



CITY OF WESTWOOD, KANSAS

CITY COUNCIL MEETING

4700 RAINBOW BLVD. WESTWOOD, KS 66205

Thursday, June 13, 2024 at 7:00 PM

AGENDA

Welcome to your Westwood City Council meeting. This meeting may be attended remotely via Zoom:

Access Online: <https://us02web.zoom.us/j/89908289796>

Access by Phone: (312) 626-6799 / **Webinar ID:** 899 0828 9796

[Note: This agenda is subject to changes, additions, or deletions at the discretion of the Governing Body]

CITY COUNCIL WORK SESSION AGENDA

- I. **CALL TO ORDER - 6:00 PM**
 - II. **WORK SESSION ITEMS/DISCUSSION OF UPCOMING MATTERS**
 - A. FY 2025 Budget: Projects & Equipment
 - III. **ADJOURNMENT TO REGULAR MEETING**
-

REGULAR MEETING AGENDA

- I. **CALL TO ORDER - 7:00 PM**
- II. **APPROVAL OF THE AGENDA**
- III. **PUBLIC COMMENT**

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda, or about items on the regular agenda for which the Governing Body, at its discretion, accepts public comment. Public comment should be limited to 2-3 minutes and, unless the topic of public comment is before the Governing Body as part of its agenda, no action will be taken by the Governing Body on public comment items. Please state your name and address for the record. Persons attending virtually online will be able to make public comment by using the "raise hand" function on Zoom.
- IV. **PRESENTATIONS AND PROCLAMATIONS**
 - A. Introduce Public Works Maintenance Worker Jeffrey Mull
 - B. Presentation of Rainbow Boulevard Complete Streets Traffic Management Plan final report and recommendations

V. CONSENT AGENDA

All items listed below are considered to be routine by the Governing Body and will be enacted in one motion (roll call vote). There will be no separate discussion of these items unless a member of the Governing Body so requests, in which event the item will be removed from the consent agenda and considered separately following approval of the consent agenda.

A. Consider approval of May 9, 2024 City Council meeting minutes

B. Consider approval of Appropriations Ordinance 763

VI. MAYOR'S REPORT

VII. CITY COUNCILMEMBER REPORTS

VIII. STAFF REPORTS

A. Administrative Report (City Administrator Leslie Herring)

B. Public Works Report (Public Works Director John Sullivan)

C. Police Report (Police Chief Curt Mansell)

D. City Treasurer Report (City Treasurer Michelle Ryan)

E. City Attorney Report (City Attorney Ryan Denk)

IX. OLD BUSINESS

X. NEW BUSINESS

A. Consider Second Amendment to Real Estate Purchase Agreement with Shawnee Mission School District for real property at 2511 W. 50th St.

B. Consider various agreements relating to redevelopment at and around 50th & Rainbow Blvd.

C. Consider Professional Services Agreement with Port Architecture and Urbanism, LLC for park planning and design services

D. Consider Ordinance No. 1042 designating certain funds of the City of Westwood as multi-year capital improvement funds

E. Consider Resolution No. 128-2024 amending the City's Financial and Purchasing Policy

F. Consider Resolution No. 129-2024 Waiving the GAAP Requirement for Financial Reporting

G. Consider Resolution No. 130-2024 appointing Mary Bosco Heinrich to the Westwood Foundation Board

H. Consider authorization of purchase of 2024 ¾ ton crew cab pickup truck

I. Consider fence variance for 2330 Shawnee Mission Parkway (KU Health Systems)

XI. ANNOUNCEMENTS/GOVERNING BODY COMMENTS

XII. EXECUTIVE SESSION

- A. Consultation with the City Attorney on matters relating to real property located at and around 5000 Rainbow Blvd. which would be deemed privileged in the attorney-client relationship

XIII. ADJOURNMENT

UPCOMING MEETINGS

Regular meetings of the Westwood City Council are held at 7:00 PM on the second Thursday of each month. The next regular meeting of the Westwood City Council will be held Thursday, July 11, 2024, at 7:00 PM at Westwood City Hall. The City Calendar may be accessed at www.westwoodks.org. To receive further updates and communications, please see or sign up for the following:

Westwood Buzz Email: <https://bit.ly/3wA4DWx>

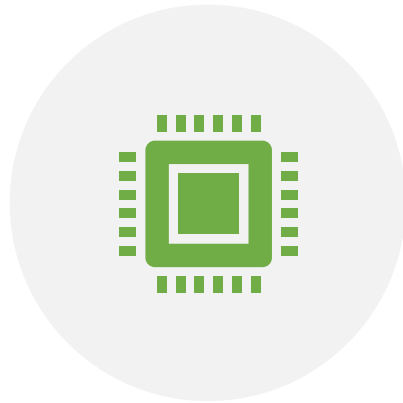
Facebook: [City of Westwood Kansas-Government](#)
[Westwood, KS Police Department](#)

June 13, 2024

FY 2025 Budget: Projects & Equipment

Governing Body Guidance

From May 11, 2023 Work Session (affirmed in May 2024)



BEGIN CHIPPING AWAY AT DEFERRED MAINTENANCE NEEDS AT PUBLIC WORKS (AND CITY HALL, DEPENDING ON THE COUNCIL'S DECISION ON ULTIMATE DISPOSITION)



ACCELERATE IMPLEMENTATION OF THE STREETS, SIDEWALK, STORMWATER, AND STREETLIGHTS PROGRAM



INCREASE THE CITY'S COMPETITIVENESS IN THE LABOR MARKET WITH EMPLOYEE WAGES AND BENEFITS

Contextual Notes



The following plans have been created to present a full picture of the infrastructure needs and goals of the City of Westwood. They are based on professional studies or intentional processes to ensure integrity in the results.



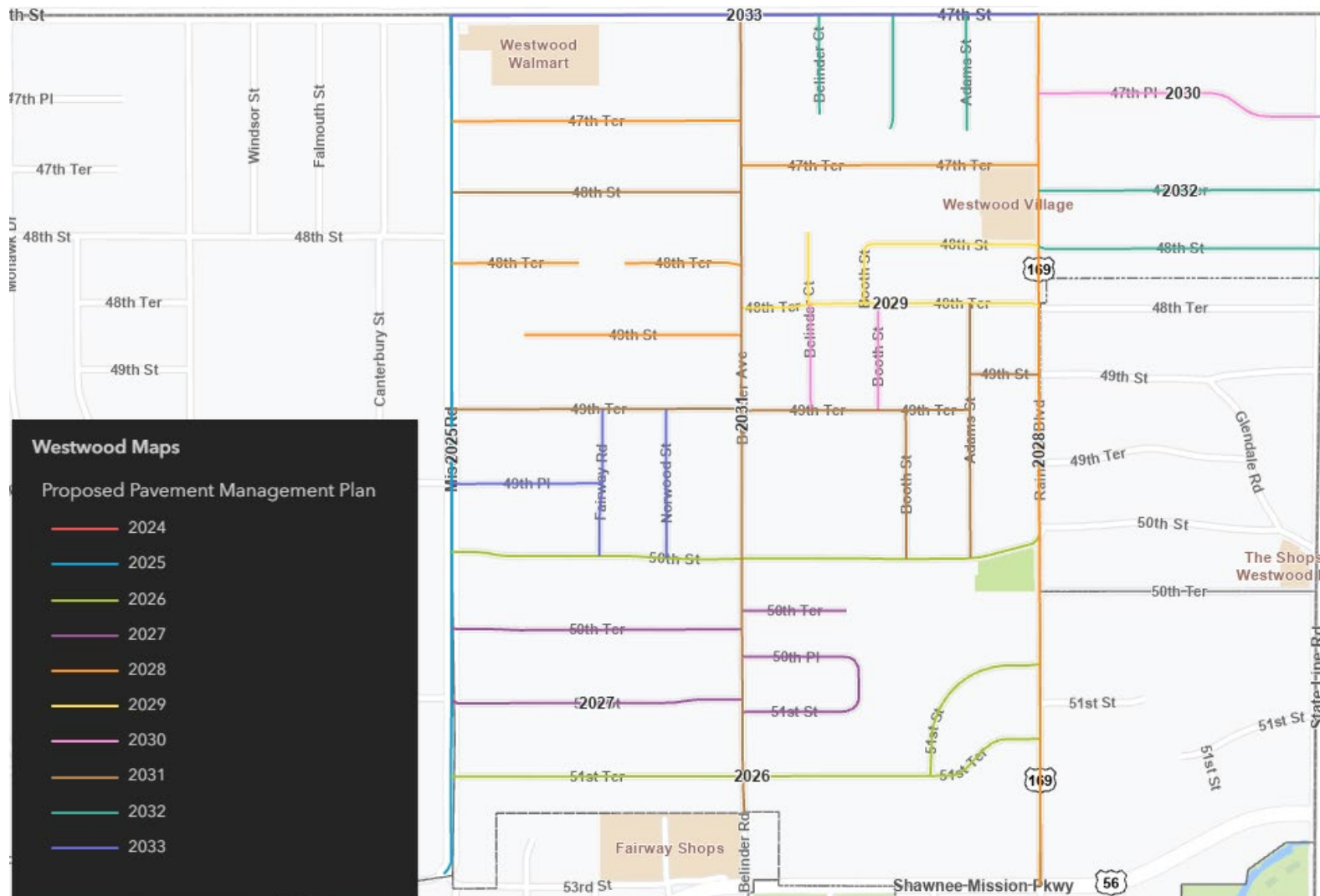
The City does not currently have enough funds to implement these plans on a ten-year timeline; however, the City Council has the authority to increase revenue streams to the extent politically acceptable, extend the timeline to one that's politically acceptable, or both.



The deferred maintenance priorities for City facilities presented here represent only the most pressing, immediate needs. The items and costs listed are, in effect, the cost of kicking the can on the buildings another five years. Should deferred maintenance not be addressed, the cost and consequence of failure could possibly be higher or represent an unbudgeted expenditure requiring immediate reprioritization within an existing budget year, with future budget implications.

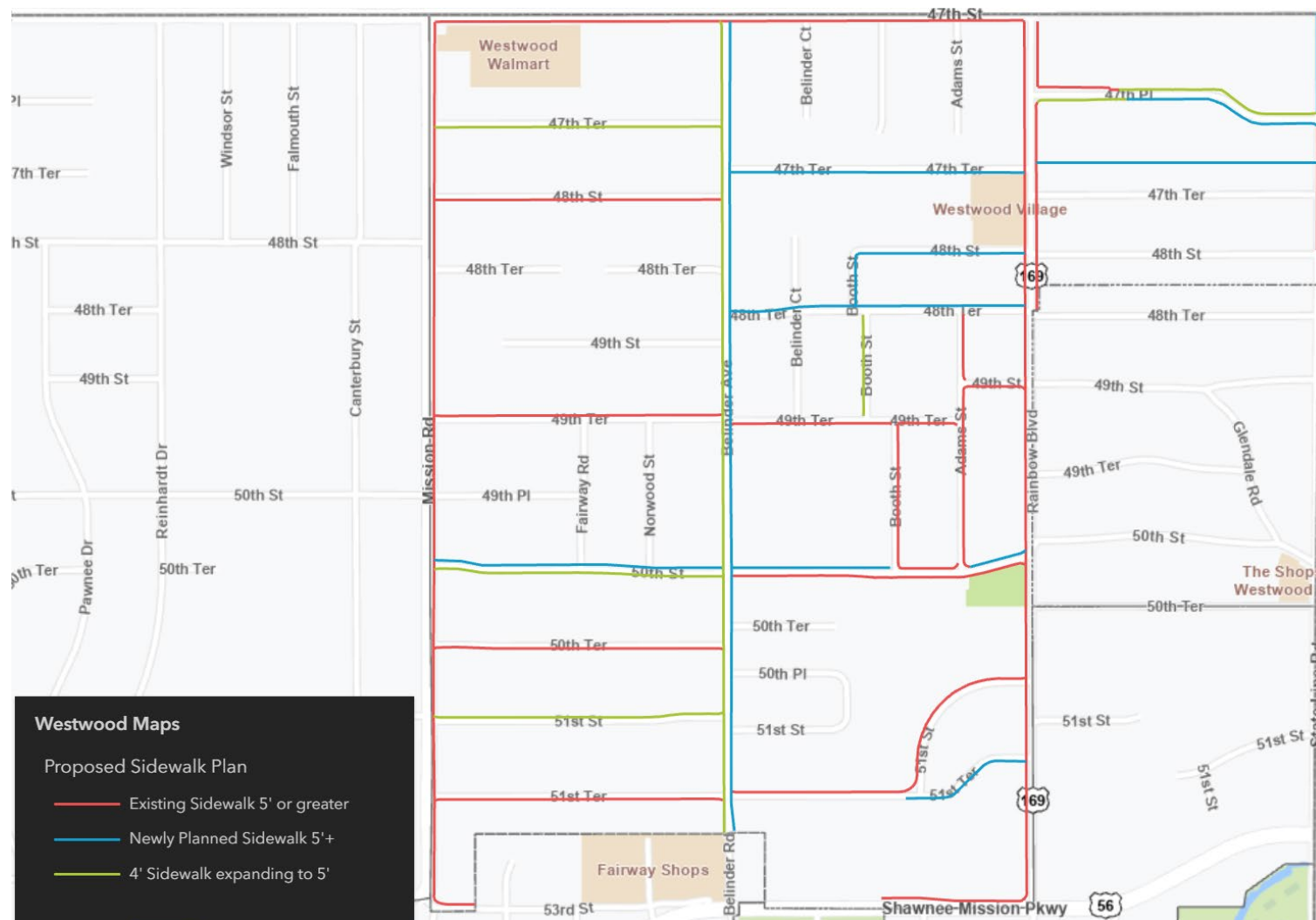
Pavement Management Plan

- 2022 Pavement Condition Inventory (PCI) identified where surface treatments, mill & overlay, and complete rebuild are needed on all streets within the city
- A ten-year program recommended through the PCI is reflected on the map
- Only remaining streets needing full replacement (\$\$\$) are 50th St. and 47th Ter. (plus annex streets, recently improved)



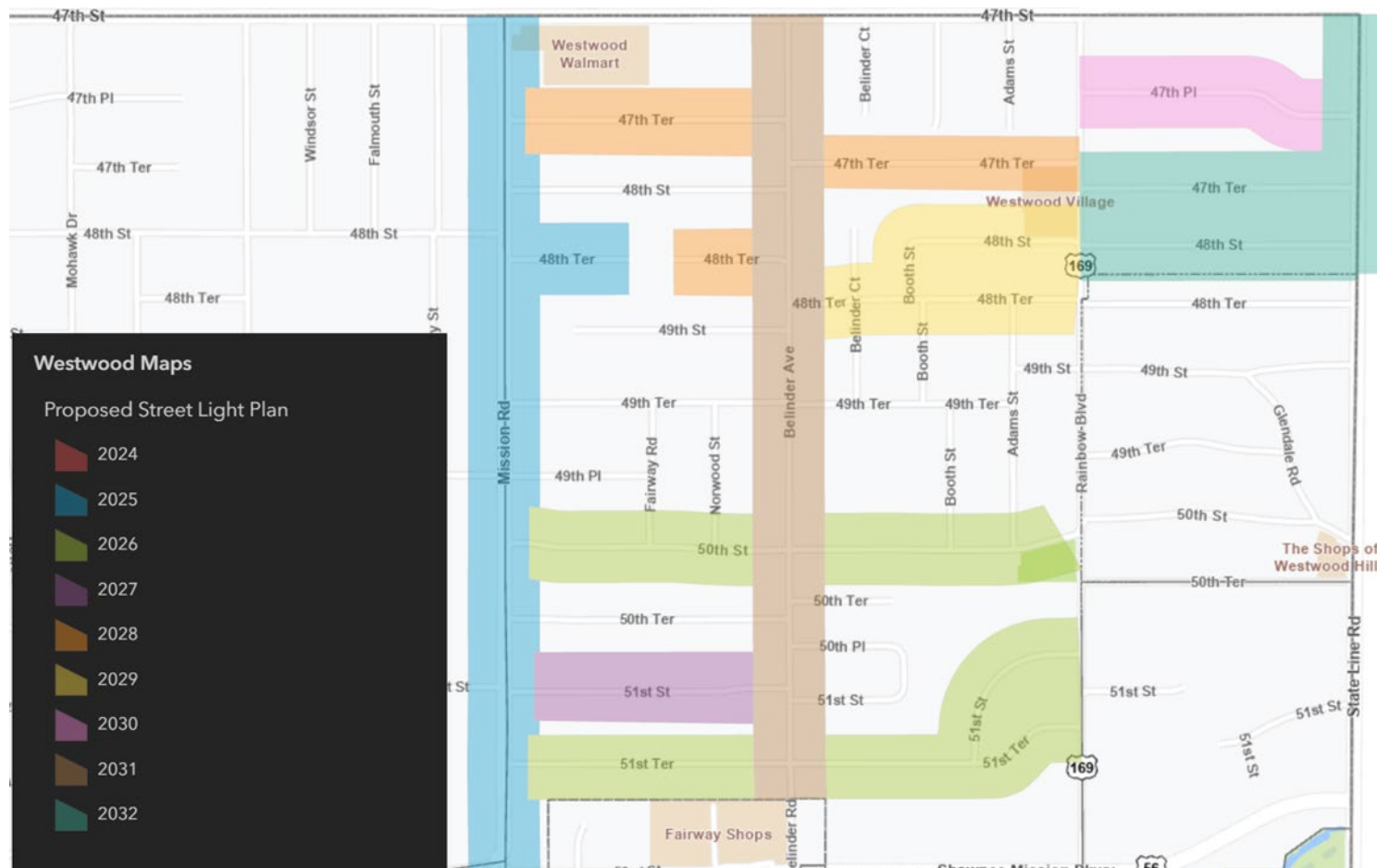
Sidewalk Implementation Plan

- Sidewalk Plan developed in 2021 by Complete Streets Task Force during the creation of the Complete Streets Policy and Plan development
- Sidewalk construction years aligned with Pavement Management Plan
- Existing 4' sidewalk included in replacement/construction plan upon recommendation by Task Force to move toward all sidewalks being 5'
- Existing sidewalks are not shown on map but will be repaired as needed; all locations identified by the Task Force to add sidewalks are represented on the map



Streetlights Implementation Plan

- 2018 Streetlight Master Plan set out standards for complete replacement of all streetlights purchased by the City from KCPL
- Map indicates where new streetlights are planned; any streets not in hatching received new streetlights in 2019
 - 47th St. and the cul de sacs south of it are receiving streetlights in 2023
 - Rainbow Blvd. would receive new streetlights at the time it is improved
- **Five of seven required controllers have already been installed**



Stormwater System Replacement/Repair Plan

- 2019 Trekk condition assessment revealed segments of stormwater pipe needing attention
- 2025 (Mission Rd.) pipe determined not to need replaced, but junction box will be added
- 2026 projects may be investigated in 2025, depending on timing of closing on property sales at 50th St.



City Facilities: Deferred Maintenance Needs

City Hall

Priority	Description	Estimated Cost (2024)	Remaining Useful Life	Estimated Years to Failure
1.	Replace & Upgrade HVAC	\$190,500	0 years	< 2 years
2.	Replace Metal Roof	\$165,000	0 years	Failed
3.	Resurface Parking Lot	\$25,500	0 years	Failed
4.	Replace Windows/Glazing	\$288,750	0 years	Failed
5.	Rebuild Bay Window (Chief's Office)	\$7,500	0 years	Failed
6.	Replace EIFS Facade	\$83,600	0 years	Failed
7.	Replace Flat Roof	\$90,000	0 years	< 2 years

TOTAL Immediate Need: \$850,850

Public Works

Priority	Description	Estimated Cost (2024)	Remaining Useful Life	Estimated Years to Failure
1.	Add Exhaust to All Areas of Building	\$362,180	0 years	Existing Health Risk
2.	Add Drainage in Truck Bay		0 years	Existing Safety Risk
3.	Replace Exterior Metal Facade		0 years	Failed
4.	Coat Roof & Add Snow Guards		0 years	Failed
5.	Repair Concrete Foundation		0 years	Unknown
6.	Expand Yard	\$500,913	0 years	Inadequate
7.	Rebuild Salt Shed		0 years	Inadequate

TOTAL Immediate Need: \$863,093

Major Asset Purchases

Equipment Reserve Plan Highlights

2025



Item A. Section II, Item

2026



2027



2028



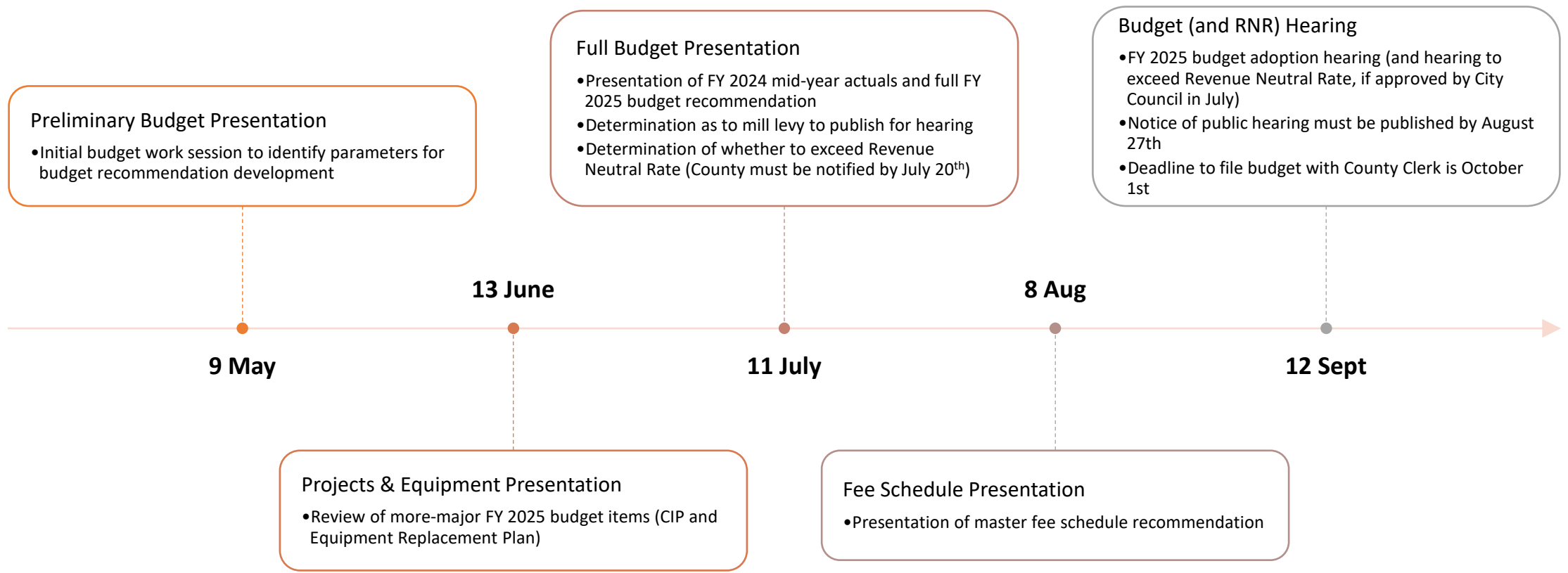
2029



Fund Balance Analysis

	General Fund	As % of revenues	Capital Improvement Fund	Equipment Reserve Fund	Special Highway Fund	Stormwater Utility Fund	Debt Service Fund	Woodside TIF/CID Fund	Total (All Funds)
2020	\$ 873,232.00	32%	\$ 850,050.00	\$ 138,646.00	\$ 56,119.00	\$ 179,217.00	\$ 125,985.00	\$ 275,698.00	\$ 2,498,947.00
2021	\$ 1,147,486.00	38%	\$ 889,193.00	\$ 245,440.00	\$ 118,219.00	\$ 167,572.00	\$ 145,755.00	\$ 381,142.00	\$ 3,094,807.00
2022	\$ 1,380,347.45	45%	\$ (313,412.09)	\$ 151,488.00	\$ 105,656.58	\$ 182,022.82	\$ 170,342.00	\$ 457,313.22	\$ 2,133,757.98
2023 (Audited)	\$ 1,505,391.00	48%	\$ 306,230.00	\$ 346,488.00	\$ 169,094.00	\$ 189,217.00	\$ 144,555.00	\$ 602,664.00	\$ 3,263,639.00
2024 (Forecasted Year End)	\$ 1,172,079.00	36%	\$ 483,254.00	\$ 398,456.00	\$ 168,314.00	\$ 234,701.00	\$ 170,023.00	\$ 697,012.00	\$ 3,283,839.00

Budget Calendar



Uncertainties

Pending Resolution within Next 12 Months

- 47th St.
 - KDOT reconciliation of final invoicing
 - Streetlight installation on cul de sacs
- Mission Rd.
 - Engineering invoicing
 - Construction bidding
 - Johnson County CARS funding formula
- 47th Pl.
 - Woodside Sales Tax IRB rebate to City
 - Possibility of using Woodside Village CID2 revenues
- Rainbow Blvd.
 - Federal, state, and county funding opportunities
- 4700 Rainbow Blvd. (City Hall)
 - Redevelopment outlook; RFQ for master developer
- 5000 and 5050 Rainbow Blvd.
 - Sale of City property to Karbank
 - Acquisition of former Westwood View property by City
 - 5050 Rainbow Blvd. loan payoff
 - Park program and operations & maintenance plan
- Community survey results indicating interest in generating revenue
- Governing Body Strategic Plan Creation

Potential Strategies for CIP Funding

- Leveraging outside funding
 - private development partners
 - federal, state, and county grants
 - partnering with neighboring cities we share roadway with
- Increase revenue through a sales tax and/or property tax increase
- Redeveloping real property currently off the tax roles to increase the tax base
- Bonding streetlights and remaining road replacement projects (50th St. & 47th Ter.)
- Working with a professional municipal financial advisor and bond counsel (Columbia Capital and Gilmore & Bell)



Reimagine Rainbow

Rainbow Boulevard Complete Streets
and Traffic Management Plan

Project Purpose and Study Area

How can a state highway transform from a barrier to a place of connection? **Reimagine Rainbow** is a planning effort to help guide the future of Rainbow Boulevard to support a vibrant and growing area in the Kansas City region.

