



## Agenda

**REGULAR MEETING  
GOVERNING BODY  
CITY OF LENEXA, KANSAS  
17101 W. 87<sup>th</sup> STREET PARKWAY**

**SEPTEMBER 5, 2023  
7:00 PM  
COMMUNITY FORUM**

**CALL TO ORDER** Pledge of Allegiance

**ROLL CALL**

**APPROVE MINUTES** August 15, 2023 City Council meeting draft minutes  
(located in the Appendix)

**MODIFICATION OF  
AGENDA**

**APPOINTMENT** Arts Council - Sarah Homan (memo located in the  
Appendix)

**PROCLAMATIONS** Suicide Prevention Month  
Fetal Alcohol Spectrum Disorders Awareness Month  
Constitution Week - Sept 17-23

**CONSENT AGENDA** **Item Numbers 1 through 4**  
All matters listed within the Consent Agenda have been distributed to each member of the Governing Body for review, are considered to be routine, and will be enacted by one motion with no separate discussion. If a member of the Governing Body or audience desires separate discussion on an item, that item may be removed from the Consent Agenda and placed on the regular agenda.

1. Acceptance for maintenance
  - a. Acceptance of the Arbor Lake South, First Plat public improvements for maintenance

*This project constructed public street, storm, and streetlight improvements in the Arbor Lake South, First Plat subdivision. The*

*project was funded by private development.*

- b. Acceptance of the Pavement Markings Project (87th Street Parkway & I-435 Interchange and Quivira Road from 87th Street Parkway to 75th Street) for maintenance

*This project installed permanent pavement markings for the 87th Street Parkway & I-435 Intersection and Quivira Road Improvement Projects. The total cost of construction was \$114,101.50.*

- c. Acceptance of the Skate Park Reconstruction Project for maintenance

*This project constructed Rolling Magic Skate Park, which consists of an 11,200 square foot, all-wheel park with a wide range of features to accommodate all levels of users. The new park is fully ADA accessible and includes an entry plaza with seat walls, turfed berm, landscaping, and a monument sign. The total cost of construction was \$1.1 million.*

- 2. Resolution authorizing the sale, possession, and consumption of alcohol at the 2023 Lenexa Chili Challenge

*The 2023 Lenexa Chili Challenge will be held October 13-14, 2023. To permit the sale, possession, and consumption of alcoholic liquor at the event, the City must approve a resolution which recognizes the Lenexa Chili Challenge as a special event as defined by state law, designate the boundaries of the event where alcohol may be consumed, and identify the public streets to be closed. The resolution will approve the Rotary Club of Lenexa as a designated vendor to sell alcohol at the Chili Challenge.*

- 3. Consideration of two resolutions to appropriate private property for the construction of stormwater improvement projects

- a. Resolution declaring it necessary to appropriate private property for the construction of the 113th East of Renner Stormwater Project
- b. Resolution declaring it necessary to appropriate private property for the construction of the 113th and Lakeview Stormwater Project

*These resolutions will allow the City to proceed with acquisition of private property associated with the construction of the 113th East of Renner and the 113th and Lakeview Stormwater Improvement Projects. The total estimated cost of the projects, including acquisition, is \$4,520,000.*

- 4. Ordinance granting a contract franchise to Kansas Fiber Network, LLC

*This ordinance will renew the franchise with Kansas Fiber Network, LLC to construct, operate, and maintain a telecommunications system in the city. The franchise ordinance includes a 5% fee on gross receipts and a two-year term with four automatic renewal terms of two years each for a total of 10 years.*

## END OF CONSENT AGENDA

### PUBLIC HEARINGS

5. Consideration of approving Project Plan 1L in the City Center Tax Increment Financing (TIF) District (City Center Midas Lenexa Dual Hotel Project)
  - a. Public Hearing to consider approving TIF Project Plan 1L
  - b. Ordinance approving TIF Project Plan 1L
  - c. Resolution approving the Disposition and Development Agreement with Midas Lenexa CC, LLC
  - d. Resolution determining the intent of the City to issue approximately \$80.5 million in industrial revenue bonds to help acquire, construct, and equip the City Center Midas Lenexa Dual Hotel Project

*Tax Increment Financing (TIF) Project Plan 1L contemplates construction of a mixed-use building containing two hotels, commercial and retail space, and structured parking as well as associated infrastructure improvements, located in the center block of 87th Street Parkway immediately west of Penrose Lane in the City Center TIF District. After the public hearing, the Governing Body will consider adoption of TIF Project Plan 1L. If passed by a 2/3 vote, the Governing Body will consider adoption of a Disposition and Development Agreement with Midas Lenexa CC, LLC setting forth the terms and conditions for reimbursement of TIF eligible costs with TIF revenues generated from the TIF District. Finally, the Governing Body will consider adoption of a resolution determining the City's intent to issue up to \$80.5 million in industrial revenue bonds for construction of the project.*

6. Consideration of establishing the City Center Midas Lenexa Dual Hotel Community Improvement District (CID)
  - a. Public hearing to consider establishing the City Center Midas Lenexa

Dual Hotel CID

- b. Ordinance establishing the CID
- c. Resolution approving the Development Agreement with Midas Lenexa CC, LLC

*The proposed CID includes the City Center Lenexa Midas Dual Hotel development area located in the center block of 87<sup>th</sup> Street Parkway immediately west of Penrose Lane. The CID revenues generated from the CID area will be used by Midas Lenexa CC, LLC for approved CID costs. The CID Development Agreement sets the terms and conditions for performance and reimbursement.*

**NEW BUSINESS**

- 7. Ordinance approving a Transient Guest Tax Rebate and authorizing the Mayor to execute a Transient Guest Tax Rebate Agreement with Midas Lenexa CC, LLC

*The developer of the Midas Lenexa Dual Hotel Project has agreed to construct an additional level of public parking to partially support the various public and civic uses and activities which occur in the immediate vicinity. The enlarged parking structure will include approximately 358 parking spaces. Due to the significant cost of structured parking and the City's desire to create additional public parking in this location in Lenexa City Center, the City is proposing to reimburse the Developer for costs associated with the structured parking using Transient Guest Tax.*

**COUNCILMEMBER  
REPORTS**

**STAFF REPORTS**

**END OF RECORDED SESSION**

**BUSINESS FROM  
FLOOR**

Comments will be accepted from the audience on items not listed on the agenda. Please limit remarks to a maximum of five (5) minutes per person/issue.

**ADJOURN**

**APPENDIX**

8. August 15, 2023 City Council meeting draft minutes
9. Arts Council Appointment - Sarah Homan
10. Suicide Prevention Month Proclamation
11. Fetal Alcohol Spectrum Disorders Awareness Month Proclamation
12. Constitution Week Proclamation
13. Item 4 -- Kansas Fiber Network Ordinance
14. Item 5 -- Project Plan 1L

Dist. Governing Body; Management Team; Agenda & Minutes Distribution List

IF YOU NEED ANY ACCOMMODATIONS FOR THE MEETING, PLEASE CONTACT THE CITY ADA COORDINATOR, 913/477-7550. KANSAS RELAY SERVICE 800/766-3777. PLEASE GIVE 48 HOURS NOTICE



**ITEM 1a**

**SUBJECT:** Acceptance of the Arbor Lake South, First Plat public improvements for maintenance  
**CONTACT:** Tim Green, Deputy Community Development Director  
**DATE:** September 5, 2023

**ACTION NEEDED:**

Accept the Arbor Lake South, First Plat public improvements for maintenance.

**PROJECT BACKGROUND/DESCRIPTION:**

This project constructed public street, storm, and streetlight improvements related to the Arbor Lake South, First Plat subdivision.

Staff performed a final inspection on August 4, 2023 and advised that all work had been completed in accordance with the plans and specifications. The maintenance bonds for this project shall go into force upon acceptance by the Governing Body on September 5, 2023 and will expire on September 5, 2025.

The contractor was Havens Construction.

Total lane miles:	1.17 miles
Total statute miles:	0.58 miles
Pipe length:	1,699 linear feet

**FINANCIAL IMPLICATIONS/FUNDING SOURCES:**

This project was funded by private development.

**STAFF RECOMMENDATION:**

Acceptance for maintenance.

**VISION / GUIDING PRINCIPLES ALIGNMENT:**

**Vision 2040**

Integrated Infrastructure & Transportation

**Guiding Principles**

Strategic Community Investment

**ATTACHMENTS**

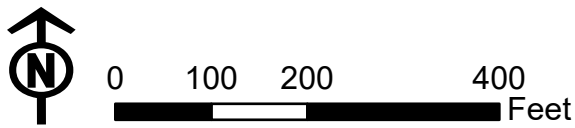
1. Map



Document Path: L:\Engineering\Miscellaneous\Packet Memo Maps\Template\Arbor Lake South, 1st Plat.aprx

Data Source: City of Lenexa and Johnson County Kansas  
For further information, please call 913-477-7500

# Arbor Lake South, First Plat





**ITEM 1b**

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**SUBJECT:** Acceptance of the Pavement Markings Project (87th Street Parkway & I-435 Interchange and Quivira Road from 87th Street Parkway to 75th Street) for maintenance

**CONTACT:** Tim Green, Deputy Community Development Director

**DATE:** September 5, 2023

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**ACTION NEEDED:**

Accept the Pavement Markings Project (87th Street Parkway & I-435 Interchange and Quivira Road from 87th Street Parkway to 75th Street) for maintenance.

**PROJECT BACKGROUND/DESCRIPTION:**

The 87th Street Parkway & I-435 Intersection and Quivira Road from 87th Street Parkway to 75th Street Improvement Projects were wrapping up construction in late fall of 2022 when weather conditions were not favorable for the installation of permanent pavement markings. Both projects were completed with temporary markings so that each project could be opened to traffic and the projects accepted for maintenance. This project installed permanent pavement markings for each project.

Staff performed a final inspection on August 7, 2023 and advised that all work had been completed in accordance with the plans and specifications. The maintenance bonds for this project shall go into force upon acceptance by the Governing Body on September 5, 2023 and will expire on September 5, 2025.

The contractor was Morgan Contractors, Inc.

**FINANCIAL IMPLICATIONS/FUNDING SOURCES:**

This project was funded by the Capital Improvement Fund (Project Nos. 60105 and 60108).

**STAFF RECOMMENDATION:**

Acceptance for maintenance.

**VISION / GUIDING PRINCIPLES ALIGNMENT:**

**Vision 2040**

Integrated Infrastructure & Transportation

**Guiding Principles**

Strategic Community Investment

**ATTACHMENTS**

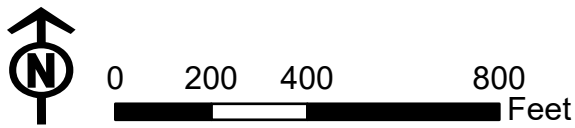
1. Map - 87th Street Parkway & I-435 Interchange
2. Map - Quivira Road

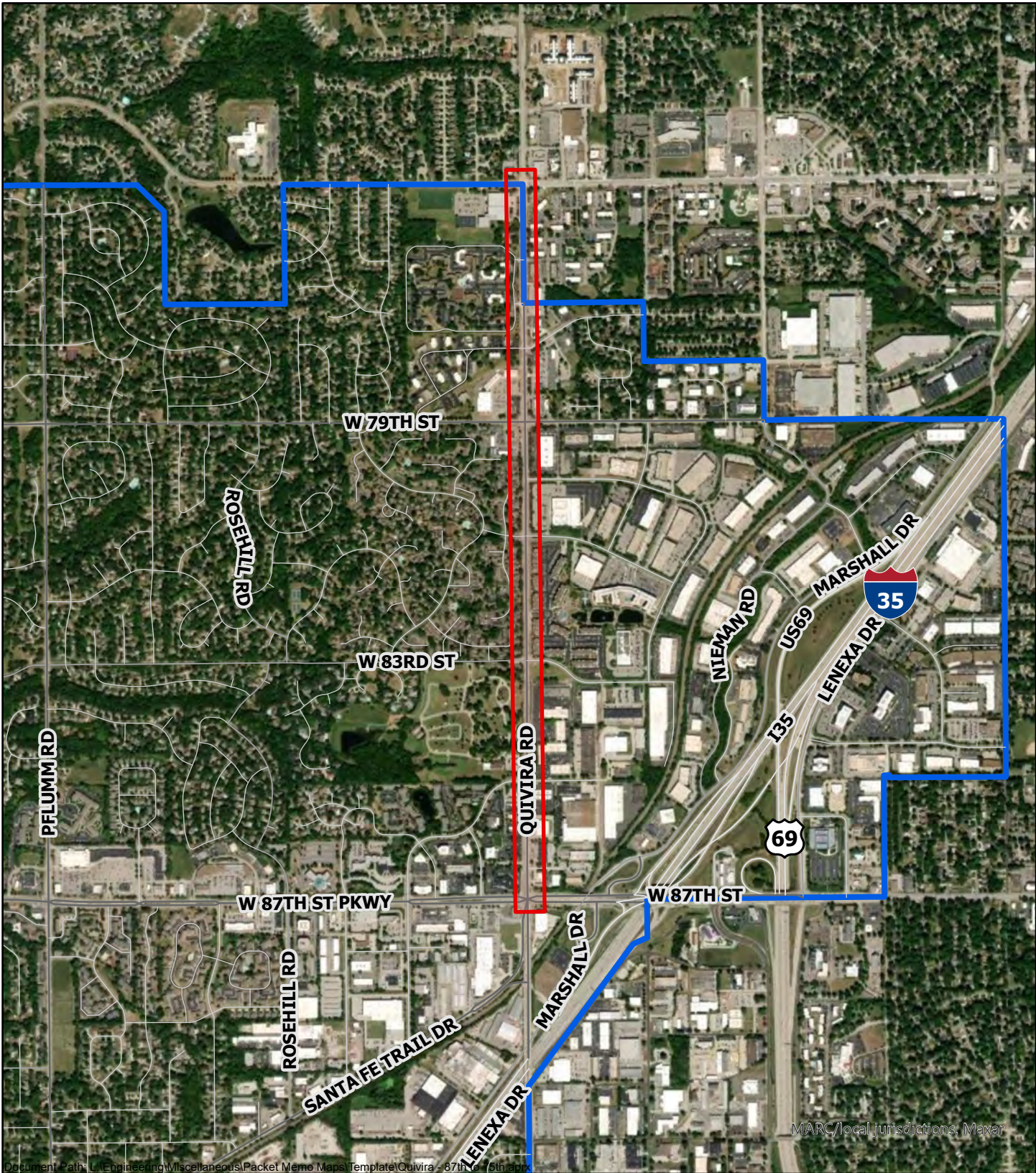




# Pavement Markings Project

## 87th Street Parkway & I-435 Interchange





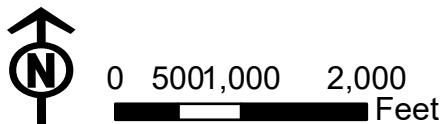
Document Path: L:\Engineering\Miscellaneous\Packet Memo Maps\Template\Quivira - 87th to 75th.aprx

MARC/local jurisdictions, Maxar

Data Source: City of Lenexa and Johnson County Kansas  
For further information, please call 913-477-7500

# Pavement Markings Project

## Quivira Road from 87th Street Parkway to 75th Street





**ITEM 1c**

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**SUBJECT:** Acceptance of the Skate Park Reconstruction Project for maintenance  
**CONTACT:** Logan Wagler, Parks & Recreation Director  
**DATE:** September 5, 2023

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**ACTION NEEDED:**

Accept the Skate Park Reconstruction Project ("Project") for maintenance.

**PROJECT BACKGROUND/DESCRIPTION:**

This Project addressed the poor and worn skate park and the surrounding area at Sar-Ko-Par Trails Park. The new skate park, named Rolling Magic, consists of an 11,200 square foot, all-wheel park with a wide range of features to accommodate all levels of users. The design and structure of the Project was largely driven by public input. The new park is fully ADA accessible and includes a generous entry plaza with seat walls, turfed berm, landscaping, and a monument sign.

