



KIRKWOOD CITY COUNCIL AGENDA

Kirkwood City Hall
May 2, 2019 – 7:00 p.m.
Posted on April 26, 2019

WHERE COMMUNITY AND SPIRIT MEET

I. PLEDGE OF ALLEGIANCE

II. ROLL CALL

III. INTRODUCTIONS AND RECOGNITIONS

IV. PRESENTATIONS

1. Kirkwood Human Rights Commission Award for Excellence

V. PUBLIC HEARINGS

VI. PUBLIC COMMENTS – 3 MINUTE LIMIT PER PERSON

The Public Comments portion of the meeting is an opportunity for the City Council to listen to comments from citizens. It is not a question and answer session and the City Council will not respond to comments or answer questions during this period. The Mayor may refer any matter brought up to the City Council to the Chief Administrative Officer or City Clerk if action is needed.

VII. CONSENT AGENDA

All items within the Consent Agenda will be enacted by one motion of the Council with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Agenda and placed on the Regular Agenda by request of a member of the City Council. The expenditures listed in the consent agenda are items already approved in the current city budget.

- a) Approval of the April 18, 2019 City Council Meeting Minutes
- b) Resolution 65-2019, authorizing and directing the Mayor to enter into a Master Power Purchase & Sale Agreement with TransAlta to allow the City of Kirkwood to purchase power in the future
- c) Resolution 66-2019, appointing Stephen O'Brien to serve as Municipal Judge for a term of two years to June 2021
- d) Resolution 67-2019, accepting the bid of Raben Tire (pursuant to State of Missouri Cooperative Contract) for the purchase Bridgestone/Firestone Medium and Heavy Duty Truck Tires on an as needed basis for the Fleet Services Department and authorizing and directing the Mayor to enter into a contract (at the rates provided in the State of Missouri Contract)

VIII. UNFINISHED BUSINESS

1. Bill 10743, granting a Special Use Permit Amendment for a restaurant (Nathaniel Reid Bakery) on the property known as 11235, 11243 & 11245 Manchester Road subject to certain conditions
2. Bill 10744, appropriating donations for the Urban Forestry Commission from the Twenty-Five Gardeners of Kirkwood Club from the Donation Account to the Urban Forestry Account (\$350.00)
3. Bill 10745, amending the Kirkwood Code of Ordinances, Chapter 14. "Motor Vehicles and Traffic", Article II. "Administration and Enforcement", Division 4.



WHERE COMMUNITY AND SPIRIT MEET

"Abandoned Vehicles", Section 14-117. "Abandoned Vehicles or Trailers Prohibited"

4. Bill 10746, amending the Kirkwood Code of Ordinances, Chapter 17. "Offenses, Miscellaneous", Article V. "Offenses Concerning Public Peace", by adding a new Section 17-81. "Obedience to police officers and Fire Department officials"
5. Bill 10747, approving the Final Subdivision Plat of a two-lot subdivision known as Kirkwood U.C.C., in the City of Kirkwood, St. Louis County, Missouri

IX. NEW BUSINESS

1. Bill 10748, granting a Special Use Permit for a restaurant at 343 South Kirkwood Road subject to certain conditions
2. Bill 10749, amending the Kirkwood Code of Ordinances, Chapter 14, Article VIII. Section 14-393 "Schedule C: No Parking Zones" by adding no parking on the south side of Dougherty Ferry Road from Ballas Road eastwardly approximately 250 feet from the prolongation of the edge lines of Ballas Road and Dougherty Ferry Road
3. Bill 10750, amending the Kirkwood Code of Ordinances, Chapter 13, Article III. "Licensing and Regulation of Certain Occupations", Division 1. "Massage Parlors and Establishments"
4. Resolution 64-2019, approving the reappointments to the Board of Directors of the Manchester Lindbergh Southeast Community Improvement District
5. Resolution 68-2019, accepting the bid of Ford Asphalt Co., for the 2019 Asphaltic Concrete Overlays and authorizing and directing the Mayor to enter into a contract (not to exceed amount of \$660,000)
6. Resolution 69-2019, accepting the bid of T.G.B. for the Parkwoods Avenue Water Main Replacement and authorizing and directing the Mayor to enter into a contract (not to exceed amount of \$569,541.50)
7. Resolution 70-2019, authorizing and directing the Mayor to enter into an amended five-year agreement with the City of Oakland for the City of Kirkwood to provide Police and Fire services

X. CONSENT AGENDA ITEMS FOR DISCUSSION (IF ANY)

XI. CITY COUNCIL REPORTS

XII. CHIEF ADMINISTRATIVE OFFICER REPORTS

**Other Items may be added after the publication of the agenda. Please contact the City Clerk's Office at 822-5802 for any additional information that may have been added after the publication of the agenda.*

XIII. CITY ATTORNEY REPORTS

XIV. CITY CLERK REPORTS

1. Report of the May 1, 2019 Planning and Zoning Commission meeting.



WHERE COMMUNITY AND SPIRIT MEET

**Other Items may be added after the publication of the agenda. Please contact the City Clerk's Office at 822-5802 for any additional information that may have been added after the publication of the agenda.*

XV. MEETING ADJOURNMENT

PLEASE NOTE: The next regular meeting of the Kirkwood City Council will take place at 7:00 p.m. on **May 16, 2019**.

UPCOMING PUBLIC HEARINGS

May 16, 2019

Allocation of \$46,800 in Community Development Block Grant funds which will become available after January 1, 2020

CONTINUED ITEMS

NONE

TABLED ITEMS

1. Bill 10645, amending the provisions of the Municipal Code, Appendix A – Zoning, regarding Side Yard Setbacks in the R-3 Single Family Residential District
2. Bill 10690, amending the provisions of the Municipal Code, Appendix A – Zoning, regarding Height Requirement in the B-2 Business District

THE CITY OF KIRKWOOD IS INTERESTED IN EFFECTIVE COMMUNICATION FOR ALL PERSONS. PERSONS REQUIRING AN ACCOMMODATION TO ATTEND AND PARTICIPATE IN THE MEETING SHOULD CONTACT THE CITY CLERK AT 314-822-5802 AT LEAST 48 HOURS BEFORE THE MEETING. WITH ADVANCE NOTICE OF SEVEN CALENDAR DAYS, THE CITY OF KIRKWOOD WILL PROVIDE INTERPRETER SERVICES AT PUBLIC MEETINGS FOR LANGUAGES OTHER THAN ENGLISH AND FOR THE HEARING IMPAIRED. UPON REQUEST, THE MINUTES FROM THIS MEETING CAN BE MADE AVAILABLE IN AN ALTERNATE FORMAT, SUCH AS CD BY CALLING 314-822-5802.

THE CONSENT AGENDA IS ATTACHED

- a) Approval of the April 18, 2019 City Council Meeting Minutes
- b) Resolution 65-2019, authorizing and directing the Mayor to enter into a Master Power Purchase & Sale Agreement with TransAlta to allow the City of Kirkwood to purchase power in the future
- c) Resolution 66-2019, appointing Stephen O'Brien to serve as Municipal Judge for a term of two years to June 2021
- d) Resolution 67-2019, accepting the bid of Raben Tire (pursuant to State of Missouri Cooperative Contract) for the purchase Bridgestone/Firestone Medium and Heavy Duty Truck Tires on an as needed basis for the Fleet Services Department and authorizing and directing the Mayor to enter into a contract (at the rates provided in the State of Missouri Contract)



WHERE COMMUNITY AND SPIRIT MEET*

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**KIRKWOOD CITY COUNCIL
KIRKWOOD CITY HALL
APRIL 18, 2019
7:00 p.m.**

Pursuant to notice of meeting duly given by the Mayor, the City Council convened on Thursday, April 18, 2019, at 7:00 p.m. at Kirkwood City Hall, 139 South Kirkwood Road, Kirkwood, Missouri. Present were Mayor Griffin, Council Members Duwe, Edman, Luetzow, Ward, Wurtz, and Zimmer. Also in attendance were Assistant Chief Administrative Officer Georgia Ragland, City Clerk Laurie Asche, Deputy City Clerk Freddy Doss, and Assistant City Attorney Sarah Mullen.

**INTRODUCTIONS AND RECOGNITIONS
NONE**

PRESENTATIONS

1. Mayor Griffin presented a Certificate of Acknowledgement to Ed Golterman
2. Mayor Griffin presented an Arbor Day Proclamation to Urban Forestry Commission Chair David Slane
3. Urban Forestry Commission Chair David Slane presented the Urban Forestry Commission Advocate of the Year Award to David Haring
4. Assistant Chief Administrative Officer Georgia Ragland reported that the City of Kirkwood was recognized as a Sterling Tree City USA Community by the Arbor Day Foundation

PUBLIC HEARINGS

Mayor Griffin recessed the meeting for the purpose of conducting a public hearing regarding a request for a Special Use Permit for Rush Bowls to operate a restaurant at 343 South Kirkwood Road, Suite 103. Ms. Mullen entered the following exhibits into the record: an Affidavit of Publication in the St. Louis Countian on March 26, 2019, as Exhibit 1; an Affidavit of Publication in the Webster Kirkwood Times on March 29, 2019, as Exhibit 2; an aerial view map showing the subject property and the properties that were notified of the hearing, as Exhibit 3; a list of property owners who were sent notice of the public hearing, as Exhibit 4; the report of the Planning and Zoning Commission dated March 21, 2019, as Exhibit 5; a memo from City Planner Jonathan Raiche dated March 19, 2019, as Exhibit 6; and the Kirkwood Code of Ordinances as Exhibit 7.

City Planner Jonathan Raiche presented information pertaining to the request:

- The proposed space is approximately 1,000 gross square feet with seating for approximately 12 patrons.
- The majority of the business anticipated is for carry-out orders.

City of Kirkwood – Council Meeting Minutes

April 18, 2019



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- The applicant expects a maximum of 4 employees on a shift during peak hours.
- Hours of operation are proposed as Monday through Friday from 7:00 a.m. to 8:00 p.m., Saturday from 8:00 a.m. to 9:00 p.m., and Sunday from 8:00 a.m. to 7:00 p.m.
- The applicant may choose to provide accessory outdoor seating subject to certain conditions included in the Zoning Code. If provided, this seating would be for no more than 12 customers and would need to provide adequate clearance for the adjacent pedestrian walkway.

The bill will be placed on the May 2, 2019 agenda for first reading consideration.

PUBLIC COMMENTS

NONE

CONSENT AGENDA

Motion was made by Council Member Wurtz and seconded by Council Member Luetzow to approve the Consent Agenda. The Consent Agenda was unanimously approved.

- a) Approval of the April 4, 2019 City Council Meeting Minutes
- b) Resolution 58-2019, authorizing the Mayor to enter into an Amended Cooperation Agreement with the cities of Glendale and Oakland for the Kirkwood Aquatic Center through March 31, 2020
- c) Resolution 60-2019, authorizing the purchase of Wholesale Summertime Block Power for the summers of 2021 and 2022 (not to exceed \$2,099,520)
- d) Resolution 61-2019, accepting the bid of N.B. West Contracting, Co. for 2019 Ultra-Thin Bonded Asphalt Wearing Surface and authorizing and directing the Mayor to enter into a contract (not to exceed amount of \$336,674.80)
- e) Resolution 62-2019, accepting the bid of Don Brown Chevrolet for the purchase of two 2019 Chevrolet Bolt Vehicles for the Electric Department and authorizing the issuance of a Purchase Order (\$65,938)
- f) Resolution 63-2019, accepting the proposal of Starfire Corporation for the City of Kirkwood 4th of July Fireworks Displays and authorizing and directing the Mayor to enter into a contract (not to exceed of \$22,000)

UNFINISHED BUSINESS

Motion was made by Council Member Ward and seconded by Council Member Zimmer to bring Substitute Bill 10742 on the floor for consideration. The motion was unanimously approved.



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Substitute Bill 10742, appropriating \$32,004 from the Parks & Storm Water Fund Reserves to the Building & Site Improvements Account, Project #PR1912, amending the contract with Geotechnology Inc. in the amount of \$32,004 for a not to exceed amount of \$108,309 for additional Kirkwood Performing Arts Center Geotechnical Services and authorizing and directing the Mayor to enter into an amended contract, was brought before the council.

Roll Call:

Mayor Griffin	"Yes"
Council Member Wurtz	"Yes"
Council Member Luetzow	"Yes"
Council Member Duwe	"Yes"
Council Member Edman	"Yes"
Council Member Zimmer	"Yes"
Council Member Ward	"Yes"

The bill, having received majority approval of the council, was adopted and became Ordinance 10585.

NEW BUSINESS

Bill 10743, granting a Special Use Permit Amendment for a restaurant (Nathaniel Reid Bakery) on the property known as 11235, 11243 and 11245 Manchester Road subject to certain conditions, was brought before the council. Motion was made by Council Member Ward and seconded by Council Member Wurtz to accept the bill for first reading approval.

The bill received first reading approval and was held over.

Bill 10744, appropriating donations for the Urban Forestry Commission from Twenty-Five Gardeners of Kirkwood Club in the amount of \$350.00 from the Donation Account to the Urban Forestry Account, was brought before the council. Motion was made by Council Member Duwe and seconded by Council Member Zimmer to accept the bill for first reading approval.

The bill received first reading approval and was held over.

Bill 10745, amending the Kirkwood Code of Ordinances, Chapter 14. "Motor Vehicles and Traffic", Article II. "Administration and Enforcement", Division 4. "Abandoned Vehicles", Section 14-117. "Abandoned Vehicles or Trailers Prohibited, was brought before the council. Motion was made by Council Member Zimmer and seconded by Council Member Edman to accept the bill for first reading approval.



WHERE COMMUNITY AND SPIRIT MEET

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The bill received first reading approval and was held over.

Bill 10746, amending the Kirkwood Code of Ordinances, Chapter 17. "Offenses, Miscellaneous", Article V. "Offenses Concerning Public Peace", by adding a new Section 17-81. "Obedience to Police Officers and Fire Department Officials", was brought before the council. Motion was made by Council Member Duwe and seconded by Council Member Zimmer to accept the bill for first reading approval.

The bill received first reading approval and was held over.

Bill 10747, approving the Final Subdivision Plat of a two-lot subdivision known as Kirkwood U.C.C., a tract of land being adjusted Lot 1 of Kirkwood U.C.C. Boundary Adjustment Plat as recorded in Plat Book 355 Page 4 and being in part of the northwest quarter of Section 2, Township 44 North, Range 5 East, in the City of Kirkwood, St. Louis County, Missouri, was brought before the council. Motion was made by Council Member Zimmer and seconded by Council Member Edman to accept the bill for first reading approval.

The bill received first reading approval and was held over.

Resolution 57-2019, approving a one year extension to the approval of Ordinance 10476 (Special Use Permit Amendment and Site Plan Amendment for a convenience/gas store) for BP Gas on the property known as 10901 Manchester Road, was brought before the council. Motion was made by Council Member Zimmer and seconded by Council Member Duwe to accept the Resolution as read.

Roll Call:

Mayor Griffin	"Yes"
Council Member Wurtz	"Yes"
Council Member Luetzow	"Yes"
Council Member Duwe	"Yes"
Council Member Edman	"Yes"
Council Member Zimmer	"Yes"
Council Member Ward	"Yes"

Resolution 59-2019, approving the Preliminary Subdivision Plat of a two-lot subdivision known as Kirkwood U.C.C., a tract of land being adjusted Lot 1 of Kirkwood U.C.C. Boundary Adjustment Plat as recorded in Plat Book 355 Page 4 and being in part of the northwest quarter of Section 2, Township 44 North, Range 5 East, in the city of Kirkwood, St. Louis County, Missouri, was brought before the council. Motion was made by Council Member Duwe and seconded by Council Member Edman to accept the Resolution as read.



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Roll Call:

Mayor Griffin	"Yes"
Council Member Wurtz	"Yes"
Council Member Luetzow	"Yes"
Council Member Duwe	"Yes"
Council Member Edman	"Yes"
Council Member Zimmer	"Yes"
Council Member Ward	"Yes"

CONSENT AGENDA ITEMS FOR DISCUSSION

NONE

CITY COUNCIL REPORTS

Mayor Griffin reported that there will be a Community Day in the Park on Saturday, April 27, 2019 from 10:00 a.m. to 12:00 p.m. in Kirkwood Park, Lion's Pavilion.

CHIEF ADMINISTRATIVE OFFICER REPORT

Mr. Hawes had nothing to report.

CITY ATTORNEY REPORT

Ms. Mullen had nothing to report.

CITY CLERK REPORT

Ms. Asche reported that the City Clerk's Office received Destruction of Records Forms from the Fleet Division, Fire, Parks & Recreation, and Procurement Departments. The forms will be filed with the approved April 4, 2019 council meeting minutes.

ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 7:25 p.m. The next regular council meeting is scheduled for May 2, 2019, at 7:00 p.m.

Laurie Asche, CMC/MRCC
City Clerk

Approved:

RESOLUTION 65-2019

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A MASTER POWER PURCHASE & SALE AGREEMENT WITH TRANSALTA TO ALLOW THE CITY OF KIRKWOOD TO PURCHASE POWER IN THE FUTURE.

WHEREAS, the Kirkwood Electric Director recommends that the City enter into a Master Power Purchase & Sale Agreement with TransAlta to allow for the purchase of power in the future.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into a Master Power Purchase & Sale Agreement with TransAlta to allow the City of Kirkwood to purchase power in the future.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 2ND DAY OF MAY 2019.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 5/2/2019

Step #1:

Strategic Plan YES Goal # & Title Goal #1 - Enhance the Quality of Life of Citizens

Background To Issue:

The Electric Department has identified a new potential supplier. The name of the new potential supplier is TransAlta.

Recommendations and Action Requested:

The department recommends approval of an enabling agreement to allow possible purchases from TransAlta in the future.

Alternatives Available:

Power could be purchased from the MISO market versus obtaining a contract for power via a solicitation. Conversely, it can sometimes be prudent to purchase power via a purchase power agreement versus a MISO transaction in order to lock in savings and avoid market volatility.

Cost: \$0.00 Account #: 50121114806201 Project #: Budgeted: YES

If YES, Budgeted Amount: \$12,000,000.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

This is merely an enabling agreement to set up credit terms and other miscellaneous conditions associated with a potential future purchase. This is not a purchase for power. Any transaction for the purchase of power must be approved separately via a future resolution by council. The department recommends approval of the enabling agreement. This has been done with other vendors in the past.

BY: Mark Petty

Date: 4/23/2019

Authenticated: pettyma

You can attach up to 3 files along with this request.



EEL_partial - Kirkwood
TransAlta 4-18-19.pdf
Adobe Acrobat Document
4.90 MB

📎 File Attachment

📎 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:


BY: David Weidler


Date: 4/24/2019

Authenticated: weidledc

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: John Adams

Date: 4/24/2019

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY: 

Date: 4-25-19

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)

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INDUSTRY IS ENCOURAGED TO USE THIS MASTER POWER PURCHASE AND SALE AGREEMENT IN ITS TRANSACTIONS.
ATTRIBUTION TO THE COPYRIGHT OWNERS IS REQUESTED.

MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 04/25/00) ("*Master Agreement*") is made as of the following date: April 10, 2019 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name: TransAlta Energy Marketing (U.S.) Inc.
("Party A")

Name: City of Kirkwood, Missouri ("Party B")

All Notices: Contract Administration

All Notices: Purchasing Director

Street: 110 – 12th Avenue SW

Street: 212 S. Taylor

City: Calgary, AB CANADA Zip: T2P 2M1

City: Kirkwood, MO Zip: 63122

Attn: Contract Administration
Email: ContractAdmin@transalta.com
Facsimile: 403-267-7255
Duns: 25-313-3508
Federal Tax ID Number: 98-0190320

Attn: Contract Administration
Phone: 314-822-5853
Facsimile: 314-984-5875
Duns: 150931962
Federal Tax ID Number: 43-6001912

Invoices:

Attn: Counterparty Settlements
Email: Transalta_Settlements@transalta.com
Facsimile:

Invoices:

Attn: Purchasing Director
Phone: 314-822-5853
Facsimile: 314-984-5875

Scheduling:

Attn: Scheduler
Phone: 403-267-6902 / 403-267-6931
Facsimile: 403-267-6906

Scheduling:

Attn: Mark Petty, Electric Dept. Director
Phone: 314-822-5847
Facsimile: 314-984-5920

Option Exercise:

Phone:

Option Exercise:

Phone:

Payments:

Attn: Counterparty Settlements
Email: Transalta_Settlements@transalta.com
Facsimile:

Payments:

Attn: Director of Finance
Phone: 314-822-5833
Facsimile: 314-984-6931

Wire Transfer Only:

Pay: Bank of America
For the Account of: TransAlta Energy Marketing
(U.S.) Inc.
Account No./CHIPS UID: 3751870997
Fed. ABA No.: 026 009 593

Wire Transfer:

BNK: Citibank N.A.
ABA: 021-000-089
ACCT: 30646208

ACH Transfer Only:

Pay:
For the Account of:
Account No.:
Fed. ABA No.:

Credit and Collections:

Attn: Credit Risk Department
Email: TAcredit@transalta.com
Facsimile: 403-267-7575

Credit and Collections:

Attn: John Adams, Director of Finance
Phone: 314-822-5833
Facsimile: 314-984-6931

Confirmations:

Attn: Confirmations
Email: TA_Confirms@transalta.com
Facsimile: 1-888-865-5643

Confirmations:

Attn: Mark Petty, Electric Dept. Director
Phone: 314-822-5847
Facsimile: 314-984-5920

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Legal Counsel, Trading
Email: ContractAdmin@transalta.com
Facsimile:

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Mark Petty, Electric Dept. Director
Phone: 314-822-5847
Facsimile: 314-984-5920

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff FERC Rate Schedule No. 1 Dated: 10/22/2015 Docket
Number: ER15-2537-000

Party B Tariff Tariff N/A Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

Cross Default for Party A:

Party A: _____ Cross Default Amount:

Other Entity: TransAlta Corporation Cross Default Amount: \$100,000,000

Cross Default for Party B:

Party B: _____ Cross Default Amount: \$50,000,000

Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B (as amended pursuant to this Cover Sheet)
- Option C (No Setoff)

Article 8

8.1 Party A Credit Protection:

Credit and Collateral Requirements

(a) Financial Information:

- Option A
- Option B Specify
- Option C Specify:

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$7,000,000; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$0

Party B Rounding Amount: \$250,000

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below BB- from S&P or Ba3 from Moody's or if Party B's is rated by neither S&P nor Moody's.

- Other:
Specify: _____

(e) Guarantor for Party B: N/A

Guarantee Amount:

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: TransAlta Corporation, provided however, that such financial statements are not required to be delivered if they are available on "SEDAR", "EDGAR" or on the party's home page.
- Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable

Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$7,000,000; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$0

Party A Rounding Amount: \$250,000

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below BB- from S&P or Ba3 from Moody's or if Party A's Guarantor's is rated by neither S&P nor Moody's.

Other:

Specify: _____

(e) Guarantor for Party A: TransAlta Corporation, in the form attached hereto as Exhibit B

Guarantee Amount: Party A's Collateral Threshold, or such larger amount as provided in Guaranty

Article 10

Confidentiality

Confidentiality Applicable If not checked, inapplicable.

Schedule M

Party A is a Governmental Entity or Public Power System

Party B is a Governmental Entity or Public Power System

Add Section 3.6. If not checked, inapplicable

Add Section 8.4. If not checked, inapplicable

Other Changes

(A) **Definitions.** The following definitions are amended as set forth below:

(1) A new Section 1.0 is added, to read as follows:

"Act" means the Missouri Constitution, Missouri Revised Statutes, and the Charter of the City of Kirkwood, Missouri.

(2) Section 1.3 is amended in its entirety to read as follows:

"**Bankrupt**" means, with respect to a Party or other entity, that such Party or other entity (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained, in each case within 30 days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts."

(3) Section 1.12 is amended in its entirety to read as follows:

"**Credit Rating**" means, with respect to any entity on any date of determination, the respective rating then assigned to its unsecured senior long-term debt or deposit obligations (not supported by third party credit enhancement), by S&P, Moody's or such other rating agency or agencies as are specified; and if no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligations by such rating agency, the general corporate credit rating or long-term issuer rating, as applicable, assigned by such rating agency to such entity.

(4) Section 1.23 shall be amended by adding to the end of the definition the following: "If the Claiming Party is Party B, Force Majeure does not include any action taken by Party B in its governmental capacity."

(5) Section 1.27 is deleted in its entirety and replaced with the following: "Letter of Credit" means an irrevocable, non-transferable, standby letter of credit, issued by a Qualified Institution, in the form as the parties may agree upon from time to time. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit."

(6) Section 1.50 is amended by changing "Section 2.4" to "Section 2.5."

(7) Section 1.51 is amended by (i) adding the phrase "for delivery" immediately before the phrase "at the Delivery Point" in the second line, (ii) deleting the phrase "at Buyer's option" from the fifth line and replacing it with "absent a purchase" and (iii) inserting the phrase "(other than penalties imposed on Buyer under an open access transmission tariff as a result of the non-delivery)" after "penalties" in the seventh line.

(8) Section 1.53 is amended by (i) deleting the phrase "at the Delivery Point" from the second line, (ii) deleting the phrase "at Seller's option" from the fifth line and replacing it with "absent a sale," (iii) inserting after the phrase "commercially reasonable manner" in the sixth line, the following phrase "; provided, however if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by Buyer, the Sales Price with respect to such Product shall be deemed equal to zero (0)," and (iv) inserting the phrase "(other than penalties imposed on Seller under an open access transmission tariff as a result of the non-receipt)" after "penalties" in the seventh line.

(9) The following definition is added as Section 1.62: "'Merger Event' means, with respect to a Party or other entity, that such Party or other entity consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party or other entity hereunder or (ii) the benefits of any credit support provided pursuant to Article 8 fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder or (iii) the resulting entity's creditworthiness is materially weaker than that of such Party or other entity immediately prior to such action."

(10) The following definition is added as Section 1.63: "'Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, having assets of at least \$10 billion and a Credit Rating of at least "A-" from S&P or "A3" from Moody's, and having a branch or branches in reasonable proximity to the beneficiary of a Letter of Credit issued by such bank or trust company at which the beneficiary can present a claim for payment under such Letter of Credit.

(B) Confirmation.

(1) Section 2.3 is hereby amended by deleting the text in its entirety and substituting the following: "Party A may confirm a Transaction by forwarding to Party B within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Party B objects to any term(s) of such Confirmation, Party B shall notify Party A in writing of such objections within two (2) Business Days of Party B's receipt thereof, failing which Party B shall be deemed to have accepted the terms as sent absent any manifest error. If Party A fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Party B to Party A. If Party A objects to any term(s) of such Confirmation, Party A shall notify Party B of such objections within two (2) Business Days of Party A's receipt thereof, failing which Party A shall be deemed to have accepted the terms as sent absent any manifest error. If Party A and Party B each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Party A's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Party A's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Party B's Confirmation was sent prior to Party A's Confirmation, in which case Party B's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties."

(2) Section 2.4 is amended to delete the phrase "either orally or" from the seventh line thereof.

(3) Section 2.5 is amended by inserting at the end of the third sentence the phrase ", provided that such Recording would be admissible in accordance with the applicable law of such proceeding or action; provided, further, the parties agree not to contest or assert any defense to the validity or enforceability of Transactions entered into pursuant to this *Master Agreement* solely under Statute of Fraud laws or laws relating to whether certain agreements are to be in writing or signed by the party to be thereby bound."

(C) Obligations and Deliveries.

(1) Section 3.2 is amended by inserting at the end thereof the following:

"Product deliveries shall be Scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and Scheduling practices for the relevant region and system operator."

(2) The following sections are added to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Party B shall provide to Party A, upon the request of Party A, certified copies of all resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement.

Section 3.5 No Immunity Claim. Party B warrants and covenants that, solely with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues from (a) suit, (b) relief by way of injunction or order for specific performance, or (c) execution or enforcement of any judgment.

(D) Seller/Buyer Failure.

The following is inserted as Section 4.3:

"4.3 With respect to Section 4.1 and Section 4.2, the origin of the values used in said calculations must be derived from commercially reasonable sources. Each Party agrees and covenants to use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the Agreement."

(E) Events of Default.

- (1) Section 5.1(f) is deleted in its entirety and replaced with the following: "a Merger Event occurs with respect to such Party;"
- (2) Section 5.1(h) is amended by insertion of the following as clause (vi): "(vi) a Merger Event occurs with respect to a Guarantor".
- (3) Section 5.1 is amended by insertion of the following as subsections (i) and (j):

"(i) the Defaulting Party repudiates any Transaction or this Agreement;

(j) an event of default or termination event occurs (howsoever determined) with respect to the Defaulting Party under any agreement between Party A and Party B under any forward contract or swap agreement (the "Specified Transactions") in each case as defined in the United States Bankruptcy Code and there occurs a liquidation of, an acceleration of obligations under, or an early termination of all transactions under the documentation applicable to the Specified Transactions"

(F) Declaration of an Early Termination Date and Calculation of Settlement Amount.

Section 5.2 is amended by (1) reversing the placement of "(i)" and "to" in the third line, and (2) deleting the following phrase from the last two lines: "under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable" and replacing it with the following:

"under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Excluded Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information."

(G) Notice of Payment of Termination Payment.

Section 5.4 is amended by adding the following to the end thereof:

Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may

include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or any of its Affiliates under this Agreement or otherwise which are due and payable as of the Early Termination Date (including for these purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed.

(H) Timeliness of Payment. Section 6.2 is amended to delete the first sentence in its entirety and to replace with the following: "Unless otherwise agreed by the Parties in a Transaction, all invoices under this Agreement shall be sent by the 10th day of each month and are due and payable in accordance with each Party's invoice instructions on or before the later of the 20th day of each month or ten (10) days after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day."

