

Chapter 18.40. Procedures

18.40.110.G.4 Site Development Plans

Recommendation: Clarified what is meant by commencement of construction.

Reason: Currently, final site development plans become null and void if the time period expires before development commences. Staff has defined commencement to mean the start of construction, which is defined as the issuance of a building permit.

Original Recommendation: Staff is not recommending any changes from what was originally presented and recommended for approval by the Planning Commission on October 22, 2018.

8. Time-Period Renewal for Preliminary Plats

Chapter 18.40. Procedures

18.40.150.F.2 Preliminary Plats

Recommendation: Add language to allow clock to reset with each final plat approved for a phased development. Preliminary plats currently expire in two (2) years if a final plat has not been submitted and approved by the City. However, for large scale developments, this can be problematic as phasing is typical with these.

Reason: This language will assist the development community by allowing the time period to reset with each phase and will also allow the City the means to ensure that current UDO requirements are met with each phase so that the best quality development is constructed.

Original Recommendation: This was not originally presented before the Planning Commission in October. However, from further collaborations with the development community and our stakeholder group, this language has been drafted and recommended for your consideration.

Included in this packet you will find a new comment letter provided by Grata Development which the City received on October 25, 2018.

9. Streamlined Administrative Review Process for Preliminary Plat Extensions

Chapter 18.40. Procedures

18.40.150.F.2 Preliminary Plat

Recommendation: Add language to allow a streamlined, administrative review extension for preliminary plats.

Reason: Section 18.40.150.F.2 currently states preliminary plats expire after two (2) years where a final plat has not been submitted for approval. Language does not currently exist in code to allow for any extensions for preliminary plats. After hearing concerns from the development community, staff has added language to allow a one (1) year extension be granted administratively.

Original Recommendation: Staff is not recommending any changes from what was originally presented and recommended for approval by the Planning Commission on October 22, 2018. This language is necessary to allow for time extensions as all other plans and plats allow for time extensions as well.

10. Phasing Requirements for Site Development Plans and Preliminary Plats

Chapter 18.40. Procedures

18.40.110.G.2 Site Development Plans and 18.40.150.F.3 Preliminary Plats

Recommendation: Update and clarify the requirements for development phasing pertaining to preliminary plats for multiple lot developments.

Reason: The UDO requires preliminary plats containing a gross land area in excess of forty (40) acres to submit a phasing pattern at the time of approval for final platting. Staff is recommending that information be included to explain what should be submitted to the City pertaining to how the phasing will occur and that updates or amendments to phasing plans may be considered. In addition, staff recommends that phasing information be required as part of the preliminary plan process as well. This will assist in making decisions pertaining to development proposals and how the ultimate site layout will develop. Also, in this section we are updating the language to reflect that phasing plans are required for development in excess of 40 acres, but phasing information may also be required for smaller developments if directed by the City. This is reflective of our current practice and will be consistent for both plans and plats.

Original Recommendation: Originally, staff recommended that phasing be explained by means of a narrative or a phasing plan. In response to concerns from the development community and working with them after the October meeting, staff is recommending that information be provided by means of a phasing plan only. Also, staff has now included language to explain that updates to the phasing of a development can be made for the City to review and is providing flexibility in the standard related to 40 acres or more criteria.

STAFF RECOMMENDATION:

To summarize the project before you, Staff continued to collaborate with the development community since the public hearing in October and has provided updated language on sections pertaining to preliminary plats, development phasing and preliminary plans. We believe that these updated recommendations address the major concerns expressed by the development community that we have heard from, as well as achieve the goals of the City. As presented, the impact to plans and plats would result in the following:

Document Type	Expiration	Action Needed Before Expiration	Extension Method
Preliminary Plats	2 years	Submittal of final plat.	Clock resets 2 years for every final plat approval in a phased development. Or, renewal administratively reviewed for one (1) year
Final Plats	2 years	Record after approval.	Administratively reviewed/renewed for one (1) year.
Preliminary Development Plans	5 years	Submittal of final development plan.	Renewal administratively reviewed for up to twelve (12) months, Or renewal for any length of time by the Governing Body.
Final Development Plans	2 years	Commence construction.	Renewal administratively reviewed for up to twelve (12) months, Or renewal for any length of time by the Governing Body.

Language previously recommended for approval by the Planning Commission is also being presented and no additional changes are being requested or recommended by Staff. Staff recommends approval of the proposed amendments to the *Unified Development Ordinance (UDO)*, as detailed in the attached UDO Amendments Exhibit for the following Chapters and associated subsections herein: 18.30.190, 18.40.110, 18.40.150, 18.40.160, and 18.50.160. Below is also a list of specific amendments being presented and recommended for approval.

1. Chapter 18.30 Development Standards

a. Section 18.30.190 Performance Standards

- i. Subsection (C) add language directing the reader to Section 18.50.160.
- ii. Subsection (C) renumber section within subsection C.

2. Chapter 18.40 Procedures

a. Section 18.40.110 Site Development Plans

- i. Subsection (D.1.a) remove inconsistent language pertaining to notice requirements.
- ii. Subsection (D.1.b) add language clarifying notice requirements for preliminary site plans.
- iii. Subsection (G.1) add language expiring preliminary site development plans if a final development plan is not approved within five (5) years.
- iv. Subsection (G.2) add language requiring a phasing pattern for site development plans containing forty (40) acres.
- v. Subsection (G.3) add language clarifying the applicant must submit and obtain approval for a final site development plan within the designated time period for the plan to remain valid.
- vi. Subsection (G.4) add the word “construction” to clarify construction must commence following approval and issuance of building permit.
- vii. Subsection (G.5) clarify the review authority for site development plan time period extensions.
- viii. Subsection (G.5) clarify how a preliminary or final development plans expiration time period may be extended.
- ix. Subsection (G.5) remove inconsistent language pertaining to RP-1 plats and plans.

b. Section 18.40.150 Preliminary Plat

- i. Subsection (F.2) add language allowing the applicant to request a one (1) year extension on for preliminary plats, approved administratively.
- ii. Subsection (F.2) add language stating that time period for a preliminary plat resets with submittal and approval of each final plat for any phase of the preliminary plat.

- iii. Subsection (F.3) strengthen and clarify phasing plan requirements for preliminary plats over forty (40) acres.
- iv. Subsection (F.4) remove inconsistent language pertaining to RP-1 plats and plans.

c. Section 18.40.160 Final Plat

- i. Subsection (E.1.b) clarified final plats must conform to all requirements of the UDO.

3. Chapter 18.50 Supplemental Use Regulations

a. Section 18.50.160 Quarries and Mines

- i. Subsection (B) add language referencing Title 16 of Municipal Code requirements shall be followed.
- ii. Subsection (D.1.b) increase setback requirements for above ground operations.
- iii. Subsection (D.4) remove unnecessary verbiage
- iv. Subsection (D.5) add and clarify setback requirements removed from subsection (D.4).
- v. Subsection (F) remove vibration standards for consistency with Title 16 of the Municipal Code.

Attached please find a copy of the redline version of the updated sections, a quick reference exhibit, as well as comment letters from individuals in the community as discussed previously in this report. Additional information and previous comments can be found in the Planning Commission October 22, 2018 meeting packet provided at the following link: <https://www.olatheks.org/government/boards-commissions-committees/planning-commission/planning-commission-documents/2018-planning-commission-packets>

18.30.190 Performance Standards

In some districts, performance standards capable of quantitative measurement are established. Except to the extent modified in the specific zoning district regulations, the following general provisions apply to measure compliance with those performance standards.

A. Noise

See Noise Control Ordinance (Chapter [6.18](#) of the Municipal Code).

B. Smoke and Particulate Matter

1. The Ringlemann Chart, as adopted and published by the United States Department of Interior, Bureau of Mines, shall be used to determine the density of equivalent opacity of smoke. The Ringlemann number indicated as the performance standard in certain zoning districts refers to the number of the area of the Ringlemann Chart that coincides most nearly with the visual density of equivalent opacity of the emission of smoke observed.
2. Within the M-1, M-2 and M-3 zoning districts, no use shall be permitted or operated so that smoke darker than Ringlemann No. 1 is produced from any vent, stack or chimney. However, emission of smoke darker than Ringlemann No. 2 is allowed for a duration of up to four (4) minutes during any eight (8) hour period if the emission is located no closer than two hundred fifty (250) feet from property zoned AG, any residential zoning district, N, or the residential areas of planned developments.
3. Particulate matter emissions, in excess of the threshold limit values caused by the wind from open storage areas, yards, roads, etc., within lot lines shall be kept to a minimum by appropriate landscaping, paving, oiling, wetting and other means, or shall be eliminated.

C. Vibration

1. Vibration standards for any use, other than quarries and mines, are found within this section. For minimum standards for quarry and mine operations, see section 18.50.160 of this UDO.

~~12.~~ Within the M-1, M-2 and M-3 zoning districts, no use may generate any ground-transmitted vibration in excess of one tenth (.10) inch per second measured at the property line, or in excess of two-one hundredths (.02) inch per second measured at any residential property line. These values may be multiplied by two (2) for impact vibrations, i.e., discrete vibration pulsations not exceeding one (1) second in duration and having a pause of at least one (1) second between

pulses. Vibrations are measured in particle velocity and are to be measured at the property line or other designated location.

32. A three-component measuring system capable of simultaneous measurement of vibration in three mutually perpendicular directions shall be used to measure vibrations.

43. The vibration maximums indicated as the performance standard in certain zoning districts may be measured directly with suitable instrumentation or computed on the basis of displacement and frequency. When computed, the following formula shall be used:

$$PV = 6.28 F \times D$$

Where:

PV = particle velocity, inches-per second

F = vibration frequency, cycles-per second

D = single amplitude displacement of the vibration,
inches

54. The maximum particle velocity shall be in the maximum vector sum of three mutually perpendicular components recorded simultaneously.

65. Unless specifically indicated to the contrary in the zoning district regulations, vibration resulting from temporary construction activity that occurs between 7:00 AM and 7:00 PM is exempt from the indicated performance standard.

D. Glare

See Lighting (Section [18.30.135](#)).

1. Within the M-1, M-2 and M-3 districts, direct or sky-reflected glare, from floodlights or from high temperature processes such as combustion or welding, shall not be directed into any adjoining property.

E. Heat

Within the M-1, M-2 and M-3 districts, heat from furnaces, processing equipment, or other devices shall be contained so that the temperature of air or materials is raised no more than five (5) degrees Fahrenheit as measured at all property lines.

F. Emissions

Within the M-1, M-2 and M-3 districts, the maximum rate of emission of dust and other particulate matter from all sources within the boundaries of any lot or tract shall not exceed one (1) pound per hour per acre of lot area.

G. Air Contaminants (such as Odors and Fumes)

Within the M-1, M-2 and M-3 districts, the emission of air contaminants created by industrial processes shall comply with the Kansas Air Quality Act, K.S.A. § [65-3002](#) and any adopted state regulations. All air contaminants shall be contained so that no odors or fumes may be sensed at the property line of any residential zoning district.

H. Electrical Issues

Within the M-1, M-2 and M-3 districts, activity which creates any off-site electrical disturbance, or contributes to interference with electronic signals (including television and radio broadcasting transmissions) shall be prohibited.

I. Toxic or Flammable Liquids

Storage of toxic or flammable liquids such as gasoline, oil or grease, where not stored underground, shall occur in such a manner that a secondary storage system is provided with capacity as specified by the Fire Code.

18.40.110 Site Development Plans

Purpose: A site development plan is a process that allows City staff and the Planning Commission to review significant developments and uses to ensure that they comply with the zoning and development standards in this title, have appropriate design and infrastructure, and comply with any conditions of rezoning, preliminary subdivision plat, or special use permit approval.

A. Applicability

1. A preliminary site development plan is required for:

a. Any application to rezone property:

(1) to a district that allows nonresidential uses or multifamily or two-family dwellings, or

(2) to an "A," "R-1" or "R-2" district where the applicant is proposing a nonresidential development

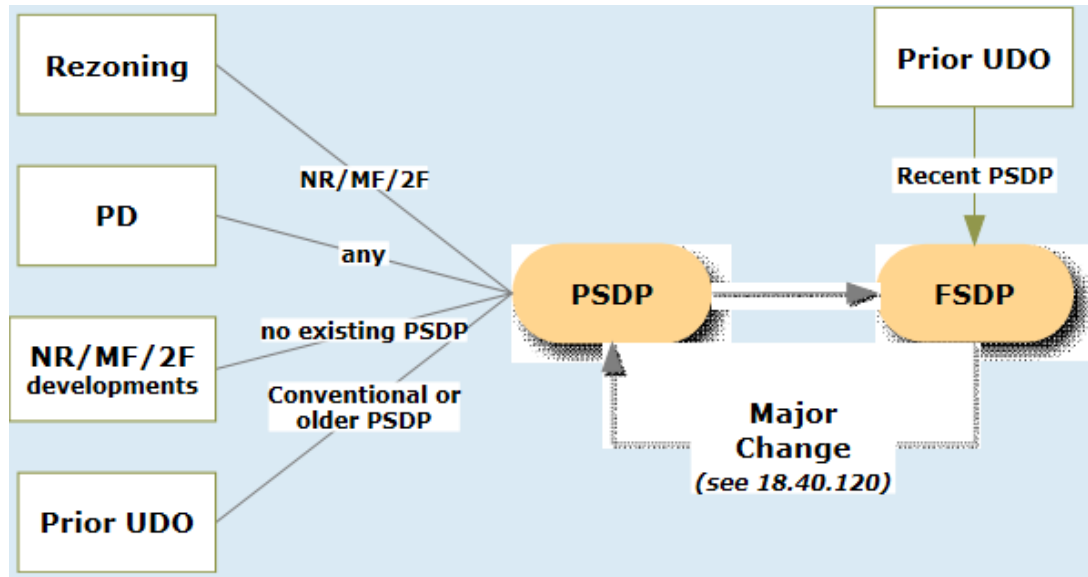
b. All nonresidential uses, or developments with multifamily or two-family dwellings unless a preliminary site development plan for the proposed development was already approved as part of the existing zoning district, and

c. Any application for approval of a planned development district.

2. If a property is subject to an approved and unexpired preliminary site development plan, a **final site development plan** is required before a building permit application is filed.

B. Initiation

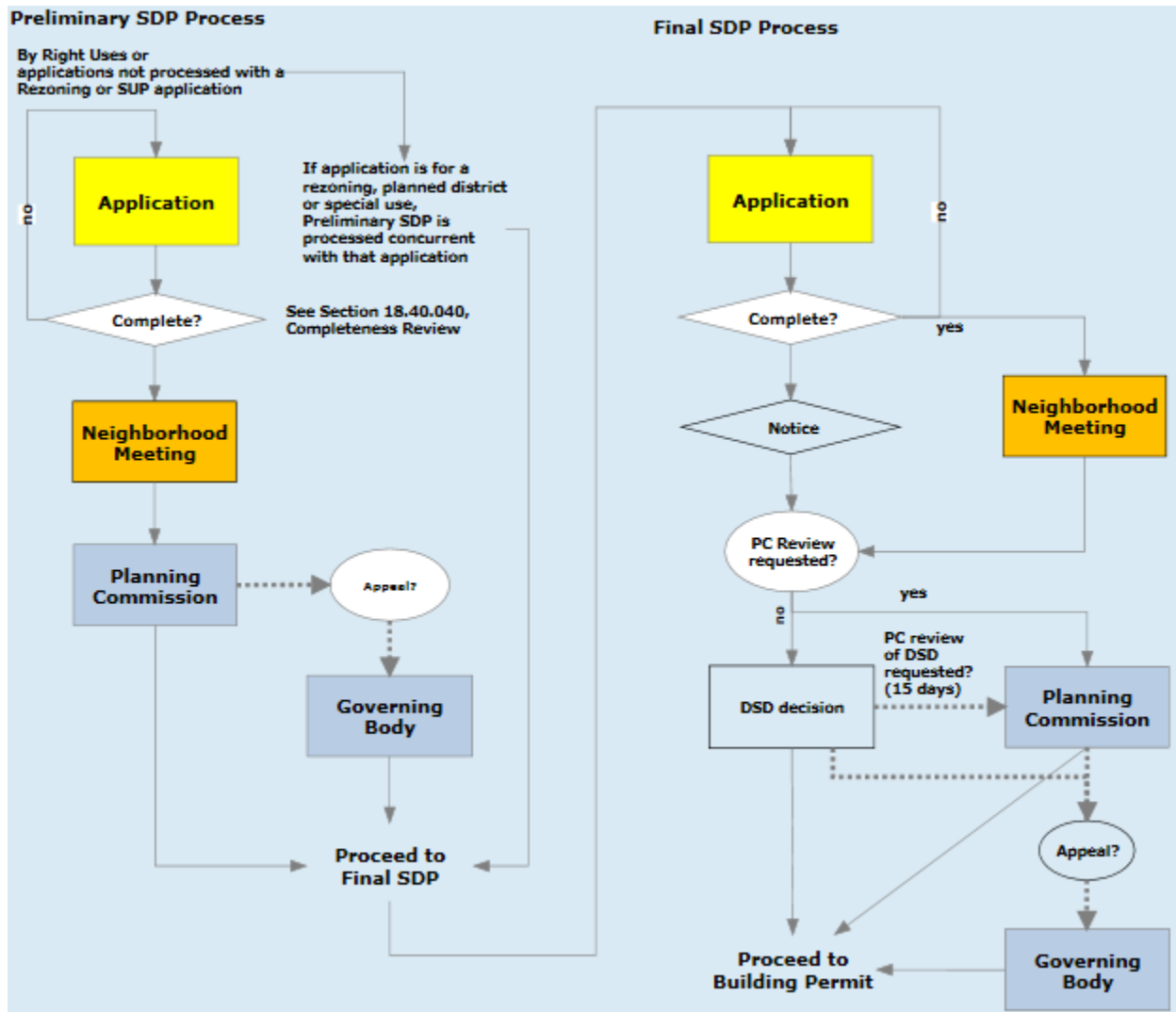
1. Preliminary and final site development plans shall be filed with the Planning Official, and shall include the information required by Chapter [18.94](#).



Editor's Note: This diagram referenced "Substantial Change" in Section [18.40.120](#). This terminology has been changed to "Major Change" to match the text of that section.

2. A neighborhood meeting is required for a preliminary and final site development plan (see Section [18.40.030](#)).

C. Review Process



D. Decision

1. Preliminary Site Development Plan Decision

a. If the application involves a use that is **permitted by right** in the applicable zoning district, the Planning Commission will approve, conditionally approve, or deny a preliminary site development plan. ~~Notice to surrounding property owners is required (see Section 18.40.050.B).~~ The Planning Commission will render a decision within 30 days, unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.

b. If the application involves a **planned district**, a **rezoning**, or a **special use**, the preliminary site development plan is processed and approved as part of that application. [Notice to surrounding property owners is required \(see Section 18.40.050.B\)](#). The preliminary site development plan may be revised and resubmitted during the review period for the planned district/conditional rezoning or special use permit application review period and approved as part of the conditions of approval. In that case, the Approving Authority is the agency that approves that rezoning or special use.

2. Final Site Development Plan Decision

a. Authority

A final site development plan is approved by the Planning Official, unless the applicant requests Planning Commission review.

b. Planning Official Decisions

If the Planning Official renders a decision on the application:

- (1)** The Planning Official shall render its determination within thirty (30) days after the applicant submits a complete application (see Section [18.40.040](#)), unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.
- (2)** If the Planning Official fails to render a timely decision, the applicant or a surrounding property owner may request Planning Commission review (see subsection [D.2.c](#), below).
- (3)** If the applicant or surrounding property owner does not request Planning Commission review, the Planning Official's determination is final.
- (4)** If an administrative review application is without communication from the applicant for more than six (6) months, the applicant will be required to submit a new application and fees for the final site development plan review to continue.

c. Planning Commission Review

- (1) The Planning Commission reviews the final site plan if the applicant asks the Planning Commission to review the final site plan within fifteen (15) days of the date of the Planning Official's decision.
- (2) The Planning Commission will consider the application without a public hearing.
- (3) The Planning Commission may approve, approve with conditions, or deny the preliminary or final site development plan.
- (4) The Planning Commission shall render its decision within 30 days after the applicant requests a review. The Planning Commission may extend the time for making a decision if requested by the applicant.

E. Approval Criteria

1. The following criteria apply to the approval, conditional approval or denial of a preliminary site development plan:
 - a. The plan complies with all applicable requirements of Chapters [18.15](#), [18.20](#), and [18.30](#), and
 - b. The plan represents an overall development pattern that is consistent with the Comprehensive Plan, the Major Street Map and other adopted planning policies.
2. A final site development plan is approved if it is consistent with the preliminary site development plan as approved, including all conditions of approval, and complies with all applicable requirements of this title. A final site development plan shall not modify or expand the approved preliminary site development plan, except as provided in Section [18.40.120](#).

F. Subsequent Applications

1. When an application for preliminary or final site plan is withdrawn by the applicant or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
2. An application for a major modification to the withdrawn or denied application may be submitted at any time.

G. Scope of Approval

1. Approved preliminary site development plans or final site development plans are valid for ~~two~~five (25) years after ~~final~~ date of approval.

~~2. When a preliminary site development plan containing multiple lots is submitted for approval; the applicant will indicate the anticipated development or phasing pattern for final development. The phasing pattern for development shall include:~~ When a preliminary site development plan containing a gross land area in excess of forty (40) acres is submitted for approval, the applicant will indicate the anticipated development or phasing pattern for final development. For developments which will be built in phases with a gross area less than forty (40) acres the City may require submittal of a phasing plan. The phasing plan for development shall include the following:

- a) Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically (to avoid confusion with lot numbers), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The final phasing plan map should be drawn at the same scale as the preliminary site plan map.
- b) Any deviation from the approved phasing may be approved administratively by the Planning Official.

3. If the applicant fails to submit and obtain approvals for a final site development plan within the time period required in subsection G.1, above, the preliminary site development plan becomes null and void unless the time period is extended.

~~24.~~ If the ~~landowner~~ applicant fails to commence construction by means of issuance of a building permit ~~the planned development~~ within the time period required in subsection G.1, above, the final site development plan becomes null and void unless the time period is extended.

~~35.~~ The ~~Approving Authority~~ Chief Planning and Development Officer may extend the time period of a preliminary or final development plan upon written ~~application request~~ by the ~~landowner applicant~~. Unless otherwise required in a condition of approval, the ~~Approving Authority~~ Chief Planning and Development Officer may extend the time period administratively without a public hearing. The ~~Approving Authority~~ Chief Planning and Development Officer shall extend the time period of either site development plan for up to ~~six (6)~~ twelve (12) months. ~~After~~

~~this time period or at the time the original extension is requested,~~ Upon written request by the applicant, the ~~Approving Authority~~ Governing Body may extend the preliminary or final site development plan for any length of time for cause.

46. The applicant may revise an approved final site development plan as provided in Section 18.40.120.

~~5. Any preliminary plat or preliminary development plan for a single-family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

H. Appeals

The applicant or aggrieved party may appeal the disapproval of a preliminary or final site development plan by the Planning Commission to the Governing Body. The applicant shall file a notice of appeal with the Planning Official within ten (10) days following the decision.

I. Recordkeeping

The Planning Division and the applicant shall maintain copies of the preliminary and final site development plan approvals, and all supporting documentation.

J. Abandonment of Final Site Development Plan

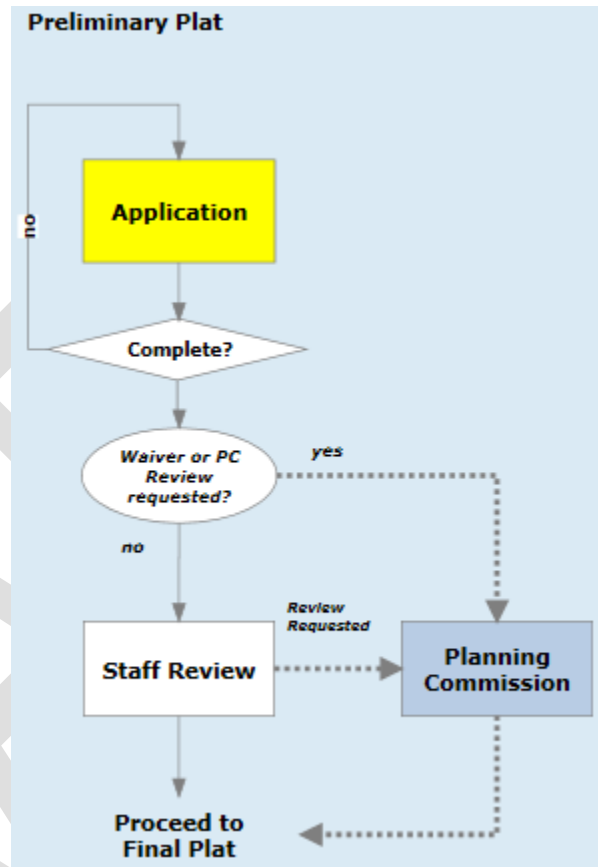
- 1.** If the applicant abandons any part of a site development plan, then the applicant shall notify the City in writing.
- 2.** If any part of a final site development plan is abandoned, no development shall take place on the property until a new final site development plan is approved. (*Ord. 17-52 §§ 22, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 15-16 § 3, 2015*)

18.40.150 Preliminary Plat

Purpose: The preliminary plat process examines the major features and elements of a proposed plat. This process determines whether the plat conforms to this title and the Comprehensive Plan, and any conditions of approval.

A. Applicability

1. The Planning Commission must approve a preliminary plat before a final plat application is filed.
2. A preliminary plat is not considered a "plat" for purposes of KSA [12-752](#). Instead, the preliminary plat is a preapplication process that is designed to ensure that that plat conforms to all applicable requirements of this title. The applicant may request that the City waive the preliminary plat process and proceed directly to the final plat process.



B. Initiation

1. An application for preliminary plat approval is filed with the Planning Official. Preapplication is required.
2. An applicant may substitute a preliminary development plan for a preliminary plat if the preliminary development plan contains all information required for preliminary plats as set forth in Chapter [18.94](#).
3. A neighborhood meeting is required (see Section [18.40.030](#))

⇒ Cross-Reference: [18.40.020](#) (Preapplication)

C. Completeness Review

See Section [18.40.040](#), Completeness Review.