Staff performed a final inspection on August 30, 2023 and advised that all work had been completed in accordance with the plans and specifications. The maintenance bonds for this project shall go into force upon acceptance by the Governing Body on September 5, 2023 and will expire on September 5, 2025.

The contractor was New Line Skateparks, Inc.

**FINANCIAL IMPLICATIONS/FUNDING SOURCES:**

This project is included in the 2023-27 Capital Improvement Program (Project No. 70007). The total cost of construction was \$1.1 million.

**STAFF RECOMMENDATION:**

Acceptance for maintenance.

**VISION / GUIDING PRINCIPLES ALIGNMENT:**

**Vision 2040**  
Inviting Places

**Guiding Principles**  
Inclusive Community Building

**ATTACHMENTS**

1. Map



Data Source: City of Lenexa and Johnson County Kansas  
For further information, please call 913-477-7500

# Rolling Magic Skate Park Acceptance for Maintenance





**ITEM 2**

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**SUBJECT:** Resolution authorizing the sale, possession, and consumption of alcohol at the 2023 Lenexa Chili Challenge

**CONTACT:** Spencer Throssell, Assistant City Attorney

**DATE:** September 5, 2023

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**ACTION NEEDED:**

Adopt a resolution authorizing the sale, possession and consumption of alcohol at the 2023 Lenexa Chili Challenge and recognizing the Rotary Club of Lenexa as an authorized vendor of alcohol.

**PROJECT BACKGROUND/DESCRIPTION:**

The City will host the 2023 Lenexa Chili Challenge on October 13th and 14th, 2023, in Old Town Lenexa ("Chili Challenge"). The City intends to contract with the Rotary Club of Lenexa to provide and sell alcoholic beverages at the Chili Challenge.

The boundary of the Chili Challenge, as depicted in the attached map, will include a portion of the following streets:

- Sante Fe Trail Drive from Pflumm Road to Caenen Lake Road;
- 92nd Street from Haskins Street to Sante Fe Trail Drive; and
- Walnut Street from Pflumm Road to Haskins Street.

Pursuant to Kansas law, alcohol may only be consumed upon public streets, alleys, roads, sidewalks or highways as part of a special event, so long as the local governing body has approved, by resolution, the special event and authorized the closure of any applicable streets to vehicular traffic during the special event, and a temporary permit for the sale of alcoholic liquor has been issued to each person or organization intending to sell alcoholic liquor at the special event by the Kansas Division of Alcoholic Beverage Control.

The Rotary Club of Lenexa is required to obtain a temporary permit in order to provide and sell alcoholic liquor at the Chili Challenge. For the Rotary Club to secure the temporary permit, the City will need to adopt a resolution recognizing the Chili Challenge as a special event defined by state law, authorizing the sale and consumption of alcoholic liquor on public streets closed as part of the Chili Challenge, and authorizing the closure of the aforementioned public streets from 7 AM on Friday, October 13, 2023 until 7 PM on Saturday, October 14, 2023.

**STAFF RECOMMENDATION:**

Adoption of the resolution.

**VISION / GUIDING PRINCIPLES ALIGNMENT:**

**Vision 2040**  
Inviting Places

**Guiding Principles**  
Extraordinary Community Pride

**ATTACHMENTS**

1. Map
2. Resolution

2023 LENEXA CHILI CHALLENGE ALCOHOL BOUNDARIES

Ex. A



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE SALE, POSSESSION, AND CONSUMPTION OF ALCOHOL AT THE 2023 LENEXA CHILI CHALLENGE.**

WHEREAS, the 2023 Lenexa Chili Challenge (“Chili Challenge”) will take place October 13 and 14, 2023, in Old Town Lenexa; and

WHEREAS, the City intends to contract with the Rotary Club of Lenexa to provide and sell alcohol at the Chili Challenge for consumption on the premises, including consumption on certain public streets, roads and sidewalks closed to vehicular traffic; and

WHEREAS, pursuant to K.S.A. 41-719, alcohol may be consumed on public streets, alleys, roads, sidewalks or highways as part of an event, so long as a temporary permit for the sale of alcoholic liquor has been issued by the State and the local governing body has approved the event and authorized the closure of any applicable streets to vehicular traffic during the special event; and

WHEREAS, in accordance with K.S.A. 41-719, the City desires to close certain streets, alleys, roads and sidewalks within the boundaries depicted on Exhibit A, attached hereto and incorporated herein by reference, to vehicular traffic and to allow the consumption of alcohol within said boundaries during the Chili Challenge.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:**

**SECTION ONE:** In accordance with K.S.A. 41-719, the Governing Body hereby authorizes the consumption of alcoholic liquor on public streets, alleys, roads, sidewalks or highways that are closed to vehicular traffic as part of the 2023 Lenexa Chili Challenge.

**SECTION TWO:** The Governing Body hereby authorizes the Rotary Club of Lenexa to provide and sell alcohol at the 2023 Lenexa Chili Challenge, provided the Rotary Club of Lenexa first obtains a temporary permit for the sale of alcoholic liquor from the State of Kansas, Division of Alcoholic Beverage Control.

**SECTION THREE:** The Governing Body hereby authorizes the closure of the following streets to vehicular traffic during the 2023 Lenexa Chili Challenge:

- Santa Fe Trail Drive from Pflumm Road to Caenan Lake Road;
- 92nd Street from Haskins to Santa Fe Trail Drive; and
- Walnut Street from Pflumm Road to Haskins Street.

These streets are anticipated to close at 7:00 a.m. on Friday, October 13, 2023 and re-open at 7:00 p.m. on Saturday, October 14, 2023.



**SECTION FOUR:** The boundaries of the 2023 Lenexa Chili Challenge, within which alcoholic liquor may be possessed or consumed, shall be as designated on the attached Exhibit A. The Community Development Director or designee will mark the boundaries of the approved event area by signs, a posted map, or other means that will reasonably identify the area in which alcoholic liquor may be possessed or consumed.

**ADOPTED** by the City Council this 5th day of September, 2023.

**SIGNED** by the Mayor this 5th day of September, 2023.

CITY OF LENEXA, KANSAS

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Michael A. Boehm, Mayor

ATTEST:

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Jennifer Martin, City Clerk

APPROVED AS TO FORM:

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Spencer L. Throssell, Assistant City Attorney



**ITEM 3**

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**SUBJECT:** Consideration of two resolutions to appropriate private property for the construction of stormwater improvement projects

**CONTACT:** Tim Green, Deputy Community Development Director

**DATE:** September 5, 2023

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**ACTION NEEDED:**

- a. Adopt a resolution declaring it necessary to appropriate private property for the construction of the 113th East of Renner Stormwater Improvement Project; and
- b. Adopt a resolution declaring it necessary to appropriate private property for the construction of the 113th and Lakeview Stormwater Improvement Project.

**PROJECT BACKGROUND/DESCRIPTION:**

These resolutions declare it necessary to appropriate private property for use by the City for the construction of the 113th East of Renner and the 113th and Lakeview Stormwater Improvement Projects ("Projects"). The Projects will rehabilitate existing stormwater infrastructure in the area from Renner Boulevard to Lakeview Road along 113th Street. Construction is anticipated to begin in spring 2024.

This is the first step in acquiring the easements for the Projects. The City will need to acquire easements from three property owners adjacent to the Project areas. These resolutions empower the Community Development Director, or a designee, to approve offers, negotiate for the acquisition of such private property, and enter into agreements accomplishing such acquisition; provided there is sufficient funding available in the approved Projects' budget to accomplish the same. This provision affirms the standard practice by which Community Development staff makes all reasonable attempts to settle with property owners outside of condemnation. Should condemnation be necessary, staff will seek authorization from the Governing Body to institute those proceedings. The City retained Orrick & Erskine as acquisition counsel on these projects.

**FINANCIAL IMPLICATIONS/FUNDING SOURCES:**

The total estimated cost of the Projects is \$4,520,000, which includes any necessary acquisition costs. The Projects will be funded with stormwater cash and Johnson County Stormwater Management Program funding.

**STAFF RECOMMENDATION:**

Adoption of the resolutions.

## **VISION / GUIDING PRINCIPLES ALIGNMENT:**

### **Vision 2040**

Integrated Infrastructure & Transportation

### **Guiding Principles**

Sustainable Policies and Practices

## **ATTACHMENTS**

1. Map
2. Resolution - 113th East of Renner
3. Resolution - 113th and Lakeview



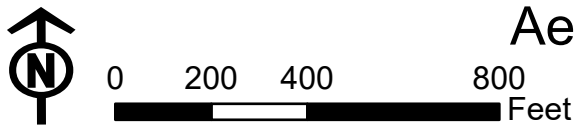
Project Area  
113th Street East of  
Renner

Project Area  
113th Street at  
Lakeview

Document Path: U:\TomStormwater\MyProject\MyProject.aprx

Data Source: City of Lenexa and Johnson County Kansas  
For further information, please call 913-477-7500

# 113th East of Renner and 113th and Lakeview Stormwater Projects Aerial/Vicinity Map



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION DECLARING IT NECESSARY TO APPROPRIATE PRIVATE PROPERTY FOR THE USE OF THE CITY OF LENEXA, KANSAS FOR CONSTRUCTION OF THE 113<sup>th</sup> EAST OF RENNER STORMWATER IMPROVEMENTS PROJECT.**

**WHEREAS**, the City of Lenexa, Kansas does hereby authorize and direct the following described improvement:

Construction of the 113<sup>th</sup> East of Renner Stormwater Improvements Project

**WHEREAS**, it is necessary to acquire private property for the construction of the improvements.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:**

**SECTION ONE:** It is hereby declared necessary to acquire private property for the use of the City of Lenexa, Kansas, for the following described improvements:

Construction of the 113<sup>th</sup> East of Renner Stormwater Improvements Project

**SECTION TWO:** It is hereby authorized and directed that a survey and description of the lands or interests therein to be acquired be made by the City Engineering staff and filed with the City Clerk of the City of Lenexa, Kansas.

**SECTION THREE:** The Community Development Director, or his designee, is hereby empowered to negotiate and approve offers for the acquisition of such private property and to enter into agreements accomplishing such acquisition, whose value does not exceed his authorization under the City's purchasing policy; and the City Manager, or her designee, is authorized to enter into all other agreements accomplishing such acquisition; provided there is sufficient funding available in the approved project budget to accomplish the same.

**SECTION FOUR:** This Resolution shall take effect and be in force from and after its publication in the official City newspaper.

ADOPTED by the City Council this 5th day of September, 2023.

SIGNED by the Mayor this 5th day of September, 2023.

CITY OF LENEXA, KANSAS

[SEAL]

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Michael A. Boehm, Mayor

ATTEST:

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Jennifer Martin, City Clerk

APPROVED AS TO FORM:

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Steven D. Shrout, Assistant City Attorney

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION DECLARING IT NECESSARY TO APPROPRIATE PRIVATE PROPERTY FOR THE USE OF THE CITY OF LENEXA, KANSAS FOR CONSTRUCTION OF THE 113<sup>th</sup> AND LAKEVIEW STORMWATER IMPROVEMENTS PROJECT.**

**WHEREAS**, the City of Lenexa, Kansas does hereby authorize and direct the following described improvement:

Construction of the 113<sup>th</sup> and Lakeview Stormwater Improvements Project

**WHEREAS**, it is necessary to acquire private property for the construction of the improvements.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:**

**SECTION ONE:** It is hereby declared necessary to acquire private property for the use of the City of Lenexa, Kansas, for the following described improvements:

Construction of the 113<sup>th</sup> and Lakeview Stormwater Improvements Project

**SECTION TWO:** It is hereby authorized and directed that a survey and description of the lands or interests therein to be acquired be made by the City Engineering staff and filed with the City Clerk of the City of Lenexa, Kansas.

**SECTION THREE:** The Community Development Director, or his designee, is hereby empowered to negotiate and approve offers for the acquisition of such private property and to enter into agreements accomplishing such acquisition, whose value does not exceed his authorization under the City's purchasing policy; and the City Manager, or her designee, is authorized to enter into all other agreements accomplishing such acquisition; provided there is sufficient funding available in the approved project budget to accomplish the same.

**SECTION FOUR:** This Resolution shall take effect and be in force from and after its publication in the official City newspaper.

ADOPTED by the City Council this 5th day of September, 2023.

SIGNED by the Mayor this 5th day of September, 2023.

CITY OF LENEXA, KANSAS

[SEAL]

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Michael A. Boehm, Mayor

ATTEST:

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Jennifer Martin, City Clerk

APPROVED AS TO FORM:

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Steven D. Shrout, Assistant City Attorney





**ITEM 4**

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**SUBJECT:** Ordinance granting a contract franchise to Kansas Fiber Network, LLC  
**CONTACT:** Steven Shrout, Assistant City Attorney  
**DATE:** September 5, 2023

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**ACTION NEEDED:**

Pass an ordinance granting a contract franchise to Kansas Fiber Network, LLC.

**PROJECT BACKGROUND/DESCRIPTION:**

This is a franchise renewal permitting Kansas Fiber Network, LLC ("Kansas Fiber Network") to continue to construct, operate, and maintain a telecommunications system within the City. This franchise ordinance is substantially similar to Kansas Fiber Network's previous franchise as well as the City's current franchises with other telecommunication entities.

The franchise provides that any use of the right-of-way by Kansas Fiber Network is subordinate to the City's health, safety, and welfare requirements and regulations, including the City's right-of-way management code. The franchise does not include the right to use any other City-owned facilities, parkland, or property. Pursuant to the franchise, Kansas Fiber Network is required to maintain sufficient workers' compensation and general liability insurance or demonstrate to the City that it is self-insured and able to provide sufficient coverage to protect the City from any claims for personal injury or property damage occasioned by Kansas Fiber Network.

Finally, the franchise agreement contains a provision allowing for renegotiation upon the occurrence of certain events including but not limited to change in law, regulation, or other unanticipated material changes. The franchise agreement will become effective following publication. The existing Kansas Fiber Network franchise (Ordinance 5290) will be repealed automatically upon the effective date of this ordinance. The franchise is for a two-year term with up to four automatic renewal terms of two years each for a total of 10 years.

**FINANCIAL IMPLICATIONS/FUNDING SOURCES:**

The City receives 5% of the gross receipts for certain telecommunication services that Kansas Fiber Network collects within the City.

**STAFF RECOMMENDATION:**

Passage of the ordinance.

**VISION / GUIDING PRINCIPLES ALIGNMENT:**

**Vision 2040**

Integrated Infrastructure & Transportation

**Guiding Principles**

## **ATTACHMENTS**

1. Ordinance located in the Appendix



**ITEM 5**

**SUBJECT:** Consideration of approving Project Plan 1L in the City Center Tax Increment Financing (TIF) District (City Center Midas Lenexa Dual Hotel Project)

**CONTACT:** Sean McLaughlin, City Attorney

**DATE:** September 5, 2023

**ACTION NEEDED:**

- a. Conduct a public hearing;
- b. Pass an ordinance approving TIF Project Plan 1L by a 2/3 vote of the Governing Body;
- c. Adopt a resolution approving the Disposition and Development Agreement (DDA) with Midas Lenexa CC, LLC; and
- d. Adopt a resolution determining the intent of the City to issue approximately \$80.5 million in industrial revenue bonds (IRBs) to help acquire, construct and equip the City Center Lenexa Dual Hotel Project.

**PROJECT BACKGROUND/DESCRIPTION:**

After staff's presentation, the City Council will open a public hearing to consider approving Redevelopment (TIF) Project Plan 1L ("Project Plan 1L") located on 2.318 acres located in the center block of 87th Street Parkway immediately west of Penrose Lane in the City Center TIF District ("District"). The City established the original district on September 11, 2001 by Ordinance 4427 and it was subsequently amended on December 20, 2005 by Ordinance 4824 to include approximately 424 acres. The Kansas TIF Act (K.S.A. 12-1770 et seq.) contemplates approval of one or more project plans within a District.