In addition, the following will be added to the last sentence of section 6.2: "Each Party making a payment to the other Party shall be responsible for any bank fees or charges assessed by its own bank and associated with such payment and shall not deduct such fees from the payment owed to the other Party; provided, however, any such fee or charge associated with such payment that a party incurs as a result of an error, omission, or failure of the other party (e.g., return for insufficient funds) shall be the responsibility of the party that made the error, omission, or failure."

(I) Credit and Collateral Requirements.

Section 8.1(d) is amended by inserting the phrase "or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing" after the words "receipt of notice" in the fifth line thereof.

Section 8.2(d) is amended by inserting the phrase "or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing" after the words "receipt of notice" in the fifth line thereof.

A new Section 8.4 is added as follows: "8.4 Interest Rate on Cash Collateral Held: Where cash is provided as Performance Assurance, the party providing the cash as Performance Assurance shall be paid by the party for whose benefit the Performance Assurance was provided interest on such cash at a rate equal to the Federal Funds Effective Rate as published under "Money Rates" in the *Wall Street Journal* minus one quarter (1/4) percentage point."

(J) Representations and Warranties. Subsection (ix) of Section 10.2 is deleted in its entirety and replaced with the following:

"(ix) at the time of executing this Cover Sheet, (A) it is an 'eligible contract participant' as such term is defined in the Commodity Exchange Act, as amended (7 U.S.C. § 1(a)(18)); and (B) it is an 'eligible commercial entity' as such term is defined in the Commodity Exchange Act, as amended (7 U.S.C. § 1(a)(17))."

A new subsection (xiii) is added to Section 10.2 as follows:

"(xiii) Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement have been or will be taken and performed as required under the Act, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Party B are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, and (v) Party B's obligations to make payments hereunder are unsubordinated obligations and such payments are otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Party B's obligations hereunder and under each Transaction."

(K) **Indemnity.** Section 10.4 is amended by inserting the phrase “except to the extent attributable to the indemnitee Party’s gross negligence, willful misconduct or bad faith” at the end of the first sentence.

(L) **Assignment.** Section 10.5 is amended by deletion of the phrase “tax and enforceability assurance” in the eleventh and twelfth lines thereof and replacement therewith of the phrase, “tax, credit and enforceability assurance.”

(M) **Governing Law.** Section 10.6 is amended by adding the following sentence at the end of the section: “Notwithstanding the foregoing, in respect of the applicability of the Act as herein provided, the laws of the State of Missouri shall apply.”

(N) **General.** Section 10.8 is amended by inserting the following at the end thereof:

“This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original. Copies of this Agreement (and each amendment, modification and waiver in respect of it) are deemed acceptable and may be used in lieu of originals for all purposes, including, but not limited to admissibility, authenticity or other purposes related to legal proof.”

(O) **Nature of Parties**

Section 10.10 is deleted in its entirety and replaced with the following:

10.10 **Forward Contracts.** The Parties intend that (i) any Transaction with a maturity date more than two days after the date the Transaction is entered into shall constitute a “forward contract” within the meaning of title 11 of the United States Code (the “Bankruptcy Code”); (ii) certain Transactions may constitute “swap agreements” within the meaning of the Bankruptcy Code; (iii) each of Party A and Party B is a “forward contract merchant” within the meaning of the Bankruptcy Code with respect to any Transactions that constitute “forward contracts” under statutory and decisional law in effect as of the date of this Agreement; (iv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code; (v) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments” within the meaning of the Bankruptcy Code; and (vi) this Agreement constitutes a “master netting agreement” within the meaning of the Bankruptcy Code. In addition, each Party agrees that, at the time of executing this Cover Sheet, (A) it is an ‘eligible contract participant’ as such term is defined in the Commodity Exchange Act, as amended (7 U.S.C. § 1, *et seq.*); and (B) it is an ‘eligible commercial entity’ as such term is defined in the Commodity Exchange Act, as amended (7 U.S.C. § 1, *et seq.*).

(P) **Confidentiality.** Section 10.11 is deleted in its entirety and replaced with the following:

“10.11 **Confidentiality.** If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet or any annex to this Master Agreement to a third party (other than the employees, lenders, counsel, accountants or advisors of a Party or its Affiliates to whom disclosure is reasonably required (with respect to a Party, its “Representatives”)) except in order to comply with any applicable law (including the Missouri public records and sunshine laws), regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request by a regulatory authority; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the non-disclosure obligations set forth in this Section 10.11; provided, that a breach of this Section 10.11 shall not give rise to a right to suspend or terminate any ongoing Transaction under this Agreement. Notwithstanding the foregoing, it shall not be deemed a breach of this Section 10.11 if a Party disclosed the terms or conditions of a Transaction, provided that the name of and any other identifying information relating to the other Party is redacted and otherwise not disclosed. Each Party will cause its Representatives to comply with the non-disclosure obligations set forth in this Section 10.11.”

(Q) **Venue.** Article 10 is amended by inserting the following as Section 10.12:

"10.12 Venue. Each party hereto irrevocably (i) submits to the non-exclusive jurisdiction of the federal courts located in Missouri, assuming they have subject matter jurisdiction, and otherwise to the non-exclusive jurisdiction of the state courts located in Missouri; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Agreement.

(R) Index Transactions. Article 10 is amended by inserting the following as Section 10.13:

"10.13 Index Transactions. (a) Market Disruption. If a Market Disruption Event occurs during the Determination Period, the Floating Price for the affected Trading Day(s) shall be determined pursuant to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then each Party shall reasonably and in good faith obtain a calculation of the relevant Floating Price from a Reference Market-maker, and the Floating Price shall be the average of the two calculations.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

"Floating Price" means the Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events : (a) the failure of the Price Source to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Reference Market-maker" means a leading dealer in the relevant market selected by a Party in good faith from among dealers which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

"Trading Day" means a day in respect of which the relevant Price Source published the relevant price.

(b) Corrections to Published Prices. For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(c) Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged."

(S) **Mobile-Sierra.** Article 10 is amended by inserting the following as Section 10.14:

"10.14 FERC Standard of Review; Mobile-Sierra Waiver. (a) Absent the agreement of both Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) (the "Mobile-Sierra" doctrine)."

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a)."

(T) **Dispute Resolution.** Article 10 is amended by inserting the following as Section 10.15:

"10.15 Resolution of Disputes. Any dispute or need of interpretation between the Parties involving or arising under this Agreement first shall be referred for resolution to a senior representative of each Party. Upon receipt of a notice describing the dispute and designating the notifying Party's senior representative and that the dispute is to be resolved by the Parties' senior representatives under this Agreement, the other Party shall promptly designate its senior representative to the notifying Party. The senior representatives so designated shall attempt to resolve the dispute on an informal basis as promptly as practicable. If the dispute has not been resolved within fifteen (15) days after the notifying Party's notice was received by the other Party, or within such other period as the Parties may jointly agree to in writing, the Parties may submit the dispute to the Federal Energy Regulatory Commission or (subject to Section 10.12) any court of competent jurisdiction."

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

PARTY A

TransAlta Energy Marketing (U.S.) Inc.

By: Todd Stack

Name: Todd Stack

Title: Chief Financial Officer

PARTY B

City of Kirkwood, Missouri

By: _____

Name: _____

Title: _____



DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 "Agreement" has the meaning set forth in the Cover Sheet.

1.3 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 "Buyer" means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 "Call Option" means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 "Claiming Party" has the meaning set forth in Section 3.3.

1.8 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

1.15 "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.16 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

1.18 "Early Termination Date" has the meaning set forth in Section 5.2.

1.19 "Effective Date" has the meaning set forth on the Cover Sheet.

1.20 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 "Event of Default" has the meaning set forth in Section 5.1.

1.22 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.23 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 -
Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE
APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS
OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on _____, _____
between _____ (“Party A”) and _____ (“Party B”) _____
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter
Page 2

Delivery Period: _____
Special Conditions: _____
Scheduling: _____
Option Buyer: _____
Option Seller: _____
Type of Option: _____
Strike Price: _____
Premium: _____
Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

EXHIBIT B

GUARANTEE AGREEMENT

Date:	This Guarantee Agreement (this "Guarantee") is made as of [____], 20[____].
Granted To:	[____], a body corporate incorporated under the laws of [____] (the "Beneficiary")
Granted By:	TransAlta Corporation, a body corporate incorporated under the laws of Canada (the "Guarantor")
Re:	TransAlta Energy Marketing (U.S.) Inc., a body corporate incorporated under the laws of the State of Delaware (the "Guarantor's Subsidiary")
Guaranteed Amount:	\$ [____] US

The Beneficiary and the Guarantor's Subsidiary have entered into, or may be, or are anticipating entering into, one or more contracts or agreements (the "Transaction Agreements") involving the purchase, sale, or similar physical or derivate financial transactions with respect to electrical power or natural gas (the "Transactions"). As a result of the Transactions between the Beneficiary and the Guarantor's Subsidiary, the Beneficiary will or may be extending credit to the Guarantor's Subsidiary. The Guarantor acknowledges that it will receive substantial and direct and indirect benefits from the Transactions and wishes to provide this Guarantee to the Beneficiary as part of the Guarantor's Subsidiary's consideration for such Transactions and to induce the Beneficiary to enter into such Transactions and to extend such credit to the Guarantor's Subsidiary.

Accordingly, the Guarantor hereby agrees as follows:

1. **Guarantee:** The Guarantor hereby unconditionally and irrevocably guarantees the prompt and punctual payment when due by the Guarantor's Subsidiary, subject to any applicable cure periods under the Transaction Agreements, of all current and future payment obligations of the Guarantor's Subsidiary owed to the Beneficiary arising under or pursuant to the Transactions (the "Obligations") all in accordance with the terms of the Transaction Agreements and this Guarantee. For greater certainty, the "Obligations" include:
 - a. all taxes which may be payable pursuant to the applicable Transaction Agreements;
 - b. interest, late and service fees and other charges payable pursuant to the applicable Transaction Agreements;
 - c. damages and liquidated damages but only if, and to the extent, contemplated as being payable pursuant to the applicable Transaction Agreements; and
 - d. reasonable attorneys' fees, and/or costs of collection, if any, paid by the Beneficiary in the collection of the Obligations.

Limitation: Notwithstanding anything else contained within this Guarantee, the maximum liability of the Guarantor in respect of any or all of the Obligations shall not, in any event or circumstance, exceed or aggregate to exceed over time the Guaranteed Amount identified above. If any Obligation must be converted between currencies in order to determine whether or not the Guaranteed Amount is exceeded and the Transaction Agreement does

not provide for such a conversion, then it shall be done using the average of the Bank of Canada end of day rate for the calendar month immediately preceding the date of any required conversion calculation.

- 2. Nature of Guarantee:** The Guarantor's obligations hereunder with respect to any of the Obligations shall not be affected by the existence of or any change in the validity, enforceability, perfection or the extent of any collateral or security for the Obligations. The Beneficiary shall not be obligated to file any claim relating to the Obligations owing to it in the event that the Guarantor's Subsidiary becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of the Beneficiary to so file shall not affect the Guarantor's obligations hereunder. In the event that any payment related to an Obligation is rescinded or must otherwise be returned by the Beneficiary for any reason whatsoever, the Guarantor shall remain liable in accordance with the provisions of this Guarantee in respect of such rescinded or returned payment as if it had not been made. The Guarantor reserves the right to assert defences which the Guarantor's Subsidiary may have to the payment of any Obligation other than defences arising from the bankruptcy or insolvency of the Guarantor's Subsidiary and other defences expressly waived under this Guarantee.
- 3. Consents, Waivers and Renewals:**

 - a. Subject to the right of termination under Section 6, the Guarantor agrees that the Beneficiary and the Guarantor's Subsidiary may mutually agree to create or modify any Obligation, Transaction, or Transaction Agreement without in any way impairing or affecting the Guarantor's obligations under this Guarantee. In addition, the Guarantor waives all right to receive any notice in respect of the creation or modification of any Obligation, Transaction, or Transaction Agreement.
 - b. The Guarantor agrees that the Beneficiary may resort to the Guarantor for the payment of the Obligations under this Guarantee whether or not the Beneficiary shall have resorted to any collateral security or shall have proceeded against any other obligator principally or secondarily obligated with respect to any of the Obligations.
 - c. Upon the failure by the Guarantor's Subsidiary to pay any of the Obligations, the Beneficiary shall make demand for payment upon the Guarantor. Such demand shall be in writing and shall state the amount the Guarantor's Subsidiary has failed to pay and an explanation of why such payment is due together with a specific statement that the Beneficiary is calling upon the Guarantor to pay the Obligation under this Guarantee. Other than such demand for payment, the Guarantor hereby waives notice of acceptance of this Guarantee and any notice of presentment or of protest and all other notices whatsoever.
- 4. Subrogation:** Upon payment of all Obligations owing to the Beneficiary in respect of a particular Transaction, the Guarantor shall be subrogated to the rights of the Beneficiary against the Guarantor's Subsidiary in respect of such Transaction and the Beneficiary shall take, at the Guarantor's expense, all such steps as the Guarantor may reasonably request to implement such subrogation.
- 5. Termination:** This Guarantee and the Guarantor's obligations hereunder may be terminated by the Guarantor at any time by delivery of written notice thereof to the Beneficiary; provided however that this Guarantee shall remain in full force and effect after such termination until all Obligations that are outstanding, contracted or committed for

(whether or not outstanding) before such termination shall be finally and irrevocably paid in full.

6. Miscellaneous:

- a. **governing law/courts:** This Guarantee shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of law provisions that would require the application of the laws of any other jurisdiction. All disputes arising pursuant to or related to this Guarantee shall be settled exclusively in the federal and state courts located in Manhattan. Each of the Guarantor (by its execution and delivery of this Guarantee) and the Beneficiary (by its acceptance of this Guarantee) irrevocably submit to the exclusive jurisdiction of such courts.
- b. **successors and assigns:** The Beneficiary may assign its rights hereunder (when assigning its rights and obligations related to an applicable Transaction in accordance with the provisions of the applicable Transaction Agreement) without the prior consent of the Guarantor. Any other assignment by the Beneficiary or any assignment by the Guarantor of its respective rights or obligations hereunder shall not be made without the written consent of the other party, such consent not to be unreasonably withheld. This Guarantee shall be binding upon the Guarantor's successors and permitted assigns and shall enure to the benefit of the Beneficiary and its successors and permitted assigns.
- c. **representations/warranties:** The Guarantor, through the undersigned officer, represents and warrants to the Beneficiary that (i) the Guarantor's Subsidiary is a subsidiary of the Guarantor, (ii) the Guarantor is authorized to grant this Guarantee and has all necessary rights, powers and authorizations to do so and (iii) this Guarantee is a valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as may be modified by applicable bankruptcy, insolvency, reorganization and other laws relating to or affecting creditors' rights and to general equity principles.
- d. **execution:** This Guarantee (i) may be executed and delivered by electronic means and (ii) need not be under corporate seal. Any such execution and delivery shall be sufficient for all purposes of evidencing due, valid and authorized execution of this Guarantee by the Guarantor.
- e. **guarantee of payment:** This Guarantee constitutes a guarantee of payment and not of collection.
- f. **entire agreement:** Except as provided in any other written agreement now or at any time hereafter in force between the Beneficiary and the Guarantor, this Guarantee shall constitute the entire agreement of the Guarantor with the Beneficiary with respect to the subject matter hereof and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon the Guarantor unless expressed herein.

- 7. Notices:** All notices, requests, demands and other communications required or permitted to be made or given under this Guarantee shall be in writing and shall be delivered via courier, e-mail, or first class mail (postage prepaid) to the address and to the individual(s) indicated below:

If to the Beneficiary, to:

[]
[]
[]

Attn:

E-mail: []

If to the Guarantor, to: TransAlta Corporation

Box 1900, Station "M"

110 -12 Avenue SW

Calgary, Alberta T2P 2M1

Attn: Credit Department

E-mail: TACredit@transalta.com

Any notices shall be deemed to have been given (i) with respect to delivery by courier, on the date of receipt, (ii) with respect to delivery by e-mail, if received before the end of regular business hours, then on the day of receipt, or if received after regular business hours, then on the business day immediately following receipt, or (iii) with respect to delivery by mail, on the 5th business day after being mailed by registered or certified mail, provided that if there is any disruption in postal service, notice shall be deemed to have been given on the day of receipt.

[signature page follows]

IN WITNESS WHEREOF, the Guarantor has executed this Guarantee by its duly appointed signing officer with all requisite authorization as of the date noted on the top of the first page.

TRANSALTA CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

RESOLUTION 66-2019

A RESOLUTION APPOINTING STEPHEN O'BRIEN TO SERVE AS MUNICIPAL JUDGE FOR A TERM OF TWO YEARS TO JUNE 2021.

WHEREAS, the City Council reviews the appointment for Municipal Judge every two years, and

WHEREAS, Stephen O'Brien has served as Kirkwood Municipal Judge since 2013 and the City Council believes it is in the best interest of Kirkwood citizens to reappoint Judge O'Brien, and

WHEREAS, it has been determined that the payment per court session shall be \$400 per session.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI:

SECTION 1. That Stephen O'Brien is hereby appointed to serve as Municipal Judge for the City of Kirkwood for a term of two years to June 2021 with a pay rate of \$400 per session.

PASSED AND APPROVED THIS 2ND DAY OF MAY 2019.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 5/2/2019

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

The City Council reviews the appointment for Municipal Judge every two years. Stephen O'Brien has served as Kirkwood Municipal Judge since 2013.

Recommendations and Action Requested:

Appoint Stephen O'Brien as Municipal Judge for a term of two years to June 2021.

Alternatives Available:

Cost: \$0.00

Account #: 000000

Project #:

Budgeted: YES

If YES, Budgeted Amount: \$0.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Laurie Asche

Date: 4/24/2019

Authenticated: aschelb

You can attach up to 3 files along with this request.

📎 File Attachment

📎 File Attachment

📎 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:

BY: Select...


Date:

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (Must have Finance Department's approval).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY:



Date:

4-25-19

RESOLUTION 67-2019

A RESOLUTION ACCEPTING THE BID OF RABEN TIRE (PURSUANT TO STATE OF MISSOURI COOPERATIVE CONTRACT) AT THE RATES PROVIDED IN THE STATE OF MISSOURI CONTRACT (A COPY OF WHICH IS ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN) FOR THE PURCHASE BRIDGESTONE/FIRESTONE MEDIUM AND HEAVY DUTY TRUCK TIRES ON AN AS NEEDED BASIS FOR THE FLEET SERVICES DEPARTMENT AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT.

WHEREAS, the City may purchase items and services that have been competitively bid and awarded by State of Missouri Cooperative Contract, and

WHEREAS, staff recommends that the City purchase Bridgestone/Firestone Medium and Heavy Duty Truck Tires for the Fleet Services Department on an as needed basis from Raben Tire under State of Missouri Cooperative Contract #CC191557003 at the rates provided in the State of Missouri Contract (a copy of which is attached hereto and incorporated by reference herein), and

WHEREAS, funds are available in Account #608-1703-429.66.27.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The bid of Raben Tire under to State of Missouri Cooperative Contract #CC191557003 at the rates provided in the State of Missouri Contract (a copy of which is attached hereto and incorporated by reference herein) for the purchase of Bridgestone/Firestone Medium and Heavy Duty Truck Tires on an as needed basis for the Feet Services Department is hereby accepted and approved.

SECTION 2. The Mayor is hereby authorized and directed to enter into a contract with Raben Tire pursuant to State of Missouri Cooperative Contract #CC191557003 at the rates provided in the State of Missouri Contract (a copy of which is attached hereto and incorporated by reference herein) for the purchase of Bridgestone/Firestone Medium and Heavy Duty Truck Tires on an as needed basis for the Fleet Services Department.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 2ND DAY OF MAY 2019.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 5/2/2019

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

Fleet Services utilizes the State of Missouri Cooperative Agreement, CC191557003, in which Raben Tire is an authorized dealer and provides medium/heavy duty truck tires based on pricing within the contract. The Procurement Department has reviewed and approved the cooperative agreement for use by the City of Kirkwood.

Recommendations and Action Requested:

Staff recommends the City Council accept the State of Missouri Cooperative Agreement with Raben Tire for medium/heavy duty truck tires based on the rates provided for FY19/20 and not to exceed budgeted funds in 608-1703-429.66-27

Alternatives Available:

Cost: \$25,000.00 Account #: 60817034296627 Project #: Budgeted: YES
If YES, Budgeted Amount: \$68,097.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Christopher Wenom Sr. Date: 4/24/2019 Authenticated: wenomcj

You can attach up to 3 files along with this request.



20240331 State of Missouri
Tire Contract.pdf
Adobe Acrobat Document
392 KB

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

[Empty text box for Purchasing Director's Comments]


BY: David Weidler


Date: 4/25/2019

Authenticated: weidledc

You can attach up to 3 files along with this request.


13141 Resolution Letter.pdf
Adobe Acrobat Document
156 KB

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name: [Empty text box]

To Account # or Fund Name: [Empty text box]

Finance Director's Comments:

[Empty text box for Finance Director's Comments]

BY: John Adams

Date: 4/25/2019

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Diasapprove

Chief Administrative Officer's Comments:

[Empty text box for Chief Administrative Officer's Comments]

BY: 

Date: 4-25-19



STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF PURCHASING

NOTIFICATION OF STATEWIDE CONTRACT

Date: 4/1/19

CONTRACT TITLE: Tires, Tubes and Services

CURRENT CONTRACT PERIOD:	April 1, 2019 through March 31, 2024	
RENEWAL INFORMATION:	Original Contract Period:	April 1, 2019 through March 31, 2024
	Renewal Options Available:	0
	Potential Final Expiration:	March 31, 2024
BUYER INFORMATION:	Jason Kolks 573-522-1620 Jason.kolks@oa.mo.gov	

ALL PURCHASES MADE UNDER THIS CONTRACT MUST BE FOR **PUBLIC USE ONLY**.
PURCHASES FOR PERSONAL USE BY PUBLIC EMPLOYEES OR OFFICIALS ARE PROHIBITED.

THE USE OF THIS CONTRACT IS **PREFERRED** FOR ALL STATE AGENCIES.

Local Purchase Authority should not be used to purchase supplies/services included in this contract unless specific item is out-of-stock for an unreasonable amount of time (to be determined by the state agency) without an acceptable substitute; closest authorized dealer is too far and it would be burdensome for the agency to pay the cost associated with travel.

The entire contract document may be viewed and printed from the Division of Purchasing's **Awarded Bid & Contract Document Search** located on the Internet at

<http://oa.mo.gov/purchasing>.

~ Instructions for use of the contract, specifications, requirements, and pricing are attached ~.

CONTRACT NUMBER	SAM II VENDOR NUMBER/ MissouriBUYS SYSTEM ID	VENDOR INFORMATION	MBE/WBE	COOP PROCUREMENT
CC191557003	3402532400 2 / MB00004549	Goodyear Tire & Rubber Company 200 E Innovation Way D/709 Akron, OH 44316 Contact: Jeff Goodenow Ph: 330-796-4352 FAX: 330-796-3404 E-Mail: jsgoodenow@goodyear.com For Invoice questions, contact John Donelan. John_donelan@goodyear.com or 330-796-1078.	No	Yes

CC191577001	8803350670 0 / MB00081478	Bridgestone Americas Tire Operations, LLC 535 Marriott Drive, 10 th Floor Nashville, TN 37214 Contact: Gregg Trospen Ph: 615-937-3794 FAX: 615-493-0000 E-Mail: trospergregg@bfusa.com	N0	Yes
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STATEWIDE CONTRACT HISTORY

The following summarizes actions related to this Notification of Statewide Contract since its initial issuance. Any and all revisions have been incorporated into the attached document.

Contract Period	Issue Date	Summary of Changes
April 1, 2019 through March 31, 2024	4/1/19	Initial issuance of new statewide contract with Goodyear(CC191557003).

TIRES, TUBES AND SERVICES
STATEWIDE NOTICE

General: The contracts identified herein have been awarded to serve State of Missouri agencies, political subdivisions or governmental entities specified by the State of Missouri for various types of tires, tubes and services. The contracts are piggyback contracts off of current NASPO ValuePoint contracts.

Purchase Orders: In MissouriBUYS utilize off-catalog when entering a request.

Pricing: Pricing is provided in accordance with the applicable percentage discounts off of current list prices found in the specific tire manufacturer catalogs. The chart herein provides the percentage discount for each of the available tire and tube categories. Additionally, a chart is provided that gives specific firm, fixed prices for each service that can be provided by the manufacturers. **Attachment #1** to this statewide notice provides current contract period net prices for all tires available from Bridgestone America Tire Operation (CC191557001). **Attachment #3** to this statewide notice provides current contract period net prices for all tires available from The Goodyear Tire & Rubber Company (CC191557003).

Note: The attachments are separate from this Statewide Notice but they are available at the same website.

Delivery: The contracts allow for agencies to order and pick-up tires at dealerships participating in the contract. Tires may also be shipped to the state agency site FOB Destination, freight prepaid and allowed.

- Bridgestone offers forty-five (45) days ARO
- Goodyear offers thirty (30) days ARO

Authorized Missouri Tire Dealers: **Attachment #4** provides a listing of authorized Bridgestone dealers in Missouri. **Attachment #6** provides a listing of authorized Goodyear dealers in Missouri. The dealers listed on the attachment are the only authorized dealers to provide tires, tubes and related services in accordance with the contracts.

Invoicing and Payments: All orders shall be placed with the manufacturer in care of the local dealer providing product and/or services. Invoices will be billed by the manufacturer and payments will be made to the manufacturer directly, not the local dealer. No payments shall be made to the authorized dealers.

Preferred Use Contract: The State of Missouri has various state agencies that are located in remote areas of the state with limited access to a nearby dealer. Because of the time it takes state personnel to travel along with the cost associated with travel to the closest authorized tire dealers, the state intends to provide as much variability as is needed to obtain the tires and service. The State of Missouri must also be assured the product is readily available.

For the reasoning cited in the above paragraph, the contract shall be considered a preferred-use contract which means all state agencies should use the contract for the supplies and service on contract if needed. Even though the contract is considered a preferred-use contract, there will be rare situations where an agency may waive itself from using the contract so long as such determination is supportable and in the best interests of the state. Reasons for not using the contract shall include but shall not necessarily be limited to the following: specific item is out-of-stock for an unreasonable amount of time (to be determined by the state agency) without an acceptable substitute; closest authorized dealer is too far and it would be burdensome for the agency to pay the cost associated with travel.

TIRES, TUBES AND RELATED SERVICES
STATEWIDE NOTICE

The State of Missouri Tire Contract Percentage Discount Off List Pricing:

	CC191557001 Bridgestone Americas	CC191557003 The Goodyear Tire & Rubber Company
Pursuit and Performance Tires	57%	52.5%
Automobile/Passenger Vehicles	41%	48%
Light Duty Trucks (Radial)	37%	48%
Medium Commercial/Heavy Duty Trucks/Buses	46%	60%
Off Road (Radial)	37%	30%
Off Road (Bias)	37%	30%
Agricultural/Farm	23%	Not Available
Industrial	23%	Not Available

TIRES, TUBES AND RELATED SERVICES
STATEWIDE NOTICE

CC191557001: BRIDGESTONE SERVICE PRICING AS FOLLOWS:

Type of Service		Pursuit, Performance, Passenger	Light Duty Trucks	Medium Commercial/ Heavy Duty/Bus	
				Single	Dual
1	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)	\$5.00	\$5.00	\$25.00	\$28.00
2	Change tire, dismount and mount	\$5.00	\$5.00	\$25.00	\$28.00
3	Flat Repair, remove, repair and mount	\$15.00	\$15.00	\$25.00	\$28.00
4	Flat repair, off vehicle	\$12.00	\$12.00	\$30.00	\$33.00
5	Rotate mounted tires (per tire)	\$3.50	\$3.50	\$5.00	\$5.00
6	New valve stem rubber or metal (per tire)	\$3.00	\$3.00	\$9.00	\$9.00
7	Wheel balance-computer spin balance (Per Tire)	\$9.50	\$9.50	\$18.00	\$18.00
8	Wheel balance/Valve stem combo (per tire)	\$12.50	\$12.50	\$27.00	\$27.00
9	Alignment services				
	9a. Standard two wheel alignment	\$55.00	\$55.00		
	9b. Four wheel alignment	\$70.00	\$70.00		
	9c. Bushing/cam alignment	Current Mfg's list price for parts; Labor based on Mitchell Manual.	Current Mfg's list price for parts; Labor based on Mitchell Manual.		
10.	Studding (Per Tire) – To be performed on new tires only.	15.00	15.00		
11	Used tire recycle/disposal fee (per tire)	3.00	3.00		
12	Tire pressure monitoring kit (per Tire)	10.00	10.00		

The State of Missouri Tire Contract Service Pricing:

CC191557003: THE GOODYEAR TIRE & RUBBER COMPANY SERVICE PRICING AS FOLLOWS:

Type of Service	Pursuit, Performance, Passenger	Light Duty Trucks	Medium Commercial/ Heavy Duty/Bus	
			Single	Dual
1 Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)	\$0.00	\$8.00	\$24.00	\$36.00
2 Change tire, dismount and mount	\$8.50	\$10.00	\$27.51	\$30.82
3 Flat Repair, remove, repair and mount	\$14.00	\$15.50	\$31.00	\$45.00
4 Flat repair, off vehicle	\$14.00	\$14.00	\$31.00	\$45.00
5 Rotate mounted tires (per tire)	\$3.50	\$3.50	\$17.16	\$17.16
6 New valve stem rubber or metal (per tire)	Rubber \$3.00 Metal \$6.75	Rubber \$3.00 Metal \$6.75	\$9.00	\$9.00
7 Wheel balance-computer spin balance (Per Tire)	\$10.95	\$10.95	\$33.00	\$36.00
8 Wheel balance/Valve stem combo (per tire)	\$13.95	\$13.95	\$38.72	\$38.72
9 Alignment services				
9a. Standard two wheel alignment	\$69.95	\$69.95	Not Available	Not Available
9b. Four wheel alignment	\$74.95	\$74.95	Not Available	Not Available
9c. Bushing/cam alignment	Current Mfg's list price for parts; Labor based on Mitchell Manual.	Current Mfg's list price for parts; Labor based on Mitchell Manual.	Not Available	Not Available
9d. Vehicle Alignment Check Only	\$29.00	\$29.00	Not Available	Not Available
10 Used tire recycle/disposal fee (per tire)	See applicable state laws	See applicable state laws	See applicable state laws	See applicable state laws
11 Bulk tire disposal (min. of six tons capacity)	See applicable state laws	See applicable state laws	See applicable state laws	See applicable state laws
12 Tire pressure monitoring kit (per Tire)	Current Mfg.'s list price for kit; Labor rate per Mitchell Manual.	Current Mfg.'s list price for kit; Labor rate per Mitchell Manual.	Not Available	Not Available
13 Service TPMS Sensors/System	\$2.50/Tire	\$2.50/Tire	Not Available	Not Available

**State of Missouri
Office of Administration
Division of Purchasing
Contract Performance Report – Tires, Tubes and Services**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve products and services available to state agency users. **Comments should include those of the product's end user.**

Contract No.: _____ **Contractor:** _____

Describe Product Purchased (include Item No's., if available): _____

Rating Scale: 5 = Excellent, 4 = Good, 3 = Average, 2 = Poor, 1 = Fails to meet expectations

Product Rating	Rate 1-5, 5 best
Product meets your needs	
Product meets contract specifications	
Pricing	

Contractor Rating	Rate 1-5, 5 best
Timeliness of delivery	
Responsiveness to inquiries	
Employee courtesy	
Problem resolution	
Recall notices handled effectively	

Comments: _____

Prepared by: _____ **Title:** _____ **Agency:** _____

Date: _____ **Phone:** _____ **Email:** _____

Address: _____

Please detach or photocopy this form & return by FAX to 573-526-9816, or mail to:

Office of Administration
Division of Purchasing
301 West High Street, RM 630
PO Box 809
Jefferson City, Missouri 65102
You may also e-mail form to the buyer as an attachment at
jason.kolks@oa.mo.gov

April 25, 2019

To: Russell B. Hawes, Chief Administrative Officer

For Your Consideration: Bridgestone/Goodyear Medium and Heavy Duty Truck Tires, Bid # 13141

The City of Kirkwood may use cooperative contracts that are competitively bid. The State of Missouri competitively bid Bridgestone/Goodyear Medium and Heavy Duty Truck Tires and Raben Tire was designated as an authorized dealer under the contract. The state contract number is CC191557003.