The Reimagine Rainbow plan focuses on creating **Complete Streets** within the study area by improving mobility, safety, and comfort for everyone that uses Rainbow and adjacent streets. This study examines the existing road design on multiple sections throughout Rainbow Boulevard to understand how geometric changes could improve the safety, accessibility, and attractiveness of using multiple modes of transportation, such as walking, bicycling, and transit, in addition to driving.

The study area, shown in **Figure 2**, is focused on Rainbow Boulevard, running from Southwest Boulevard in Kansas City, Kansas on the north end to Shawnee Mission Parkway on the south end. The broader study area includes an area approximately one half-mile on either side of Rainbow Boulevard and areas as far north as I-35.

Complete Streets: Roadways that are designed for safe and convenient travel by users of all ages and abilities. Pedestrians, bicyclists, motorists, and transit riders must be able to move safely along and across a complete street.

Study Overview

Study Team Partners

Mid-America Regional Council
 City of Westwood, Kansas
 Unified Government of Wyandotte County and Kansas City, KS
 City of Westwood Hills, Kansas
 City of Mission Woods, Kansas
 Rosedale Development Association
 The University of Kansas Health System
 Kansas Department of Transportation
 Kansas City Area Transportation Authority



Steering Committee

Leslie Herring, City of Westwood
 John Sullivan, City of Westwood
 Alyssa Marcy, Unified Government
 Gunnar Hand, AICP, Unified Government
 Taylor Cunningham, MARC
 Mayor Rosemary Podrebarac, City of Westwood Hills
 Councilmember Erica Hartley, City of Mission Woods
 Michael Moriarty, KDOT

Erin Stryka, Rosedale Development Association
 Jason Glasrud, KU Health System
 Sherrie Gayed, KU Health System
 Kevin Rowland, KU Med Center
 Rachel Russell, KCKPS
 AJ Farris, KCATA
 Mira Felzein, KCATA
 Michael Kelley, BikeWalkKC
 Gayle Bergman, Resident
 Mark Vranicar, Resident
 Annette Rude, Resident
 Gil Pintar, Resident
 Jake Hodson, Resident
 Mike Coffman, Resident

Consultant Team



Legend

- Rainbow Boulevard
- Study Area Boundary
- KU Med./Health System Campuses
- KU Med. Main Campus
- Rosedale Middle
- Frank Rushton Elementary
- Westwood City Hall
- Westwood View Elementary
- KU Med. Westwood Campus

Past Plans and Policy Review

There are many previous plans and recommendations within the study area. Fortunately, several of these recommendations have advanced and been implemented. This planning effort will take into consideration relevant previous plan recommendations and re-evaluate some recommendations that have not yet been implemented.

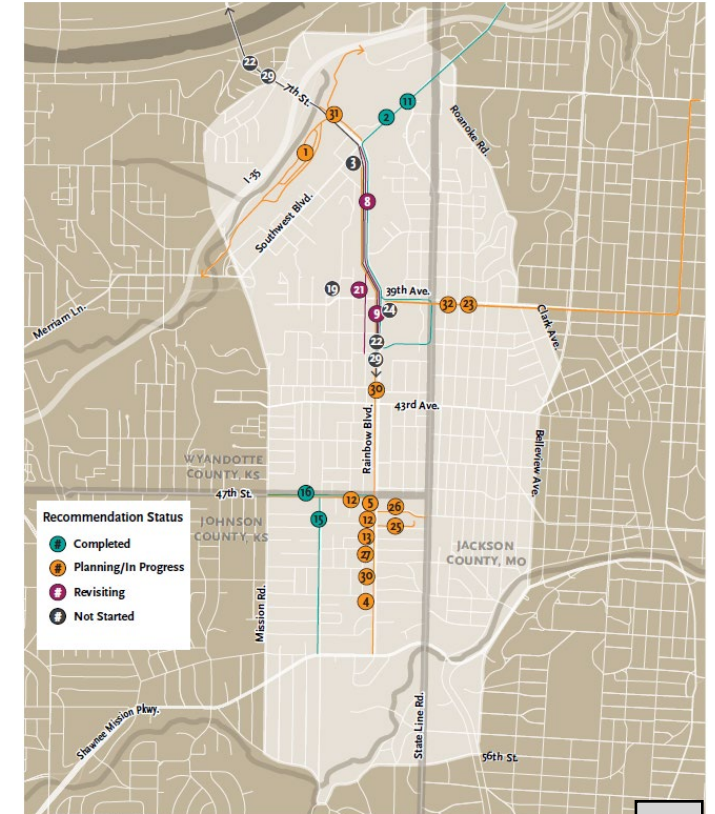


Figure 3. Location of Key Recommendations

Public Input

Table 2. List of Community and Stakeholder Engagement Activities

	Activity	Date	Location
Round 1 Issues & Opportunities	Project Kickoff Meeting	6/27/2023	Westwood City Hall
	KU Health System Staff	7/21/2023	KU Economic Development Offices
	Unified Government Staff	8/17/2023	KCK City Hall
	Rosedale Development Association staff	8/22/2023	RDA
	Westwood / Mission Woods / Westwood Hills	8/22/2023	Westwood City Hall
	Hanover Heights Neighborhood Association	8/27/2023	Yard of private residence
	Steering Committee Meeting #1	8/31/2023	Westwood City Hall
	Round 1 Online Survey	9/7/2023	Virtual
	Spring Valley Neighborhood Association	9/28/2023	Westwood City Hall
	Popup Meeting - Frank Rushton Elementary	10/4/2023	Frank Rushton Elementary School
	Steering Committee Meeting #2	10/5/2023	Virtual
	Popup Meeting - KU	10/19/2023	KU Hospital Cafeteria
	Popup Meeting - Westwood KC Symphony Event	10/22/2023	Westwood City Hall
	Popup Meeting - Rosedale Middle School	10/25/2023	Rosedale Middle School
Round 2 Exploring Alternatives	Popup Meeting - PlanKCK Summit	10/28/2023	Gloria Willis Middle School
	Round 2 Online Survey	11/2/2023	Virtual
	Steering Committee Meeting #3	1/4/2024	Virtual
Round 3 Preferred Alternative and Refinement	Open House	1/27/2024	Westwood City Hall
	KU Health System Staff	2/6/2024	Virtual
	Round 3 Online Survey	2/8/2024	Virtual
	Westwood Staff	2/13/2024	Westwood City Hall
	KDOT Staff	3/6/2024	Virtual
	Westwood + Unified Government Staff	3/21/2024	Virtual
	KU Health System Staff	3/22/2024	KU Hospital
	Spring Valley Neighborhood Association	3/27/2024	The Knotty Rug
Steering Committee Meeting #4	4/2/2024	Virtual	
Westwood Staff	4/5/2024	Virtual	

The project featured three rounds of engagement, focused on:

- **Issues and Opportunities:** Focused on understanding the challenges people have navigating the study area through multiple modes, as well as specific opportunities and ideas they see.
- **Exploring Alternatives:** Focused on understanding what people value in their transportation system and community (such as safety, comfort, convenience) and how those values are supported by each alternative.
- **Preferred Alternative & Refinement:** Focused on selecting a preferred alternative and refining and developing that concept.

Participation Totals:

- 297 pop-up meeting participants at 5 events
- 12 stakeholder meetings
- 23 open house attendees
- 4 steering committee meetings
- 3,285 online views
- 622 online participants
- 2,809 survey responses (3 rounds)
- 936 comments and replies
- 30 eblasts with 40% open rate



Figure 39. A Pop-up public meeting (left) and Steering Committee feedback (below)



Public Input, Cnt'd.

Issues and Opportunities

Most of the feedback around the first phase of engagement centered around feelings of safety while walking, bicycling, or even driving on Rainbow Boulevard. Traffic was described by many respondents as being *scary*, *dangerous*, and *loud*. Respondents said that they hoped that future travel on Rainbow Boulevard would be *accessible*, *comfortable*, *balanced*, *multimodal*, and *for everyone*.

Many participants specifically addressed issues surrounding speed, the feeling of safety while walking or crossing the street, and the ability to make turns safely while driving on Rainbow.

Specifically, participants suggested:

- Better crossings and crosswalks
- Easier and protected bicycling
- Consistent sidewalk elevations
- Removal of sidewalk obstacles
- Widening of sidewalks
- Narrower, fewer traffic lanes
- Intersection improvements
- Lower speed limits
- Address turning issues
- Better trail connections

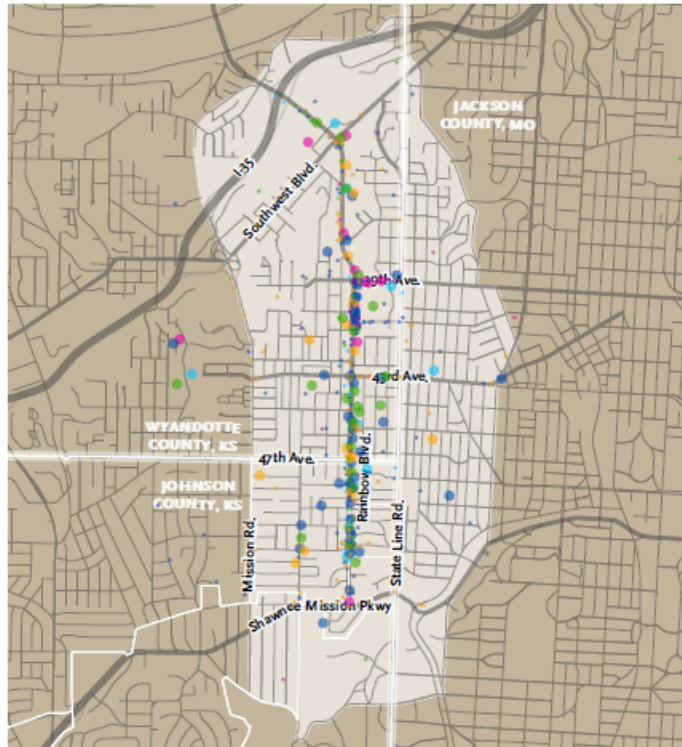


Figure 40. Map-based feedback identifying issues and opportunities on the Rainbow Corridor

Legend

- Accessibility
- Walking
- Bicycling
- Transit
- Driving
- General Comment
- Improvement Idea
- Comment on Issue

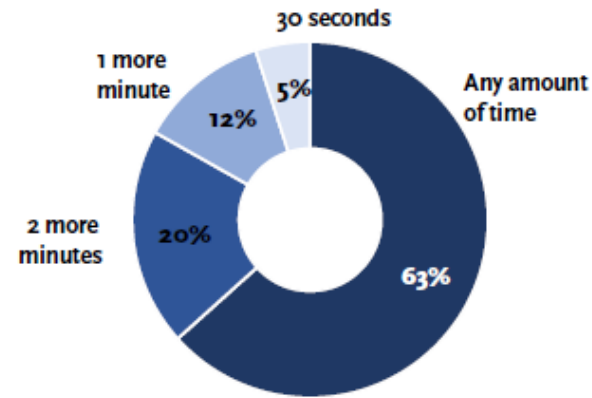


Figure 43. Travel Time Trade-off Preferences of Online Poll Participants ("How Much Additional Travel Time would you be willing to spend on Rainbow in exchange for improvements?")

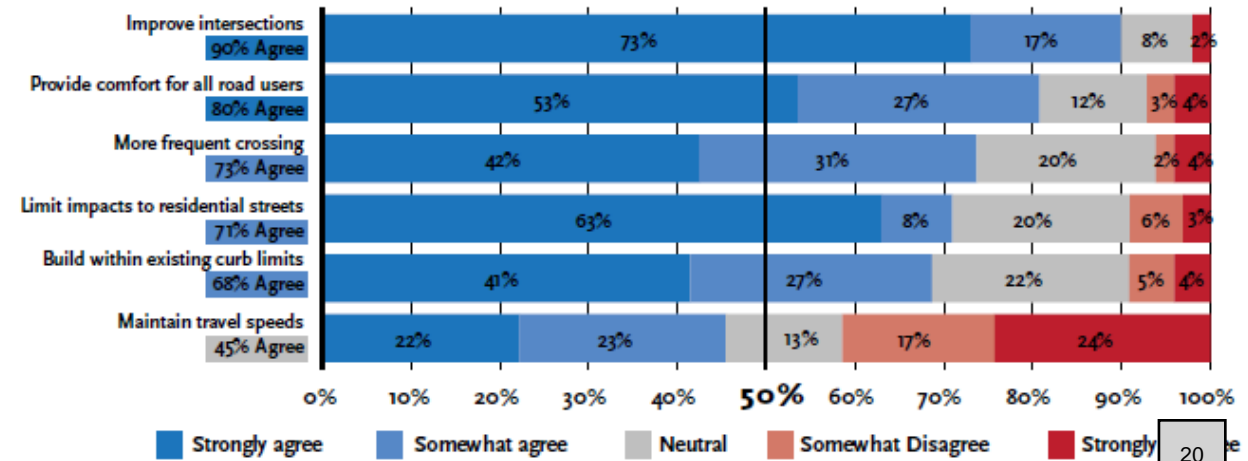
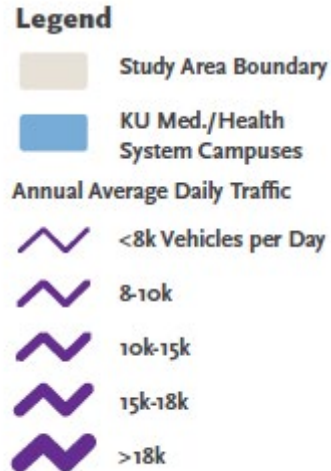
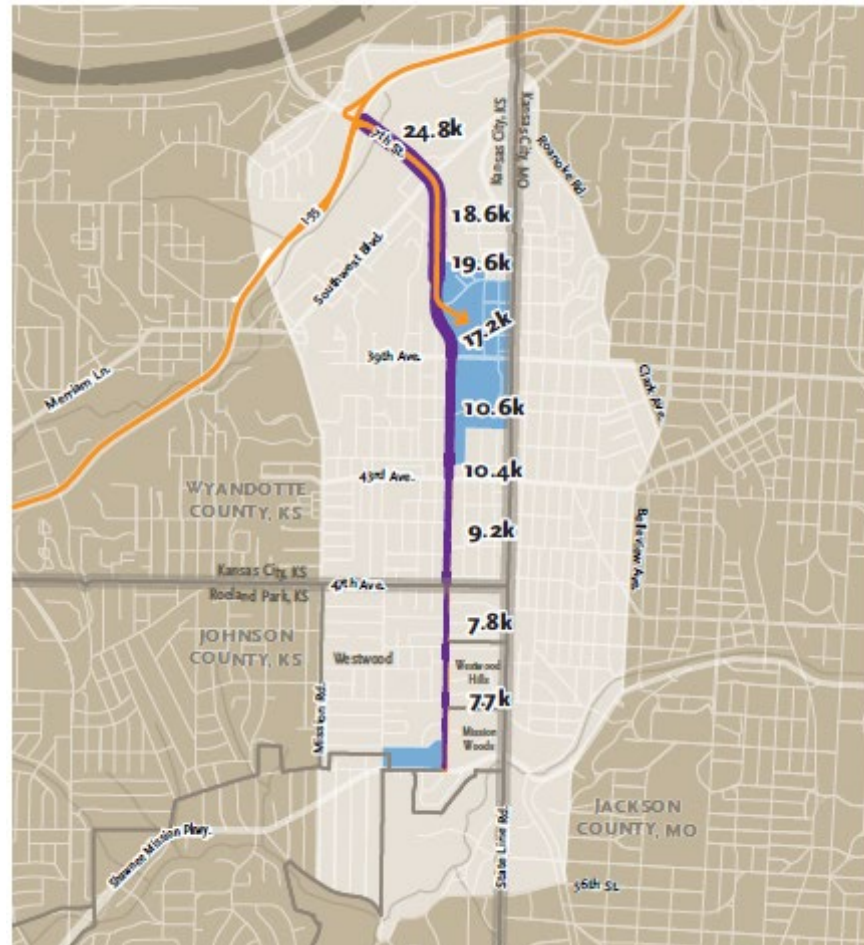


Figure 44. Design Priorities of Online Poll Participants

Study Findings

Figure 33. Average Annual Daily Traffic Volumes for Rainbow Boulevard



Source: Replica

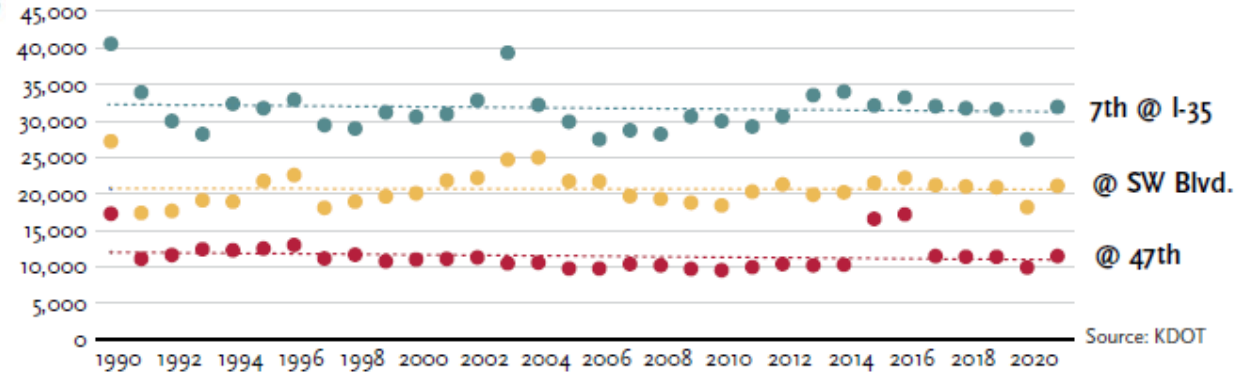
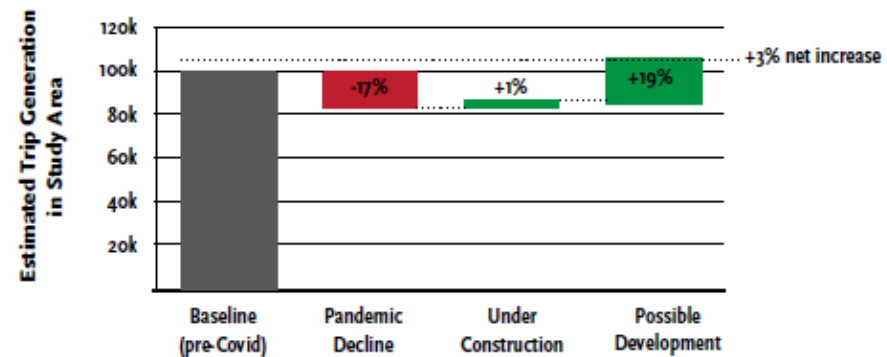


Figure 36. Long-term traffic trends on Rainbow (or 7th St.) at I-35, Southwest Boulevard, and 47th



Source: Analysis of Replica and ITE Trip Generation Manual, 11th Ed.

Figure 37. Reconciling past trends and future growth

Study Findings, Cnt'd.

Regional Trip Patterns

According to data from *Replica*, around half of the trips that occur in the study area are under 5 miles. Of these trips, 74% are by car. Approximately 30% of trips are under 2 miles, and 62% of those trips are by car. There is significant potential to increase walking, biking, and transit trips, particularly for shorter trips within the study area. This would also reduce traffic and improve convenience for people that do drive.

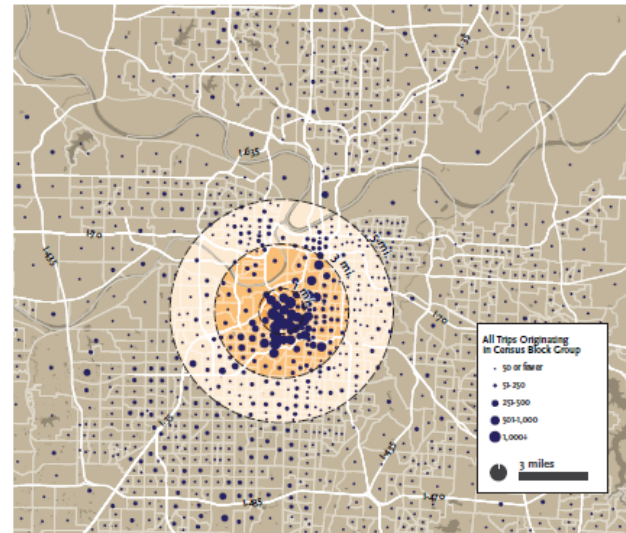
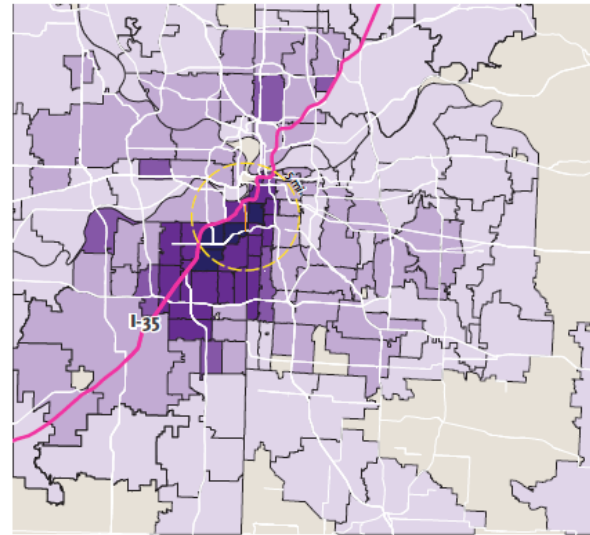


Figure 20. Distribution of Trip Distances traveling to the Study Area

Replica: A traffic model and "big data" source that combines information from GPS data, connected vehicles, and many other sources to provide an accurate picture of travel patterns in a particular study area.