Project Plan 1L contemplates construction of a mixed-use building containing an approximately 187,695 square foot dual-branded hotel under the AC Hotel by Marriott flag and Residence Inn by Marriott flags or similar upscale flags; 11,797 square feet of commercial and retail space; and 129,412 square feet of structured parking and associated infrastructure ("Private Project Improvements"). The Private Project Improvements will be performed by or on behalf of Midas Lenexa CC, LLC ("Developer"). The TIF increment generated from the Project will be used to reimburse the Developer for a portion of its TIF eligible costs associated with the Private Project Improvements. The eligible costs, priority, and terms of reimbursement to the Developer for the Public Project Improvements are set forth in the DDA with the Developer.

Pursuant to the DDA, the Developer will receive 100% of the TIF revenues during the TIF term. The DDA also contains a number of performance standards. Some of the key provisions include a phasing schedule with construction starting in summer 2024 and substantial completion by the end of 2026. Due to the use of public funds to reimburse the Developer for the structured parking, the Developer is required to reserve at least 139 of the total 358 parking spaces for the general public. The City is entitled to receive reimbursement of the Annual TIF Administrative Fee and the TIF Project Plan Fee prior to reimbursing

100% of TIF revenue to the Developer. The DDA uses the City's standard terms and is available for review in the City Clerk's office.

Finally, the City received an application from the Developer to issue up to \$80.5 million in IRBs for the construction of the Project. Since the Project includes retail uses, the City published notice for the proposed resolution of intent to issue the bonds in the Legal Record on August 22, 2023, in accordance with state statute. The Developer requested the industrial revenue bonds to receive a sales tax exemption on the construction materials for the Project.

**FINANCIAL IMPLICATIONS/FUNDING SOURCES:**

Project Plan 1L identifies a maximum in private reimbursable TIF expenses of \$26,225,875. The feasibility study prepared by City staff conservatively estimates the Project Plan 1L area TIF increment of \$15,818,312 over the 20-year TIF Term. The TIF increment plus other available private revenues and funds are expected to be sufficient to pay for the eligible reimbursable expenses. This is a pay-as-you-go TIF, so reimbursement is only made to the extent TIF revenues are actually received by the City.

The IRBs are not backed by the full faith and credit of the City. The Developer is responsible for repayment of the bonds and all fees related to the bond issue.

**STAFF RECOMMENDATION:**

Passage of the ordinance and adoption of the resolutions.

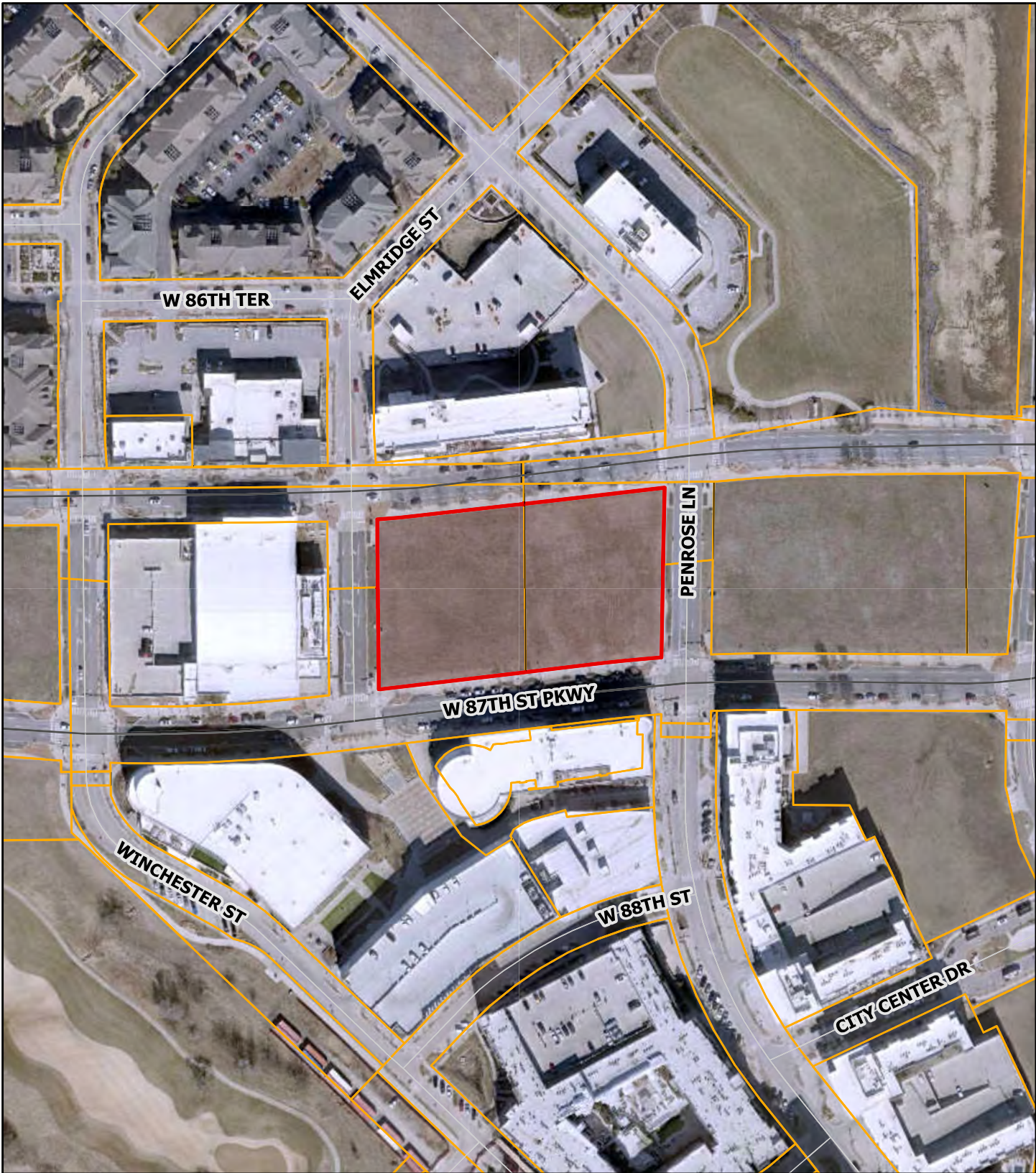
**VISION / GUIDING PRINCIPLES ALIGNMENT:**

**Vision 2040**  
Thriving Economy

**Guiding Principles**  
Responsible Economic Development

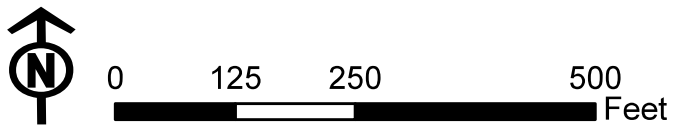
**ATTACHMENTS**

1. Map
2. Ordinance
3. Resolution - IRB
4. Resolution - DDA
5. Project Plan 1L located in the Appendix



Data Source: City of Lenexa and Johnson County Kansas  
For further information, please call 913-477-7500

## Midas Lenexa City Center



**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE APPROVING AND ADOPTING REDEVELOPMENT PROJECT PLAN 1L WITHIN A REDEVELOPMENT DISTRICT IN THE CITY OF LENEXA, KANSAS GENERALLY REFERRED TO AS THE CITY CENTER TIF DISTRICT (CITY CENTER MIDAS LENEXA DUAL HOTEL PROJECT)**

**WHEREAS**, pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “Act”) cities are authorized to assist in the development and redevelopment of eligible areas located within cities in order to promote, stimulate and develop the general and economic welfare of the state of Kansas and its communities; and

**WHEREAS**, in order to promote, stimulate and develop the general and economic welfare of the city of Lenexa, Kansas (“City”), the Lenexa City Council on September 11, 2001, adopted Ordinance No. 4427 establishing a Redevelopment District (the “Original District”) pursuant to the Act. The Original District was amended on December 20, 2005 by Ordinance No. 4824 to include a total of approximately 424 acres (the “District”) referred to as the City Center TIF District; and

**WHEREAS**, pursuant to the Act and the establishment of the District, the City in cooperation with the Lenexa Planning Commission prepared a Redevelopment Project Plan for an area within the District (“Project Plan 1L”) which was found by the Lenexa Planning Commission on June 26, 2023 to be consistent with the intent of the comprehensive plan for the development of the City; and

**WHEREAS**, the purpose of Project Plan 1L is to construct a mixed use building containing two hotels, commercial and retail space, and structured parking as well as associated infrastructure improvements (the “Project”) and to reimburse Midas Lenexa CC, LLC (“Midas”) for various TIF eligible expenses associated with the Project, as described in more detail in Project Plan 1L and an associated Disposition & Development Agreement (“DDA”) with Midas; and

**WHEREAS**, pursuant to Resolution No. 2023-066 adopted July 18, 2023, the City gave notice of its intent to consider Project Plan 1L and conduct a public hearing on the proposed Project Plan 1L at the City Council meeting on September 5, 2023, all in accordance with the Act; and

**WHEREAS**, a comprehensive feasibility study has been completed which indicates the benefits derived from Project Plan 1L are significant. Revenues from

Project Plan 1L and other available revenues including private debt and equity are expected to be sufficient to pay for the eligible redevelopment project costs; and

**WHEREAS**, pursuant to the Act, Project Plan 1L, including a summary of the feasibility study and a description and map of the area to be redeveloped, has been on file in the office of the City Clerk and available for viewing during regular office hours; and

**WHEREAS**, Midas understands and agrees that it will be required to execute a DDA with the City setting forth the terms for the implementation of Project Plan 1L. Such agreement shall be in substantially the same form as the City's standard form and address issues involved in the redevelopment project, including but not limited to, the eligible TIF expenses, priority and eligible amount for reimbursement, performance requirements, reimbursement procedures, and remedies upon default.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:**

**SECTION ONE:** Redevelopment Project Plan 1L, a copy of which is on file and available for inspection in the office of the City Clerk, is hereby adopted and approved.

**SECTION TWO:** In accordance with the Act, following publication of this Ordinance, the City Clerk is authorized and directed to transmit a copy of the description of the land within the Redevelopment District, a copy of this Ordinance adopting Project Plan 1L and a map indicating the boundaries within the Redevelopment District to the County Clerk, County Assessor, County Treasurer and Board of County Commissioners of Johnson County, Kansas, and the Board of Education of Unified School District No. 512 of Johnson County, Kansas.

**SECTION THREE:** This Ordinance shall be in full force and effect from and after its passage by a 2/3 vote of the Governing Body and publication once in the official newspaper of the City.

**PASSED** by two-thirds vote of the Lenexa Governing Body this 5th day of September, 2023.

**SIGNED** by the Mayor this 5th day of September, 2023.

**CITY OF LENEXA, KANSAS**

[SEAL]

\_\_\_\_\_  
Michael A. Boehm, Mayor

**ATTEST:**

\_\_\_\_\_  
Jennifer Martin, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Sean McLaughlin, City Attorney



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION DETERMINING THE INTENT OF THE CITY OF LENEXA, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN THE APPROXIMATE PRINCIPAL AMOUNT OF \$80,500,000 TO FINANCE THE COSTS OF ACQUIRING, CONSTRUCTING AND EQUIPPING A MIXED-USE HOTEL AND RETAIL PROJECT FOR THE BENEFIT OF MIDAS LENEXA CC, LLC**

**WHEREAS**, the City of Lenexa, Kansas (the “City”), desires to promote, stimulate and develop the general welfare and economic prosperity of the City and its inhabitants and to further promote, stimulate and develop the general welfare and economic prosperity of the state of Kansas; and

**WHEREAS**, the City is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the “Act”), to issue industrial revenue bonds to pay the cost of certain facilities (as defined in the Act) for the purposes set forth in the Act and to lease such facilities to private persons, firms or corporations; and

**WHEREAS**, Midas Lenexa CC, LLC, a Kansas limited liability corporation (the “Company”), made application requesting the City issue its industrial revenue bonds in the aggregate principal amount not to exceed \$80,500,000 (the “Bonds”) for the purpose of financing the cost of acquiring, constructing and equipping a mixed-use building containing two hotels, commercial and retail space, and structured parking as well as associated infrastructure (the “Project”) located in the center block of 87<sup>th</sup> Street Parkway immediately west of Penrose Lane, and to lease the Project to the Company or its successors and assigns, subject to City consent and all pursuant to the Act; and

**WHEREAS**, the Company is a retailer as defined in K.S.A. 79-3602; and

**WHEREAS**, in accordance with K.S.A. 12-1744e, the City published notice in the official city newspaper of its intent to issue Bonds and lease the Project to the Company; and

**WHEREAS**, it is found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that the City finance the costs of the Project by the issuance of Bonds under the Act in an approximate principal amount of \$80,500,000, such Bonds to be payable solely out of rentals, revenues and receipts derived from the lease of the Project by the City to the Company or its successors and assigns.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS, AS FOLLOWS:**

**Section 1. Approval of Project.** The Governing Body of the City finds and determines that the acquisition, construction and equipping the Project will promote,

stimulate and develop the general welfare and economic prosperity of the City through the promotion and advancement of physical or mental health, industrial, commercial, agricultural, natural resources or recreation development of the City and the issuance of the City's Bonds to pay such costs will be in furtherance of the public purposes set forth in the Act.

**Section 2. Intent to Issue Bonds.** The Governing Body of the City determines and declares the intent of the City to acquire and equip the Project using the proceeds of the Bonds to be issued and used in accordance with the Act.

**Section 3. Provision for the Bonds.** Subject to the conditions of this Resolution, the City expresses its intent to: (i) issue its Bonds to pay the costs of acquiring, constructing and equipping the Project, with such maturities, interest rates, redemption terms and other provisions as may be determined by ordinance of the City; (ii) provide for the base lease from the Company to the City and a lease (with an option to purchase) of the Project from the City to the Company; and (iii) to effect the foregoing, adopt such resolutions and ordinances and authorize the execution and delivery of such instruments and the taking of such action as may be necessary or advisable for the authorization and issuance of the Bonds by the City and take or cause to be taken such other action as may be required to implement the aforesaid.

**Section 4. Conditions to Issuance.** Issuance of the Bonds and the execution and delivery of any documents related to the Bonds are subject to (i) passage and publication of an ordinance authorizing the Bonds and obtaining any other necessary governmental approvals; (ii) agreement by the City, the Company and the purchaser of the Bonds upon (a) mutually acceptable terms for the Bonds and for the sale and delivery thereof; and (b) mutually acceptable terms and conditions of any documents related to the issuance of the Bonds and the Project, including, but not limited to, provisions relating to the security for the payment of the Bonds, and provisions relating to the maintenance of the Project; (iii) the Company's compliance with the City's policies relating to the issuance of industrial revenue bonds, including payment of the City's origination fee and all costs of issuance; and (iv) delivery of an opinion of Bond Counsel with respect to the validity of the Bonds in a form acceptable to the City and the purchaser of the Bonds and delivery of an opinion from counsel to the Company for the benefit of the city in a form acceptable to the City..

**Section 5. Sale of the Bonds/Authority to Proceed.** The sale of the Bonds shall be the responsibility of the Company and shall be privately place with the Company, an affiliate of the Company or Company's lender; provided, however, all arrangements for the sale of the Bonds shall be acceptable to the City. The Company is authorized to proceed with the acquiring and equipping of construction materials for the Project, including the necessary planning and engineering for the Project and entering into contracts and purchase orders in connection therewith and to advance such funds as may be necessary to accomplish such purposes, and to the extent permitted by law, the Company may be reimbursed for such expenditures out of the proceeds of the Bonds, when and if issued, to the extent permitted by law. Notwithstanding such authorization, the Company proceeds at its own risk and if for any reason, the Bonds are not issued,

the City shall have no liability to the Company for any reason, including the repayment to the Kansas Department of Revenue of any retailers' sales tax exemption utilized by the Company for which the Company shall indemnify and hold the City harmless.