D. Approval Criteria

The Approving Authority shall approve the preliminary plat if it finds that the following criteria are satisfied:

1. The proposed preliminary plat conforms to the requirements of Chapter [18.30](#), the applicable zoning district regulations and any other applicable provisions of the Municipal Code, subject only to acceptable rule exceptions.
2. The subdivision represents an overall development pattern that is consistent with the Comprehensive Plan, Major Street Map, Access Management Plan, and applicable corridor studies and plans.
3. The plat contains a sound, well-conceived parcel and land subdivision layout which is consistent with good land planning and site engineering design principles.
4. The spacing and design of proposed curb cuts, driveway approaches and intersection locations is consistent with the Access Management Plan, good traffic engineering design and public safety considerations.
5. The plat conforms to any existing, unexpired and valid conditions of rezoning, special use permit or site development plan approval.
6. All submission requirements are satisfied.

E. Subsequent Applications

1. When a preliminary plat application is withdrawn or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
2. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

F. Scope of Approval

1. Approval of a preliminary plat does not constitute acceptance of the subdivision, but authorizes preparation of the final plat. No improvements shall take place in the subdivision

prior to approval and recording of the final plat and submittal and approval of street, sanitary sewer, water line and storm sewer construction plans by the City Engineer.

2. Preliminary plat approval is effective for a period of two (2) years, ~~except approval of a final plat for any phase specifically indicated on the preliminary plat shall renew the two (2) year time period.~~ Where a final plat for the subdivision is not submitted for approval within the two (2) year time period, the preliminary plat becomes null and void and the developer shall resubmit a new preliminary plat for approval subject to the then effective regulations.

The Chief Planning and Development Officer may, upon written request by the applicant, administratively grant a one (1) year time extension. Consideration for a time extension shall be based upon, but not limited to:

- a) the developer's ability to adhere to any changes in the Olathe Municipal Code or other applicable regulations, that would impact the proposed development; or
- b) if the developer demonstrates substantial progress towards the design and engineering requirements necessary to submit a final plat.

3. When a preliminary plat containing a gross land area in excess of forty (40) acres is submitted for approval, the applicant ~~will~~ **may** indicate the **anticipated development or phasing pattern** for final platting. The applicant may receive an extension of the one (1) year time limit for submission of the final plat if each phase is constructed in accordance with the original phasing plan and subsequent final plats comply with all applicable regulations at the time of final platting. For developments which will be built in phases with a gross area less than forty (40) acres the City may require submittal of a phasing plan. The phasing plan for development shall include the following:

- a) Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically (to avoid confusion with lot numbers), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The final phasing plan map should be drawn at the same scale as the preliminary plat map.
- b) Any deviation from the approved phasing may be approved administratively by the Planning Official.

~~4. Any preliminary plat or preliminary development plan for a single family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014),~~

~~where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

G. Recordkeeping

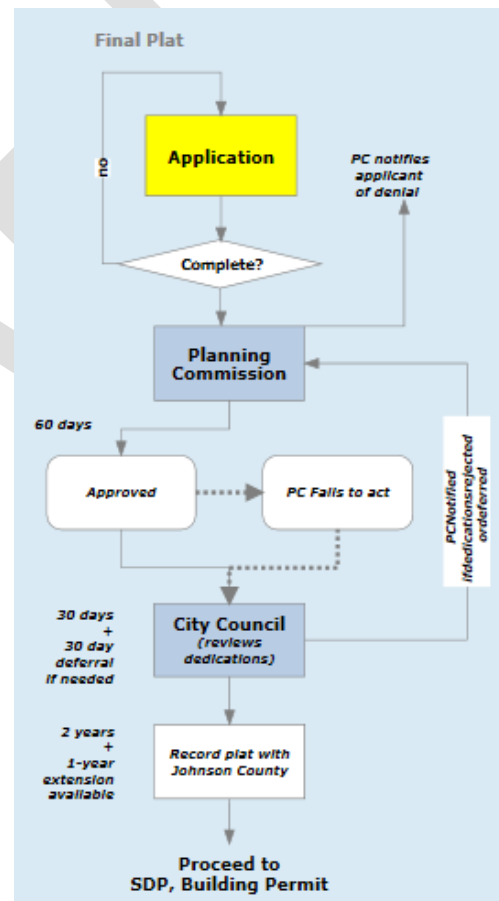
A preliminary plat application is not recorded. The Planning Official will maintain a record of approved preliminary plats. The applicant must maintain a copy of the approved preliminary plat, including any attachments. (Ord. 17-52 §§ 25, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 02-54 § 2, 2002)

18.40.160 Final Plat

Purpose: This section establishes the process to approve formal plats for recording with the Johnson County register of deeds.

A. Applicability

1. This section applies to any formal plat application. Final plat applications are filed after the preliminary plat is approved.
2. The applicant may file a final plat without first seeking preliminary plat approval. However, in that case the applicant must strictly observe all requirements of this title and may not request a modification of any standards established in Chapter [18.30](#). In addition, the Planning Commission will deny the plat if it does not conform to all applicable requirements within the statutory period for approving a plat.



B. Initiation

An application for final plat approval is filed with the Planning Official.

C. Completeness Review

See § [18.40.040](#) Completeness Review.

D. Decision

- 1.** The Planning Commission will consider the final plat without a public hearing, unless the applicant requests a public hearing.
- 2.** The Planning Commission may approve, approve with conditions, or deny the final plat.
- 3.** The Planning Commission shall render its decision within 60 days after its first meeting after the plat is submitted to the Planning Official. If the Planning Commission fails to timely render its decision, the plat is deemed approved.
- 4.** If the final plat is approved or the Planning Commission fails to render a timely decision, the Planning Official shall issue a certificate upon demand.
- 5.** If the Planning Commission finds that the plat does not conform to subsection [E](#) below, it shall notify the owner or owners of that fact. The notice shall be in writing and shall specify in detail the reasons the plat does not conform to subsection E.
- 6.** If the plat conforms to subsection E, the Planning Commission chair shall endorse on the plat the fact that the plat has been submitted to and approved by the Planning Commission. The secretary of the Planning Commission shall attest the chair's signature.
- 7.** After the final plat is approved, the applicant shall submit it to the Governing Body for review if land is proposed to be dedicated for public purposes. The Governing Body shall approve or disapprove the dedication of land for public purposes within thirty (30) days after the first meeting of the Governing Body following the date of the submission of the plat to the City Clerk. The Governing Body may defer action for an additional thirty (30) days for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. No additional filing fees shall be assessed during that period. The Governing Body shall advise the Planning Commission of its reasons for any deferral or disapproval of any dedication. Acceptance of lands and easements dedicated for public purposes that are approved by the Governing Body shall be endorsed on the plat by the Mayor. The City Clerk shall attest the Mayor's signature. (*Ord. 02-54 § 2, 2002*)
- 8.** No plat shall be filed with the Register of Deeds office unless it bears the endorsement that the land dedicated to public purposes is approved by the Governing Body.

9. All conditions to approval of a subdivision by the Planning Commission or the acceptance of dedications of land by the Governing Body, and all waivers granted by the Planning Commission, shall be clearly stated on the final plat prior to its recording. (Ord. 02-54 § 2, 2002)

E. Approval Criteria

1. The Planning Commission shall approve a final plat if it determines that:
 - a. The final plat substantially conforms to the approved preliminary plat and any applicable conditions of approval.
 - b. The plat conforms to all applicable requirements of the Municipal Code [and Unified Development Ordinance](#), subject only to approved waivers.
2. If the applicant chooses not to submit a preliminary plat, the final plat is subject to the criteria for approving a preliminary plat and to subsection 1, above.

F. Subsequent Applications

1. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

G. Scope of Approval

1. After the Governing Body endorses its acceptance of lands and easements dedicated for public purposes, the final plat shall be recorded with the Register of Deeds of Johnson County as provided by law. No plat shall be recorded with the Register of Deeds prior to its endorsement by the Mayor.
2. After the applicant provides public improvements assurances and records the final plat, the applicant may construct the improvements shown on the plat and proceed to the building permit approval process.

H. Recordkeeping

1. Final plats shall be recorded with the Register of Deeds office within two (2) years following Governing Body approval of land dedicated to public purposes. Final plats which are not timely recorded are null and void.
2. No plat shall be recorded before the applicant submits satisfactory assurances for construction of public improvements.

I. Final Plat Extensions

- 1.** Requests for final plat extension shall be made in writing to the Planning Official prior to the two (2) year expiration date provided above. Final plat extensions may only be granted by one of the following:
 - a.** The Planning Official may administratively grant a one (1) year extension if no changes are made to any City ordinance, regulation or approved plans that would require a change in the final plat. The applicant may appeal the Planning Official's denial of an extension to the Planning Commission.
 - b.** The Planning Commission, upon appeal from the Planning Official's decision to deny a final plat extension, may grant the one (1) year extension upon finding that the extension will not impact the City's ability to administer current ordinances or regulations.
- 2.** Final plat extensions are subject to all current excise taxes and/or development fees at the time of the extension approval. (*Ord. 15-16 §3, 2015*)

18.50.160 Quarries and Mines

Purpose. This section regulates the externalities of quarries.

A. Applicability

This section applies to mines or quarries.

B. Generally

All ~~M~~mines and quarries shall follow all Federal, State, and ~~local Olathe Municipal Code~~ guidelines and requirements, including those ~~found in Title 16 of the Olathe Municipal Code as well as requirements found in any special use permit governing a specific site. for blasting and vibration. In the event that multiple requirements exist, including those for blasting and vibration, the stricter standard shall be controlling over the land use activity on the site.~~

C. Roads

1. Proposed quarry operations shall provide or have direct access to a public road.
2. Public and private roads shall be hard-surfaced and built to carry the heavy loads that are generated from quarry operations.

D. Setbacks for Above-Ground Operations

1. All above-ground operations shall be located at least:
 - a. One hundred (100) feet from any property line except as provided below.
 - b. One thousand (1,000) feet from an existing residence or the nearest property line of a residentially zoned property, whichever achieves the greatest overall setback.
2. The Planning Commission or Governing Body may reduce the property line setback where it abuts a highway or railroad right-of-way by up to fifty (50) percent.

3. The Planning Commission or Governing Body may reduce the residential setback by up to ninety (90) percent if the applicant shows that compliance with the City ordinances related to noise, dust, visibility and operations will adequately protect the residents from the above-ground operations, or upon approval of the residence owner.

4. The above setbacks may be increased upon the City's determination that wider setbacks are warranted ~~in order~~ to mitigate adverse impacts. ~~All above-ground operations located next to existing mine or quarry operations require no setback, and may be immediately adjacent.~~

5. A setback for above-ground operation is not required when the operation is located contiguous to another existing mine or quarry operation.

E. Setbacks for Below-Ground Operations

All below-ground operations shall be located at least two hundred (200) feet from the nearest property line, measured laterally.

~~F. Vibration~~

~~1. Ground-transmitted vibration shall not exceed two-tenths (0.20) inches per second at the property line or two-hundredths (0.02) inches per second measured at any residential property line.~~

~~2. These values may be multiplied by two (2) for impact vibrations; i.e., discrete vibration pulsations not exceeding one (1) second in duration and having a pause of at least one (1) second between pulses. (Ord. 16-51 § 3, 2016)~~

2018 UDO Updates – Quick Reference Exhibit
Planning Commission Meeting November 26, 2018

1. Chapter 18.30 Development Standards

a. Section 18.30.190 Performance Standards

- i. Subsection (C) add language directing the reader to Section 18.50.160.
- ii. Subsection (C) renumber section within subsection C.

2. Chapter 18.40 Procedures

a. Section 18.40.110 Site Development Plans.

- i. Subsection (D.1.a) remove inconsistent language pertaining to notice requirements.
- ii. Subsection (D.1.b) add language clarifying notice requirements for preliminary site plans.
- iii. Subsection (G.1) add language expiring preliminary site development plans if a final development plan is not approved within five (5) years.
- iv. Subsection (G.2) add language requiring a phasing pattern for site development plans over forty (40) acres.
- v. Subsection (G.3) add language clarifying the applicant must submit and obtain approval for a final site development plan within the designated time period for the plan to remain valid.
- vi. Subsection (G.4) add the word “construction” to clarify construction must commence following approval and issuance of building permit.
- vii. Subsection (G.5) clarify the review authority for site development plan time period extensions.
- viii. Subsection (G.5) clarify how a preliminary or final development plans expiration time period may be extended.

- ix. Subsection (G.5) remove inconsistent language pertaining to RP-1 plats and plans.

b. Section 18.40.150 Preliminary Plat.

- i. Subsection (F.2) add language allowing the applicant to request a one (1) year extension on for preliminary plats, approved administratively.
- ii. Subsection (F.2) add language stating that time period for a preliminary plat resets with submittal and approval of each final plat for any phase on the preliminary plat.
- iii. Subsection (F.3) strengthen and clarify phasing plan requirements for preliminary plats over forty (40) acres.
- iv. Subsection (F.4) remove inconsistent language pertaining to RP-1 plats and plans.

c. Section 18.40.160 Final Plat.

- i. Subsection (E.1.b) clarify that final plats must conform to all requirements of the UDO.

3. Chapter 18.50 Supplemental Use Regulations

a. Section 18.50.160

- i. Subsection (B) add language referencing Title 16 of Municipal Code requirements shall be followed.
- ii. Subsection (D.1.b) increase setback requirements for above ground operations.
- iii. Subsection (D.4) remove unnecessary verbiage.
- iv. Subsection (D.5) add and clarify setback requirements removed from subsection D.4.
- v. Subsection (F) remove vibration standards for consistency with Title 16 of the Municipal Code.

Shelby Ferguson

Attachment B 12/04/18

From: Cynthia Kriesel <cann@vfemail.net>
Sent: Monday, November 19, 2018 9:25 AM
To: Aimee Nassif
Cc: Planning Contact; Shelby Ferguson
Subject: UDO 18-0002 - New information comments to be included in packet (RE: UDO 18-0002 Planning Commission Agenda)

Here are my new comments for the UDO 18-0002 Packet:

The proposed language changes to 18.30.190 and 18.50.160 would inappropriately remove all vibration restrictions related to non-blasting vibrations. The current language is applicable to vibrations from all quarry operations (including accessory uses), which includes non-blasting vibration producing activities such as:

- Rock Crushing
- Rock Drilling
- Rock Hammering
- Rock Loading/Dumping
- Heavy Machinery Generated Vibrations
- Accessory use vibrations, such as landfill compacting (applicable to quarries with landfill as an accessory use)

Title 16 of the Olathe Municipal Code does not have any restrictions applicable to non-blasting vibrations. There are no requirements in the existing quarry special use permits that address/restrict these types of vibrations (the permits rely on the existing UDO language for limiting those vibrations). So by completely removing the 0.02 inch per second residential property line vibration limit for quarry operations, the draft language would allow unlimited vibration levels at residential property for non-blasting vibrations produced by quarries.

Keeping the 0.02 limit in 18.50.160 is especially important since the UDO allows quarries on AG zoned property, and 18.30.190 does not apply to AG zoning. In addition, the 0.02 limit in 18.050.160 needs to be clarified to make sure it is clear that it means “peak” vibrations, which is what people feel. If not clarified, it could be argued to be non-enforceable in the future (as it has been in the past).

Also I note that Staff’s stated reason for the vibration language change in 18.30.190 is “... so that all standards specifically pertaining to quarries and mines are found in a single section of code.” But what about the other 18.30 development standards that should apply to quarries and mines (Noise, Smoke and Particulate Matter, Glare, Heat, Emissions, Air Contaminants, Electrical Issues, & Toxic or Flammable Liquids)? To follow Staff’s stated reason for the vibration language change, those other development standards also need to be covered in 18.50.160 to get them into a single section of code for quarries and mines. Those performance standards also need to be in 18.50.160 in order to cover all quarries, including those on AG zoned property (18.30 doesn’t cover AG zoned property), or alternatively 18.50.160 could refer back to the 18.30 for those performance standards.

Regards,

Randy Kriesel

24120 West 167th Street
Olathe, KS 66061
November 19, 2018

ATTACHMENT C 03/19/19

Attachment B 12/04/18

From: Aimee Nassif [mailto:AENassif@OLATHEKS.ORG]

Sent: Friday, November 09, 2018 3:41 PM

To: Cynthia Kriesel; TG Hamm; Waters, David (LG); Jacob Scherer; Pete Heaven (pheaven@spencerfane.com); Courtney Reyes; Todd Allenbrand; Mark Huggins; Brett Richter

Cc: Shelby Ferguson

Subject: UDO 18-0002 Planning Commission Agenda

On October 22, 2018, the Olathe Planning Commission held a public hearing regarding several proposed amendments to the Olathe Unified Development Ordinance (UDO 18-0002). After much discussion and hearing from several speakers from the development community, the Planning Commission voted 4-2 to recommend approval of UDO 18-0002 to the City Council, but requested that staff's recommendations regarding procedures for plans and plats (UDO 18.40.110) (UDO 18.40.150) be struck.

After the meeting, staff met with some of the members of the development community in an another attempt to reach a consensus on language for UDO 18.40 that would meet the needs of the stakeholders as well as accomplish the City's development goals.

On November 1st, Planning staff shared the results of the October 22nd Planning Commission meeting and the information that staff gathered from the stakeholders with the City Council. The City Council directed the Planning Commission to reconsider its motion on UDO 18-0002 to specifically address suggestions of staff pertaining to those sections stricken by the Planning Commission.

Staff intends to present suggestions regarding procedures for plans and plats (UDO 18.40.110) (UDO 18.40.150) to the Planning Commission for consideration at its November 26th meeting.

The only sections that Planning Commission recommended striking were in Chapter 18.40, but those sections are/were part of a larger comprehensive update to the UDO. Therefore, the entire package of UDO amendments in UDO 18-0002 will be returning to the Planning Commission on November 26th. Staff will focus on reconsideration of the updates regarding procedures for plans and plats (UDO 18.40.110) (UDO 18.40.150), and the result will be incorporated into the larger, comprehensive update known as UDO 18-0002, so that all the amendments may continue through the process together.

The packet for the November 26 meeting will be completed and distributed on Wednesday, November 21. If you have any new information that you would like included in the packet, please provide that to planning by close of business Monday, November 19.

A link to the previous packet with all the documents provided previously for that meeting will be provided to the Planning Commission.

Thank you

Aimee Nassif, Chief Planning & Dev Officer

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Public Works | City of Olathe, Kansas

Setting the Standard for Excellence in Public Service



Attachment B 12/04/18



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October 25, 2018

Dear City Council Members,

Grata Development (formerly Day3) is a Residential and commercial developer with 2 active residential developments Boulder Creek (170th and Murlen) and Boulder Hills (175th & Lackman) and an active Commercial Development at 167th and Murlen. We also have 462 acres in Olathe that are currently undeveloped. We are writing to you regarding the newly proposed changes to the Unified Development Ordinance (UDO), specifically concerning the expiration of preliminary and final plats. Over the past few months, our staff has had the opportunity to meet with members of staff both individually and as members of the Kansas City Home Builders Association Roundtable. We have been working diligently to understand the changes to the UDO and how they might impact our business. We have reached the conclusion that the proposal to add expiration dates to preliminary and final plats is detrimental to our businesses and detrimental to future residential and commercial development in Olathe.

It is our desire for you to consider the below facts during your contemplation of these changes:

- A preliminary plat is an agreement between the city and the developer memorializing the developer's vision for the project and how it fits into the requirements of the city.
- Plat expirations discourage large master planned communities, by introducing significant uncertainty and risk on the later phases of development.
- Plat expirations significantly complicate financing for larger developments by introducing the risk of increased government interference in the later phases, which results in decreased profitability.
- Developers make decisions on when to start developments based exclusively on market conditions. Expirations are more likely to cause development to stop rather than start sooner.
- Plat expirations will add additional bureaucracy to an already cumbersome process and extra work for city staff.
- Expirations add uncertainty which has a significant negative impact on property value.

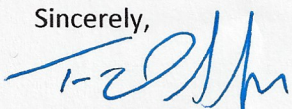
As a group of community minded developers, we are requesting the following considerations:

- If construction has begun on the first phase or final plat of a preliminary plan or plat, they should never expire.
- Preliminary plats should not expire.
- Any extensions granted should be at least 5 years in length.
- Properties that currently have a preliminary plan in place should be grandfathered into any changes in ordinance.

Olathe has had regulations that encourage developers to listen closely to market demand and build homes and developments that meet the needs of these consumers. Consumers have responded to this value proposition at an astounding rate. Never has this been more apparent than the past ten years, while the City of Olathe has been leading Johnson County in residential building permits. Implementation of these changes limit the developers' ability to respond to market demand.

We have made significant investments in Olathe and would like to work with you to create a wonderful place to live and work. However, the proposed changes will discourage development and significantly hinder our ability to achieve that goal.

Sincerely,



Travis Schram
President



Jon Burrell
Majority Owner



MINUTES

Planning Commission Meeting: November 26, 2018

Application:	<u>UDO18-0002</u>: Unified Development Ordinance Amendments
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Aimee Nassif, Chief Planning and Development Officer, provided an overview of this item. She said since the last meeting on October 22nd, staff has continued to communicate with stakeholders and the development community. She noted that UDO updates were recommended to proceed forward on October 22nd, striking out updates to 18.40.110 and 18.40.150. Ultimately, City Council has asked the Planning Commission reconsider those items removed,

Ms. Nassif noted that the first section deals with preliminary plans and final plans. The original recommendation was that preliminary plans have an expiration period of two years after date of approval. Staff is recommending this be increased to five years.

The second section for reconsideration deals with commencement of construction. Ms. Nassif noted that staff's recommendation has not changed, and they are recommending approval as previously presented.

The third section for reconsideration has to do with preliminary plat expiration after two years. After further discussion with stakeholders following the October 22nd hearing, language has been updated to allow the clock for preliminary plats to renew upon approval of a final plat. This will encourage and promote phasing for large developments. Also, there was a clause written previously where the developer could ask for time extension. That language was struck out on October 22nd, but staff recommends it be put back because preliminary plats should have an ability for an extension. Preliminary plats, final plats and final development plans all have a two-year expiration point. Preliminary plans have five years, which is what is new. And then, every plan or plat has a caveat for time extension or renewal for a developer to ask for. Also, the time extension allowance was increased from six months to 12 months for final development plan.

Comm. Sutherland asked Ms. Nassif to define "commencing construction." She responded that commencing construction begins at issuance of the building permit. **Comm. Freeman** asked if the chart would be included in the UDO; Ms. Nassif said a summary may be included in our development manual being drafted.

Ms. Nassif then addressed phasing plans. Currently, preliminary plans require a phasing pattern. She noted that members of the development community had concerns voiced at the October 22nd meeting regarding if their proposed phasing plan changes. She said Section B has been updated at the request of the development community noting that any deviation from the approved phasing plan may be approved administratively and requirement for a narrative removed at the stakeholder's request. She then provided charts outlining an overview of all the amendments as part of UDO18-0002.

Chair Vakas appreciates the time that everyone has devoted to this process. He noted that this is not a public hearing and any public comment would be heard on December 4 by City Council. **Comm. Fry** also said he appreciates the work and effort that staff and City Council put into this process. **Comm. Rinke** asked how the development community has reacted to the latest proposal. **Ms. Nassif** hopes they are satisfied, many of the new recommendations have come directly from the development community, and staff has appreciated all their input and work with us. **Comm. Rinke** wished to go on the record, saying that for quarries and blasting he would like to see some type of vibration limit at lower limits than the .75. However, he is supportive of sending this forward to City Council.

There being no other comments, **Chair Vakas** called for a motion.

Motion by Comm. Fry, seconded by Comm. Sutherland, to recommend approval of UDO18-0002, as follows:

Staff recommends approval of the proposed amendments to the *Unified Development Ordinance (UDO)*, as detailed in the UDO Amendments Exhibit for the following Chapters and associated subsections herein: 18.30.190, 18.40.110, 18.40.150, 18.40.160, and 18.50.160. Below is also a list of specific amendments being presented and recommended for approval.

1. Chapter 18.30 Development Standards

a. Section 18.30.190 Performance Standards

- i. Subsection (C) add language directing the reader to Section 18.50.160.
- ii. Subsection (C) renumber section within subsection C.

2. Chapter 18.40 Procedures

a. Section 18.40.110 Site Development Plans

- i. Subsection (D.1.a) remove inconsistent language pertaining to notice requirements.
- ii. Subsection (D.1.b) add language clarifying notice requirements for preliminary site plans.
- iii. Subsection (G.1) add language expiring preliminary site development plans if a final development plan is not approved within five (5) years.
- iv. Subsection (G.2) add language requiring a phasing pattern for site development plans containing forty (40) acres.
- v. Subsection (G.3) add language clarifying the applicant must submit and obtain approval for a final site development plan within the designated time period for the plan to remain valid.
- vi. Subsection (G.4) add the word "construction" to clarify construction must commence following approval and issuance of building permit.
- vii. Subsection (G.5) clarify the review authority for site development plan time period extensions.
- viii. Subsection (G.5) clarify how a preliminary or final development plans expiration time period may be extended.
- ix. Subsection (G.5) remove inconsistent language pertaining to RP-1 plats and plans.

b. Section 18.40.150 Preliminary Plat

- i. Subsection (F.2) add language allowing the applicant to request a one (1) year extension on for preliminary plats, approved administratively.
- ii. Subsection (F.2) add language stating that time period for a preliminary plat resets with submittal and approval of each final plat for any phase of the preliminary plat.
- iii. Subsection (F.3) strengthen and clarify phasing plan requirements for preliminary plats over forty (40) acres.
- iv. Subsection (F.4) remove inconsistent language pertaining to RP-1 plats and plans.

c. Section 18.40.160 Final Plat

- i. Subsection (E.1.b) clarified final plats must conform to all requirements of the UDO.

3. Chapter 18.50 Supplemental Use Regulations

a. Section 18.50.160 Quarries and Mines

- i. Subsection (B) add language referencing Title 16 of Municipal Code requirements shall be followed.
- ii. Subsection (D.1.b) increase setback requirements for above ground operations.
- iii. Subsection (D.4) remove unnecessary verbiage
- iv. Subsection (D.5) add and clarify setback requirements removed from subsection (D.4).
- v. Subsection (F) remove vibration standards for consistency with Title 16 of the Municipal Code.

Aye: Sutherland, Freeman, Nelson, Rinke, Fry, Corcoran, Vakas (7)

No: (0)

Motion was approved 7-0.