Figure 19. Regional Distribution of Trips Destined to the Study Area



Existing Conditions Analysis 29

Figure 24. Origin of University of Kansas Health System Employees

This data includes all employees of all health system locations (not just 39th and Rainbow)

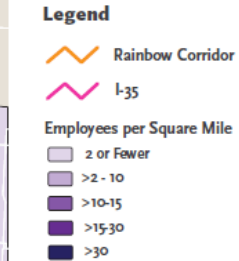


Figure 25. Origin of University of Kansas Health System Patients

This data includes all patients to all health system locations (not just 39th and Rainbow)

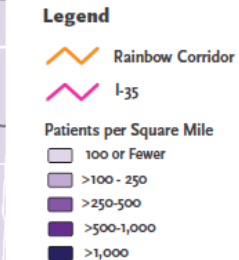


Figure 27. Four Types of Cyclists

Research from Jennifer Dill of Portland State University shows that most people have an interest in bicycling but are concerned about their safety or comfort while bicycling. [Read more about the Types of Cyclists by Jennifer Dill.](#)



Figure 28. Bicyclists on Rainbow Boulevard

Two bicyclists at the 39th and Rainbow intersection, despite the lack of dedicated facilities

Professional Recommendations

Recommended Program of Projects

Based on community engagement results, project goals, and technical analysis, the following program of projects is recommended for Rainbow Boulevard:

- Rainbow Road Reconfiguration ("Road Diet")
- Shared Use Path (Southwest Boulevard to Adams St.)
- On-Street Bicycle Facilities (Adams St. to Shawnee Mission Pkwy)
- Olathe Boulevard Realignment
- New Pedestrian Crossings
- Neighborhood Traffic Calming
- Turkey Creek Trail Connection

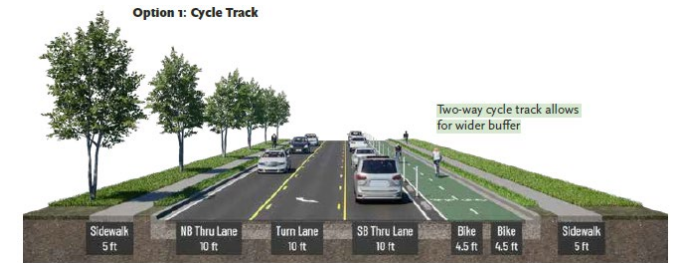
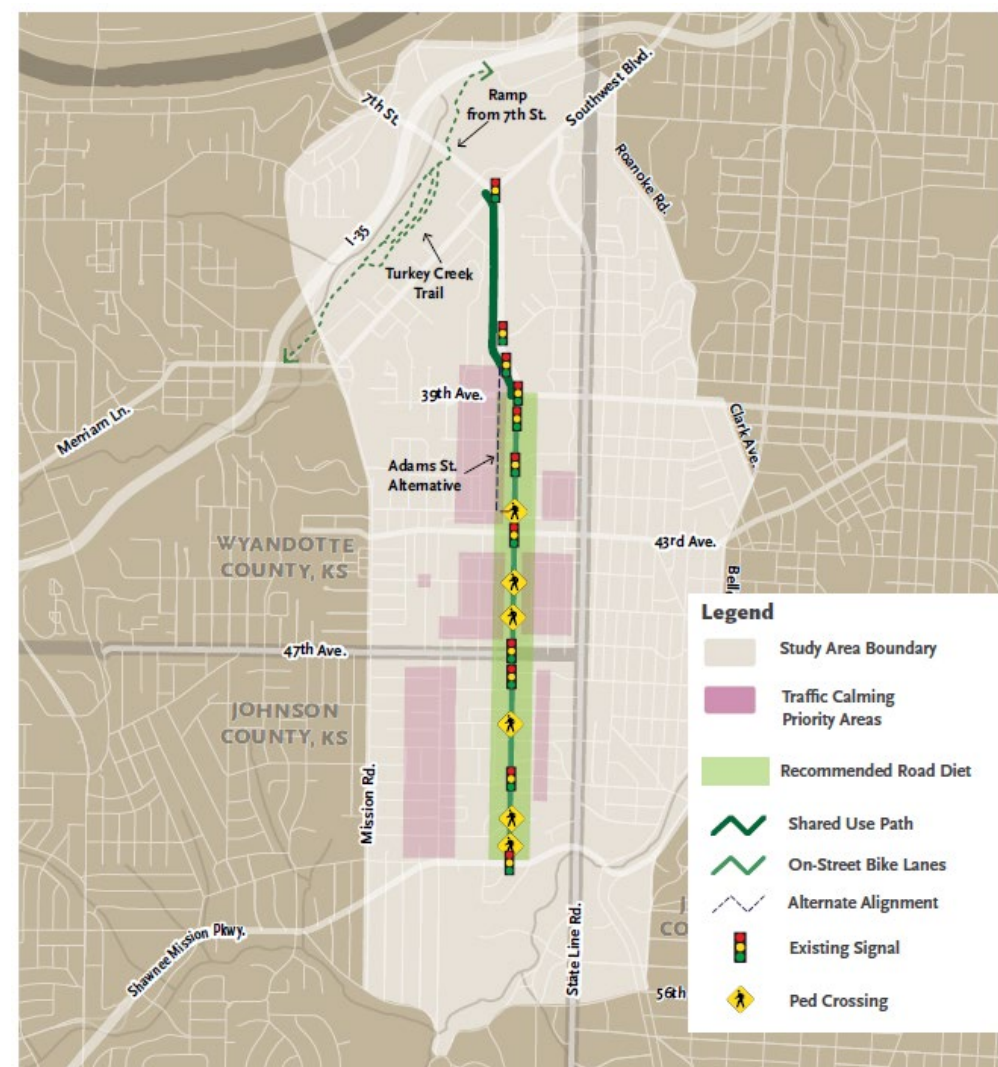
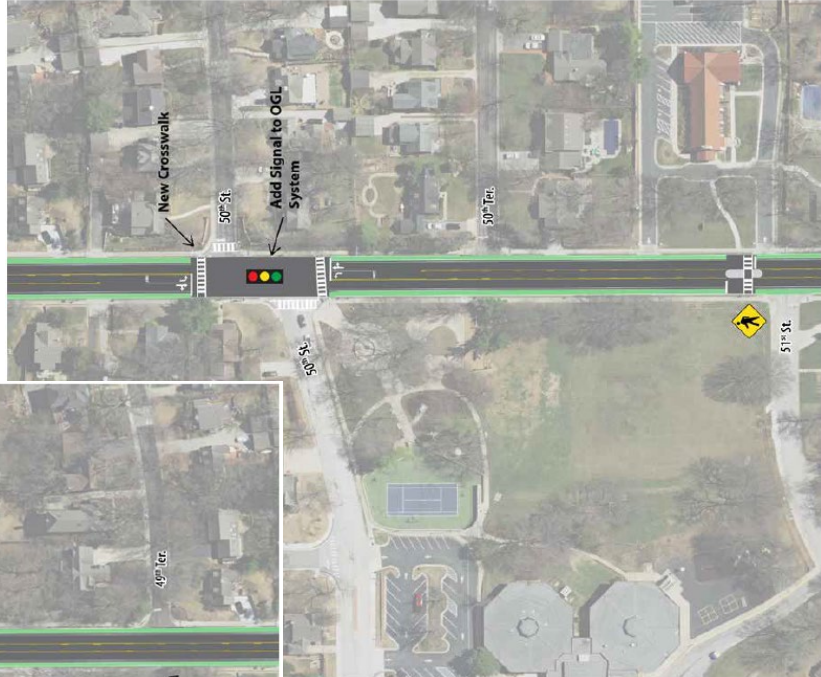


Figure 57. On-Street Bicycle Facilities South of 39th Avenue



Professional Recommendations (JoCo Cities)



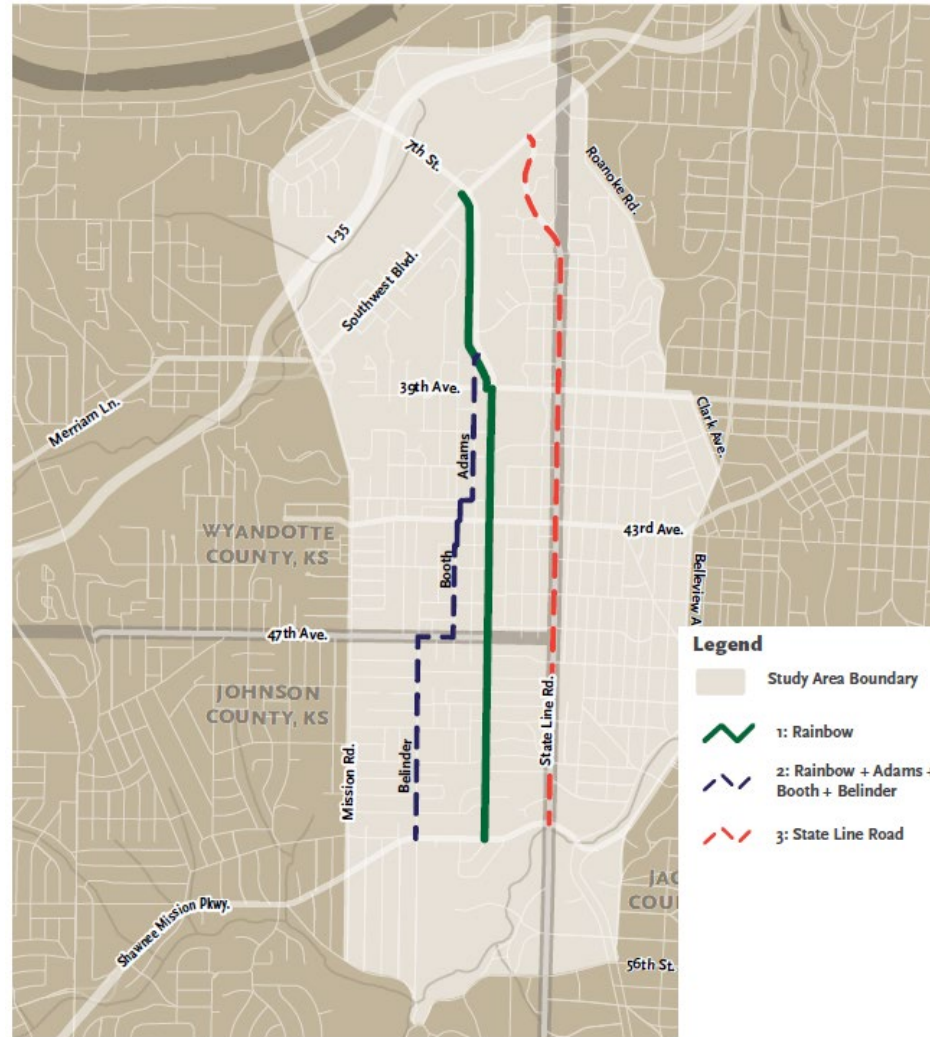
Bicycle Facility Recommendations

Why Rainbow?

During the engagement process, some individuals asked whether considering an alternative corridor for bicycle travel would be beneficial. The study area has a handful of north-south alternatives that could be considered for bicycle travel. These corridors include State Line Road and a combination of Rainbow, Adams, Booth, and Belinder.

Our screening found that Rainbow was still the most suitable corridor for bicyclists, based on the following criteria:

- **Removes a Barrier:** Implementing a road diet and adding mid-block crossings to Rainbow would remove a substantial barrier within the study area and make pedestrian traffic more safe, comfortable, and convenient.
- **Direct Connection:** Rainbow connects the most destinations and is the most straightforward north-south route in the study area.
- **Right of Way Width:** Rainbow has sufficient ROW width to accommodate a shared use path or on-street bicycle facilities.
- **Pavement Width:** Rainbow has sufficient pavement width to accommodate dedicated bicycle facilities.
- **Traffic Volumes:** Rainbow's traffic volumes are compatible with a 3-lane road diet section.
- **Low-Stress Bike Facility Potential:** The addition of a bicycle facility on Rainbow would create a lower stress bicycling facility than the existing roadway, or the existing roadway is already low-stress (as is the case with some alternatives to Rainbow).
- **Bike-Friendly Terrain:** Topography on Rainbow is gentler than alternatives like State Line Road.
- **Placemaking:** Rainbow offers the most opportunity to create a unique street that benefits adjacent land uses and future development and supports sustainability and public health.
- **Crash Reduction:** This alternative for Rainbow could result in fewer crashes by implementing a 4-to-3 road diet, which can reduce crashes by up to 47%.



1/2 mile

Figure 50. Alternatives for north-south bicycling corridors on Rainbow Boulevard

Table 5. Alternative North-South Corridor Screening Results

	1: Rainbow Shared Use Path + Road Diet	2: Rainbow Shared Use Path + Adams, Booth, and Belinder	3: State Line Road
Removes Barrier	✓	✗	✗
Direct Connection	✓	—	—
Right of Way Width	✓	—	—
Pavement Width	✓	—	—
Traffic Volume Supports Road Diet	✓	✓	—
Low-Stress Bicycle Facility Potential	✓	✓	—
Bicycle Friendly Terrain	—	—	—
Placemaking	✓	—	✗
Crash Reduction	✓	—	—

Impact of Road Diet on Personal Vehicles

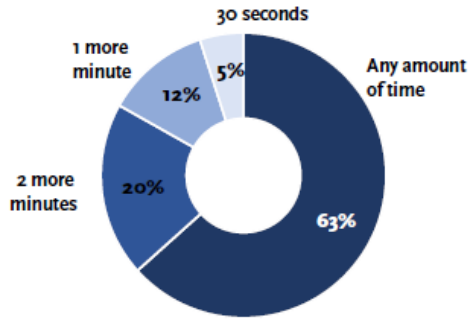


Figure 43. Travel Time Trade-off Preferences of Online Poll Participants ("How Much Additional Travel Time would you be willing to spend on Rainbow in exchange for improvements?")

Table 4. Level of Service Definitions

Level of Service	Seconds of Delay per Vehicle
A	10 or less
B	>10 -20
C	> 20-35
D	> 35-55
E	> 55-80
F	> 80

Table 3. Travel Time Changes Due to a Road Diet on Rainbow Boulevard

Northbound Travel (seconds)

Segment	AM	Noon	PM
Shawnee Mission Parkway	-5.9	-27.6	-37.4
50th St	-0.1	-1.6	-0.2
47th Place	1.2	4.6	-0.6
47th Ave	0.5	5.1	-4.3
43rd Ave	22	-0.5	43.2
Olathe Blvd	5.2	2.3	11.5
Marty Ave	0.3	4.4	-1.3
39th Ave	-0.7	1.4	-3
Adams St	-4.5	-2.2	-0.4
36th Ave	-5.4	9.1	-1.5
	-2.1	-3.1	4.2
Southwest Boulevard	-9.7	-9.4	-12.7
Total Change	0.8	-17.5	-2.5

Southbound Travel (seconds)

Segment	AM	Noon	PM
Southwest Boulevard	-2.5	4.2	-1.9
	-0.4	0.5	0.4
36th Ave	0.2	-2.9	-1.2
Adams St	3.7	21.6	6.9
39th Ave	-1.1	2.5	6.2
Marty Ave	-1.4	0.7	-0.3
Olathe Blvd	-3.0	6.7	25.2
43rd Ave	31.5	-1.9	81.4
47th Ave	-3.3	5.5	1.4
47th Place	-2.2	-0.6	-6.8
50th St	5.7	1.4	-1.5
Shawnee Mission Parkway	-1.7	0.7	-1.0
Total Change	25.5	38.4	108.8

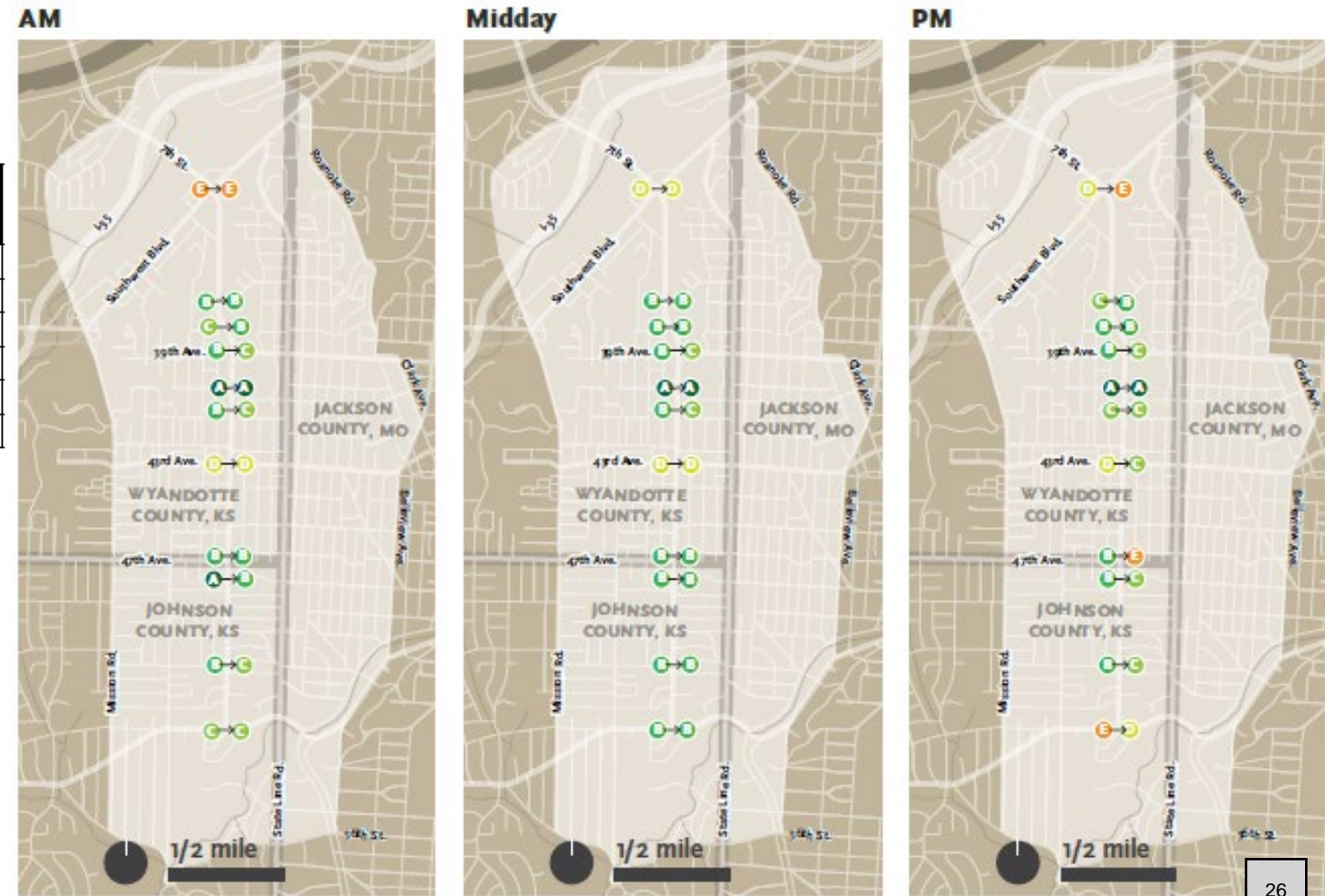


Figure 49. Change in Level of Service at AM, Midday, and PM Periods Due to a Road Diet on Rainbow Boulevard

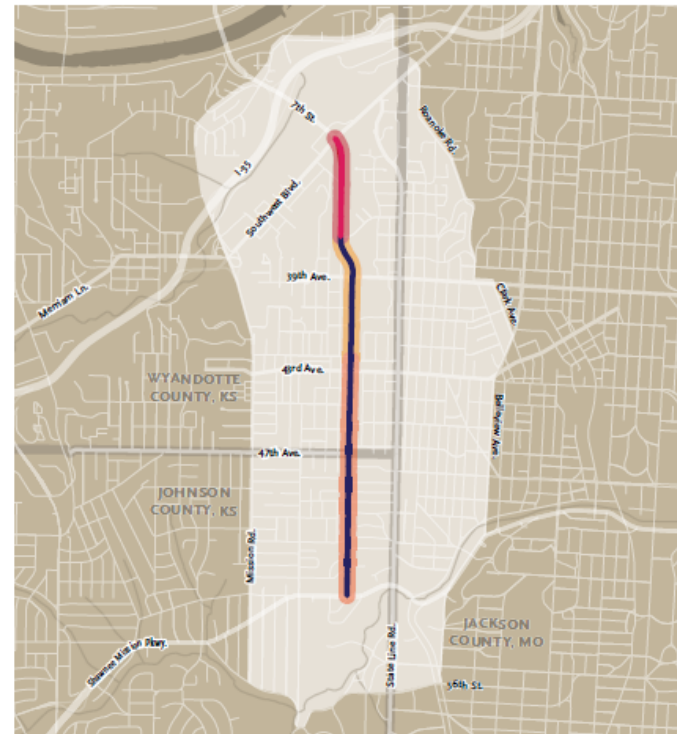
Supporting Recommendations

Speed Limit Reductions

Fast vehicle speeds were a top concern listed by stakeholders. The project team conducted a speed study in three different zones along the corridor and used the **FHWA USLIMITS2** tool to understand an appropriate speed limit for these zones. Based on the crash history, number of driveways and access points/driveways, land use context, and existing observed speed data, lower speed limits on the corridor would be justified. According to results from USLIMITS2, the appropriate speed limit on Rainbow Boulevard is 30 mph from Southwest Boulevard to Adams Street and 25 mph from Adams Street to Shawnee Mission Parkway. Speed limit reductions are usually implemented in 5 mph increments to avoid creating excessive enforcement issues. Speed limit reductions are a low-cost safety countermeasure that could be implemented prior to a road diet and revisited with further studies after a road diet is implemented.

USLIMITS2: USLIMITS2 is a free tool from the Federal Highway Administration designed to set appropriate speed limits based on a variety of inputs, including observed speeds.

Figure 71. Speed Limit Reduction Recommendations on Rainbow Boulevard



Neighborhood Traffic Calming

Public meeting participants said that reducing impacts to local residential streets should be a top design consideration. Some people expressed concerns about "cut-through" traffic, or traffic that would divert off of Rainbow on to local residential streets. The street network within the study area does not provide many direct paths for automobiles to divert off of Rainbow, and Rainbow would still likely be the quickest route for most motorists. However, this project recommends including traffic calming measures on local residential streets. Traffic circle islands and chicanes are popular traffic calming tools that have been used in the Kansas City region to slow traffic. They also provide opportunities for green infrastructure and stormwater capture. These devices should be deployed after consultation with neighborhood residents after road diet implementation.

Turkey Creek Trail Connection

The US Army Corps of Engineers recently completed improvements to Turkey Creek that will reduce flooding in the area, and a nature trail has been constructed as a part of these improvements. Rainbow Boulevard becomes 7th Street north of Southwest Boulevard, bridging over railroad tracks and Turkey Creek before the I-35 interchange. A switchback bicycle and pedestrian ramp has been proposed to connect this bridge to the Turkey Creek trail. This structure would provide trail access to a major employment and population center in the region.

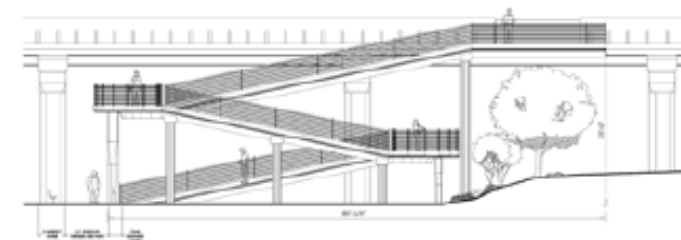


Figure 70. Conceptual Drawings for the Turkey Creek Trail Connection at 7th Street
 Images: Turkey Creek Corridor Enhancement Plan

Figure 81. Rainbow Project Locations



- Legend**
- A Turkey Creek Access
 - B SW Blvd to 39th Ave
 - C 39th Ave to 43rd Ave
 - D 43rd Ave to Shawnee Mission Pkwy
 - Potential Demonstration Project (47th to SMP)
 - E Olathe Blvd Realignment
 - Traffic Calming Priority Areas

Cost Estimate

These estimates assume that construction costs will increase an average of 5% per year, for a total escalation of 22% to 2028 dollar terms. A 25% contingency is also included in these costs. Costs such as utility relocation, stormwater inlets, new driveways, or full-depth pavement replacement are not included in these estimates.

Approximately 77% of these costs are in Wyandotte County, and 23% are in Johnson County. 35% of the costs are in USDOT Disadvantaged Tracts, and 77% are in MARC Environmental Justice tracts.

Project Costs by Community

#	Project/Item	2028\$ Costs	WyCo %	JoCo %	Westwood	Mission Woods	Westwood Hills	Unified Government
A	Turkey Creek Trail Connection*	\$ 1,976,000	100%	0%	\$ -	\$ -	\$ -	\$ 1,976,000
B	Southwest Blvd to 39th	\$ 2,468,000	100%	0%	\$ -	\$ -	\$ -	\$ 2,468,000
C	39th to 43rd	\$ 1,794,000	100%	0%	\$ -	\$ -	\$ -	\$ 1,794,000
D	43rd to Shawnee Mission Parkway	\$ 4,086,000	36%	64%	\$ 1,639,940.34	\$ 509,711	\$ 465,388	\$ 1,470,960
E	Olathe Boulevard Realignment	\$ 1,810,000	100%	0%	\$ -	\$ -	\$ -	\$ 1,810,000
	ADA Ramps and Spot Sidewalk Replacement Allowance*	\$ 800,000	69%	31%	\$ 155,525.42	\$ 48,339	\$ 44,136	\$ 552,000
	Neighborhood Traffic Calming Allowance*	\$ 550,000	69%	31%	\$ 106,923.73	\$ 33,233	\$ 30,343	\$ 379,500
	Streetlight Allowance*	\$ 954,000	69%	31%	\$ 185,464.07	\$ 57,644	\$ 52,632	\$ 658,260
	Landscape / Green Infrastructure Allowance*	\$ 550,000	69%	31%	\$ 106,923.73	\$ 33,233	\$ 30,343	\$ 379,500
	Right-of-Way Allowance*	\$ 200,000	69%	31%	\$ 38,881.36	\$ 12,085	\$ 11,034	\$ 138,000
	Total ROW + Construction Cost	\$ 15,188,000			\$ 2,233,658.64	\$ 694,245.25	\$ 633,876.10	\$ 11,626,220.00
	Maximum Federal Share (80%)	\$ 12,150,400			\$ 1,786,926.92	\$ 555,396.20	\$ 507,100.88	\$ 9,300,000.00
	Survey, Engineering, and other Soft Costs (15%)	\$ 2,279,000			\$ 335,048.80	\$ 104,136.79	\$ 95,081.42	\$ 1,743,771.00
	Non-Federal Match + Survey/Engineering/Soft Costs	\$ 5,316,600			\$ 781,781	\$ 242,986	\$ 221,857	\$ 4,069,177

Funding Outlook

This program of projects would be eligible and potentially competitive for several funding sources, including Federal, State, and Local programs.

While Federal funding can sometimes complicate project implementation by adding certain requirements and administrative procedures, a project of this size could easily justify that added effort.