**Section 6. Limited Obligations of the City.** The Bonds and the interest thereon shall be special, limited obligations of the City payable solely out of the amounts derived by the City under a Lease Agreement with respect to the Bonds and as provided herein and are secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the owners of such Bonds, as provided in the Indenture. The Bonds shall not constitute a general obligation of the City, the State or of any other political subdivision thereof within the meaning of any State constitutional provision or statutory limitation and shall not constitute a pledge of the full faith and credit of the City, the State or of any other political subdivision thereof and shall not be payable in any manner by taxation, but shall be payable solely from the funds provided for as provided in the Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the State or any other political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment.

**Section 7. Required Disclosure.** Any disclosure document prepared in connection with the private placement of the Bonds shall contain a disclaimer that none of the information was supplied or verified by the City and the City makes no representation or warranty, express or implied, as to the accuracy or completeness of such information.

**Section 8. Benefit of Resolution.** This Resolution will inure to the benefit of the City and the Company. The City may, at the written request of the Company and approval of the City Counsel, assign the Company's interest in this Resolution to another entity, and such assignee will be entitled to the benefits of this Resolution assigned and the proceedings related thereto.

**Section 9. Further Action.** The City's Bond Counsel, the City's Financial Advisor, together with the officers and employees of the City, are authorized to work with the purchaser of the Bonds, the Company, their respective counsel and others, to prepare for submission to and final action by the City all documents necessary to effect the authorization, issuance and sale of the Bonds and other actions contemplated hereunder.

**Section 10. Effective Date.** This Resolution shall take effect and be in full force immediately after its passage by the City Council of the City and remain in effect until December 31, 2024 unless (i) the Bonds have been issued by the City or (ii) the Company has obtained from the City a building permit for the Project and is diligently pursuing construction to completion.

**ADOPTED** by the Lenexa City Council on September 5, 2023.

**SIGNED** by the Mayor on September 5, 2023.

**CITY OF LENEXA, KANSAS**

(Seal)

\_\_\_\_\_  
Michael A. Boehm, Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Martin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Sean McLaughlin, City Attorney

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT WITH MIDAS LENEXA CC, LLC (PROJECT PLAN 1L-CITY CENTER TIF)**

**WHEREAS**, on September 11, 2001, the City adopted Ordinance No. 4427 establishing a Redevelopment District generally referred to as the City Center TIF District (“Original District”) which was amended by Ordinance No. 4824 on December 20, 2005 to incorporate a total area of approximately 424 acres, including all four corners of 87<sup>th</sup> Street Parkway and Renner Boulevard, as well as a tract of land located east of I-435 at 87<sup>th</sup> Street Parkway (the “City Center TIF District”); and

**WHEREAS**, the City has identified multiple City Center development projects located within the City Center TIF District; and

**WHEREAS**, pursuant to K.S.A. 12-1772, as amended, the City prepared Redevelopment Project Plan 1L for property located within the City Center TIF District (the "Project Plan"); and

**WHEREAS**, on September 5, 2023, the Governing Body adopted an ordinance approving the Project Plan which was found by the Lenexa Planning Commission on June 26, 2023 to be consistent with the intent of the comprehensive plan for the development of the City; and

**WHEREAS**, the Project Plan contemplates construction of a mixed use building containing two hotels, commercial and retail space, and structured parking as well as associated infrastructure improvements on land within the Redevelopment District (the “TIF Project”); and

**WHEREAS**, the City and Midas desire to enter into a Disposition & Development Agreement (“DDA”) regarding the terms for implementation of the Project Plan including but not limited to reimbursement of costs associated with approved TIF eligible costs; the description of such eligible improvements/costs; and the procedures for and priority of reimbursement on a “pay as you go” basis, all as set forth in the DDA attached hereto as Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:**

**SECTION ONE:** The City Council hereby approves and authorizes the Mayor to execute the Disposition and Development Agreement in substantially the same form as the document attached hereto as Exhibit A.

**SECTION TWO:** The approval granted herein is contingent upon Governing Body adoption of the ordinance approving Project Plan 1L and publication thereof as required by law.

**SECTION THREE:** This Resolution shall be effective upon passage and execution by the Mayor, subject to the conditions set forth in Section Two herein.

**PASSED** by the City Council this 5th day of September, 2023.

**SIGNED** by the Mayor this 5th day of September, 2023.

**CITY OF LENEXA, KANSAS**

[SEAL]

By: \_\_\_\_\_  
Michael A. Boehm, Mayor

**Attest:**

\_\_\_\_\_  
Jennifer Martin, City Clerk

**Approved As To Form:**

\_\_\_\_\_  
Sean McLaughlin, City Attorney



**ITEM 6**

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**SUBJECT:** Consideration of establishing the City Center Midas Lenexa Dual Hotel Community Improvement District (CID)

**CONTACT:** Sean McLaughlin, City Attorney

**DATE:** September 5, 2023

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**ACTION NEEDED:**

- a. Conduct a public hearing;
- b. Pass an ordinance establishing the City Center Midas Lenexa Dual Hotel Community Improvement District (CID); and
- c. Adopt a resolution approving the CID Development Agreement with Midas Lenexa CC, LLC.

**PROJECT BACKGROUND/DESCRIPTION:**

After holding a public hearing, the Governing Body will consider establishing a CID over the City Center Midas Lenexa Dual Hotel project area ("Dual Hotel Project"), which is located in the center block of 87th Street Parkway immediately west of Penrose Lane. City Center Lenexa ("Petitioner"), the owner of record of 100% of the land within the proposed CID and 100% of the land measured by assessed value within the proposed CID, filed a petition on behalf of Midas Lenexa CC, LLC ("Developer"), which is under contract to purchase the property, requesting the City establish the CID over the property, which is 2.318 acres in area.

The Dual Hotel Project consists of construction of a mixed-use building containing an approximately 187,695 square foot dual-branded hotel under the AC Hotel by Marriott flag and Residence Inn by Marriott flags or similar upscale flags; 11,797 square feet of commercial and retail space; and 129,412 square feet of structured parking and associated infrastructure.

The proposed CID would be used to reimburse the Developer up to a maximum of \$6.5 million for its CID eligible costs associated with the Dual Hotel Project. If approved, the CID would be established by ordinance and the City would enter into a separate CID Development Agreement with the Developer.

The following are the key points of the CID and the Development Agreement:

- The CID will be funded with a 1% CID sales tax over the Dual Hotel Project area.
- The CID will extend for a period of 22 years from the date the sales tax is first commenced. It is estimated that the CID sales tax will commence on or about October 1, 2025.

- The Developer will receive 100% of the CID revenues generated from the CID over the term of the CID to reimburse its CID eligible costs up to \$6.5 million.
- The Development Agreement contains the City's standard provisions for submitting invoices, payment of costs, etc. Further, if any costs are also TIF eligible costs, the Developer must designate only one source for reimbursement.

The CID Development Agreement uses the City's standard form and is available in the City Clerk's office.

**FINANCIAL IMPLICATIONS/FUNDING SOURCES:**

The CID improvements will be funded with a 1% CID sales tax over the property located within the CID. It is estimated that the CID revenues over the 22-year term will be approximately \$3.3 million.

**STAFF RECOMMENDATION:**

Passage of the ordinance and adoption of the resolution.

**VISION / GUIDING PRINCIPLES ALIGNMENT:**

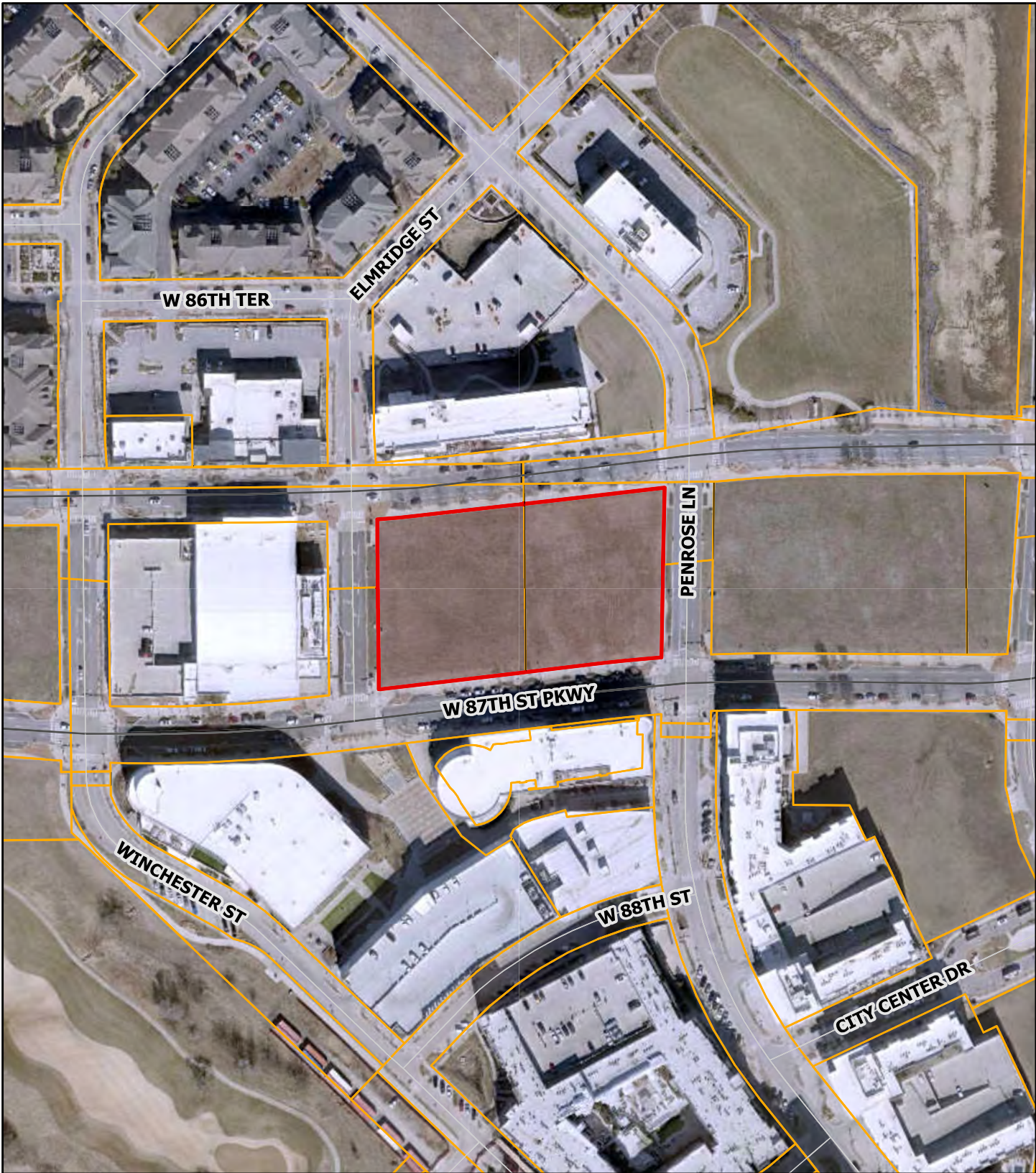
**Vision 2040**  
Thriving Economy

**Guiding Principles**  
Responsible Economic Development

**ATTACHMENTS**

1. Map
2. Ordinance
3. Resolution





Data Source: City of Lenexa and Johnson County Kansas  
For further information, please call 913-477-7500

# Midas Lenexa City Center



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE APPROVING AND ESTABLISHING A COMMUNITY IMPROVEMENT DISTRICT IN THE CITY OF LENEXA, KANSAS AND LEVYING A CID SALES TAX (CITY CENTER LENEXA MIDAS DUAL HOTEL PROJECT).**

**WHEREAS**, pursuant to K.S.A. 12-6a26 through 12-6a36, as amended (the “Act”) cities are authorized to establish a Community Improvement District (“CID” or “District”) for economic development purposes and any other purpose for which public money may be expended; and

**WHEREAS**, on or about July 25, 2023, City Center Lenexa, LLC (the “Petitioner”), on behalf of Midas Lenexa CC, LLC filed with the Lenexa City Clerk a signed petition to authorize and establish a CID Project (the “CID Project”, also referred to as the “City Center Lenexa Midas Dual Hotel CID Project”), over real property owned by Petitioner (the “Dual Hotel CID Property”) and legally described in Exhibit A, attached hereto and incorporated herein by reference,

**WHEREAS**, the Petitioner is the owner of record of 100% of the land area within the proposed CID and 100% of the land measured by assessed value of the land area within the proposed CID; and

**WHEREAS**, pursuant to Resolution No. 2023-079 passed by the Lenexa City Council on August 1, 2023, the City provided notice that it would hold a public hearing on September 5, 2023 to consider establishing a District and make findings necessary therefore; and

**WHEREAS**, the Lenexa Governing Body conducted a public hearing on September 5, 2023 to consider establishing the District, all in accordance with the Act; and

**WHEREAS**, the City’s Community Improvement District Policy (the “CID Policy”) requires the Governing Body find the proposed CID project meets one or more of the criteria set forth in Section GB05-1-4 of the CID Policy; and

**WHEREAS**, the Governing Body makes the following findings:

a. The Governing Body has determined that this City Center Lenexa Midas Dual Hotel CID Project furthers multiple goals of the Governing Body, including promoting and stimulating quality in-fill development, enhancing the City’s diverse economic base and assisting the City in developing a premier destination point – “City Center” – that serves as a community gathering place by integrating a variety of uses;

b. The City Center Lenexa Midas Dual Hotel CID Project substantially promotes economic development and reinvestment in the community;

c. The City Center Lenexa Midas Dual Hotel CID Project has unique site constraints making development more difficult and costly; and

d. The City Center Lenexa Midas Dual Hotel CID Project provides for the construction of facilities that promote tourism or enhance the quality of life within the City; and

**WHEREAS**, the Act provides that upon conclusion of the public hearing the Governing Body, by majority vote, may create the District by adoption of an ordinance and authorize the City Center Lenexa Midas Dual Hotel CID Project therein.

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS, AS FOLLOWS:**

**SECTION ONE.** The general nature of the CID Project consists of construction of a mixed-use building containing an approximately 187,695 s.f. dual-branded hotel under the AC Hotel by Marriott flag and Residence Inn by Marriott flags or similar upscale flags; approximately 11,797 s.f. of commercial and retail space; and approximately 129,412 s.f. of structured parking as well as associated infrastructure on the CID Property and any other items or uses allowable under the Act and City CID Policy.

**SECTION TWO.** The Lenexa Governing Body finds the District furthers economic development within the City and further finds it advisable and in the City’s best interest to establish the District and authorize the City Center Lenexa Midas Dual Hotel CID Project as proposed, subject to an approved Development Agreement and therefore the City hereby establishes the District and authorizes the City Center Lenexa Midas Dual Hotel CID Project for a term of twenty-two (22) years from the date the State Director of Taxation begins collecting the CID sales

tax or until the approved CID Eligible Costs up to a maximum of \$6,500,000 are paid, whichever occurs first.

**SECTION THREE.** The estimated total cost of the proposed City Center Lenexa Midas Dual Hotel CID Project within the District is approximately \$78,714,729.

**SECTION FOUR.** The proposed CID is legally described on **Exhibit A**.

**SECTION FIVE.** A map of the District is attached as **Exhibit B**.

**SECTION SIX.** The Project will be financed initially through a combination of private equity, private debt and Pay-as-you-go financing, as defined in the Act. Petitioner will be reimbursed for CID Eligible Costs associated with the Project from the CID Sales Tax generated solely from the CID Project and such reimbursement shall be made in accordance with the priority, amounts and source set forth in the approved CID Development Agreement (the "Development Agreement") to be entered into by the City with Petitioner prior to making any reimbursement.

The City reserves the right to issue Special Obligation Community Improvement District Bonds, as defined in the Act, at a future date in order to fund the CID Eligible Costs that have not been reimbursed previously, but is not obligated to issue such bonds.

**SECTION SEVEN.** The City authorizes and hereby levies a two percent (2%) CID sales tax over all parcels in the District legally described in Section Four. Such CID Sales Tax shall be effective October 1, 2025 and extend for the term of the CID as set forth in Section Two herein.