Staff Report

Planning Commission Meeting: October 22, 2018

Application:	<u>UDO18-0002: Unified Development Ordinance Amendments</u>
Applicant:	City of Olathe, Public Works – Planning Services
Staff Contact:	Aimee Nassif, Chief Planning and Development Officer Shelby Ferguson, Planning Consultant

Overview:

Presented this evening are major areas of updates to the *Unified Development Ordinance* (UDO). Those are for 18.40 procedures for phasing and time expirations and 18.30 and 18.50 pertaining to quarry operations. The first section to be discussed in this report is procedures.

18.40 Procedures

City staff began working on several UDO updates this past summer. After discussions on several cases which had been zoned or platted many years ago and then researching what other municipalities require, staff discussed updating section 18.40 with the governing body. To ensure that older developments, once ready to proceed with platting meet current UDO standards, language for preliminary plats was drafted. This 2-year proposed time matches the time period currently allowed in the UDO for all other plans and plats.

On August 13, 2018 the Planning Division held a Planning Commission workshop and a public hearing on several UDO updates. Many of the updates were simple in nature pertaining to landscape screening and site design layout. However, within the proposed updates staff recommended amendments to Section 18.40 Procedures regarding the expiration of preliminary site development plans. At the time of the public hearing the proposed amendments were intended to bring consistency to the review of plats and plans.

On June 27, staff met with the Home Builder's Association (HBA) on a variety of items which included providing conceptual language for these UDO updates previously discussed with the City Council. Subsequently, we heard from one member of the HBA who expressed concern and asked that preliminary plans have an extended period of 7 years in lieu of 2 years.

On August 13 a workshop was held with the Planning Commission followed by a public hearing. During the public hearing, representatives of the HBA addressed the Planning Commission and expressed concern with the proposed updates to Section 18.40.110 regarding the addition of a two (2) year time expiration for preliminary development plans. Following discussion, the Planning Commission voted to hold the public hearing until a later date to allow staff to continue collaborating with the development community.

Since that time staff has spoken with the HBA and other members of the development community on numerous occasions and met formerly with these stakeholders on: June 27, August 14, August 20, and September 11 on this area of the UDO as well as other future updates as well. Individuals who have participated with us include Pete Heaven, Amy Grant, Mark Huggins and Todd Allenbrand. Throughout these conversations, the development community has continued to express concern with expirations on preliminary plans.

According to those opposed, two (2) year expiration for preliminary plans could result in uncertainties with project approvals, along with concerns for the developer's ability to receive financial guarantees from lenders. Staff has appreciated all the feedback we have received from the community (and other departments as well). From these discussions, to address other concerns we heard from them, we have updated other sections of the UDO that were not originally being addressed. We believe these additional updates will streamline and improve the review process. Some of the language below specifically came from examples shared in these meetings that staff incorporated (such as that from Pete Heaven). This includes:

1. Making time extensions administrative reviews 12 months for final plans and preliminary plans in lieu of 6 months.
2. Providing an option for greater (even unlimited) extensions for final and preliminary plans by the Governing Body.
3. Updated existing language allowing for extensions of preliminary plans which did not otherwise exist.
4. Provided language stating what is necessary in order to be considered for an extension from suggestions provided at our stakeholder meetings.
5. Added language to clarify phasing requirements for large developments (over 40 acres).

18.30 and 18.50 Quarries, Mines, and Blasting

Staff has also been collaborating with key stakeholders in the quarry and mining industry to update inconsistencies in the UDO pertaining to vibration standards for quarry and mine operations and blasting.

Staff previously presented draft language to City Council on August 21st where it was determined additional research and collaboration with key stakeholders was necessary before moving forward with the proposed amendments. During this meeting there was one speaker, Randy Kriesel, who spoke in opposition of removing the ground vibration standard from section 18.50.160.

Since that time, staff has completed research on local, state, and national regulations along with collaborating with several stakeholders. In addition to working with other city staff, and meetings, discussions have occurred with Randy Kriesel, representatives of HAMM Inc., Vibra-Tech, and Brett Richter with Buckley Powder for completion of this draft for your review. All these individuals have provided helpful feedback and information to staff as we've worked through this process.

On September 7th staff met with representatives from HAMM Inc., who are the new owners of the quarry operations located at 159th and S. Clare to discuss the updates. Following a workshop with the Planning Commission on October 8, staff met with Mr. Randy Kriesel on October 12th to discuss the proposed drafts. At this meeting Mr. Kriesel expressed concerns with the proposed setback language, the removal of the .02 ips ground vibration standards from Section 18.50.160 and recommended that individuals schedule a time to experience a blast.

Out of these discussions and our research, staff is presenting draft language which removes the inconsistency in blasting regulations, locates all quarry and mine operation standards in a single section of code, and clarifies language pertaining to setbacks when near residential properties.

The following is a summary of UDO Section updates which we are recommending as the part of this round's updates. A quick reference exhibit for all recommendations can be found attached, along with a red-line version of the updates and revisions. Please note that the quick reference exhibit has update categories by the relevant Chapter and Section of the UDO.

UDO Amendments

1. Quarries and Mines

Section 18.30. Development Standards

18.30.190 Performance Standards

- a) **Recommendation:** Add language to point the reader to Section 18.50.160 for specific performance standards for operation of quarries and mines.

Reason: Section 18.30.190 of the UDO provides performance standards for activities in industrial districts. While quarries and mines are found in industrial districts, the UDO provides its own separate chapter on regulations for quarries and mines. To improve readability and remove inconsistencies, staff recommends adding language directing the reader to Section 18.50.160 so that all standards specifically pertaining to quarries and mines are found in a single section of code.

Section 18.50. Supplemental Use Regulations

18.50.160 Performance Standards

- a) **Recommendation:** Update vibration standards and setback language pertaining to quarries and mines in Section 18.50.160.

Reason: Staff collaborated with Public Works, the Fire Department, and Legal Department and researched local communities, state regulations, the City Technical Specifications and the National Fire Protection Association (NFPA) Code, to draft these updates for your review.

As part of our research, staff has identified three (3) surrounding communities Lenexa, Shawnee and Overland Park to have a vibration standard lower than the proposed .75 ips; which is .02 ips at the residential property line however there are no active quarries in these communities. However, Johnson County, Douglas County, and Bonner Springs all do have active quarries and follow the standards of NFPA 495.

The updated reference to Title 16 of the Olathe Municipal Code for Fire Prevention will require operation of quarries and mines to follow vibration standards for blasting set forth in the National Fire Protection Association (NFPA 495) which states blasting vibration standards for structures of drywall shall use a limit of .75 ips and structures of plaster shall use a limit of .50 ips.

The vibration standards in NFPA and adopted by the City of Olathe are for structural damage and not a nuisance standard. If a nuisance (or zoning) standard is desired, language is included in the redline stating that additional or

stricter requirements may be applied to a site-specific operation within the governing Special Use Permit (SUP). This is consistent with current, active SUP regulations as well as how other municipalities address these operations.

Included in this packet you will find a comment letter provided by Randy Kriesel. No additional documentation since the Planning Commission workshop has been provided however we have provided copies of this packet to all stakeholders that we have been engaged with.

Since the Planning Commission workshop, staff has received comments from both Randy Kriesel and HAMM Inc., which we have used to update the draft. First, staff has removed the proposed setback increase (from areas that are not residential) as it is handled by the special use permit language and can be determined on a case by case basis. Secondly, staff clarified the intent of the setback requirement from residential property to improve readability.

2. Procedures (Expiration of Prelim. Plans and Time Extensions for Plans and Plats)

Section 18.40. Procedures

18.40.110 Site Development Plans

- a) Recommendation:** Clarify when public notice is necessary for preliminary site development plans.

Reason: Currently Section 18.40.110 states under “decision” a public notice is required for preliminary site development plans if the use is permitted by right. However, this would delay the review process by several months and is also not current practice unless associated with a rezoning or special use permit.

- b) Recommendation:** Add an expiration date on preliminary site development plans (not simply those zoned RP-1) if a final development plan is not approved within two (2) years.

Reason: Currently Section 18.40.110.G states that final development plans expire after a 2-year time period. This is to ensure compliance with current code regulations which can be difficult to maintain if long periods of time lapse between approvals and commencement of construction. However, preliminary site development plans have no such time expiration. Language is proposed to add an expiration period similar to that of all other plans and plat types.

Despite numerous conversations, the development community remains concerned with this language and have proposed a longer time. Our research has found that other communities have time limitations of two (2) years or as short as 12 months. However, there are many communities in the area that do not have such a requirement at all. A table outlining our neighboring communities time limits is provided showing our research. We have also provided a table which shows the time expiration period required for all other plans and plats by these same communities.

Table 1. Neighboring Communities Preliminary Plan Expirations

	12 mths	15 mths	18 mths	2 yrs	4 yrs	5 yrs	
Olathe				X			-
OP							n/a
Lenexa							n/a
Shawnee							n/a
Leawood							n/a
Gardner				X			-
Mission							n/a
De Soto							n/a
Fairway	X						-
Prairie Village							n/a
Edgerton							n/a
Merriam							n/a
Roeland Park							n/a
Spring Hill							n/a
KCK	X						-
KCMO				X			-

Table 2. Neighboring Communities Other Plats and Plans Expirations

	12 mths	15 mths	18 mths	2 yrs	4 yrs	5 yrs
Olathe				All		
OP	-	-	FP, FSP	-	-	-
Lenexa		-	-	All	-	-
Shawnee	PP	-	-	FP, FSP		
Leawood	-	-	-	-	-	FP, FSP
Gardner	-	-	PP	FP, FSP	-	-
Mission	-	-	FP	-	-	-
De Soto	PP	-	SP	-	-	FP (SF)
Fairway	FSP	-	-	-	-	FP (SF)
Prairie Village	-	-	-	-	-	-
Edgerton	PP, FP	-	-	-	-	PUD
Merriam	PP, SP	-	-	-	-	-
Roeland Park	-	FP	FSP	-	-	-
Spring Hill	PP, SP	-	-	-	-	-
KCK	All	-	-	-	-	-
KCMO	FSP	-	-	PP	FP	-

FP – Final Plat**PP** – Preliminary Plat**FSP** – Final Site Plan**SP** – Site Plan (*No distinction between Prelim and Final*)**PUD** – Planned Unit Development

In response to concerns, we have added language which would allow for a streamlined, administrative approval of requests for extensions. Staff is also not proposing a limit to the number of extensions that can be requested or approved. We are also proposing that applicants are able to seek Governing Body approval for time periods beyond 12 months. Staff has attached each draft iteration of the plans and plats language, to provide a comprehensive overview of how the proposed amendments have evolved through our discussions with the development community.

During our conversations with the development community we received a letter from Farmers Bank of Kansas City supporting their customers in requesting a 7-year expiration on preliminary plats, this letter is attached for your reference. We have also included letters from Gary Kerns of the HBA and anticipate others would like to participate in the public hearing discussions.

Staff was hopeful that with the other updates and streamline process that this would have addressed all of the development community concerns. Our goal was to update the code to ensure UDO standards are met, while still providing for a streamline process which would not result in delays or issues. Since we have been discussing this for several months now, we felt it was important to proceed forward with the amendments so that you may hear directly from the community and we may receive your recommendation and continue these discussions with the governing body.

- c) Recommendation:** Remove inconsistent language pertaining to RP-1 plats and plans.

Reason: Sections 18.40.110.G.5 and 18.40.150.F.4 currently state that only RP-1 zoned plans and plats expire and reference a date of June 2014 as that was the date of original adoption of the UDO. In addition, other language found in these same sections causes confusion because it does not identify that the time restriction applies only to a certain zoning district; it actually is applicable regardless of district boundaries

18.40.150 Preliminary Plat

- a) **Recommendation:** Add language to allow a streamlined, administrative review extension for preliminary plats.

Reason: Section 18.40.150 currently states preliminary plats expire after two (2) years where a final plat has not been submitted for approval. After hearing concerns from the development community, staff has added language to allow a one (1) year extension be granted administratively.

- b) **Recommendation:** Strengthen and clarify the requirements for development phasing pertaining to preliminary plats.

Reason: The UDO requires preliminary plats containing a gross land area in excess of forty (40) acres to submit a phasing pattern at the time of approval for final platting. The added language provides clarity to the developer and staff for review as to what should be included and what the expectation is for development phasing.

18.40.160 Final Plat

- a) **Recommendation:** Add language to clarify all plats are required to meet requirements of the UDO.

Reason: Currently within the approval criteria for preliminary plats the UDO states preliminary plats are to conform to the development standards within Chapter 18.30. However final plats do not include specific language for conforming to the UDO. Language has been added to clarify final plats are also required to conform to the current standards and requirements set within the UDO.

Staff Recommendation:

Staff recommends approval of the proposed amendments to the *Unified Development Ordinance (UDO)*, as detailed in the attached UDO Amendments Exhibit for the following Chapters and associated subsections herein: 18.30.190, 18.40.110, 18.40.150, 18.40.160, and 18.50.160.

It should be noted that when this round of updates was originally presented in August it included updates to Section 18.40.110 pertaining to vested rights. We are in the midst of further research and discussion on this section, so it has been removed from this round of UDO amendments and will return at a later date.

Attached please find a copy of the redline version of the updated sections, a quick reference exhibit, as well as comment letters from individuals in the community as discussed previously in this report.

We appreciate the feedback we have received and look forward to continuing to collaborate with the community.

18.30.190 Performance Standards

In some districts, performance standards capable of quantitative measurement are established. Except to the extent modified in the specific zoning district regulations, the following general provisions apply to measure compliance with those performance standards.

A. Noise

See Noise Control Ordinance (Chapter [6.18](#) of the Municipal Code).

B. Smoke and Particulate Matter

1. The Ringlemann Chart, as adopted and published by the United States Department of Interior, Bureau of Mines, shall be used to determine the density of equivalent opacity of smoke. The Ringlemann number indicated as the performance standard in certain zoning districts refers to the number of the area of the Ringlemann Chart that coincides most nearly with the visual density of equivalent opacity of the emission of smoke observed.
2. Within the M-1, M-2 and M-3 zoning districts, no use shall be permitted or operated so that smoke darker than Ringlemann No. 1 is produced from any vent, stack or chimney. However, emission of smoke darker than Ringlemann No. 2 is allowed for a duration of up to four (4) minutes during any eight (8) hour period if the emission is located no closer than two hundred fifty (250) feet from property zoned AG, any residential zoning district, N, or the residential areas of planned developments.
3. Particulate matter emissions, in excess of the threshold limit values caused by the wind from open storage areas, yards, roads, etc., within lot lines shall be kept to a minimum by appropriate landscaping, paving, oiling, wetting and other means, or shall be eliminated.

C. Vibration

1. [Vibration standards for any use, other than quarries and mines, are found within this section. For minimum standards for quarry and mine operations, see section 18.50.160 of this UDO.](#)

~~12.~~ Within the M-1, M-2 and M-3 zoning districts, no use may generate any ground-transmitted vibration in excess of one tenth (.10) inch per second measured at the property line, or in excess of two-one hundredths (.02) inch per second measured at any residential property line. These values may be multiplied by two (2) for impact vibrations, i.e., discrete vibration pulsations not exceeding one (1) second in duration and having a pause of at least one (1) second between

pulses. Vibrations are measured in particle velocity and are to be measured at the property line or other designated location.

32. A three-component measuring system capable of simultaneous measurement of vibration in three mutually perpendicular directions shall be used to measure vibrations.

43. The vibration maximums indicated as the performance standard in certain zoning districts may be measured directly with suitable instrumentation or computed on the basis of displacement and frequency. When computed, the following formula shall be used:

$$PV = 6.28 F \times D$$

Where:

PV = particle velocity, inches-per second

F = vibration frequency, cycles-per second

D = single amplitude displacement of the vibration,
inches

54. The maximum particle velocity shall be in the maximum vector sum of three mutually perpendicular components recorded simultaneously.

65. Unless specifically indicated to the contrary in the zoning district regulations, vibration resulting from temporary construction activity that occurs between 7:00 AM and 7:00 PM is exempt from the indicated performance standard.

D. Glare

See Lighting (Section [18.30.135](#)).

1. Within the M-1, M-2 and M-3 districts, direct or sky-reflected glare, from floodlights or from high temperature processes such as combustion or welding, shall not be directed into any adjoining property.

E. Heat

Within the M-1, M-2 and M-3 districts, heat from furnaces, processing equipment, or other devices shall be contained so that the temperature of air or materials is raised no more than five (5) degrees Fahrenheit as measured at all property lines.

F. Emissions

Within the M-1, M-2 and M-3 districts, the maximum rate of emission of dust and other particulate matter from all sources within the boundaries of any lot or tract shall not exceed one (1) pound per hour per acre of lot area.

G. Air Contaminants (such as Odors and Fumes)

Within the M-1, M-2 and M-3 districts, the emission of air contaminants created by industrial processes shall comply with the Kansas Air Quality Act, K.S.A. § [65-3002](#) and any adopted state regulations. All air contaminants shall be contained so that no odors or fumes may be sensed at the property line of any residential zoning district.

H. Electrical Issues

Within the M-1, M-2 and M-3 districts, activity which creates any off-site electrical disturbance, or contributes to interference with electronic signals (including television and radio broadcasting transmissions) shall be prohibited.

I. Toxic or Flammable Liquids

Storage of toxic or flammable liquids such as gasoline, oil or grease, where not stored underground, shall occur in such a manner that a secondary storage system is provided with capacity as specified by the Fire Code.

18.50.160 Quarries and Mines

Purpose. This section regulates the externalities of quarries.

A. Applicability

This section applies to mines or quarries.

B. Generally

All ~~M~~mines and quarries shall follow all Federal, State, and ~~local Olathe Municipal Code guidelines~~ and requirements, including those found in Title 16 of the Olathe Municipal Code as well as requirements found in any special use permit governing a specific site. for blasting and vibration. In the event that multiple requirements exist, including those for blasting and vibration, the stricter standard shall be controlling over the land use activity on the site.

C. Roads

1. Proposed quarry operations shall provide or have direct access to a public road.
2. Public and private roads shall be hard-surfaced and built to carry the heavy loads that are generated from quarry operations.

D. Setbacks for Above-Ground Operations

1. All above-ground operations shall be located at least:
 - a. One hundred (100) feet from any property line except as provided below.
 - b. One thousand (1,000) feet from an existing residence or the nearest property line of a residentially zoned property, whichever achieves the greatest overall setback.
2. The Planning Commission or Governing Body may reduce the property line setback where it abuts a highway or railroad right-of-way by up to fifty (50) percent.

3. The Planning Commission or Governing Body may reduce the residential setback by up to ninety (90) percent if the applicant shows that compliance with the City ordinances related to noise, dust, visibility and operations will adequately protect the residents from the above-ground operations, or upon approval of the residence owner.

4. The above setbacks may be increased upon the City's determination that wider setbacks are warranted ~~in order~~ to mitigate adverse impacts. ~~All above-ground operations located next to existing mine or quarry operations require no setback, and may be immediately adjacent.~~

5. A setback for above-ground operation is not required when the operation is located contiguous to another existing mine or quarry operation.

E. Setbacks for Below-Ground Operations

All below-ground operations shall be located at least two hundred (200) feet from the nearest property line, measured laterally.

~~F. Vibration~~

~~1. Ground-transmitted vibration shall not exceed two-tenths (0.20) inches per second at the property line or two-hundredths (0.02) inches per second measured at any residential property line.~~

~~2. These values may be multiplied by two (2) for impact vibrations; i.e., discrete vibration pulsations not exceeding one (1) second in duration and having a pause of at least one (1) second between pulses. (Ord. 16-51 § 3, 2016)~~

18.40.110 Site Development Plans

Purpose: A site development plan is a process that allows City staff and the Planning Commission to review significant developments and uses to ensure that they comply with the zoning and development standards in this title, have appropriate design and infrastructure, and comply with any conditions of rezoning, preliminary subdivision plat, or special use permit approval.

A. Applicability

1. A preliminary site development plan is required for:

a. Any application to rezone property:

(1) to a district that allows nonresidential uses or multifamily or two-family dwellings, or

(2) to an "A," "R-1" or "R-2" district where the applicant is proposing a nonresidential development

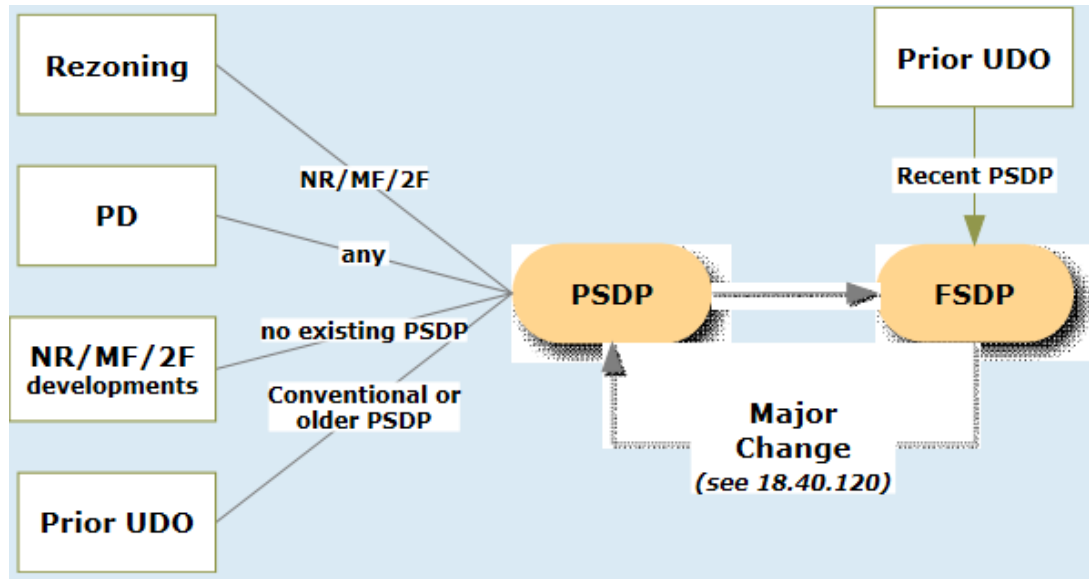
b. All nonresidential uses, or developments with multifamily or two-family dwellings unless a preliminary site development plan for the proposed development was already approved as part of the existing zoning district, and

c. Any application for approval of a planned development district.

2. If a property is subject to an approved and unexpired preliminary site development plan, a **final site development plan** is required before a building permit application is filed.

B. Initiation

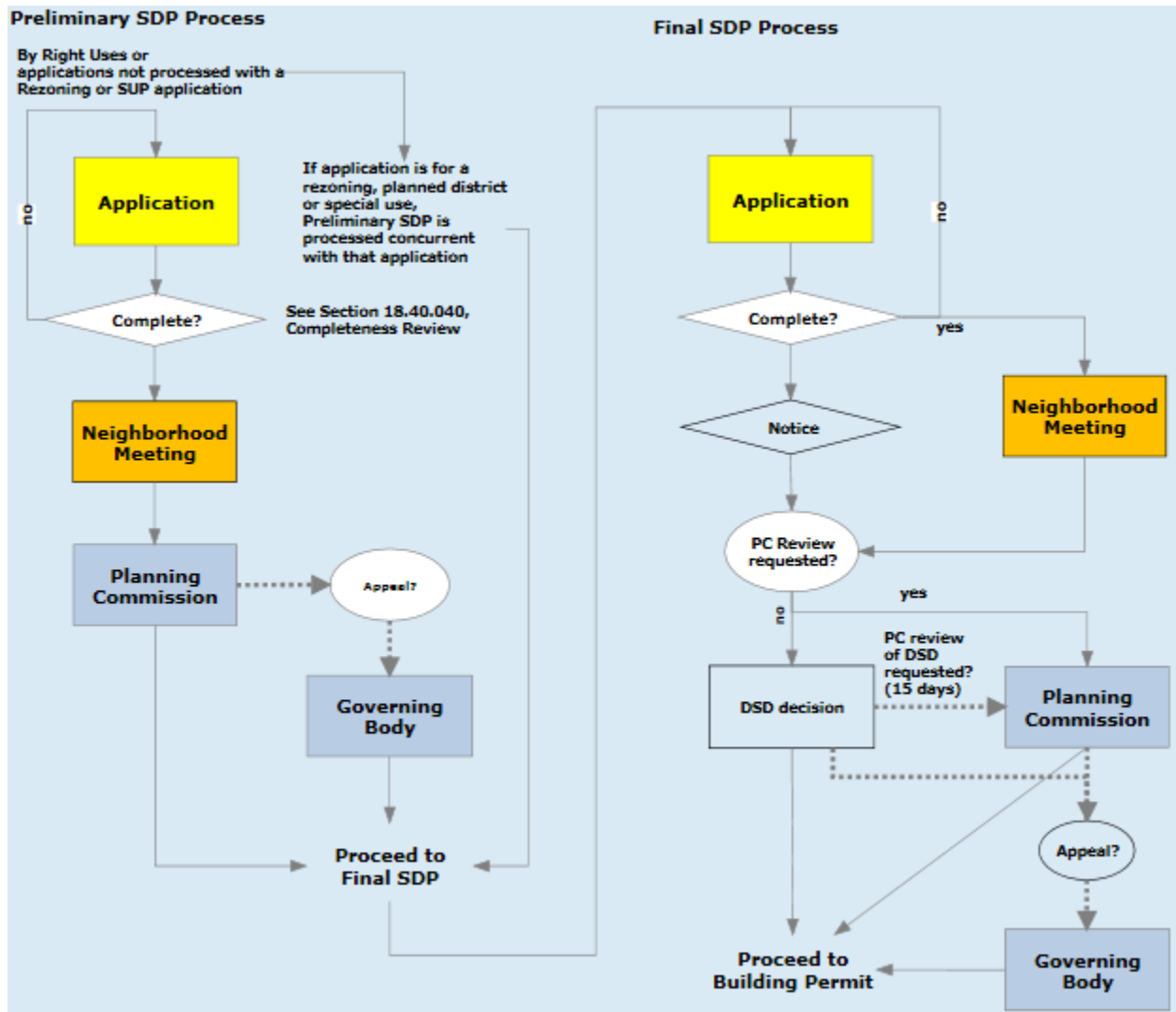
1. Preliminary and final site development plans shall be filed with the Planning Official, and shall include the information required by Chapter [18.94](#).