The Mid-America Regional Council (MARC) allocates Federal funding for projects through its committee structure. Although they require an intensive grant application and screening process and are typically highly competitive, Federal discretionary programs such as the RAISE program, Safe Streets and Roads for All, and Reconnecting Communities offer opportunities for major funding.

State and local programs can help provide required matching funds required for Federal projects. Typically, Federal projects can only cover a maximum of 80% of project costs, although there are certain exceptions for projects located within Historically Disadvantaged Census Tracts for certain programs. For this program of projects, a combination of Federal sub-allocated funding, KDOT, and local funding sources could realistically provide sufficient funding for the proposed program of projects.

Table 7. Potential Funding Sources

Category	Name	Typical Range / Max Award	Competition / Difficulty
Federal - Suballocated (MARC Programs)	Surface Transportation Block Grant (STBG)	Total \$30 M in KS	Moderate
	STBG Set-Aside (Transportation Alternatives)	Max \$1.5 M Total \$4.5 M in KS	Moderate
	Congestion Mitigation and Air Quality (CMAQ)	Total \$5.6 M in KS	Moderate
	Carbon Reduction Program (CRP)	Total \$8 M in KS	Moderate
Federal Discretionary	Community Project Funding ("Earmarks")	\$500k- \$4 M	Moderate
	Rebuilding America's Infrastructure with Sustainability and Equity (RAISE)	Max \$25 M	High
	Safe Streets and Roads for All - Demonstration Grant	Max \$10 M	Moderate
	Safe Streets and Roads for All - Implementation Grant	Max \$25 M	High
	Reconnecting Communities & Neighborhoods	Min \$5 M	High
KDOT (or KDOT Allocated)	Connecting Link Improvement Program	Max \$1.5 M	Moderate
	Highway Safety Improvement Program - VRU Set Aside (Future)	TBD	Moderate
	Cost Share Program	Max \$1 M	Lower
	Build Kansas Fund	TBD	Moderate
Local	Johnson County County Assistance Road System (CARS)	Likely \$1-2 M per project	Lower
	Street Maintenance/Preservation Funds	Varies (Unified Government is around ~ \$12 M/year citywide)	Lower

Timeline

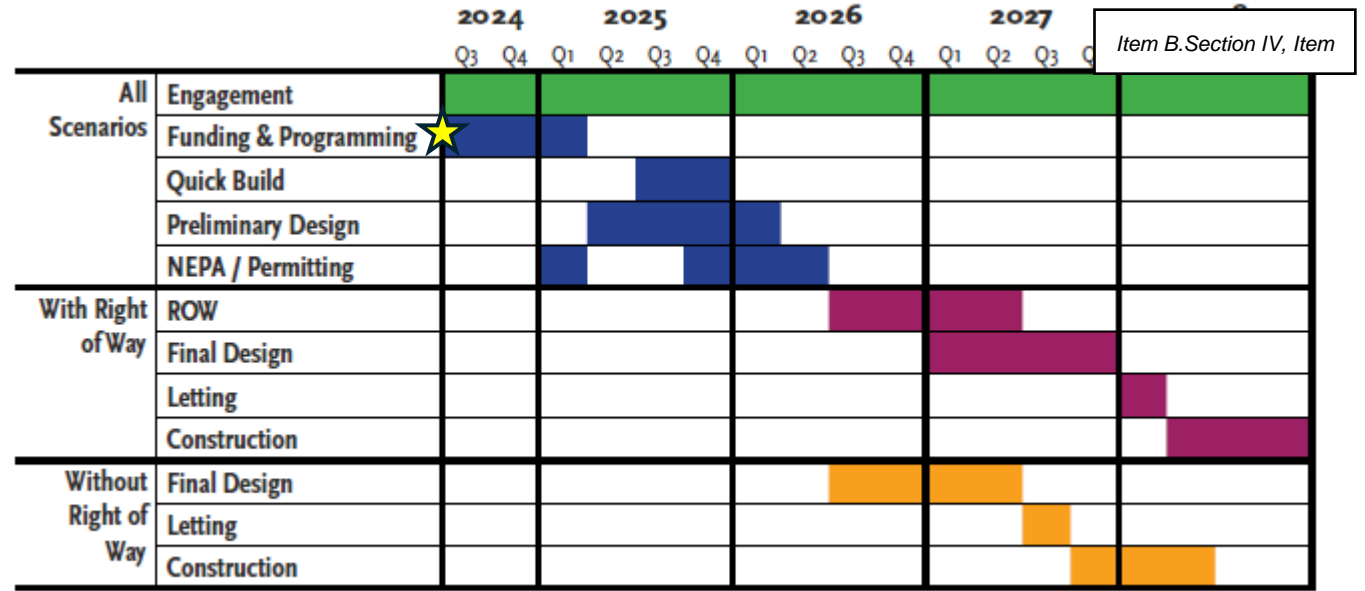
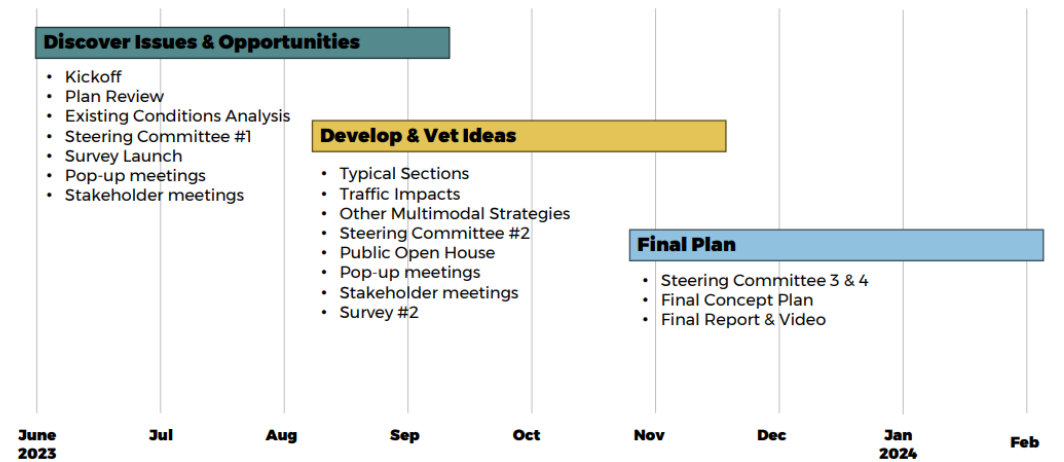
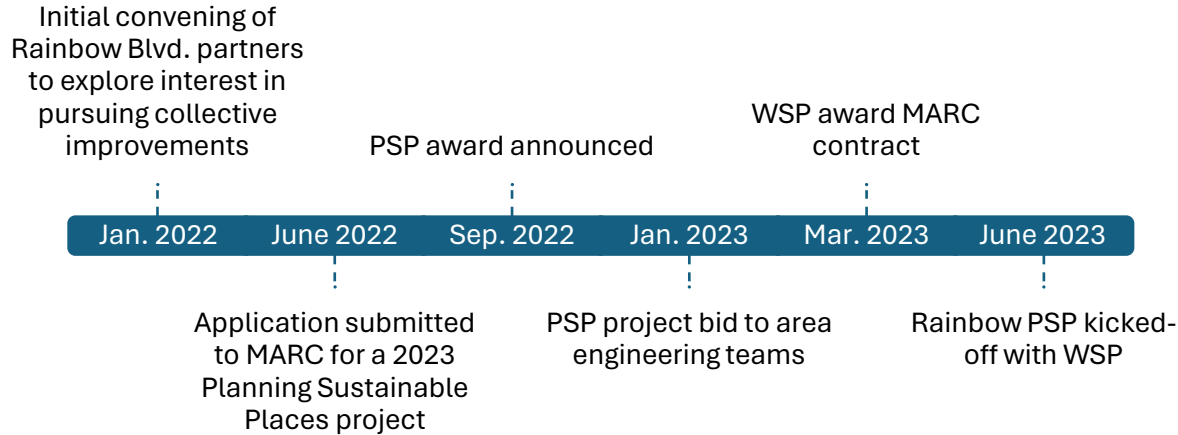


Figure 82. Example project development scenarios

Process & Schedule



Next Steps

Funding and Programming: The Federal funding and allocation process administered by the Mid-America Regional Council helps to allocate funding such as STBG, STBG Set-Aside, CMAQ, and CRP funds. As local agencies apply for funding, projects are evaluated, scored, and recommended to various committees that provide recommendations and final approval for project funding. This process typically takes several months. Once that process is complete, project sponsors will have an understanding of the amount of funding allocated to their project(s). This allows project sponsors to understand which projects they can afford, the amount of matching funding required, and the timeline when funds will be available. Once funding is secured, **Local Public Agencies (LPAs)** should begin coordinating with KDOT's Bureau of Local Projects to begin the Discovery Phase of the project by submitting a Project Programming Request Form.

Quick-Build Demonstration: Quick-build or demonstration projects are a low-cost way to implement a road diet or roadway reconfiguration in order to prove their effectiveness at calming traffic and improving safety and operations. For example, the City of Westwood and the Unified Government implemented a roadway reconfiguration on 47th Avenue/Street using a quick-build approach. Following a quick build project, the street was upgraded with new, more permanent improvements including pedestrian refuge islands and new curb ramps and sidewalks.

The section of Rainbow from Shawnee Mission Parkway to 47th Avenue would serve as an ideal quick-build project that could be implemented earlier on in the process to serve as a proof of concept for the Rainbow Boulevard Road Diet.



Figure 8.4. Demonstration Project (Left - photo by Laura Fox) and Permanent Installations on 47th Street/Avenue

Discovery and Preliminary Design: Once funding is secured, preliminary engineering can begin. Project sponsors should meet with KDOT's Bureau of Local Projects to discuss the project scope, limits, and any complex details. An engineering consultant should be competitively selected in accordance with KDOT rules. An engineering survey is also needed to support design. Discovery and preliminary engineering may dictate further evaluation of the concepts within this study and their safety and operational impacts. Preliminary plans (30%) are followed by field check plans (50-60%), produced prior to right of way plans (if applicable).

Local Public Agencies (LPA): A public agency (i.e. City, County, or other non-State government entity) sponsoring a Federal-Aid (federally funded) project

The Kansas Department of Transportation's [Bureau of Local Projects](#) (KDOT BLP) assists Local Public Agencies (LPAs) in project development for Federally-funded projects. As the owner of Rainbow Boulevard, KDOT will be involved in decisions about the facility as it is designed.

A detailed LPA Project Development Manual can be found on [KDOT's Authentication & Resource Tracking \(KART\)](#) web portal.

Ongoing Engagement

Although this feasibility study has concluded, ongoing community and stakeholder engagement should continue as the corridor advances through project development. Preliminary and final engineering should include continued public engagement opportunities. As more details are decided through preliminary and final engineering, project partners should seek the input of individual property owners and tenants, while still respecting the goals and the will of the general public that were identified through this study.

Environmental Review and Permitting: The National Environmental Policy Act (NEPA) requires Federally-funded projects to adhere to certain standards and processes. KDOT will determine the environmental class of the project, depending on the scale, complexity, and anticipated impacts of the project. Because these projects are mostly within existing developed Right of Way, they are likely to be classified as Categorical Exclusions (CATX). KDOT's Environmental Services Section (ESS) will draft a Preliminary Memo when the project is programmed to begin coordination with various review agencies. Review agencies will provide their review letters to KDOT ESS. KDOT ESS will compile those responses and provide a Final Memo, indicating which permits and actions need to be taken by the LPAs. The LPA is responsible for obtaining permits.

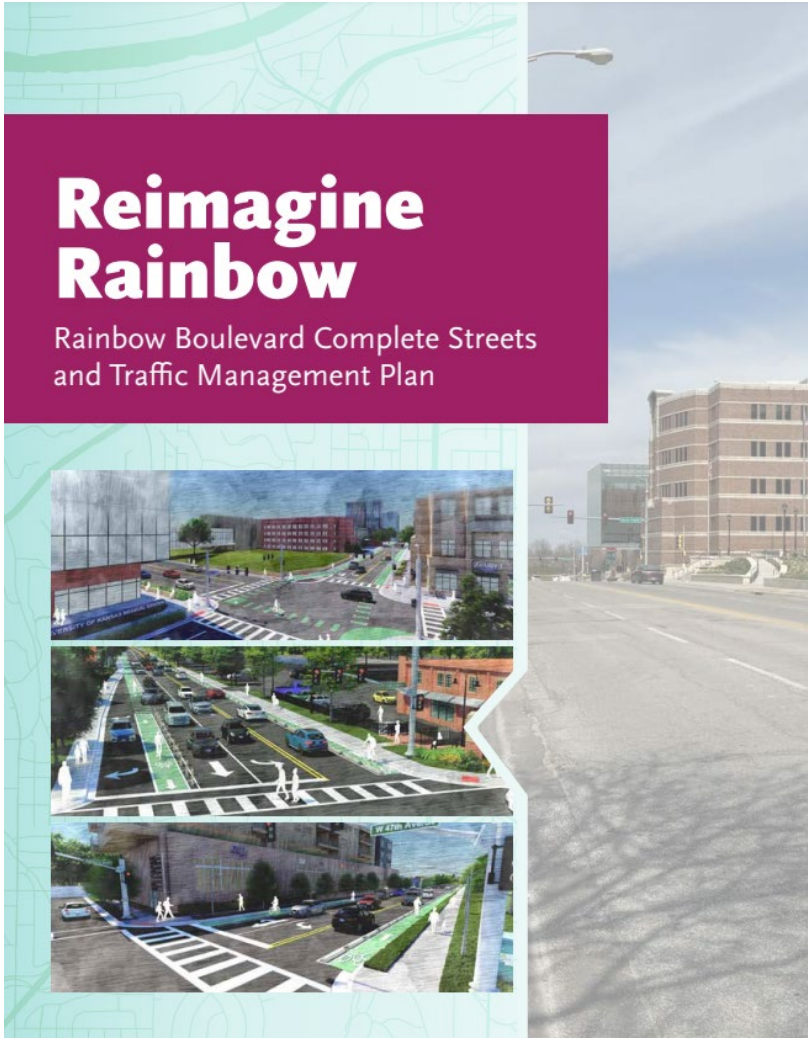
Right of Way: While this project will work mostly within existing right of way, there may be a need to acquire partial tracts of temporary or permanent easements or right of way to complete certain projects, depending on the results of preliminary design. LPAs must follow specific rules when acquiring right of way. Title reports, legal descriptions, right of way plans, and property valuation are required in order to begin negotiation with property owners and acquiring property.

Final Design: The final design stage includes development of a set of office check plans (90% plans), final plans (100% plans), and the final plans, specification, and estimate (PS&E).

Advertising, Letting, and Construction: Once the final PS&E is complete, KDOT will advertise the project for bid on its portal for one month. The contract is awarded to the lowest responsible and responsive bidder. After a contract is executed, a pre-construction meeting is held, and a Notice to Proceed is issued. During construction, the LPA, KDOT, and/or a consultant share responsibilities for construction engineering, inspection, and oversight.

Alternative Delivery: Alternative delivery methods, such as design-build or construction manager at risk, can help save time and costs over design-bid-build delivery. Alternative delivery methods may be appropriate for certain projects in this program. However, further design, definition of the scope of work, and an understanding of environmental and permitting considerations would be required for alternative delivery. There is currently no defined design-build process for KDOT local projects, and additional consultation with KDOT will be needed if project partners desire to pursue alternative delivery. Project sponsors should consider using an owner's representative to help manage the process.

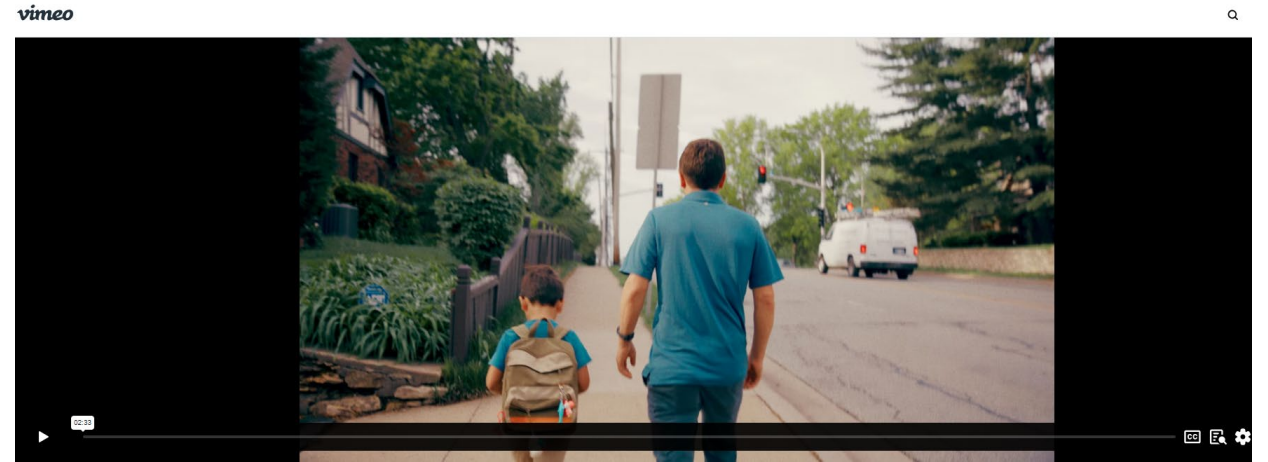
Additional Information



Click on the report to read the full document

Click on the video for a short project narrative

Click on the project website to review all the community engagement



**City of Westwood, Kansas
City Council Work Session
4700 Rainbow Boulevard
May 9, 2024 – 6:00 PM**

Council Present: David E. Waters, Mayor
Andrew Buckman, Councilmember
Jeff Harris, Council President
Jason Hannaman, Councilmember
Laura Steele, Councilmember
Holly Wimer, Councilmember

Council Absent: None

Staff Present: Leslie Herring, City Administrator
Curtis Mansell, Police Chief
John Sullivan, Public Works Director

Call to Order

Mayor Waters called the meeting to order at 6:00 p.m. on May 9, 2024. The meeting was held in a hybrid manner with attendees being able to join in person and virtually via Zoom.

Community Survey Preparation

Discuss parameters and process for drafting, issuing, and reviewing requests for proposals for City-owned property at 4700 Rainbow Blvd.

Mayor Waters and Ms. Herring conducted a general discussion to begin the request for proposals (RFP) process for the City-owned property at 4700 Rainbow Blvd. The discussion followed the presentation for guided discussion included in the meeting packet. No action was taken but direction was given to the Mayor and City Administrator to bring a draft of the RFP document back to Council for review before it is issued.

Adjournment to Regular Meeting

The Work session adjourned at 6:52 p.m. to prepare for the regular City Council meeting.

**City of Westwood, Kansas
City Council Meeting
May 9, 2024 – 7:00 p.m.**

Council Present: David E. Waters, Mayor
Andrew Buckman, Councilmember
Jeff Harris, Council President
Jason Hannaman, Councilmember
Laura Steele, Councilmember
Holly Wimer, Councilmember

Council Absent: None

Staff Present: Leslie Herring, City Administrator
Curtis Mansell, Police Chief
John Sullivan, Public Works Director
Ryan Denk, City Attorney
Melissa Rome, City Treasurer
John Martin, City Auditor

Call to Order

Mayor Waters called the meeting to order at 7:00 p.m. on May 9, 2024. Ms. Herring called the roll. A quorum was present. The evening's meeting was held in a hybrid manner, with attendees joining both in person and via Zoom.

Approval of Agenda

Motion by Councilmember Harris to approve the May 9, 2024 City Council meeting agenda as submitted. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

Public Comment

Ann Genovese, 2512 W 50th Pl, expressed her concern about short-term rentals. Ms. Genovese said she believes the City should be proactive to prevent short-term rental properties from becoming a problem in the future by tightening restrictions on such properties.

Presentations and Proclamations

Introduce Public Works Maintenance Worker Alex Gonzalez

Mr. Sullivan introduced Alex Gonzalez, the newest member of the Public Works Department. Mr. Gonzalez started on April 1st, and previously worked for the City of Mission.

Presentation by the Silver Haired Legislature of Kansas

Norman Kahn and David Wood with the Silver Haired Legislature of Kansas provided an overview of the organization's priorities and operations.

Mayoral Proclamation of May 2024 as Bike Month in Westwood

Mayor Waters said Woodside recently shared that the bike share hub at Woodside is ranked 19 out of 98 hubs in the Kansas City metro region. Mayor Waters proclaimed the month of May 2024 Bike Month in Westwood.

Proclamation of May 12 – 18, 2024 as National Police Week

Mayor Waters proclaimed May 12 – 18, 2024 as National Police Week in Westwood. Mayor Waters called upon all citizens of the city to observe May 15, 2024 as Peace Officer's Memorial Day to honor those officers who have lost their lives in the line of duty.

Chief Mansell shared that Peace Officer's Memorial Day hit close to home this year with the loss of Fairway Police Officer Jonah Oswald.

Consent Agenda

All items listed below are considered to be routine by the Governing Body and will be enacted in one motion. There will be no separate discussion of these items unless a member of the Governing Body so requests, in which event the item will be removed from the consent agenda and considered separately following approval of the consent agenda.

- A. Consider April 11, 2024, City Council Work Session & Meeting Minutes
- B. Consider Appropriations Ordinance 762

Motion by Councilmember Hannaman to approve the Consent Agenda as submitted. Second by Councilmember Buckman. Ms. Herring conducted a roll call vote. Motion carried by a 5-0 vote.

Mayor's Report

Mayor Waters provided an update of events he attended and plans to attend as Mayor.

Councilmember Reports

Councilmember Wimer encouraged all Westwood businesses, families and community members who are interested in participating in the 75th Anniversary parade to sign up online to help organizers plan for the parade lineup. The 75th Anniversary celebration will be held Saturday, June 8th and will include a parade at 3:00 PM and will be followed by a cookout, live music and family fun at 5000 & 5050 Rainbow Blvd.

Staff Reports

Administrative Report

Ms. Herring provided an overview of the May 2024 Administrative Report included in the agenda packet and offered to answer questions.

Public Works Report

Mr. Sullivan provided an overview of the April and May 2024 Public Works Report included in the agenda packet and offered to answer questions.

Public Safety Report

Chief Mansell provided an overview of the April 2024 Public Safety Report included in the agenda packet and offered to answer questions.

Treasurer's Report

The April 2024 Treasurer's Report was included in the agenda packet, no questions or comments were made about the report.

City Attorney's Report

Mr. Denk did not have any items to report.

Old Business

Discuss current status of design of 2025 Mission Rd. improvements

Mission Rd. improvements are scheduled to be completed in 2025 as part of the City's Capital Improvement Plan. As these improvements are scheduled for next spring, design and preparations are well underway and have been for the past few years. An overview of the project timeline was included in the agenda packet. The scope of the Mission Rd. improvements includes:

- Adding bike lanes to both sides of the street and moving the centerline to the center of the road bed (it is currently closer to the east/Westwood side of the roadbed to accommodate on-street parking on the west/Roeland Park side);
- Moving the cobra head street light attachments from the utility poles on the Westwood side of the road and installing streetlighting that adequately lights both the roadway and the sidewalks and intersections of both cities; and
- Adding pedestrian safety features including crosswalks at both 50th St./49th Pl. and 48th St./48th Ter.

In recent months, Roeland Park residents living on Mission Rd. have formally protested and petitioned against the planned improvements.

Councilmember Steele has requested this item be added to tonight's agenda to allow space and time for the Governing Body to discuss the following question: *Is it still the desire of the Governing Body to implement the City's Complete Streets Plan with the 2025 Mission Rd. improvements?*

A general discussion ensued regarding the project. The Governing Body agreed that the City should continue pursuing its policy of improved safety for Mission Rd. by adhering to the original plan design.

New Business

Consider agreement with Columbia Capital Management for investment advisory services

The City carries all monies across all funds in one depository, First National Bank of Omaha (FNBO). As the City carries a multi-million dollar balance at any given time and only needs access to a certain amount of funds to operate at any given time, there is opportunity for the City to invest funds to earn a higher amount of total interest on the balance the City carries. State statute strictly governs a city's investment of idle funds and such regulation is monitored by the City's Auditor, with additional oversight by the City Treasurer, City Attorney, and City Administrator.

Columbia Capital is a trusted and reputable partner of multiple Johnson County cities and has a number of other Kansas local government clients. They focus very closely on compliance with KSA 12-1675 et seq. and internally, they have a separation of duties where every trade made is reviewed by a different individual to ensure the securities purchased comport both with state law and with any unique requirements of the City's investment policy.

Columbia Capital proposes the City establish a Schwab account in the exercise of their duties for the City of Westwood. Their proposal also identifies a host of additional services they provide included in their fee. The City Attorney, City Treasurer, and City Auditor have all reviewed the proposal and agreement and have engaged Jeff White of Columbia Capital with questions to ensure a firm understanding of how state regulatory requirements are met.