Funds are available in the account number, 608-1703-429.66-27, in the amount of \$68,097.00.

Attached is a request from Christopher Wenom, Fleet Director, for a resolution authorizing a contract at the rates provided in state contract number is CC191557003 to be issued to Raben Tire for the purchase of Bridgestone/Firestone Medium and Heavy Duty Truck Tires, on an as needed basis, but not to exceed budgeted funds.

Respectfully,

A handwritten signature in black ink, appearing to read "David Weidler, CPPO, CPPB".

David Weidler, CPPO, CPPB
Procurement Director

BILL 10743

ORDINANCE

AN ORDINANCE GRANTING A SPECIAL USE PERMIT AMENDMENT FOR A RESTAURANT (NATHANIEL REID BAKERY) ON THE PROPERTY KNOWN AS 11235, 11243 & 11245 MANCHESTER ROAD SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, Nathaniel Reid made application (PZ-21-19) for a special use permit amendment to expand the existing restaurant on the property known 11243 & 11245 Manchester Road into the tenant space known as 11235 Manchester Road; and

WHEREAS, the Planning and Zoning Commission did on the 6th day of March, 2019, by adopting the Staff memo dated February 27, 2019, (attached hereto and incorporated by reference herein), recommend the granting of said Special Use Permit amendment subject to certain conditions and did find that granting of said permit would not substantially increase traffic hazards or congestion, would not substantially increase fire hazards, would not adversely affect the character of the neighborhood, would not adversely affect the general welfare of the community, and would not overtax public utilities, and that granting such permit would be consistent with the zoning laws; and

WHEREAS, the Council did on the 4th day of April, 2019, hold a public hearing with respect to the special use permit amendment after duly advertising and giving proper notice of such hearing and does find that the granting of such permit, subject to certain conditions, would not substantially increase traffic hazards or congestion, would not substantially increase fire hazards, would not adversely affect the character of the neighborhood, would not adversely affect the general welfare of the community, and would not overtax public utilities; and

WHEREAS, the Council does further find that the general welfare requires that such permit amendment be subject to the conditions hereinafter set out.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. A Special Use Permit amendment for a restaurant is hereby granted on the property known as 11235, 11243, & 11245 Manchester Road subject to the following conditions:

1. A Special Use Permit be granted for a restaurant (bakery) and be limited to the tenant spaces at 11235, 11243, and 11245 Manchester Road.
2. The project shall be consistent with the floor plan stamped "Received November 2, 2015, City of Kirkwood Public Works Department" and the annotated as-built floor plan stamped "February 22, 2019, City of Kirkwood Public Works Department", except as noted herein.
3. Indoor seating shall be limited to 12 chairs.
4. Outdoor music shall not be permitted.
5. Any new rooftop equipment, air-conditioning units and mechanical equipment related to the project shall be completely screened from view of adjoining properties and right-of-way.
6. The Architectural Review Board shall approve all signs prior to the issuance of a Sign Permit.

SECTION 2. The approval of this Special Use Permit Amendment shall not authorize any person to unreasonably alter, increase, or redirect the surface water run off so as to cause harm to any person or property.

SECTION 3. The premises and improvements as approved by this Special Use Permit Amendment shall be in good working order and maintained in good repair at all times.

SECTION 4. The applicant by accepting and acting under the Special Use Permit Amendment herein granted accepts the approval subject to the reservations, restrictions, and conditions set forth in the Code of Ordinances and in this Ordinance and agrees to comply with each provision subject to the penalties prescribed under Section 1-8 of the Code of Ordinances and subject to revocation of this permit in the event such provisions are not complied with.

SECTION 5. The applicant further agrees by accepting and acting under this Special Use Permit Amendment granted herein that this Ordinance does not grant applicant any special rights, privileges, or immunities

SECTION 6. This Ordinance shall become null and void in the event the petitioner does not obtain a building permit for the construction approved by this Ordinance within one year of the passage of this ordinance.

SECTION 7. The applicant and his successors and assigns by accepting and acting under the approval herein granted accepts the approval subject to the condition that failure to abate any violation of this approval or any provisions of the Code of Ordinances of the City of Kirkwood within five (5) days after notice by hand delivery or first-class mail shall result in an administrative investigation fee of \$500 due to the City of Kirkwood. An invoice shall be issued. A Stop Work Order to cease all work on the premises except such work as directed by the Public Services Director to abate the violation may be issued for any work on the premises until the investigation fee is paid in full. The City may demand payment of said fee from the holder of the letter of credit, any bond, or escrow if not paid within 30 days of the invoice.

SECTION 8. This ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS ____ day of _____, 2019.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Introduced:

1st Reading:

2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 4/4/2019

Step #1:

Strategic Plan Select... Goal # & Title

Background To Issue:

The owner of the Nathaniel Reid Bakery has applied for an expansion of his existing restaurant/bakery into a tenant space below his current space. The expansion is proposed for additional dry storage, cold storage, and dough prep. The expansion will not increase employees or seating for the restaurant. Additional information is provided in the attached Staff memo.

Recommendations and Action Requested:

The Planning & Zoning Commission unanimously recommended approval of the SUP amendment at their meeting on March 6, 2019. A public hearing is requested along with Council consideration of the recommendation from the P&Z Commission.

Alternatives Available:

Cost: \$0.00 Account #: 0 Project #: Budgeted: YES
If YES, Budgeted Amount: \$0.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Jonathan Raiche

Date: 3/26/2019

Authenticated: raichejd

You can attach up to 3 files along with this request.



2019-04-04 PZ-21-19
Ordinance.docx
Microsoft Word Document
20.9 KB



2019-03-06 PZ-21-19 Staff
Memo.pdf
Adobe Acrobat Document
11.4 MB

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

You can attach up to 3 files along with this request.

📎 File Attachment

📎 File Attachment

📎 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY:



Date:

3-29-19

MEMORANDUM

TO: PLANNING & ZONING COMMISSION
FROM: JONATHAN D. RAICHE, CITY PLANNER *JDR*
SUBJECT: PZ-21-19; 11235 MANCHESTER ROAD –
NATHANIEL REID BAKERY (SUP AMEND –
RESTAURANT)
DATE: FEBRUARY 27, 2019
CC: BILL BENSING, PUBLIC SERVICES DIRECTOR



WHERE COMMUNITY AND SPIRIT MEET ®

PROJECT DESCRIPTION:

The existing restaurant/bakery tenant, Nathaniel Reid Bakery, in the Cambridge Building is requesting a Special Use Permit Amendment to allow an expansion of their restaurant operations into an existing tenant space on the lower level of the same building. The gross square footage of the existing tenant space is approximately 2,000 sf and the expansion is proposed for an additional 784 sf. As referenced in the attached cover letter submitted by the applicant, the expansion space will allow for additional bread dough prep area and storage area for the existing bakery. No cooking activity or equipment is proposed for the additional area.

The current bakery operates under Ordinance 10,297 (attached). This ordinance limits indoor seating to 12 chairs and prohibits outdoor music. The current bakery has hours of operation on Monday through Friday from 7:00am to 6:00pm and on Saturday from 7:00am to 5:00pm. The applicant is not proposing any change to the hours of operation or to the number of employees.

DISCUSSION:

Zoning Matters signs will be placed on the property by March 1st for proper notification of the application. Because there is no increase in seating area for the bakery and no additional employees proposed, there is no additional parking required by the Zoning Code for this proposal. Staff recommends that the conditions of Ordinance 10,297 be carried forward into the new ordinance as conditions noted below.

RECOMMENDATION:

Staff recommends this petition for a Special Use Permit for a Restaurant on the properties known as 11235, 11243, and 11245 Manchester Road be **approved** with the following conditions:

1. The project shall be consistent with the floor plan stamped "received November 2, 2015, City of Kirkwood Public Works Department" and the annotated as-built floor plan stamped "February 22, 2019, City of Kirkwood Public Works Department", except as noted herein.
2. Indoor seating shall be limited to 12 chairs.
3. Outdoor music shall not be permitted.
4. Any new rooftop equipment, air-conditioning units and mechanical equipment related to the project shall be completely screened from view of adjoining properties and right-of-way.
5. The Architectural Review Board shall approval all signs prior to the issuance of a Sign Permit.

Attachments:

Planning & Zoning Application

Applicant Cover Letter dated February 21, 2019

Annotated As-Built Floor Plan stamped February 22, 2019

Ordinance 10,297

CITY OF KIRKWOOD

APPLICATION FOR PLANNING AND ZONING COMMISSION ACTION

DATE: 2/21/19

CASE NUMBER: PZ-21-19
PROJECT ADDRESS: 11235 Manchester Rd 63122
ZONING DISTRICT: B3 LOT SIZE: _____
LOCATOR NUMBER: 22N34-0639

ACTION REQUESTED

- Zoning Change From _____ to _____
- Community Unit Plan, Type: _____
- Special Use Permit, Category: Restaurant
- Subdivision Development, Number of Lots: _____
- B4 Development Plan
- B5 Development Plan

- Site Plan Review
 - Right-of-Way/Easement Vacation
 - Other: _____
- Comments: EXPAND TO LOWER LEVEL

PETITIONER INFORMATION

I (We) hereby certify that I (we) have legal interest in the hereinabove described property and that all information given herein is true and a statement of fact

Name (Print): Nathaniel Reid Signature: Nathaniel Reid Phone No.: 702-378-6715
Mailing Address: 11243 Manchester Rd City: Kirkwood State: MO Zip: 63122
E-mail Address: Nathaniel@nrbakery.com
Petitioner's Status: Corporation Partnership Individual
Relationship of Petitioner to Property: Owner Tenant Option Holder (Attach Copy of Contract) Other

AGENT INFORMATION

Agent's Name: _____ Signature: _____ Phone No.: _____
Mailing Address: _____ City: _____ State: _____ Zip: _____
E-mail Address: _____

(NOTE: The petitioner's agent, if listed, shall receive the official notice of public hearing)

PROPERTY OWNERS

Signature required or submit proof petitioner has legal interest in property.

Name: _____	Name: <u>TIM BOEGEMAN, BAYWOOD REALTY, AGENT FOR HARRY W BOEGEMAN LIVING TRUST</u>
Signature: _____	Signature: <u>[Signature]</u>
Address: _____	Address: <u>8922 Manchester Rd.</u>
City/State/Zip: _____	City/State/Zip: <u>St. Louis, MO 63144</u>
Phone: _____	Phone: <u>office: (314) 962-9900 cell: (314) 369-3984</u>

FOR CITY USE ONLY

Date Received: 2-22-19 Total Received: \$ 1000.00 Agenda Date: 3-6-19

- B-4/B-5 Development Plan (Preliminary): \$1,000 + _____ Acres @ \$100/Acre or portion over one acre) = \$ _____
- CUP, Preliminary (Multi Family): \$1,000 + _____ Dwelling units @ \$20/Each = \$ _____ = \$ _____
- CUP, Preliminary (Detached Single Family): \$1,000 + _____ Lots @ \$500/Lot = \$ _____
- Letter of Credit Extension: \$100
- Rezoning: \$1,000
- Site Plan Review: \$1,000
- Site Plan Review Amendment \$800 or Extension: \$300
- Site Plan Review, Mixed Use in B2 Zoning District (Preliminary): \$1,000 (includes SPR fee) + \$25/acre or portion over one acre
- Special Use Permit and Special Use Permit Amendments: \$1,000
- Subdivision, Preliminary (Detached Single Family): _____ Lots @ \$500/Lot = \$ _____
- Vacation, Easement: \$75
- Vacation, Right-of-way: \$100
- Zoning Code Amendment: \$1,000

Final Subdivision Plat/Community Unit Plan/B-4 or B-5 Development Plan

Date Received: _____ Total Received: \$ _____ Agenda Date: _____

- B-4 and B-5 Development Plan (Final) or B4 Development Plan Amendment (when public hearing is not required): \$1,000
- B-5 Development Plan Amendment (when public hearing is not required): \$500
- CUP Amendment, Type A or Type C: Without public hearing \$500; With public hearing \$800
- CUP Type C (Final): \$500 + 1-1/4% of \$ _____ = \$ _____
- CUP Type A or C Time Extension on Final: \$300
- Sidewalk Waiver on _____ feet @ \$30/Foot = \$ _____ = \$ _____
- Site Plan Review, Mixed use in B2 Zoning District (Final): \$500
- Site Plan, Mixed use in B2 Zoning District Amendment: \$300
- Subdivision Plat or CUP Type A (Final): _____ Lots @ \$100/Lot = \$ _____ + 1-1/4% of \$ _____ = \$ _____
- Subdivision Plat Development Plan Amendment: \$200

February 21, 2019

Jonathan D. Raiche, AICP
City Planner, City of Kirkwood
139 S. Kirkwood Rd.
Kirkwood, MO 63122

Dear Mr. Raiche,

Nathaniel Reid Bakery is a retail bakery providing breakfast pastries, sandwiches, sweets and non-alcoholic beverages to the Kirkwood community since August 1st 2016. We are located at 11243 and 11245 Manchester Rd. Our business hours are Monday through Friday from 7am until 6pm, Saturday from 7am until 5pm and closed on Sundays. We would like to expand our storage and prep space to meet the demands of our customer base. In order to meet these demands we would like to lease a vacant space (11235 Manchester Rd.) in the Cambridge Building.

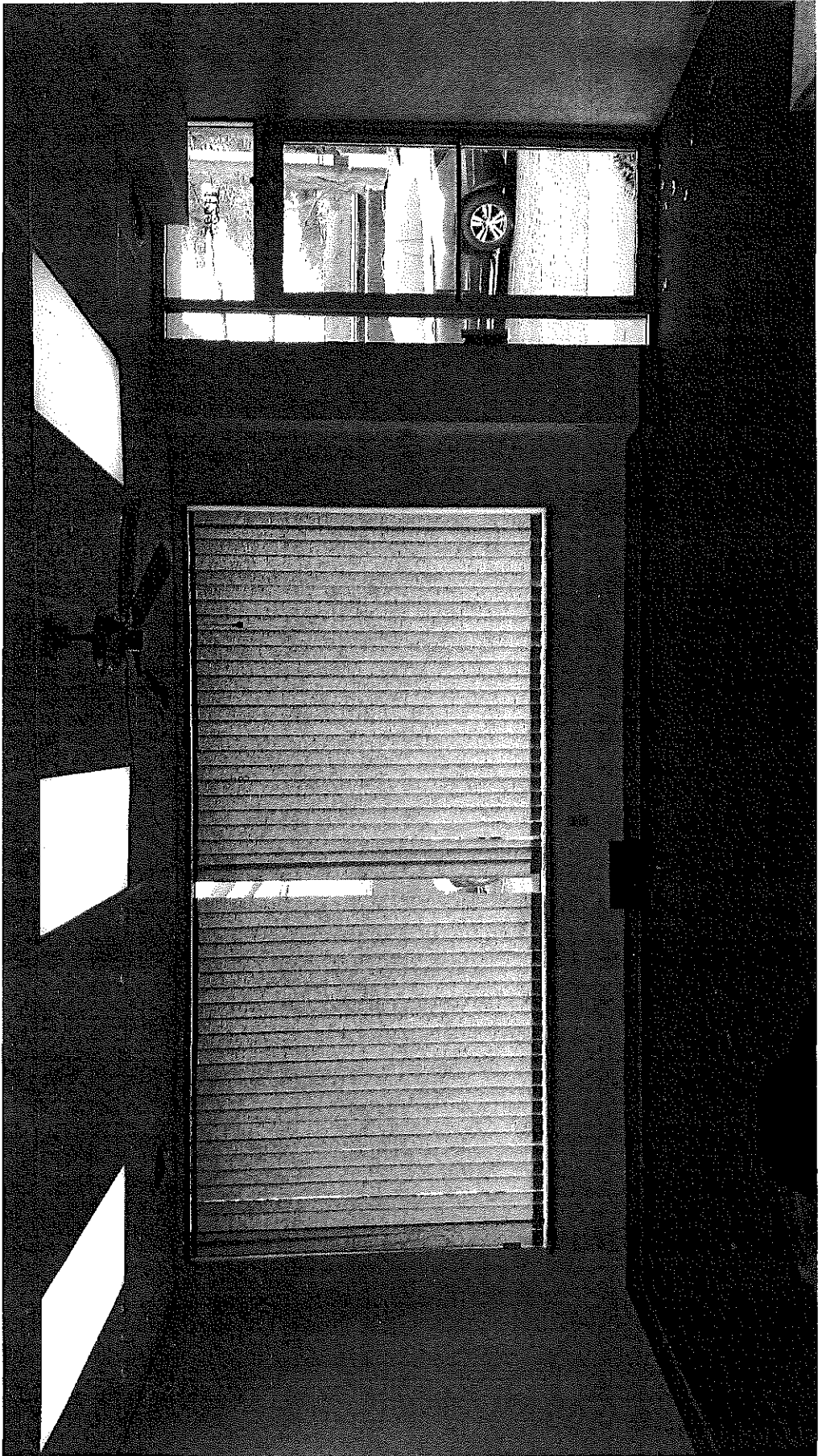
The use of 11235 Manchester road would be for storage and light food prep (no cooking). There would be no access to this space for customers and is strictly for employees only. The items to be stored in this area would be overflow of refrigeration and freezer items from our current space. It would also allow us to have additional paper storage and buy packaging in larger quantities. The light food prep would be used to mix and shape breads.

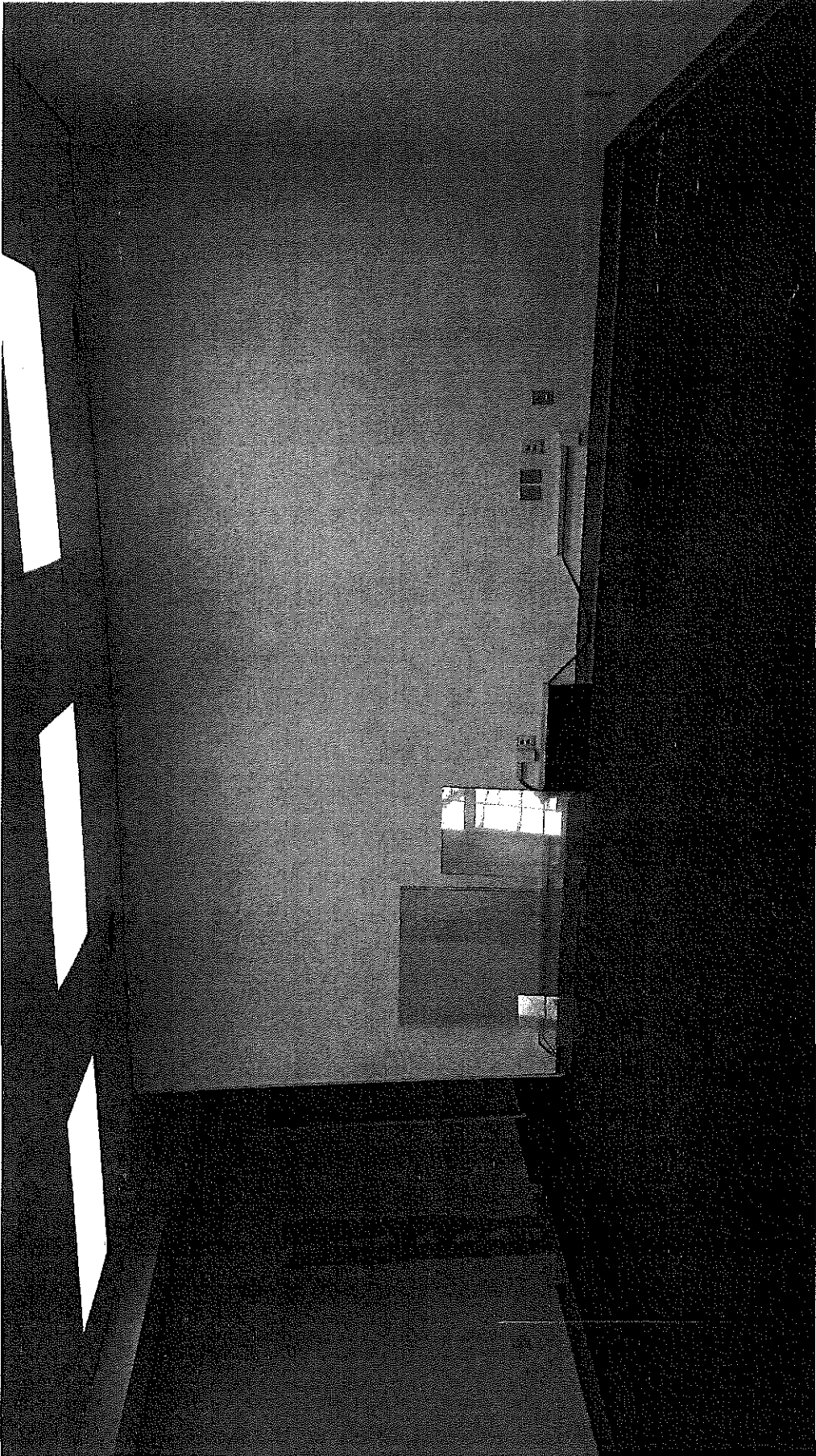
By leasing the additional space, we would not be changing any hours to our current operation. We would not be changing the number of employees working (currently 10 at any time) in our operation, just moving some of their work stations to this new area. We would not have an increase in parking demand either, and would be saving spaces on the parking lot compared to if this unit was leased to a new client. We would not be increasing our retail space or design of the current bakery.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nathaniel Reid', written over a white background.

Nathaniel Reid





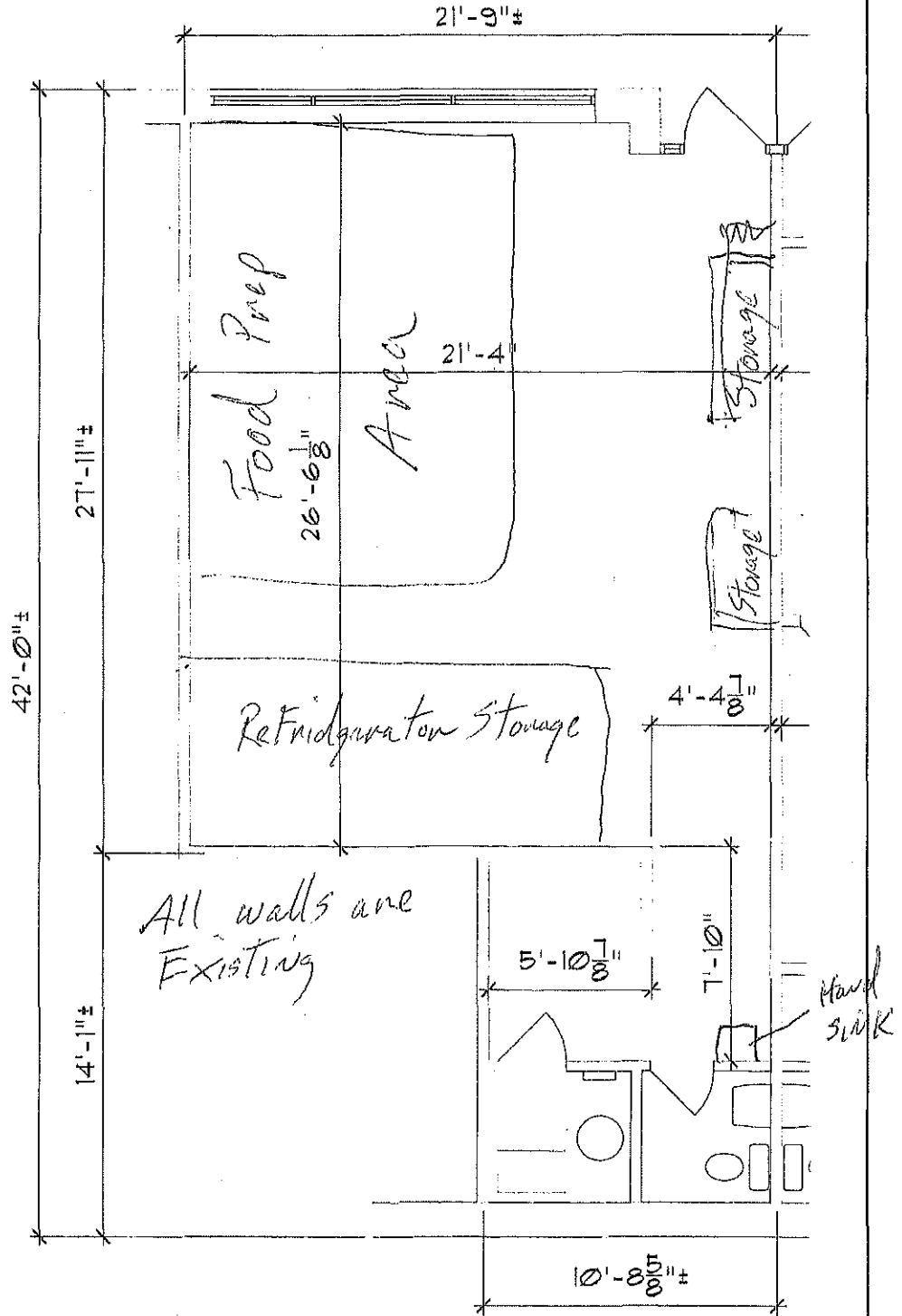
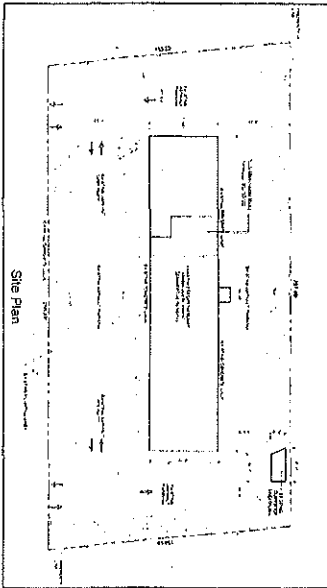


THE CAMBRIDGE BUILDING

11215 - 11247 Manchester Road, Kirkwood, MO 63122

Quick Reference Data:

- * Approx. 784 Square Feet
- * Conveniently located just west of Geyer Road
- * Convenient parking
- * Great mix of co-tenants!



Baywood Rlty & Constr Corp.
 8922 Manchester Rd, St. Louis, MO 63144
 Contact: Tim Boegeman (314)962-8900x4



As-Built Floor Plan | 11235 Manchester Road, Kirkwood, MO 63122

Property owner and management make no representations as to the suitability or viability of the Premises or its infrastructure for any use. Building as built takes precedence over this plan as drawn. Field verification of all aspects is necessary prior to reliance on this plan. This plan may not be to scale

BILL 10448A

ORDINANCE 10297

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR A RESTAURANT (REIDS PASTRY & CHOCOLATE, LLC) ON THE PROPERTY KNOWN AS 11243 & 11245 MANCHESTER ROAD SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, Nathaniel Reid made application (PZ-04-16) for a special use permit for a restaurant on the property known 11243 & 11245 Manchester Road; and

WHEREAS, the Planning and Zoning Commission did on the 7th day of October, 2015, by adopting the subcommittee report dated October 7, 2015, (attached hereto and incorporated by reference herein), recommend the granting of said Special Use Permit subject to certain conditions and did find that granting of said permit would not substantially increase traffic hazards or congestion, would not substantially increase fire hazards, would not adversely affect the character of the neighborhood, would not adversely affect the general welfare of the community, and would not overtax public utilities, and that granting such permit would be consistent with the zoning laws; and

WHEREAS, the Council did on the 5th day of November, 2015, hold a public hearing with respect to the special use permit after duly advertising and giving proper notice of such hearing and does find that the granting of such permit, subject to certain conditions, would not substantially increase traffic hazards or congestion, would not substantially increase fire hazards, would not adversely affect the character of the neighborhood, would not adversely affect the general welfare of the community, and would not overtax public utilities; and

WHEREAS, the Council does further find that the general welfare requires that such permit and site plan approval be subject to the conditions hereinafter set out.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. A Special Use Permit for a restaurant (bakery) is hereby granted on the property known as 11243 & 11245 Manchester Road subject to the following conditions:

1. The project shall be consistent with the floor plan stamped "Received November 2, 2015, City of Kirkwood Public Works Department", except as noted herein.
2. Indoor seating shall be limited to 12 chairs.
3. Outdoor music shall not be permitted.
4. Any new rooftop equipment, air-conditioning units and mechanical equipment related to the project shall be completely screened from view of adjoining properties and right-of-way.
5. The Architectural Review Board shall approve all signs prior to the issuance of a Sign Permit.