Editor's Note: This diagram referenced "Substantial Change" in Section [18.40.120](#). This terminology has been changed to "Major Change" to match the text of that section.

2. A neighborhood meeting is required for a preliminary and final site development plan (see Section [18.40.030](#)).

C. Review Process



D. Decision

1. Preliminary Site Development Plan Decision

- a. If the application involves a use that is **permitted by right** in the applicable zoning district, the Planning Commission will approve, conditionally approve, or deny a preliminary site development plan. ~~Notice to surrounding property owners is required (see Section 18.40.050.B).~~ The Planning Commission will render a decision within 30 days, unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.

b. If the application involves a **planned district**, a **rezoning**, or a **special use**, the preliminary site development plan is processed and approved as part of that application. [Notice to surrounding property owners is required \(see Section 18.40.050.B\)](#). The preliminary site development plan may be revised and resubmitted during the review period for the planned district/conditional rezoning or special use permit application review period and approved as part of the conditions of approval. In that case, the Approving Authority is the agency that approves that rezoning or special use.

2. Final Site Development Plan Decision

a. Authority

A final site development plan is approved by the Planning Official, unless the applicant requests Planning Commission review.

b. Planning Official Decisions

If the Planning Official renders a decision on the application:

- (1)** The Planning Official shall render its determination within thirty (30) days after the applicant submits a complete application (see Section [18.40.040](#)), unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.
- (2)** If the Planning Official fails to render a timely decision, the applicant or a surrounding property owner may request Planning Commission review (see subsection [D.2.c](#), below).
- (3)** If the applicant or surrounding property owner does not request Planning Commission review, the Planning Official's determination is final.
- (4)** If an administrative review application is without communication from the applicant for more than six (6) months, the applicant will be required to submit a new application and fees for the final site development plan review to continue.

c. Planning Commission Review

- (1) The Planning Commission reviews the final site plan if the applicant asks the Planning Commission to review the final site plan within fifteen (15) days of the date of the Planning Official's decision.
- (2) The Planning Commission will consider the application without a public hearing.
- (3) The Planning Commission may approve, approve with conditions, or deny the preliminary or final site development plan.
- (4) The Planning Commission shall render its decision within 30 days after the applicant requests a review. The Planning Commission may extend the time for making a decision if requested by the applicant.

E. Approval Criteria

1. The following criteria apply to the approval, conditional approval or denial of a preliminary site development plan:
 - a. The plan complies with all applicable requirements of Chapters [18.15](#), [18.20](#), and [18.30](#), and
 - b. The plan represents an overall development pattern that is consistent with the Comprehensive Plan, the Major Street Map and other adopted planning policies.
2. A final site development plan is approved if it is consistent with the preliminary site development plan as approved, including all conditions of approval, and complies with all applicable requirements of this title. A final site development plan shall not modify or expand the approved preliminary site development plan, except as provided in Section [18.40.120](#).

F. Subsequent Applications

1. When an application for preliminary or final site plan is withdrawn by the applicant or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
2. An application for a major modification to the withdrawn or denied application may be submitted at any time.

G. Scope of Approval

1. Approved preliminary site development plans or final site development plans are valid for two (2) years after ~~final~~ date of approval.

2. When a preliminary site development plan containing multiple lots is submitted for approval; the applicant will indicate the anticipated development or phasing pattern for final development. The phasing pattern for development shall include:

- a) Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically (to avoid confusion with lot numbers), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The final phasing plan map should be drawn at the same scale as the preliminary site plan map.
- b) A narrative description or table that describes each phase and its associated improvements. In addition, the narrative or table shall demonstrate that each phase would comprise a "stand-alone" development which, should no subsequent phases be constructed, would meet or exceed the standards of this ordinance.

3. If the applicant fails to submit and obtain approvals for a final site development plan within the time period required in subsection G.1, above, the preliminary site development plan becomes null and void unless the time period is extended.

~~24.~~ If the ~~landowner~~ applicant fails to commence construction by means of an issued building permit ~~the planned development~~ within the time period required in subsection G.1, above, the final site development plan becomes null and void unless the time period is extended.

~~35.~~ The ~~Approving Authority~~ Chief Planning and Development Officer may extend the time period of a preliminary or final development plan upon written ~~application request~~ by the ~~landowner~~ applicant. Unless otherwise required in a condition of approval, the ~~Approving Authority~~ Chief Planning and Development Officer may extend the time period administratively without a public hearing. The ~~Approving Authority~~ Chief Planning and Development Officer shall extend the time period of either site development plan for up to ~~six (6)~~ twelve (12) months. ~~After this time period or at the time the original extension is requested,~~ Upon written request by the applicant, the ~~Approving Authority~~ Governing Body may extend the preliminary or final site development plan for any length of time for cause.

~~46.~~ The applicant may revise an approved final site development plan as provided in Section [18.40.120](#).

~~5. Any preliminary plat or preliminary development plan for a single-family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

H. Appeals

The applicant or aggrieved party may appeal the disapproval of a preliminary or final site development plan by the Planning Commission to the Governing Body. The applicant shall file a notice of appeal with the Planning Official within ten (10) days following the decision.

I. Recordkeeping

The Planning Division and the applicant shall maintain copies of the preliminary and final site development plan approvals, and all supporting documentation.

J. Abandonment of Final Site Development Plan

1. If the applicant abandons any part of a site development plan, then the applicant shall notify the City in writing.
2. If any part of a final site development plan is abandoned, no development shall take place on the property until a new final site development plan is approved. (*Ord. 17-52 §§ 22, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 15-16 § 3, 2015*)

18.40.150 Preliminary Plat

Purpose: The preliminary plat process examines the major features and elements of a proposed plat. This process determines whether the plat conforms to this title and the Comprehensive Plan, and any conditions of approval.

A. Applicability

1. The Planning Commission must approve a preliminary plat before a final plat application is filed.
2. A preliminary plat is not considered a "plat" for purposes of KSA [12-752](#). Instead, the preliminary plat is a preapplication process that is designed to ensure that that plat conforms to all applicable requirements of this title. The applicant may request that the City waive the preliminary plat process and proceed directly to the final plat process.

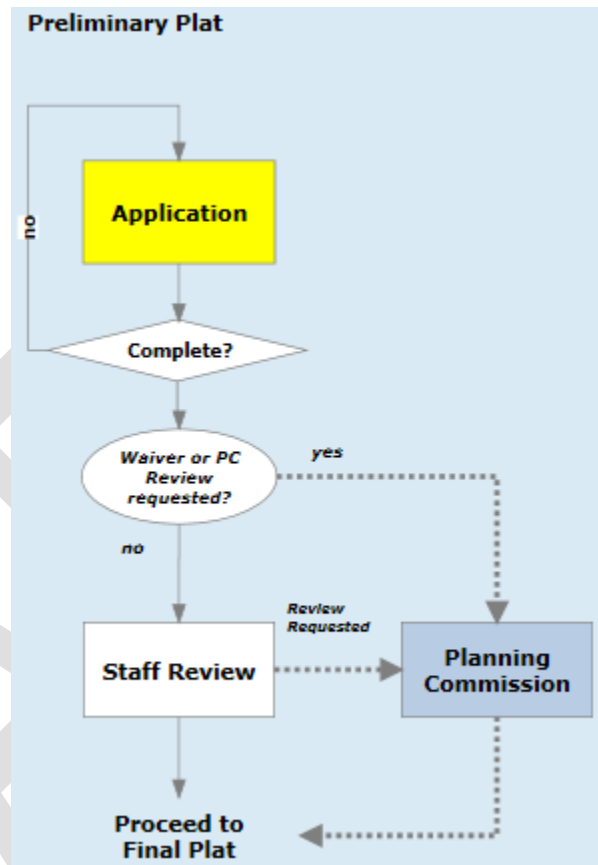
B. Initiation

1. An application for preliminary plat approval is filed with the Planning Official. Preapplication is required.
2. An applicant may substitute a preliminary development plan for a preliminary plat if the preliminary development plan contains all information required for preliminary plats as set forth in Chapter [18.94](#).
3. A neighborhood meeting is required (see Section [18.40.030](#))

⇌ Cross-Reference: [18.40.020](#) (Preapplication)

C. Completeness Review

See Section [18.40.040](#), Completeness Review.



D. Approval Criteria

The Approving Authority shall approve the preliminary plat if it finds that the following criteria are satisfied:

1. The proposed preliminary plat conforms to the requirements of Chapter [18.30](#), the applicable zoning district regulations and any other applicable provisions of the Municipal Code, subject only to acceptable rule exceptions.
2. The subdivision represents an overall development pattern that is consistent with the Comprehensive Plan, Major Street Map, Access Management Plan, and applicable corridor studies and plans.
3. The plat contains a sound, well-conceived parcel and land subdivision layout which is consistent with good land planning and site engineering design principles.
4. The spacing and design of proposed curb cuts, driveway approaches and intersection locations is consistent with the Access Management Plan, good traffic engineering design and public safety considerations.
5. The plat conforms to any existing, unexpired and valid conditions of rezoning, special use permit or site development plan approval.
6. All submission requirements are satisfied.

E. Subsequent Applications

1. When a preliminary plat application is withdrawn or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
2. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

F. Scope of Approval

1. Approval of a preliminary plat does not constitute acceptance of the subdivision, but authorizes preparation of the final plat. No improvements shall take place in the subdivision prior to approval and recording of the final plat and submittal and approval of street, sanitary sewer, water line and storm sewer construction plans by the City Engineer.

2. Preliminary plat approval is effective for a period of two (2) years. Where a final plat for the subdivision is not submitted for approval within the two (2) year time period, the preliminary plat becomes null and void and the developer shall resubmit a new preliminary plat for approval subject to the then effective regulations. The Chief Planning and Development Officer may, upon written request by the applicant, administratively grant a one (1) year time extension.
Consideration for a time extension shall be based upon, but not limited to:

- a) the developer's ability to adhere to any changes in the Olathe Municipal Code or other applicable regulations, that would impact the proposed development; or
- b) if the developer demonstrates substantial progress towards the design and engineering requirements necessary to submit a final plat.

3. When a preliminary plat containing a gross land area in excess of forty (40) acres is submitted for approval, the applicant will ~~may~~ indicate the **anticipated development or phasing pattern** for final platting. The applicant may receive an extension of the one (1) year time limit for submission of the final plat if each phase is constructed in accordance with the original phasing plan and subsequent final plats comply with all applicable regulations at the time of final platting. The phasing pattern for development shall include the following:

- a) Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically (to avoid confusion with lot numbers), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The final phasing plan map should be drawn at the same scale as the preliminary plat map.
- b) A narrative description or table that describes each phase and its associated improvements. In addition, the narrative or table shall demonstrate that each phase would comprise a "stand-alone" development which, should no subsequent phases be constructed, would meet or exceed the standards of this ordinance.

~~4. Any preliminary plat or preliminary development plan for a single family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

G. Recordkeeping

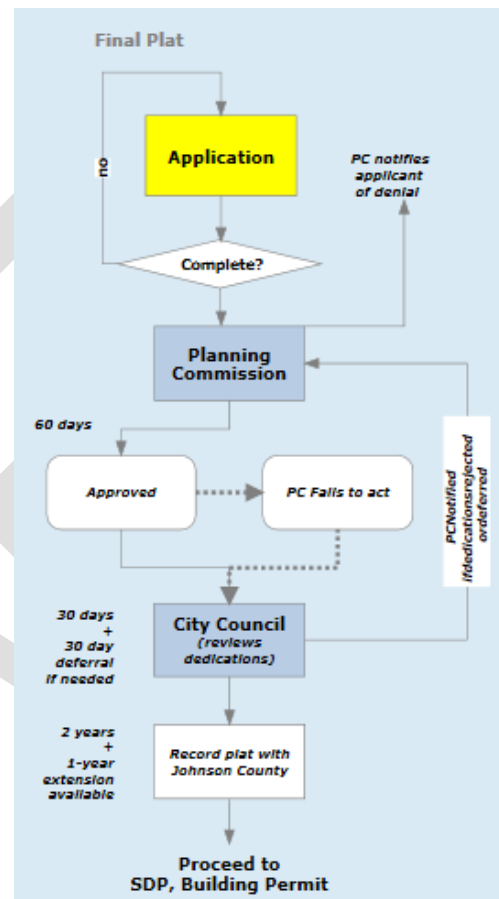
A preliminary plat application is not recorded. The Planning Official will maintain a record of approved preliminary plats. The applicant must maintain a copy of the approved preliminary plat, including any attachments. (*Ord. 17-52 §§ 25, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 02-54 § 2, 2002*)

18.40.160 Final Plat

Purpose: This section establishes the process to approve formal plats for recording with the Johnson County register of deeds.

A. Applicability

1. This section applies to any formal plat application. Final plat applications are filed after the preliminary plat is approved.
2. The applicant may file a final plat without first seeking preliminary plat approval. However, in that case the applicant must strictly observe all requirements of this title and may not request a modification of any standards established in Chapter [18.30](#). In addition, the Planning Commission will deny the plat if it does not conform to all applicable requirements within the statutory period for approving a plat.



B. Initiation

An application for final plat approval is filed with the Planning Official.

C. Completeness Review

See § [18.40.040](#) Completeness Review.

D. Decision

1. The Planning Commission will consider the final plat without a public hearing, unless the applicant requests a public hearing.
2. The Planning Commission may approve, approve with conditions, or deny the final plat.

3. The Planning Commission shall render its decision within 60 days after its first meeting after the plat is submitted to the Planning Official. If the Planning Commission fails to timely render its decision, the plat is deemed approved.
4. If the final plat is approved or the Planning Commission fails to render a timely decision, the Planning Official shall issue a certificate upon demand.
5. If the Planning Commission finds that the plat does not conform to subsection E below, it shall notify the owner or owners of that fact. The notice shall be in writing and shall specify in detail the reasons the plat does not conform to subsection E.
6. If the plat conforms to subsection E, the Planning Commission chair shall endorse on the plat the fact that the plat has been submitted to and approved by the Planning Commission. The secretary of the Planning Commission shall attest the chair's signature.
7. After the final plat is approved, the applicant shall submit it to the Governing Body for review if land is proposed to be dedicated for public purposes. The Governing Body shall approve or disapprove the dedication of land for public purposes within thirty (30) days after the first meeting of the Governing Body following the date of the submission of the plat to the City Clerk. The Governing Body may defer action for an additional thirty (30) days for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. No additional filing fees shall be assessed during that period. The Governing Body shall advise the Planning Commission of its reasons for any deferral or disapproval of any dedication. Acceptance of lands and easements dedicated for public purposes that are approved by the Governing Body shall be endorsed on the plat by the Mayor. The City Clerk shall attest the Mayor's signature. (*Ord. 02-54 § 2, 2002*)
8. No plat shall be filed with the Register of Deeds office unless it bears the endorsement that the land dedicated to public purposes is approved by the Governing Body.
9. All conditions to approval of a subdivision by the Planning Commission or the acceptance of dedications of land by the Governing Body, and all waivers granted by the Planning Commission, shall be clearly stated on the final plat prior to its recording. (*Ord. 02-54 § 2, 2002*)

E. Approval Criteria

1. The Planning Commission shall approve a final plat if it determines that:
 - a. The final plat substantially conforms to the approved preliminary plat and any applicable conditions of approval.

b. The plat conforms to all applicable requirements of the Municipal Code [and Unified Development Ordinance](#), subject only to approved waivers.

2. If the applicant chooses not to submit a preliminary plat, the final plat is subject to the criteria for approving a preliminary plat and to subsection 1, above.

F. Subsequent Applications

1. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

G. Scope of Approval

1. After the Governing Body endorses its acceptance of lands and easements dedicated for public purposes, the final plat shall be recorded with the Register of Deeds of Johnson County as provided by law. No plat shall be recorded with the Register of Deeds prior to its endorsement by the Mayor.

2. After the applicant provides public improvements assurances and records the final plat, the applicant may construct the improvements shown on the plat and proceed to the building permit approval process.

H. Recordkeeping

1. Final plats shall be recorded with the Register of Deeds office within two (2) years following Governing Body approval of land dedicated to public purposes. Final plats which are not timely recorded are null and void.

2. No plat shall be recorded before the applicant submits satisfactory assurances for construction of public improvements.

I. Final Plat Extensions

1. Requests for final plat extension shall be made in writing to the Planning Official prior to the two (2) year expiration date provided above. Final plat extensions may only be granted by one of the following:

a. The Planning Official may administratively grant a one (1) year extension if no changes are made to any City ordinance, regulation or approved plans that would require a change in the final plat. The applicant may appeal the Planning Official's denial of an extension to the Planning Commission.

- b.** The Planning Commission, upon appeal from the Planning Official's decision to deny a final plat extension, may grant the one (1) year extension upon finding that the extension will not impact the City's ability to administer current ordinances or regulations.
- 2.** Final plat extensions are subject to all current excise taxes and/or development fees at the time of the extension approval. (*Ord. 15-16 §3, 2015*)

DRAFT

2018 UDO Updates – Quick Reference Exhibit
Planning Commission Meeting October 22, 2018

1. Chapter 18.30 Development Standards

a. Section 18.30.190 Performance Standards

- i. Subsection (C) add language directing the reader to Section 18.50.160.
- ii. Subsection (C) renumber section within subsection C.

2. Chapter 18.40 Procedures

a. Section 18.40.110 Site Development Plans.

- i. Subsection (D.1.a) remove inconsistent language pertaining to notice requirements.
- ii. Subsection (D.1.b) add language clarifying notice requirements for preliminary site plans.
- iii. Subsection (G.1) add an expiration date on preliminary site development plans, if a final development plan is not approved within two (2) years.
- iv. Subsection (G.2) include language to require a phasing pattern for site development plans include multiple lots.
- v. Subsection (G.3) include language clarifying the applicant must submit and obtain approval for a final site development plan within the designated time period for the plan to remain valid.
- vi. Subsection (G.4) add the word “construction” to clarify construction must commence following approval and issuance of building permit.
- vii. Subsection (G.5) clarify review authority for site development plan time period extensions.
- viii. Subsection (G.5) update to clarify preliminary or final development plans expiration time period may be extended.
- ix. Subsection (G.5) remove inconsistent language pertaining to RP-1 plats and plans.

b. Section 18.40.150 Preliminary Plat.

- i. Subsection (F.2) add language to allow the applicant to request a one (1) year extension on for preliminary plats, approved administratively.
- ii. Subsection (F.3) strengthen and clarify phasing plan requirements for preliminary plats over forty acres.
- iii. Subsection (F.4) remove inconsistent language pertaining to RP-1 plats and plans.

c. Section 18.40.160 Final Plat.

- i. Subsection (E.1.b) clarified final plats must conform to all requirements of the UDO.

3. Chapter 18.50 Supplemental Use Regulations**a. Section 18.50.160**

- i. Subsection (B) add in language referencing Title 16 of Municipal Code requirements shall be followed.
- ii. Subsection (D.1.b) increase setback requirements for above ground operations.
- iii. Subsection (D.4) remove unnecessary verbiage
- iv. Subsection (D.5) add and clarify setback requirements removed from subsection D.4.
- v. Subsection (F) remove vibration standards for consistency with Title 16 of the Municipal Code.

18.40.110 Site Development Plans

Purpose: A site development plan is a process that allows City staff and the Planning Commission to review significant developments and uses to ensure that they comply with the zoning and development standards in this title, have appropriate design and infrastructure, and comply with any conditions of rezoning, preliminary subdivision plat, or special use permit approval.

A. Applicability

1. A preliminary site development plan is required for:

a. Any application to rezone property:

(1) to a district that allows nonresidential uses or multifamily or two-family dwellings, or

(2) to an "A," "R-1" or "R-2" district where the applicant is proposing a nonresidential development

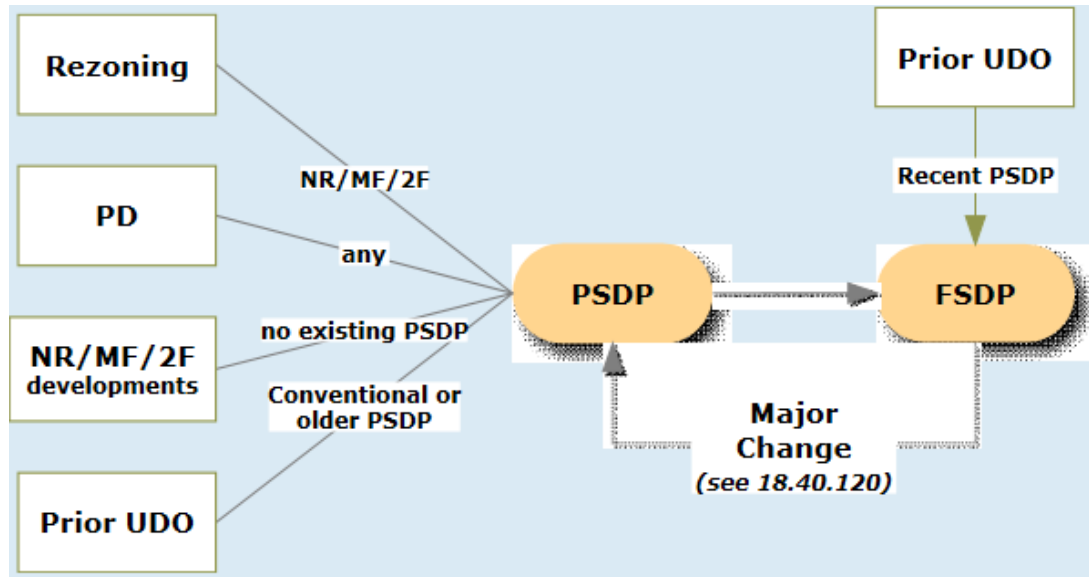
b. All nonresidential uses, or developments with multifamily or two-family dwellings unless a preliminary site development plan for the proposed development was already approved as part of the existing zoning district, and

c. Any application for approval of a planned development district.

2. If a property is subject to an approved and unexpired preliminary site development plan, a **final site development plan** is required before a building permit application is filed.

B. Initiation

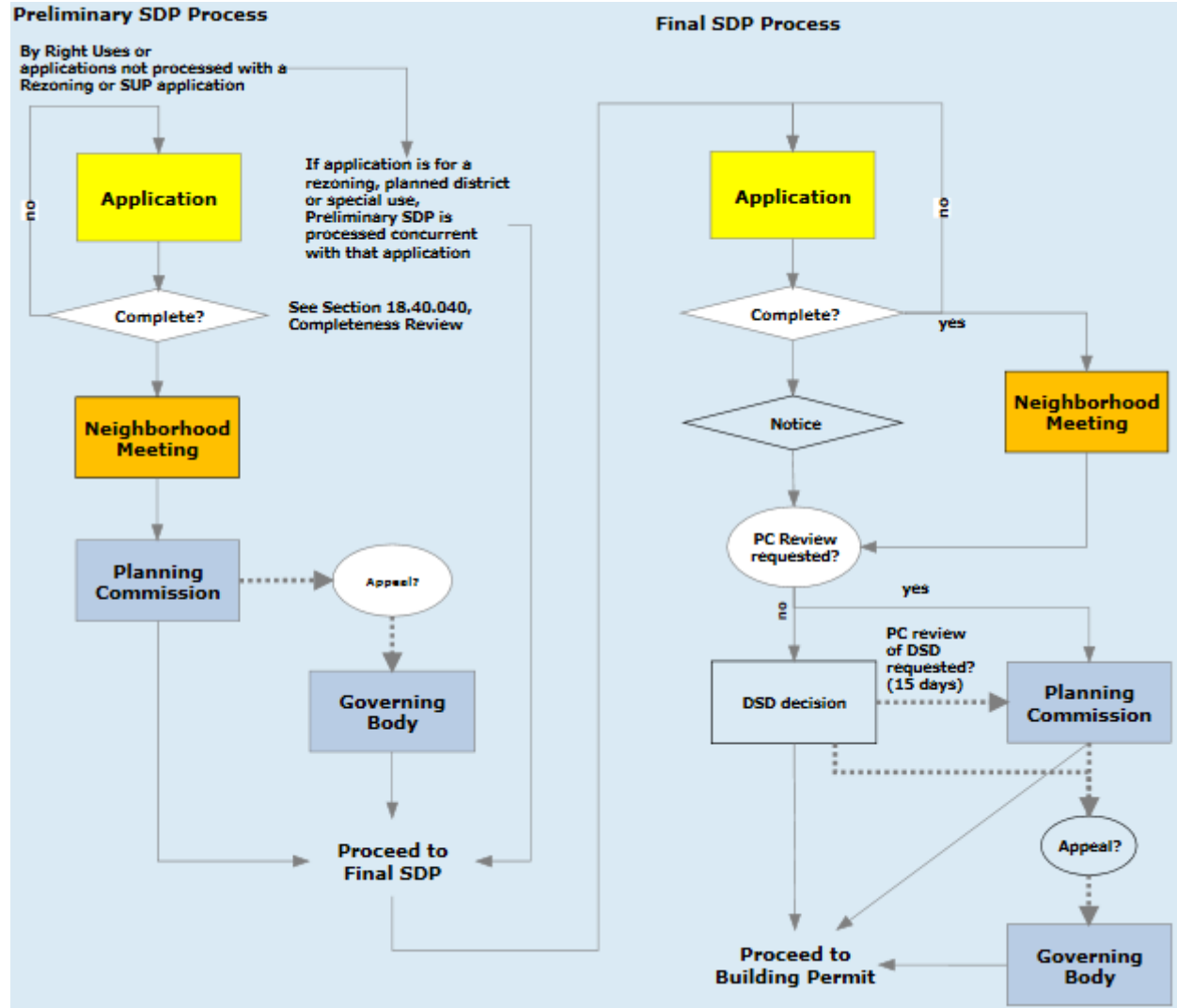
1. Preliminary and final site development plans shall be filed with the Planning Official, and shall include the information required by Chapter [18.94](#).



Editor's Note: This diagram referenced "Substantial Change" in Section [18.40.120](#). This terminology has been changed to "Major Change" to match the text of that section.