Following approval of this professional services agreement, the next steps in this relationship would be:

- Opening a Schwab account for the City (performed administratively);
- Completing a liquidity template to help size the sub portfolios (performed administratively);
- Reviewing and revising the City's Financial and Purchasing Policy to embed a new investment policy for Council consideration for adoption by resolution;
- City Council consideration of an ordinance designating multi-year funds for compliance with State statute; and
- Each July and January, Columbia Capital will present an investment management report to the Governing Body to allow for transparency in how the investments are performing.

The City's current annual percentage yield using FNBO as its depository is 1.46%. In 2023, the City earned a total of \$44,015 in interest on the bank balance it carried. Columbia Capital is realizing north of 5% interest on even fairly short-term Treasury or Agency investments.

Columbia Capital has agreed to manage the City's investment strategy for a fee equal to the greater of \$12,000 per year, billed quarterly in arrears, or 0.20% per annum on the total portfolio of the City (pooled cash), billed quarterly in arrears based upon the average of the month-end portfolio balances in each month.

Jeff White with Columbia Capital provided a review of Columbia Capital's services offered and offered to address any questions.

Councilmember Harris asked if the City Treasurer had any concerns. Melissa Romme, Adams Brown, said she and City Treasurer Michelle Ryan want to ensure that as investments are being made Columbia Capital would follow Kansas statutes. Mr. White said Columbia Capital practices separation of duties to ensure compliance with Kansas statutes.

Motion by Councilmember Hannaman to authorize the City Administrator to execute a professional services agreement with Columbia Capital for investment management services subject to final review and approval by the City Attorney. Second by Councilmember Buckman. Motion carried by a 5-0 voice vote.

Receive Presentation of 2023 Independent Financial Audit

Higdon & Hale CPAs, PC has completed the 2023 financial audit. Copies of the final report are included in the agenda packet. City Auditor John Martin provided a review of the report and offered to answer any questions the Governing Body might have regarding the final 2023 financial audit report.

Fiscal Year 2025 Budget Presentation Review: 2023 audit actuals, 2024 expectations, and 2025 planning

Ms. Herring provided an overview of the 2025 budget presentation included in the agenda packet and offered to answer any questions.

Consider Amendment and restatement of agreement with Johnson County to provide support to the opioid antagonist protocol with the City of Westwood

State law governs administration of emergency opioid antagonists (e.g. Narcan) without a prescription. Statute requires that a first responder to whom the emergency opioid antagonist is dispensed have some training and an opioid antagonist protocol signed by a doctor. Johnson County offers to cities the

use of its staff EMS System Medical Director to meet the statutory requirements for Westwood Police Department staff to lawfully administer emergency opioid antagonists (e.g. Narcan), and the City of Westwood has had an established partnership with the County in this way since 2019.

This amendment and restatement of the agreement is before the City Council now to remove reference to a specific person as the medical director and to ensure the language is as clear, concise, and correct is possible.

The County Attorney's Office is currently working across the county to amend and restate these agreements. The City Attorney has reviewed this agreement and has provided no requested nor required modifications to the document.

Motion by Councilmember Hannaman to authorize the City Administrator to execute the Amended and Restatement of Agreement with Johnson County to Provide Support to the Opioid Antagonist Protocol within the City of Westwood. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

Consider allowing the consumption of alcoholic beverages on City property at 5000 and 5050 Rainbow for Westwood's 75th Anniversary celebration

The City of Westwood is hosting an event to celebrate the City's 75th anniversary of incorporation in June. The event will be held at 5000 and 5050 Rainbow Blvd. on Saturday, June 8, 2024, from 4:00 to 8:00 PM. As this event includes a pre-party parade which may conclude earlier than 4:00 PM, City staff recommend allowing the consumption of alcoholic beverages beginning at 3:00 PM.

As in years past for certain events, the City Council may consider whether to permit the consumption of alcoholic beverages on City property during a special event.

Motion by Councilmember Harris to approve the provision, possession, and consumption of alcoholic beverages on City-owned property at 5000 and 5050 Rainbow Blvd. on Saturday, June 8, 2024, from 3:00 to 8:00 PM. Second by Councilmember Buckman. Motion carried by a 5-0 voice vote.

Announcements/Governing Body Comments

No announcements or comments were made.

Executive Session

Consultation with the City Attorney on matters relating to real property located at and around 5000 Rainbow Blvd. which would be deemed privileged in the attorney client relationship under K.S.A. 75-1319(b)2

Motion by Councilmember Hannaman to recess into Executive Session for 20 minutes for consultation with the City Attorney on matters relating to real property located at and around 5000 Rainbow Blvd. which would be deemed privileged in the attorney-client relationship under K.S.A. 75-4319(b)2 present will be the members of the Governing Body, the City Administrator, and the City Attorney. The regular meeting will resume at 9:00 p.m. Second by Councilmember Harris. Motion carried by a 5-0 voice vote.

At 9:00 p.m. the Governing Body returned to the dais. Mayor Waters said no action was taken during the Executive Session.

Adjournment

Motion by Councilmember Steele to adjourn the meeting. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote. The meeting was adjourned at 9:00 p.m.

APPROVED: _____
David E. Waters, Mayor

ATTEST: _____
Abby Schneweis, City Clerk

DRAFT

**City of Westwood, Kansas
Appropriation Ordinance No. 763**

AN ORDINANCE APPROPRIATING CITY EXPENDITURES FOR THE PERIOD OF MAY 1, 2024 - MAY 31, 2024 AND SUMMARIZING SAID EXPENDITURE HEREIN.

	General Month Ending 5/31/2024	Capital Improvements Month Ending 5/31/2024	Equipment Reserve Month Ending 5/31/2024	Stormwater Month Ending 5/31/2024	Special Highway Month Ending 5/31/2024	Woodside TIF/CID Month Ending 5/31/2024	Debt Service Month Ending 5/31/2024	Total All Funds Month Ending 5/31/2024
Expenditures								
Salary & Benefits	163,363.70	0.00	0.00	0.00	0.00	0.00	0.00	163,363.70
Employee Expenses	5,087.36	0.00	0.00	0.00	0.00	0.00	0.00	5,087.36
Professional Fees	38,676.81	0.00	0.00	0.00	0.00	0.00	0.00	38,676.81
General Operating Expenses	19,134.93	0.00	0.00	0.00	0.00	0.00	0.00	19,134.93
Utilities	17,275.08	0.00	0.00	0.00	0.00	0.00	0.00	17,275.08
Equipment and Maintenance	6,681.10	0.00	58,638.86	0.00	0.00	0.00	0.00	65,319.96
Street and Stormwater	0.00	4,360.00	0.00	361.80	0.00	0.00	0.00	4,721.80
Park and Events	13,281.01	0.00	0.00	0.00	0.00	0.00	0.00	13,281.01
Miscellaneous	0.00	0.00	0.00	0.00	0.00	14,061.52	0.00	14,061.52
Intergovernmental	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Expenditures	263,499.99	4,360.00	58,638.86	361.80	0.00	14,061.52	0.00	340,922.17

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS:

SECTION 1. The Claims included herein are hereby approved and allowed.

SECTION 2. That the payment of all claims and charges against the respective accounts and funds provided in the budget for the year 2024 are consistent with that budget and are hereby authorized, ratified and approved.

SECTION 3. This Ordinance shall take effect from and after its passage.

ADOPTED this 13th day of June, 2024.

MAYOR

ATTEST: CITY CLERK



City Administrator's Report

June 2024

To: Mayor and City Council
From: Leslie Herring, City Administrator
Date: June 13, 2024
RE: Update on some of the key areas of focus of the Administration Department

Current Priorities

2nd Quarter (April) 2024 through 3rd Quarter (September) 2024

- *Issue Request for Proposals for 4700 Rainbow Blvd.*
 - ✓ Staff conducted a work session with the Governing Body at the May regular City Council meeting to discuss parameters and guidance for building this process and RFP.
 - The Mayor and City Administrator are working together to draft a Request document, likely now a Request for Qualifications for a Master Developer for the site.
- *Communications Strategic Plan Deployment*
 - Staff plans to begin this process once the Governing Body's Strategic Plan has been developed and adopted.
- *Financial Review and Planning*
 - ✓ The 2023 fiscal year audit is underway and is expected to be completed and presented by the City's independent financial auditor at the May 2024 regular City Council meeting.
 - The 2025 budget process is beginning and staff is working on a number of preparations to ensure a comprehensive and smooth Summer 2024 budget process, including:
 - Evaluation of City fees, possible recommendations of modifications, and establishment of a Master Fee Schedule
 - Creation of a comprehensive Capital Improvement Plan (CIP) funding recommendation
 - Integration of the Spring 2024 community priorities survey
- *City Code Recodification*
 - This process is well underway and the Governing Body review concluded in April 2024. City staff is working with CivicPlus (Municode) to wrap-up some loose ends to move to the next step: CivicPlus (Municode) completing their preparation of an ordinance for adoption by the City Council to complete the process and then will add the searchable digital code to the City's website.

Priorities Closing-Out

3rd Quarter (October) 2023 through 1st Quarter (March) 2024

- *Rainbow Blvd. Complete Streets Traffic Management Plan*
 - ✓ The draft final report was shared by the consultant team with the Rainbow stakeholders group on April 10th and comments are due back April 25th.

- ✓ The pre-application for MARC funding for construction was submitted on the April 5th deadline. This is only the pre-application, with the formal application due July 26th. Over the next several months, the stakeholders will work together with the various governing bodies and boards to align expectations, desires, and concerns following the conclusion of the Complete Streets study, which is expected to be completed in May.
 - ✓ The final deliverables – a pdf report and video – are now complete and being presented at tonight’s City Council meeting.
- Mission Rd. Improvements (2024 JoCo CARS-funded project in partnership with Roeland Park)
 - ✓ Westwood staff and elected officials continue to work with Roeland Park staff and elected officials to finalize the design of the street ahead of 2025 construction.
 - Street lighting options are the final design element to be decided and the project engineer is finalizing a recommendation that will be shared with both cities for consideration.
 - *Community Survey and Strategic Priorities Setting*
 - ✓ The survey tool for both residents and businesses was opened in digital form on May 15, 2024 and City staff confirmed mailed surveys have been hitting Westwood mailboxes around June 7th. This was due to a delay in mail delivery. ETC is monitoring responses but it is anticipated that the survey will remain open for the next month.
 - Staff is aiming for a July/August Governing Body retreat with PorchLight Insights.
 - *New Feature Park Plan Creation*
 - ✓ The Park Planning Steering Committee issued the RFQ for park design services on March 29th and held a pre-proposal site visit on April 8th. Proposals/Responses were due April 30th, with review and interviews to take place in May, and a recommendation made to Council in June.
 - ✓ A recommendation from the Park Planning Steering Committee is ready and included in tonight’s City Council meeting packet.

Building Permits

The following is a snapshot of select building permits of note issued last month:

Residential

New Construction: None

Additions: None

Alterations: None

Demolition:

- 2524 W. 51st Terr. – Demolish single family house for purposes of constructing new single family house

Misc:

- 4940 Rainbow Blvd. – Install Tesla car charger and panel

Commercial

New Construction: None

Additions: None

Alterations: None

Demolition: None

Misc: None of note

Westwood Code Enforcement Report

June 11th, 2024

Listed below are the recent code violation complaints and their current statuses within the City of Westwood. This list may not be complete as I have only recently began taking on code enforcement complaints and procedures.

2330 W 48th St. – In March of 2024 I received a complaint by phone about the condition of the property. I went to inspect the property shortly after and observed multiple holes in the roof, a broken window on the second floor, a damaged side door which was not secure, chipping/peeling paint on much of the structure, and overgrowth of weeds and grass. I was able to get in contact with Celine Cohan, daughter of the former resident of the home. I explained these problems to her and was told that they would be addressed. I checked back in the property in May of 2024 and found that minimal efforts had been made to paint parts of the house and a board had been affixed to the damaged side door. On May 21st I mailed a certified letter informing them of a deadline of July 20th, 2024 to complete the necessary repairs or else I would have no choice but to declare the structure unfit and begin the process to demolish the house. Brandon Cohan, son of the former resident, contacted me shortly afterwards to assure me that repairs would be made. As of June 11th, 2024, more improvements have been made but the necessary work has not yet been completed. This case is ongoing.

2625 W 47th Ter. – On April 16th, 2024, the resident of 2623 W 47th Ter contacted me about the house next door. They provided pictures of shingles which had blown off of the roof of the roof of 2625 and landed in their driveway and on their vehicles. They also mentioned the overall condition of the house looked poor and the yard was getting overgrown. Upon inspection of the property, I noted that there did appear to be a couple shingles missing from the ridge, some paint was chipping from the soffits, and some weeds had been allowed to grow up on/next to the house. I contacted the property manager to inform them of these problems. They told me that as soon as the current tenant moved out at the end of the April, repairs would begin. All weeds and brush have since been removed and the property manager has continued to keep in contact updating me on their plans for remodeling the home. This case is ongoing.

2517 W 50th St. – On May 7th, 2024, I received a call from the homeowner of 2521 W 50th St. who was concerned about a tree next door in the back yard of 2517. I notified John Sullivan, Public Works Director and certified arborist, that the neighbor had concerns about the safety of the tree. We met up to look at the tree the following day. He determined that while the tree had lost some limbs in the past, it still appeared to be healthy and sound.

2207 W 47th Ter. – On May 8th, 2024, a resident at 2128 W 47th Ter. called to report overgrowth across the street at 2207 W 47th ter. Upon inspection, I observed tall grass, brush and weeds in the front and side yards. I left a notice of violation in the mailbox asking that the weeds be removed within ten days. The homeowner at the time, Jason Proffit called to inform me that he had just sold the property. Chris George Homes is now the owner of record. The front has since been mowed but there is still overgrowth on the sides of the house. This case is ongoing.

1907 W 47th Ter. – On May 15th, 2024, I received a complaint about a mattress stored in the side yard of the property. Upon inspection, I observed the mattress sitting in the side yard leaning

against a fence. I left a note in the mailbox asking for the removal of the mattress. As of June 11th, 2024, the mattress has been removed.

2412 W 48th Ter. – On May 31st, 2024, I received an email from former mayor John Ye about a resident who has been leaving their trash and recycling bins on the curb regularly. I attempted to make contact with the resident with no success. I left a note in the mailbox asking that the bins be stored out of public view. The bins were still left at the curb as of June 11th, 2024. I attempted to make contact again by knocking at the door with no success. This case is ongoing.

This report prepared by Nick Finck, Building Official/Codes Administrator.

Westwood Rental Report

In late April, I began searching AirBNB and Vrbo for any short term rental properties in Westwood and cross referenced them to our list of active rental licenses. I was able to identify 5 properties which appeared to be operating without a rental license. On May 5th, 2024 I mailed letters to the owner of record for each property informing them of the city's ordinance regulating short-term rental properties. The addresses of each property and their current statuses are as follows:

4750 Belinder Ave.- Made contact with owner, owner stated he would apply for rental license, license not yet applied for. Requires follow up.

4939 Norwood St.- Owner responded to letter, applied for license, obtained inspection. Resolved.

2417 W 48th St.- Owner responded to letter, owner had already filled out paper application and paid for license. Inspection still required.

1909 W 48th St.- Owner responded to letter, property is not offered for a period of less than 30 days for rental, rental license applied for. Inspection still required.

2514 W 50th Pl.- Owner responded to letter, obtained inspection. Re-inspection and license still required.

This report prepared by Nick Finck, Building Official/Codes Administrator.

WESTWOOD
COURT SUMMARY
MAY, 2024

COURT DATE	ARRAIGNMENTS	TRIALS	FINES	LETTERS	WARRANTS
May 05, 2024	39	01	\$ 5,267.00	13	04
May 19, 2024	32	10	\$ 4,816.00	02	03
TOTALS					
May, 2024	71	11	\$10,083.00	15	07
May, 2023	56	04	\$ 9,937.00	22	12
			TOTAL (\$ 10,083.00) less		
			* Kansas DL fees:	\$203.00	
			* Judges Training Fund:	\$ 27.00	
			* LET Training Fund:	\$ 605.00	
			* Seat Belt Fund:	\$ 200.00	
			May 2024 TOTAL:	\$ 9,048.00	

Y.T.D. TOTALS 2024		Y.T.D. TOTALS 2023	
ARRAIGNMENTS:	350	ARRAIGNMENTS:	261
TRIALS	56	TRIALS:	53
LETTERS:	122	LETTERS:	91
WARRANTS:	123	WARRANTS:	82
FINES:	\$43,230.00	FINES:	\$34,901.00
KS DL FEES:	\$244.00	KS DL FEES:	\$446.00
JUDGES FUND:	\$123.50	JUDGES FUND:	\$77.00
L.E.T.FUND:	\$ 2,805.00	L.E.T FUND:	\$1,745.00
COMM CORRECTIONS:	\$00.00	COMM CORRECTIONS:	\$00.00
SEAT BELT FUND:	\$380.00	SEAT BELT FUND:	\$80.00

Westwood Public Works Monthly Report

TO: GOVERNING BODY
FROM: JOHN SULLIVAN, DIRECTOR OF PUBLIC WORKS
RE: MONTHLY REPORT, MAY 2024
DATE: JUNE 11, 2024

Some of the activities for Public Works in May include:

1. Daily collection of trash from City Hall and City Parks.
2. Perform a weekly inspection of the playground equipment and park facilities.
3. Perform a weekly inspection of the traffic control signs throughout the city; replace poles and signs as required.
4. I prepared the Purchase Orders and documentation for those purchases.
5. Performed routine maintenance at the City Hall to include the servicing of the air handling equipment, re-lamping fixtures and repairing or installing appurtenances including plumbing fixtures.
6. I represented the city at various meetings to include:
 Fireworks Meeting – Virtual – .5 hrs.
 STP Meeting - Virtual – 1 hr.
 FEMA Training – In Person in Maryland – 6 days
 CARS 80% Rule Sub-Committee – In Person – 1.5 hr.
7. Received, via email, Kansas One-Call Locate Requests, advised callers of their status with the City of Westwood regarding utilities and advised, when appropriate, the need to either get an excavation permit, building permit or fence permit. I provided the building official with a copy of the locate requests for follow-up for any building permits that may be required and answered any questions when asked.
8. We performed routine maintenance on the Public Works vehicles and equipment to include fluid services, cleaning, and general repairs.
9. Routine maintenance of the Public Works Facility to include the air handling equipment, plumbing, electrical, and cleaning.
10. Performed various clerical duties for the Public Works Department's daily functions.
11. I attended Public Works, City Council and Staff and Committee meetings as required.
12. Observed activities associated with ROW Permits.
13. We marked streetlight utilities when requested by the One-Call System.
14. We performed monthly safety checks at all City properties as well as monthly fire extinguisher inspections.
15. Mitch attends monthly Safety Committee Meetings.
16. We patched potholes.
17. We swept streets.
18. We cleaned the catch basin fronts.
19. We welcome Jeff Mull as our newest Public Works employee.
20. We pulled weeds along new beds on W. 47th Street.
21. We are mowing and trimming various City properties.

22. Issues with Rooftop Unit at City Hall. Parts ordered.
23. Remove graffiti from W. 47th Terrace Park behind the animal hospital sidewalk.
24. We had a direct lighting strike to our video detection system on the traffic signal at W. 47th Place and Rainbow requiring some intervention and repair which is ongoing due to parts being ordered.

This concludes my activities report for some of the activities for Public Works in May.

Westwood Public Works

To: Governing Body
From: John Sullivan, Director of Public Works
Date: June 11, 2024
Re: Monthly Status Report

- W. 47th Street Project: We plan to install the light items next week.
- 2023 F-550 and Equipment: The truck is complete with the exception of door decals. I will be ordering them.
- CCLIP funding: I will be meeting with the Unified Government to begin the design of this project.
- Storm Debris Removal: This project is complete. We are awaiting the reimbursement.
- Stone wall damage: We had a vehicle accident at W. 51st Terrace and Belinder Avenue that resulted in damage to the stone wall on the corner. This project is complete.
- Stone wall damage and light pole damage: I have the replacement Medalion, and we will be installing it next week.
- 415 Explorer: The Explorer I have been driving lost the engine due to a water pump that locked up which then caused the timing chain to jump time which then caused the valves in two of the pistons to damage the engine requiring a new replacement engine. After soliciting bids for replacements, it was decided to not make the repairs and auction it off.
- Public Works Replacement Vehicle: I will be requesting expenditure from the Equipment Replacement Fund to replace the Explorer with a truck. Please see the CAF for this request.
- Street Light Replacement, Belinder Court & Booth: We will receive bids for consideration at the July Council meeting for this project.
- Repairs to Signals, W. 47th Street and W. 47th Place and Rainbow: On May 19th the Video detection system associated with these intersections was struck by lightning destroying a camera, video detection controller, load switch and 4 pedestrian push buttons at W. 47th Place. I am filing a claim with our insurance carrier as this cost will exceed our deductible of \$2,500.00 dollars. We currently have working signals and video detection, but we do not have correctly working push buttons at the intersections. Currently all the ped signals are on continuous call until we receive the parts needed to place the buttons in operation. This may take up to 60 days to receive the parts to finish this project.
- Street Light Pole Knockdown, 4700 Rainbow Blvd.: On June 6th, a motor vehicle struck a decorative streetlight that was installed as part of the Woodside Village Development. The pole and fixture were destroyed. I am attempting to find a replacement pole and fixture.

currently and provide an accurate estimate of cost for the accident report. whether the fault has been assigned and whether that person has insurance. We could request our insurance to cover this cost if no insurance is available from the person at fault.

- HVAC Unit at City Hall: The large HVAC unit at City Hall that covers the Council/Courtroom has developed some electrical issues. I am trying to effectively repair the unit and not replace it currently. Parts have been difficult to obtain but I believe the final parts we are waiting on will be here Thursday.