SECTION 2. The approval of this Special Use Permit and Site Plan Approval shall not authorize any person to unreasonably alter, increase, or redirect the surface water run off so as to cause harm to any person or property.

SECTION 3. The premises and improvements as approved by this Special Use Permit shall be in good working order and maintained in good repair at all times.

SECTION 4. The applicant by accepting and acting under the Special Use Permit herein granted accepts the approval subject to the reservations, restrictions, and conditions set forth in the Code of Ordinances and in this Ordinance and agrees to comply with each provision subject to the penalties prescribed under Section 1-8 of the Code of Ordinances and subject to revocation of this permit in the event such provisions are not complied with.

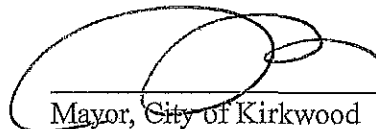
SECTION 5. The applicant further agrees by accepting and acting under this Special Use Permit and Site Plan Approval herein granted that this Ordinance does not grant applicant any special rights, privileges, or immunities

SECTION 6. This Ordinance shall become null and void in the event the petitioner does not obtain a building permit for the construction approved by this Ordinance within one year of the passage of this ordinance.

SECTION 7. The applicant and his successors and assigns by accepting and acting under the approval herein granted accepts the approval subject to the condition that failure to abate any violation of this approval or any provisions of the Code of Ordinances of the City of Kirkwood within five (5) days after notice by hand delivery or first-class mail shall result in an administrative investigation fee of \$500 due to the City of Kirkwood. An invoice shall be issued. A Stop Work Order to cease all work on the premises except such work as directed by the Public Services Director to abate the violation may be issued for any work on the premises until the investigation fee is paid in full. The City may demand payment of said fee from the holder of the letter of credit, any bond, or escrow if not paid within 30 days of the invoice.


SECTION 8. This ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS 19TH DAY OF NOVEMBER 2015.



Mayor, City of Kirkwood

ATTEST:

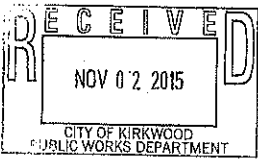


Deputy City Clerk

Public Hearing: November 5, 2015

1st Reading: November 5, 2015

2nd Reading: November 19, 2015



1
A2.1
BAKERY FLOOR PLAN - REVISED (designed occupant load of 15)
 3/16" = 1'-0"



EXISTING WALLS
 NEW WALLS

Preliminary
Not For
Construction

Ann Stahl, AIA
 7428 Warner Ave
 St. Louis, MO 63117
 314.775.3888
 MO License A-2011002772

Date
9.17.15

Issue 1.0
Special Use Permit
 Revised 10.30.15

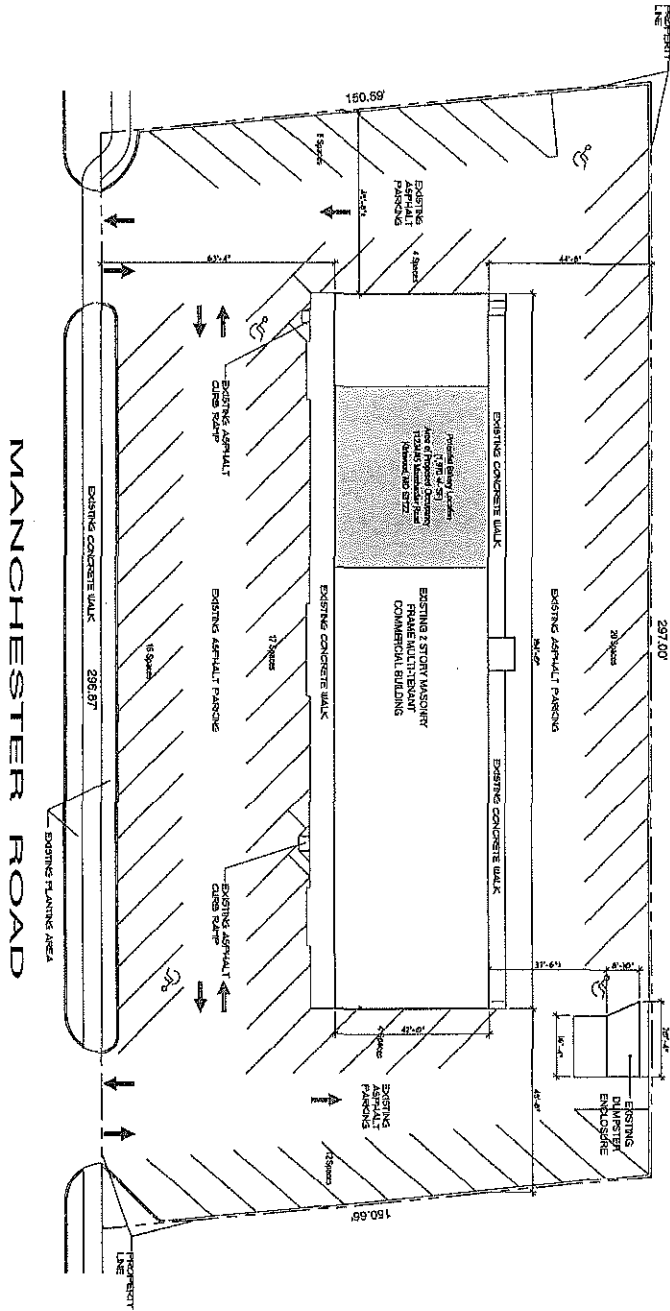
sheet no.
A2.1

A Bakery
 Baywood Realty & Construction Company
 11245 Manchester Road
 Kirkwood, Missouri 63122
 Saint Louis County

SITE PLAN PROVIDED FOR:

A POTENTIAL NEW BAKERY

11234 & 11245 MANCHESTER ROAD
KIRKWOOD, MO 63122



SITE PLAN



(81) TOTAL EXISTING PARKING SPACES
(4) TOTAL EXISTING ACCESSIBLE PARKING SPACES

<p>Baywood Realty</p> <p><small>Property owner and management make no representations as to the accuracy or stability of the Premises or the Plans/Drawings for any use. Building and other work in accordance with this plan as shown. Field verification of all aspects is necessary prior to reliance on this plan. This plan may not be to scale.</small></p>	<p>SITE PLAN PROVIDED FOR:</p> <p>A POTENTIAL NEW BAKERY</p> <p>11234 & 11245 MANCHESTER ROAD KIRKWOOD, MO 63122</p>	
	<p>Drawn By: TTB</p> <p>Date: 8/1/18</p> <p>Project No. 1576</p> <p>Revision: 0</p> <p>Sheet Title: Site Plan (for Parking)</p>	<p>Sheet No. A-1</p> <p>of</p>

PROCEDURE FOR PUBLIC HEARING

Mayor: At this time the council will recess to conduct a public hearing regarding:

A request for an amendment to the Special Use Permit to allow Nathaniel Reid Bakery at 11243 and 11245 Manchester Road to expand into the space at 11235 Manchester Road

Mayor: Mr. Hessel, do you wish to enter any exhibits into the record?

Mayor: Mr. Hawes, who will present this issue to the City Council?

City Planner Jonathan Raiche

Mayor: Georgia, has anyone completed a card to speak regarding this proposal?

Mayor: Is there anyone in the audience that did not complete a card that wishes to speak regarding this issue? (Please be sure to fill out a card before you leave so your name and address is reflected in the record)

Mayor: Hearing no further discussion, the council will take this matter under advisement and consider the hearing to be recessed.



AFFIDAVIT OF PUBLICATION

STATE OF MISSOURI
COUNTY OF ST. LOUIS

} S.S.

Page 1 of 1

Before the undersigned Notary Public personally appeared **Karie Clark** on behalf of **THE COUNTIAN, ST. LOUIS COUNTY** who, being duly sworn, attests that said newspaper is qualified under the provisions of Missouri law governing public notices to publish, and did so publish, the notice annexed hereto, starting with the **March 12, 2019** edition and ending with the **March 12, 2019** edition, for a total of 1 publications:

03/12/2019

CITY OF KIRKWOOD NOTICE OF PUBLIC HEARING

Before the City Council of
Kirkwood, Missouri

The Council of the City of Kirkwood will hold a public hearing in City Hall, 139 South Kirkwood Road, Kirkwood, Missouri at the hour of 7:00 p.m., Thursday, April 4, 2019 to consider the following:

A request for an amendment to the Special Use Permit to allow Nathaniel Reid Bakery at 11243 and 11245 Manchester Road to expand into the space at 11235 Manchester Road.

Laurie Asche, CMC/MRCC
City Clerk

The City of Kirkwood is interested in effective communication for all persons. Persons requiring an accommodation to attend and participate in the meeting should contact the City Clerk at 314-822-5802 at least 48 hours before the meeting. With advance notice of seven calendar days, the City of Kirkwood will provide interpreter services at public meetings for languages other than English and for the hearing impaired. Upon request, the minutes from this meeting can be made available in an alternate format, such as CD by calling 314-822-5802. 11714075 County Mar. 12, 2019

Karie Clark

Karie Clark

Subscribed & sworn before me this 12th day of Mar, 2019
(SEAL)

Chanel Jones
Notary Public

CHANEL JONES
Notary Public - Notary Seal
State of Missouri
Commissioned for St Louis County
My Commission Expires: August 08, 2022
Commission Number: 14397721



AFFIDAVIT OF PUBLICATION

City of Kirkwood

Attn: Laurie Asche
City Clerk
139 S. Kirkwood Rd.
Kirkwood, MO 63122

I, Terry Cassidy, verify that the attached Public Hearing
Notice was published in the Webster-Kirkwood Times on
March 15, 2019


Advertising Consultant



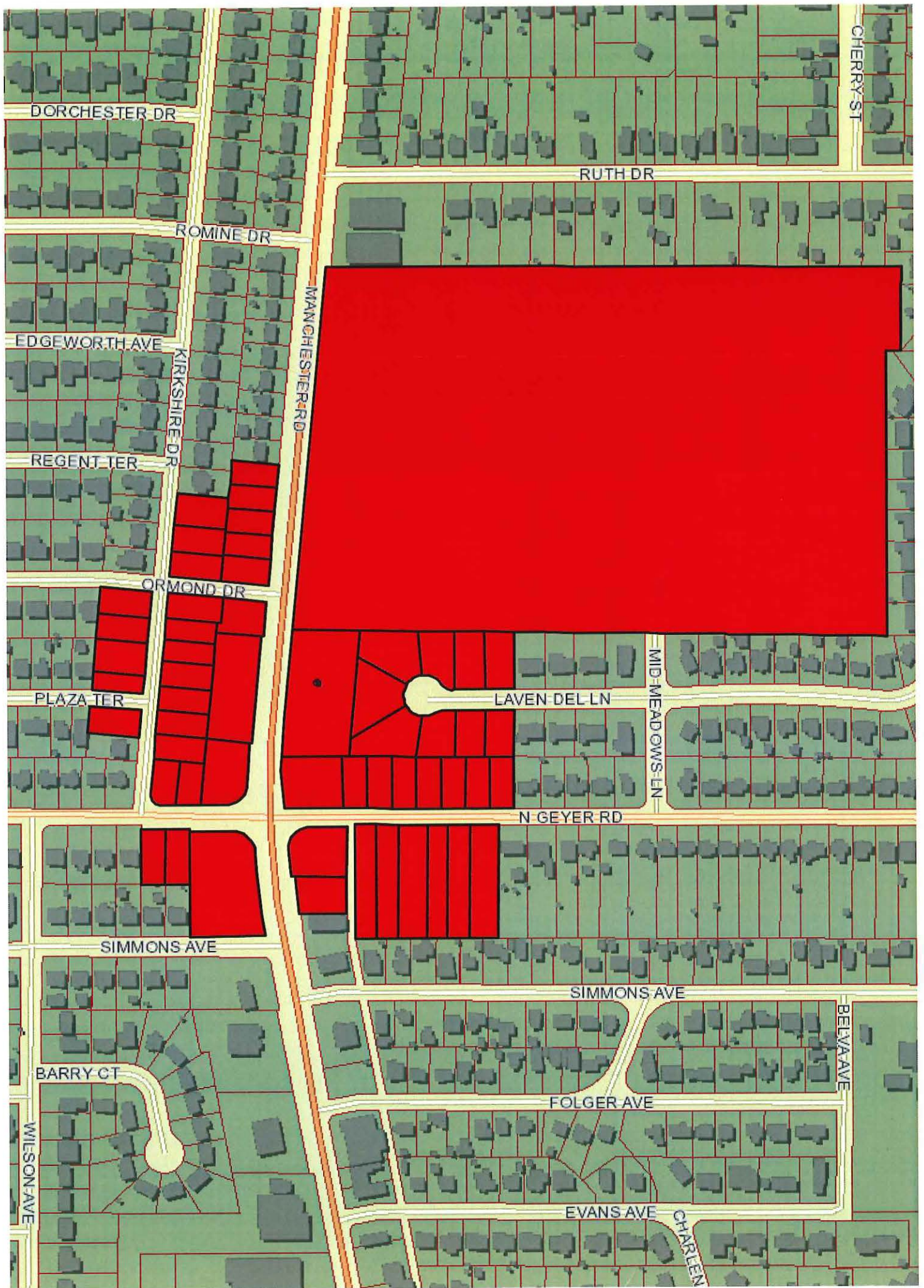
NOTICE OF PUBLIC HEARING
before the City Council
of Kirkwood, MO

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A request for an amendment to the Special Use Permit to allow Nathaniel Reid Bakery at 11243 and 11245 Manchester Road to expand into the space at 11235 Manchester Road.

Betty Montano, MMC/MPCC, City Clerk

The City of Kirkwood is interested in effective communication for all persons. Persons requiring an accommodation to attend and/or participate in the meeting should contact the City Clerk at 314-822-5802 at least 48 hours before the meeting. With advance notice of seven calendar days, the City of Kirkwood will provide interpreter services at public meetings for languages other than English and for the hearing impaired. Upon request, the minutes from this meeting can be made available in an alternate format, such as CD by calling 314-822-5802.



DORCHESTER DR

RUTH DR

CHERRY ST

ROMINE DR

MANCHESTER RD

EDGEWORTH AVE

KIRKSHIRE DR

REGENT TER

ORMOND DR

PLAZA TER

LAVEN-DEL LN

MID-MEADOWS LN

N GEYER RD

SIMMONS AVE

SIMMONS AVE

BARRY CT

BELVA AVE

FOLGER AVE

WILSON AVE

EVANS AVE

CHARLEEN

PROPERTY OWNER
1130 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
521 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
527 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
531 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
1185 LAVEN DEL LN
SAINT LOUIS, MO 6312

PROPERTY OWNER
535 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
1125 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
64 SANDWEDGE DR
SAINT CHARLES, MO 63303

PROPERTY OWNER
601 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
1184 LAVEN DEL LN
SAINT LOUIS, MO 63122

PROPERTY OWNER
1122 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
607 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
613 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
106 E WASHINGTON ST
CUBA, MO 65453

PROPERTY OWNER
1129 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
1128 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
516 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
1183 LAVEN DEL LN
SAINT LOUIS, MO 63122

PROPERTY OWNER
1188 LAVEN DEL LN
SAINT LOUIS, MO 63122

PROPERTY OWNER
200 HOLLEDER PKWY 101
ROCHESTER, NY 14615

PROPERTY OWNER
220 NORTHWOODS DR
PACIFIC, MO 63069

PROPERTY OWNER
528 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
11149 MANCHESTER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
534 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
423 MIRIAM AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
9507 PAGE AVE
SAINT LOUIS, MO 63132

PROPERTY OWNER
517 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
540 KIRKSHIRE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
112222 MANCHESTER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
11817 DOVERHILL DR
SAINT LOUIS, MO 63128

PROPERTY OWNER
11287 MANCHESTER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
201 N MAIN ST, STE 300
SAINT CHARLES, MO 63301

PROPERTY OWNER
1115 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
1193 LAVEN DEL LN
SAINT LOUIS, MO 63122

PROPERTY OWNER
1192 LAVEN DEL LN
SAINT LOUIS, MO 63122

PROPERTY OWNER
180 N STETSON AVE, STE 3650
CHICAGO, IL 60601

PROPERTY OWNER
1043 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
11310 MANCHESTER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
11316 MANCHESTER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
1136 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
46 SPRINGWATER CT
WENTZVILLE, MO 63385

PROPERTY OWNER
11306 MANCHESTER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
1048 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
1317 MISSOURI AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
11320 MANCHESTER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
1119 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
1116 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
6611 BONNIE RIDGE DR, #101
BALTIMORE, MD 21209

PROPERTY OWNER
1197 LAVEN DEL LN
SAINT LOUIS, MO 63122

PROPERTY OWNER
1139 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
1182 LAVEN DEL LN
SAINT LOUIS, MO 63122

PROPERTY OWNER
1047 N GEYER RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
511 KIRKSHIRE DR
SAINT LOUIS, MO 63122

March 7, 2019

Russell B. Hawes
Chief Administrative Officer

At the March 6, 2019, meeting of the Planning and Zoning Commission, the following action was taken:

1. Unanimously recommended approval of an amendment to the Special Use Permit to allow Nathaniel Reid Bakery at 11243 Manchester Road to expand into the space at 11235 Manchester Road.
2. Staff provided updates on development projects recently reviewed by the City Council and provided an update on the upcoming Comprehensive Zoning & Subdivision Code Review project.

The next meeting will be held on March 20, 2019, at 7 p.m.

Respectfully submitted,

Allen Klippel, Chair
Planning and Zoning Commission

MEMORANDUM

TO: PLANNING & ZONING COMMISSION
FROM: JONATHAN D. RAICHE, CITY PLANNER *JDR*
SUBJECT: PZ-21-19; 11235 MANCHESTER ROAD –
NATHANIEL REID BAKERY (SUP AMEND –
RESTAURANT)
DATE: FEBRUARY 27, 2019
CC: BILL BENSING, PUBLIC SERVICES DIRECTOR



WHERE COMMUNITY AND SPIRIT MEET ®

PROJECT DESCRIPTION:

The existing restaurant/bakery tenant, Nathaniel Reid Bakery, in the Cambridge Building is requesting a Special Use Permit Amendment to allow an expansion of their restaurant operations into an existing tenant space on the lower level of the same building. The gross square footage of the existing tenant space is approximately 2,000 sf and the expansion is proposed for an additional 784 sf. As referenced in the attached cover letter submitted by the applicant, the expansion space will allow for additional bread dough prep area and storage area for the existing bakery. No cooking activity or equipment is proposed for the additional area.

The current bakery operates under Ordinance 10,297 (attached). This ordinance limits indoor seating to 12 chairs and prohibits outdoor music. The current bakery has hours of operation on Monday through Friday from 7:00am to 6:00pm and on Saturday from 7:00am to 5:00pm. The applicant is not proposing any change to the hours of operation or to the number of employees.

DISCUSSION:

Zoning Matters signs will be placed on the property by March 1st for proper notification of the application. Because there is no increase in seating area for the bakery and no additional employees proposed, there is no additional parking required by the Zoning Code for this proposal. Staff recommends that the conditions of Ordinance 10,297 be carried forward into the new ordinance as conditions noted below.

RECOMMENDATION:

Staff recommends this petition for a Special Use Permit for a Restaurant on the properties known as 11235, 11243, and 11245 Manchester Road be **approved** with the following conditions:

1. The project shall be consistent with the floor plan stamped "received November 2, 2015, City of Kirkwood Public Works Department" and the annotated as-built floor plan stamped "February 22, 2019, City of Kirkwood Public Works Department", except as noted herein.
2. Indoor seating shall be limited to 12 chairs.
3. Outdoor music shall not be permitted.
4. Any new rooftop equipment, air-conditioning units and mechanical equipment related to the project shall be completely screened from view of adjoining properties and right-of-way.
5. The Architectural Review Board shall approval all signs prior to the issuance of a Sign Permit.

BILL 10744

ORDINANCE

AN ORDINANCE APPROPRIATING DONATIONS FOR THE URBAN FORESTRY COMMISSION FROM THE TWENTY-FIVE GARDENERS OF KIRKWOOD CLUB IN THE AMOUNT OF \$350.00 FROM THE DONATION ACCOUNT TO THE URBAN FORESTRY ACCOUNT.

WHEREAS, the City received a donation in the amount of \$350 from the Twenty-Five Gardeners of Kirkwood Club to be used towards classroom materials for the students participating in the Junior TreeKeepers Program, and

WHEREAS, the Junior TreeKeepers program is an award winning educational program that members of the Urban Forestry Commission make available to area students, and

WHEREAS, funds in the amount of \$350 need to be appropriated from Account #101-0000-365.30.00 (Donation) to Account #101-1102-412.31.08 (Urban Forestry).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. Funds in the amount of \$350 are hereby appropriated from Account #101-0000-365.30.00 (Donation) to Account #101-1102-412.31.08 (Urban Forestry).

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

Mayor, City of Kirkwood

ATTEST:

City Clerk
1st Reading:
2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 4/18/2019

Step #1:

Strategic Plan Select... Goal # & Title

Background To Issue:

The 25 Gardeners of Kirkwood have donated \$350 to the Kirkwood Urban Forestry Commission to be used for classroom materials for the students participating in the Junior TreeKeeper program.

Recommendations and Action Requested:

Donations need to be appropriated to Revenue Account 10100003653000 and then to an expenditure account before they can be used. The appropriate expenditure account is 101-1102-412.31-08.

Alternatives Available:

Cost: \$0.00 Account #: 10111024123108 Project #: Budgeted: NO

If YES, Budgeted Amount: If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Georgia Ragland

Date: 4/9/2019

Authenticated: raglangl

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve


Purchasing Director's Comments:


BY: David Weidler


Date: 4/9/2019

Authenticated: weidledc

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Appropriation

From Account # or Fund Name: Donation account 10100003653000

To Account # or Fund Name: 10111024123108 Urban Forestry

Finance Director's Comments:

BY: John Adams

Date: 4/9/2019

Authenticated: aschelb

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Diasapprove

Chief Administrative Officer's Comments:

BY:

George Lee England

Date:

4/12/2019

BILL 10745

ORDINANCE

AN ORDINANCE AMENDING THE KIRKWOOD CODE OF ORDINANCES, CHAPTER 14. "MOTOR VEHICLES AND TRAFFIC", ARTICLE II. "ADMINISTRATION AND ENFORCEMENT", DIVISION 4. "ABANDONED VEHICLES", SECTION 14-117. "ABANDONED VEHICLES OR TRAILERS PROHIBITED".

WHEREAS, the Police Department, while amending procedures, determined that a section of wording from the previous Code of Ordinances was not included in the new Code of Ordinances, in which the wording provides circumstances for officers to consider as they determine when/if an abandoned vehicle should be towed, and

WHEREAS, the Police Department recommends amending the Code of Ordinances, Chapter 14, Section 14-117 to include language pertaining to the towing of vehicles.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Kirkwood Code of Ordinances, Chapter 14. "Motor Vehicles and Traffic", Article II. "Administration and Enforcement", Division 4. "Abandoned Vehicles", Section 14-117. "Abandoned vehicles or trailers prohibits" is hereby amended by deleting it in its entirety and inserting the following in lieu thereof:

14-117. Abandoned vehicles or trailers prohibited.

No person shall abandon any motor vehicle or trailer on the right-of-way of any public road or state highway as set out in §16-8 of the City of Kirkwood Code of Ordinances. And no person shall leave any vehicle at any place within the city for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned. For purposes of this section, the following matters shall be considered material to the determination of whether a vehicle has been abandoned:

- (a) The vehicle has not been moved for a period of ninety-six (96) hours.
- (b) The vehicle contains no engine.
- (c) The vehicle is missing one or more wheels or tires.
- (d) The vehicle is missing body parts such as hood, fender, door or trunk lid.
- (e) The vehicle is incapable of being operated.

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

Mayor, City of Kirkwood

ATTEST:

City Clerk
1st Reading:
2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 4/18/2019

Step #1:

Strategic Plan Select... Goal # & Title

Background To Issue:

The Police Department, while amending procedures, determined that a section of wording from a removed ordinance (14-360) was not included in new ordinance 14-117. This wording provides circumstances for officers to consider as they determine when/if an abandoned vehicle should be towed.

Recommendations and Action Requested:

Place the section of wording from former ordinance 14-360 into 14-117.

Alternatives Available:

None

Cost: \$0.00 Account #: 0 Project #: Budgeted: YES

If YES, Budgeted Amount: If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Brian Murphy

Date: 4/9/2019

Authenticated: follojrd

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:


BY: Select...


Date:

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (Must have Finance Department's approval).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Diasapprove

Chief Administrative Officer's Comments:

BY:

George R. Taylor

Date:

4/12/2019

BILL 10746

ORDINANCE

AN ORDINANCE AMENDING THE KIRKWOOD CODE OF ORDINANCES, CHAPTER 17. "OFFENSES, MISCELLANEOUS", ARTICLE V. "OFFENSES CONCERNING PUBLIC PEACE", BY ADDING A NEW SECTION 17-81. "OBEDIENCE TO POLICE OFFICERS AND FIRE DEPARTMENT OFFICIALS".

WHEREAS, Police Department staff determined that the language from Chapter 14, Section 14-2 should also be included in Chapter 17, and

WHEREAS, the Police Department recommends amending the Code of Ordinances, Chapter 17, by adding a new Section 17-81 regarding obedience to police officers and Fire Department officials.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Kirkwood Code of Ordinances, Chapter 17. "Offenses, Miscellaneous", Article V. "Offenses Concerning Public Peace" is hereby amended by inserting a new Section 17-81. "Obedience to police officers and Fire Department officials":

17-81. Obedience to police officers and Fire Department officials.

No person shall knowingly fail or refuse to comply with any lawful order or direction of a police officer or Fire Department official.

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

Mayor, City of Kirkwood

ATTEST:

City Clerk
1st Reading:
2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 4/18/2019

Step #1:

Strategic Plan Select... Goal # & Title

Background To Issue:

A Police Department supervisor was researching an ordinance during an investigation, and was unable to locate it where he expected to find it, in Chapter 17, Miscellaneous Offenses. It was eventually located in Chapter 14, Motor Vehicles and Traffic, as Ordinance 14-2. To help ensure officers are able to locate the ordinance when needed, PD requests inclusion in both chapters.

Recommendations and Action Requested:

Adopt Ordinance 17-81, which is identical in wording to Ordinance 14-2.

Alternatives Available:

Take no action

Cost: \$0.00 Account #: 0 Project #: Budgeted: YES

If YES, Budgeted Amount: If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Brian Murphy

Date: 4/9/2019

Authenticated: folluojd

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. (Must have Purchasing Director's approval).

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (Must have Finance Department's approval).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

The City Clerk and City Attorney have been consulted and are in agreement with this request.

BY:

George Lee Ogden

Date:

4/12/2019

BILL 10747

ORDINANCE

AN ORDINANCE APPROVING THE FINAL SUBDIVISION PLAT OF A TWO-LOT SUBDIVISION KNOWN AS KIRKWOOD U.C.C., A TRACT OF LAND BEING ADJUSTED LOT 1 OF KIRKWOOD U.C.C. BOUNDARY ADJUSTMENT PLAT AS RECORDED IN PLAT BOOK 355 PAGE 4 AND BEING IN PART OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 44 NORTH, RANGE 5 EAST, IN THE CITY OF KIRKWOOD, ST. LOUIS COUNTY, MISSOURI.

WHEREAS, the Kirkwood United Church of Christ made application (PZ-22-19) for a two-lot subdivision upon a tract of land known as 1603 Dougherty Ferry Road; and

WHEREAS, the Planning and Zoning Commission did on the 20th day of March, 2019, recommend approval of the preliminary and final subdivision plats and directed Staff to draft a memorandum reflecting said recommendation, attached hereto and incorporated by reference herein; and

WHEREAS, the City Council did on the 18th day of April, 2019, approve the preliminary subdivision plat by Resolution 59-2019.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, as follows:

SECTION 1. That the final subdivision plat on the property known as 1603 Dougherty Ferry Road in the City of Kirkwood, St. Louis County, Missouri, is hereby approved.

SECTION 2. The approval of said subdivision plat is subject to the following conditions:

1. The subdivision shall be developed in accordance with the Preliminary Plat and Landscape Plan, and the Final Subdivision Plat stamped "Received April 10, 2019 City of Kirkwood Public Services Department" except as noted herein.
2. A performance Guarantee to cover the cost of required landscaping in the amount of \$1,772.70 was submitted on April 10, 2019.
3. A subdivision plat approved by the City and recorded in the St. Louis Country Office of the Recorder of Deeds shall be filed in the Public Services Director's Office within 90 days of City Council Approval of the Final Plat.

SECTION 3. The easements designated for public use on such plat are hereby accepted and dedicated for public use.

SECTION 4. The approval of this subdivision shall not authorize any person to increase or unreasonably alter or redirect the surface water run off so as to cause harm to any person or property.

SECTION 5. The premises and improvements as approved by this Ordinance shall be in good working order and maintained in good repair at all times.