2. A neighborhood meeting is required for a preliminary and final site development plan (see Section [18.40.030](#)).

C. Review Process



D. Decision

1. Preliminary Site Development Plan Decision

- a. If the application involves a use that is **permitted by right** in the applicable zoning district, the Planning Commission will approve, conditionally approve, or deny a preliminary site development plan. Notice to surrounding property owners is required (see Section [18.40.050.B](#)). The Planning Commission will render a decision within 30 days, unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.

b. If the application involves a **planned district**, a **rezoning**, or a **special use**, the preliminary site development plan is processed and approved as part of that application. The preliminary site development plan may be revised and resubmitted during the review period for the planned district/conditional rezoning or special use permit application review period and approved as part of the conditions of approval. In that case, the Approving Authority is the agency that approves that rezoning or special use.

2. Final Site Development Plan Decision

a. Authority

A final site development plan is approved by the Planning Official, unless the applicant requests Planning Commission review.

b. Planning Official Decisions

If the Planning Official renders a decision on the application:

(1) The Planning Official shall render its determination within thirty (30) days after the applicant submits a complete application (see Section [18.40.040](#)), unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.

(2) If the Planning Official fails to render a timely decision, the applicant or a surrounding property owner may request Planning Commission review (see subsection [D.2.c](#) below).

(3) If the applicant or surrounding property owner does not request Planning Commission review, the Planning Official's determination is final.

(4) If an administrative review application is without communication from the applicant for more than six (6) months, the applicant will be required to submit a new application and fees for the final site development plan review to continue.

c. Planning Commission Review

(1) The Planning Commission reviews the final site plan if the applicant asks the Planning Commission to review the final site plan within fifteen (15) days of the date of the Planning Official's decision.

- (2) The Planning Commission will consider the application without a public hearing.
- (3) The Planning Commission may approve, approve with conditions, or deny the preliminary or final site development plan.
- (4) The Planning Commission shall render its decision within 30 days after the applicant requests a review. The Planning Commission may extend the time for making a decision if requested by the applicant.

E. Approval Criteria

1. The following criteria apply to the approval, conditional approval or denial of a preliminary site development plan:
 - a. The plan complies with all applicable requirements of Chapters [18.15](#), [18.20](#), and [18.30](#), and
 - b. The plan represents an overall development pattern that is consistent with the Comprehensive Plan, the Major Street Map and other adopted planning policies.
2. A final site development plan is approved if it is consistent with the preliminary site development plan as approved, including all conditions of approval, and complies with all applicable requirements of this title. A final site development plan shall not modify or expand the approved preliminary site development plan, except as provided in Section [18.40.120](#).

F. Subsequent Applications

1. When an application for preliminary or final site plan is withdrawn by the applicant or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
2. An application for a major modification to the withdrawn or denied application may be submitted at any time.

G. Scope of Approval

1. Approved [preliminary site development plans or](#) final site development plans are valid for two (2) years after ~~final~~[date of](#) approval.
2. If the landowner fails to commence ~~construction the planned development~~ within the time period required in subsection [G.1](#), above, the [final](#) site development plan becomes null and void unless the time period is extended.

3. If the landowner fails to submit and obtain approvals for a final site development plan within the time period required in subsection G.1, above, the preliminary site development plan becomes null and void unless the time period is extended.

~~3~~4. The Approving Authority may extend the time period of a preliminary or final development plan upon written application by the landowner. Unless otherwise required in a condition of approval, the Approving Authority may extend the time period without a public hearing. The Approving Authority shall extend the site development plan for up to six (6) months. After this time period or at the time the original extension is requested, the Approving Authority may extend the site development plan for any length of time for cause.

~~4~~5. The applicant may revise an approved final site development plan as provided in Section 18.40.120.

~~5. Any preliminary plat or preliminary development plan for a single-family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

H. Appeals

The applicant or aggrieved party may appeal the disapproval of a preliminary or final site development plan by the Planning Commission to the Governing Body. The applicant shall file a notice of appeal with the Planning Official within ten (10) days following the decision.

I. Recordkeeping

The Planning Division and the applicant shall maintain copies of the preliminary and final site development plan approvals, and all supporting documentation.

J. Abandonment of Final Site Development Plan

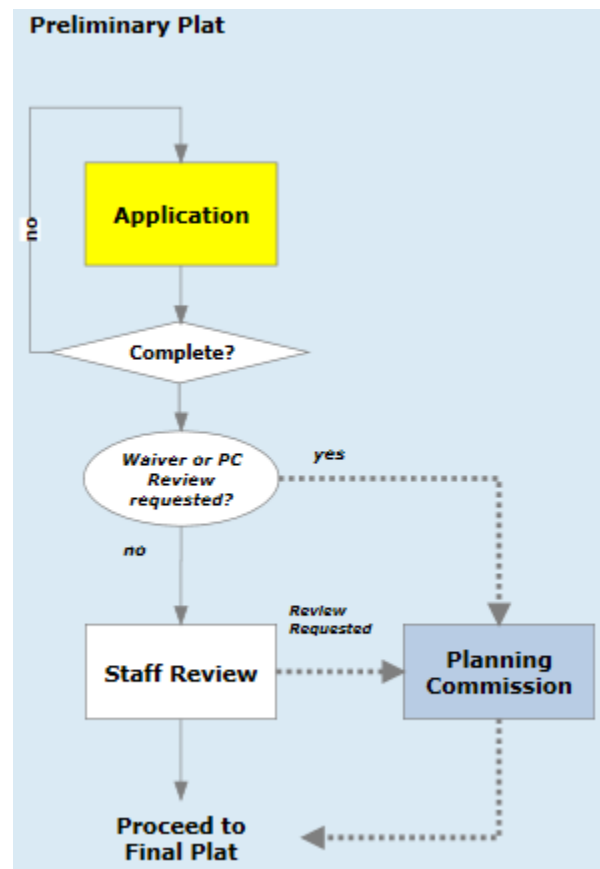
1. If the applicant abandons any part of a site development plan, then the applicant shall notify the City in writing.
2. If any part of a final site development plan is abandoned, no development shall take place on the property until a new final site development plan is approved. (*Ord. 17-52 §§ 22, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 15-16 § 3, 2015*)

18.40.150 Preliminary Plat

Purpose: The preliminary plat process examines the major features and elements of a proposed plat. This process determines whether the plat conforms to this title and the Comprehensive Plan, and any conditions of approval.

A. Applicability

1. The Planning Commission must approve a preliminary plat before a final plat application is filed.
2. A preliminary plat is not considered a "plat" for purposes of KSA [12-752](#). Instead, the preliminary plat is a preapplication process that is designed to ensure that that plat conforms to all applicable requirements of this title. The applicant may request that the City waive the preliminary plat process and proceed directly to the final plat process.



B. Initiation

1. An application for preliminary plat approval is filed with the Planning Official. Preapplication is required.
2. An applicant may substitute a preliminary development plan for a preliminary plat if the preliminary development plan contains all information required for preliminary plats as set forth in Chapter [18.94](#).
3. A neighborhood meeting is required (see Section [18.40.030](#))

↔ Cross-Reference: [18.40.020](#) (Preapplication)

C. Completeness Review

See Section [18.40.040](#), Completeness Review.

D. Approval Criteria

The Approving Authority shall approve the preliminary plat if it finds that the following criteria are satisfied:

1. The proposed preliminary plat conforms to the requirements of Chapter [18.30](#), the applicable zoning district regulations and any other applicable provisions of the Municipal Code, subject only to acceptable rule exceptions.
2. The subdivision represents an overall development pattern that is consistent with the Comprehensive Plan, Major Street Map, Access Management Plan, and applicable corridor studies and plans.
3. The plat contains a sound, well-conceived parcel and land subdivision layout which is consistent with good land planning and site engineering design principles.
4. The spacing and design of proposed curb cuts, driveway approaches and intersection locations is consistent with the Access Management Plan, good traffic engineering design and public safety considerations.
5. The plat conforms to any existing, unexpired and valid conditions of rezoning, special use permit or site development plan approval.
6. All submission requirements are satisfied.

E. Subsequent Applications

1. When a preliminary plat application is withdrawn or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
2. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

F. Scope of Approval

1. Approval of a preliminary plat does not constitute acceptance of the subdivision, but authorizes preparation of the final plat. No improvements shall take place in the subdivision prior to approval and recording of the final plat and submittal and approval of street, sanitary sewer, water line and storm sewer construction plans by the City Engineer.

2. Preliminary plat approval is effective for a period of two (2) years. Where a final plat for the subdivision is not submitted for approval within the two (2) year time period, the preliminary plat becomes null and void and the developer shall resubmit a new preliminary plat for approval subject to the then effective regulations.

3. When a preliminary plat containing a gross land area in excess of forty (40) acres is submitted for approval, the applicant may indicate the **anticipated development or phasing pattern** for final platting. The applicant may receive an extension of the one (1) year time limit for submission of the final plat if each phase is constructed in accordance with the original phasing plan and subsequent final plats comply with all applicable regulations at the time of final platting.

~~4. Any preliminary plat or preliminary development plan for a single-family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

G. Recordkeeping

A preliminary plat application is not recorded. The Planning Official will maintain a record of approved preliminary plats. The applicant must maintain a copy of the approved preliminary plat, including any attachments. (*Ord. 17-52 §§ 25, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 02-54 § 2, 2002*)

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18.40.110 Site Development Plans

Purpose: A site development plan is a process that allows City staff and the Planning Commission to review significant developments and uses to ensure that they comply with the zoning and development standards in this title, have appropriate design and infrastructure, and comply with any conditions of rezoning, preliminary subdivision plat, or special use permit approval.

A. Applicability

1. A preliminary site development plan is required for:

a. Any application to rezone property:

(1) to a district that allows nonresidential uses or multifamily or two-family dwellings, or

(2) to an "A," "R-1" or "R-2" district where the applicant is proposing a nonresidential development

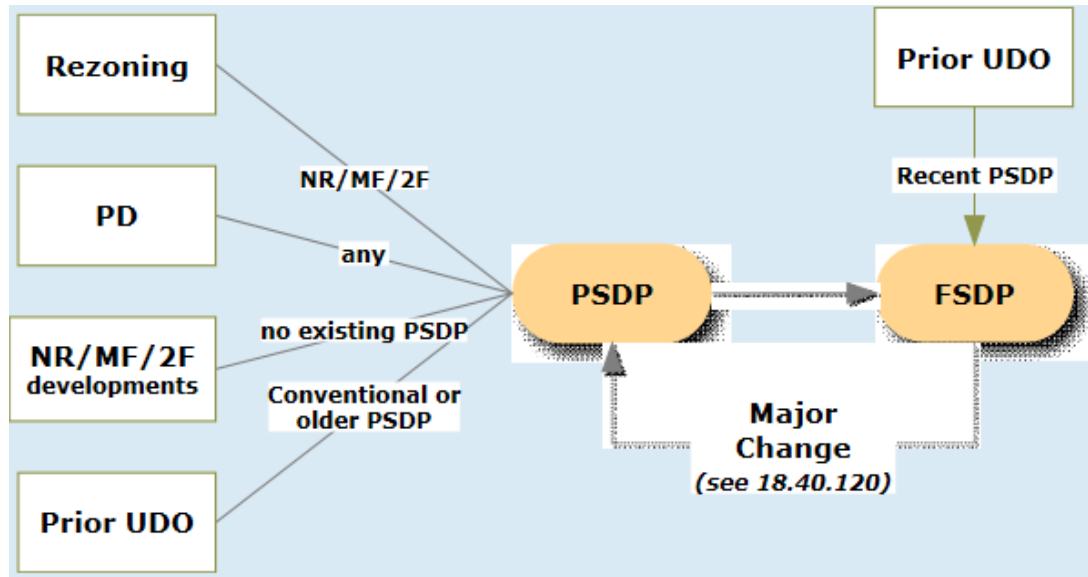
b. All nonresidential uses, or developments with multifamily or two-family dwellings unless a preliminary site development plan for the proposed development was already approved as part of the existing zoning district, and

c. Any application for approval of a planned development district.

2. If a property is subject to an approved and unexpired preliminary site development plan, a **final site development plan** is required before a building permit application is filed.

B. Initiation

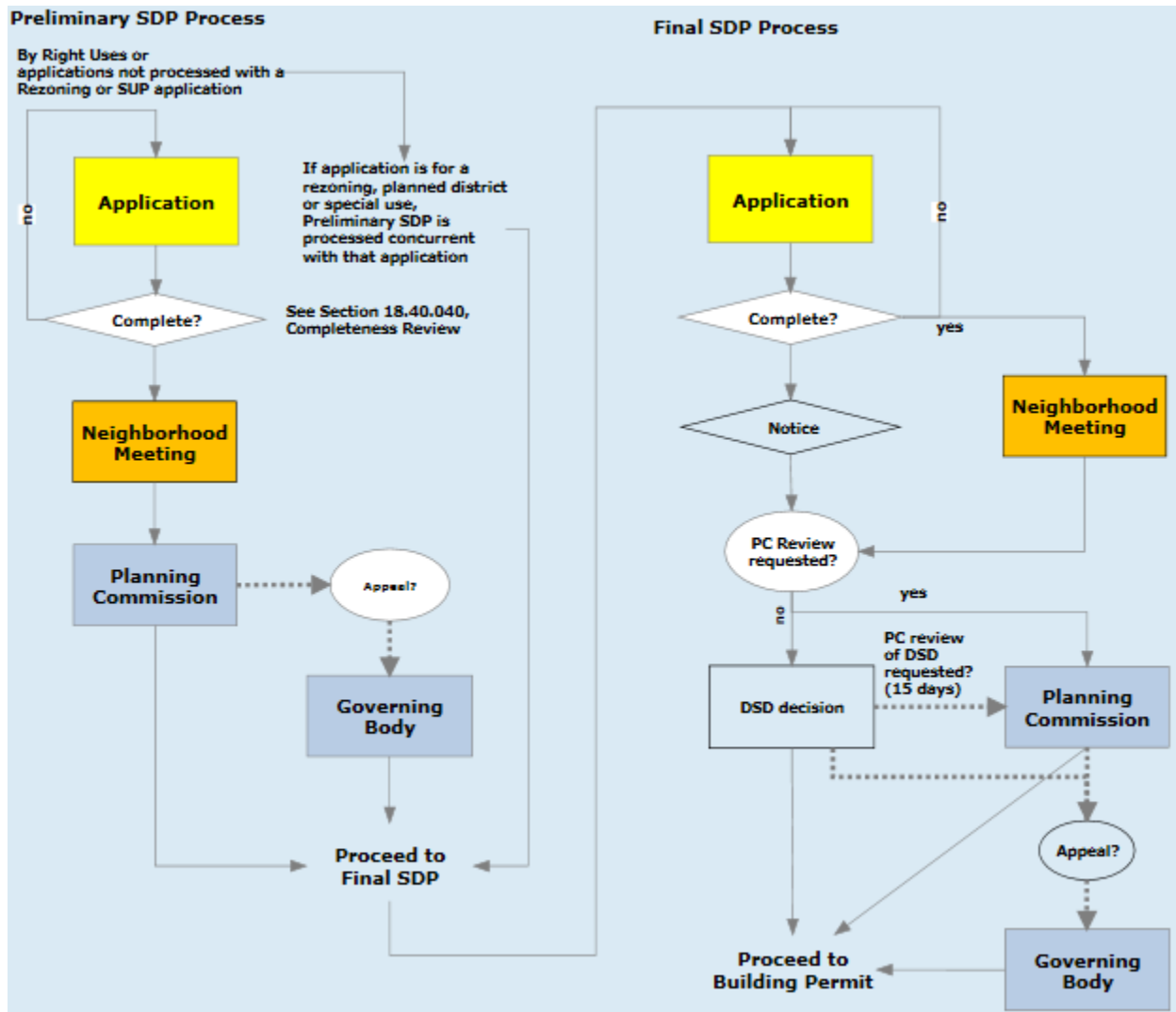
1. Preliminary and final site development plans shall be filed with the Planning Official, and shall include the information required by Chapter [18.94](#).



Editor's Note: This diagram referenced "Substantial Change" in Section [18.40.120](#). This terminology has been changed to "Major Change" to match the text of that section.

2. A neighborhood meeting is required for a preliminary and final site development plan (see Section [18.40.030](#)).

C. Review Process



D. Decision

1. Preliminary Site Development Plan Decision

- a. If the application involves a use that is **permitted by right** in the applicable zoning district, the Planning Commission will approve, conditionally approve, or deny a preliminary site development plan. ~~Notice to surrounding property owners is required (see Section 18.40.050.B).~~ The Planning Commission will render a decision within 30 days, unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.

b. If the application involves a **planned district**, a **rezoning**, or a **special use**, the preliminary site development plan is processed and approved as part of that application. Notice to surrounding property owners is required (see Section 18.40.050.B). The preliminary site development plan may be revised and resubmitted during the review period for the planned district/conditional rezoning or special use permit application review period and approved as part of the conditions of approval. In that case, the Approving Authority is the agency that approves that rezoning or special use.

2. Final Site Development Plan Decision

a. Authority

A final site development plan is approved by the Planning Official, unless the applicant requests Planning Commission review.

b. Planning Official Decisions

If the Planning Official renders a decision on the application:

- (1)** The Planning Official shall render its determination within thirty (30) days after the applicant submits a complete application (see Section [18.40.040](#)), unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.
- (2)** If the Planning Official fails to render a timely decision, the applicant or a surrounding property owner may request Planning Commission review (see subsection [D.2.c](#) below).
- (3)** If the applicant or surrounding property owner does not request Planning Commission review, the Planning Official's determination is final.
- (4)** If an administrative review application is without communication from the applicant for more than six (6) months, the applicant will be required to submit a new application and feeds for the final site development plan review to continue.

c. Planning Commission Review

- (1) The Planning Commission reviews the final site plan if the applicant asks the Planning Commission to review the final site plan within fifteen (15) days of the date of the Planning Official's decision.
- (2) The Planning Commission will consider the application without a public hearing.
- (3) The Planning Commission may approve, approve with conditions, or deny the preliminary or final site development plan.
- (4) The Planning Commission shall render its decision within 30 days after the applicant requests a review. The Planning Commission may extend the time for making a decision if requested by the applicant.

E. Approval Criteria

1. The following criteria apply to the approval, conditional approval or denial of a preliminary site development plan:
 - a. The plan complies with all applicable requirements of Chapters [18.15](#), [18.20](#), and [18.30](#), and
 - b. The plan represents an overall development pattern that is consistent with the Comprehensive Plan, the Major Street Map and other adopted planning policies.
2. A final site development plan is approved if it is consistent with the preliminary site development plan as approved, including all conditions of approval, and complies with all applicable requirements of this title. A final site development plan shall not modify or expand the approved preliminary site development plan, except as provided in Section [18.40.120](#).

F. Subsequent Applications

1. When an application for preliminary or final site plan is withdrawn by the applicant or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
2. An application for a major modification to the withdrawn or denied application may be submitted at any time.

G. Scope of Approval

1. Approved [preliminary site development plans or](#) final site development plans are valid for two (2) years after ~~final~~-[date of](#) approval.

2. When a preliminary site development plan containing multiple lots is submitted for approval; the applicant will indicate the anticipated development or phasing pattern for final development. The phasing pattern for development shall include:

- a) Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically (to avoid confusion with lot numbers), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The final phasing plan map should be drawn at the same scale as the preliminary site plan map.
- b) A narrative description or table that describes each phase and its associated improvements. In addition, the narrative or table shall demonstrate that each phase would comprise a "stand-alone" development which, should no subsequent phases be constructed, would meet or exceed the standards of this ordinance.

3. If the landowner fails to submit and obtain approvals for a final site development plan within the time period required in subsection G.1, above, the preliminary site development plan becomes null and void unless the time period is extended.

~~24.~~ If the landowner fails to commence ~~construction the planned development~~ within the time period required in subsection G.1, above, the final site development plan becomes null and void unless the time period is extended.

~~35.~~ The ~~Approving Authority~~ Chief Planning and Development Officer may extend the time period of a preliminary or final development plan upon written application by the landowner. Unless otherwise required in a condition of approval, the ~~Approving Authority~~ The Chief Planning and Development Officer may extend the time period without a public hearing. The ~~Approving Authority~~ Chief Planning and Development Officer shall extend the site development plan for up to six (6) months. After this time period or at the time the original extension is requested, the Approving Authority may extend the site development plan for any length of time for cause.

~~46.~~ The applicant may revise an approved final site development plan as provided in Section 18.40.120.

~~5. Any preliminary plat or preliminary development plan for a single-family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

H. Appeals

The applicant or aggrieved party may appeal the disapproval of a preliminary or final site development plan by the Planning Commission to the Governing Body. The applicant shall file a notice of appeal with the Planning Official within ten (10) days following the decision.

I. Recordkeeping

The Planning Division and the applicant shall maintain copies of the preliminary and final site development plan approvals, and all supporting documentation.

J. Abandonment of Final Site Development Plan

- 1.** If the applicant abandons any part of a site development plan, then the applicant shall notify the City in writing.
- 2.** If any part of a final site development plan is abandoned, no development shall take place on the property until a new final site development plan is approved. (*Ord. 17-52 §§ 22, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 15-16 § 3, 2015*)

18.40.150 Preliminary Plat

Purpose: The preliminary plat process examines the major features and elements of a proposed plat. This process determines whether the plat conforms to this title and the Comprehensive Plan, and any conditions of approval.

A. Applicability

1. The Planning Commission must approve a preliminary plat before a final plat application is filed.
2. A preliminary plat is not considered a "plat" for purposes of KSA [12-752](#). Instead, the preliminary plat is a preapplication process that is designed to ensure that that plat conforms to all applicable requirements of this title. The applicant may request that the City waive the preliminary plat process and proceed directly to the final plat process.

B. Initiation

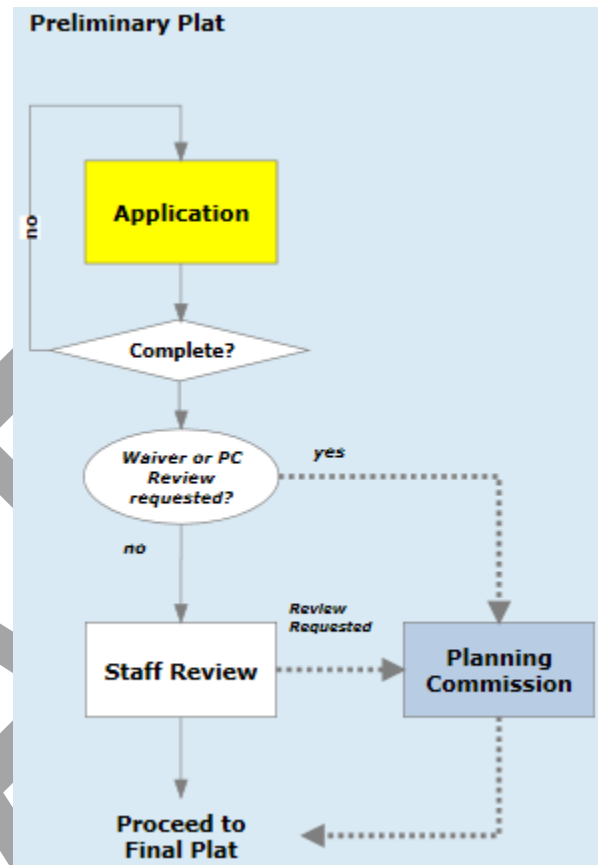
1. An application for preliminary plat approval is filed with the Planning Official. Preapplication is required.
2. An applicant may substitute a preliminary development plan for a preliminary plat if the preliminary development plan contains all information required for preliminary plats as set forth in Chapter [18.94](#).
3. A neighborhood meeting is required (see Section [18.40.030](#))

⇌ Cross-Reference: [18.40.020](#) (Preapplication)

C. Completeness Review

See Section [18.40.040](#), Completeness Review.

D. Approval Criteria



The Approving Authority shall approve the preliminary plat if it finds that the following criteria are satisfied:

1. The proposed preliminary plat conforms to the requirements of Chapter [18.30](#), the applicable zoning district regulations and any other applicable provisions of the Municipal Code, subject only to acceptable rule exceptions.
2. The subdivision represents an overall development pattern that is consistent with the Comprehensive Plan, Major Street Map, Access Management Plan, and applicable corridor studies and plans.
3. The plat contains a sound, well-conceived parcel and land subdivision layout which is consistent with good land planning and site engineering design principles.
4. The spacing and design of proposed curb cuts, driveway approaches and intersection locations is consistent with the Access Management Plan, good traffic engineering design and public safety considerations.
5. The plat conforms to any existing, unexpired and valid conditions of rezoning, special use permit or site development plan approval.
6. All submission requirements are satisfied.

E. Subsequent Applications

1. When a preliminary plat application is withdrawn or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
2. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

F. Scope of Approval

1. Approval of a preliminary plat does not constitute acceptance of the subdivision, but authorizes preparation of the final plat. No improvements shall take place in the subdivision prior to approval and recording of the final plat and submittal and approval of street, sanitary sewer, water line and storm sewer construction plans by the City Engineer.

2. Preliminary plat approval is effective for a period of two (2) years. Where a final plat for the subdivision is not submitted for approval within the two (2) year time period, the preliminary plat becomes null and void and the developer shall resubmit a new preliminary plat for approval subject to the then effective regulations.

3. Development rights shall vest upon the requirement set forth in Section 18.60.070 in accordance with provisions of KSA 12-764.

~~3~~4. When a preliminary plat containing a gross land area in excess of forty (40) acres is submitted for approval, the applicant will~~may~~ indicate the **anticipated development or phasing pattern** for final platting. The phasing pattern for development shall include the following:

c) Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically (to avoid confusion with lot numbers), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The final phasing plan map should be drawn at the same scale as the preliminary plat map.

d) A narrative description or table that describes each phase and its associated improvements. In addition, the narrative or table shall demonstrate that each phase would comprise a "stand-alone" development which, should no subsequent phases be constructed, would meet or exceed the standards of this ordinance.

The applicant may receive an extension of the one (1) year time limit for submission of the final plat if each phase is constructed in accordance with the original phasing plan and subsequent final plats comply with all applicable regulations at the time of final platting.

~~4. Any preliminary plat or preliminary development plan for a single-family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

G. Recordkeeping

A preliminary plat application is not recorded. The Planning Official will maintain a record of approved preliminary plats. The applicant must maintain a copy of the approved preliminary plat, including any attachments. (*Ord. 17-52 §§ 25, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 02-54 § 2, 2002*)

18.40.160 Final Plat

Purpose: This section establishes the process to approve formal plats for recording with the Johnson County register of deeds.