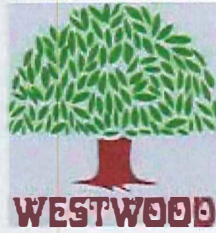
Westwood Police Department Westwood City Council Report

Item C. Section VIII, Item

5/1/2024



5/31/2024



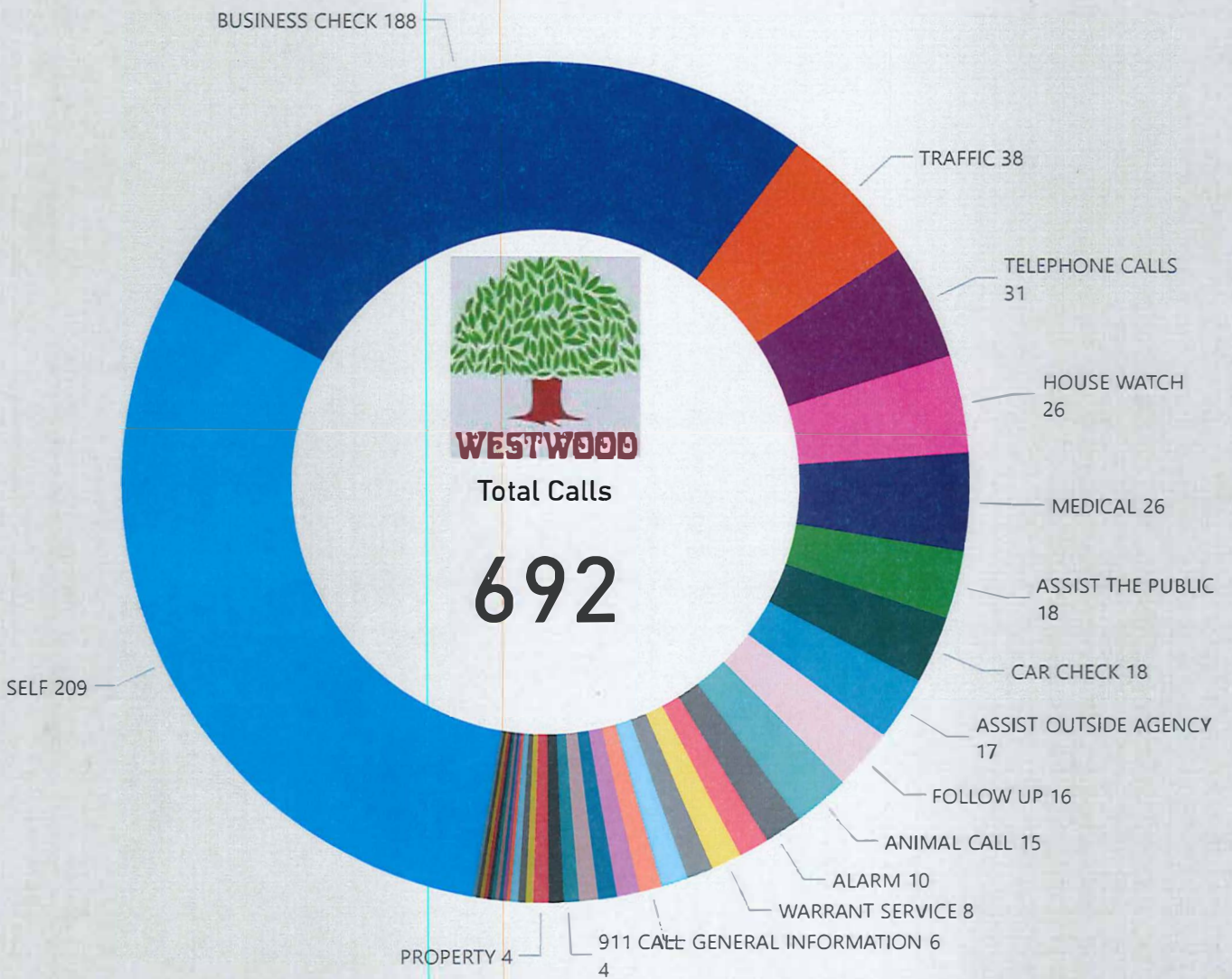
Westwood Police Department City Council Report

Item C. Section VIII, Item

5/1/2024





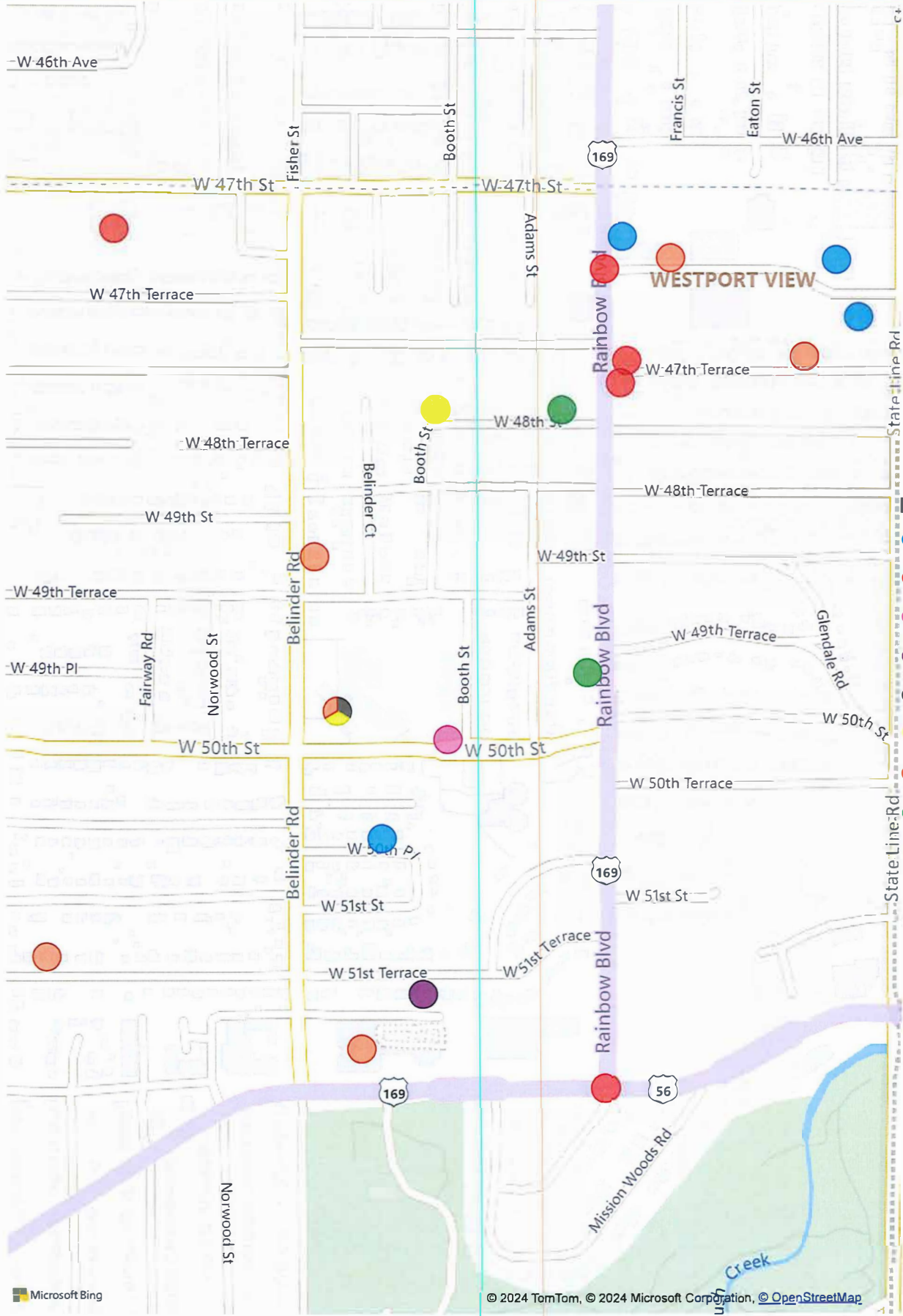
5/31/2024



Westwood Police Department Westwood City Council Report

Item C. Section VIII, Item

5/1/2024  5/31/2024 



- Nature of Call**
- 911 CALL
 - ACCIDENT
 - AUTO THEFT REPORT
 - BURGLARY
 - DISTURBANCE
 - NOISE COMPLAINT
 - SUSPICIOUS
 - TRESPASSING

Westwood Police Department Westwood City Council Report

Item C. Section VIII, Item

5/1/2024



5/31/2024



Case Number	Nature of Call	Summary
20240151	WARRANT SERVICE	Subject had two warrants for FTA on traffic charges.
20240156	THEFT REPORT	Reporting officer responded to a theft of a lawn mower. No suspects at this time.
20240157	ASSIST OUTSIDE AGENCY	Reporting officer responded to an assist outside agency in Roeland Park. The call was in reference to an armed disturbance at Burger King. The subject was taken into custody without incident.
20240158	ACCIDENT	V2 was southbound on Rainbow Blvd making a left hand turn to eastbound 47th Pl and was struck by V1 traveling northbound on Rainbow Blvd.
20240161	AUTO THEFT REPORT	Officer responded to an auto theft report. No suspects at this time.
20240163	WARRANT SERVICE	Reporting officer served a Westwood warrant on an individual in Wyandotte County's custody. I transported individual to Olathe ADC pending court.
20240166	WARRANT SERVICE	Reporting officer faxed a Westwood warrant for trespassing to JOCO ADC for service.
20240167	ASSIST OUTSIDE AGENCY	Reporting officer responded to a dog bite. MedAct arrived and treated a male for a dog bite on his hand.
20240169	WARRANT SERVICE	Bonner Springs PD had a subject on a traffic stop. Subject had a Westwood warrant. He was transported to Shawnee Police Department where reporting officer responded to serve warrant. A fine payout was collected and subject was released.
20240170	ACCIDENT	V1 was backing out of a parking lot when it struck V2 that was legally parked.
20240171	THEFT REPORT	Reporting officer responded to a theft that just occurred. The suspect left the store with products without paying for them.
20240173	THEFT REPORT	Reporting officer took a shoplifting report for a female pushing out a cart of groceries. Suspect and vehicle description were obtained.
20240174	WARRANT SERVICE	Reporting officer served a Westwood warrant at the police station. The subject was released with a new court date.
20240177	BURGLARY	The officer responded to an auto burglary report where a wallet with credit cards and a pair of air pods were taken. The investigation is ongoing.
20240178	THEFT REPORT	Reporting officer responded to a investigate a theft. Theft did not occur in the City of Westwood. A general information report was taken.
20240180	WARRANT SERVICE	Officer responded to station for a fax warrant to Olathe ADC.
20240182	ASSIST OUTSIDE AGENCY	Reporting officer was assisting Overland Park Police with a DUI checklane. Driver was contacted and admitted to consuming alcohol. Testing was conducted. Driver was arrested for DUI.
20240183	THEFT REPORT	Officer responded to Wal-Mart to take a report on a previous theft.

**City of Westwood
Treasurer's Report
5/31/24**

1. Balance Sheet by Fund – shows overall ending cash balances for the City by Fund.
 - a. Ending unencumbered cash through 5/31/24 was \$3,594,005. The May 31, 2023 balance was \$2,839,042. This is an increase in cash of \$754,963.
2. Cash Flow – shows beginning cash by fund and associated revenues and expenditures for each fund in a more summarized format.
3. Statement of Operations – General Fund
 - a. Revenue received for the month was \$186,514. Total Revenue received through May 31, 2024 was \$1,478,416. The prior year revenue to date was \$1,486,027. Current year to date revenue is less than prior year revenue by \$7,611.
 - i. Taxes – Tax revenue received in May 2024 was \$94,939. Year to date tax revenue has increased over the prior year by \$24,103.
 - ii. Fees and Licenses have decreased in the current year by \$47,558. This is due to the utility franchise fees decreasing from May 2023 from \$119,081 to \$70,928.
 - iii. Intergovernmental revenue has increased year to date by \$17,516. This is due to revenue in the police services line item.
 - iv. Municipal court fines have increase from \$32,199 to \$44,511 in the current year.
 - v. In May the city had reimbursements of \$11,286 which is a reimbursement from insurance for property that sustained damages.
 - vi. The city received interest income of \$22,579 in 2024 compared to \$16,112 in 2023.
 - vii. The overall Miscellaneous income decreased by \$24,401 which is due to the Karbank Development deposit of \$25,000 received in 2023.
 - b. May expenditures totaled \$263,500. This is an increase of \$23,709 from the prior year.
 - i. General overhead expenditures were \$76,723 for the month. Overall expenditures decreased by \$37,767 due a decrease of \$37,393 in professional fees.
 - ii. Administrative expenditures were down by \$6,449 due to Salary and benefits to date.
 - iii. Public Works total expenditures were \$51,479 for the month which is a increase for the year of \$10,075. This is due to equipment and maintenance having an increase in the current year.
 - iv. Police expenditures are \$81,218 for the month. Overall the police department expenditures are down from 2023 by \$18,785.
 - c. Net Expenditures Over Receipts in the General Fund were (\$76,986) for the month. Year to date the receipts over expenditures are \$284,281.
4. Other Funds – Current Month and Year to Date
 - a. CIP –Sales tax was collected was \$30,992 for May 2024. City expended \$4,360 on stone wall repairs.
 - b. Equipment reserve expensed \$58,639 for a patrol car and related equipment replacement. The unencumbered cash balance ended the month as a negative (\$14,100). In June the City will make a transfer from the General Fund to the Equipment Reserve Fund which will correct this balance.
 - c. Stormwater collected fees of \$9,533.
 - d. Woodside TIF and CID fund made the UMB CID payment of 14,062 this month and received income of \$28,603.

I am happy to answer any questions upon request.

Michelle Ryan
City of Westwood Treasurer

ACCOUNTANTS' COMPILATION REPORT

To the City Council
City of Westwood, Kansas
Westwood, Kansas

Management is responsible for the accompanying financial statements of **City of Westwood, Kansas** (a municipal entity), which comprises the statement of assets, liabilities and fund balance by fund – regulatory basis and the statement of cash flow – regulatory basis as of and for the one month ended May 31, 2024, in accordance with the regulatory basis of accounting, and for determining that the regulatory basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the financial statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. We do not express an opinion, a conclusion, nor provide any assurance on these financial statements.

The financial statements are prepared in accordance with the regulatory basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America.

Management has elected to omit substantially all the disclosures ordinarily included in financial statements prepared in accordance with the regulatory basis of accounting. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the City's assets, liabilities, fund balance, receipts, and expenditures. Accordingly, the financial statements are not designed for those who are not informed about such matters.

The supplementary information is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management. The supplementary information was subject to our compilation engagement. We have not audited or reviewed the supplementary information and do not express an opinion, a conclusion, nor provide any assurance on such information.

We are not independent with respect to **City of Westwood, Kansas**.



ADAMSBROWN, LLC
Certified Public Accountants
Overland Park, Kansas

June 5, 2024



City of Westwood, Kansas
Statement of Assets, Liabilities and Fund Balance by Fund - Regulatory Basis
 As of May 31, 2024

	General Fund	Capital Improvements Fund	Equipment Reserve Fund	Stormwater Fund	Special Highway Fund	Woodside TIF/CID Fund	Debt Service Fund	All Funds
	05/31/2024	05/31/2024	05/31/2024	05/31/2024	05/31/2024	05/31/2024	05/31/2024	05/31/2024
Assets								
Current Assets								
Cash In Bank	1,788,680.56	448,995.87	(14,099.58)	340,402.34	198,858.36	686,454.56	109,750.56	3,559,042.67
Cash In Bank - Bond Fund	34,613.94	0.00	0.00	0.00	0.00	0.00	0.00	34,613.94
Cash In Bank - Woodside Village Acct	9.55	0.00	0.00	0.00	0.00	0.00	0.00	9.55
Petty Cash	339.00	0.00	0.00	0.00	0.00	0.00	0.00	339.00
Total Current Assets	1,823,643.05	448,995.87	(14,099.58)	340,402.34	198,858.36	686,454.56	109,750.56	3,594,005.16
Total Assets	\$ 1,823,643.05	\$ 448,995.87	\$ (14,099.58)	\$ 340,402.34	\$ 198,858.36	\$ 686,454.56	\$ 109,750.56	\$ 3,594,005.16
Liabilities and Fund Balance								
Current Liabilities								
Woodside Village Deposits	9.19	0.00	0.00	0.00	0.00	0.00	0.00	9.19
Refundable Bond Deposits	33,939.99	0.00	0.00	0.00	0.00	0.00	0.00	33,939.99
KPERS/KPF Payable	24.11	0.00	0.00	0.00	0.00	0.00	0.00	24.11
Total Current Liabilities	33,973.29	0.00	0.00	0.00	0.00	0.00	0.00	33,973.29
Total Liabilities	33,973.29	0.00	0.00	0.00	0.00	0.00	0.00	33,973.29
Fund Balance								
Fund Balance	1,505,389.06	306,229.94	346,488.84	189,217.42	169,092.79	602,665.66	144,556.17	3,263,639.88
Fund Balance - Current Year	284,280.70	142,765.93	(360,588.42)	151,184.92	29,765.57	83,788.90	(34,805.61)	296,391.99
Total Fund Balance	1,789,669.76	448,995.87	(14,099.58)	340,402.34	198,858.36	686,454.56	109,750.56	3,560,031.87
Total Liabilities and Fund Balance	\$ 1,823,643.05	\$ 448,995.87	\$ (14,099.58)	\$ 340,402.34	\$ 198,858.36	\$ 686,454.56	\$ 109,750.56	\$ 3,594,005.16

See accountants' compilation report.



City of Westwood, Kansas

Statement of Cash Flow - Regulatory Basis

For the One Month Ended May 31, 2024

	General Fund Month Ending 05/31/2024	Capital Improvements Fund Month Ending 05/31/2024	Equipment Reserve Fund Month Ending 05/31/2024	Stormwater Fund Month Ending 05/31/2024	Special Highway Fund Month Ending 05/31/2024	Woodside TIF/CID Fund Month Ending 05/31/2024	Debt Service Fund Month Ending 05/31/2024	All Funds Month Ending 05/31/2024
Unencumbered Cash, Beginning Period	1,903,190.64	422,363.65	44,539.28	340,764.14	198,858.36	671,912.91	109,750.56	3,691,379.54
Receipts								
Taxes	94,938.60	30,992.22	0.00	0.00	0.00	0.00	0.00	125,930.82
Fees and Licenses	47,088.91	0.00	0.00	0.00	0.00	0.00	0.00	47,088.91
Building Permits	2,849.00	0.00	0.00	0.00	0.00	0.00	0.00	2,849.00
Intergovernmental	26,536.18	0.00	0.00	0.00	0.00	0.00	0.00	26,536.18
Restricted Use	0.00	0.00	0.00	0.00	0.00	28,603.17	0.00	28,603.17
Fines	9,802.00	0.00	0.00	0.00	0.00	0.00	0.00	9,802.00
Miscellaneous	5,299.33	0.00	0.00	0.00	0.00	0.00	0.00	5,299.33
Total Receipts	186,514.02	30,992.22	0.00	0.00	0.00	28,603.17	0.00	246,109.41
Expenditures								
Salary & Benefits	163,363.70	0.00	0.00	0.00	0.00	0.00	0.00	163,363.70
Employee Expenses	5,087.36	0.00	0.00	0.00	0.00	0.00	0.00	5,087.36
Professional Fees	38,676.81	0.00	0.00	0.00	0.00	0.00	0.00	38,676.81
General Operating Expenses	19,134.93	0.00	0.00	0.00	0.00	0.00	0.00	19,134.93
Utilities	17,275.08	0.00	0.00	0.00	0.00	0.00	0.00	17,275.08
Equipment and Maintenance	6,681.10	0.00	58,638.86	0.00	0.00	0.00	0.00	65,319.96
Street and Stormwater	0.00	4,360.00	0.00	361.80	0.00	0.00	0.00	4,721.80
Park and Events	13,281.01	0.00	0.00	0.00	0.00	0.00	0.00	13,281.01
Miscellaneous	0.00	0.00	0.00	0.00	0.00	14,061.52	0.00	14,061.52
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Expenditures	263,499.99	4,360.00	58,638.86	361.80	0.00	14,061.52	0.00	340,922.17
Adjustments								
Increase / (Decrease) in Payables	(2,711.62)	0.00	0.00	0.00	0.00	0.00	0.00	(2,711.62)
Increase / (Decrease) in Refundable Bond Deposits	150.00	0.00	0.00	0.00	0.00	0.00	0.00	150.00
Total Adjustments	(2,561.62)	0.00	0.00	0.00	0.00	0.00	0.00	(2,561.62)
Ending Cash	\$ 1,823,643.05	\$ 448,995.87	\$ (14,099.58)	\$ 340,402.34	\$ 198,858.36	\$ 686,454.56	\$ 109,750.56	\$ 3,594,005.16

CITY OF WESTWOOD, KANSAS

Supplementary Information



City of Westwood, Kansas
Statement of Receipts and Expenditures - Regulatory Basis
 General Fund
 For The Five Months Ended May 31, 2024 and 2023

	Month Ending	Year To Date	Year To Date	Year Ending	
	05/31/2024	05/31/2024	05/31/2023	12/31/2024	12/31/2024
	Actual	Actual	Prior Year	Current Budget	Over/(Under) Budget
Receipts					
Taxes	\$ 94,938.60	\$ 1,043,336.94	\$ 1,019,234.33	\$ 2,110,854.00	\$ (1,067,517.06)
Fees and Licenses	47,088.91	193,040.50	240,599.43	472,200.00	(279,159.50)
Building Permits	2,849.00	21,944.70	22,811.70	160,000.00	(138,055.30)
Intergovernmental	26,536.18	136,209.64	118,694.07	325,100.00	(188,890.36)
Fines	9,802.00	44,511.00	32,199.00	80,000.00	(35,489.00)
Reimbursements	0.00	11,286.03	0.00	0.00	11,286.03
Miscellaneous	5,299.33	28,087.16	52,488.29	55,250.00	(27,162.84)
Total Receipts	186,514.02	1,478,415.97	1,486,026.82	3,203,404.00	(1,724,988.03)
Expenditures					
General Overhead					
Salary & Benefits	2,866.70	18,861.35	19,579.27	45,940.68	(27,079.33)
Employee Expenses	509.29	3,529.47	2,100.67	9,000.00	(5,470.53)
Professional Fees	34,428.97	115,848.93	153,242.28	260,250.00	(144,401.07)
General Operating Expenses	14,253.84	25,134.06	10,763.10	30,000.00	(4,865.94)
Utilities	15,106.76	82,090.78	89,655.02	287,295.60	(205,204.82)
Equipment and Maintenance	237.53	2,624.27	0.00	0.00	2,624.27
Park and Events	9,176.50	13,641.50	5,866.24	14,750.00	(1,108.50)
Miscellaneous	0.00	0.00	0.00	30,000.00	(30,000.00)
Intergovernmental	0.00	0.00	18,434.00	20,000.00	(20,000.00)
Interfund Transfers	0.00	0.00	0.00	268,830.00	(268,830.00)
Total General Overhead	76,579.59	261,730.36	299,640.58	966,066.28	(704,335.92)
Administrative					
Salary & Benefits	42,661.04	185,082.02	192,526.18	480,100.00	(295,017.98)
Employee Expenses	2,882.08	7,755.70	1,718.54	14,500.00	(6,744.30)
Professional Fees	3,045.08	15,479.16	16,490.66	48,000.00	(32,520.84)
General Operating Expenses	14.99	4,594.21	1,063.03	2,500.00	2,094.21
Interfund Transfers	0.00	0.00	0.00	5,000.00	(5,000.00)
Total Administrative	48,603.19	212,911.09	211,798.41	550,100.00	(337,188.91)
Public Works					
Salary & Benefits	41,548.83	172,783.19	178,137.82	432,000.00	(259,216.81)
Employee Expenses	1,122.71	4,131.82	2,706.05	7,900.00	(3,768.18)
Professional Fees	0.00	0.00	0.00	17,000.00	(17,000.00)
General Operating Expenses	3,091.34	6,463.77	8,208.43	27,550.00	(21,086.23)
Utilities	194.04	2,967.42	6,015.27	19,580.00	(16,612.58)
Equipment and Maintenance	5,522.12	30,641.65	11,845.34	60,500.00	(29,858.35)
Interfund Transfers	0.00	0.00	0.00	200,000.00	(200,000.00)
Total Public Works	51,479.04	216,987.85	206,912.91	764,530.00	(547,542.15)
Police					
Salary & Benefits	76,287.13	400,103.27	424,298.24	999,500.00	(599,396.73)
Employee Expenses	573.28	8,365.26	8,248.87	27,000.00	(18,634.74)
Professional Fees	1,202.76	6,102.64	4,696.35	34,000.00	(27,897.36)
General Operating Expenses	1,774.76	16,560.37	18,208.71	67,100.00	(50,539.63)

See accountants' compilation report.



City of Westwood, Kansas
Statement of Receipts and Expenditures - Regulatory Basis
 General Fund
 For The Five Months Ended May 31, 2024 and 2023

	Month Ending 05/31/2024	Year To Date 05/31/2024	Year To Date 05/31/2023	Year Ending 12/31/2024	
	<u>Actual</u>	<u>Actual</u>	<u>Prior Year</u>	<u>Current Budget</u>	<u>Over/(Under) Budget</u>
Utilities	748.75	1,301.82	929.36	4,500.00	(3,198.18)
Equipment and Maintenance	631.12	7,727.66	2,692.98	10,500.00	(2,772.34)
Park and Events	0.00	1,229.46	1,100.00	1,200.00	29.46
Interfund Transfers	0.00	0.00	0.00	70,000.00	(70,000.00)
Total Police	<u>81,217.80</u>	<u>441,390.48</u>	<u>460,174.51</u>	<u>1,213,800.00</u>	<u>(772,409.52)</u>
Parks & Rec					
General Operating Expenses	0.00	904.95	1,166.12	3,000.00	(2,095.05)
Utilities	1,225.53	3,353.91	9,922.09	30,000.00	(26,646.09)
Equipment and Maintenance	290.33	1,946.52	7,624.84	10,000.00	(8,053.48)
Park and Events	4,104.51	4,563.87	1,010.76	28,250.00	(23,686.13)
Total Parks & Rec	<u>5,620.37</u>	<u>10,769.25</u>	<u>19,723.81</u>	<u>71,250.00</u>	<u>(60,480.75)</u>
Non-Departmental					
Salary & Benefits	0.00	0.00	(6,444.72)	0.00	0.00
Miscellaneous	0.00	50,346.24	26,038.73	0.00	50,346.24
Total Non-Departmental	<u>0.00</u>	<u>50,346.24</u>	<u>19,594.01</u>	<u>0.00</u>	<u>50,346.24</u>
Total Expenditures	<u>263,499.99</u>	<u>1,194,135.27</u>	<u>1,217,844.23</u>	<u>3,565,746.28</u>	<u>(2,371,611.01)</u>
Receipts Over (Under) Expenditures	<u>\$ (76,985.97)</u>	<u>\$ 284,280.70</u>	<u>\$ 268,182.59</u>	<u>\$ (362,342.28)</u>	<u>\$ 646,622.98</u>

See accountants' compilation report.



City of Westwood, Kansas
Statement of Receipts and Expenditures - Regulatory Basis
 Other Funds
 For The One Month Ended May 31, 2024

Other Funds

	Capital Improvements Fund Month To Date 05/31/2024 Actual	Equipment Reserve Fund Month To Date 05/31/2024 Actual	Stormwater Fund Month To Date 05/31/2024 Actual	Special Highway Fund Month To Date 05/31/2024 Actual	Woodside TIF/CID Fund Month To Date 05/31/2024 Actual	Debt Service Fund Month To Date 05/31/2024 Actual
Receipts						
Taxes						
City Sales & Use Tax - Special	\$ 30,992.22	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Total Taxes	30,992.22	0.00	0.00	0.00	0.00	0.00
Restricted Use						
WV CID-1	0.00	0.00	0.00	0.00	18,817.72	0.00
WV CID-2	0.00	0.00	0.00	0.00	9,785.45	0.00
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00
Total Receipts	30,992.22	0.00	0.00	0.00	28,603.17	0.00
Expenditures						
Equipment and Maintenance						
Machinery & Equipment Purchase	0.00	58,638.86	0.00	0.00	0.00	0.00
Street and Stormwater						
Capital Improvement Expense	4,360.00	0.00	0.00	0.00	0.00	0.00
Stormwater Expense	0.00	0.00	361.80	0.00	0.00	0.00
Miscellaneous						
UMB CID Payment	0.00	0.00	0.00	0.00	14,061.52	0.00
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00
Total Expenditures	4,360.00	58,638.86	361.80	0.00	14,061.52	0.00
Receipts Over (Under) Expenditures	\$ 26,632.22	\$ (58,638.86)	\$ (361.80)	\$ 0.00	\$ 14,541.65	\$ 0.00

See accountants' compilation report.