SECTION 6. That the applicant by accepting and acting under the Subdivision approval herein granted accepts the subdivision approval subject to the reservations, restrictions, and conditions set forth in the Code of Ordinances and in this Ordinance and agrees to comply with each provision subject to the penalties prescribed under Section 1-8 of the Code of Ordinances.

SECTION 7. The applicant and his successors and assigns by accepting and acting under the approval herein granted accepts the approval subject to the condition that failure to abate any violation of this approval or any provisions of the Code of Ordinances of the City of Kirkwood within five (5) days after notice by hand delivery or first-class mail shall result in an administrative investigation fee of \$500 due to the City of Kirkwood. An invoice shall be issued. A Stop Work Order to cease all work on the premises except such work as directed by the Public Works Director to abate the violation may be issued for any work on the premises until the investigation fee is paid in full. The City may demand payment of said fee from the holder of the letter of credit, any bond, or escrow if not paid within 30 days of the invoice.

SECTION 8. That the City Clerk is authorized to execute such plat on behalf of the City, and the Council does hereby authorize that such plat and a copy of this ordinance be recorded at the office of the Recorder of Deeds for St. Louis County, Missouri, at the expense of the applicant, within 90 days of the passage of this ordinance.

SECTION 9. Within ten days after recording, one PDF digital version, and one CAD or comparable digital version of the recorded plat shall be submitted to the Public Services Department.

SECTION 10. This ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS ____TH DAY OF _____, 2019.

Mayor, City of Kirkwood

ATTEST:

City Clerk
1st Reading:
2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 4/18/2019

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

The Kirkwood United Church of Christ was recently approved for 3 subdivision waivers that would allow them to separate their former parsonage home from the main church property so that the single-family home could be sold. The Church is now requesting approval of the two-lot subdivision that is made possible by the waivers granted.

The request is a two-step request which includes the preliminary subdivision plat and a final subdivision plat. The attached ordinance is for approval of the final subdivision plat. The City has received preliminary approval from MSD, but final MSD approval is needed prior to final approval by the City Council. An updated Ordinance will be provided once MSD approval is received.

Recommendations and Action Requested:

The Planning & Zoning Commission unanimously recommended approval of both the preliminary and final subdivision plat. Rather than assign a subcommittee, the Commission requested Staff to draft a Memo reflecting the Commission's discussion and decision to report to the Council. Said Memo is attached. Council consideration of the attached Ordinance is requested.

Alternatives Available:

Cost: \$0.00

Account #: 0

Project #:

Budgeted: YES

If YES, Budgeted Amount: \$0.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Jonathan Raiche

Date: 4/10/2019

Authenticated: raichejd

You can attach up to 3 files along with this request.



2019-04-18 PZ-22-19 FinalPlat
Ord.doc
Microsoft Word 97 - 2003
Document
35.5 KB



2019-04-18 PZ-22-19
Memo.pdf
Adobe Acrobat Document
3.45 MB



2019-04-10 PZ-22-19 Revised
Final Plat.pdf
Adobe Acrobat Document
1.71 MB

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

You can attach up to 3 files along with this request.

📎 File Attachment

📎 File Attachment

📎 File Attachment

Step #3: If budgetary approval is required **(Must have Finance Department's approval).**

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.



Approve



Diasapprove

Chief Administrative Officer's Comments:

BY:

George Lee Taylor

Date:

4/12/2019

MEMORANDUM

TO: MAYOR & CITY COUNCIL
FROM: JONATHAN D. RAICHE, CITY PLANNER *JDR*
SUBJECT: PZ-22-19; 1603 DOUGHERTY FERRY ROAD –
KUCC, 2-LOT SUBDIVISION
DATE: APRIL 9, 2019
CC: RUSS HAWES, CAO
BILL BENSING, PUBLIC SERVICES DIRECTOR
JOHN HESSEL, CITY ATTORNEY



WHERE COMMUNITY AND SPIRIT MEET[®]

PROJECT DESCRIPTION

The Kirkwood United Church of Christ was approved by the City Council for three subdivision waivers in February of 2019 to accommodate a subdivision of their current property of approximately 3.3 acres into two lots. A summary of the approved waivers is shown in the table below:

<u>Topic</u>	<u>Required</u>	<u>Proposed</u>
Minimum lot size (Church)	3 acres	2.3 acres
Minimum side yard setback (house)	25'	11.3'
Minimum side yard setback (Church)	40'	23'

The Church has now applied for the Preliminary and Final Subdivision Plats related to this same project. The property is currently zoned R-1 which requires a minimum lot size of 3 acres for a church and 1 acre for single-family dwellings. The Church was approved for a Boundary Adjustment Plat in 2007 which separated their former parsonage (544 Lindeman) from their property so they could sell that house. During that same boundary adjustment, the property that was formerly 1525 Dougherty Ferry was consolidated into the Church property so that their lot would remain above the minimum 3 acres required by Code. The applicant's request would accommodate a new two-lot subdivision which would return the property at 1525 Dougherty Ferry to its previous size and status as a separate lot. See Exhibit 1 for reference.

DISCUSSION

The only physical/site work that will be required with this subdivision is the addition of 3 proposed trees to ensure that the new single-family residential lot meets the Planting requirements of the City's Subdivision Code. The applicant has provided a proposed landscape plan to illustrate these requirements being met. MSD has indicated that they have no concerns with the proposed subdivision; however, they are requiring an off-site easement on the property at 544 Lindeman prior to issuing full approval. This approval, along with a financial guarantee for the required trees, is required prior to final approval by the City Council.

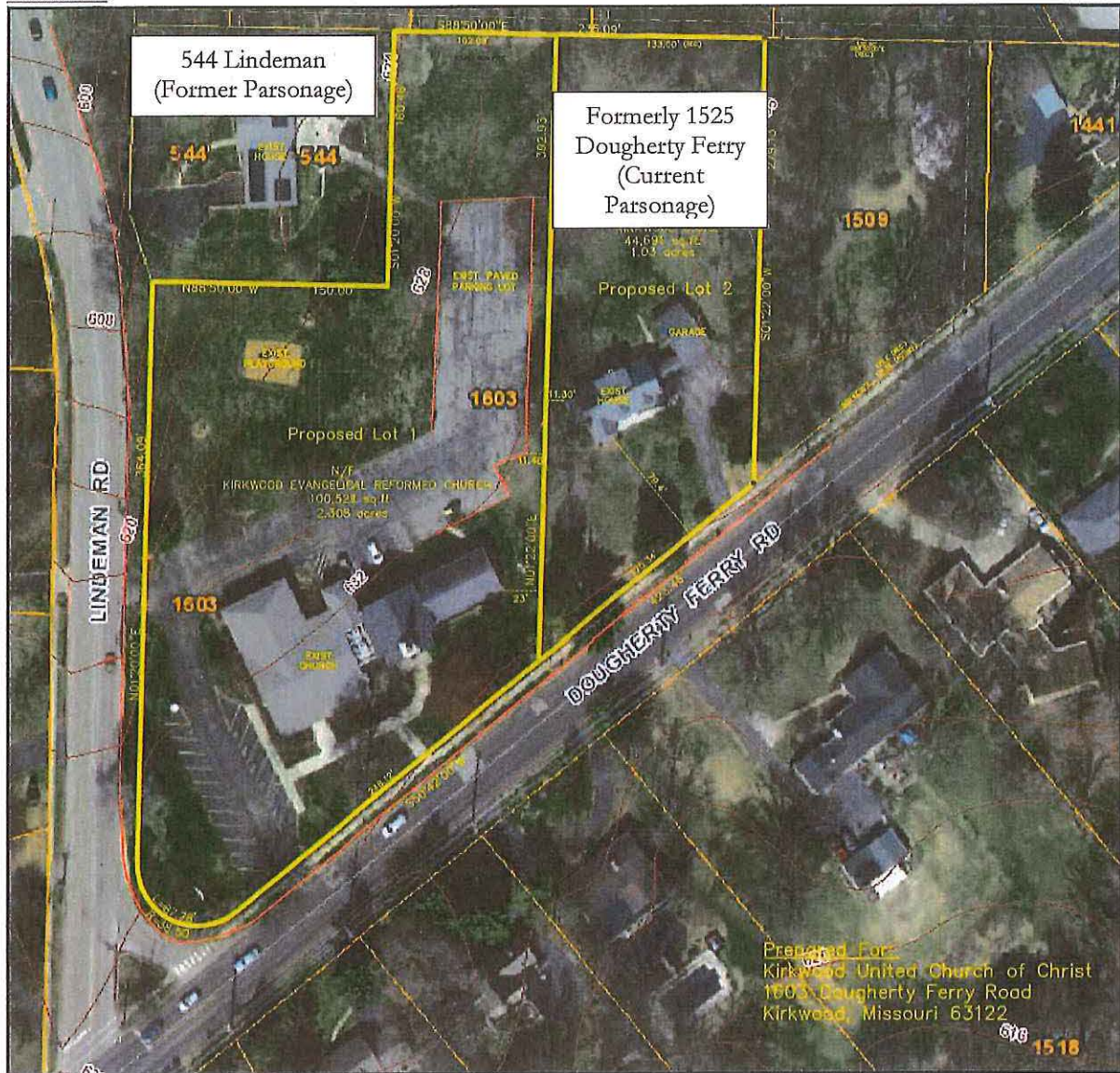
The proposed plan was presented to the Planning & Zoning Commission at their meeting on March 20, 2019. Rather than assigning a subcommittee at that meeting, the Commission voted to recommend approval of the Preliminary and Final Plats and directed Staff to draft a memorandum to memorialize that action. The Commission explained that the familiarity with the project, limited scope of the proposed improvements, and lack of technical issues provided them the comfort of recommending approval without going through the Subcommittee process.

RECOMMENDATION

The Planning & Zoning Commission recommends the preliminary and final plats be approved with the following conditions:

1. The subdivision shall be developed in accordance with the Preliminary Plat and Landscape Plan, and the Final Subdivision Plat stamped "Received March 1, 2019 City of Kirkwood Public Works Department" except as noted herein.
2. A performance Guarantee to cover the cost of required landscaping is required to insure installation of said landscaping.
3. Approval from the Metropolitan St. Louis Sewer District is required prior to final approval by the City Council.
4. A revised final plat shall be submitted addressing Staff's comments from the letter dated March 3, 2019.
5. A subdivision plat approved by the City and recorded in the St. Louis County Office of the Recorder of Deeds shall be filed in the Public Services Director's Office within 90 days of City Council Approval of the Final Plat.
6. The approval of these Preliminary and Final Subdivision Plats shall not authorize any person to unreasonably alter, increase, or redirect the surface water run off so as to cause harm to any person or property. The applicant assumes all responsibility and liability for storm water run-off.
7. The applicant, by accepting and acting under the Preliminary and Final Subdivision Plat approval granted, accepts the approval subject to the reservations, restrictions, and conditions set forth in the Code of Ordinances and in the report and agrees to comply with each provision subject to the penalties prescribed under Section 1-8 of the Code of Ordinances and subject to revocation of this approval in the event such provisions are not complied with.

Exhibit 1

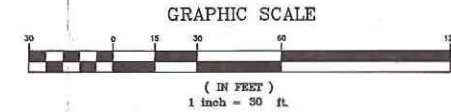


KIRKWOOD U.C.C. SUBDIVISION PLAT

A TRACT OF LAND BEING ADJUSTED LOT 1 OF BOUNDARY ADJUSTMENT PLAT AS RECORDED IN PLAT BOOK 355 PAGE 4 AND BEING IN PART OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 44 NORTH, RANGE 5 EAST, CITY OF KIRKWOOD, ST. LOUIS COUNTY, MISSOURI

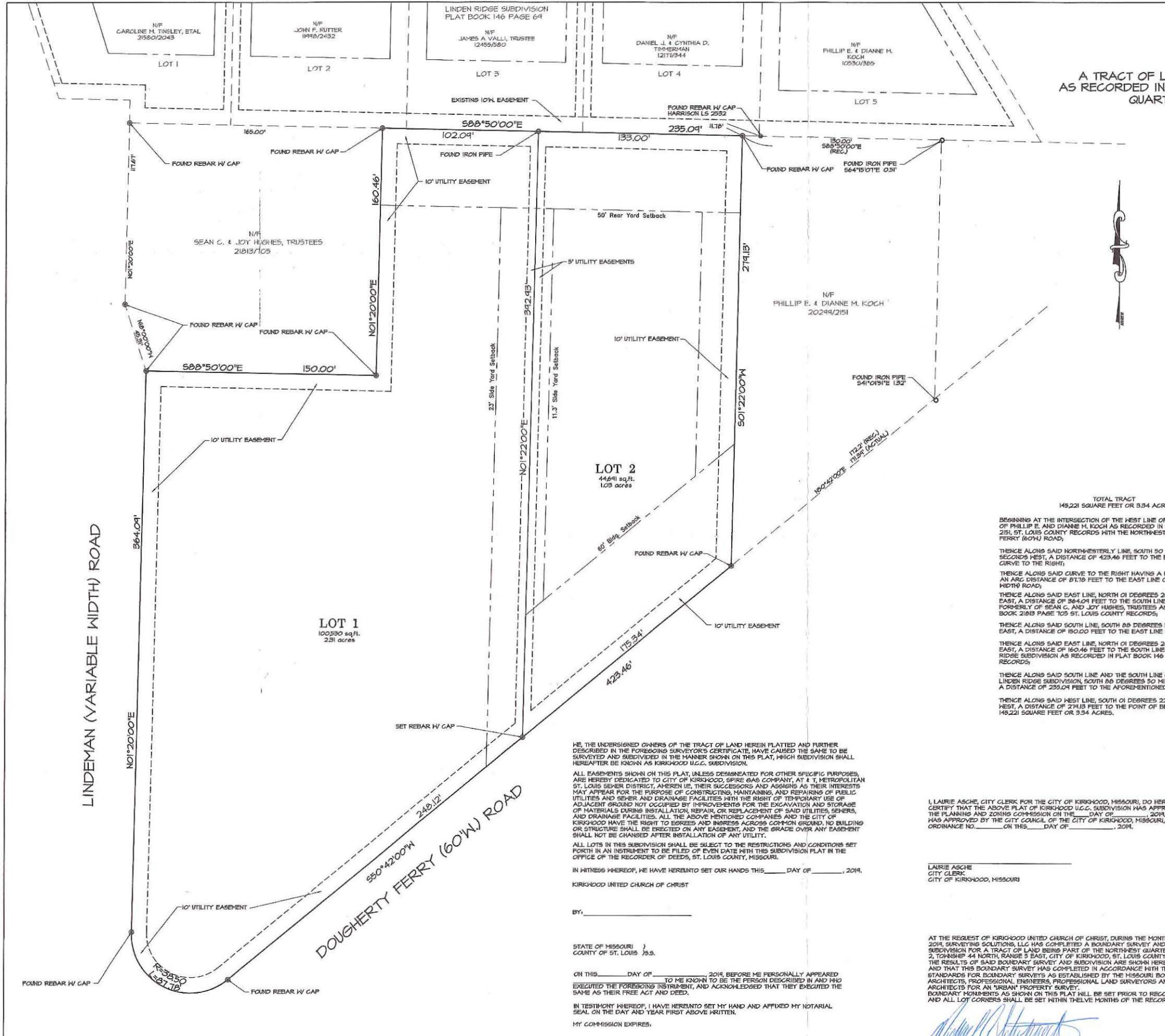
PREPARED FOR:
KIRKWOOD UNITED CHURCH OF CHRIST
1603 DOUGHERTY FERRY ROAD
KIRKWOOD, MISSOURI 63122

TOTAL AREA OF THIS PLAT: 3.34 ACRES OR 145,221 SQ. FT.



GENERAL NOTES:

SOURCE OF RECORD TITLE: LAND NOW OR FORMERLY OF KIRKWOOD UNITED CHURCH OF CHRIST AS RECORDED IN DEED BOOK 2422 PAGE 506, ST. LOUIS COUNTY RECORDS.
BASIS OF BEARINGS: THE SOUTH LINE OF LINDEN RIDGE SUBDIVISION AS RECORDED IN PLAT BOOK 146 PAGE 64 ST. LOUIS COUNTY RECORDS AND BEING SOUTH 89 DEGREES 50 MINUTES 00 SECONDS EAST.
ALL PARCELS SHOWN ON THIS PLAT ARE CONTIGUOUS TO EACH OTHER AND THERE ARE NO STRIPS, GAPS OR GORES.



LOT 1
100,590 SQUARE FEET OR 2.31 ACRES

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF LAND NOW OR FORMERLY OF PHILLIP E. AND DIANNE M. KOCH AS RECORDED IN DEED BOOK 20294 PAGE 251, ST. LOUIS COUNTY RECORDS WITH THE NORTHWESTERLY LINE OF DOUGHERTY FERRY (60W) ROAD;

THENCE ALONG SAID NORTHWESTERLY LINE, SOUTH 50 DEGREES 42 MINUTES 00 SECONDS WEST, A DISTANCE OF 115.34 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE, SOUTH 50 DEGREES 42 MINUTES 00 SECONDS WEST, A DISTANCE OF 249.12 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT;

THENCE ALONG SAID CURVE TO THE RIGHT HAVING A RADIUS OF 39.50 FEET, AN ARC DISTANCE OF 87.19 FEET TO THE EAST LINE OF LINDEMAN (VARIABLE WIDTH) ROAD;

THENCE ALONG SAID EAST LINE, NORTH 01 DEGREES 20 MINUTES 00 SECONDS EAST, A DISTANCE OF 364.04 FEET TO THE SOUTH LINE OF LAND NOW OR FORMERLY OF SEAN C. AND JOY HUGHES, TRUSTEES AS RECORDED IN DEED BOOK 21818 PAGE 105 ST. LOUIS COUNTY RECORDS;

THENCE ALONG SAID SOUTH LINE, SOUTH 89 DEGREES 50 MINUTES 00 SECONDS EAST, A DISTANCE OF 150.00 FEET TO THE EAST LINE OF SAID HUGHES LAND;

THENCE ALONG SAID EAST LINE, NORTH 01 DEGREES 20 MINUTES 00 SECONDS EAST, A DISTANCE OF 160.46 FEET TO THE SOUTH LINE OF LOT 2 OF LINDEN RIDGE SUBDIVISION AS RECORDED IN PLAT BOOK 146 PAGE 64, ST. LOUIS COUNTY RECORDS;

THENCE ALONG SAID SOUTH LINE AND THE SOUTH LINE OF LOT 3 OF SAID LINDEN RIDGE SUBDIVISION, SOUTH 89 DEGREES 50 MINUTES 00 SECONDS EAST, A DISTANCE OF 102.04 FEET TO A POINT;

THENCE LEAVING SAID SOUTH LINE, SOUTH 01 DEGREES 22 MINUTES 00 SECONDS WEST, A DISTANCE OF 342.45 FEET TO THE POINT OF BEGINNING AND CONTAINING 100,590 SQUARE FEET OR 2.31 ACRES.

LOT 2
44,641 SQUARE FEET OR 1.03 ACRES

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF LAND NOW OR FORMERLY OF PHILLIP E. AND DIANNE M. KOCH AS RECORDED IN DEED BOOK 20294 PAGE 251, ST. LOUIS COUNTY RECORDS WITH THE NORTHWESTERLY LINE OF DOUGHERTY FERRY (60W) ROAD;

THENCE ALONG SAID NORTHWESTERLY LINE, SOUTH 50 DEGREES 42 MINUTES 00 SECONDS WEST, A DISTANCE OF 115.34 FEET TO A POINT;

THENCE LEAVING SAID NORTHWESTERLY LINE, NORTH 01 DEGREES 22 MINUTES 00 SECONDS EAST, A DISTANCE OF 342.45 FEET TO THE SOUTH LINE OF LOT 3 OF LINDEN RIDGE SUBDIVISION AS RECORDED IN PLAT BOOK 146 PAGE 64, ST. LOUIS COUNTY RECORDS;

THENCE ALONG SAID SOUTH LINE AND THE SOUTH LINE OF LOT 4 OF SAID LINDEN RIDGE SUBDIVISION, SOUTH 89 DEGREES 50 MINUTES 00 SECONDS EAST, A DISTANCE OF 133.00 FEET TO THE AFOREMENTIONED WEST LINE OF KOCH;

THENCE ALONG SAID WEST LINE, SOUTH 01 DEGREES 22 MINUTES 00 SECONDS WEST, A DISTANCE OF 214.13 FEET TO THE POINT OF BEGINNING AND CONTAINING 44,641 SQUARE FEET OR 1.03 ACRES.

WE, THE UNDERSIGNED OWNERS OF THE TRACT OF LAND HEREIN PLATTED AND FURTHER DESCRIBED IN THE FOREGOING SURVEYOR'S CERTIFICATE, HAVE CAUSED THE SAME TO BE SURVEYED AND SUBDIVIDED IN THE MANNER SHOWN ON THIS PLAT, WHICH SUBDIVISION SHALL HEREINAFTER BE KNOWN AS KIRKWOOD U.C.C. SUBDIVISION.

ALL EASEMENTS SHOWN ON THIS PLAT, UNLESS DESIGNATED FOR OTHER SPECIFIC PURPOSES, ARE HEREBY DEDICATED TO CITY OF KIRKWOOD, SPIRE GAS COMPANY, AT & T, METROPOLITAN ST. LOUIS SEWER DISTRICT, AMEREN US, THEIR SUCCESSORS AND ASSIGNS AS THEIR INTERESTS MAY APPEAR FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, AND REPAIRING OF PUBLIC UTILITIES AND SEWER AND DRAINAGE FACILITIES WITH THE RIGHT OF TEMPORARY USE OF ADJACENT GROUND NOT OCCUPIED BY IMPROVEMENTS FOR THE EXCAVATION AND STORAGE OF MATERIALS DURING INSTALLATION, REPAIR, OR REPLACEMENT OF SAID UTILITIES, SEWERS, AND DRAINAGE FACILITIES. ALL THE ABOVE MENTIONED COMPANIES AND THE CITY OF KIRKWOOD HAVE THE RIGHT TO EGRESS AND INGRESS ACROSS COMMON GROUND, NO BUILDING OR STRUCTURE SHALL BE ERECTED ON ANY EASEMENT, AND THE GRADE OVER ANY EASEMENT SHALL NOT BE CHANGED AFTER INSTALLATION OF ANY UTILITY.

ALL LOTS IN THIS SUBDIVISION SHALL BE SUBJECT TO THE RESTRICTIONS AND CONDITIONS SET FORTH IN AN INSTRUMENT TO BE FILED OF EVEN DATE WITH THIS SUBDIVISION PLAT IN THE OFFICE OF THE RECORDER OF DEEDS, ST. LOUIS COUNTY, MISSOURI.

IN WITNESS WHEREOF, WE HAVE HEREBY SET OUR HANDS THIS _____ DAY OF _____, 2019.

KIRKWOOD UNITED CHURCH OF CHRIST

BY: _____

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

ON THIS _____ DAY OF _____, 2019, BEFORE ME PERSONALLY APPEARED TO ME KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME AS THEIR FREE ACT AND DEED.

IN TESTIMONY WHEREOF, I HAVE HEREBY SET MY HAND AND AFFIXED MY NOTARIAL SEAL ON THE DAY AND YEAR FIRST ABOVE WRITTEN.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC - _____

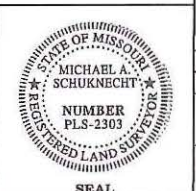
I, LAURIE ASCHÉ, CITY CLERK FOR THE CITY OF KIRKWOOD, MISSOURI, DO HEREBY CERTIFY THAT THE ABOVE PLAT OF KIRKWOOD U.C.C. SUBDIVISION WAS APPROVED BY THE PLANNING AND ZONING COMMISSION ON THE _____ DAY OF _____, 2019, AND WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, BY ORDINANCE NO. _____ ON THIS _____ DAY OF _____, 2019.

LAURIE ASCHÉ
CITY CLERK
CITY OF KIRKWOOD, MISSOURI

AT THE REQUEST OF KIRKWOOD UNITED CHURCH OF CHRIST, DURING THE MONTH OF FEBRUARY, 2019, SURVEYING SOLUTIONS, LLC HAS COMPLETED A BOUNDARY SURVEY AND PREPARED A SUBDIVISION FOR A TRACT OF LAND BEING PART OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 44 NORTH, RANGE 5 EAST, CITY OF KIRKWOOD, ST. LOUIS COUNTY, MISSOURI; THE RESULTS OF SAID BOUNDARY SURVEY AND SUBDIVISION ARE SHOWN HEREOF, AND THAT THIS BOUNDARY SURVEY WAS COMPLETED IN ACCORDANCE WITH THE CURRENT MISSOURI STANDARDS FOR BOUNDARY SURVEYS AS ESTABLISHED BY THE MISSOURI BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, PROFESSIONAL LAND SURVEYORS AND LANDSCAPE ARCHITECTS FOR AN "URBAN" PROPERTY SURVEY.

BOUNDARY MONUMENTS AS SHOWN ON THIS PLAT WILL BE SET PRIOR TO RECORDING OF PLAT, AND ALL LOT CORNERS SHALL BE SET WITHIN TWELVE MONTHS OF THE RECORDING OF THE PLAT.

MICHAEL A. SCHUKNECHT, P.L.S.
MISSOURI CERT. NO. LS. 2303
4/8/19



SURVEYING SOLUTIONS, LLC
L-2008031324
1346 MONTEVALE COURT
FENTON, MISSOURI 63026
PHONE: 636-305-4601
MICHAEL A. SCHUKNECHT, L.S.-2303

KIRKWOOD UNITED CHURCH OF CHRIST
1603 DOUGHERTY FERRY ROAD
KIRKWOOD, MISSOURI

DATE: 2/19/19
CHECKED BY: _____
JOB NO.: 2018-0095
DRAWN BY: MAS
SCALE: 1" = 50'

SUBDIVISION PLAT

REV.: 3/10/19 - CITY COMMENTS
SHEET: 1 OF 1

BILL 10748

ORDINANCE

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR A RESTAURANT AT 343 SOUTH KIRKWOOD ROAD SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, Ken Moroney made application (PZ-23-19) for a Special Use Permit to operate a restaurant at 343 South Kirkwood Road, Suite 103; and

WHEREAS, the Planning and Zoning Commission did on the 20th day of March, 2019, recommend the granting of said Special Use Permit subject to certain conditions and did find that granting of said permit would not substantially increase traffic hazards or congestion, would not substantially increase fire hazards, would not adversely affect the character of the neighborhood, would not adversely affect the general welfare of the community, and would not overtax public utilities, and that granting such permit would be consistent with the zoning laws; and

WHEREAS, the Council did on the 18th day of April, 2019, hold a public hearing with respect to such application after duly advertising and giving proper notice of such hearing and does find that the granting of such permit, subject to certain conditions, would not substantially increase traffic hazards or congestion, would not substantially increase fire hazards, would not adversely affect the character of the neighborhood, would not adversely affect the general welfare of the community, and would not overtax public utilities; and

WHEREAS, the Council does further find that the general welfare requires that such permit be subject to the conditions hereinafter set out.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. A Special Use Permit is hereby granted for a restaurant on the property known as 343 South Kirkwood Road, Suite 103 subject to the following conditions:

1. The project shall be constructed and maintained in accordance with the floor plan stamped "Received March 8, 2019, City of Kirkwood Public Services Department".

SECTION 2. The approval of this special use permit shall not authorize any person to unreasonably alter, increase, or redirect the surface water run off so as to cause harm to any person or property.

SECTION 3. The premises and improvements as approved by this Special Use Permit shall be in good working order and maintained in good repair at all times.

SECTION 4. The applicant by accepting and acting under the Special Use Permit herein granted accepts the permit subject to the reservations, restrictions, and conditions set forth in the Code of Ordinances and in this Ordinance and agrees to comply with each provision subject to the penalties prescribed under Section 1-8 of the Code of Ordinances and subject to revocation of this permit in the event such provisions are not complied with.

SECTION 5. The applicant and his successors and assigns by accepting and acting under the approval herein granted accepts the approval subject to the condition that failure to abate any violation of this approval or any provisions of the Code of Ordinances of the City of Kirkwood within five (5) days after notice by hand delivery or first-class mail shall result in an administrative investigation fee of \$500 due to the City of Kirkwood. An invoice shall be issued. A Stop Work Order to cease all work on the premises except such work as directed by the Public Services Director to abate the violation may be issued for any work on the premises until the investigation fee is paid in full. The City may demand payment of said fee from the holder of the letter of credit, any bond, or escrow if not paid within 30 days of the invoice.

SECTION 6. The applicant further agrees by accepting and acting under this Special Use Permit herein granted that this Ordinance does not grant applicant any special rights, privileges, or immunities.

SECTION 7. This ordinance shall become null and void in the event the petitioner does not obtain a building permit for the construction approved by this ordinance within one year of the passage of this ordinance.

SECTION 8. This ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS day of _____, 2019.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Introduced:

1st Reading:

2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 4/18/2019

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

The applicant is requesting a Special Use Permit to operate a restaurant in the Pioneer Place development located at 343 S. Kirkwood, Suite 103. The space was most recently approved for an expansion of the adjacent restaurant in March of 2018. The adjacent restaurant never expanded and has since been replaced. A new and separate restaurant is now requesting the ability to operate in this same space. Additional information about the proposal and history of the location can be found in the attached Staff Memo.

Recommendations and Action Requested:

The Planning & Zoning Commission recommended approval unanimously at their meeting on March 20th. A public hearing is requested for the April 18th, 2019 City Council meeting. Following the public hearing, consideration by the City Council of the attached ordinance is requested.

Alternatives Available:

Cost: \$0.00

Account #: 0

Project #:

Budgeted: YES

If YES, Budgeted Amount: \$0.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Jonathan Raiche

Date: 4/9/2019

Authenticated: raichejd

You can attach up to 3 files along with this request.



2019-04-18 PZ-23-19
Ordinance.doc
Microsoft Word 97 - 2003
Document
38.0 KB



2019-03-19 PZ-23-19
Memo.pdf
Adobe Acrobat Document
5.81 MB

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:


BY: Select...