**SECTION EIGHT.** There will be no CID special assessment levied on any property within the District as a result of this Petition.

**SECTION NINE.** Upon establishment of this District and prior to the expenditure of any CID revenues the City and the Petitioner receiving such CID revenues shall enter into a Development Agreement setting forth the terms and conditions for implementation of the District, including the eligible CID Reimbursable Costs, the priority, and terms for reimbursement.

**SECTION TEN.** This ordinance shall be in full force and effect from and after its passage by a majority of the Governing Body and publication once in the official City newspaper.

**SECTION ELEVEN.** After publication, the City Clerk is hereby directed to file a copy of this ordinance with the Johnson County, Kansas Register of Deeds.

**SECTION TWELVE.** After publication of this ordinance and expiration of the protest period, the City Clerk, in coordination with the City Attorney, is directed to provide the Kansas Department of Revenue with a copy of this ordinance and the associated Development Agreement, notifying them of the establishment of the District and the levy of the CID Sales Tax.

**PASSED** by the Governing Body this 5<sup>th</sup> day of September, 2023.

**SIGNED** by the Mayor this 5<sup>th</sup> day of September, 2023.

**CITY OF LENEXA, KANSAS**

[SEAL]

By: \_\_\_\_\_  
Michael A. Boehm, Mayor

**Attest:**

\_\_\_\_\_  
Jennifer Martin, City Clerk

**Approved As To Form:**

\_\_\_\_\_  
Sean McLaughlin, City Attorney

## EXHIBIT A

### Legal Description of District

ALL THAT PART OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 12 SOUTH, RANGE 24 EAST, IN THE CITY OF LENEXA, JOHNSON COUNTY, KANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH  $87^{\circ}28'35''$  WEST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 1,115.90 FEET; THENCE DEPARTING SAID NORTH LINE, SOUTH  $02^{\circ}31'25''$  EAST A DISTANCE OF 7.62 FEET TO A POINT OF INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF 87TH STREET PARKWAY AND THE WEST RIGHT- OF-WAY LINE OF PENROSE LANE, AS THEY BOTH NOW EXIST, SAID POINT BEING THE POINT OF BEGINNING; THENCE SOUTH  $00^{\circ}52'05''$  EAST, ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 246.27 FEET TO A POINT OF INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF 87TH STREET PARKWAY, AS IT NOW EXISTS; THENCE WESTERLY, ALONG SAID NORTH RIGHT-OF-WAY LINE, ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,056 FEET, AND A CHORD WHICH BEARS SOUTH  $82^{\circ}38'52''$  WEST, A DISTANCE OF 85.19 FEET, FOR AN ARC LENGTH OF 85.19 FEET; THENCE SOUTH  $81^{\circ}27'38''$  WEST, CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 327.39 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF ELMRIOGE STREET, AS IT NOW EXISTS; THENCE NORTH  $02^{\circ}26'24''$  WEST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 246.82 FEET TO A POINT OF INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID 87TH STREET PARKWAY; THENCE EASTERLY, ALONG SAID SOUTH RIGHT-OF-WAY LINE, ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,056 FEET, AND A CHORD WHICH BEARS NORTH  $83^{\circ}02'26''$  EAST, A DISTANCE OF 113.38 FEET, FOR AN ARC LENGTH OF 113.40 FEET; THENCE NORTH  $81^{\circ}27'38''$  EAST, CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 305.87 FEET TO THE POINT OF BEGINNING, EXCEPT ANY PART USED OR DEDICATED FOR STREETS, ROADS AND PUBLIC RIGHTS OR WAY.

# Exhibit B



**Midas Lenexa City Center**



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH MIDAS LENEXA CC, LLC ASSOCIATED WITH THE ESTABLISHMENT OF A CID OVER THE CITY CENTER MIDAS DUAL HOTEL PROJECT AREA.**

WHEREAS, K.S.A. 12-6a26 *et seq.*, as amended, establishes the Community Improvement District Act (the “Act”) for economic development and any other purpose for which public money may be expended; and

WHEREAS, cities are authorized to create a community improvement district (CID) to assist with the financing of eligible projects provided cities comply with the procedures set forth in the Act; and

WHEREAS, the City received a petition from the owner 100% of the land within the proposed CID district and the owner of 100% of the land measured by assessed value within the proposed CID district (the “Petitioner”) generally located in the center block of 87<sup>th</sup> Street Parkway immediately west of Penrose Lane (the “Midas Dual Hotel CID”); and

WHEREAS, in order to assist in the development and redevelopment of the Midas Dual Hotel CID Project, the City approved Ordinance No. \_\_\_\_\_ on September 5, 2023 establishing the City Center Lenexa Midas Dual Hotel CID; and

WHEREAS, the City and Midas Lenexa CC, LLC (“Midas”) desire to enter into a Development Agreement regarding the terms for implementation of the CID including but not limited to reimbursement of costs associated with approved CID Eligible Reimbursable Costs for eligible improvements; the description of such eligible improvements; the term of reimbursement; the procedures for reimbursement; and applicable performance standards, all as set forth in the Development Agreement attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:

SECTION ONE: The City Council hereby approves and authorizes the Mayor to execute the Development Agreement, attached hereto as Exhibit A and incorporated herein by reference.

SECTION TWO: This Resolution shall take effect immediately upon passage and its execution by the Mayor.



ADOPTED by the Lenexa City Council this 5<sup>th</sup> day of September, 2023.

SIGNED by the Mayor this 5<sup>th</sup> day of September, 2023.

CITY OF LENEXA, KANSAS

[SEAL]

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Michael A. Boehm, Mayor

Attest:

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Jennifer Martin, City Clerk

Approved As To Form:

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Sean McLaughlin, City Attorney



**ITEM 7**

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**SUBJECT:** Ordinance approving a Transient Guest Tax Rebate and authorizing the Mayor to execute a Transient Guest Tax Rebate Agreement with Midas Lenexa CC, LLC

**CONTACT:** Sean McLaughlin, City Attorney  
Beccy Yocham, City Manager

**DATE:** September 5, 2023

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**ACTION NEEDED:**

Pass an ordinance approving a Transient Guest Tax Rebate and authorizing the Mayor to execute a Transient Guest Tax Rebate Agreement ("Rebate") with Midas Lenexa CC, LLC ("Developer").

**PROJECT BACKGROUND/DESCRIPTION:**

The Governing Body will consider an ordinance approving a Rebate with the Developer for the construction of a mixed-use building containing a dual-branded hotel under the AC Hotel by Marriott flag and Residence Inn by Marriott flags; commercial and retail space; and structured parking located in the center block of 87th Street Parkway directly west of Penrose Lane ("Project"). Since 2017, the Developer has also operated the four-story Marriott Springhill Suites Hotel located in the northwest corner of Penrose Lane & 87th Street Parkway ("Springhill Project").

While the Project initially included structured parking, the City requested and the Developer agreed to construct an additional level of public parking, above and beyond that which is necessary to support the Project. The additional parking will partially support the various public and civic uses and activities which occur in the immediate vicinity. The enlarged parking structure will include approximately 358 parking spaces, of which 139 parking spaces will be generally available to the public at all times.

Due to the significant cost of structured parking and the City's desire to create additional public parking in this location in Lenexa City Center, the City is proposing to reimburse the Developer for costs associated with the structured parking using the Transient Guest Tax (TGT) collected from both the Project and the Springhill Project.

The City's current TGT rate is 8% and is collected from all hotels and motels. TGT funds may be used for a variety of costs associated with promoting tourism and economic development. Using TGT funds to defray costs associated with the construction of public parking for the Project will help draw tourism and visitors to the City, and promote the general economic welfare of the City.

The proposed Rebate will be structured as a pay-as-you-go reimbursement to the Developer, so reimbursement will only be made to the extent that the TGT is collected by the City. The proposed Rebate is subject to an agreement with the Developer setting forth performance requirements and the priority and method of reimbursement as well as the City's standard terms and conditions for economic development agreements and is available for review in the City Clerk's office.

**FINANCIAL IMPLICATIONS/FUNDING SOURCES:**

The Developer will receive the Rebate reimbursement for up to 10 years starting January 1, 2024 or \$11 million, whichever comes first ("Developer Rebate Term"). The Rebate would be structured as follows:

**First Phase:** The Developer will receive 100% of the TGT paid to the Springhill Project and 100% of the TGT paid to the Project up to a maximum reimbursement of \$3.2 million, which is the estimated cost for the additional level of structured parking ("First Phase") requested to be added as additional public parking by the City.

**Second Phase:** After the Developer is reimbursed in full for the First Phase, the Developer will receive 75% of the TGT paid to the dual hotel Project until the end of the Developer Rebate Term or up to a maximum of \$7.8 million, whichever occurs first ("Second Phase"). In the Second Phase, 100% of the TGT generated by the Springhill Project will revert to the City.

**STAFF RECOMMENDATION:**

Passage of the ordinance.

**VISION / GUIDING PRINCIPLES ALIGNMENT:**

**Vision 2040**

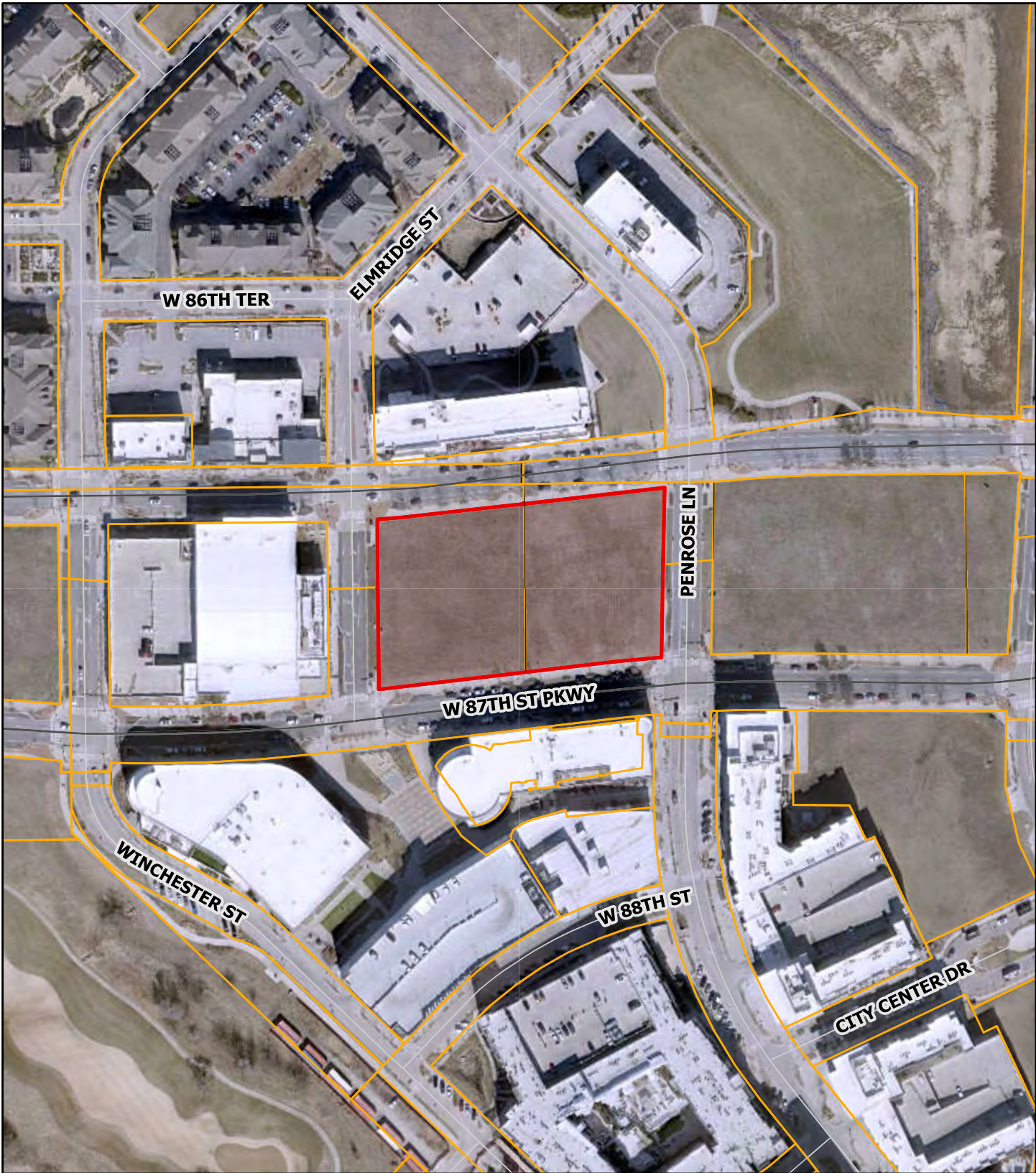
Thriving Economy

**Guiding Principles**

Responsible Economic Development

**ATTACHMENTS**

1. Map
2. Ordinance



Data Source: City of Lenexa and Johnson County Kansas  
For further information, please call 913-477-7500

# Midas Lenexa City Center



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE APPROVING A TRANSIENT GUEST TAX REBATE AND AUTHORIZING THE MAYOR TO EXECUTE A TRANSIENT GUEST TAX REBATE AGREEMENT WITH MIDAS LENEXA CC, LLC (“DEVELOPER”).**

**WHEREAS**, the Developer intends to construct a mixed-use building containing a dual-branded hotel under the AC Hotel by Marriott flag and Residence Inn by Marriott flags or similar upscale flags; commercial and retail space; and structured parking as well as associated infrastructure (the “**Project**”) located in the center block of 87<sup>th</sup> Street Parkway directly west of Penrose Lane; and

**WHEREAS**, a significant portion of the structured parking associated with the Project will be public parking and the Developer has, at the City’s request, agreed to construct additional public parking, above and beyond that which is necessary to support the Project, in order to create additional parking to partially support parking for the various public and civic uses and activities which occur in the immediate vicinity; and

**WHEREAS**, since 2017, the Developer has also operated a four-story Marriott Springhill Suites Hotel located in the northwest corner of Penrose Lane and 87<sup>th</sup> Street Parkway (“**Springhill Project**”); and

**WHEREAS**, the City, by the power vested in it by Article 12, Section 5 of the Kansas Constitution, has exempted itself from the Kansas Transient Guest Tax statutes and has adopted Charter Ordinance No. 75 effective June 20, 2016, Lenexa City Code Article 1-9-D, and Resolution No. 2010-70 dated July 7, 2010, levying a transient guest tax in the amount of 8.0% (the “**TGT**”) upon the gross rental receipts derived from transient guests for lodging or sleeping accommodations in any hotel or motel in the City;

**WHEREAS**, in order to assist with the costs of the increased structured parking, the Developer has requested a rebate of a portion of the TGT generated by the Project and the Springhill Project (the “**Rebate**”);

**WHEREAS**, it is in the City’s best interest to encourage economic development within its community and the City has a public interest in encouraging redevelopment of this key property; and

**WHEREAS**, in accordance with Lenexa City Code Section 1-9-D-3, the City Council has found and determined that providing the Rebate would promote tourism and conventions and the general economic welfare of the City;

**WHEREAS**, the City has determined that there is significant public benefit to the public parking associated with the Dual Hotel Project, the Dual Hotel Project will help draw tourism and visitors to the City, and promote the general economic welfare of the City all of which are approved uses of the TGT pursuant to Lenexa

City Code Section 1-9-D; therefore it is necessary and desirable to provide the Rebate subject to the terms and conditions set forth in this Agreement; and

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:**

**SECTION ONE:** The City Council finds the Transient Guest Tax Rebate is in the best interests of the City and would promote tourism and conventions and the general economic welfare of the City; therefore, the City Council approves a Transient Guest Tax Rebate pursuant to Lenexa Code Section 1-9-D subject to the terms and provisions set forth in the Transient Guest Tax Rebate Agreement.

**SECTION TWO:** The City Council hereby approves and authorizes the Mayor to execute the Transient Guest Tax Rebate Agreement in substantially the same form as attached hereto.