City of Westwood, Kansas
Statement of Receipts and Expenditures - Regulatory Basis
 Other Funds
 For The Five Months Ended May 31, 2024

Other Funds

	Capital Improvements Fund Year To Date 05/31/2024 Actual	Equipment Reserve Fund Year To Date 05/31/2024 Actual	Stormwater Fund Year To Date 05/31/2024 Actual	Special Highway Fund Year To Date 05/31/2024 Actual	Woodside TIF/CID Fund Year To Date 05/31/2024 Actual	Debt Service Fund Year To Date 05/31/2024 Actual
Receipts						
Taxes						
Ad Valorem Tax	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 10,982.63
City Sales & Use Tax - Special	152,005.93	0.00	0.00	0.00	0.00	0.00
Motor Vehicle Tax	0.00	0.00	0.00	0.00	0.00	405.52
Restricted Use						
Stormwater Utility Fee	0.00	0.00	154,050.39	0.00	0.00	0.00
State Hwy Maintenance	0.00	0.00	0.00	7,420.20	0.00	0.00
Special Highway Fund Revenue	0.00	0.00	0.00	22,581.87	0.00	0.00
WV Ad Valorem Tax	0.00	0.00	0.00	0.00	488,381.00	0.00
WV CID-1	0.00	0.00	0.00	0.00	92,120.45	0.00
WV CID-2	0.00	0.00	0.00	0.00	47,862.76	0.00
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00
Total Receipts	152,005.93	0.00	154,050.39	30,002.07	628,364.21	11,388.15
Expenditures						
Equipment and Maintenance						
Repairs & Maint Leaf Truck	0.00	0.00	167.16	0.00	0.00	0.00
Stone Wall Repairs	4,880.00	0.00	0.00	0.00	0.00	0.00
Machinery & Equipment Purchase	0.00	360,588.42	0.00	0.00	0.00	0.00
Special Highway Maintenance	0.00	0.00	0.00	236.50	0.00	0.00
Street and Stormwater						
Capital Improvement Expense	4,360.00	0.00	0.00	0.00	0.00	9,900.00
Stormwater Expense	0.00	0.00	2,698.31	0.00	0.00	0.00
Miscellaneous						
UMB TIF Payment	0.00	0.00	0.00	0.00	454,134.33	0.00
UMB CID Payment	0.00	0.00	0.00	0.00	90,440.98	0.00
Interest on GO Bond	0.00	0.00	0.00	0.00	0.00	36,293.76
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00
Total Expenditures	9,240.00	360,588.42	2,865.47	236.50	544,575.31	46,193.76
Receipts Over (Under) Expenditures	\$ 142,765.93	\$ (360,588.42)	\$ 151,184.92	\$ 29,765.57	\$ 83,788.90	\$ (34,805.61)

See accountants' compilation report.



City of Westwood, Kansas
Summary of Expenditures - Actual and Budget
Regulatory Basis
For The Year Ended May 31, 2024

	<u>Certified Budget</u>	<u>Expenditures Chargeable to Current Year</u>	<u>Difference Over/(Under)</u>
Expenditures			
General Fund	3,565,746.28	1,194,135.27	(2,371,611.01)
Capital Improvements Fund	361,976.00	9,240.00	(352,736.00)
Equipment Reserve Fund	741,414.00	360,588.42	(380,825.58)
Stormwater Fund	194,516.00	2,865.47	(191,650.53)
Special Highway Fund	10,000.00	236.50	(9,763.50)
Woodside TIF/CID Fund	623,562.00	544,575.31	(78,986.69)
Debt Service Fund	231,837.50	46,193.76	(185,643.74)
Total Expenditures	<u>5,729,051.78</u>	<u>2,157,834.73</u>	<u>(3,571,217.05)</u>

See accountants' compilation report.

COUNCIL ACTION FORM

Meeting Date: October 12, 2023

Staff Contact: Ryan Denk

Agenda Item: Consider various agreements relating to redevelopment at and around 50th & Rainbow Blvd.

Background/Description of Item

On March 9, 2023, the City and Karbank Real Estate entered into a Funding and Exclusivity Agreement to explore Karbank's proposal to the Westwood City Council for redevelopment of the Rainbow Blvd. frontage between 50th and 51st Street, which property is owned by the City of Westwood. Following that initial presentation and Agreement execution, on June 8th, the Shawnee Mission School District and the City of Westwood entered into a Purchase Agreement to leverage its option to purchase the former Westwood View Elementary School located at 2511 W. 50th St. and, that same night, the City of Westwood and Karbank entered into a Purchase Agreement for Karbank to acquire the City's Rainbow Blvd. frontage property parcels, subject to the terms of those agreements.

Thereafter, Karbank submitted an application for and received conditional approval in October 2023 from the Governing Body of the necessary associated rezoning, development plan, and platting to construct the mixed-use redevelopment project. Commensurate with the Governing Body's approval of these land entitlements, the City Council approved several documents setting out terms and conditions for the agreement between the City of Westwood and Karbank. These agreements included:

- a. Development Agreement;
- b. Donation Agreement (Covenants & Restrictions are set out in an exhibit to this document); and
- c. First Rights Agreement.

In December 2023, upon authority granted by the City Council at the November 9, 2023 regular City Council meeting, Mayor Waters executed amendments to such agreements to extend the contractual deadlines. Now again, extensions to such agreements are sought to lengthen the due diligence period prescribed for the City to convey to Karbank fee simple title to City-owned property located at 5000 Rainbow Blvd.

Staff Comments/Recommendation

Staff recommends that the City Council consider [re]approving the following slate of documents:

1. Second Amendment to Real Estate Purchase Agreement with Shawnee Mission School District for real property at 2511 W. 50th St.
2. Second Real Estate Contract Modification Agreement with Karbank Holdings, LLC for real property at 5000 Rainbow Blvd. and 5050 Rainbow Blvd.
3. Amendment to Development Agreement with Karbank Holdings, LLC
4. Second Amendment to Funding and Exclusive Rights Agreement with Karbank Holdings, LLC
5. Donation Agreement for park creation costs (**requesting approval as to form, execution to occur at later date**)
 - a. Declaration of Covenants & Restrictions (exhibit) (**requesting approval as to form, execution to occur at later date**)
6. Consider First Rights Agreement with Karbank Holdings, LLC relating to redevelopment at 50th & Rainbow Blvd. (**requesting approval as to form, execution to occur at later date**)

A second Donation Agreement is also presented for consideration by the City Council. This document is for the City's consideration of acceptance of the privately-negotiated land acquisition between Karbank and The Joanne Maureen Gaar Trust for real property at 2322 W. 51st St. to be used for purposes of future City Park. ***(requesting approval as to form, execution to occur at later date)***

Budget Impact

All expenses incurred relating to these documents since the Governing Body's October 12th initial approvals have been borne by the City and funded from the General Overhead Department of the General Fund. These expenses are unbudgeted.

Suggested Motions

I move to approve the slate of documents as enumerated in the City Attorney's staff report as presented and to authorize the Mayor to execute same.

SECOND AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT (this "Amendment"), is made this _____ day of _____, 2024 by and between the **CITY OF WESTWOOD, KANSAS**, a political subdivision organized and existing under the laws of the State of Kansas with a notice address of 4700 Rainbow Boulevard, Westwood, KS 66205 ("Buyer"), and **SHAWNEE MISSION UNIFIED SCHOOL DISTRICT #512**, a nonprofit unified school district organized and existing under the laws of the State of Kansas with a notice address of 8200 West 71st Street, Shawnee Mission, Kansas 66204 ("Seller") (Buyer and Seller may be collectively referred to as the "Parties").

RECITALS:

WHEREAS, Seller is the owner of those certain tracts, pieces or parcels of improved land in the City of Westwood, Johnson County, Kansas and legally described in **Exhibit "A"** annexed hereto and made a part hereof, comprising approximately 4.97 acres of land more or less (the "Land"), together with building thereon containing approximately 26,257 sq ft. (the "Building", together with the Land and all other improvements on the Land and all appurtenant easements and any other rights and appurtenances, and all right, title and interest of Seller in and to any streets, alleys, public ways or parking lots adjacent to the Land, and together with all strips and gores and all appurtenances, fixtures and other equipment attached to the Land or the Building, collectively the "Property"); and

WHEREAS, the Property is commonly known as 2511 West 50th Street, Westwood, Kansas 66205 and comprises Johnson County, Kansas parcels RP270000000008 (Quick Ref R168789) and RP300000010012A (Quick Ref R168897); and

WHEREAS, the Parties entered into a Real Estate Purchase Agreement dated June 8, 2023 relating to the sale of the Property ("Purchase Agreement");

WHEREAS, the Parties entered into an Amendment to Real Estate Purchase Agreement dated November 13, 2023 relating to the sale of the Property ("First Amendment");

WHEREAS, the Parties now deem it necessary to extend the due diligence and closing deadlines within the original Purchase Agreement as amended by the First Amendment;

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows and the following Sections of the original Purchase Agreement are amended as follows:

3.1 The consummation of the transaction contemplated hereby ("Closing") shall take place at 10:00 a.m. at the offices of the Title Company, on or before February 3, 2025 (the "Revised Closing Date"). All references in the original Purchase Agreement to "Closing Date" shall be defined as the "Revised Closing Date" as described herein.

3.2 During the time period beginning on the Effective Date until the date occurring thirty (30) days prior to the Revised Closing Date (such time period, the "Revised Due Diligence Period"), Buyer and its agents, contractors and invitees shall have the right to enter onto the Property from time to time through Closing, but only upon prior notice to and approval by Seller (which Seller shall not unreasonably withhold, condition or delay), for the purpose of inspecting the Property and making such investigations and tests as Buyer may require. If Buyer's inspections involve any physical disturbance of the Property, Buyer shall return the Property to the condition existing but for such inspections. Seller shall cooperate with Buyer in making the Property available for such investigations and tests during normal business hours, and Buyer shall indemnify and hold Seller harmless from and against any injury to persons or damage to property arising from such investigations.

3.3 If Buyer determines that Buyer does not wish to purchase the Property, for any reason or for no reason at all, in its sole and absolute discretion, then Buyer shall provide written notice ("Buyer's Termination Notice") to Seller on or before the expiration of the Revised Due Diligence Period. In the absence of the timely delivery of Buyer's Termination Notice, the inspection condition set forth in Section 3.2 hereof shall be deemed satisfied.

3.4 The parties agree that, given the Revised Closing Date, provisions 7.4 and 8.2 of the Purchase Agreement regarding the parties executing a lease agreement are no longer necessary. Provisions 7.4 and 8.2 of the Purchase Agreement shall be deleted in their entirety and have no further force and effect. The parties further agree that Exhibit C ("Lease Agreement") to the Purchase Agreement is hereby terminated and null and void.

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be executed as of the day and year first above written.

CITY OF WESTWOOD, KANSAS
as Buyer

By: _____
David E. Waters, Mayor

Date: _____

ATTEST:

By: _____
Abby Schneweis, City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Ryan B. Denk, City Attorney

Date: _____

SHAWNEE MISSION UNIFIED SCHOOL DISTRICT #512
as Seller

By: _____

Date: _____

Printed Name: _____

Title: _____

Table of Exhibits

Exhibit A: Legal Description of the Land

EXHIBIT "A"
LEGAL DESCRIPTION OF THE LAND

Legal Description Developed by Survey

TRACT 1:

THE WEST TWO HUNDRED FIFTY-EIGHT AND ONE-TENTH (258.1) FEET OF THE SOUTH HALF (1/2) OF LOT EIGHT (8), HOMESLAND, A SUBDIVISION IN THE CITY OF WESTWOOD, IN JOHNSON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF.

AND ALSO:

THE NORTH HALF OF LOT 8, HOLMESLAND, A SUBDIVISION IN THE CITY OF WESTWOOD, JOHNSON COUNTY, KANSAS EXCEPT THE EAST 286.58 FEET THEREOF, AND THE WEST 258.1 THEREOF.

AND ALSO:

ALL THAT PART OF THE EAST 286.58 FEET OF THE NORTH 1/2 OF LOT 8, HOLMESLAND, A SUBDIVISION IN THE CITY OF WESTWOOD, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE AND 286.58 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 8; THENCE SOUTH, ALONG A LINE 286.58 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID LOT 8, A DISTANCE OF 165.39 FEET, TO THE SOUTH LINE OF THE N 1/2 OF SAID LOT 8; THENCE EAST, ALONG THE SOUTH LINE OF THE N 1/2 OF SAID LOT 8, A DISTANCE OF 1.28 FEET, TO THE NORTHEAST CORNER OF LOT 12, BLOCK 1, KLASSEN PLACE, A SUBDIVISION IN THE CITY OF WESTWOOD, JOHNSON COUNTY, KANSAS; THENCE NORTHEASTERLY, TO A POINT ON THE NORTH LINE AND 271.28 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 8; THENCE WEST, ALONG THE NORTH LINE OF SAID LOT 8, A DISTANCE OF 15.30 FEET, TO THE POINT OF BEGINNING.

EXCEPT ANY PART USED OR DEDICATED FOR STREETS, ROADS AND PUBLIC RIGHTS

OF WAY. TRACT 2:

ALL OF LOTS 4 THROUGH 14, BOTH INCLUSIVE, BLOCK 1, SWATZELL ADDITION, A SUBDIVISION IN THE CITY OF WESTWOOD, JOHNSON COUNTY, KANSAS.

TRACT 3:

THE EAST 112.3 FEET OF THE NORTH HALF OF LOT 9, HOLMESLAND, A SUBDIVISION IN THE CITY OF WESTWOOD, JOHNSON COUNTY, KANSAS.

TRACT 4:

ALL OF LOT 12, BLOCK 1, KLASSEN PLACE, A SUBDIVISION IN THE CITY OF WESTWOOD, JOHNSON COUNTY, KANSAS, EXCEPT THE FOLLOWING TRACT OF LAND:

ALL THAT PART OF LOT 12, BLOCK 1, KLASSEN PLACE, A SUBDIVISION OF LAND IN THE CITY OF WESTWOOD, JOHNSON COUNTY, KANSAS, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 12; THENCE SOUTHEASTERLY, ALONG THE EASTERLY LINE OF SAID LOT 12, TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTHWESTERLY, ALONG THE SOUTHERLY LINE OF SAID LOT 12, A DISTANCE OF 16.87 FEET THENCE NORTHWESTERLY, TO THE POINT OF BEGINNING.

COUNCIL ACTION FORM

Meeting Date: October 12, 2023

Staff Contact: Ryan Denk

Agenda Item: Consider various agreements relating to redevelopment at and around 50th & Rainbow Blvd.

Background/Description of Item

On March 9, 2023, the City and Karbank Real Estate entered into a Funding and Exclusivity Agreement to explore Karbank's proposal to the Westwood City Council for redevelopment of the Rainbow Blvd. frontage between 50th and 51st Street, which property is owned by the City of Westwood. Following that initial presentation and Agreement execution, on June 8th, the Shawnee Mission School District and the City of Westwood entered into a Purchase Agreement to leverage its option to purchase the former Westwood View Elementary School located at 2511 W. 50th St. and, that same night, the City of Westwood and Karbank entered into a Purchase Agreement for Karbank to acquire the City's Rainbow Blvd. frontage property parcels, subject to the terms of those agreements.

Thereafter, Karbank submitted an application for and received conditional approval in October 2023 from the Governing Body of the necessary associated rezoning, development plan, and platting to construct the mixed-use redevelopment project. Commensurate with the Governing Body's approval of these land entitlements, the City Council approved several documents setting out terms and conditions for the agreement between the City of Westwood and Karbank. These agreements included:

- a. Development Agreement;
- b. Donation Agreement (Covenants & Restrictions are set out in an exhibit to this document); and
- c. First Rights Agreement.

In December 2023, upon authority granted by the City Council at the November 9, 2023 regular City Council meeting, Mayor Waters executed amendments to such agreements to extend the contractual deadlines. Now again, extensions to such agreements are sought to lengthen the due diligence period prescribed for the City to convey to Karbank fee simple title to City-owned property located at 5000 Rainbow Blvd.

Staff Comments/Recommendation

Staff recommends that the City Council consider [re]approving the following slate of documents:

1. Second Amendment to Real Estate Purchase Agreement with Shawnee Mission School District for real property at 2511 W. 50th St.
2. Second Real Estate Contract Modification Agreement with Karbank Holdings, LLC for real property at 5000 Rainbow Blvd. and 5050 Rainbow Blvd.
3. Amendment to Development Agreement with Karbank Holdings, LLC
4. Second Amendment to Funding and Exclusive Rights Agreement with Karbank Holdings, LLC
5. Donation Agreement for park creation costs (**requesting approval as to form, execution to occur at later date**)
 - a. Declaration of Covenants & Restrictions (exhibit) (**requesting approval as to form, execution to occur at later date**)
6. Consider First Rights Agreement with Karbank Holdings, LLC relating to redevelopment at 50th & Rainbow Blvd. (**requesting approval as to form, execution to occur at later date**)

A second Donation Agreement is also presented for consideration by the City Council. This document is for the City's consideration of acceptance of the privately-negotiated land acquisition between Karbank and The Joanne Maureen Gaar Trust for real property at 2322 W. 51st St. to be used for purposes of future City Park. **(requesting approval as to form, execution to occur at later date)**

Budget Impact

All expenses incurred relating to these documents since the Governing Body's October 12th initial approvals have been borne by the City and funded from the General Overhead Department of the General Fund. These expenses are unbudgeted.

Suggested Motions

I move to approve the slate of documents as enumerated in the City Attorney's staff report as presented and to authorize the Mayor to execute same.

SECOND REAL ESTATE CONTRACT MODIFICATION AGREEMENT

THIS AGREEMENT, made as of June __, 2024 (this "Agreement"), between **KARBANK HOLDINGS LLC**, a Delaware limited liability company ("Buyer"); and **CITY OF WESTWOOD, KANSAS**, a political subdivision organized and existing under the laws of the State of Kansas ("Seller"),

W-I-T-N-E-S-S-E-T-H:

WHEREAS, pursuant to that certain Real Estate Purchase Agreement, dated June 8, 2023 (as amended by Real Estate Contract Modification Agreement, dated December 1, 2023, the "Contract"), between Buyer and Seller, Buyer agreed to purchase, from Seller, those certain parcels of real property (the "Property") described in the Contract and located on or near Rainbow Boulevard between 50th and 51st Street in Westwood, Kansas; and

WHEREAS, pursuant to Section 3.2 of the Contract, Buyer's due diligence deadline under the Contract (the "Due Diligence Deadline") is July 2, 2024, and pursuant to Section 3.1 of the Contract, closing under the contract ("Closing") is scheduled for August 1, 2024 (the "Closing Date"); and

WHEREAS, Buyer and Seller wish to extend the Due Diligence Deadline and the Closing Date in order to allow Seller to fulfill certain conditions to Closing and in order to allow Buyer certainty regarding Seller's ability to close under the Contract.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Buyer and Seller hereby agree as follows (a capitalized term contained herein but not defined herein shall have the meaning ascribed to it in the Contract, and in the event of any conflict between the terms of the Contract and the terms of this Agreement, the terms of this Agreement shall control):

1. **Ratification of the Contract.** Buyer and Seller hereby confirm that the Contract remains in full force and effect subject, however, to the terms and conditions of this Agreement.
2. **Extension of the Due Diligence Deadline and the Closing Date.** The Due Diligence Deadline is hereby extended to January 3, 2025 and the Closing Date is hereby extended to February 3, 2025.
3. **Counterparts; Facsimile Execution and Delivery.** This Agreement may be executed in several counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument. This Agreement may be executed and delivered by the electronic transmission of signatures, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the day and year first above written.

BUYER: KARBANK HOLDINGS LLC

By: _____
Neil D. Karbank, a Manager

Date: June __, 2024
Time:

CITY OF WESTWOOD, KANSAS
as Seller

By: _____
David E. Waters, Mayor

Date: June __, 2024
Time:

ATTEST:

By: _____
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan Denk, City Attorney

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of June __, 2024 (this “Agreement”), between **KARBANK HOLDINGS LLC**, a Delaware limited liability company (“Developer”); and **CITY OF WESTWOOD, KANSAS**, a political subdivision organized and existing under the laws of the State of Kansas (“Westwood”),

W-I-T-N-E-S-S-E-T-H:

WHEREAS, pursuant to that certain Development Agreement, dated December 1, 2023 (the “Development Agreement”), between Developer and Westwood, Developer and Westwood agreed on a plan (the “Development Plan”) for certain parcels of real estate located in Westwood, Kansas (such parcels are collectively the “Property”); and

WHEREAS, the Development Plan sets forth the understandings between Westwood and Developer as to the Development Plan’s intent, timeline, milestones, considerations and other matters as to Developer’s and Westwood’s acquisition and ultimate use of the Property; and

WHEREAS, Developer has acquired a portion of the Property and has undertaken steps and has achieved several approvals, from Westwood, including approval of the Rezoning, the Replatting, the Preliminary Development Plan and the Final Development Plan (each as defined in the Development Agreement); and

WHEREAS, one or more citizens of Westwood have sought, in Johnson County, Kansas District Court case #24CV272 and Kansas Court of Appeals case 24-127371-A (collectively with any subsequent appeal or proceeding, the “Litigation”) to prohibit Westwood from conveying, to Developer, a portion of the Property known as the “Joe Dennis Parcel”, and the Litigation has in fact impaired Westwood’s ability to convey, to Developer, marketable fee simple title to the Joe Dennis Parcel; and

WHEREAS, since the Litigation has delayed the Development Plan, Developer and Westwood wish to revise certain dates contained in Development Agreement so that the Development Plan can proceed once the Litigation has been completed and Westwood is able to convey the Joe Dennis Parcel to Developer.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Developer and Westwood hereby agree as follows (a capitalized term contained herein but not defined herein shall have the meaning ascribed to it in the Development Agreement, and in the event of any conflict between the terms of the Development Agreement and the terms of this Agreement, the terms of this Agreement shall control):

1. **Ratification of the Development Agreement.** Developer and Westwood hereby confirm that the Development Agreement remains in full force and effect subject, however, to the terms and conditions of this Agreement.

2. **Extension of the Certain Deadlines.** Certain deadlines contained in the Development Agreement are hereby revised as follows (section numbers refer to the Development Agreement's sections):
 - **1.1.13.1 Development commencement:**
July 31, 2026
 - **2.1.1 Funding of School District Parcels acquisitions:**
December 20, 2024
 - **2.2.2 Funding of Rushton School demolition:** April 1, 2025
 - **8.2 Deadline for abandonment of the Development Plan:** December 20, 2024

3. **Counterparts; Facsimile Execution and Delivery.** This Agreement may be executed in several counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument. This Agreement may be executed and delivered by the electronic transmission of signatures, each of which shall be deemed to be an original.

[signatures commence on the following page]

IN WITNESS WHEREOF, Developer and Westwood have executed this Agreement as of the day and year first above written.