Date:

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

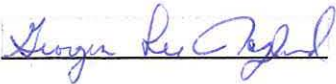
Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Diasapprove

Chief Administrative Officer's Comments:

BY:



Date:

4/12/2019

MEMORANDUM

TO: PLANNING & ZONING COMMISSION
FROM: JONATHAN D. RAICHE, CITY PLANNER *ADR*
SUBJECT: PZ-23-19; 343 S. KIRKWOOD ROAD, SUITE 103 – RUSH BOWLS (SUP – RESTAURANT)
DATE: MARCH 19, 2019
CC: BILL BENSING, PUBLIC SERVICES DIRECTOR



WHERE COMMUNITY AND SPIRIT MEET[®]

PROJECT DESCRIPTION:

The new restaurant, Rush Bowls, is proposed for suite 103 in the Pioneer Place Development at 343 S. Kirkwood Road. This space is approximately 1,000 gross square feet with seating for approximately 12 patrons. The majority of their business is anticipated to be for carry-out orders. The applicant expects a maximum of 4 employees on a shift during peak hours and hours of operation are proposed as Monday – Friday, 7am – 8pm; Saturday 8am – 9pm; and Sunday 8am – 7pm. The applicant may choose to provide accessory outdoor seating subject to certain conditions included in the Zoning Code. If provided, this seating would be for no more than 12 customers and would need to provide adequate clearance for the adjacent pedestrian walkway.

In 1998, suite 103 was approved for a restaurant as part of the Blue Water Grill which occupied suites 101-103. In March of 2018, suite 103 was once again approved to host the expansion of the adjacent restaurant at that time (Sushi Bistro). Since the March 2018 approval, Sushi Bistro has been replaced by My Greek Kitchen, but neither restaurant ever expanded into suite 103. This proposal would result in two separate restaurants operating in the same three tenant spaces that have been previously approved for restaurants by the City.

DISCUSSION:

Zoning Matters signs were posted on the property on March 15, 2019. Section A-1000: Parking Regulations of the Zoning Code states that the change of use of any premises within the downtown area shall be exempt from additional parking and loading requirements. In addition to this exemption, Staff would like to draw attention to a couple pieces of information related to parking. In 2018, there was a 16 space parking lot that was constructed by the property owners and said parking lot is used by the larger Pioneer Place Development. These 16 parking spaces are additional to what was provided in 1998 when the property was approved for a restaurant, Blue Water Grill, to occupy all three tenant spaces. The newly adopted Downtown parking rates would require 10 spaces per 1,000 square feet of gross floor area. This would result in a requirement of 10 parking spaces which are off-set by the 16 spaces recently installed for the entire development.

RECOMMENDATION:

Staff recommends this petition be **approved** with the following conditions:

1. A Special Use Permit shall be granted to allow for the operation of a restaurant on the property known as 343 South Kirkwood Road, Suite 103.
2. The project shall be constructed and maintained in accordance with the floor plan stamped "Received March 8, 2019, City of Kirkwood Public Services Department".

Attachments:

Planning & Zoning Application

Applicant Cover Letter

Proposed Floor Plan (Received 3/8/2019)

CITY OF KIRKWOOD

APPLICATION FOR PLANNING AND ZONING COMMISSION ACTION

DATE: 3/8/19

CASE NUMBER: P2-23-19

PROJECT ADDRESS: 343 S. KIRKWOOD RD
 ZONING DISTRICT: B2 LOT SIZE: _____
 LOCATOR NUMBER: _____

ACTION REQUESTED

- | | |
|---|--|
| <input type="checkbox"/> Zoning Change From _____ to _____
<input type="checkbox"/> Community Unit Plan, Type: _____
<input checked="" type="checkbox"/> Special Use Permit, Category: <u>Restaurant</u>
<input type="checkbox"/> Subdivision Development, Number of Lots: _____
<input type="checkbox"/> B4 Development Plan
<input type="checkbox"/> B5 Development Plan | <input type="checkbox"/> Site Plan Review
<input type="checkbox"/> Right-of-Way/Easement Vacation
<input type="checkbox"/> Other: _____
Comments: <u>RUSH BOWLS</u> |
|---|--|

PETITIONER INFORMATION

I (We) hereby certify that I (we) have legal interest in the hereinabove described property and that all information given herein is true and a statement of fact

Name (Print): KEN MORONEY Signature: Ken Moroney Phone No.: 314 650 3028
 Mailing Address: 8 WILSON RIDGE CT City: CHESTERFIELD State: MO Zip: 63105
 E-mail Address: KEN.MORONEY@GMAIL.COM
 Petitioner's Status: Corporation Partnership Individual
 Relationship of Petitioner to Property: Owner Tenant Option Holder (Attach Copy of Contract) Other

AGENT INFORMATION

Agent's Name: _____ Signature: _____ Phone No.: _____
 Mailing Address: _____ City: _____ State: _____ Zip: _____
 E-mail Address: _____

(NOTE: The petitioner's agent, if listed, shall receive the official notice of public hearing)

PROPERTY OWNERS

Signature required or submit proof petitioner has legal interest in property.

Name: Jonathan Brown, c/o Pioneer Place, LLC Name: _____
 Signature: Jonathan P. Brown Signature: _____
 Address: 20 Allen Ave, # 400 Address: _____
 City/State/Zip: Webster Groves, MO 63119 City/State/Zip: _____
 Phone: 314-968-0842 Phone: _____

FOR CITY USE ONLY

Date Received: 3/8/19 Total Received: \$ 1,000.00 Agenda Date: 3-20-19

- B-4/B-5 Development Plan (Preliminary): \$1,000 + _____ Acres @ \$100/Acre or portion over one acre) = \$ _____
- CUP, Preliminary (Multi Family): \$1,000 + _____ Dwelling units @ \$20/Each = \$ _____ = \$ _____
- CUP, Preliminary (Detached Single Family): \$1,000 + _____ Lots @ \$500/Lot = \$ _____
- Letter of Credit Extension: \$100
- Rezoning: \$1,000
- Site Plan Review: \$1,000
- Site Plan Review Amendment \$800 or Extension: \$300
- Site Plan Review, Mixed Use in B2 Zoning District (Preliminary): \$1,000 (includes SPR fee) + \$25/acre or portion over one acre
- Special Use Permit and Special Use Permit Amendments: \$1,000
- Subdivision, Preliminary (Detached Single Family): _____ Lots @ \$500/Lot = \$ _____
- Vacation, Easement: \$75
- Vacation, Right-of-way: \$100
- Zoning Code Amendment: \$1,000

Final Subdivision Plat/Community Unit Plan/B-4or B-5 Development Plan

Date Received: _____ Total Received: \$ _____ Agenda Date: _____

- B-4 and B-5 Development Plan (Final) or B4 Development Plan Amendment (when public hearing is not required): \$1,000
- B-5 Development Plan Amendment (when public hearing is not required): \$500
- CUP Amendment, Type A or Type C: Without public hearing \$500; With public hearing \$800
- CUP Type C (Final): \$500 + 1-1/4% of \$ _____ = \$ _____
- CUP Type A or C Time Extension on Final: \$300
- Sidewalk Waiver on _____ feet @ \$30/Foot = \$ _____
- Site Plan Review, Mixed use in B2 Zoning District (Final): \$500
- Site Plan, Mixed use in B2 Zoning District Amendment: \$300
- Subdivision Plat or CUP Type A (Final): _____ Lots @ \$100/Lot = \$ _____ + 1-1/4% of \$ _____ = \$ _____
- Subdivision Plat Development Plan Amendment: \$200

To Whom It May Concern:

3/8/2019

Hi, my wife Kim and I are trying to bring a healthy eating option to the city of Kirkwood. Rush Bowls is a franchise that serves fresh fruit blended meal-in-a-bowl options to healthy minded consumers. The typical ordering experience (in and out) takes less than 3 minutes and our patrons generally eat on the go.

Franchise History

Rush Bowls was launched in 2004, when founder, Andrew Pudalov, decided to leave the hustle and bustle of New York's financial scene to pursue his dream of creating a healthy, fast-dining restaurant that fueled people's lives with honest ingredients and delicious recipes. As a result, Rush Bowls was born in Boulder, Colorado, offering meals crafted from the finest fruit, topped with granola & honey, and blended with protein, vitamins and other nutritious ingredients that taste delicious while promoting a healthy lifestyle.

Rush Bowls started franchising nationwide in 2016. <http://www.rushbowls.com>

What's a Rush Bowl?

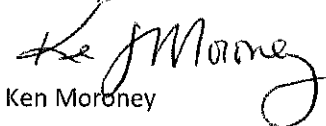
A Rush Bowl starts out with the finest all-natural fruit blended extra thick and creamy, to which we add nutrients, protein, juice or milk and an assortment of decadent yet wholesome ingredients. We top things off with crumbles of crunchy granola & a drizzle of the most delicious honey you've ever tasted. It is a complete meal-in-a-bowl designed to satisfy your hunger and fuel your life ...whatever your RUSH might be!

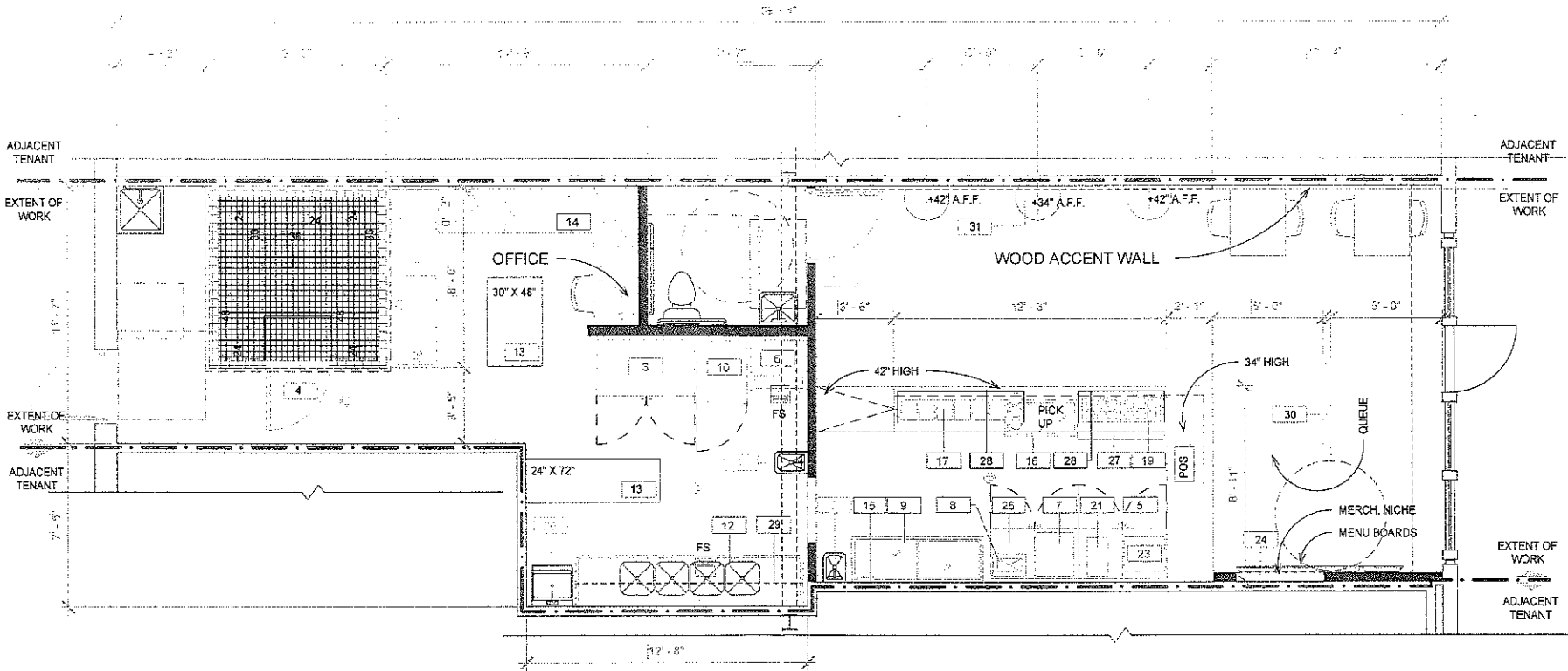
Operations

We currently have a single store in Central West End. The operations for this Kirkwood location are expected to be comparable in all ways

- Opened late March 2018
- Current Staff: 1 Manager, 5 part time employees. We have expanded up to 10 employees at times depending on volume.
- Daily Staffing: We generally can meet our intended volume with 1-2 employee during our open hours. 1-2 additional staff might be brought on during peak hours (lunch / dinner).
- Current Hours: M-F 7am – 8pm, Sat 8am – 9pm, Sun 8am – 7pm
- Seating: We are a quick service restaurant. Most of our customers leave with their product for on-the-go eating. However, for those that wish to stay and eat, we have 2 window bench counters (8 seats total) and a single 32" bar table (4 seats total).
- Floor Space – 1000 sq. ft.
- We also deliver meals via delivery partners: Door Dash, Uber Eats, Postmates
- Outdoor seating: We have 2 small tables with 4 seats each. These outdoor seats are optional and are subject to local availability and codes.

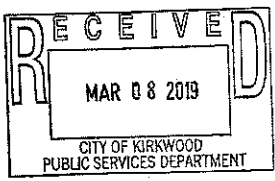
Sincerely,


Ken Moroney



FLOOR PLAN - 1/4" = 1'-0"

TOTAL AREA: 1,016 SQ. FT.



1300 - C Yellow Pine Ave | Boulder CO 80304 | T.303.444.1598 | E. jim@brayarchitecture.com

Project No. 2018x | December 18, 2018 | RUSH BOWLS : St Louis- Kirkwood

SK 1

PROCEDURE FOR PUBLIC HEARING

Mayor: At this time the council will recess to conduct a public hearing regarding:

A request for a Special Use Permit for Rush Bowls to operate a restaurant at 343 South Kirkwood Road, Suite 103

Mayor: Mr. Hessel, do you wish to enter any exhibits into the record?

Mayor: Mr. Hawes, who will present this issue to the City Council?

City Planner Jonathan Raiche

Mayor: Georgia, has anyone completed a card to speak regarding this proposal?

Mayor: Is there anyone in the audience that did not complete a card that wishes to speak regarding this issue? (Please be sure to fill out a card before you leave so your name and address is reflected in the record)

Mayor: Hearing no further discussion, the council will take this matter under advisement and consider the hearing to be recessed.



AFFIDAVIT OF PUBLICATION

STATE OF MISSOURI
COUNTY OF ST. LOUIS

} S.S.

Page 1 of 1

Before the undersigned Notary Public personally appeared **Karie Clark** on behalf of **THE COUNTIAN, ST. LOUIS COUNTY** who, being duly sworn, attests that said newspaper is qualified under the provisions of Missouri law governing public notices to publish, and did so publish, the notice annexed hereto, starting with the **March 26, 2019** edition and ending with the **March 26, 2019** edition, for a total of 1 publications:

03/26/2019

CITY OF KIRKWOOD NOTICE OF PUBLIC HEARING

Before the City Council of
Kirkwood, Missouri

The Council of the City of Kirkwood will hold a public hearing in City Hall, 139 South Kirkwood Road, Kirkwood, Missouri at the hour of 7:00 p.m., Thursday, April 18, 2019 to consider the following:

A request for a Special Use Permit for Rush Bowls to operate a restaurant at 343 South Kirkwood Road, Suite 103.

Laurie Asche, CMC/MRCC
City Clerk

The City of Kirkwood is interested in effective communication for all persons. Persons requiring an accommodation to attend and participate in the meeting should contact the City Clerk at 314-822-5802 at least 48 hours before the meeting. With advance notice of seven calendar days, the City of Kirkwood will provide interpreter services at public meetings for languages other than English and for the hearing impaired. Upon request, the minutes from this meeting can be made available in an alternate format, such as CD by calling 314-822-5802.
11720324 County Mar. 26, 2019

Karie Clark

Karie Clark

Subscribed & sworn before me this 26th day of Mar, 2019
(SEAL)

Chanel Jones
Notary Public

CHANEL JONES
Notary Public - Notary Seal
State of Missouri
Commissioned for St Louis County
My Commission Expires: August 08, 2022
Commission Number: 14397721



AFFIDAVIT OF PUBLICATION

City of Kirkwood

Attn: Laurie Asche
City Clerk
139 S. Kirkwood Rd.
Kirkwood, MO 63122

I, Terry Cassidy, verify that the attached Public Hearing
Notice was published in the Webster-Kirkwood Times on

March 29, 2019


Advertising Consultant

1/32 pg - permit Rush Bowls



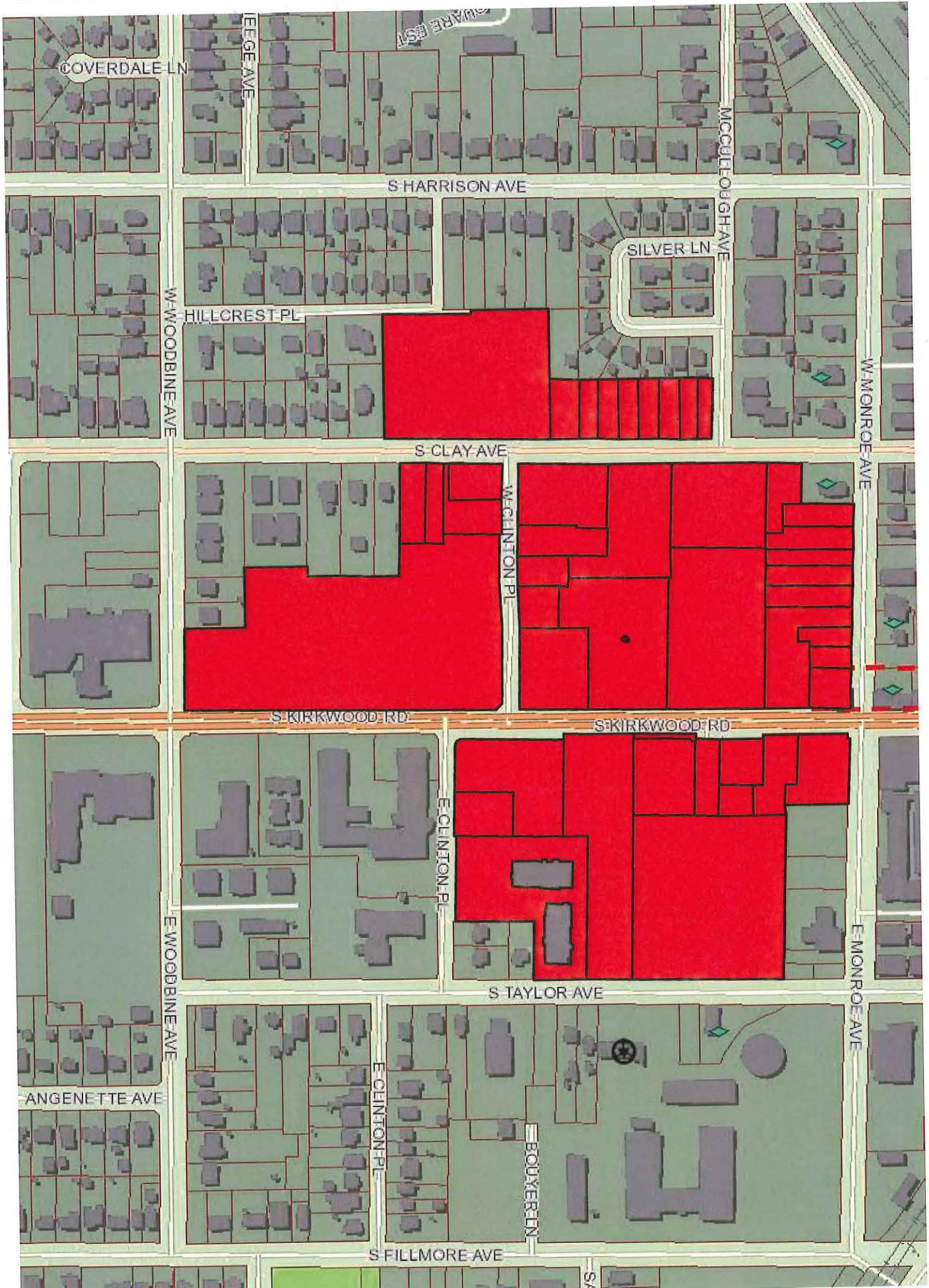
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COVERDALE LN

LEGE AVE

S HARRISON AVE

MCCULLOCH AVE

W WOODBINE AVE

HILLCREST PL

SILVER LN

W MONROE AVE

S CLAY AVE

W CLINTON PL

S KIRKWOOD RD

S KIRKWOOD RD

E WOODBINE AVE

E CLINTON PL

E MONROE AVE

S TAYLOR AVE

ANGENETTE AVE

E CLINTON PL

BOULDER PL

S FILLMORE AVE

SA

PROPERTY OWNER
437 S CLAY AVE, UNIT 1
SAINT LOUIS, MO 63122

PROPERTY OWNER
117 E CLINTON PL, UNIT 1
SAINT LOUIS, MO 63122

PROPERTY OWNER
1216 PASEO JUANITA ST
SIERRA VISTA, AZ 85635

PROPERTY OWNER
117 E CLINTON PL, UNIT 3
SAINT LOUIS, MO 63122

PROPERTY OWNER
5513 CARIBBEAN PL
JONESBOROR, AR 72404

PROPERTY OWNER
9942 WATSON RD
SAINT LOUIS, MO 63126

PROPERTY OWNER
417 S CLAY AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
132 E MONROE AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
6389 N QUAIL HOLLOW RD, STE 101
MEMPHIS, TN 38120

PROPERTY OWNER
117 E CLINTON PL, UNIT 7
SAINT LOUIS, MO 63122

PROPERTY OWNER
2201 3RD AVE, #1501
SEATTLE, WA 98121

PROPERTY OWNER
138 W CLINTON PL
SAINT LOUIS, MO 63122

PROPERTY OWNER
404 S CLAY AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
435 S CLAY AVE, UNIT 5
SAINT LOUIS, MO 63122

PROPERTY OWNER
338 S KIRKWOOD RD, #103
SAINT LOUIS, MO 63122

PROPERTY OWNER
P.O. BOX 220881
SAINT LOUIS, MO 63122

PROPERTY OWNER
435 S CLAY AVE, UNIT 3
SAINT LOUIS, MO 63122

PROPERTY OWNER
461 S CLAY AVE, UNIT D
SAINT LOUIS, MO 63122

PROPERTY OWNER
120 S CENTRAL AVE, STE 500
SAINT LOUIS, MO 63105

PROPERTY OWNER
1530 S 2ND ST
SAINT LOUIS, MO 63104

PROPERTY OWNER
350 S KIRKWOOD RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
132 E MONROE AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
435 S CLAY AVE, UNIT 3
SAINT LOUIS, MO 63122

PROPERTY OWNER
1000 OAK GLEN CIR
BALLWIN, MO 63021

PROPERTY OWNER
1135 FRANCISCO ST, UNIT 8
SAN FRANCISCO, CA 94109

PROPERTY OWNER
27 SAPIINGTON VILLA CT
SAINT LOUIS, MO 63126

PROPERTY OWNER
433 S CLAY AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
430 W JEFFERSON AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
20 ALLEN AVE, STE 341
SAINT LOUIS, MO 63119

PROPERTY OWNER
123 W CLINTON PL, #2737
SAINT LOUIS, MO 63122

PROPERTY OWNER
20 ALLEN AVE, STE 400
SAINT LOUIS, MO 63119

PROPERTY OWNER
335 S KIRKWOOD RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
10406 ARTHUR PL
SAINT LOUIS, MO 63131

PROPERTY OWNER
451 S CLAY AVE, UNIT A
SAINT LOUIS, MO 63122

PROPERTY OWNER
133 W CLINTON PL
SAINT LOUIS, MO 63122

PROPERTY OWNER
453 S CLAY AVE, UNIT A
SAINT LOUIS, MO 63122

PROPERTY OWNER
453 S CLAY AVE, UNIT B
SAINT LOUIS, MO 63122

PROPERTY OWNER
455 S CLAY AVE, UNIT A
SAINT LOUIS, MO 63122

PROPERTY OWNER
451 S CLAY AVE, UNIT B
SAINT LOUIS, MO 63122

PROPERTY OWNER
125 E CLINTON PL, UNIT 3C
SAINT LOUIS, MO 63122

PROPERTY OWNER
125 E CLINTON PL, UNIT 2D
SAINT LOUIS, MO 63122

PROPERTY OWNER
9942 WATSON RD
SAINT LOUIS, MO 63126

PROPERTY OWNER
441 S CLAY AVE, UNIT B
SAINT LOUIS, MO 63122

PROPERTY OWNER
2026 DOUGHERTY FERRY RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
441 S CLAY AVE, UNIT D
SAINT LOUIS, MO 63122

PROPERTY OWNER
443 S CLAY AVE, UNIT A
SAINT LOUIS, MO 63122

PROPERTY OWNER
9395 SE 12TH ST
SUMMERFIELD, FL 34491

PROPERTY OWNER
1034 S BRENTWOOD BLVD #1492
SAINT LOUIS, MO 63117

PROPERTY OWNER
555 12TH ST, STE 1250
OAKLAND, CA 94607

PROPERTY OWNER
443 S CLAY AVE, UNIT C
SAINT LOUIS, MO 63122

PROPERTY OWNER
8767 D RD
WATERLOO, IL 62298

PROPERTY OWNER
459 S CLAY AVE, UNIT A
SAINT LOUIS, MO 63122

PROPERTY OWNER
364 N WOODLAWN AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
4922 BRUNSTON DR
SAINT LOUIS, MO 63129

PROPERTY OWNER
205 BEACON POINT LN
GROVER, MO 63040

PROPERTY OWNER
P.O. BOX 220526
SAINT LOUIS, MO 63122

PROPERTY OWNER
484 N TAYLOR ST
SAINT LOUIS, MO 63122

PROPERTY OWNER
419 S CLAY AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
437 S CLAY AVE, UNIT 2
SAINT LOUIS, MO 63122

PROPERTY OWNER
431 S CLAY AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
133 W CLINTON PL
SAINT LOUIS, MO 63122

PROPERTY OWNER
143 W CLINTON PL
SAINT LOUIS, MO 63122

PROPERTY OWNER
P.O. BOX 220399
SAINT LOUIS, MO 63122

PROPERTY OWNER
338 S KIRKWOOD RD, UNIT 105
SAINT LOUIS, MO 63122

PROPERTY OWNER
305 S KIRKWOOD RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
309 S KIRKWOOD RD
SAINT LOUIS, MO 63122

PROPERTY OWNER
106 W MONROE AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
124 W MONROE AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
128 W MONROE AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
130 W MONROE AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
41 BOPP LN
SAINT LOUIS, MO 63132

PROPERTY OWNER
1490 SCHOETTLER RD
CHESTERFIELD, MO 63017

PROPERTY OWNER
427 S CLAY AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
455 S CLAY AVE, UNIT B
SAINT LOUIS, MO 63122

PROPERTY OWNER
457 S CLAY AVE, UNIT A
SAINT LOUIS, MO 63122

PROPERTY OWNER
338 S KIRKWOOD RD, UNIT 105/107
SAINT LOUIS, MO 63122

PROPERTY OWNER
435 S CLAY AVE, UNIT 6
SAINT LOUIS, MO 63122

PROPERTY OWNER
125 E CLINTON PL, UNIT 3A
SAINT LOUIS, MO 63122

PROPERTY OWNER
125 E CLINTON PL, UNIT 2B
SAINT LOUIS, MO 63122

PROPERTY OWNER
125 E CLINTON PL, UNIT 3B
SAINT LOUIS, MO 63122

PROPERTY OWNER
425 S CLAY AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
117 E CLINTON PL, UNIT 4
SAINT LOUIS, MO 63122

PROPERTY OWNER
418 S CLAY AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
117 E CLINTON PL, UNIT 5
SAINT LOUIS, MO 63122

PROPERTY OWNER
338 117 E CLINTON PL, UNIT 6
SAINT LOUIS, MO 63122

PROPERTY OWNER
429 S CLAY AVE, UNIT 1
SAINT LOUIS, MO 63122

PROPERTY OWNER
340 W JEFFERSON AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
412 S CLAY AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
125 E CLINTON PL, UNIT 1B
SAINT LOUIS, MO 63122

PROPERTY OWNER
125 E CLINTON PL, UNIT 1C
SAINT LOUIS, MO 63122

PROPERTY OWNER
459 S CLAY AVE, UNIT D
SAINT LOUIS, MO 63122

PROPERTY OWNER
461 S CLAY AVE, UNIT B
SAINT LOUIS, MO 63122

PROPERTY OWNER
120 S CENTRAL AVE, STE 250
SAINT LOUIS, MO 63105

398-47
PROPERTY OWNER
437 S CLAY AVE, UNIT 8
SAINT LOUIS, MO 63122

PROPERTY OWNER
715 HAVENWOOD CIRCLE DR
SAINT LOUIS, MO 63122

PROPERTY OWNER
1127 COUNTRY STONE DR
VALLEY PARK, MO 63088

PROPERTY OWNER
338 S KIRKWOOD RD, #101
SAINT LOUIS, MO 63122

PROPERTY OWNER
439 S CLAY AVE, UNIT 6
SAINT LOUIS, MO 63122

PROPERTY OWNER
9942 WATSON RD
SAINT LOUIS, MO 63126

PROPERTY OWNER
5412 LANGSWORTH DR
SAINT LOUIS, MO 63129

PROPERTY OWNER
2912 GREENLEAF DR
SAINT CHARLES, MO 63303

PROPERTY OWNER
806 ST ALBANS DR
FARMINGTON, MO 63640

333-8
PROPERTY OWNER
421 S CLAY AVE
SAINT LOUIS, MO 63122

PROPERTY OWNER
457 S CLAY AVE, UNIT B
SAINT LOUIS, MO 63122

PROPERTY OWNER
602 E DANIEL ST
ALBANY, MO 64402

PROPERTY OWNER
968 W HIGHWAY C
CHARLESTON, MO 63834

PROPERTY OWNER
950 HWY 98 E 7122
DESTIN, FL 32541

PROPERTY OWNER
433 S CLAY AVE, UNIT 5
SAINT LOUIS, MO 63122

PROPERTY OWNER
433 S CLAY AVE, UNIT 2
SAINT LOUIS, MO 63122

PROPERTY OWNER
433 S CLAY AVE, UNIT 3
SAINT LOUIS, MO 63122

PROPERTY OWNER
433 S CLAY AVE, UNIT 4
SAINT LOUIS, MO 63122

344-1
PROPERTY OWNER
437 S CLAY AVE, UNIT 3
SAINT LOUIS, MO 63122

PROPERTY OWNER
437 S CLAY AVE, UNIT 4
SAINT LOUIS, MO 63122



WHERE COMMUNITY AND SPIRIT MEET

March 21, 2019

Russell B. Hawes
Chief Administrative Officer

At the March 20, 2019, meeting of the Planning and Zoning Commission, the following action was taken:

1. After a presentation to subdivide the Kirkwood United Church of Christ property at 1525 and 1603 Dougherty Ferry Road into two lots, the Commission recommended approval.
2. After a presentation for Rush Bowls to operate a restaurant in Suite 103 of 343 South Kirkwood Road, the Commission recommended approval.
3. Staff provided updates on development projects recently reviewed by the City Council.
4. Staff provided an update on the upcoming Comprehensive Zoning & Subdivision Code Review project. A Subcommittee consisting of Commissioners Drewel, Mallinckrodt, and Eagleton was appointed to serve on the Steering Committee.
5. Staff provided information to the Commission on the various application processes that involve review by the Commission.