**SECTION THREE:** This Ordinance shall take effect immediately upon execution by the Mayor and publication in the City's official newspaper.

**PASSED** by the Lenexa City Council this 5<sup>th</sup> day of September, 2023.

**SIGNED** by the Mayor this 5<sup>th</sup> day of September, 2023.

**CITY OF LENEXA, KANSAS**

[SEAL]

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Michael A. Boehm, Mayor

Attest:

---

Jennifer Martin, City Clerk

Approved As To Form:

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Sean McLaughlin, City Attorney

# APPENDIX



**MINUTES OF THE  
AUGUST 15, 2023  
LENEXA CITY COUNCIL MEETING  
COMMUNITY FORUM, 17101 W 87<sup>th</sup> STREET PARKWAY  
LENEXA, KS 66219**

**CALL TO ORDER**

Mayor Boehm called the meeting to order at 7 PM. Members of Cub Scout pack 3136 led the Pledge of Allegiance. Jonah, Nicholas, Dustin, Gabe, and Michael introduced themselves.

**ROLL CALL**

Councilmembers Karlin, Eiterich, Nicks, Nolte, Arroyo, Sayers, and Denny were present with Mayor Boehm presiding. Councilmember Roh was absent.

Staff present included Beccy Yocham, City Manager; Todd Pelham, Deputy City Manager; Mike Nolan, Assistant City Manager; Scott McCullough, Community Development Director; Sean McLaughlin, City Attorney; Jennifer Martin, City Clerk; and other City staff.

**APPROVE MINUTES**

*Councilmember Denny made a motion to approve the August 1, 2023 City Council meeting draft minutes and Councilmember Sayers seconded the motion. Motion passed unanimously.*

**MODIFICATION OF AGENDA**

There were no modifications to the agenda.

**APPOINTMENT**

Planning Commission - Cara Wagner

Mayor Boehm presented Cara Wagner for appointment to the Planning Commission with a term expiring February 28, 2026.

*Councilmember Sayers made a motion to approve the appointment and Councilmember Karlin seconded the motion. Motion passed unanimously.*

**CONSENT AGENDA**

1. Bid award to SAK Construction for the 2023 Pipe Lining Project  
*Staff identified numerous corrugated metal pipes in various parts of the city that are good candidates for lining. SAK Construction bid \$594,546 for this project.*
2. Bid award to Infrastructure Solutions for the 2023 Pavement Management Program Residential Concrete Panel Replacement Project



*This project consists of removing and replacing deteriorated concrete roadway panels in and around the southern portion of The Reserve residential neighborhood. Infrastructure Solutions bid \$282,060 for this project.*

3. Change order to add a shelter to Phase 1 of the Cedar Station Park Project  
*The bid approved on July 18, 2023 for Phase 1 of the Cedar Station Park Project left sufficient funds to construct the shelter in that phase, which will minimize site impacts and be much more cost effective. The cost to add the shelter during Phase 1 is \$135,725.*
4. Acceptance of utility, sidewalk, and drainage easements as shown on the StorTropolis Final Plat, located at the southwest corner of 96th Terrace & Rosehill Road  
*StorTropolis is a one-lot self-storage development on 3.3 acres. Utility, sidewalk, and drainage easements are being dedicated to the City as part of the final plat.*
5. Resolution approving and authorizing the Mayor to execute an agreement with ClearCompany for applicant tracking and I-9 administration services  
*The City's current agreement with ClearCompany expires September 29, 2023 and staff recommends entering into a new 36-month Agreement effective September 30, 2023. The annual estimated fees for all services are \$102,374.60.*
6. Consideration of a resolution and an ordinance concerning property acquisitions for construction of the Santa Fe Trail Drive Street and Trail Improvements Project
  - a. Resolution declaring it necessary to appropriate private property for construction of the Project
  - b. Ordinance authorizing and providing for the acquisition of lands or interests therein by condemnation for the construction of the Project  
*Santa Fe Trail Drive will be rehabilitated and widened from the previous 95th Street Intersection Project limits to Park Street. New curb and gutter will be constructed along with a trail segment along the south side of Santa Fe Trail Drive to Pflumm Road. Temporary construction easements and a sidewalk easement from adjacent property owners will be required for construction.*

### **END OF CONSENT AGENDA**

Mayor Boehm said he would abstain from item 2 due to a potential conflict of interest.

*Councilmember Karlin made a motion to approve items 1 and 3 through 6 on the consent agenda and Councilmember Nicks seconded the motion. Motion passed unanimously.*

Council President Karlin asked if there was any discussion on item 2. There was no discussion.

*Councilmember Sayers made a motion to approve item 2 on the consent agenda and Councilmember Denny seconded the motion. Motion passed unanimously with Mayor*

Boehm abstaining.

## BOARD RECOMMENDATIONS

7. Consideration of a rezoning and preliminary/final plan for retail, office, personal instruction (general), and wholesale/warehousing (general and limited) uses for 8500 Marshall Drive
  - a. Ordinance rezoning property from the BP-2, Planned Manufacturing Zoning District to the CP-4, Planned Service Commercial Zoning District
  - b. Approval of a companion preliminary/final plan for 8500 Marshall Drive  
*The applicant is requesting rezoning of the property located at 8500 Marshall Drive from the BP-2, Planned Manufacturing Zoning District to the CP-4 Planned Service Commercial District, and approval of a companion preliminary/final plan for Bushnell to operate a retail business.*

Stephanie Kisler, Planning Manager, said this item is a request for rezoning of the property at 8500 Marshall Drive and approval of a preliminary/final plan. She presented a location map. She said the 49,000 square foot building is on about 4 acres and rezoning the property will allow Bushnell, a current tenant, to expand from primarily warehousing to more retail.

Ms. Kisler presented the zoning and land use map, showing the area zoned BP-2 for business park uses. She said the proposed zoning is CP-4 which is commercial and allows for the current industrial uses as well as the retail.

Ms. Kisler pointed out the two parcels on the site plan. She said Bushnell will be relocating to a smaller space in the building that is about 6,000 square feet for the retail operations. She added that some of the industrial uses include retail, but only a small percentage of retail is allowed.

Ms. Kisler showed photos of the building from the street view.

Ms. Kisler said that staff reviewed the rezoning criteria and the staff report contains all of staff's comments and responses.

Ms. Kisler said that both staff and the Planning Commission recommend approval of the rezoning and the plan, subject to two conditions: that the property is replatted to one lot and two landscaping trees are added.

Rick Oddo, applicant/building owner, said that Bushnell is currently in about 16,000 square feet and as it is changing its business operations, they want to keep this existing business in Lenexa by making this change. He said this zoning is more appropriate.

*Councilmember Arroyo made a motion to approve Item 7a and Councilmember Karlin seconded the motion. Motion passed unanimously.*

*Councilmember Denny made a motion to approve Item 7b and Councilmember Nicks seconded the motion. Motion passed unanimously.*

## **OLD BUSINESS**

8. Consideration of two resolutions for the Lenexa Old Town Activity Center Improvement Project
  - a. Resolution amending the FY 2023-2027 Capital Improvement Program (CIP) and increasing the budget amount for the Lenexa Old Town Activity Center Improvement Project to \$12,152,000
  - b. Resolution waiving the sealed bid process, authorizing the Mayor to execute a Construction Manager at Risk (CMAR) Agreement with Turner Construction Company, and approving Guaranteed Maximum Price Amendment 1 to the CMAR Agreement for construction of the Lenexa Old Town Activity Center Improvement Project  
*Design development and pre-construction work on the Lenexa Old Town Activity Center Improvement Project is complete. This item includes an overview of the final design of the facility, an update on the project schedule and the mural design process, a 2023-2027 Capital Improvement Program amendment to increase the project budget to \$12,152,000, as well as a resolution waiving the sealed bid process and approving a Construction Manager at Risk (CMAR) Agreement with Turner Construction Company, which includes GMP #1 to the CMAR Agreement for early procurement of long lead-time materials in the sum of \$94,928.*

Logan Wagler, Parks and Recreation Director, reviewed the project history and timeline, as well as the project goals. He thanked staff, specifically Mike Nolan, Assistant City Manager, and Ben Clark, Project Manager, for their work. He introduced Sean Zaudke, MultiStudio, and Christy Turner, Turner Construction, who would be providing project updates.

Mr. Wagler said that this item is for an amendment to the Capital Improvement Program (CIP) budget, increasing the budget to \$12,152,000; a Construction Manager at Risk (CMAR) agreement with Turner Construction; and a Guaranteed Maximum Price (GMP #1) for \$94,928 to secure long lead items such as HVAC equipment and electrical gear. He noted that this practice has been successful on a few recent City projects: the Civic Campus, the Lenexa Justice Center, and the Sar-Ko-Par Aquatics Center.

Mr. Wagler said that they are going through a platting process and vacating the right-of-way on Oak Street to clean the plat up and combine everything into one parcel. He reviewed the mural project process, saying phase 1 is complete and phase 2 is ongoing. He said that there is a

change in the third potential artist to ITRA Icon as Austin declined the invitation.

Mr. Zaudke presented a walk-through of the design development showing site, exterior, and interior renderings. He explained the four zones of the outdoor area. He said they have a rural pallet and are using old town and city center elements in the design. He showed the site and building from various views, pointing out specific details of the plan. He added that they are focused on a commitment to sustainability and the use of healthy building materials.

Councilmember Denny asked why there are basketball hoops on the pickleball courts and Mr. Wagler said they want to make the spaces as flexible as possible.

Councilmember Karlin said he likes the light and windows this design has and asked about the plan for the building in case of inclement weather. Mr. Zaudke said that there are still several areas that can be used, in particular the bathrooms and locker rooms.

Councilmember Nicks asked if the west lawn will be grass or turf and Mr. Zaudke said it would be grass.

Mayor Boehm said that artificial turf should be considered now, if possible and Mr. Wagler said it is a matter of budget but can be explored.

Councilmember Eiterich said she likes that there are options like pickleball and basketball. She asked if there would not be garage doors from the gym and Mr. Zaudke said no, that regular doors would be more watertight and easier to maintain.

Councilmember Nolte said it is a wise choice to paint and seal the concrete walls of the building and to change change the color. He liked that design is coming together.

Councilmember Arroyo said she is excited for this to open.

Councilmember Sayers asked about the mural surface around the mechanical units and Mr. Zaudke said it would be something the mural could be attached to and determined with the muralist's input.

Mayor Boehm asked if people would be able to cut through from Pflumm Road to Haskins Street and Mr. Zaudke said it is an open pathway, but something could be done to slow traffic down.

Christie Turner, Turner Construction, said they will be working with MultiStudio as they finalize the construction documents. She noted that the last estimate came in on budget, as a result of some determinations on different scopes of work to make that happen. She said that the

estimated construction cost is \$9,889,000 and that they feel it will be very close to that when the project is fully bid between September and November. She said they anticipate bringing the final GMP for approval in November. She added that they plan to mobilize for construction in January with completion in December.

Ms. Turner reviewed the project milestones.

Mr. Wagler said that staff recommends approval of the CIP budget amendment, the CMAR agreement, and GMP #1.

*Councilmember Karlin made a motion to approve Item 8a and Councilmember Denny seconded the motion. Motion passed unanimously.*

*Councilmember Nolte made a motion to approve Item 8b and Councilmember Sayers seconded the motion. Motion passed unanimously.*

### **NEW BUSINESS**

There was no new business.

### **COUNCILMEMBER REPORTS**

Councilmember Eiterich thanked everyone who helped with the fallen officer's memorial, saying those efforts were appreciated.

### **STAFF REPORTS**

#### 9. 2023 ProX Internship Program Review

Jim Bowers, Human Resources Director, introduced Bree Rhodes, HR Specialist, who coordinated the ProX Internship Program this summer. He explained the program and gave an overview of how the students were selected. He said there was no cost to the City to participate.

Ms. Rhodes, HR Specialist, said that she, Mr. Bowers, April Beretta, HR Partner, and Mandy Danler, Assistant Parks and Recreation Director, participated in the interview process and selected five interns, although only four were able to participate.

Ms. Rhodes said that the interns were Kavya Patel, Blue Valley High School; Mack Fuhr, Blue Springs South High School; Issiah Walker, Park Hill South High School; and Ashley Broils, Shawnee Mission North High School. She reviewed the five week rotational experience program and all of the activities the interns went through with nine city departments.

Ms. Rhodes said that at the end of the program, the interns were given a survey about their experiences. One intern said they might now be interested in a career in public service and another said this helped them think about what classes to take in high school.

Ms. Rhodes said that city staff that participated were also surveyed and that feedback will be used next year to make the experience better for everyone.

Governing Body members shared their support and thanks to everyone involved for doing this.

Mr. Bowers introduced Ms. Beretta, who recently created the Workplace Buddy Program. Ms. Beretta explained how the program works and said that this is an opportunity for current Lenexa employees to welcome new employees and help them acclimate into the organization and its culture. Several employees who are in the program attended the meeting: Monty Zimmerman (CD), Brandon McElhiney (CD), Emily Semadeni (LE), Courtney Wright (HR), Jen Martin (Exec), Justine Kubicki (FI), Bree Rhodes (HR), Lisa Roberts (HR), and Heather Howell (HR).

Beccy Yocham, City Manager, said that the Budget Open House will be this Thursday from 5 -7 PM at City Hall.

### **END OF RECORDED SESSION**

### **BUSINESS FROM FLOOR**

There was no business from the floor.

### **ADJOURN**

*Councilmember Nolte made a motion to adjourn and Councilmember Eiterich seconded the motion. Motion passed unanimously.*

The meeting adjourned at 8:08 PM.



TO: Lenexa City Council

FROM: Mike Boehm – Mayor

RE: Appointment – Lenexa Arts Council

I am pleased to place before you, **Sarah Elizabeth Homan** for appointment to the Lenexa Arts Council for a term beginning immediately upon your approval and continuing through February 28, 2025. This appointment will fill the current vacancy on the council due to the departure of Claire Ward.

Sarah grew up in Johnson County and has lived in Overland Park, Leawood, Shawnee, and now Lenexa since 2021. She's currently residing at the Domain in Lenexa City Center. Other cities lived in include Lawrence (while attending KU), St. Louis, MO, and Kalamazoo, MI.

She has been employed at the Basehor Linwood Middle School as an ELA and Theater teacher for grades 6, 7 & 8 since 2013. Previous experience includes a stint during college as a Camp Counselor at Camp Echo in New York, Preschool Enrichment Teacher specializing in music and drama at Crem de la Crème School in Leawood, and as an outreach instructor with Theater for Young America – Sarah possesses a youth focus current underrepresented with our current Arts Council members.

Sarah's application notes: ... "I see firsthand how the arts enrich students' lives ... I want to bring more opportunity for diverse arts, performance, and culture to our area and more opportunities for kids in our community to experience the arts".

Attached is Sarah's application and Bio.

Approval is recommended.

Name Sarah Homan  
Home Address 8800 Penrose #336 Lenexa, KS 66219  
Occupation/Job Title Theatre and ELA Teachers  
Place of Employment USD458 Basehor Linwood  
Employment Address 15900 Conley RD Basehor, KS 66007  
Home Phone 9134848096  
Work Phone 9134848096  
Cell Phone 9134848096  
Email Address sarah.elizabeth.homan@gmail.com

Explain why you would be a good addition to the Lenexa Arts Council and why you are interested in the position:

I have wanted to serve the community for a while now, and as a teacher of theatre I believe I would be a good asset. I see first-hand how the arts enrich students' lives and the damaging effects of defunding the arts in schools. I want to bring more opportunity for diverse arts, performance, and culture to our area, and more opportunities for kids in our community to experience the arts.

List your art-related experience/expertise:

BA in Theatre from KU Master of education-Rockhurst Theatre for Young America-resident actor from 2004-2008 Theatre and reading teacher at Basehor Linwood Middle School

List any professional associations or special honors you may hold:

Loren Trainee Theatre Scholarship from KU Educator of the Year finalist- Midco

List your previous civic involvement and what that includes:

Voter Registration volunteer - Overland Park area.