A. Applicability

1. This section applies to any formal plat application. Final plat applications are filed after the preliminary plat is approved.
2. The applicant may file a final plat without first seeking preliminary plat approval. However, in that case the applicant must strictly observe all requirements of this title and may not request a modification of any standards established in Chapter [18.30](#). In addition, the Planning Commission will deny the plat if it does not conform to all applicable requirements within the statutory period for approving a plat.

B. Initiation

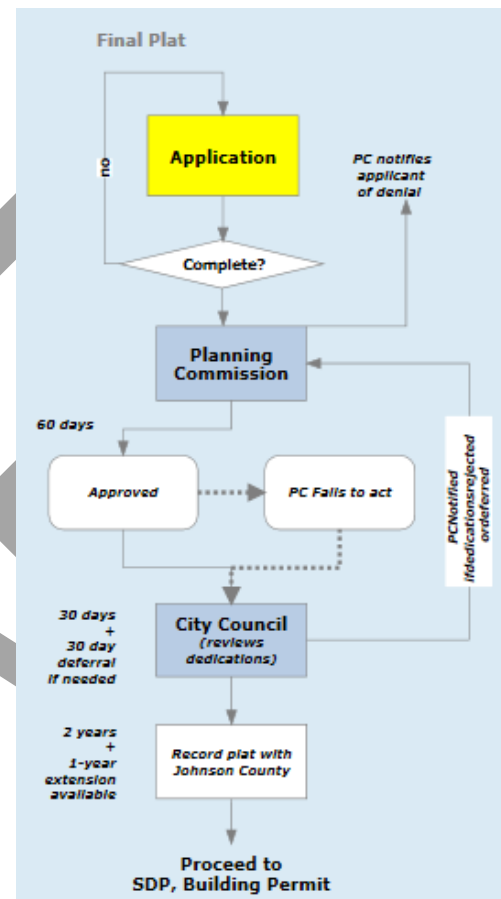
An application for final plat approval is filed with the Planning Official.

C. Completeness Review

See § [18.40.040](#) Completeness Review.

D. Decision

1. The Planning Commission will consider the final plat without a public hearing, unless the applicant requests a public hearing.
2. The Planning Commission may approve, approve with conditions, or deny the final plat.



3. The Planning Commission shall render its decision within 60 days after its first meeting after the plat is submitted to the Planning Official. If the Planning Commission fails to timely render its decision, the plat is deemed approved.
4. If the final plat is approved or the Planning Commission fails to render a timely decision, the Planning Official shall issue a certificate upon demand.
5. If the Planning Commission finds that the plat does not conform to subsection E below, it shall notify the owner or owners of that fact. The notice shall be in writing and shall specify in detail the reasons the plat does not conform to subsection E.
6. If the plat conforms to subsection E, the Planning Commission chair shall endorse on the plat the fact that the plat has been submitted to and approved by the Planning Commission. The secretary of the Planning Commission shall attest the chair's signature.
7. After the final plat is approved, the applicant shall submit it to the Governing Body for review if land is proposed to be dedicated for public purposes. The Governing Body shall approve or disapprove the dedication of land for public purposes within thirty (30) days after the first meeting of the Governing Body following the date of the submission of the plat to the City Clerk. The Governing Body may defer action for an additional thirty (30) days for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. No additional filing fees shall be assessed during that period. The Governing Body shall advise the Planning Commission of its reasons for any deferral or disapproval of any dedication. Acceptance of lands and easements dedicated for public purposes that are approved by the Governing Body shall be endorsed on the plat by the Mayor. The City Clerk shall attest the Mayor's signature. (*Ord. 02-54 § 2, 2002*)
8. No plat shall be filed with the Register of Deeds office unless it bears the endorsement that the land dedicated to public purposes is approved by the Governing Body.
9. All conditions to approval of a subdivision by the Planning Commission or the acceptance of dedications of land by the Governing Body, and all waivers granted by the Planning Commission, shall be clearly stated on the final plat prior to its recording. (*Ord. 02-54 § 2, 2002*)

E. Approval Criteria

1. The Planning Commission shall approve a final plat if it determines that:
 - a. The final plat substantially conforms to the approved preliminary plat and any applicable conditions of approval.

b. The plat conforms to all applicable requirements of the Municipal Code and Unified Development Ordinance, subject only to approved waivers.

2. If the applicant chooses not to submit a preliminary plat, the final plat is subject to the criteria for approving a preliminary plat and to subsection 1, above.

F. Subsequent Applications

1. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

G. Scope of Approval

1. After the Governing Body endorses its acceptance of lands and easements dedicated for public purposes, the final plat shall be recorded with the Register of Deeds of Johnson County as provided by law. No plat shall be recorded with the Register of Deeds prior to its endorsement by the Mayor.

2. After the applicant provides public improvements assurances and records the final plat, the applicant may construct the improvements shown on the plat and proceed to the building permit approval process.

H. Recordkeeping

1. Final plats shall be recorded with the Register of Deeds office within two (2) years following Governing Body approval of land dedicated to public purposes. Final plats which are not timely recorded are null and void.

2. No plat shall be recorded before the applicant submits satisfactory assurances for construction of public improvements.

I. Final Plat Extensions

1. Requests for final plat extension shall be made in writing to the Planning Official prior to the two (2) year expiration date provided above. Final plat extensions may only be granted by one of the following:

a. The Planning Official may administratively grant a one (1) year extension if no changes are made to any City ordinance, regulation or approved plans that would require a change in the final plat. The applicant may appeal the Planning Official's denial of an extension to the Planning Commission.

- b.** The Planning Commission, upon appeal from the Planning Official's decision to deny a final plat extension, may grant the one (1) year extension upon finding that the extension will not impact the City's ability to administer current ordinances or regulations.
- 2.** Final plat extensions are subject to all current excise taxes and/or development fees at the time of the extension approval. (*Ord. 15-16 §3, 2015*)

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18.40.110 Site Development Plans

Purpose: A site development plan is a process that allows City staff and the Planning Commission to review significant developments and uses to ensure that they comply with the zoning and development standards in this title, have appropriate design and infrastructure, and comply with any conditions of rezoning, preliminary subdivision plat, or special use permit approval.

A. Applicability

1. A preliminary site development plan is required for:

a. Any application to rezone property:

(1) to a district that allows nonresidential uses or multifamily or two-family dwellings, or

(2) to an "A," "R-1" or "R-2" district where the applicant is proposing a nonresidential development

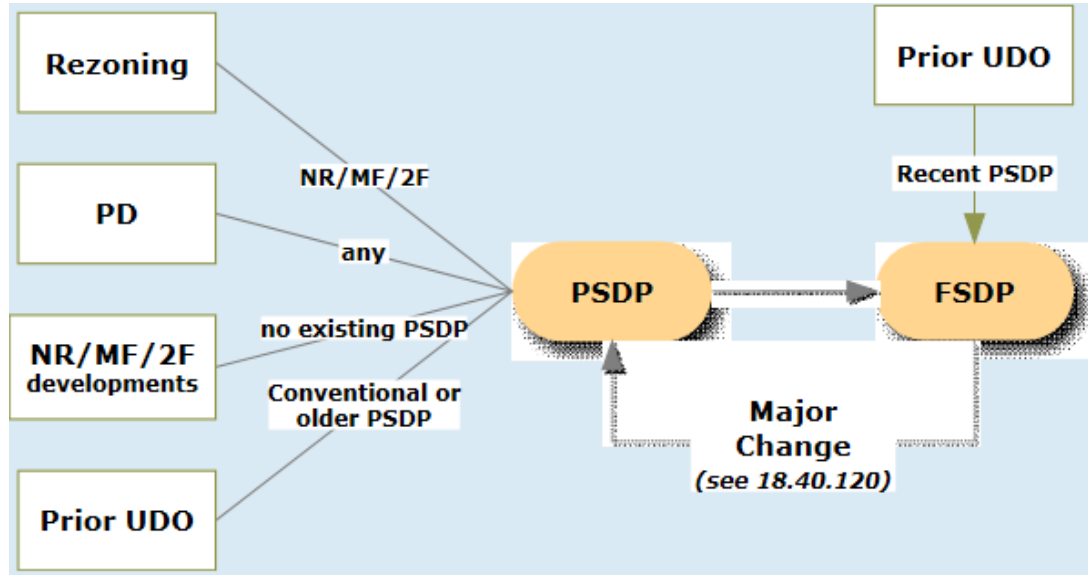
b. All nonresidential uses, or developments with multifamily or two-family dwellings unless a preliminary site development plan for the proposed development was already approved as part of the existing zoning district, and

c. Any application for approval of a planned development district.

2. If a property is subject to an approved and unexpired preliminary site development plan, a **final site development plan** is required before a building permit application is filed.

B. Initiation

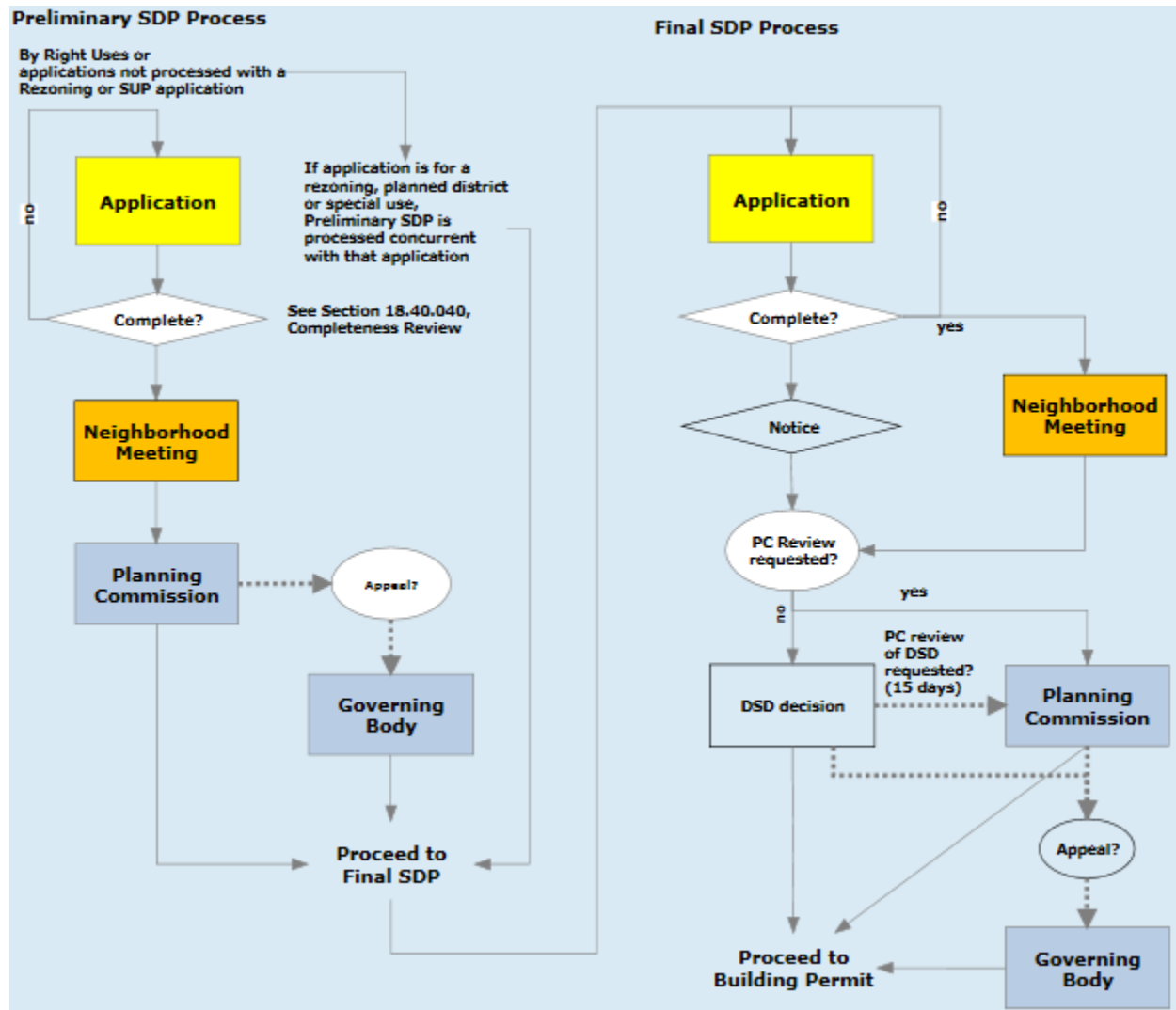
1. Preliminary and final site development plans shall be filed with the Planning Official, and shall include the information required by Chapter [18.94](#).



Editor's Note: This diagram referenced "Substantial Change" in Section [18.40.120](#). This terminology has been changed to "Major Change" to match the text of that section.

2. A neighborhood meeting is required for a preliminary and final site development plan (see Section [18.40.030](#)).

C. Review Process



D. Decision

1. Preliminary Site Development Plan Decision

- a. If the application involves a use that is **permitted by right** in the applicable zoning district, the Planning Commission will approve, conditionally approve, or deny a preliminary site development plan. ~~Notice to surrounding property owners is required (see Section 18.40.050.B).~~ The Planning Commission will render a decision within 30 days, unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.

b. If the application involves a **planned district**, a **rezoning**, or a **special use**, the preliminary site development plan is processed and approved as part of that application. [Notice to surrounding property owners is required \(see Section 18.40.050.B\)](#). The preliminary site development plan may be revised and resubmitted during the review period for the planned district/conditional rezoning or special use permit application review period and approved as part of the conditions of approval. In that case, the Approving Authority is the agency that approves that rezoning or special use.

2. Final Site Development Plan Decision

a. Authority

A final site development plan is approved by the Planning Official, unless the applicant requests Planning Commission review.

b. Planning Official Decisions

If the Planning Official renders a decision on the application:

- (1)** The Planning Official shall render its determination within thirty (30) days after the applicant submits a complete application (see Section [18.40.040](#)), unless the applicant requests additional time in order to revise the application. The applicant may revise the application during this review period without resubmitting the application and paying new filing fees.
- (2)** If the Planning Official fails to render a timely decision, the applicant or a surrounding property owner may request Planning Commission review (see subsection [D.2.c](#) below).
- (3)** If the applicant or surrounding property owner does not request Planning Commission review, the Planning Official's determination is final.
- (4)** If an administrative review application is without communication from the applicant for more than six (6) months, the applicant will be required to submit a new application and fees for the final site development plan review to continue.

c. Planning Commission Review

- (1)** The Planning Commission reviews the final site plan if the applicant asks the Planning Commission to review the final site plan within fifteen (15) days of the date of the Planning Official's decision.
- (2)** The Planning Commission will consider the application without a public hearing.
- (3)** The Planning Commission may approve, approve with conditions, or deny the preliminary or final site development plan.
- (4)** The Planning Commission shall render its decision within 30 days after the applicant requests a review. The Planning Commission may extend the time for making a decision if requested by the applicant.

E. Approval Criteria

- 1.** The following criteria apply to the approval, conditional approval or denial of a preliminary site development plan:
 - a.** The plan complies with all applicable requirements of Chapters [18.15](#), [18.20](#), and [18.30](#), and
 - b.** The plan represents an overall development pattern that is consistent with the Comprehensive Plan, the Major Street Map and other adopted planning policies.
- 2.** A final site development plan is approved if it is consistent with the preliminary site development plan as approved, including all conditions of approval, and complies with all applicable requirements of this title. A final site development plan shall not modify or expand the approved preliminary site development plan, except as provided in Section [18.40.120](#).

F. Subsequent Applications

- 1.** When an application for preliminary or final site plan is withdrawn by the applicant or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
- 2.** An application for a major modification to the withdrawn or denied application may be submitted at any time.

G. Scope of Approval

1. Approved preliminary site development plans or final site development plans are valid for two (2) years after ~~final~~ date of approval.

2. When a preliminary site development plan containing multiple lots is submitted for approval; the applicant will indicate the anticipated development or phasing pattern for final development. The phasing pattern for development shall include:

- a) Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically (to avoid confusion with lot numbers), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The final phasing plan map should be drawn at the same scale as the preliminary site plan map.
- b) A narrative description or table that describes each phase and its associated improvements. In addition, the narrative or table shall demonstrate that each phase would comprise a "stand-alone" development which, should no subsequent phases be constructed, would meet or exceed the standards of this ordinance.

3. If the applicant fails to submit and obtain approvals for a final site development plan within the time period required in subsection G.1, above, the preliminary site development plan becomes null and void unless the time period is extended.

~~24.~~ If the ~~landowner~~ applicant fails to commence construction by means of an issued building permit ~~the planned development~~ within the time period required in subsection G.1, above, the final site development plan becomes null and void unless the time period is extended.

~~35.~~ The ~~Approving Authority~~ Chief Planning and Development Officer may extend the time period of a preliminary or final development plan upon written ~~application request~~ by the ~~landowner~~ applicant. Unless otherwise required in a condition of approval, the ~~Approving Authority~~ Chief Planning and Development Officer may extend the time period administratively without a public hearing. The ~~Approving Authority~~ Chief Planning and Development Officer shall extend the time period of either site development plan for up to ~~six (6)~~ twelve (12) months. ~~After this time period or at the time the original extension is requested,~~ Upon written request by the applicant, the ~~Approving Authority~~ Governing Body may extend the preliminary or final site development plan for any length of time for cause.

~~46.~~ The applicant may revise an approved final site development plan as provided in Section [18.40.120](#).

~~5. Any preliminary plat or preliminary development plan for a single-family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

H. Appeals

The applicant or aggrieved party may appeal the disapproval of a preliminary or final site development plan by the Planning Commission to the Governing Body. The applicant shall file a notice of appeal with the Planning Official within ten (10) days following the decision.

I. Recordkeeping

The Planning Division and the applicant shall maintain copies of the preliminary and final site development plan approvals, and all supporting documentation.

J. Abandonment of Final Site Development Plan

1. If the applicant abandons any part of a site development plan, then the applicant shall notify the City in writing.
2. If any part of a final site development plan is abandoned, no development shall take place on the property until a new final site development plan is approved. (*Ord. 17-52 §§ 22, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 15-16 § 3, 2015*)

18.40.150 Preliminary Plat

Purpose: The preliminary plat process examines the major features and elements of a proposed plat. This process determines whether the plat conforms to this title and the Comprehensive Plan, and any conditions of approval.

A. Applicability

1. The Planning Commission must approve a preliminary plat before a final plat application is filed.
2. A preliminary plat is not considered a "plat" for purposes of KSA [12-752](#). Instead, the preliminary plat is a preapplication process that is designed to ensure that that plat conforms to all applicable requirements of this title. The applicant may request that the City waive the preliminary plat process and proceed directly to the final plat process.

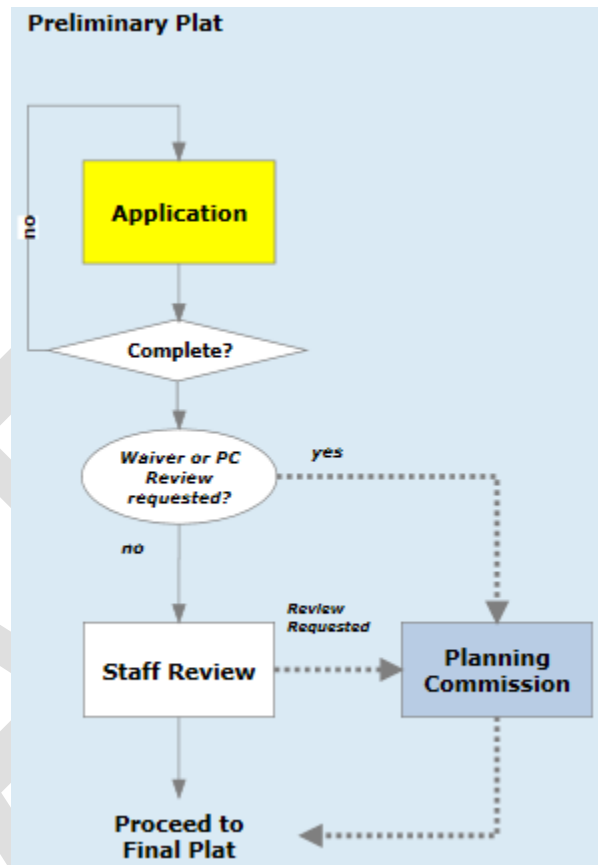
B. Initiation

1. An application for preliminary plat approval is filed with the Planning Official. Preapplication is required.
2. An applicant may substitute a preliminary development plan for a preliminary plat if the preliminary development plan contains all information required for preliminary plats as set forth in Chapter [18.94](#).
3. A neighborhood meeting is required (see Section [18.40.030](#))

⇌ Cross-Reference: [18.40.020](#) (Preapplication)

C. Completeness Review

See Section [18.40.040](#), Completeness Review.



D. Approval Criteria

The Approving Authority shall approve the preliminary plat if it finds that the following criteria are satisfied:

1. The proposed preliminary plat conforms to the requirements of Chapter [18.30](#), the applicable zoning district regulations and any other applicable provisions of the Municipal Code, subject only to acceptable rule exceptions.
2. The subdivision represents an overall development pattern that is consistent with the Comprehensive Plan, Major Street Map, Access Management Plan, and applicable corridor studies and plans.
3. The plat contains a sound, well-conceived parcel and land subdivision layout which is consistent with good land planning and site engineering design principles.
4. The spacing and design of proposed curb cuts, driveway approaches and intersection locations is consistent with the Access Management Plan, good traffic engineering design and public safety considerations.
5. The plat conforms to any existing, unexpired and valid conditions of rezoning, special use permit or site development plan approval.
6. All submission requirements are satisfied.

E. Subsequent Applications

1. When a preliminary plat application is withdrawn or denied, the same application for the same property shall not be resubmitted for a period of one (1) year from the date of withdrawal or denial.
2. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

F. Scope of Approval

1. Approval of a preliminary plat does not constitute acceptance of the subdivision, but authorizes preparation of the final plat. No improvements shall take place in the subdivision prior to approval and recording of the final plat and submittal and approval of street, sanitary sewer, water line and storm sewer construction plans by the City Engineer.

2. Preliminary plat approval is effective for a period of two (2) years. Where a final plat for the subdivision is not submitted for approval within the two (2) year time period, the preliminary plat becomes null and void and the developer shall resubmit a new preliminary plat for approval subject to the then effective regulations. The Chief Planning and Development Officer may, upon written request by the applicant, administratively grant a one (1) year time extension.
Consideration for a time extension shall be based upon, but not limited to:

- a) the developer's ability to adhere to any changes in the Olathe Municipal Code or other applicable regulations, that would impact the proposed development; or
- b) if the developer demonstrates substantial progress towards the design and engineering requirements necessary to submit a final plat.

3. When a preliminary plat containing a gross land area in excess of forty (40) acres is submitted for approval, the applicant will ~~may~~ indicate the **anticipated development or phasing pattern** for final platting. The applicant may receive an extension of the one (1) year time limit for submission of the final plat if each phase is constructed in accordance with the original phasing plan and subsequent final plats comply with all applicable regulations at the time of final platting. The phasing pattern for development shall include the following:

- a) Illustrative maps for each proposed phase which clearly mark in heavy lines the boundaries of the subject phase, label the phase alphabetically (to avoid confusion with lot numbers), and identify approximate area, number of lots in each phase, total area and buildable area per phase. All phasing maps shall be drawn at the same scale. The final phasing plan map should be drawn at the same scale as the preliminary plat map.
- b) A narrative description or table that describes each phase and its associated improvements. In addition, the narrative or table shall demonstrate that each phase would comprise a "stand-alone" development which, should no subsequent phases be constructed, would meet or exceed the standards of this ordinance.

~~4. Any preliminary plat or preliminary development plan for a single family subdivision in an existing RP-1 District approved prior to the effective date of this ordinance (June 17, 2014), where no final plat or plan has been approved, shall be considered expired and subject to a new application and the provisions of this ordinance.~~

G. Recordkeeping

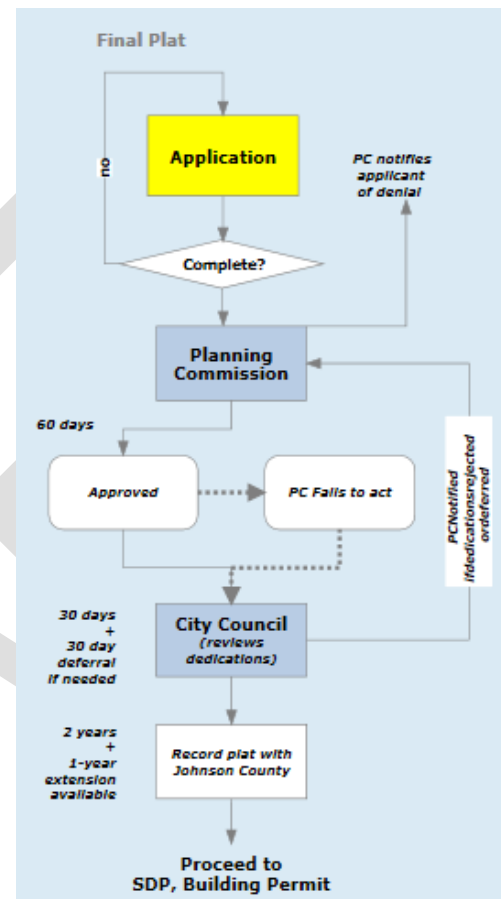
A preliminary plat application is not recorded. The Planning Official will maintain a record of approved preliminary plats. The applicant must maintain a copy of the approved preliminary plat, including any attachments. (*Ord. 17-52 §§ 25, 41, 2017; Ord. 16-20 § 4, 2016; Ord. 02-54 § 2, 2002*)

18.40.160 Final Plat

Purpose: This section establishes the process to approve formal plats for recording with the Johnson County register of deeds.

A. Applicability

1. This section applies to any formal plat application. Final plat applications are filed after the preliminary plat is approved.
2. The applicant may file a final plat without first seeking preliminary plat approval. However, in that case the applicant must strictly observe all requirements of this title and may not request a modification of any standards established in Chapter [18.30](#). In addition, the Planning Commission will deny the plat if it does not conform to all applicable requirements within the statutory period for approving a plat.



B. Initiation

An application for final plat approval is filed with the Planning Official.

C. Completeness Review

See § [18.40.040](#) Completeness Review.

D. Decision

1. The Planning Commission will consider the final plat without a public hearing, unless the applicant requests a public hearing.
2. The Planning Commission may approve, approve with conditions, or deny the final plat.