The next meeting will be held on April 3, 2019, at 7 p.m.

Respectfully submitted,

Allen Klippel, Chair
Planning and Zoning Commission

MEMORANDUM

TO: PLANNING & ZONING COMMISSION
FROM: JONATHAN D. RAICHE, CITY PLANNER *JDR*
SUBJECT: PZ-23-19; 343 S. KIRKWOOD ROAD, SUITE 103 –
 RUSH BOWLS (SUP – RESTAURANT)
DATE: MARCH 19, 2019
CC: BILL BENSING, PUBLIC SERVICES DIRECTOR



WHERE COMMUNITY AND SPIRIT MEET®

PROJECT DESCRIPTION:

The new restaurant, Rush Bowls, is proposed for suite 103 in the Pioneer Place Development at 343 S. Kirkwood Road. This space is approximately 1,000 gross square feet with seating for approximately 12 patrons. The majority of their business is anticipated to be for carry-out orders. The applicant expects a maximum of 4 employees on a shift during peak hours and hours of operation are proposed as Monday – Friday, 7am – 8pm; Saturday 8am – 9pm; and Sunday 8am – 7pm. The applicant may choose to provide accessory outdoor seating subject to certain conditions included in the Zoning Code. If provided, this seating would be for no more than 12 customers and would need to provide adequate clearance for the adjacent pedestrian walkway.

In 1998, suite 103 was approved for a restaurant as part of the Blue Water Grill which occupied suites 101-103. In March of 2018, suite 103 was once again approved to host the expansion of the adjacent restaurant at that time (Sushi Bistro). Since the March 2018 approval, Sushi Bistro has been replaced by My Greek Kitchen, but neither restaurant ever expanded into suite 103. This proposal would result in two separate restaurants operating in the same three tenant spaces that have been previously approved for restaurants by the City.

DISCUSSION:

Zoning Matters signs were posted on the property on March 15, 2019. Section A-1000: Parking Regulations of the Zoning Code states that the change of use of any premises within the downtown area shall be exempt from additional parking and loading requirements. In addition to this exemption, Staff would like to draw attention to a couple pieces of information related to parking. In 2018, there was a 16 space parking lot that was constructed by the property owners and said parking lot is used by the larger Pioneer Place Development. These 16 parking spaces are additional to what was provided in 1998 when the property was approved for a restaurant, Blue Water Grill, to occupy all three tenant spaces. The newly adopted Downtown parking rates would require 10 spaces per 1,000 square feet of gross floor area. This would result in a requirement of 10 parking spaces which are off-set by the 16 spaces recently installed for the entire development.

RECOMMENDATION:

Staff recommends this petition be **approved** with the following conditions:

1. A Special Use Permit shall be granted to allow for the operation of a restaurant on the property known as 343 South Kirkwood Road, Suite 103.
2. The project shall be constructed and maintained in accordance with the floor plan stamped "Received March 8, 2019, City of Kirkwood Public Services Department".

BILL 10749

ORDINANCE

AN ORDINANCE AMENDING THE KIRKWOOD CODE OF ORDINANCES, CHAPTER 14, ARTICLE VIII. SECTION 14-393 "SCHEDULE C: NO PARKING ZONES" BY ADDING NO PARKING ON THE SOUTH SIDE OF DOUGHERTY FERRY ROAD FROM BALLAS ROAD EASTWARDLY APPROXIMATELY 250 FEET FROM THE PROLONGATION OF THE EDGE LINES OF BALLAS ROAD AND DOUGHERTY FERRY ROAD.

WHEREAS, in 2021 St. Louis County will resurface the Ballas Road pavement between Dougherty Ferry Road and Manchester Road, and

WHEREAS, as part of this project, St. Louis County is also planning to enhance the safety of the intersection by restriping the east leg of the intersection to include an exclusive left turn lane for westbound Dougherty Ferry Road to southbound Ballard Road, and

WHEREAS, to accommodate the proposed striping, the Streets and Codes Issue Team recommends that there should be no parking in the aforementioned area, and

WHEREAS, the Streets and Codes Issue Team recommends that the "No Parking Signs" be added on the south side of Dougherty Ferry Road from Ballas Road eastwardly approximately 250 feet from the prolongation of the edge lines of Ballas Road and Dougherty Ferry Road.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Kirkwood Code of Ordinances, Chapter 14, Article VIII. Section 14-393 (c) is hereby amended by adding the following:

Dougherty Ferry Road (south side) approximately 250 feet from the prolongation of the edge lines of Ballas Road and Dougherty Ferry Road.

SECTION 2. The Street Department is hereby directed to install and maintain "No Parking Signs" in the above location.

SECTION 3. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

Mayor, City of Kirkwood

ATTEST:

City Clerk

1st Reading:

2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 5/2/2019

Step #1:

Strategic Plan NO Goal # & Title To restrict parking near Dougherty Ferry and Ballas so St. Louis C...

Background To Issue:

In 2021, St. Louis County will resurface the Ballas Road pavement between Dougherty Ferry and Manchester Road. As part of this project, the County is also planning to enhance the safety of the intersection by restriping the east leg of the intersection to include an exclusive left turn lane for westbound Dougherty Ferry to southbound Ballas Road.

Recommendations and Action Requested:

To accommodate the proposed striping, parking would need to be PROHIBITED on the south side of Dougherty Ferry from Ballas Road eastwardly approximately 250 feet from the prolongation of the edge lines of Ballas Road and Dougherty Ferry.

This section of Dougherty Ferry shall be added to Ordinance #14.393.

Alternatives Available:

Cost: \$0.00 Account #: 0 Project #: 0 Budgeted: NO

If YES, Budgeted Amount: If NO, or if insufficient funding (Complete Step #3).


Department Head Comments:

BY: Brian Murphy

Date: 4/16/2019

Authenticated: baldriga

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:

BY: Select...


Date:

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (Must have Finance Department's approval).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY:



Date:

4-25-19

BILL 10750

ORDINANCE

AN ORDINANCE AMENDING THE KIRKWOOD CODE OF ORDINANCES, CHAPTER 13, ARTICLE III. "LICENSING AND REGULATION OF CERTAIN OCCUPATIONS", DIVISION 1. "MASSAGE PARLORS AND ESTABLISHMENTS".

WHEREAS, the Code of Ordinances, Chapter 13, Article III. "Licensing and Regulation of Certain Occupations", Division 1. "Massage Parlors and Establishments" is out of date with the State of Missouri Board of Therapeutic Massage regulations, and

WHEREAS, it is recommended that the provision regarding massage clients being required to be 18 years of age be removed, the provision that it is unlawful for a massage therapist provide massage therapy to a person of the opposite sex be removed, and the provision that a massage therapy applicant provide the city with a licensed physicians examination be removed.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Kirkwood Code of Ordinances, Chapter 13, Article III. "Licensing and Regulation of Certain Occupations", Division 1. "Massage Parlors and Establishments" is hereby amended by deleting it in its entirety and inserting the following in lieu thereof:

Sec. 13-81. Policy.

It is hereby declared that the business of operating massage parlors and establishments as defined herein is a business affecting the public health, safety and general welfare. (Ord. No. 5673, §1, 3-7-74)

Sec. 13-82. Definitions.

As used in this division, the following words, terms and phrases shall have the meaning ascribed to them in this section, unless the context clearly indicates otherwise:

(a) *Applicant.* Any person who applies for a license as required herein. If the applicant is a partnership, each partner shall be deemed an applicant. If the applicant is a corporation or other firm, association, or company, the owner of a majority of such entity shall be deemed an applicant.

(b) *Employee.* Any person, other than a massage technician, masseur, or masseuse who renders any service to a patron in connection with the operation of a massage parlor and who receives compensation directly or indirectly from the operation or owner of the massage parlor or its patrons.

(c) *Massage.* Any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the structure of the human body or external parts of the human body with the human hand or with the aid of any instrument or mechanical or electrical apparatus whether or not applied with such substances or supplementary aids as rubbing alcohol, liniment, antiseptics, oils, powders, creams, lotions, ointments or other similar preparations or substances.

(d) *Massage parlor.* Any establishment having a fixed place of business where massages are administered or where any person engages in or carries on, or permits to be engaged in or carried on, any or all of the activities mentioned in the definition of "massage"; provided, however, that nothing herein contained shall be construed to include a duly licensed hospital, nursing home, medical clinic, or duly licensed physician, surgeon, physical therapist, chiropractor, osteopath, naturopath, podiatrist, or persons holding a drugless practitioner's certificate under the laws of this state. Furthermore, this definition shall exclude from its operation barbershops or beauty salons (i.e., duly licensed barbers or cosmetologists) in which massages are administered only to the scalp, the face, the neck or the shoulders.

(e) *Massage technician, masseur, masseuse.* Any person who for any consideration whatsoever administers a massage to another person at a massage parlor.

(f) *Patron.* Any person who receives a massage at a massage parlor under such circumstances that it is reasonably expected that he or she will pay money or give other consideration thereof.

(g) *Recognized school.* Any school or institution of learning which has for its purpose, or among its chief purposes, the teaching of the theory, method, profession, or work of massage, provided that such recognized school shall require a resident course of study of at least seventy (70) hours before a student shall be entitled to receive a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning, and provided further that such school shall have, prior to the issuance of the diploma or certificate, been approved pursuant to the governing regulations of the state in which said school or institution is located.

(h) *Permittee.* The person to whom a permit has been issued to act in the capacity of a massage technician (masseur or masseuse).

(i) *Sexual or genital area.* Genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.

Sec. 13-83. Minimum standards.

No license to conduct a massage establishment shall be issued unless an inspection by the building commissioner or designee reveals that the establishment complies with each of the following minimum requirements:

(1) *Disinfecting and sterilizing equipment.* The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and

materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.

(2) *Closed storage areas.* Closed cabinets shall be provided and used for the storage of clean linen, towels and other materials used in connection with administering massages. All soiled linens, towels and other materials shall be kept in properly covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage areas.

(3) *Linen and towels.* Clean linen and towels shall be provided for each patron. No common use of towels or linens shall be permitted.

(4) *Dressing, locker, bathing and toilet facilities.* Adequate dressing, locker, bathing, if any, and toilet facilities shall be provided in convenient locations. In the event female patrons are to be served simultaneously, separate dressing, locker, bathing, if any, toilet and massage room facilities shall be provided. Separate toilet and lavatory facilities shall be maintained for personnel. Doors to all dressing rooms shall be self closing.

(5) *Lavatories or washbasins.* Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap and a dispenser and with sanitary towels.

(6) *Plumbing and electrical equipment.* All plumbing and electrical equipment shall be installed in accordance with the requirements of the applicable plumbing code and electrical code.

(7) *Facilities.* All walls, ceilings, floors, showers, bathtubs, steam rooms and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs and showers shall be thoroughly cleaned after each use. When carpeting is used on the floors, it shall be kept dry.

Sec. 13-84. Operating requirements.

(a) *Sanitation.* Every portion of the massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.

(b) *Posting of rates.* Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.

(c) *Cleanliness of employees; dressing rooms.* All employees, including masseurs and masseuses, shall be clean and wear clean, nontransparent outer garments, covering the sexual and genital areas, whose use is restricted to the massage establishment. A separate dressing

room for each sex must be available on the premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

(d) *Clean sheets and towels.* All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in a sanitary manner.

(e) *False or misleading advertising.* No massage establishment granted a license under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed any advertisement, picture or statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage services.

Sec. 13-85. Alcoholic beverages prohibited.

No person shall sell, give, dispense, provide or keep, or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage establishment.

Sec. 13-86. Employment of masseur/masseuse.

No person shall employ as a masseur or masseuse any person unless the person has obtained and has in effect a permit issued pursuant to this article.

Sec. 13-87. Inspection required.

The building commissioner or designee and the chief of police or authorized representative shall from time to time make inspection of each massage establishment for the purpose of determining full compliance with the provisions of this article. It shall be unlawful for any licensee to fail or to allow such persons access to the premises or hinder such persons in any manner.

Sec. 13-88. Unlawful acts.

(a) It shall be unlawful for any person in a massage establishment to touch with his or her hands or other part of the body, to fondle or massage in any manner the sexual or genital areas of any other person.

(b) It shall be unlawful for any person while in the presence of any other person in a massage establishment to fail to conceal with a fully opaque covering the sexual or genital areas of his or her body.

(c) It shall be unlawful for any person to engage in outcall massage service.

(d) It shall be unlawful for any licensee hereunder, or any person owning, operating or managing a massage establishment knowingly to cause or permit any massage therapist or employee to perform any of the acts prohibited by this section.

Sec. 13-89. Applicability to existing massage therapists.

Applicants for a massage therapist permit may substitute one year's continuous experience as a masseur or masseuse in lieu of the requirement of a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method and work of massage is taught. Such masseur or masseuse must obtain an affidavit attesting to such experience occurred. If, after diligent effort, the masseur or masseuse is unable to obtain an affidavit from the owner, such masseur or masseuse may submit an affidavit from a person who had firsthand knowledge of his or her continuous year of experience.

Sec. 13-90. License required; application.

(a) It shall be unlawful for any person to establish, maintain or conduct any massage business within the City unless such person has made application for and secured a license to do so from the City.

(b) Any person desiring a license pursuant to this article shall submit an application to the Director of Finance along with a nonrefundable application fee of \$50 in addition to the license fees required under Section 13-34. Each application shall include the following information:

- (1) The name and residence address of each applicant; and if the applicant is a partnership or corporation, then the names and residence addresses of all partners and principals;
- (2) The location and mailing address of the proposed business;
- (3) A statement of the services and facilities to be provided;
- (4) Satisfactory proof that the applicant is at least eighteen (18) years of age;
- (5) Two (2) current portrait photographs (taken within six months of application) at least two inches by two inches of each applicant;
- (6) The business, occupation and employment of the applicant for the three (3) years immediately preceding the date of application;
- (7) All criminal convictions other than misdemeanor traffic violations;
- (8) The qualifications, training and experience of the applicant, including documentation evidencing any course, study or experience of applicant in performing massages, and the history of applicant in connection with such business including names of employers and associates, locations and dates;
- (9) A list of all masseurs and masseuses who work at the massage business, including the information specified in Section 13-96 of this Code.

- (10) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant.

Sec. 13-91. Investigation.

The application under this article shall be referred to the building commissioner or designee and the police department for investigation, including inspection of the proposed premises, and a report of the character and qualifications of the applicant.

Sec. 13-92. Issuance.

The director of finance shall issue a license for a massage establishment upon satisfaction of the conditions and requirements set forth in this article, including confirmation of the following:

- (1) Compliance with the "Minimum Standards" set forth in Section 13-83;
- (2) The premises and location of the proposed massage establishment would not be in violation of any City codes pertaining to building, health, housing, zoning and fire as certified by the fire chief and building official;
- (3) The applicant has not been convicted of a criminal act which constitutes either a felony, an offense involving obscenity or prostitution, or an offense involving immoral conduct;
- (4) The applicant has not made any false, fraudulent or misleading statements in the license application;
- (5) The applicant is at least eighteen (18) years of age;
- (6) The applicant has satisfactorily completed a course of training in a recognized school, or in the alternative has equivalent on the job training and experience;
- (7) The applicant has not had a massage parlor, massage business or other similar license revoked by the City or any other governmental entity anywhere within two years of the present application.

Sec. 13-93. Suspension or revocation.

Any massage establishment license may be suspended or revoked by the director of finance for the violation of any of the provisions of this article or for any act or conduct which would be sufficient cause for the denial of a license upon an original application. Before any such suspension or revocation, the licensee shall be given at least five (5) days' written notice of

the specific charges and an opportunity for a hearing and presentation of evidence bearing upon the question before the director of finance.

Sec. 13-94. Transfer.

No license shall be transferable except with the written consent of the city; provided, however, that upon the death or incapacity of the licensee, the massage establishment may continue in business for a reasonable period of time to allow for an orderly transfer of the license.

Sec. 13-95. Massage technician permit.

(a) It shall be unlawful for any person to practice massage unless a valid permit has been issued by the City pursuant to the provisions herein.

(b) Prior to employing any person as a masseur or masseuse, an application for a permit shall be made to the director of finance. Each application shall include information as follows:

- (1) The name and residence address of the applicant;
- (2) The social security number of the applicant;
- (3) Satisfactory proof that the applicant is at least eighteen (18) years of age;
- (4) Two (2) current portrait photographs (taken within six months of application) at least two inches by two inches, and a complete set of fingerprints taken by the police department;
- (5) The business, occupation and employment of the applicant for the three (3) years immediately preceding the date of application;
- (6) All criminal convictions other than misdemeanor traffic violations;
- (7) The training and experience of the applicant in the massage business, and the history of applicant in connection with such business including names of employers and associates, locations and dates;
- (8) Authorization to the City to seek information and conduct an investigation concerning the matters set forth in the application and the qualifications of the applicant for the permit;

(c) Each applicant for a massage technician permit shall pay a nonrefundable annual permit fee of \$50 per year or any part thereof.

(d) The application for a permit shall be referred to the police department for investigation and a report of the character and qualifications of the applicant.

(e) The director of finance shall within thirty (30) days issue a permit for a massage therapist upon approval by the license inspector and compliance with all appropriate provisions of this chapter, and upon the findings, as follows:

- (1) The applicant has not been convicted of a criminal act which constitutes either a felony, an offense involving sexual misconduct, an offense involving obscenity or prostitution, or an offense involving immoral conduct;
- (2) The applicant has not made any false, fraudulent or misleading statements in the permit application;
- (3) The applicant is at least eighteen (18) years of age;
- (4) The applicant has satisfactorily completed a course of training in a recognized school, or in the alternative has equivalent on the job training and experience.

Sec. 13-96. Suspension or revocation of permit.

Any massage therapist permit may be suspended or revoked by the director of finance for the violation of the provisions of this chapter or for any act or conduct which would be sufficient cause for the denial of a permit upon an original application. Before any such suspension or revocation, the permittee shall be given at least five (5) days' written notice of the specific charges and an opportunity for public hearing and presentation of evidence bearing upon the question. (Ord. No. 8466, §1, 11-16-95)

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

Mayor, City of Kirkwood

ATTEST:

City Clerk
1st Reading:
2nd Reading:

Legislation Request

Ordinance

Place On The Agenda Of: 5/2/2019

Step #1:

Strategic Plan Select... Goal # & Title

Background To Issue:

Updating Article III. Licensing and Regulations of Certain Occupations. Division 1. Massage Parlors and Establishments. The City of Kirkwood massage parlor ordinance contains some outdated provisions that I am requesting be changed. In summary I am requesting council remove the provision that massage clients have to be 18 years old to receive a massage. The Executive Director of the State of Missouri Board of Therapeutic Massage stated: The licensure board has no specific law or rules concerning massage therapy for minors. Defined as health care providers, licensed massage therapists would need to follow the same requirements as a physician, dentist etc. regarding parental consent and documentation.

I am also asking council to change the ordinance that it is unlawful in the City of Kirkwood for a massage therapist to provide massage therapy to a person of the opposite sex. The Executive Director responded that there is no such restriction in the state massage statutes and that many male and female massage therapists provide massage therapy regardless of gender.

Remove the provision that a massage therapy applicant provide the city with a licensed physicians examination that states the applicant is free of communicable diseases.

Recommendations and Action Requested:

I have attached a copy of the applicable ordinance with recommended deletions which are struck through and highlighted.

Alternatives Available:

If council chooses to take no action we will have an outdated ordinance on our books that does not deal with the realities of the massage therapy industry today.

Cost: \$0.00 Account #: Revenue account Project #: t Budgeted: YES

If YES, Budgeted Amount: If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: John Adams

Date: 4/25/2019

Authenticated: adamsjr

You can attach up to 3 files along with this request.



MessageOrdinanceChanges.do

CX

Microsoft Word Document

22.2 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

You can attach up to 3 files along with this request.

File Attachment

File Attachment

File Attachment

Step #3: If budgetary approval is required **(Must have Finance Department's approval).**

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

This is a part of the business licensing ordinance that is implemented by the Finance Department.

BY: John Adams

Date: 4/25/2019

Authenticated: adamsjr

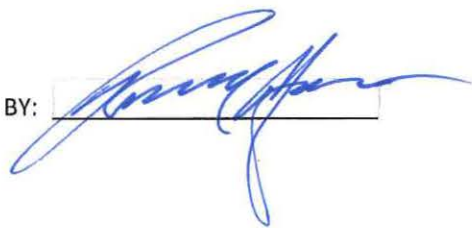
Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY:

A handwritten signature in blue ink, written over a horizontal line. The signature is cursive and appears to be "Randy".

Date:

4-25-19

ARTICLE III. LICENSING AND REGULATION OF CERTAIN OCCUPATIONS

DIVISION 1. MASSAGE PARLORS AND ESTABLISHMENTS

Sec. 13-81. Policy.

It is hereby declared that the business of operating massage parlors and establishments as defined herein is a business affecting the public health, safety and general welfare. (Ord. No. 5673, §1, 3-7-74)

Sec. 13-82. Definitions.

As used in this division, the following words, terms and phrases shall have the meaning ascribed to them in this section, unless the context clearly indicates otherwise:

(a) *Applicant.* Any person who applies for a license as required herein. If the applicant is a partnership, each partner shall be deemed an applicant. If the applicant is a corporation or other firm, association, or company, the owner of a majority of such entity shall be deemed an applicant.

(b) *Employee.* Any person, other than a massage technician, masseur, or masseuse who renders any service to a patron in connection with the operation of a massage parlor and who receives compensation directly or indirectly from the operation or owner of the massage parlor or its patrons.

(c) *Massage.* Any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the structure of the human body or external parts of the human body with the human hand or with the aid of any instrument or mechanical or electrical apparatus whether or not applied with such substances or supplementary aids as rubbing alcohol, liniment, antiseptics, oils, powders, creams, lotions, ointments or other similar preparations or substances.

(d) *Massage parlor.* Any establishment having a fixed place of business where massages are administered or where any person engages in or carries on, or permits to be engaged in or carried on, any or all of the activities mentioned in the definition of "massage"; provided, however, that nothing herein contained shall be construed to include a duly licensed hospital, nursing home, medical clinic, or duly licensed physician, surgeon, physical therapist, chiropractor, osteopath, naturopath, podiatrist, or persons holding a drugless practitioner's certificate under the laws of this state. Furthermore, this definition shall exclude from its operation barbershops or beauty salons (i.e., duly licensed barbers or cosmetologists) in which massages are administered only to the scalp, the face, the neck or the shoulders.

(e) *Massage technician, masseur, masseuse.* Any person who for any consideration whatsoever administers a massage to another person at a massage parlor.

(f) *Patron.* Any person ~~over eighteen (18) years of age~~ who receives a massage at a massage parlor under such circumstances that it is reasonably expected that he or she will pay money or give other consideration thereof.

(g) *Recognized school.* Any school or institution of learning which has for its purpose, or among its chief purposes, the teaching of the theory, method, profession, or work of massage, provided that such recognized school shall require a resident course of study of at least seventy (70) hours before a student shall be entitled to receive a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning, and provided further that such school shall have, prior to the issuance of the diploma or certificate, been approved pursuant to the governing regulations of the state in which said school or institution is located.

(h) *Permittee.* The person to whom a permit has been issued to act in the capacity of a massage technician (masseur or masseuse).

(i) *Sexual or genital area.* Genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.

Sec. 13-83. Minimum standards.

No license to conduct a massage establishment shall be issued unless an inspection by the building commissioner or designee reveals that the establishment complies with each of the following minimum requirements:

(1) *Disinfecting and sterilizing equipment.* The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.

(2) *Closed storage areas.* Closed cabinets shall be provided and used for the storage of clean linen, towels and other materials used in connection with administering massages. All soiled linens, towels and other materials shall be kept in properly covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage areas.

(3) *Linen and towels.* Clean linen and towels shall be provided for each patron. No common use of towels or linens shall be permitted.

(4) *Dressing, locker, bathing and toilet facilities.* Adequate dressing, locker, bathing, if any, and toilet facilities shall be provided in convenient locations. In the event female patrons are to be served simultaneously, separate dressing, locker, bathing, if any, toilet and massage room facilities shall be provided. Separate toilet and lavatory facilities shall be maintained for personnel. Doors to all dressing rooms shall be self closing.

(5) *Lavatories or washbasins.* Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap and a dispenser and with sanitary towels.

(6) *Plumbing and electrical equipment.* All plumbing and electrical equipment shall be installed in accordance with the requirements of the applicable plumbing code and electrical code.

(7) *Facilities.* All walls, ceilings, floors, showers, bathtubs, steam rooms and all other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs and showers shall be thoroughly cleaned after each use. When carpeting is used on the floors, it shall be kept dry.

Sec. 13-84. Operating requirements.

(a) *Sanitation.* Every portion of the massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.

(b) *Posting of rates.* Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.

(c) *Cleanliness of employees; dressing rooms.* All employees, including masseurs and masseuses, shall be clean and wear clean, nontransparent outer garments, covering the sexual and genital areas, whose use is restricted to the massage establishment. A separate dressing room for each sex must be available on the premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

(d) *Clean sheets and towels.* All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in a sanitary manner.

(e) *False or misleading advertising.* No massage establishment granted a license under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed any advertisement, picture or statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage services.

~~**Sec. 13-85. Persons under age eighteen prohibited on premises.**~~

~~No person shall permit any person under the age of eighteen (18) years to come or remain on the premises of any massage establishment, as massagist, employee or patron.~~

Sec. 13-86. Alcoholic beverages prohibited.

No person shall sell, give, dispense, provide or keep, or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage establishment.

Sec. 13-87. Employment of masseur/masseuse.

No person shall employ as a masseur or masseuse any person unless the person has obtained and has in effect a permit issued pursuant to this article.

Sec. 13-88. Inspection required.

The building commissioner or designee and the chief of police or authorized representative shall from time to time make inspection of each massage establishment for the purpose of determining full compliance with the provisions of this article. It shall be unlawful for any licensee to fail or to allow such persons access to the premises or hinder such persons in any manner.

Sec. 13-89. Unlawful acts.

(a) It shall be unlawful for any person in a massage establishment to touch with his or her hands or other part of the body, to fondle or massage in any manner the sexual or genital areas of any other person.

(b) It shall be unlawful for any person while in the presence of any other person in a massage establishment to fail to conceal with a fully opaque covering the sexual or genital areas of his or her body.

(c) It shall be unlawful for any person to engage in outcall massage service.

(d) It shall be unlawful for any licensee hereunder, or any person owning, operating or managing a massage establishment knowingly to cause or permit any massage therapist or employee to perform any of the acts prohibited by this section.

~~(e) It shall be unlawful for any massage therapist to massage a person of the opposite sex, except upon the written order of a person licensed to practice the healing arts under the laws of the state.~~

Sec. 13-90. Applicability to existing massage therapists.

Applicants for a massage therapist permit may substitute one year's continuous experience as a masseur or masseuse in lieu of the requirement of a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method and work of massage is taught. Such masseur or masseuse must obtain an affidavit attesting to such experience occurred. If, after diligent effort, the masseur or masseuse is unable to obtain an affidavit from the owner, such masseur or masseuse may submit an affidavit from a person who had firsthand knowledge of his or her continuous year of experience.

Sec. 13-91. License required; application.

(a) It shall be unlawful for any person to establish, maintain or conduct any massage business within the City unless such person has made application for and secured a license to do so from the City.

(b) Any person desiring a license pursuant to this article shall submit an application to the Director of Finance along with a nonrefundable application fee of \$50 in addition to the license fees required under Section 13-34. Each application shall include the following information:

- (1) The name and residence address of each applicant; and if the applicant is a partnership or corporation, then the names and residence addresses of all partners and principals;
- (2) The location and mailing address of the proposed business;
- (3) A statement of the services and facilities to be provided;
- (4) Satisfactory proof that the applicant is at least eighteen (18) years of age;
- (5) Two (2) current portrait photographs (taken within six months of application) at least two inches by two inches of each applicant;
- (6) The business, occupation and employment of the applicant for the three (3) years immediately preceding the date of application;
- (7) All criminal convictions other than misdemeanor traffic violations;
- (8) The qualifications, training and experience of the applicant, including documentation evidencing any course, study or experience of applicant in performing massages, and the

history of applicant in connection with such business including names of employers and associates, locations and dates;

- (9) A list of all masseurs and masseuses who work at the massage business, including the information specified in Section 13-96 of this Code.
- (10) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant.