What cities have you lived in, other than Lenexa?

Overland Park Lawrence Leawood Shawnee St. Louis, MO Kalamazoo, MI

How long have you lived in Lenexa: January 2021

E-signed: Sarah Homan  
6/23/2021



# sarah elizabeth homan

8800 Penrose Ln. #336  
Lenexa, KS 66219  
913.484.8096  
shoman@usd458.org

**CERTIFICATION** Kansas Secondary 6-12 English (Attained May 2013)

**EDUCATION** Emporia State  
**Master of Curriculum Leadership and Instruction** anticipated in Fall of 2021  
Rockhurst University, Kansas City, MO  
**Master of Education**, May 2013  
The University of Kansas Lawrence, KS  
**B.A. in Theatre and Film Studies** with a minor in **English**, May 2004

**TEACHING EXPERIENCE** **Basehor Linwood Middle School**  
Basehor, Kansas  
*ELA and Theatre teacher Grades 6, 7, and 8.*  
August 2013-present

**Crème de la Crème School**  
Leawood, Kansas  
*Preschool Enrichment Teacher* specializing in music and drama  
August 2007 to January 2013

**WORK EXPERIENCE** **Crème de la Crème School**  
*Enrichment Teacher: Music and Drama*  
Leawood, KS August 2007-January 2013

**Pete and Macs Pet Resort**  
*Receptionist/Shift Lead*  
Lenexa, KS 2005-2007

**Theatre For Young America**  
*Outreach Instructor/Office Assistant*  
Kansas City, MO 2004-2005

**Camp Echo**  
*Camp Counselor*

Burlingham, NY Summer 2004

**HONORS**

Recipient of the Loren Kennedy Traineeship scholarship The University of Kansas (2003)

Recipient of the BLEF Education Grant 2016, 2017, 2018, and 2019

Midco Teacher of the Year Nominee-2020

**ACTIVITIES:**

Content creating for social media, biking, travel, reading, writing, theatre/film, art, hiking, camping, and all things music.

# Proclamation

**WHEREAS**, September is Suicide Prevention Month across the United States and in Johnson County, which helps promote resources and awareness around suicide prevention; and

**WHEREAS**, in Kansas, suicide has consistently been in the top 10 leading causes of death among all ages and the second leading cause of death for Kansans aged 10 to 34 years; and

**WHEREAS**, suicide is preventable. The will to live is strong and difficult for most people to overcome. Many people who consider suicide do not actually want to die. They are in deep emotional pain and anguish. Suicide, for many, is the only way they know to end that pain. Through compassion, means restriction, and professional intervention suicide is preventable; and

**WHEREAS**, in 2022, the U.S. successfully transitioned to the 988 Suicide & Crisis Lifeline—the easy-to-remember number to reach trained crisis counselors for help with suicide, mental health, and substance use-related crises; and

**WHEREAS**, Kansas Suicide Prevention HQ is dedicated to reducing the frequency of suicide attempts and deaths through training, educational programs, and outreach, and urges all Lenexa residents to:

- > recognize suicide as a significant public health problem and prioritize suicide prevention,
- > support the development of accessible mental health services for all residents, and
- > encourage initiatives based on the goals and activities contained within the National Strategy for Suicide Prevention, Zero Suicide of the National Action Alliance for Suicide Prevention, and The Way Forward by the Action Alliance's suicide attempt survivor task force.

**NOW, THEREFORE**, I, Michael A. Boehm, Mayor of Lenexa, Kansas do hereby proclaim the month of September 2023 to be

## SUICIDE PREVENTION MONTH

**IN WITNESS WHEREOF**, I have hereunto set my hand this 5th day of September, 2023.



---

Michael A. Boehm  
Mayor of Lenexa, Kansas

# Proclamation

**WHEREAS**, Fetal Alcohol Spectrum Disorders (FASD) is an umbrella term describing a range of disabilities that can occur in babies who are exposed to alcohol before birth; and

**WHEREAS**, these disorders affect as many as 5% of school-aged children in the U.S. with complex lifelong challenges including verbal and nonverbal communication, social interaction, growth, cognition, and adaptive function, and are often accompanied by medical conditions that impact quality of life; and

**WHEREAS**, a comprehensive, collaborative approach will help to advance research, while strengthening advocacy efforts and ensuring access to services and resources; and

**WHEREAS**, while these disorders can be prevented by supporting pregnancies free of alcohol, prevention efforts should be balanced with support and intervention for people living with them; and

**WHEREAS**, early diagnosis and intervention can have lifelong benefits, easing the transition to adulthood and fostering greater independence; and

**WHEREAS**, each person and family affected by these disorders should have access to reliable information, support, and opportunities to live up to their greatest potential.

**NOW, THEREFORE**, I, Michael Boehm, Mayor of Lenexa, do hereby declare September 2023 in Lenexa to be

## FETAL ALCOHOL SPECTRUM DISORDERS AWARENESS MONTH

**IN WITNESS WHEREOF**, I have hereunto set my hand this 5<sup>th</sup> day of September, 2023.



---

Michael A. Boehm  
Mayor of Lenexa, Kansas

# Proclamation

**WHEREAS**, The Constitution of the United States of America, the guardian of our liberties, embodies the principles of limited government in a Republic dedicated to rule by law; and

**WHEREAS**, September 17, 2023, marks the 236th anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

**WHEREAS**, it is fitting and proper to accord official recognition to the magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate the occasion; and

**WHEREAS**, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17-23 as Constitution Week.

**NOW, THEREFORE**, I, Michael A. Boehm, Mayor of Lenexa, Kansas do hereby proclaim September 17-23, 2023 to be

## CONSTITUTION WEEK

in Lenexa, and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

**IN WITNESS WHEREOF**, I have hereunto set my hand this 5th day of September, 2023.



---

Michael A. Boehm  
Mayor of Lenexa, Kansas

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE GRANTING TO KANSAS FIBER NETWORK, LLC., A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF LENEXA, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE AND REPEALING ORDINANCE NO. 5290.**

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:**

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
- b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
- d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
- e. "City" - means the City of Lenexa, Kansas.

- f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.
- g. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.
- h. "Grantee" - means Kansas Fiber Network, LLC, a telecommunications local exchange service provider providing, or intending to provide local exchange service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
- i. "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee's Facilities to provide services described in Sections (1) through (6) . All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- j. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

- k. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- l. "Telecommunications local exchange service provider" – means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187 and amendments thereto, which does, or in good faith intends to, provide local exchange service.
- m. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

## **SECTION 2. GRANT OF CONTRACT FRANCHISE.**

- a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.
- b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:
  - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
  - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
  - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or



controlled by the City or a third-party.

- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).
- d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

### **SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

- a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance Relating to Managing the Use and

Excavation of the Public Right-of-way of the City of Lenexa, Kansas, codified at Article 4-6-I of the Lenexa City Code, and amendments thereto.

- c. Grantee shall participate in the Kansas One Call utility location program.

#### **SECTION 4. COMPENSATION TO THE CITY.**

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed \$2.00 per Access line per month. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.
- b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.
- c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement showing the manner in which the franchise fee was calculated.
- e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

- f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.
- g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of one thousand Dollars (\$1,000). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.
- h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.
- i. Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter into a contract franchise ordinance.

## **SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage by its negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

## **SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND**

- a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:
  - (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
  - (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.
- b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars (\$1,000,000) per occurrence and two million dollars (2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

- c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
  
- d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond or irrevocable letter of credit in the amount of \$20,000 payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The letter of credit must be from a recognized financial institution acceptable to the City, on terms and in a form reasonably satisfactory to the City. The performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and reasonably satisfactory to the City Attorney in form and substance. If after Grantee's initial installation Grantee expands its telecommunications network in the City's right-of-way, the City, at its reasonable discretion, upon thirty (30) days prior notice, may require Grantee to increase the amount of the performance bond or letter of credit. Such increase shall not exceed a total of \$50,000.

## **SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due

process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

## **SECTION 8. RESERVATION OF RIGHTS.**

- a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances

(e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise), and/or rulings.

## **SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

## **SECTION 10. TERM AND TERMINATION DATE.**

- a. This Contract franchise shall be effective for a two-year term beginning on the effective date of this Contract franchise. Thereafter, this Contract franchise will automatically renew for up to four additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.
- b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.
- c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.
- d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

- e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

**The City:**

The City of Lenexa, Kansas  
 17101 W. 87<sup>th</sup> Street Parkway  
 Lenexa, KS 66219  
 Attn: City Clerk  
 (913) 477-7504 fax

**Grantee:**

Kansas Fiber Network, LLC  
 10875 Benson Dr., Suite 130  
 Overland Park, KS 66210  
 Attn: VP of NetDev  
 NetDev@ksfiber.net

With a copy to:

City Attorney  
 The City of Lenexa, Kansas  
 17101 W. 87<sup>th</sup> Street Parkway  
 Lenexa, KS 66219  
 (913) 477-7639 fax

legal@ksfiber.net  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

or to replacement addresses that may be later designed in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned unless such transfer or assignment occurs i) between any



entity controlling, controlled by or under common control with Grantee; or ii) to any successor in interest to Grantee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of the Grantee's assets used to provide services to residents and businesses located in the City. Grantee shall provide written notice of any such transfer. Grantee shall notify the City prior to transfer and inform the City of any change in contact information.

### **SECTION 13. CONFIDENTIALITY.**

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

### **SECTION 14. ACCEPTANCE OF TERMS.**

Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas.

### **SECTION 15. PAYMENT OF COSTS.**

In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

### **SECTION 16. SEVERABILITY.**

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

### **SECTION 17. FORCE MAJEURE.**

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

**SECTION 18. EFFECTIVE DATE.**

This Ordinance shall take effect on \_\_\_\_\_.

**SECTION 19. REPEAL OF EXISTING ORDINANCE**

Ordinance No. 5290, which heretofore granted a non-exclusive franchise to the Grantee, and which became a contract franchise between the City and the Grantee in accordance with the terms, and all other ordinances and resolutions or parts thereof inconsistent with or in conflict with the terms hereof, are hereby canceled, amended, repealed, and set aside.

PASSED by the City Council of the City of Lenexa, Kansas this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF LENEXA, KANSAS**

[SEAL]

\_\_\_\_\_  
Michael A. Boehm, Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Martin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven D. Shrout, Assistant City Attorney

## REDEVELOPMENT PROJECT PLAN 1L FOR THE CITY CENTER TIF DISTRICT

(City Center Midas Lenexa Dual Hotel Project)

In accordance with K.S.A. 12-1770 *et seq.*, as amended (the “**Act**”), to promote, stimulate and develop the general and economic welfare of the city of Lenexa, Kansas (“**City**”), the Lenexa City Council adopted Ordinance No. 4427 on September 11, 2001, establishing a Redevelopment (TIF) District (the “**Original District**”). The Original District was amended on December 20, 2005 by Ordinance No. 4824 to include a total of approximately 424 acres (the “**District**,” also referred to as the “**City Center TIF District**”) and legally described in attached **Exhibit A**. The City has identified multiple City Center development projects located within the City Center TIF District.

The Act allows one or more TIF projects to be undertaken by a city within an established district and any such project plan may be implemented in separate development stages. To date, the City has approved multiple TIF project plans in the area located on the southwest corner of 87<sup>th</sup> Street Parkway and Renner Boulevard, which area is commonly referred to as the “**Lenexa City Center**” area.

The City desires to establish another project plan in the City Center area as set forth herein (“**Project Plan 1L**”, also referred to as the “**Project Plan**”). Project Plan 1L will include approximately 2.318 acres located in the center block of 87<sup>th</sup> Street Parkway immediately west of Penrose Lane and is legally described on **Exhibit B** (the “**Project Plan 1L Area**”).

Anticipated within Project Plan 1L is construction of a mixed-use building containing two hotels, commercial and retail space, and structured parking as well as associated infrastructure improvements all of which are more specifically described in **Section 5** herein (the “**Private Project**”).

Project Plan 1L shall extend for a period of twenty (20) years from the date the Project Plan is approved by the City (the “**Project Plan Term**”). The tax increment generated from the real property in the Project Plan 1L Area during the Project Plan Term in excess of the amount of real property taxes collected for the base year assessed valuation constitute the “**TIF Revenues**”.

### 1. **Financial Feasibility Study.**

Staff prepared a Financial Feasibility Study (“**Feasibility Study**”) for Project Plan 1L. Projections on development in the Project Plan 1L Area were provided by Midas Lenexa CC, LLC (the “**Developer**”). The Feasibility Study incorporates a number of conservative assumptions, including a constant mill levy of 90.733, which excludes the 20 mill school levy and the 1.5 State mill levy. The mill levy may vary each year of the TIF Term based on legislative actions and budgetary decisions made by the individual taxing jurisdictions. It also assumes property tax collection at 100%, Private Project completion by January 1, 2026 and a one percent (1.5%) annual increase in appraised valuation after the Private Project is fully constructed and stabilized.

The Developer will advance funds necessary to construct the Private Project and to pay the costs associated with the estimated and approved, private TIF eligible reimbursable costs set forth generally on **Exhibit C** attached hereto (the “**TIF Reimbursable Costs**”), and it is contemplated that Developer will subsequently be reimbursed with TIF Revenues received by the City on a “pay-as-you-go” basis. Such advances and reimbursements will be made in accordance with the terms of a Disposition & Development Agreement executed by the Developer and the City (the “**DDA**”). The TIF Reimbursable Costs are set forth in more detail in the DDA. There is a total of \$26,225,875 in TIF Reimbursable Costs identified with Project Plan 1L, but reimbursement of TIF Reimbursable Costs is dependent upon the amount of TIF Revenues generated within the Project Plan 1L Area during the Project Plan Term and received by the City, and shall be paid in accordance with the amount, priority and duration set forth in the DDA. In no event will any TIF Reimbursable Costs be reimbursed in an amount that exceeds the amount of TIF Revenues available.

The Feasibility Study indicates that if projected development, assessed values and tax revenues are accurate, TIF Revenues will be sufficient to reimburse the Developer for a portion of the approved TIF Reimbursable Costs. Other revenue sources, including but not limited to private equity, are available to meet TIF Reimbursable Costs and other private development costs associated with the Project. TIF Reimbursable Costs must (1) be reasonably approved by the City in accordance with the terms of the DDA; (2) meet the definition of “redevelopment project cost” set out in K.S.A. 12-1770a(o), as amended; (3) be an eligible expense under the City’s adopted TIF Policy and/or Procedures, unless otherwise permitted in the DDA; (4) be authorized in this Project Plan 1L and in the City Center TIF District Plan; and (5) be in compliance with the terms for reimbursement and prioritization described with particularity in the DDA.

The City has identified up to \$26,225,875 in TIF Reimbursable Costs and anticipates reimbursing Developer for such TIF Reimbursable Costs incurred and paid by the Developer with available TIF Revenues generated during the twenty (20) year Project Plan Term. Based on the current projections and cash flow analysis contained in the Feasibility Study, it is determined that the Private Project benefits, TIF Revenues and other available revenues exceed the TIF Reimbursable Costs, and that the TIF Revenues and other available revenue sources, including private revenue sources for the private costs, should be sufficient to pay for such TIF Reimbursable Costs. For any improvements constructed by Developer in Project Plan 1L, the Developer is responsible for all expenses, including but not limited to, TIF Reimbursable Costs, even if they exceed the amount of available TIF Revenues. The City reserves the right to amend the specific approved TIF Reimbursable Costs, and the amount, duration and prioritization thereof, to conform to the provisions of the DDA. City may also amend this Project Plan 1L in accordance with state law and the DDA provided that such amendments shall not, without the consent of Developer, change the nature or scope of the Private Project improvements to be constructed by Developer, amend the timing of Project Plan 1L, or alter or affect the financial terms of this Project Plan 1L benefitting Developer.

The City anticipates the ad valorem property tax increment will generate approximately \$15,818,312 over the Project Plan Term (the “**Estimated Total TIF**”).