3. The Planning Commission shall render its decision within 60 days after its first meeting after the plat is submitted to the Planning Official. If the Planning Commission fails to timely render its decision, the plat is deemed approved.
4. If the final plat is approved or the Planning Commission fails to render a timely decision, the Planning Official shall issue a certificate upon demand.
5. If the Planning Commission finds that the plat does not conform to subsection E below, it shall notify the owner or owners of that fact. The notice shall be in writing and shall specify in detail the reasons the plat does not conform to subsection E.
6. If the plat conforms to subsection E, the Planning Commission chair shall endorse on the plat the fact that the plat has been submitted to and approved by the Planning Commission. The secretary of the Planning Commission shall attest the chair's signature.
7. After the final plat is approved, the applicant shall submit it to the Governing Body for review if land is proposed to be dedicated for public purposes. The Governing Body shall approve or disapprove the dedication of land for public purposes within thirty (30) days after the first meeting of the Governing Body following the date of the submission of the plat to the City Clerk. The Governing Body may defer action for an additional thirty (30) days for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. No additional filing fees shall be assessed during that period. The Governing Body shall advise the Planning Commission of its reasons for any deferral or disapproval of any dedication. Acceptance of lands and easements dedicated for public purposes that are approved by the Governing Body shall be endorsed on the plat by the Mayor. The City Clerk shall attest the Mayor's signature. (*Ord. 02-54 § 2, 2002*)
8. No plat shall be filed with the Register of Deeds office unless it bears the endorsement that the land dedicated to public purposes is approved by the Governing Body.
9. All conditions to approval of a subdivision by the Planning Commission or the acceptance of dedications of land by the Governing Body, and all waivers granted by the Planning Commission, shall be clearly stated on the final plat prior to its recording. (*Ord. 02-54 § 2, 2002*)

E. Approval Criteria

1. The Planning Commission shall approve a final plat if it determines that:
 - a. The final plat substantially conforms to the approved preliminary plat and any applicable conditions of approval.

b. The plat conforms to all applicable requirements of the Municipal Code [and Unified Development Ordinance](#), subject only to approved waivers.

2. If the applicant chooses not to submit a preliminary plat, the final plat is subject to the criteria for approving a preliminary plat and to subsection 1, above.

F. Subsequent Applications

1. A new plat application showing major modifications and/or revisions to the withdrawn or denied plat application may be submitted at any time.

G. Scope of Approval

1. After the Governing Body endorses its acceptance of lands and easements dedicated for public purposes, the final plat shall be recorded with the Register of Deeds of Johnson County as provided by law. No plat shall be recorded with the Register of Deeds prior to its endorsement by the Mayor.

2. After the applicant provides public improvements assurances and records the final plat, the applicant may construct the improvements shown on the plat and proceed to the building permit approval process.

H. Recordkeeping

1. Final plats shall be recorded with the Register of Deeds office within two (2) years following Governing Body approval of land dedicated to public purposes. Final plats which are not timely recorded are null and void.

2. No plat shall be recorded before the applicant submits satisfactory assurances for construction of public improvements.

I. Final Plat Extensions

1. Requests for final plat extension shall be made in writing to the Planning Official prior to the two (2) year expiration date provided above. Final plat extensions may only be granted by one of the following:

a. The Planning Official may administratively grant a one (1) year extension if no changes are made to any City ordinance, regulation or approved plans that would require a change in the final plat. The applicant may appeal the Planning Official's denial of an extension to the Planning Commission.

- b.** The Planning Commission, upon appeal from the Planning Official's decision to deny a final plat extension, may grant the one (1) year extension upon finding that the extension will not impact the City's ability to administer current ordinances or regulations.
- 2.** Final plat extensions are subject to all current excise taxes and/or development fees at the time of the extension approval. (*Ord. 15-16 §3, 2015*)

DRAFT

Shelby FergusonAttachment D 12/04/18

From: Cynthia Kriesel <cann@vfemail.net>
Sent: Friday, October 12, 2018 4:16 PM
To: Shelby Ferguson
Cc: Aimee Nassif
Subject: UDO18-0002 Public Comments Regarding Quarries
Attachments: 2016 email handout.pdf; Other places vibration limits handout.pdf; OSMRE and FHA Handout.pdf; OSMRE Slides Handout.pdf

Shelby,

Thank you for meeting with me this afternoon and confirming that the intent of the revised setback language is to maximize quarry operation setbacks from residential property and residences. As I stated in the meeting, I would like to see a draft, as soon as possible, of what the new proposed setback language is to achieve this intent.

Regarding quarry vibrations, attached to this email are pdf scans of the four handouts that I gave you during our meeting today. I want to again stress the importance of doing a test blast prior to changing or eliminating the 0.02 ips residential property vibration limit for quarry blasts. That is the only way that City representatives can experience in a residence what the higher proposed vibrations will feel like and determine whether or not a change is appropriate.

Please make sure that this email and all attachments become part of the UDO18-0002 packet.

Regards,

Randy Kriesel
24120 West 167th Street
Olathe, KS 66061
October 12, 2018
Cell Phone: 913-269-8959



Virus-free. www.avast.com

Cynthia Kriesel

Attachment D 12/04/18

From: Cynthia Kriesel [cann@vfemail.net]
Sent: Sunday, September 11, 2016 10:01 PM
To: 'Amy Kynard'; 'David Knopick'
Cc: 'Chris Grunewald'; 'Rachelle Breckenridge'
Subject: RE: Proposed changes to Chapters 18.20 and 18.50 of the Unified Development Ordinance

Amy, Dave,

I downloaded the packet for the September 12, 2016 public hearing and saw the letter regarding the UDO text amendments from the law firm representing APAC. In the letter they claim that the current UDO vibration provisions "are not based on good science, or objective criteria." This claim is false because there nationally recognized standards that address criteria for annoyance caused by vibrations. These standards were looking at vibration annoyance caused by construction activities, but many cities have adopted the vibration annoyance approach to strictly limit ground transmitted vibrations from any uses. The vibration limit in the Olathe UDO for residential property is appropriate in order to avoid annoyance to residents (and not just address personal safety and/or damage to structures, which is what the standards referenced in the letter are concerned with). Some cities are even stricter than Olathe and prohibit any "measurable" ground transmitted vibrations on residential property.

The criteria used in determining vibration annoyance inside a building depend on the type of activities, as well as time of day. Conservative design criteria used for assessing human sensitivity to vibration during construction activities have been developed by the International Organization for Standardization (ISO) and the American National Standards Institute (ANSI). These criteria levels are shown in the following table.

Building Use Category	Maximum Vibration Velocity (inches/second)	Notes
Hospital and critical areas	0.005	
Residential (nighttime)	0.007	
Residential (daytime)	0.01	Also applies to churches, schools, hotels, and theaters
Office	0.02	Also applies to commercial establishments
Factory	0.03	Also applies to industrial establishments

Source: ISO Standard 2631 (1974) and ANSI Standard S3.29-2001.

I also noted that the letter extends an offer to meet with city representatives to provide information on "the appropriate standards" from their perspective. If possible, I would like to participate in any such discussions. If my participation is not possible, I would request a similar meeting with the city so that I can expand upon the information that I provided herein.

Regards,

Randy Kriesel

From: Cynthia Kriesel [mailto:cann@vfemail.net]
Sent: Wednesday, August 31, 2016 3:15 PM
To: 'Amy Kynard'; 'David Knopick'
Cc: 'Chris Grunewald'; 'Rachelle Breckenridge'
Subject: RE: Proposed changes to Chapters 18.20 and 18.50 of the Unified Development Ordinance

ISO 2631 Mechanical vibration and shock -- Evaluation of human exposure to whole-body vibration

***ANSI S3.29* Guide To The Evaluation Of Human Exposure To Vibration In Buildings**

**OFFICE of SURFACE MINING
RECLAMATION and ENFORCEMENT****U.S. Department of the Interior**

<https://www.osmre.gov/resources/blasting.shtm>

“OSMRE recognizes that people are sensitive to blasting vibrations and can feel blasts that are as little as 2% of the legal vibration limits. Thus, blasting that shakes their homes, but is within legal limits, may often annoy people. Depending on person’s sensitivity, any given blast may be offensive. While OSMRE does not regulate this annoyance, the regulations do recognize that people need advance warning. To help minimize annoyance, the rules require warning signals (audible to residents within ½ mile) that alert the public of impending blasts. The meaning of the signals and the specific blasting times are provided in a blasting schedule notice that is mailed to residents within ½-mile of any blasting. Additionally, homeowners can ask questions about the blasting during the pre-blasting survey of their home (available to residents within ½ mile of coal mining permit boundaries).”

OSMRE also has an online presentation entitled “Controlling the Adverse Effects of Blasting” which states the following.

<https://www.osmre.gov/resources/blasting/docs/WYBlasterCertModules/8AdverseEffectsBlasting.pdf>

Past experience in human response to blasting has revealed that persons inside structures can detect, and will object to, air and ground vibration levels far below those that could damage structures.

FACTS:

- Low amplitude airblast (110 to 117 dB) can cause glass window panes and mid-walls to rattle, generating noise inside structures.
- Above 117 dB to 120 dB, airblast may cause some annoyance and fright.
- Ground vibrations as low as 0.02 ips are perceptible to residents inside structures.
- Low frequency ground vibration events are most annoying to people

[This is the OSMRE Table for blasting vibrations]

Distance (D) from the blasting site, in feet	Maximum allowable peak particle velocity (V max) for ground vibration, in inches/ second ¹	Scaled-distance factor to be applied without seismic monitoring ² (Ds)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

¹ Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

² Applicable to the scaled-distance equation of Paragraph (d) (3) (i) of this Section.

Other Federal Organizations

<https://www.fhwa.dot.gov/engineering/geotech/pubs/012844.pdf>

Rock Blasting and Overbreak Control (Federal Highway Administration)

In discussing blasting vibrations, the document states **“The annoyance and fear associated with it begins at levels much lower than the damage level for structures.”**

The document also discusses “non-damaging” effects of blasting vibrations and states:

“many other effects occur that are disconcerting and alarming to persons who feel and hear the vibration. Some of these effects are:

- Walls and floors vibrate and make noise.
- Pipes and duct work may rattle.
- Loose objects, plates, etc., may rattle.
- Objects may slide over a table or shelf, and may fall off.
- Chandeliers and hanging objects may swing.
- Water may ripple and oscillate.
- Noise inside a structure is greatly amplified over noise outside.
- Vibration is very disturbing to occupants. “

10.6 SENSITIVITY TO VIBRATION

Human beings are remarkably sensitive to vibration. If this were not so, the vibration problem would scarcely exist. The explosives technology of today insures that most operations are conducted in a safe manner. In relatively few cases is there a significant probability of damage.

Since vibration is felt in practically all cases, the reaction to this sensation is one of curiosity, concern, and even fear. Hence, it is important to understand something about human response to vibration which depends on vibration levels, frequency and duration. In addition to these physical factors, it is important to keep in mind that human response is a highly subjective phenomenon.

Human response has been investigated by many researchers. One of the early investigations was by Reiher and Meister, Berlin, 1931. Other investigations were made by Goldman, 1948, and Wiss and Parmelee, 1974. A composite of these investigators' results was presented graphically in the U. S. Bureau of Mines RI 8507, Siskind, et al, 1980. This composite is represented here in Figure 10.28.

The human response curves are all similar and highly subjective in that the response is a mixture of physiological and psychological factors individual to each person. Based on these curves, a very simple and practical set of human responses can be designated as follows:

TABLE 10.10 HUMAN RESPONSE

RESPONSE	PARTICLE VELOCITY	DISPLACEMENT AT 10 Hz	DISPLACEMENT AT 40 Hz
Noticeable	0.02 in/s	0.00032 in	0.00008 in
Troublesome	0.2 in/s	0.0032 in	0.0008 in
Severe	0.7 in/s	0.011 in	0.0028 in

Vibration is a fact of daily life which one regularly experiences but is seldom aware of. This type of vibration has been designated cultural vibration. Generally, it elicits no reaction from the person affected.

Other vibration that contrasts sharply, because it is not part of the daily experience but is unusual, has been designated acultural. It surprises a person, is disturbing, and causes an acute awareness.

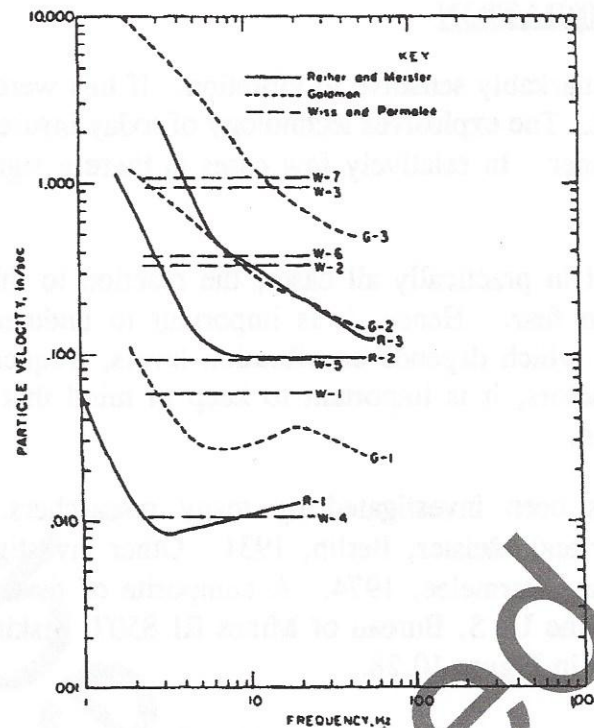


Figure 10.28 Human Response To Vibration (RI 8507)

Some example of cultural and acultural vibration are listed in the following:

CULTURAL VIBRATION

Automobile
Commuter Train
Household
Industrial Plant or Office
Airplane

Common Denominator:
No reaction

ACULTURAL VIBRATION

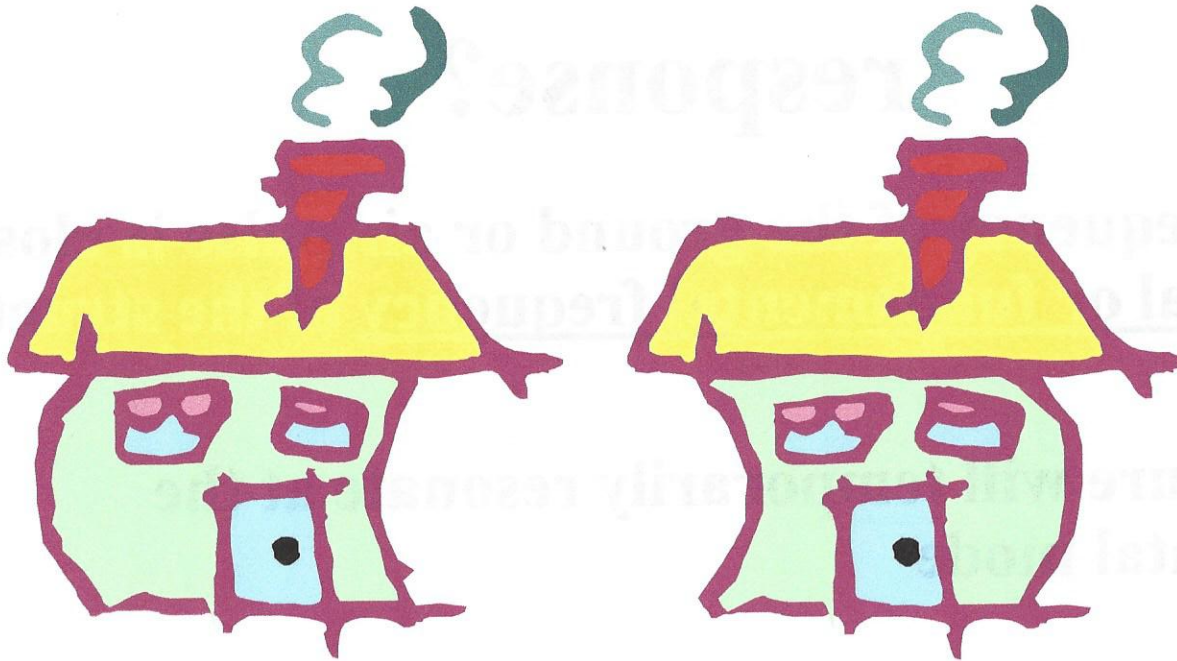
Blasting
Pile Driving
Impact Machinery
Jack Hammer
Forging Hammers

Common Denominator:
Persons react because these vibrations
are unfamiliar, disturbing

Blasting is definitely acultural for the average person. The annoyance and fear associated with it begin at levels much lower than the damage level for structures.

<https://www.osmre.gov/resources/blasting/docs/ATF/OSMREResponsibilitiesATF.pdf>

Mid-wall response



Move like a drum and result in rattling (noise) of loose objects on, or resting against walls.

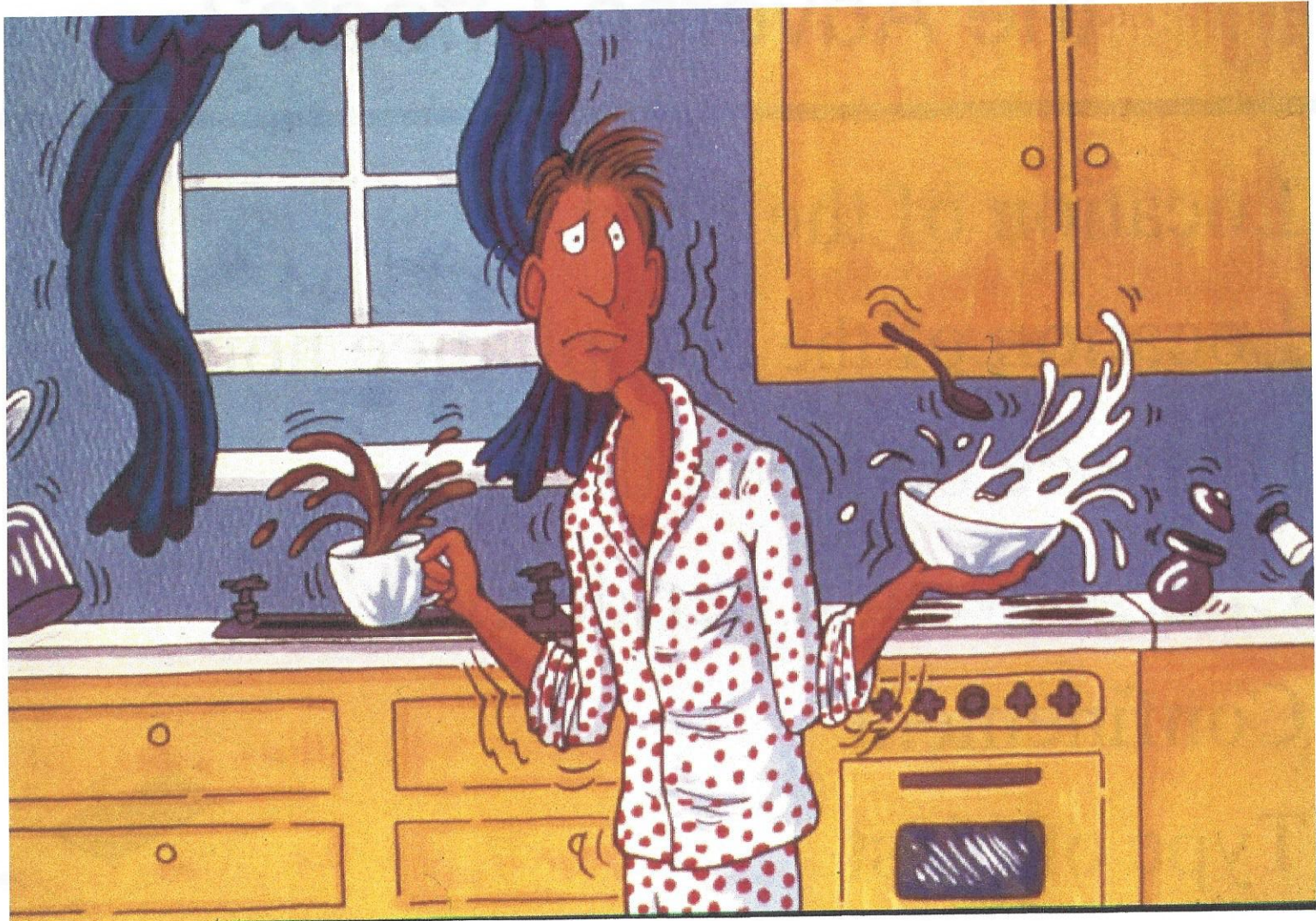
Motions do not result in wall cracking. But the noise can startle occupants, promoting the perception of structure damage.

What is the worst case scenario of response?

When the frequency of the ground or air pulse is close to the natural or fundamental frequency of the structure

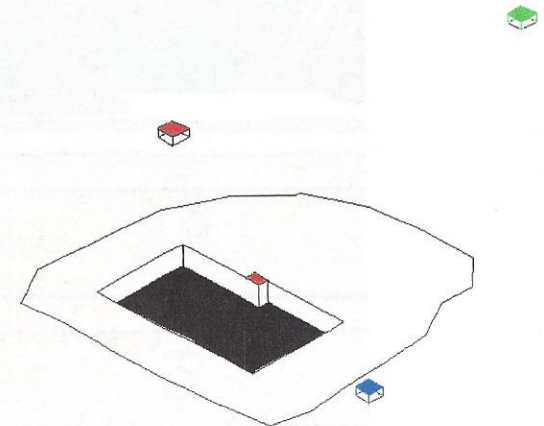
- the structure will temporarily resonate at the fundamental mode
- the time duration of structure shaking may be far longer than that of the ground
- structures may exhibit an amplification of the ground excitations

When the house shakes, owners are Annoyed or Fear Damage



What are the Most Important Parameters in Evaluating the Adverse Effects?

- Location of the blast
- Location of the compliance house
- Distance between the two
- Charge weight per delay
- Confinement
- Type of blast



Other places that impose .02 inch per second or less vibration limit at residential property.

Beloit, Kansas (near Salina)

Mohave County, Arizona

Albemarle County, Virginia (.015 inch per second)

Fairfax County, Virginia

Grand Forks, North Dakota

Utica, New York

Sugar Land, Texas

Lake Stevens, Washington

Carrboro, North Carolina

Chanceford Township, Pennsylvania

Fawn Township, Pennsylvania

McHenry, Illinois

Pittsfield Township, Michigan

State of New Jersey **(In any residential area, the peak particle velocity shall not exceed 0.02 inches per second during the hours of 7:00 A.M. to 9:00 P.M. and shall not exceed 0.01 inches per second during the hours of 9:00 P.M. to 7:00 A.M.)**

From: [Karen Hooven](#)
To: [Michael Copeland](#)
Cc: [Aimee Nassif](#)
Subject: FW: UDO Changes Proposed for Olathe, KS
Date: Tuesday, August 21, 2018 11:35:25 AM

From: Jacinda Zerr <jzerr@farmersbankks.com>
Sent: Friday, August 17, 2018 9:34 AM
To: Michael Copeland <MCopeland@OLATHEKS.ORG>
Subject: UDO Changes Proposed for Olathe, KS

Mayor Mike Copeland,

We have been contacted by several of our customers for whom we provide development financing in the city of Olathe. They have asked us to voice our recommendations regarding the recent proposed Olathe UDO changes. In supporting these customers, we are asking you to consider a 7 year sunset with a 2 to 4 year extension in regards to the period in which a preliminary plan will be in effect.

Please contact me with questions you might have and I could give you details of the Olathe developments we are currently financing.

Sincerely,

Jacinda Zerr

Market President
Farmers Bank of Kansas City
14231 Metcalf Ave.
Overland Park, KS 66223
Direct # 913-387-5563
NMLS# 646380

At Farmers Bank of Kansas City, our customers are our #1 priority. We work hard to make sure we offer the latest in financial services along with the kind of customer service you expect from a community bank. We are a financially strong and stable institution prepared for the future!

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prohibited and may be unlawful.

Attachment D 12/04/18

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HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY

ATTACHMENT C 03/19/19
Affiliated With



600 EAST 103RD STREET • KANSAS CITY, MISSOURI 64131-4300 • (816) 942-8800 • FAX (816) 942-8367 • www.kchba.org

October 16, 2018

Chairman Vakas and Members of the Planning Commission, thank you for the opportunity to submit testimony on the 2018 Olathe Unified Development Ordinance amendments, 18.40.110. The Home Builders Association of Greater Kansas City is proud to be the voice of the local housing industry. Comprising approximately 800 member companies, the HBA represents an industry that supports over 20,000 local jobs and contributes more than \$1.5 billion to both short and long-term economic growth in the region.

The Home Builders Association greatly values our relationship with Olathe's local government as we share the common goals of promoting new economic growth, homeownership, affordable housing and strong communities.

Below is the KCHBA's recommended standards on the Site Development Plans:

18.40.110.G – Scope of Approval

18.40.110.G.1 There should not be an expiration on preliminary site development plans, but if one must be put in place it should be no less than a 7-year expiration.

We believe that a preliminary site plan expiration would be detrimental to Olathe's economic growth and development. The current system being utilized allows developers to develop and build based on market-driven demands, and when planning for the future provides a more stable business environment for long-term investment in Olathe.

As Olathe has been the highest permitting city in Johnson County for the last 10 years, the HBA recognizes and appreciates that the city has put forth a great effort to work collectively and harmoniously with local builders and developers to provide a platform for booming economic development. We urge you to keep our stance in mind when considering the adoption of the 2018 Olathe Unified Development Ordinance amendments.

Thank you for your consideration.

Sincerely,

Gary Kerns
President
Home Builders Association of Greater Kansas City



City of Olathe
City Planning Division

MINUTES

Planning Commission Meeting: October 22, 2018

Application:	<u>UDO18-0002: Unified Development Ordinance Amendments</u>
Applicant:	City of Olathe, Public Works – Planning Services
Staff Contact:	Aimee Nassif, Chief Planning and Development Officer Shelby Ferguson, Planning Consultant

Aimee Nassif, Chief Planning and Development Officer, appeared before the Planning Commission to present updates to the Unified Development Ordinance, including Section 18:40 for procedures, plans and plats, and 18.30 and 18.50, which involve quarries and mines. She reminded commissioners that 18.40 was before them at the August 13th meeting and due to discussion on Chapter Section 18.40, the public hearing was held to allow additional community collaboration with staff. Staff collaborated with stakeholders and looked to other municipalities to see what they are doing in these two areas since that time.