Sec. 13-92. Investigation.

The application under this article shall be referred to the building commissioner or designee and the police department for investigation, including inspection of the proposed premises, and a report of the character and qualifications of the applicant.

Sec. 13-93. Issuance.

The director of finance shall issue a license for a massage establishment upon satisfaction of the conditions and requirements set forth in this article, including confirmation of the following:

- (1) Compliance with the "Minimum Standards" set forth in Section 13-83;
- (2) The premises and location of the proposed massage establishment would not be in violation of any City codes pertaining to building, health, housing, zoning and fire as certified by the fire chief and building official;
- (3) The applicant has not been convicted of a criminal act which constitutes either a felony, an offense involving obscenity or prostitution, or an offense involving immoral conduct;
- (4) The applicant has not made any false, fraudulent or misleading statements in the license application;
- (5) The applicant is at least eighteen (18) years of age;
- (6) The applicant has satisfactorily completed a course of training in a recognized school, or in the alternative has equivalent on the job training and experience;
- (7) The applicant has not had a massage parlor, massage business or other similar license revoked by the City or any other governmental entity anywhere within two years of the present application.

Sec. 13-94. Suspension or revocation.

Any massage establishment license may be suspended or revoked by the director of finance for the violation of any of the provisions of this article or for any act or conduct which would be sufficient cause for the denial of a license upon an original application. Before any such suspension or revocation, the licensee shall be given at least five (5) days' written notice of the specific charges and an opportunity for a hearing and presentation of evidence bearing upon the question before the director of finance.

Sec. 13-95. Transfer.

No license shall be transferable except with the written consent of the city; provided, however, that upon the death or incapacity of the licensee, the massage establishment may continue in business for a reasonable period of time to allow for an orderly transfer of the license.

Sec. 13-96. Massage technician permit.

(a) It shall be unlawful for any person to practice massage unless a valid permit has been issued by the City pursuant to the provisions herein.

(b) Prior to employing any person as a masseur or masseuse, an application for a permit shall be made to the director of finance. Each application shall include information as follows:

- (1) The name and residence address of the applicant;
- (2) The social security number of the applicant;
- (3) Satisfactory proof that the applicant is at least eighteen (18) years of age;
- (4) Two (2) current portrait photographs (taken within six months of application) at least two inches by two inches, and a complete set of fingerprints taken by the police department;
- (5) The business, occupation and employment of the applicant for the three (3) years immediately preceding the date of application;
- (6) All criminal convictions other than misdemeanor traffic violations;
- (7) The training and experience of the applicant in the massage business, and the history of applicant in connection with such business including names of employers and associates, locations and dates;
- (8) Authorization to the City to seek information and conduct an investigation concerning the matters set forth in the application and the qualifications of the applicant for the permit;
- ~~(9) The applicant for a massage therapist permit shall furnish to the City a recent certificate by a licensed physician stating that upon examination the applicant is free of communicable disease, and thereafter such a certificate shall be furnished semiannually as a condition to the continuation of the permit.~~

(c) Each applicant for a massage technician permit shall pay a nonrefundable annual permit fee of \$50 per year or any part thereof.

(d) The application for a permit shall be referred to the police department for investigation and a report of the character and qualifications of the applicant.

(e) The director of finance shall within thirty (30) days issue a permit for a massage therapist upon approval by the license inspector and compliance with all appropriate provisions of this chapter, and upon the findings, as follows:

- (1) The applicant has not been convicted of a criminal act which constitutes either a felony, an offense involving sexual misconduct, an offense involving obscenity or prostitution, or an offense involving immoral conduct;
- (2) The applicant has not made any false, fraudulent or misleading statements in the permit application;
- (3) The applicant is at least eighteen (18) years of age;
- (4) The applicant has satisfactorily completed a course of training in a recognized school, or in the alternative has equivalent on the job training and experience.

Sec. 13-97. Suspension or revocation of permit.

Any massage therapist permit may be suspended or revoked by the director of finance for the violation of the provisions of this chapter or for any act or conduct which would be sufficient cause for the denial of a permit upon an original application. Before any such suspension or revocation, the permittee shall be given at least five (5) days' written notice of the specific charges and an opportunity for public hearing and presentation of evidence bearing upon the question. (Ord. No. 8466, §1, 11-16-95)

RESOLUTION 64-2019

A RESOLUTION OF THE CITY OF KIRKWOOD, MISSOURI APPROVING THE REAPPOINTMENTS TO THE BOARD OF DIRECTORS OF THE MANCHESTER LINDBERGH SOUTHEAST COMMUNITY IMPROVEMENT DISTRICT

WHEREAS, the City of Kirkwood, Missouri (the "*City*") is authorized and empowered pursuant to the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended (the "*CID Act*"), to establish a community improvement district upon receipt of a proper petition requesting the formation of such district and after a public hearing on such petition; and

WHEREAS, a Petition for the Creation of a Community Improvement District (the "*Petition*") was filed with the City Clerk requesting the creation of the Manchester Lindbergh Southeast Improvement District (the "*District*"), the boundaries of which would include approximately 2.2 acres of real property at the southeast corner of the intersection of Manchester and Kirkwood Roads; and

WHEREAS, pursuant to Section 67.1411.3 of the CID Act, the City passed Ordinance No. 10248 dated January 15, 2015 (the "*Ordinance*") that approved the Petition, established the District as a political subdivision of the State of Missouri, approved the appointment of the District's initial Board of Directors, and directed the City Clerk to notify the Missouri Department of Economic Development of the creation of the District; and

WHEREAS, pursuant to the Ordinance, the District shall be governed by a Board of Directors consisting of five individuals appointed by the Mayor of the City with the consent of the City Council; and

WHEREAS, the City Council finds that reappointing certain directors whose terms are expiring to the District's Board of Directors is in the best interest of the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. Pursuant to Section 67.1451.5 of the CID Act, the Mayor hereby reappoints and the City Council hereby consents to the following reappointments to the Manchester Lindbergh Southeast Improvement District:

Matthias D. Renner, as director to the CID's Board of Directors for a term expiring January 15, 2023.

Benjamin Phillips, as director to the CID's Board of Directors for a term expiring January 15, 2023.

SECTION 2. This Resolution shall be in full force and effect from the date of its passage and approval.

PASSED AND APPROVED THIS 2ND DAY OF MAY 2019.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 5/2/2019

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

A request from the Manchester Lindbergh Southeast Community Improvement District to reappoint Matthias D. Renner and Benjamin Phillips as directors to the CID's Board of Directors for terms expiring January 15, 2023.

Recommendations and Action Requested:

Reappoint Matthias D. Renner and Benjamin Phillips as directors to the CID's Board of Directors for terms expiring January 15, 2023.

Alternatives Available:

Cost: \$0.00

Account #: 000000

Project #:

Budgeted: YES

If YES, Budgeted Amount: \$0.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Laurie Asche

Date: 4/16/2019

Authenticated: aschelb

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Diasapprove

Chief Administrative Officer's Comments:

BY:



Date:

4-25-19

April 16, 2019

VIA CERTIFIED/RETURN RECEIPT

Honorable Timothy E. Griffin
Mayor
City of Kirkwood
139 S. Kirkwood Road
Kirkwood, MO 63122

Re: Appointment to the Manchester Lindbergh Southeast Community Improvement District

Dear Mayor Griffin:

Please be advised that this firm represents the Manchester Lindbergh Southeast Community Improvement District (the "CID").

On behalf of the CID, I respectfully request the re-appointment of Matthias D. Renner and Benjamin Phillips, each to additional four year terms expiring January 15, 2023, to the board of directors of the CID be recommended by you as Mayor and approved by the City Council of the City of Kirkwood, Missouri.

If you have any questions, please call me at (314) 552-6634.

Sincerely,



Linda K. AuBuchon
Paralegal

LKA

Enclosures

cc: Angela Odlum (via email)
Russell B. Hawes (via email)
Laurie Asche (via email)

RESOLUTION 68-2019

A RESOLUTION ACCEPTING THE BID OF FORD ASPHALT CO., IN THE NOT TO EXCEED AMOUNT OF \$660,000 (WHICH INCLUDES A CONTINGENCY OF \$60,000) FOR THE 2019 ASPHALTIC CONCRETE OVERLAYS AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT.

WHEREAS, pursuant to law, the City obtained bids for the 2019 Asphaltic Concrete Overlays, and

WHEREAS, the most responsible bid received was that of Ford Asphalt Co., in the not to exceed amount of \$660,000 (which includes a contingency of \$60,000) and which bid acceptance is approved by the Chief Administrative Officer and recommended by the Director of Procurement and the Director of Public Services, and

WHEREAS, funds are available in Account #301-1401-600.75.14, Project #PW2001.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The bid of Ford Asphalt Co., in the not to exceed amount of \$660,000 (which includes a contingency of \$60,000) for the 2019 Asphaltic Concrete Overlays is hereby accepted and approved.

SECTION 2. The Mayor is hereby authorized and directed to enter into a contract with Ford Asphalt Co., in the not to exceed amount of \$660,000 (which includes a contingency of \$60,000) for the 2019 Asphaltic Concrete Overlays.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 2ND DAY OF MAY 2019.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 5/2/2019

Step #1:

Strategic Plan YES

Goal # & Title Goal 5. Invest for the future through infrastructure. Objective C.2

Background To Issue:

The Engineering Department has selected asphalt streets to be milled and receive a hot mix asphaltic concrete overlay. The project includes ADA curb ramps, curb repair, milling, asphaltic concrete overlay and pavement markings. Bid advertisements for construction of the project were sent to contractor's through the Procurement Department. Ford Asphalt Co, Inc. submitted a low bid of \$600,000.00

Recommendations and Action Requested:

It is recommended the City Council accept the bid submitted by Ford Asphalt Co, Inc. for construction services and authorize an additional amount of \$60,000 contingency for a total contract amount of \$660,000.00

Alternatives Available:

Cost: \$660,000.00 Account #: 30114016007514 Project #: PW2001 Budgeted: YES

If YES, Budgeted Amount: \$660,000.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Ted Dunkmann

Date: 4/19/2019

Authenticated: dunkmatj

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 4/25/2019

Authenticated: weidledc

You can attach up to 3 files along with this request.



13005 Resolution Letter.pdf
Adobe Acrobat Document
183 KB

File Attachment

File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: John Adams

Date: 4/25/2019

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Diasapprove

Chief Administrative Officer's Comments:

BY: 

Date: 4-25-19

April 25, 2019

To: Russell B. Hawes, Chief Administrative Officer

For Your Consideration: 2019 Asphaltic Concrete Overlays, Bid # 13005

Sealed bids were publicly opened on April 19th, 2019. The bid tabulation is as follows:

<u>Vendor</u>	<u>Total Base Bid</u>
Ford Asphalt Co., Inc.	\$600,000.00
Spencer Contracting	\$632,458.77
Leritz Contracting	\$668,025.65

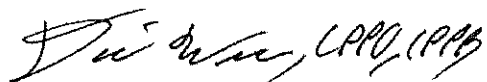
Bid requests were also sent Bryne and Jones Construction, Gershenson, Krupp, N.B. West Contracting, and Pace Construction Company; however they did not submit bids.

The bids were provided to Ted Dunkmann, City Engineer, for review. It is recommended that the bid be awarded to Ford Asphalt Co., Inc. as their bid of \$600,000.00 is the lowest responsive and responsible bid meeting specifications.

Funds are available in account number 301-1401-600.75-14, project number PW2001, in the amount of \$1,775,856.00.

Attached is a request from Ted Dunkmann, City Engineer, for a resolution authorizing a contract to be issued to Ford Asphalt Co., Inc. in the amount of \$600,000.00 with a contingency of \$60,000.00 for a total not to exceed value of \$660,000.00 for the 2019 Asphaltic Concrete Overlays.

Respectfully,



David Weidler, CPPO, CPPB
Procurement Director

RESOLUTION 69-2019

A RESOLUTION ACCEPTING THE BID OF T.G.B. IN THE NOT TO EXCEED AMOUNT OF \$569,541.50 (WHICH INCLUDES A CONTINGENCY OF \$51,776.50) FOR THE PARKWOODS AVENUE WATER MAIN REPLACEMENT AND AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT.

WHEREAS, pursuant to law, the City obtained bids for the Parkwoods Avenue Water Main Replacement, and

WHEREAS, the most responsible bid received was that of T.G.B. in the not to exceed amount of \$569,541.50 (which includes a contingency of \$51,776.50) and which bid acceptance is approved by the Chief Administrative Officer and recommended by the Director of Procurement and the Director of Public Services, and

WHEREAS, funds are available in Account #505-2215-481.75.15, Project #WA2002.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The bid of T.G.B. in the not to exceed amount of \$569,541.50 (which includes a contingency of \$51,776.50) for the Parkwoods Avenue Water Main Replacement is hereby accepted and approved.

SECTION 2. The Mayor is hereby authorized and directed to enter into a contract with T.G.B. in the not to exceed amount of \$569,541.50 (which includes a contingency of \$51,776.50) for the Parkwoods Avenue Water Main Replacement.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 2ND DAY OF MAY 2019.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 5/2/2019

Step #1:

Strategic Plan NO

Goal # & Title

Background To Issue:

The Water Division annually budgets and plans for the replacement of 1% of the City's water distribution system. This year the Division has scheduled the replacement of 4" and 6" cast iron water mains with 2,215 L.F. of 8" PVC water main on Parkwood from Adams Ave. to Essex Ave. The Water Division in conjunction with Procurement publicly solicited for proposal and is recommending TGB to preform this work.

Recommendations and Action Requested:

It is recommended that the City Council accept the bid from TGB in the amount of \$517,765 with a construction contingency of 10% for a total contract amount of \$569,541.50.

Alternatives Available:

Cost: \$569,541.50 Account #: 50522154817515 Project #: WA2002 Budgeted: YES

If YES, Budgeted Amount: \$1,525,600.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Bill Bensing


Date: 4/24/2019

Authenticated: bensinwe

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: David Weidler

Date: 4/25/2019

Authenticated: weidledc

You can attach up to 3 files along with this request.



12913 Resolution Letter.pdf
Adobe Acrobat Document
254 KB

File Attachment

File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: John Adams

Date: 4/25/2019

Authenticated: adamsjr

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve Diasapprove

Chief Administrative Officer's Comments:

BY: 

Date: 4-25-19

April 25, 2019

To: Russell B. Hawes, Chief Administrative Officer

For Your Consideration: Parkwoods Avenue Water Main Replacement, Bid # 12913

Sealed bids were publicly opened on April 19th, 2019. The bid tabulation is as follow:

<u>Vendor</u>	<u>Total</u>
T.G.B., Inc	\$517,765.00

Bid requests were also sent to Above and Below Contracting, LLC, ADB Utility Contractors, Arrow Drilling, Inc., AWC Equipment Co. LLC., Bates Utility Company, Bi-State Utilities Co., Boehmer Bros. Utility Supply, Bommarito Construction, C.E. Bollmeier Company, Inc., Core & Main, Corrigan Company, Enterprise Industrial Construction, Inc, Excel Utility Contractors, LLC, Frank C Mitchell, MB Mitchell LLC, Fred M Luth & Sons, Inc., G & S Construction, Gershenson Construction, Heneghan and Associates, P.C., IMCO Utility Supply, J H Berra Construction, K. J. Unnerstall, Karsten Equipment Co, Kelpo Contracting Inc, Lamke Trenching Excavating, Pangea Group, Piffel Excavating Company, Property Services Industries LLC, Reinhold Electric, Inc., S. J. Louis Construction, Inc., Schulte Supply, Southern Ditching & Excavating Co., Tap Utilities, LLC., TGB, Inc., Truss Brothers Construction Co, Underground Solutions, Unnerstall Contracting, Waterwork Specialties, Inc., and XL Contracting Inc; however they did not submit bids.

The bid was provided to Bill Bensing, Director of Public Services, for review. It is recommended that the bid be awarded to T.G.B., Inc, as their bid of \$517,765.00 is the lowest responsive and responsible bid meeting specifications.

Funds are available in account number 505-2215-481.75-15, project number WA2002, in the amount of \$1,525,600.00.

Attached is a request from Bill Bensing, Director of Public Services, for a resolution authorizing a contract to be issued to T.G.B., Inc in the amount of \$517,765.00 with a contingency of \$51,776.50 for a total not to exceed value of \$569,541.50.

Respectfully,



David Weidler, CPPO, CPPB
Procurement Director

RESOLUTION 70-2019

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN AMENDED FIVE-YEAR AGREEMENT WITH THE CITY OF OAKLAND FOR THE CITY OF KIRKWOOD TO PROVIDE POLICE AND FIRE SERVICES.

WHEREAS, the City of Kirkwood has provided Police and Fire services to the City of Oakland for several years, and

WHEREAS, the City of Oakland is desirous to have the City of Kirkwood continue to provide Police and Fire Services under an amended five-year agreement beginning on July 1, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into an amended agreement with the City of Oakland for Police and Fire Services beginning on July 1, 2019 through June 30, 2024 (a copy of which is attached by reference herein and attached hereto).

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 2ND DAY OF MAY 2019.

Mayor, City of Kirkwood

ATTEST:

City Clerk

Legislation Request

Resolution

Place On The Agenda Of: 5/2/2019

Step #1:

Strategic Plan NO

Goal # & Title :

Background To Issue:

The City of Kirkwood has provided Police and Fire services to the City of Oakland for several years. The City of Oakland is desirous to have the City of Kirkwood continue to provide these services under an amended five-year agreement.

The attorneys for both cities have reviewed the amended agreement.

Recommendations and Action Requested:

Enter into an amended five-year agreement with the City of Oakland for the City of Kirkwood to provide Police and Fire services.

Alternatives Available:

Cost: \$0.00 Account #: 000000 Project #: Budgeted: YES
If YES, Budgeted Amount: \$0.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

BY: Laurie Asche

Date: 4/25/2019

Authenticated: aschelb

You can attach up to 3 files along with this request.

📎 File Attachment

📎 File Attachment

📎 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...


Purchasing Director's Comments:

BY: Select...


Date:

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve

Diasapprove

Chief Administrative Officer's Comments:

BY:



Date:

4-25-19

POLICE AND FIRE SERVICES AGREEMENT
AMENDED JUNE 19, 2014 and July 1, 2019

This Amended Agreement is made and entered into this ____ day of May, 2019, by and between City of Kirkwood, Missouri, hereinafter referred to as (“Kirkwood”) and the City of Oakland, hereinafter referred to as (“Oakland”).

WITNESSETH:

WHEREAS, the provisions of Section 70.210 to 70.320 inclusive, RSMo 2006, as amended, empower Oakland and other political subdivisions to contract and cooperate with each other for a common service; and

WHEREAS, the Charter of Kirkwood, Missouri, authorizes Kirkwood to contract with Oakland for a common service by a duly enacted resolution; and

WHEREAS, Oakland has duly enacted Ordinance No. 892, a certified copy of which is attached hereto and made a part hereof, authorizing the execution of this agreement on behalf of Oakland; and

WHEREAS, Kirkwood has duly enacted Resolution No. _____, a certified copy of which is attached hereto and made a part hereof, authorizing the execution of this agreement on behalf of Kirkwood.

NOW THEREFORE, for and in consideration of the mutual promises, covenants and obligations hereinafter stated, Kirkwood and Oakland mutually agree as follows:

ARTICLE I: Scope of Services.

1.1 Kirkwood shall continue to have the responsibility for providing comprehensive police and fire (including emergency medical) services to the City of Oakland, Missouri of a quality and type equal to that received by the residents of the City of Kirkwood for the protection of the lives and property of all residents, occupants and visitors of or to the City of Oakland. The above services shall include, but not be limited to, routine police patrols of all public streets and alleys (including the patrol of each street at least once every 12 hours), enforcement of traffic and parking laws and ordinances, use of equipment and facilities associated with the performance of the above services, active participation in the neighborhood watch program and other community events, detective and undercover police services, court appearances, off-duty officers for bailiff services to the Oakland Municipal Court, access to REJIS for purposes of prosecution, public awareness and educational programs by the police department, fire protection, inspections by the Fire Marshall of institutional and commercial structures, inspections and tests of the City's fire hydrants, fire department public relations and public services such as CPR training to neighborhood groups, school programs to any school, public or private, that are currently offered by the fire department to any public school and disaster and emergency medical services on a par with those services provided to Contractor's own municipality.

Additionally, and in return for good and valuable consideration received from the City of Oakland, the Police Department will provide the following additional services throughout the term of this Agreement:

One additional hour of traffic enforcement, from 7 a.m. to 9 a.m. on weekday mornings year round, and from 2:30 p.m. to 4:30 p.m. weekday afternoons during the Kirkwood Elementary, Junior High School and High School year. When school is out for the summer, the afternoon hours will be adjusted to 4 p.m. to 5:30 p.m. Major traffic incidents, such as injury accidents or accidents on the interstate in other areas of Oakland or Kirkwood may pre-empt these additional services on any given day. In the event of extended absences due to training or vacations, the Traffic Supervisor will notify the Oakland Mayor and City Administrator by email, and will make good faith efforts to adjust the hours of other personnel to cover the special enforcement times.

- 1.2 Kirkwood shall maintain sole control over the personnel involved in the performance of these services.
- 1.3 Kirkwood shall prepare, store and retrieve police reports and records in accordance with General Order 81 issued by the Kirkwood Police Department

1.4 Kirkwood shall comply with all federal, state and local laws in the performance of all services to the City of Oakland under this contract.

ARTICLE II: Term of Agreement.

2.1 Term of Agreement. This amended agreement shall commence on the 1st day of July 2019 and shall continue in effect until June 30, 2024 unless further extended by agreement of the parties or terminated as provided in Article VI herein.

ARTICLE III: Vehicular Requirements

All vehicles used within the City of Oakland, Missouri in the performance of this contract shall carry evidence of a current State of Missouri safety inspection and registration, unless exempt from such requirements by law, and shall at all times be maintained in good and safe working order. All police and fire vehicles shall bear a logo of the City of Oakland displayed in equal prominence with the logo of Kirkwood.

ARTICLE IV: Insurance, Indemnification, Assumption of Risk

4.1 Insurance: During the term of the contract, Kirkwood shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

i. Worker's Compensation Insurance - Kirkwood shall obtain and maintain in force during the term of the contract, at its own expense, Worker's Compensation Insurance in amounts as prescribed by the Statutes of the State of Missouri.

ii. General, Police Professional and EMT Liability Insurance - Kirkwood shall obtain and maintain in force during the term of the contract, at its own expense, for all vehicles, equipment and personnel used in the work covered by the contract, general, police professional and EMT liability insurance in a sum of not less than the minimum required under RSMo 537.600, et seq., as amended. Such insurance shall specifically name the City of Oakland, Missouri as an additional insured party under the policy(ies), and the insurance shall be carried by a firm or corporation which has been duly licensed or permitted to write insurance in the State of Missouri.

A certificate of such insurance policy or policies, which shall be approved by the Oakland City Attorney, shall be filed in the Office of the Oakland City Clerk with the certificate of the insurer that the policy is in full force and that the policy will not

be canceled without thirty (30) days prior written notice having been given to the City of Oakland through the Mayor of Oakland.

Any approved subcontractor shall be subject to all conditions of this section.

iii. All policies other than those for Worker's Compensation shall be written on an occurrence and not on a claims-made basis.

iv. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

v. Additional Insureds: All liability policies listed in Section 4.1(ii) shall name the City of Oakland and its officers, officials, boards, commissions, committees, employees, attorneys, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

vi. Cancellation of Policies of Insurance: All insurance policies maintained shall contain the following endorsement:

"At least thirty (30) days prior written notice shall be given to the City of Oakland by the insurer of any intention to cancel, such notice to be given by registered mail."

4.2 Disclaimer of Liability: The City of Oakland shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the conduct of Kirkwood or its agents, employees, representatives, or subcontractors.

4.3 Indemnification: To the extent that the cities of Oakland and Kirkwood are not immune pursuant to the doctrine of sovereign immunity, and provided that Kirkwood shall not and does not by this indemnification waive any protection afforded to Kirkwood or to Oakland by the doctrine of sovereign immunity, then Kirkwood shall, to the extent covered by insurance, indemnify and hold harmless the City of Oakland

and its officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Kirkwood, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, violation of any civil right, violation of any life or property interest, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of the negligence or intentional acts of Kirkwood or its personnel, employees, agents, officers or representatives in connection with the provision of police, fire or emergency medical services to the City of Oakland.

Notwithstanding anything to the contrary, Kirkwood's obligation hereunder shall not extend to the negligence or intentional misconduct of the City of Oakland or its personnel, employees, agents, officers, representatives or subcontractors.

Notwithstanding the foregoing, it is not the intent of the City of Oakland to in any way affect, waive, or modify the doctrine of sovereign immunity through this contract.

- 4.4 Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Kirkwood shall, upon notice from any of the Indemnitees, at Kirkwood's sole cost and expense, resist and defend the same with legal counsel selected by Kirkwood; provided however, that Kirkwood shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of the City of Oakland and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Kirkwood.

ARTICLE V: Fees for Services.

- 5.1 The fees for services provided by Kirkwood shall be due monthly based upon one-twelfth of the following annual, specified amounts:

5.2

2019-20	2020-21	2021-22	2022-23	2023-24
\$151,108	Base + 3.25% or cpi, whichever is greater	Base + 3.25% or cpi, whichever is greater	Base + 3.25% or cpi, whichever is greater	Base + 3.25% or cpi, whichever is greater

- 5.2 Payment by Oakland. Kirkwood shall invoice Oakland monthly for services performed. Oakland shall pay each such invoice within 30 days of receipt. Oakland shall collect and retain all fines and costs arising from prosecution of violations in Oakland municipal court.
- 5.3 Bailiff services. Kirkwood shall provide an off-duty police officer to perform the services of a bailiff, and Oakland shall pay such bailiff directly, and in addition to the amounts in section 5.1 above, at the rate of \$50 per court session.

ARTICLE VI: Termination and Assignment

- 6.1 The City of Oakland may terminate this contract and shall, upon termination, be entitled to recover damages and take such other action and seek such other remedies available to the City of Oakland, which shall include all remedies allowed by law, if Kirkwood fails or refuses to perform its duties and obligations under this Agreement.

Before terminating the agreement under this subsection, however, Oakland shall give notice in writing to Kirkwood identifying the deficiency or deficiencies in service and granting Kirkwood 30 days to cure any such deficiency or deficiencies to Oakland’s satisfaction;

- 6.2 The City of Kirkwood may terminate this contract upon written notice not less than 120 days in advance of the termination date.
- 6.3 This contract shall not be assignable or transferable by Kirkwood, nor shall any service be performed by a subcontractor for Kirkwood without the prior written consent of the City of Oakland, Missouri.

ARTICLE VII: General Provisions

- 7.1 *Amendment and Modification.* No amendment, modification, supplement, termination, consent or waiver of any provision of this agreement, nor consent to any departure therefrom, will in any event be effective unless the same is in writing and is

signed by the party against whom enforcement of the same is sought. Any waiver of any provision of this agreement and any consent to any departure from the terms of any provision of this agreement is to be effective only in the specific instance and for the specific purpose for which given.

- 7.2 *Captions.* Captions contained in this agreement have been inserted herein only as a matter of convenience and in no way define, limit, extend, or describe the scope of this agreement for the intent of any provision hereof.
- 7.3 *Counterparts.* This agreement may be executed by the parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.
- 7.4 *Entire Agreement.* This agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, letters of intent, understandings, negotiations and discussions of the parties, whether oral or written.
- 7.5 *Failure or Delay.* No failure on the part of Oakland to exercise, and no delay in exercising, any right, power or privilege hereunder operates as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.
- 7.6 *Governing Law.* This agreement and the rights and obligations of the parties hereunder are to be governed by and construed and interpreted in accordance with the laws of the State of Missouri applicable to contracts made and to be performed totally within Missouri without regard to choice or conflict of laws of rules.
- 7.7 *Notices.* All notices, consents, requests, demands, and other communications hereunder are to be in writing, and are deemed to have been duly given or made: (i) when delivered in person; (ii) three days after deposit in the United States mail, first class postage pre-paid; (iii) in the case of telegraph or overnight courier services one business day after delivery to the telegraph company or overnight courier service with payment provided; or (iv) in the case of electronic mail, telex or telecopy or fax, when sent, verification received; and in all cases addressed as follows:

If to Kirkwood:

City of Kirkwood
139 South Kirkwood Road
Kirkwood, MO 63122
Attn: Chief Administrative Officer
Fax: 314-822-5863

with a copy to:

John Hessel
Lewis Rice LLC
600 Washington Avenue, Suite 2500
St. Louis, MO 63101

If to Oakland:

City of Oakland
PO Box 220511
Oakland, MO 63122
Attn: City Administrator
Fax: 314-416-0026

with a copy to:

Helmut Starr
Curtis, Heinz, Garrett & O'Keefe P.C.
130 S. Bemiston, Suite 200
Clayton, MO 63105

or to such other addresses any party may designate by notice to the other party in accordance with the terms of this section.

- 7.8 *Severability.* Any provision of this agreement which is prohibited, unenforceable or not authorized in any jurisdiction is, as to such jurisdiction, ineffective to the extent of any such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof, or affecting the validity, enforceability, or legality of such provision in any other jurisdiction, unless the ineffectiveness of such provision would result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable.

7.9 *Successors and Assigns.* All provisions of this agreement are binding upon, inure to the benefit of and are enforceable by or against the parties in their respective successors and permitted assigns.

7.10 *Third-Party Beneficiary.* This agreement is solely for the benefit of the parties and their respective successors and permitted assigns and no other person has any right, benefit, priority, or interest under or because of the existence of this agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

CITY OF KIRKWOOD, MISSOURI

By: _____
City Manager

ATTEST:

Kirkwood City Clerk

CITY OF OAKLAND

By: _____
Mayor

ATTEST:

Oakland City Clerk