**Revenue Projection**”). The Developer will be responsible for all expenses of Developer, including the TIF Reimbursable Costs, above the TIF Revenue generated from the Project Plan 1L Area and allocated to the TIF Reimbursable Costs during the Project Plan Term. If the TIF Revenue does not meet the estimated total TIF Reimbursable Costs, the City shall be under no obligation to provide financial assistance to Developer beyond the TIF Revenues actually generated from the Project Plan 1L Area in accordance with the distribution formula and term set out in the DDA, subject to the provisions of any separate agreement between City and Developer regarding any incentives or appropriations other than tax increment financing under the Act. A summary of the feasibility assumptions and Estimated Total TIF Revenue Projection is included in **Exhibit E**.

## **2. Redevelopment District Plan and Redevelopment (TIF) Project Plan 1L.**

### Redevelopment District Plan (City Center TIF District Plan)

The City Center TIF District area includes land within the City of Lenexa, Kansas as legally described on **Exhibit A**, but generally described as an area of approximately 424 acres located on all four corners of 87<sup>th</sup> Street and Renner Blvd., as well as a tract of land located east of I-435 at 87<sup>th</sup> St Pkwy. The Redevelopment (TIF) District Plan for the City Center TIF District contemplates development of multiple mixed use urban development projects to include office, retail, residential and public uses to be located on all four corners of Renner Boulevard and 87<sup>th</sup> St Pkwy, as well as on a tract located east of I-435 at 87<sup>th</sup> St Pkwy (the “**City Center Project**”).

Lenexa City Center will be constructed on approximately 56.85 acres located on the southwest corner of Renner Boulevard and 87<sup>th</sup> Street Parkway and is the subject of a Development Agreement dated May 31, 2006 (as amended) between City Center Lenexa, LLC (the “**Master Developer**”), and the City (the “**Master Development Agreement**”). Lenexa City Center is proposed to be developed in multiple phases as a mixed-use project consistent with the Master Plan included in the Master Development Agreement, which is contemplated to include approximately 1,900,000 square feet of retail, residential, hotel, office, entertainment and civic uses. The Lenexa City Center project proposes to utilize on-street, structured and surface parking consistent with the Master Plan in the Master Development Agreement. Development of additional City Center projects of a smaller scale are anticipated on the other tracts of land included in the District.

In accordance with the City Center District Plan, TIF increment may be used to pay for eligible project expenses within specific project areas for such items including but not limited to public infrastructure; land acquisition; site preparation; street improvements and their appurtenances; sidewalks; storm and sanitary sewers; utility improvements as permitted in the Act; parks; surface and structured parking facilities; landscaping; water mains; storm water detention; sculptures, public art and similar amenities; plazas and open space; reimbursement for special assessments levied pursuant to KSA 12-6a01 *et seq.* for eligible public infrastructure authorized in the District Plan; and other authorized uses set forth in the District Plan and permitted by the Act and the City TIF Policy & Procedures.

## Redevelopment (TIF) Project Plan 1L

Project Plan 1L incorporates approximately 2.318 acres of improvements located in the City Center TIF District. Project Plan 1L Area is legally described in **Exhibit B** and will include site improvements described in Section 5 herein (the “**Project**”).

### **3. Map of Redevelopment Project Plan 1L Area.**

A map of the Project Plan 1L Area is attached as **Exhibit D**.

### **4. Relocation Assistance Plan.**

No relocation will occur as a result of Project Plan 1L and therefore no relocation assistance plan is provided.

### **5. Description of the Buildings and Facilities Proposed to be Constructed or Improved.**

Developer intends to construct a mixed-use building containing an approximately 187,695 s.f. dual-branded hotel under the AC Hotel by Marriott flag and Residence Inn by Marriott flag or similar upscale flags (the “**Hotel**”); approximately 11,797 s.f. of commercial and retail space; and approximately 129,412 s.f. of structured parking (collectively, these constitute the “**Midas Dual Hotel Project**”). The Midas Dual Hotel Project is referred to as the “**Private Improvements**”. TIF Reimbursable Costs incurred as a result of the Private Improvements constructed as part of Project Plan 1L include, but are not limited to: land acquisition, architectural and engineering costs; site development; parking; lighting; landscaping; hardscape; associated utilities; amenities; financing costs associated with the improvements financing and special assessments costs. The TIF Reimbursable Costs are described in more detail in **Exhibit C** and in the DDA.

### **6. Other Relevant Information.**

- a. Reimbursement of TIF Reimbursable Costs shall be made from ad valorem property tax increment actually received by the City from Project Plan 1L Area and deposited into the special fund established by the City in accordance with K.S.A. 12-1778 (the “**City Center Project Plan 1L Fund**”).
- b. If sufficient TIF Revenues are not available to pay all of the TIF Reimbursable Costs, the City is under no obligation to reimburse TIF Reimbursable Costs from any other public source, except as may be provided under any separate agreement between City and Developer regarding any incentives or appropriations other than tax increment financing under the Act.
- c. Prior to any reimbursement of TIF Reimbursable Costs, each entity receiving reimbursement with TIF Revenues shall enter into a separate, valid and enforceable DDA with the City. The procedure for distribution, reimbursement

and priority of payment of the TIF Reimbursable Costs shall be set out in the DDA and consistent with this Project Plan 1L.

- d. The City does not anticipate issuing TIF Bonds, however, upon future request of Developer, the City shall reasonably consider any such request to issue TIF Bonds if the market can feasibly support such a bond issue and if the TIF Revenues and any other collateral provided for such TIF Bonds provide reasonable assurance that the principal of and interest on the TIF Bonds will be paid on a timely basis. A decision on whether or not a TIF Bond issue is feasible and adequately secured, will be the City's final decision and within the City's sole discretion. The City is under no obligation to issue TIF Bonds and makes no commitment to do so.

## EXHIBIT A

### LEGAL DESCRIPTION OF CITY CENTER REDEVELOPMENT DISTRICT

Beginning at the Northwest corner of the Northeast Quarter of Section 31, Township 12 South, Range 24 East; thence South along the West line of the Northeast Quarter of said Section 31 to the Southwest corner of the Northeast Quarter of said Section 31; thence East along the South line of the Northeast Quarter of said Section 31 to the Southeast corner of the Northeast Quarter of said Section 31, and continuing East along the South line of the Northwest Quarter of Section 32, Township 12 South, Range 24 East to the Easterly right-of-way line of Renner Boulevard as it now exist; thence North along the Easterly right-of-way line of said Renner Boulevard to the intersection with the South line of the Northwest Quarter of the Northwest Quarter of Said Section 32; thence East along the South line of the Northwest Quarter of the Northwest Quarter of said Section 32, to the intersection with the centerline of Interstate Route 435, as it now exists; thence South along the centerline of said Interstate Route 435 to the South line of the Northwest Quarter of said Section 32; thence East along the South line of the Northwest Quarter of said Section 32, to the Southeast corner of the Northwest Quarter of said Section 32; thence North along the East line of the Northwest Quarter of said Section 32, to the Northeast corner of the Northwest Quarter of said Section 32; thence West along the North line of the Northwest Quarter of said Section 32, to the centerline of Interstate Route 435, as it now exists; thence North along the centerline of said Interstate Route 435 to the North line of the Southwest Quarter of Section 29, Township 12 South, Range 24 East; thence West along the North line of the Southwest Quarter of said Section 29, to the Northwest corner of the Southwest Quarter of said Section 29: thence South along the West line of the Southwest Quarter of said Section 29, to the Northeast corner of the Southeast Quarter of the Southeast Quarter of Section 30, Township 12 South, Range 24 East; thence West along the South line of Stonecreek of Parkhurst 1<sup>st</sup> Plat, Stonecreek of Parkhurst 2<sup>nd</sup> Plat, and Estates of Parkhurst 1<sup>st</sup> Plat, all subdivisions of land in Johnson County, Kansas, to the Northeast corner of Horizons West Re-Plat 3<sup>rd</sup> Plat, a subdivision of land in Johnson County, Kansas; thence South along the East line of said Horizons West Replat 3<sup>rd</sup> Plat, and its extension South, to the South line of the Southeast Quarter of said Section 30; thence West along the South line of the Southeast Quarter of said Section 30 to the Point of Beginning, containing approximately 424 acres.



## EXHIBIT B

### LEGAL DESCRIPTION OF PROJECT PLAN 1L

ALL THAT PART OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 12 SOUTH, RANGE 24 EAST, IN THE CITY OF LENEXA, JOHNSON COUNTY, KANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 87°28'35" WEST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 1,115.90 FEET; THENCE DEPARTING SAID NORTH LINE, SOUTH 02°31'25" EAST A DISTANCE OF 7.62 FEET TO A POINT OF INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF 87TH STREET PARKWAY AND THE WEST RIGHT-OF-WAY LINE OF PENROSE LANE, AS THEY BOTH NOW EXIST, SAID POINT BEING THE POINT OF BEGINNING; THENCE SOUTH 00°52'05" EAST, ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 246.27 FEET TO A POINT OF INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF 87TH STREET PARKWAY, AS IT NOW EXISTS; THENCE WESTERLY, ALONG SAID NORTH RIGHT-OF-WAY LINE, ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,056 FEET, AND A CHORD WHICH BEARS SOUTH 82°38'52" WEST, A DISTANCE OF 85.19 FEET, FOR AN ARC LENGTH OF 85.19 FEET; THENCE SOUTH 81°27'38" WEST, CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 327.39 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF ELMRIUGE STREET, AS IT NOW EXISTS; THENCE NORTH 02°26'24" WEST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 246.82 FEET TO A POINT OF INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF SAID 87TH STREET PARKWAY; THENCE EASTERLY, ALONG SAID SOUTH RIGHT-OF-WAY LINE, ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,056 FEET, AND A CHORD WHICH BEARS NORTH 83°02'26" EAST, A DISTANCE OF 113.38 FEET, FOR AN ARC LENGTH OF 113.40 FEET; THENCE NORTH 81°27'38" EAST, CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 305.87 FEET TO THE POINT OF BEGINNING, EXCEPT ANY PART USED OR DEDICATED FOR STREETS, ROADS AND PUBLIC RIGHTS OR WAY.

## EXHIBIT C

### TIF REIMBURSABLE COSTS

The following items are estimated TIF eligible private and public costs for reimbursement with TIF Revenues generated from Project Plan 1L. The priority and duration of reimbursement is set forth in the DDA.

Description of Expenditure	Reimbursement to:	Maximum Reimbursement
<b>TIF Fee</b>	Developer	\$50,000 <sup>1</sup>
<b>Itemized TIF Reimbursable Costs paid by Developer, including:</b>  Land acquisition within the Project Plan area; site development; A/E (excluding vertical buildings owned or leased by the Developer other than parking structures); water mains; surface and structured parking; landscaping, lighting, sidewalks, benches and similar amenities; contingency; and temporary construction interest.	Developer	\$26,175,875 <sup>2,3</sup>
<b>Annual Administrative TIF Fee:</b> 0.5% of the annual TIF Revenues reimbursed to Developer	City	TBD
<b>Total Maximum Aggregate of Eligible TIF Reimbursable Costs</b>	Developer	\$26,225,875 <sup>4</sup>
<b>Total Maximum TIF Reimbursable Costs</b>		<b>\$26,225,875<sup>4</sup></b>

Notwithstanding any other provision of this Plan to the contrary, reimbursable expenditures shall at all times be consistent with the Act, including judicial interpretation of the Act.

<sup>1</sup>The TIF Fee is based upon 1% of the TIF reimbursable Costs in the estimated amount of \$26,225,875 (which amount represents the Total TIF Reimbursable Costs less the TIF Fee). This total excludes the Annual Administrative TIF Fee as it is TBD based upon eligible TIF Revenue disbursed. This sum shall be reimbursed to Developer if it has been paid by Developer and if not, it shall be deducted from the first TIF Reimbursable Cost payment (and thereafter until paid in full) and paid to the City.

<sup>2</sup>The Total TIF Reimbursable Costs do not include interest cost to carry which is not an eligible expense in this Project Plan; however, interest during construction on TIF Reimbursable Costs (excluding TIF Fee, interest and contingency) is an eligible expense and shall be reimbursed at the rate of 6% for up to 36 months. The interest shall be simple interest and shall not be compounded.

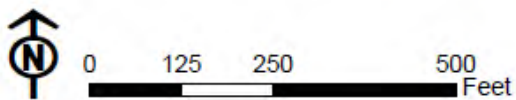
<sup>3</sup> This amount includes sums which may be included in a subsequent Community Improvement District and/or an agreement with the City as reimbursement from transient guest taxes (TGT). At the time of certifying its costs to the City, Developer must elect the Project Plan and the incentive source for which it desires reimbursement and it shall not submit those same costs for reimbursement from any other reimbursement source. CID revenues are anticipated to reimburse tenant finish costs associated with the restaurant, which are not an eligible TIF reimbursable cost. This amount also includes costs associated with surface parking and footings for future parking structure, including site work, that may be reimbursed with TIF revenue or TGT in future phases that utilize the surface parking and parking structure, to the extent those TIF reimbursable costs are not reimbursed with TIF revenues from Project Plan 1L, TGT, or CID revenues.

<sup>4</sup>The amount of the total TIF Reimbursable Costs does not include a sum for the Annual Administrative TIF Fee as this amount is to be determined as it is based upon the annual amount of TIF Revenues disbursed to Developer.

EXHIBIT D  
TIF PROJECT PLAN 1L AREA



Midas Lenexa City Center



# EXHIBIT E

## FEASIBILITY ANALYSIS

### City Center TIF District Project Plan 3I - TIF Revenue Projections Midas Lenexa City Center

Year of TIF (1)	Tax Year (2)	Distribution Year (3)	Total Assessed Value (4)	Base Year Assessed Value (5)	Captured Assessed Value (Column 3 - Column 4) (6)	Projected Property Tax Increment (7)
1	2023	2024	\$232,384	\$0	\$232,384	\$21,085
2	2024	2025	\$232,384	\$0	\$232,384	\$21,085
3	2025	2026	\$5,862,500	\$0	\$5,862,500	\$531,922
4	2026	2027	\$8,750,000	\$0	\$8,750,000	\$793,914
5	2027	2028	\$8,881,250	\$0	\$8,881,250	\$805,822
6	2028	2029	\$9,014,469	\$0	\$9,014,469	\$817,910
7	2029	2030	\$9,149,686	\$0	\$9,149,686	\$830,178
8	2030	2031	\$9,286,931	\$0	\$9,286,931	\$842,631
9	2031	2032	\$9,426,235	\$0	\$9,426,235	\$855,271
10	2032	2033	\$9,567,629	\$0	\$9,567,629	\$868,100
11	2033	2034	\$9,711,143	\$0	\$9,711,143	\$881,121
12	2034	2035	\$9,856,810	\$0	\$9,856,810	\$894,338
13	2035	2036	\$10,004,662	\$0	\$10,004,662	\$907,753
14	2036	2037	\$10,154,732	\$0	\$10,154,732	\$921,369
15	2037	2038	\$10,307,053	\$0	\$10,307,053	\$935,190
16	2038	2039	\$10,461,659	\$0	\$10,461,659	\$949,218
17	2039	2040	\$10,618,584	\$0	\$10,618,584	\$963,456
18	2040	2041	\$10,777,863	\$0	\$10,777,863	\$977,908
19	2041	2042	\$10,939,531	\$0	\$10,939,531	\$992,576
20	2042	2043	\$11,103,624	\$0	\$11,103,624	\$1,007,465
<b>Total Projected Property Tax Increment</b>						<b>\$15,818,312</b>
<b>Net Mill Levy</b>						<b>90.733</b>
<u>Assumptions:</u>						
a) TIF Mill Levy is 90.733 mills in all years.						
b) Estimated assessed value upon completion (1/1/2026) is \$8,750,000.						
c) Base year assessed valuation is \$0.						
c) Assessed value increases by 1.5% annually after completion.						
d) Property tax collection rate will be 100%.						
e) Property tax increment is distributed twice each year.						