Ms. Nassif noted that the UDO updates continue to be a work in progress and community engagement and collaboration is ongoing. Discussions are ongoing regarding several sections, mainly focusing on expiration of preliminary plans and staff is looking for feedback before proceeding to City Council.

Following **Ms. Nassif's** presentation, she said she was available for questions. Ms. Nassif also advised that staff is looking for feedback and input from the Planning Commission so that staff can proceed to City Council to update them on all the community engagement, recommendation from the Planning Commission, and seek direction on how to proceed. **Comm. Fry** commended the City and staff for their efforts in trying to find compromises. Comm. Fry asked how this moved on to City Council. Ms. Nassif responded that tonight, staff is looking for a recommendation from the Planning Commission, which she will take to City Council. Comm. Fry asked Ms. Nassif to explain why the City want preliminary plans to expire. Ms. Nassif responded that all other plans and plats have an expiration timeframe, and it is a good way to have a touchpoint back to the community. Also, because codes are updated annually, it is important to make sure that new development meets current code standards. Comm. Fry asked if Ms. Nassif thought there was a reason it was written to not have an expiration date when the UDO was revised. Ms. Nassif responded in the early 1990s, preliminary plans expired in one year. Later, expiration dates were removed. Now, after looking at the community's vision, it is thought that they should include an expiration date.

Vice-Chairman Rinke asked if someone who has a preliminary plan that doesn't expire will be grandfathered in the future. **Ms. Nassif** said there is no language to grandfather them however they can request an extension. Vice-Chairman Rinke asked about vibration standards for quarries. Ms. Nassif replied that existing special use permits are set at a .30.

Comm. Nelson asked if other developments have been held up because of a development that has not begun yet. **Ms. Nassif** developers do watch to see what sort of development is happening throughout the municipality as they market and lease ground space.

Chair Vakas opened the public hearing. **Randy Kriesel**, 24120 West 167th Street, approached the podium. Mr. Kriesel continues to be concerned about vibrations when blasting at the quarries. He stressed that the UDO amendments would not protect them from the effects of blasting. He closed by saying that the vibration change would be detrimental to the quality of life for those in his neighborhood. **Ms. Nassif** noted that Mr. Kriesel was correct, that one measurement is .75.

David Waters, Attorney, Lathrop Gage Law Firm, appeared on behalf of the Hamm Company, which operates two quarries. He and his clients support staff's recommendations and thanks them for making stakeholders a part of that process. **Chair Vakas** asked if vibration standards were lowered, what the impact would be in the blasting schedule. Mr. Waters said the lower the standard, the more blasting would need to occur.

Pete Heaven, Attorney, 9401 Indian Creek Parkway, Overland Park, appeared on behalf of Rodrock Homes, Rodrock Development, Prieb Homes and Blakeley Development. Mr. Heaven suggested that the proposed amendments won't accomplish what the staff believes they will. He believes the results will be catastrophic. He said the language in the current UDO works perfectly. Mr. Heaven expressed concern with several updates included in Section 18.40 including the expiration of preliminary plans and the updated language for final plats. **Comm. Munoz** asked Mr. Heaven if, in summarizing his comments, he wished to keep the UDO language the same. Mr. Heaven said yes.

Harold Phelps, Phelps Engineering, 1270 North Winchester, Olathe, approached the podium. He appreciated Mr. Heaven's comments and believed he outlined the major concerns of the development community. He notes that if the ordinance is passed, it would create work for engineers, but they want to support their clients, helping them get the best plan that works for everyone.

Travis Schram, President, Grata Development, 11282 S. Belmont Street, Olathe, approached the podium. He addressed the process and said it feels like there is a rush in the timetable. He does not feel this issue is ready to go to City Council. He is concerned about continuing to develop in Olathe. He does not want expirations on plans to change. **Comm. Fry** asked Mr. Schram to explain his objections. Mr. Schram said each phase needs to be a stand-alone development, which would eliminate the need for phasing, in general. **Ms. Nassif** said the area Comm. Fry is talking about exists in code today and is not being changed. Preliminary plats in excess of 40 acres are required to have a phasing plan. The code change defines what a phasing plan means. **Comm. Fry** is trying to understand if that change is supported by the development community. **Ms. Nassif** said the change is that preliminary plans have a phasing plan, as well, so as to have the ability to anticipate what is to come. **Chair Vakas** called for a motion to close the public hearing.

Motion by Vice-Chairman Rinke, seconded by Comm. Sutherland, to close the public hearing.

Motion passed 6-0.

Vice-Chairman Rinke noted that many of the comments received this evening are from residential developers. He asked Ms. Nassif if the same rule applied to commercial developers. **Ms. Nassif** said it does. Mr. Rinke asked if there are issues with both commercial and residential, and if the proposal would only apply to commercial developers and leave existing rules in place for residential. Ms. Nassif recommended that the rules be consistent as much as possible for both the residential and commercial developers.

Comm. Nelson asked Ms. Nassif to speak to the issue of conforming to the UDO versus conforming to the municipal code. **Ms. Nassif** said currently, other sections of the UDO state that those documents shall adhere to a certain section or sections of the UDO. For final plats, that is

the only document that doesn't reference that it should adhere to the UDO, which is why that language was being added.

Comm. Fry said he struggles with the purpose of the amendments and whether they are worth the potential detrimental effects. He is not comfortable moving the amendments on to City Council and proposes striking UDO amendments 18.40.110.B and 18.40.150.A and B. **Vice-Chairman Rinke** said he is not comfortable voting to approve if such a motion is made to that effect. Regarding the quarry, Vice-Chairman Rinke said he is comfortable leaving it at .02.

Comm. Nelson asked if there have been other neighbors who have expressed concern about the quarries and blasting. **Ms. Nassif** responded that there has been feedback from a variety of stakeholders over the last several months.

Chair Vakas noted that this conversation has been going on for many months and appreciates the collaboration between the development communities and quarry operators and City staff. He is not uncomfortable with the proposal as submitted but believes there are issues on the exploration of preliminary site development plans. He believes City Council needs to weigh in on that issue. Personally, he would like to send something forward to City Council, with the understanding that it's going to Council for discussion, not necessarily approval or disapproval.

Comm. Sutherland had a question about 18.40.150.B regarding phasing plans. He asked if a developer would have to come back if a phasing plan changed. **Ms. Nassif** said there is no information in the UDO that explains what a phasing plan is. She said it is not the intent for them to have to come back unless the plan itself changed.

Comm. Nelson feels that this issue has reached an impasse and the potential to bring to conclusion is non-existent at this level. **Chair Vakas** called for a motion.

Motion by Comm. Fry, seconded by Comm. Sutherland, to recommend approval of UDO18-0002, per staff recommendations, as amended:

Staff recommends approval of the proposed amendments to the *Unified Development Ordinance (UDO)*, as detailed in the attached UDO Amendments Exhibit for the following Chapters and associated subsections herein: 18.30.190, 18.40.110, 18.40.150, 18.40.160, and 18.50.160.

Motion includes striking staff recommendation 18.40.110.B and staff recommendation 18.40.150.A and B.

Comm. Nelson is concerned that Comm. Fry is striking a recommendation, not language.

Aye: Sutherland, Fry, Munoz, Vakas (4)

No: Rinke, Nelson (2)

Motion was approved 4-2.



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 3/19/2019

DEPARTMENT: Public Works

STAFF CONTACT: Mary Jaeger/Beth Wright

SUBJECT: Presentation on the Park Maintenance Facilities Improvements Project, PN 6-C-001-18.

ITEM DESCRIPTION:

Discussion on the Park Maintenance Facilities Improvements Project, PN 6-C-001-18.

SUMMARY:

The Parks Operations division is currently located 404 N. K-7 Highway at Spruce Street. Due to redevelopment opportunities at this location, the City has determined it necessary to construct a new facility for this division. This project is for the planning, design and construction of new office space, shop space, and site storage space. The site for this project is the recently acquired property west of, and adjacent to, the City's Public Works campus

On November 6, 2018, City Council authorized funding for the Park Maintenance Facilities Improvements Project, PN 6-C-001-18, and the City Facilities Expansion Infrastructure Improvements Project, PN 6-C-031-18, as well as a Design-Build Agreement with McCown Gordon Construction for both projects.

Programming for the new Parks Maintenance facility has been completed. Other future facility needs at this site were also evaluated and are reflected in the attached Concept Site Diagram.

For efficiency, Staff recommends combining the two projects into one, with an updated estimated total cost of \$11,500,000. This includes planning and design, staff time, construction of the building and supporting infrastructure, and equipment for the new facility.

With the impending sale and redevelopment of the existing Parks Maintenance facility at 404 N. K-7 Highway, timing of this project is critical. In order to expedite the Design-Build construction process, final Council approval of the Guaranteed Maximum Price (GMP) contracts will occur in two packages as outlined below.

- Complete Package 1 Design - Site Infrastructure & Structural Steel 2nd Quarter 2019
 - Council Approval of GMP Contract for Package 1 2nd Quarter 2019
 - Complete Package 2 Design - Building Construction 3rd Quarter 2019
 - Council Approval of GMP Contract for Package 2 3rd Quarter 2019
 - Substantial Completion/Occupancy/Move-In 2nd Quarter 2020
-

FINANCIAL IMPACT:

Funding for the Park Maintenance Facilities Improvements Project includes:

Cash	\$2,000,000
<u>GO Bonds</u>	<u>\$9,500,000</u>
Total	\$11,500,000

ACTION NEEDED

MEETING DATE: 3/19/2019

No action is requested at this time.

ATTACHMENT(S):

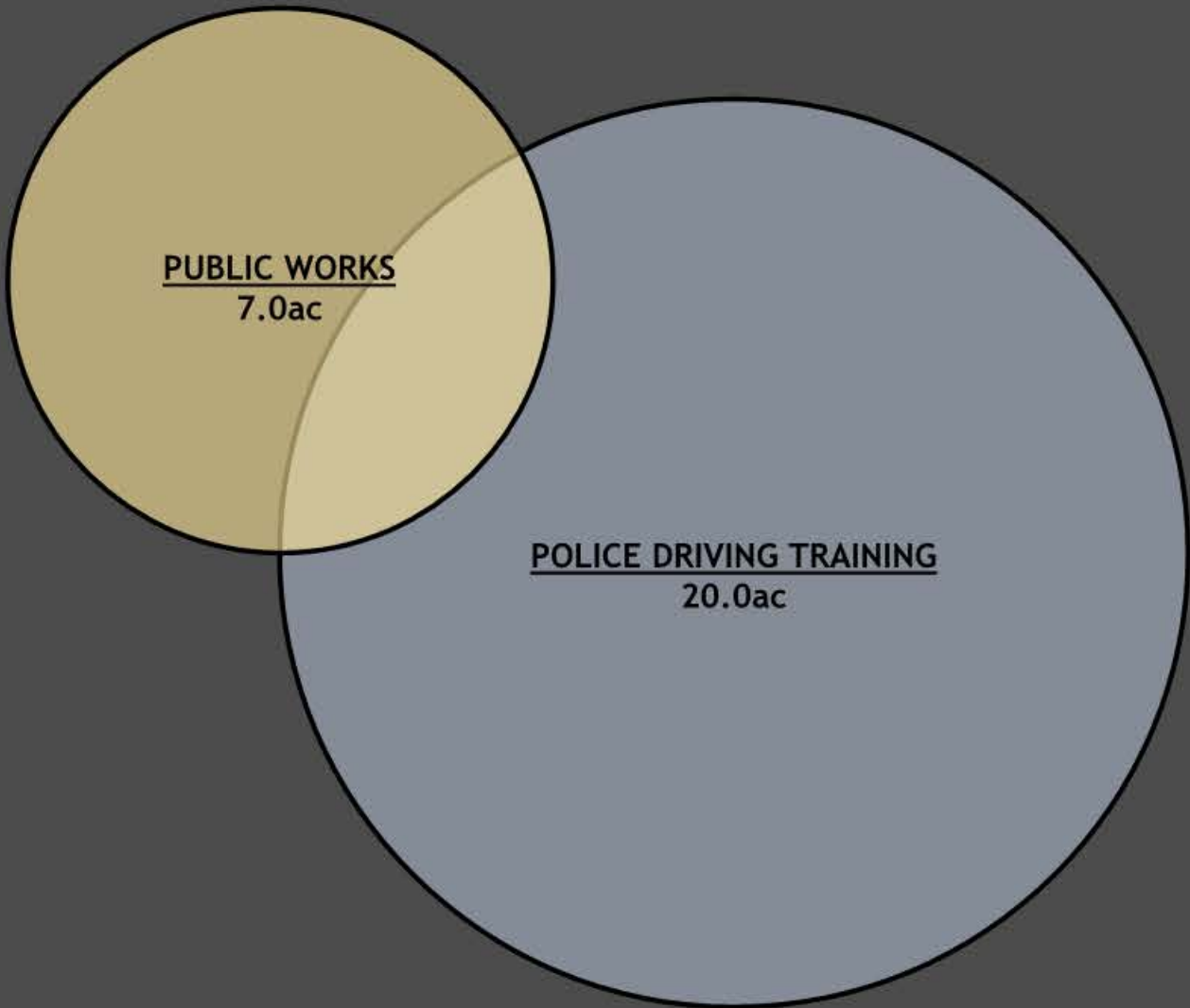
A: Concept Site Diagram

B: PowerPoint Presentation

CONCEPT SITE DIAGRAM

March 2019

Unaccommodated Program Needs



Parks Maintenance Facility

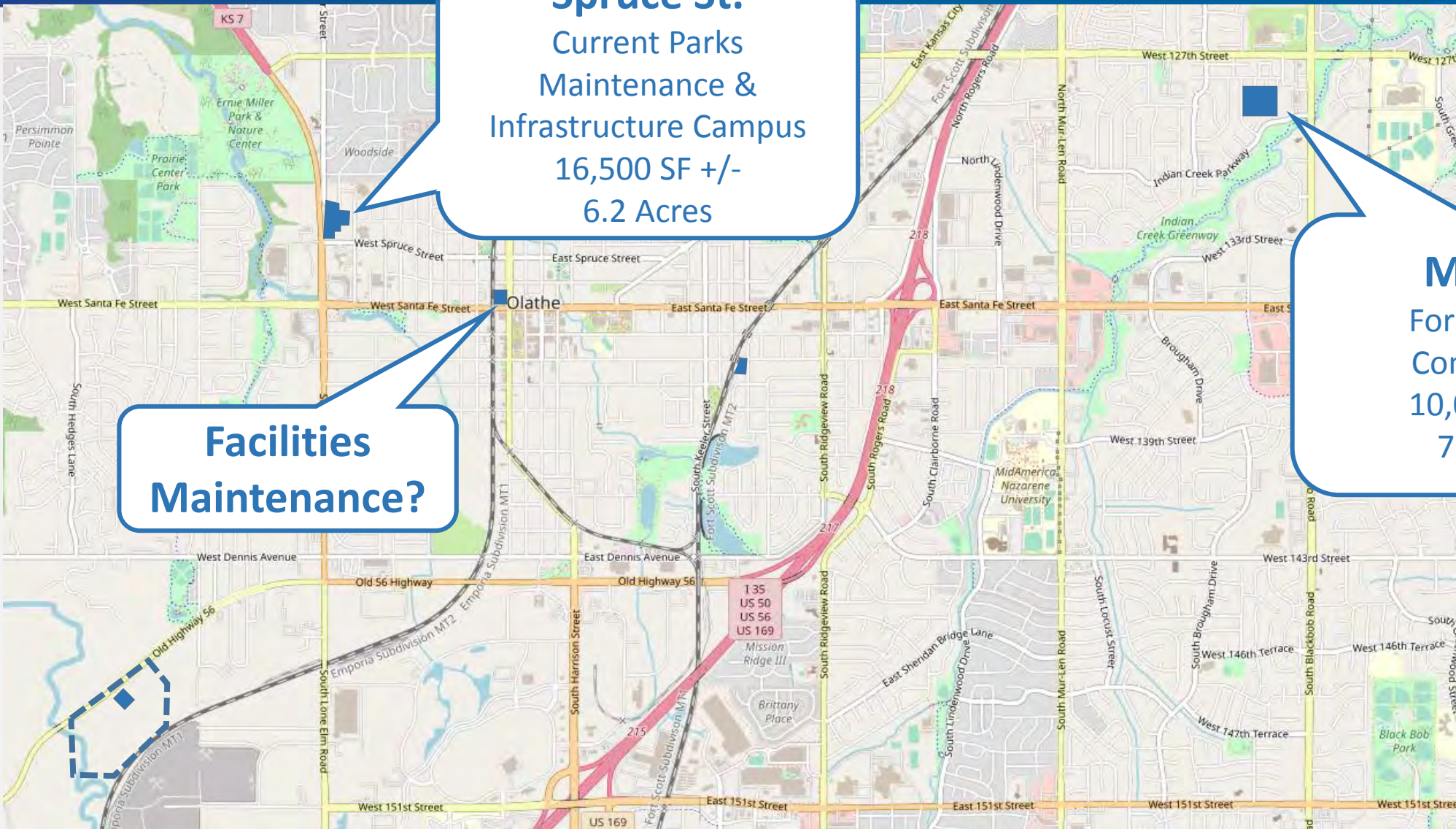
Chad Foster, AIA
Senior Building Design Project Manager
March 19, 2019

Properties Sold or For Sale

Spruce St.
Current Parks
Maintenance &
Infrastructure Campus
16,500 SF +/-
6.2 Acres

**Facilities
Maintenance?**

Main 10
Former Parks
Construction
10,000 SF +/-
7.5 Acres



Spruce St.

Current Parks Maintenance & Infrastructure Campus
16,500 SF +/- on 6.2 acres



Main 10

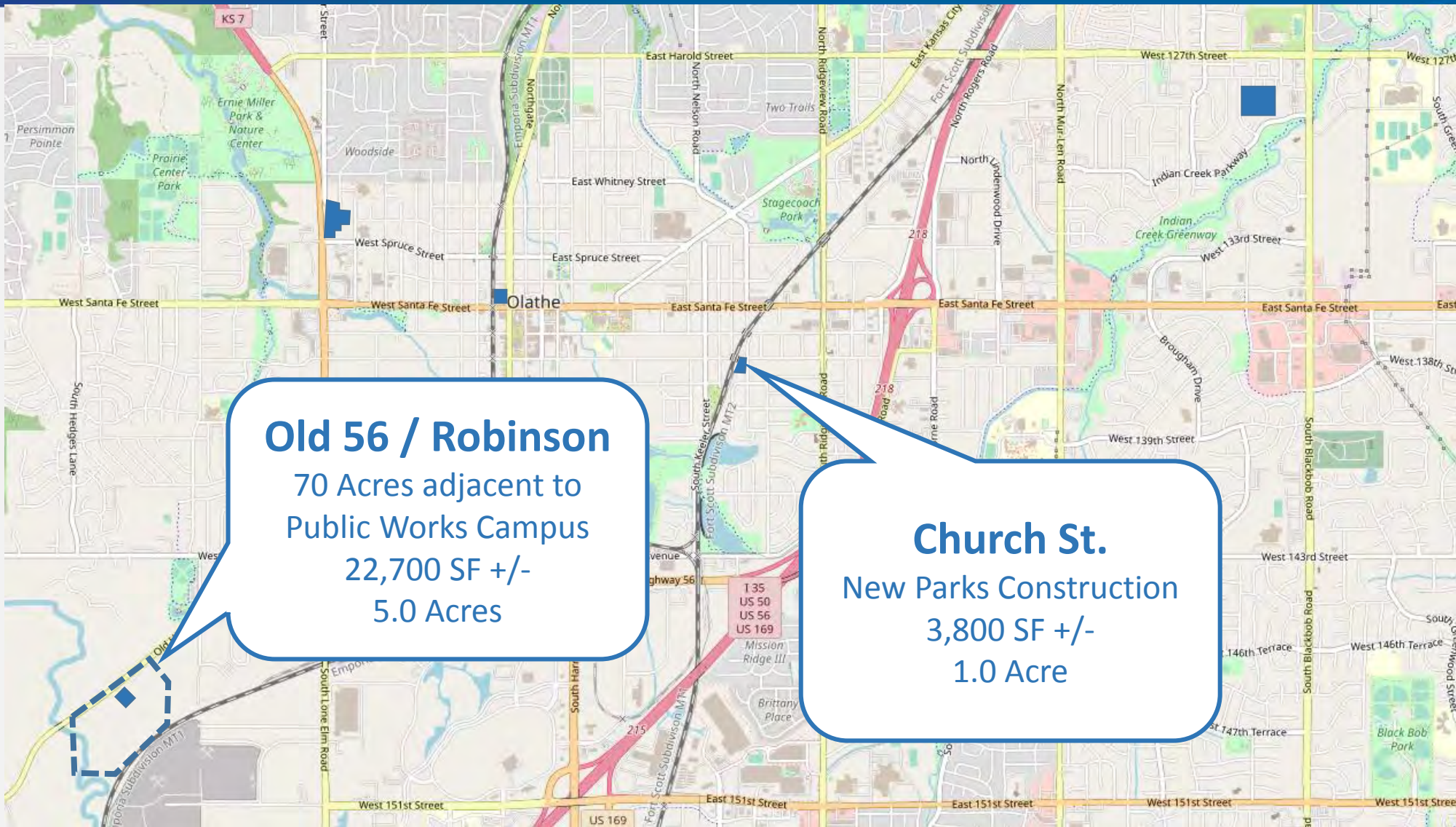
Former Parks Construction
10,000 SF +/- on 7.5 acres



Solutions

- Main 10 Replacement :: Purchase existing for replacement
- Spruce St. Replacement :: New construction on Old 56 Hwy

Properties Purchased



Old 56 Hwy

Future Parks Maintenance & Infrastructure
70 acres, 32 +/- acres readily developable



Church Street

Current Parks Construction
3,800 SF on 1.0 acre





CONCEPT SITE DIAGRAM

March 2019

Unaccommodated Program Needs

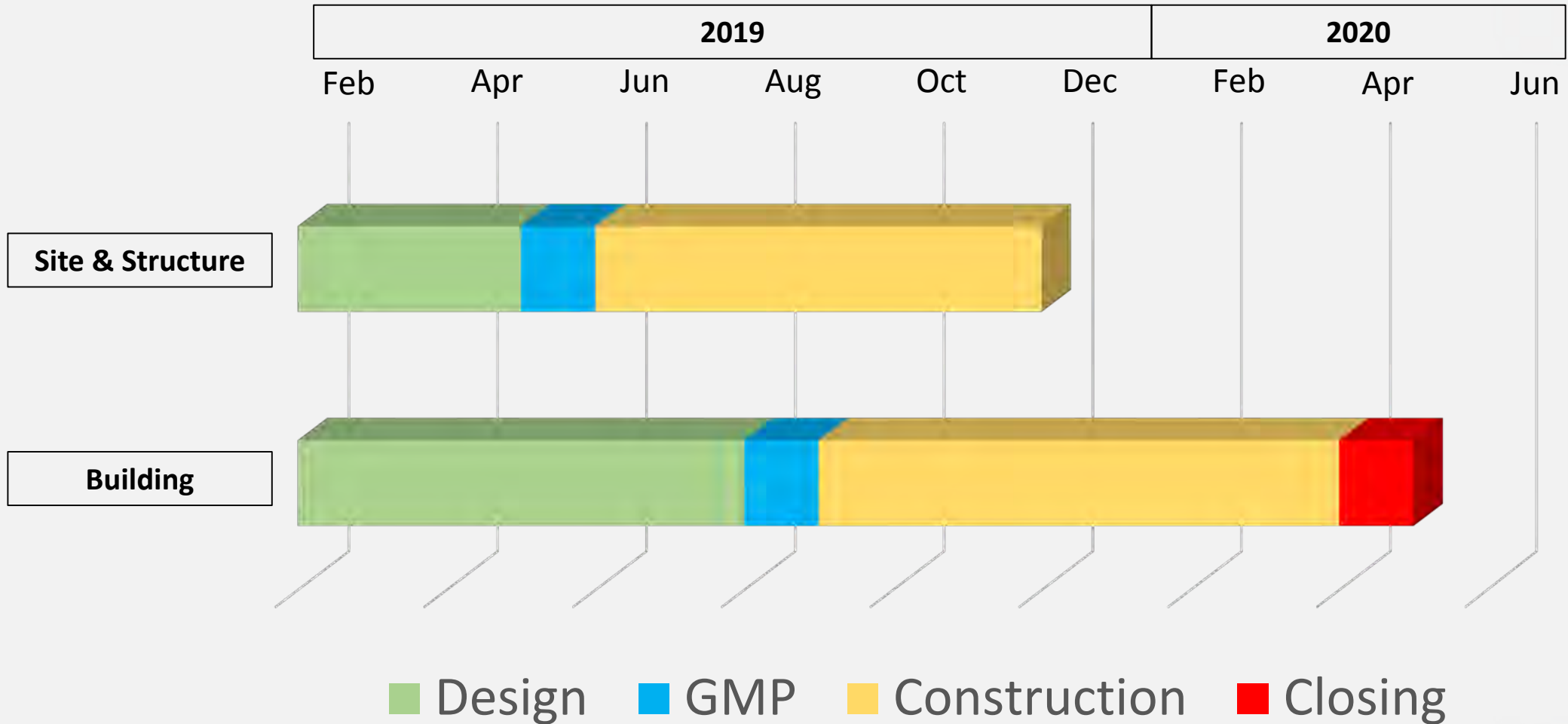


Spruce St. Replacement Scope History

- Preliminary Estimates in 2016
 - 42,000 sf
 - \$19.0M
- CIP Placeholder
 - \$7.45M in two project accounts
 - Management direction to determine essential needs
- Confirmed Need in 2019
 - 22,700 sf (expandable)
 - \$11.5M in a single project account



Schedule



Next Steps

- Project Reauthorization – April 2
 - \$11.5M (\$2M Cash + \$9.5M GO Bonds)
- Guaranteed Maximum Price (GMP) No. 1 – May 2019
 - Site Infrastructure & Pre-Engineered Steel Structure
- Guaranteed Maximum Price (GMP) No. 2 – August 2019
 - Building Pad, Envelope, Systems and Interior Finish