DEVELOPER: KARBANK HOLDINGS LLC

By: _____
Neil D. Karbank, a Manager

CITY OF WESTWOOD, KANSAS

By: _____
David E. Waters, Mayor

Date: June __, 2024

ATTEST:

By: _____
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan Denk, City Attorney

**SECOND AMENDMENT TO
FUNDING AND EXCLUSIVE RIGHTS AGREEMENT**

THIS AGREEMENT, made as of June __, 2024 (this “Agreement”), between **KARBANK HOLDINGS LLC**, a Delaware limited liability company (“Developer”); and **CITY OF WESTWOOD, KANSAS**, a political subdivision organized and existing under the laws of the State of Kansas (“Westwood”),

W-I-T-N-E-S-S-E-T-H:

WHEREAS, pursuant to that certain Funding and Exclusive Rights Agreement, dated March 9, 2023 (as amended December 1, 2023, the “Funding Agreement”), between Developer and Westwood, Westwood and Developer undertook certain obligations in connection with the planning, zoning, subdivision and certain matters concerning certain parcels of real property (the “Property”) described in the Funding Agreement and located on or near Rainbow Boulevard between 50th and 51st Street in Westwood, Kansas (such activities are collectively the “Project”); and

WHEREAS, pursuant to Section 5 of the Funding Agreement, as amended, the Funding Agreement’s term (the “Term”) shall expire on September 9, 2024 (the “Expiration Date”); and

WHEREAS, one or more citizens of Westwood have sought, in Johnson County, Kansas District Court case #24CV272 and in Kansas Court of Appeals case 24-127371-A (collectively with any subsequent appeal or proceeding, the “Litigation”) to prohibit Westwood from conveying, to Developer, a portion of the Property known as the “Joe Dennis Parcel”, and the Litigation has in fact impaired Westwood’s ability to convey, to Developer, marketable fee simple title to the Joe Dennis Parcel; and

WHEREAS, because the Litigation has delayed the Project, Developer and Westwood wish to revise certain dates contained in Funding Agreement so that the Project can proceed once the Litigation has been terminated and Westwood is able to convey, to Developer, the Joe Dennis Parcel; and

WHEREAS, Sections 2 and 3 of the Funding Agreement provide for Developer’s payment or reimbursement of Westwood’s expenses incurred in connection with the Project, and Westwood and Developer wish to confirm that Westwood’s expenses incurred in connection with confirming Westwood’s ability to convey title to all or part of the Property, including without limitation any and all of Westwood’s attorneys’ fees and costs associated with the Litigation, shall be borne exclusively by Westwood and not by Developer.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Developer and Westwood hereby agree as follows (a capitalized term contained herein but not defined herein shall have the meaning ascribed to it in the Funding Agreement, and in the event of any conflict between the terms of the Funding Agreement and the terms of this Agreement, the terms of this Agreement shall control):

1. Ratification of the Funding Agreement Estoppel.

- 1.1** Developer and Westwood hereby confirm that the Funding Agreement remains in full force and effect subject, however, to the terms and conditions of this Agreement.
- 1.2** Developer confirms that to the best of its knowledge, Westwood has fulfilled all of its obligations under the Funding Agreement and that as of this date hereof there are no defenses, offsets or counterclaims which Developer has against the enforcement of the Funding Agreement by Westwood.
- 1.3** Westwood confirms that Developer has timely paid all sums billed to date to Developer pursuant to Sections 2 and 3 of the Funding Agreement, and Westwood confirms that to the best of its knowledge, Developer has fulfilled all of its obligations under the Funding Agreement and that as of this date hereof there are no defenses, offsets or counterclaims which Westwood has against the enforcement of the Funding Agreement by Developer.

2. Extension of the Expiration Date. Pursuant to Section 5(b) of the Funding Agreement, the Expiration Date is hereby extended to March 9, 2025.

3. Matters Concerning Title to the Property or Authority to Convey Title. Westwood hereby confirms that Westwood, and not Developer, shall continue to bear all of the costs and expenses of assuring that Westwood can convey marketable fee simple title, to Developer, in the Property, including (without limitation) by undertaking to completion any and all statutory procedures or litigation, including without limitation the Litigation, which would confirm Westwood's ability to convey marketable fee simple title to the Property.

4. **Counterparts; Facsimile Execution and Delivery.** This Agreement may be executed in several counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument. This Agreement may be executed and delivered by the electronic transmission of signatures, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, Developer and Westwood have executed this Agreement as of the day and year first above written.

KARBANK HOLDINGS LLC

By: _____
Neil D. Karbank, a Manager

CITY OF WESTWOOD, KANSAS
as Westwood

By: _____
David E. Waters, Mayor

ATTEST:

By: _____
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan Denk, City Attorney

Date: _____, 2024
Time:

DONATION AGREEMENT

THIS DONATION AGREEMENT (this “Agreement”) is entered into this _____ day of _____, 2024, between **K-FRANS LLC**, a Missouri limited liability company (“Donor”); and **THE CITY OF WESTWOOD, KANSAS**, a political subdivision of the State of Kansas (“Westwood”),

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Donor and its related entities own and have developed or redeveloped office, retail, mixed-use and industrial developments in various locations in Johnson County, Kansas including in the municipalities of Mission Woods, Prairie Village, Overland Park, Merriam, Lenexa and Olathe; and

WHEREAS, Shawnee Mission Unified School District No. 512 (the “School District”) owns a parcel of land located at 2511 West 50th Street, Westwood, Kansas (the “School District North Parcel”) comprising 4.49 acres of land; and

WHEREAS, the School District owns a parcel of land located immediately south of the School District North Parcel (the “School District South Parcel”, and together with the School District North Parcel, the “School District Land”) comprising .4823 acres of land; and

WHEREAS, the School District owns and operates Rushton Elementary School (including all buildings and other improvements, the “Rushton School”) located on the School District Land; and

WHEREAS, Westwood wishes to create a public park (the “City Park”) on a portion of the School District Land, and the creation of the City Park would require, among other things, the acquisition of the School District Land (the “Land Acquisition”) and the demolition of the Rushton School, which demolition shall include demolition of the school building, playground and parking lot serving the school, finishing the demolished portions of the site to a rough grade and seeded, (the “School Demolition”); and

WHEREAS, it is understood that Westwood’s cost of the Land Acquisition will be Two Million Six Hundred Fifty Thousand (\$2,650,000.00) Dollars (the “Land Acquisition Cost”) and that the cost of the School Demolition will be approximately Three Hundred Fifty Thousand (\$350,000.00) Dollars (the “School Demolition Cost”, and together with the Land Acquisition Cost, the “Park Creation Costs” with the exact amount of the School Demolition Cost and the attendant donation to be determined by the contract letting for the School Demolition work); and

WHEREAS, Westwood does not possess the funds to pay either the Land Acquisition Cost or the Demolition Cost; and

WHEREAS, Donor, as a corporate citizen of the Greater Kansas City area, wishes to assist Westwood in creating the City Park; and

WHEREAS, Donor wishes to donate, to Westwood, an amount equal to the Park Creation Costs in order to enable Westwood to create the City Park, all on the terms and conditions set forth herein.

NOW, THEREFORE, Donor and Westwood hereby agree as follows.

1. **Donations.** Donor agrees to make two donations (each is a “Donation”, and together, the “Donations”) to Westwood in an aggregate amount equal to the Park Creation Costs. The Donations shall be made in two installments, which are **(a)** the “Land Acquisition Donation”, in the amount of the Land Acquisition Cost; and **(b)** the “School Demolition Donation”, in the amount of the School Demolition Cost.
2. **Donations Timing.** Donor agrees to make the Donations as follows:
 - 2.1 On or before December 20, 2024 (which is the fourteenth (14th) day prior to the expiration of the Due Diligence Period as defined in the Real Estate Purchase Agreement between Westwood and the School District dated June 8, 2023 (as amended November 13, 2024 and June __, 2024 the “SMSD Agreement”), Donor will make the Land Acquisition Donation.
 - 2.2 Provided that Westwood has acquired the School District Land, then on or before the date on which Westwood commences the School Demolition (which date is anticipated to be on or about April 30, 2025), Donor will make the School Demolition Donation.
3. **Execution of the Donations.** Donor may accomplish the purposes of this Agreement by funding the Donations to Westwood directly or indirectly as provided herein. Accordingly (as the circumstances require), Donor shall make **(a)** the Land Acquisition Donation by wire transfer either directly to Westwood or to the escrow agent handling Westwood’s purchase of the School District Land; and **(b)** the School Demolition Donation by wire transfer either directly to Westwood or to the escrow agent, selected by Donors and Westwood, which will make periodic disbursements to Westwood’s demolition contractor, immediately upon

Westwood's commencement, by a demolition contractor which is reasonably acceptable to Donors (the "Demolition Contractor"), of the School Demolition.

4. Restricted Uses; Means; Return of Donations.

- 4.1 Donor intends that the Donations shall be used strictly and exclusively for the purposes set forth in this Agreement, and Westwood agrees to such restrictions. It is of the essence of Donor's promise to make the Donations that the Donations shall be used only to fund the Park Creation Costs.
- 4.2 In the event that Westwood has not, on or before February 18, 2025 (the "School Land Acquisition Deadline"), acquired the School District Land, then Donors' agreement, contained in this Agreement, to make the Donations shall be, at Donor's election (by notice to Westwood) deemed void and of no effect.
- 4.3 In the event that Westwood has not, on or before the School Land Acquisition Deadline, acquired the School District Land but Donor has already made the Land Acquisition Donation, then Westwood shall, immediately upon Donor's request, refund the Land Acquisition Donation to Donor.
- 4.4 In the event that Westwood does acquire the School District Land but has not, on or before April 30, 2025, commenced the School Demolition but Donor has already made the School Demolition Donation, then Westwood shall immediately upon Donor's request refund the School Demolition Donation to Donor. For purposes of this paragraph, commencement of the School Demolition shall be deemed to have occurred by the accomplishment of all of the following: **(a)** Westwood's award of a contract, for the School Demolition, to the Demolition Contractor; **(b)** Westwood's issuance, to the Demolition Contractor, of all permits necessary for the School Demolition and **(c)** Westwood's issuance, to the Demolition Contractor (with a contemporaneous copy to Donor), of a notice to proceed with the School Demolition.

5. Declaration of Covenants and Restrictions.

- 5.1 Westwood shall, as a condition to Donor's funding the Land Acquisition Costs, and immediately following the recordation of the deed, from the School District to Westwood, for the School District Land, execute, acknowledge and record in the Office of the Johnson County, Kansas

Register of Deeds the Declaration of Covenants and Restrictions annexed hereto as **Exhibit "A"** and made a part hereof (the "Declaration"). The Declaration, by its terms, restricts the use of the Park Property (as defined in the Declaration) for the use, by Westwood, and for the term of years as set forth in the Declaration, as the City Park.

- 5.2 Donor expressly agrees that Westwood may sell or lease the remaining portion of the School District Land (the "Development Property") in connection with the development of the Development Property and of adjacent lands now owned by Westwood.
- 5.3 The Declaration, by its terms, shall be a "covenant running with the land" as to the Park Property and shall be specifically enforceable by Donor or by Donor's designee or assignee, all as provided in the Declaration.

6. Westwood's Representations, Warranties and Certain Covenants. Westwood represents and warrants to Donor, and covenants with Donor, as follows:

- 6.1 Westwood is a political subdivision, duly organized, validly existing and in good standing as a City of the Third Class under the laws of the State of Kansas.
- 6.2 All necessary action has been taken by Westwood with respect to the execution and delivery of this Agreement.
- 6.3 The person executing this Agreement on behalf of Westwood is duly authorized to execute and deliver this Agreement, and Westwood intends to be bound by this Agreement's terms and conditions.
- 6.4 This Agreement has been executed and delivered on behalf of Westwood and constitutes Westwood's valid and binding agreement, enforceable in accordance with its terms, and there are no consents of (or notices to) any third party required for the undertaking and consummation, by Westwood, of its receipt, acceptance or use of the Donations, all on the terms and conditions set forth herein.
- 6.5 Westwood's use of the Donations is and shall be solely and exclusively for public purposes and uses and not for any private purpose or use.

7. **Notices.** Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if in writing and mailed by restricted or certified or express United States mail, postage prepaid, or delivered by hand (including by any national recognized overnight delivery service or otherwise), and addressed as follows:

To Westwood:

City of Westwood, Kansas
Attn: Mayor
4700 Rainbow Boulevard
Westwood, Kansas 66205

With a copy to:

Ryan B. Denk, Esquire
McAnany, Van Cleave & Phillips, P.A.
10 E. Cambridge Cir. Dr., Ste. 300
Kansas City, Kansas 66103

To Donor:

c/o Karbank Real Estate Company LLC
2000 Shawnee Mission Parkway, Suite 400
Mission Woods, Kansas 66205
Attention: Adam Feldman, Esquire

With a copy to:

c/o Karbank Real Estate Company LLC
2000 Shawnee Mission Parkway, Suite 400
Mission Woods, Kansas 66205
Attention: Neil D. Karbank, Esquire

Each party may specify that notice be addressed to any other person or address by giving to the other parties ten (10) days prior written notice thereof.

8. Further Assurances; Donation Acknowledgement; Time of Essence.

8.1 In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by Donor and Westwood, each agrees to perform, execute and/or deliver any and all such further acts, deeds and assurances as may be reasonably required to assist or consummate the transactions contemplated hereby.

8.2 Westwood shall, concurrently with Donor's making of all or part of the Donations, cause the acknowledgment form annexed hereto as **Exhibit "B"** (each a "Donation Acknowledgement") to be executed and delivered, by Westwood to and for the benefit of each Donor which has made such portion of the Donations. Each Donation Acknowledgement shall contain:

- Donor's name
- Westwood's name
- Westwood's tax identification number
- Confirmation that Westwood is a municipal corporation organized under Kansas law
- The amount of that portion of the Donations made by a Donor and received Westwood (or by Westwood's designee as provided herein)
- A statement that no goods or services were provided by the organization in exchange for or in connection with such Donation and that such Donation is strictly for a public purpose.

8.3 Time shall be of the essence as to Donor's and Westwood's obligations hereunder.

9. Successors and Assigns; Irrevocable Promises; Westwood's Reliance.

9.1 This Agreement shall bind and inure to the benefit of Donor and to Westwood.

9.2 Donor acknowledges that **(a)** its promises to make the Donations provided herein are irrevocable except as to the conditions set forth herein and that **(b)** Westwood is relying upon Donor's promises to make the Donations to Westwood, subject, however, to the terms and conditions set forth herein.

10. Miscellaneous.

- 10.1 Incorporation of Recitals.** The recitals contained in the introduction to this Agreement are intended to provide the factual context for this Agreement and for the parties' respective performances hereunder.
- 10.2 Entire Agreement; Amendment; Severability.** This Agreement embodies the entire agreement between the parties relative to the subject matter hereof and there are no oral or other agreements existing between the parties relative to the subject matter hereof which are not expressly set forth herein and covered hereby. This Agreement may be amended only by an instrument in writing signed by the parties hereto. The invalidity or unenforceability of any term or provision of this Agreement or the non-application of such term or provision to any person or circumstance shall not impair or affect the remainder of this Agreement, and its application to other persons and circumstances and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.
- 10.3 Cumulative Rights; No Waiver.** The rights and remedies of each party hereto, as well as those provided or accorded by law, shall be cumulative, and none shall be exclusive of any other rights or remedies hereunder or allowed by law. A waiver by either party hereto of any breach or breaches, default or defaults by the other party hereto shall not be deemed or construed to be a continuing waiver of such breach or default nor as a waiver of or permission, expressed or implied, for any subsequent breach or default.
- 10.4 Applicable Law and Venue; Attorneys' Fees and Costs.** This Agreement shall be deemed to be entered into in the State of Kansas, and shall be construed in accordance with the local laws of the State of Kansas. The sole and exclusive venue for any legal action based upon or in any way relying upon this Agreement shall be in the District Court of Johnson County, Kansas. This Agreement shall be enforceable by one or more actions for damages or for specific performance, in which event the bond required for any action for injunctive relief shall be One Thousand (\$1,000.00) Dollars in cash. In the event of litigation seeking the enforcement or interpretation of this Agreement, the party prevailing in litigation shall be entitled to receive from the non-prevailing party or parties the prevailing party's or parties' reasonable attorneys' fees and costs for such enforcement or interpretation.

10.5 Counterparts. This Agreement may be executed in several counterparts (including by facsimile or electronic signatures), each of which is deemed an original. Such counterparts shall, taken together, constitute but one and the same instrument.

[signatures commence on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

K-FRANS LLC

By: _____
Adam Feldman, an Authorized Representative

CITY OF WESTWOOD, KANSAS

By: _____
David E. Waters, Mayor

ATTEST:

By: _____
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan Denk, City Attorney

Table of Exhibits

- Exhibit A: Declaration of Perpetual Covenants and Restrictions
- Exhibit B: Donation Acknowledgment Form

WESTWOOD CITY PARK
DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (this “Declaration”) is granted as of _____ by **THE CITY OF WESTWOOD, KANSAS**, a political subdivision of the State of Kansas (“Declarant”), for the benefit of **K-FRANS LLC**, a Missouri limited liability company (“Beneficiary”),

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Declarant will, exclusively using cash donations (the “Land Acquisition Donations”), made by Beneficiary to Declarant, acquire title to that certain real property located in the City of Westwood, Johnson County, Kansas which is legally described as, or is intended to be platted as legally described on **Exhibit “A”** annexed hereto and made a part hereof (the “Park Property”); and

WHEREAS, Beneficiary owns and intends to convey to Declarant certain lands formerly owned by the Joanne Maureen Gaar Trust dated 11-1-1994 (the “Gaar Property”, which is legally described on **Exhibit “B”** annexed hereto) and which adjoins the Park Property; and

WHEREAS, once Declarant has acquired the Park Property, Declarant will, again exclusively using cash donations (the “School Demolition Donations,” and, together with the Land Acquisition Donations, the “Park Creation Donations”), made by Beneficiary to Declarant, demolish existing improvements located on the Park Property; and

WHEREAS, as a condition of and in accordance with the intent of the Park Creation Donations, Declarant has agreed to create a municipal park (the “City Park”) on the Park Property and on the Gaar Property and to restrict the use of the Park Property and the Gaar Property, as provided herein; and

WHEREAS, reference is hereby made to that certain real property located in the City of Westwood, Johnson County, Kansas, located adjacent and to the east of the Park Property, which is legally described as, or is intended to be platted as legally described on **Exhibit “C”** annexed hereto and made a part hereof (the “Development Property”).

NOW THEREFORE, in consideration of Declarant’s receipt of the benefits of the Park Creation Donations, the receipt and sufficiency of which are hereby

acknowledged, Declarant hereby agrees that the Park Property shall be subject to the following rights and restrictions:

1. **Recitals Incorporated by Reference.** The foregoing recitals are incorporated by reference herein and made a part hereof, and all of the restrictions and covenants contained herein are collectively the “Restrictions”.
2. **Restricted Uses.**
 - 2.1 During the term of this Declaration (the “Term”, as described in Section 4.2 hereof), the Park Property shall be used only as a municipal park and related purposes thereto or therefor, including but not limited to parking and restroom facilities serving the City Park.
 - 2.2 The City Park’s uses shall be limited to those park purposes, including hours of operation, as defined by the policies, rules and regulations, ordinances and code of Declarant or of any municipal corporation or governmental agency (including, by way of example only, Johnson County, Kansas, or the Johnson County, Kansas, Park and Recreation District) that is a successor-in-interest to Declarant.
 - 2.3 Notwithstanding the provisions of Section 2.2 hereof, Declarant agrees that the uses and hours of operation of the City Park shall be reasonably restricted in order not to be unreasonably burdensome on or noxious to the Development Property and its customers and tenants. For the purpose of this Section 2.3, a “noxious” use shall include (without limitation) **(a)** amplified music during the hours of 6 AM through 5:00 PM, Monday through Friday (with exception of any state of federally-recognized holiday or the day before or after a holiday if such date is used to celebrate such holiday), to the extent that such amplified music would violate the terms of any applicable noise ordinance or regulation of Declarant, and **(b)** overnight camping (except by youth groups or City sanctioned events having permits, issued by Declarant, specifically for such purpose and not to exceed one (1) day in duration); no other overnight camping shall be permitted. Declarant shall reasonably monitor and control the Park Property according to the foregoing.

- 2.4** Attached hereto as **Exhibit “D”** is a drawing showing where parking, restroom and other facilities may be located. Parking on the Development Property shall be by and in accordance with written license between the parties. Additionally, the parties may subsequently agree to locate restrooms serving the City Park in a facility on the Development Property. Declarant acknowledges and intends that such restrooms and parking areas will be so located, so that users of the City Park shall not utilize the restrooms and other parking areas located on the Development Property intended to serve such Development Property.
- 2.5** Notwithstanding anything to the contrary contained herein, nothing herein shall be deemed to preclude Declarant from granting (and Declarant shall grant) **(a)** for the benefit of the Development Property, permanent maintenance and construction easements along the eastern twenty (20) feet of the Park Property, as the Development Property owner or owners may request from time to time for access, to the Development Property, in order to access, repair, maintain and replace such improvements and landscaping as may be constructed on the Development Property from time to time, or **(b)** such other easements or rights-of-way as may be reasonably necessary for the provision of utilities or other infrastructure.
- 3. Maintenance, Repairs, Replacements, Cleaning and Policing; Further Assurances.**
- 3.1** By accepting the benefit of the Park Creation Donations, Declarant accepts the responsibility of grading and landscaping the Park Property and for creating and equipping the City Park and also, at Declarant’s expense, of all of the responsibilities set forth in Sections 3.1.1 through 3.1.4 hereof, including without limitation:
- 3.1.1** Maintaining, repairing, and making replacements (as reasonably required) of all the City Park equipment and facilities (including without limitation all lawns and trees and gardens, playgrounds, pavilions, all equipment, parking areas, restroom facilities, and sport facilities).
- 3.1.2** Cleaning the City Park and all of its facilities and features (including without limitation by timely removing all trash from

the City Park and its trash receptacles) and timely removing ice and snow from paths and walkways in the City Park.

3.1.3 Providing such police and other security and public safety personnel and apparatus as may be reasonably required for the City Park.

3.1.4 Instituting, maintaining and governing the City Park's uses, including by restricting scheduling, by imposing reasonable special usage fees and by limiting the City Park's hours and uses, so that the City Park's grounds, equipment and sanitation and parking facilities are not overly used, subject to waste or become a nuisance to the Development Property, its tenants or customers or to any residential neighbor of the City Park; provided, however, that in accordance with Kansas law, nothing in this Declaration shall be deemed to contractually require that Declarant take any legislative action.

3.2 In addition to the acts and deeds recited herein and contemplated to be performed by Declarant pursuant to this Declaration, Declarant agrees to take all such actions as may be required in order to create the City Park on or before January 1, 2028. Notwithstanding the foregoing, nothing herein shall obligate Declarant to construct any particular City Park amenities or grant to Beneficiary any prior rights of approval or rejection of any particular City Park layout or features.

4. Declaration Runs With the Land; Term; Third-Party Beneficiary; No Transfer by Declarant.

4.1 This Declaration and all of the Restrictions, covenants and easements contained herein shall be deemed a "covenant running with the land" as to the Park Property, shall be binding upon Declarant's successors and assigns and shall be for the benefit of Beneficiary and its designees, successors and assigns.

4.2 The Term shall be forty-three (43) years from the date of the recording of this Declaration with the Register of Deeds for Johnson County, Kansas. Upon the expiration of the Term, the terms of this Declaration and the Restrictions contained herein shall no longer bind the Park Property.

- 4.3** During the Term, Declarant shall not transfer fee title to, or enter into any lease of any of the City Park or any of the lands comprising the City Park, except to the extent such transfer is required by operation of law arising out of the merger, reorganization, or dissolution of the City of Westwood, Kansas. This provision shall not preclude Declarant from reserving certain City Park facilities for the exclusive use by members of the public in accordance with the policies, rules and regulations, ordinances and code of the City of Westwood, Kansas.
- 5. Enforcement; Applicable Venue and Law; Attorneys' Fees and Costs.**
- 5.1** This Declaration and all of the Restrictions, covenants and easements contained herein may be enforced by Beneficiary or by its designees, successors and assigns by an action for injunctive relief or for damages (or both), and the sole and exclusive venue for any such action shall be the District Court for Johnson County, Kansas.
- 5.2** The bond required for any preliminary or temporary injunctive relief shall be One Thousand (\$1,000.00) Dollars in cash, and no showing of irreparable harm shall be required for any such relief.
- 5.3** This Declaration is being executed and delivered in the State of Kansas and shall be construed in accordance with the local laws of the State of Kansas. In the event of litigation seeking the enforcement or interpretation of this Declaration or any of the Restrictions, covenants or easements contained herein, and to the extent permitted under applicable law, the party prevailing in litigation shall be entitled to receive from the non-prevailing party the prevailing party's reasonable attorneys' fees and costs for such enforcement or interpretation.
- 6. Notices.** Any notice, approval, request or consent required by or asked to be given under this Declaration shall be deemed to be given if in writing and mailed by restricted or certified or express United States mail, postage prepaid, or delivered by hand (including by any national recognized overnight delivery service or otherwise), and addressed as follows:

To Declarant:

City of Westwood, Kansas
Attn: Mayor
4700 Rainbow Boulevard
Westwood, Kansas 66205

With a copy to:

Ryan B. Denk, Esquire
McAnany, Van Cleave & Phillips, P.A.
10 E. Cambridge Cir. Dr., Ste. 300
Kansas City, Kansas 66103

To Beneficiary:

c/o Karbank Real Estate Company LLC
2000 Shawnee Mission Parkway, Suite 400
Mission Woods, Kansas 66205
Attention: Adam Feldman, Esquire

With a copy to:

c/o Karbank Real Estate Company LLC
2000 Shawnee Mission Parkway, Suite 400
Mission Woods, Kansas 66205
Attention: Neil D. Karbank, Esquire

Any party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

7. Successors and Assigns; Delegation of Enforcement Rights; Beneficiary's Preemptive Rights.

- 7.1** This Declaration shall bind Declarant and shall inure to the benefit of Beneficiary and its designees, successors and assigns. Beneficiary may from time to time delegate its enforcement rights hereunder to such person, persons, entity or entities which shall have the power to enforce such rights in the name of, and for the benefit of, Beneficiary and its successors or assigns.
- 7.2** Notwithstanding anything to the contrary contained herein, this Declaration shall be deemed to be void ab initio, and shall be

deemed released from the Park Property, in the event that a building permit for at least one (1) building to be located on the Development Property shall not have been requested on or before June 30, 2026, such request to have been made in accordance with and in substantial compliance with all approved plans and other requirements applicable to the Development Property.

8. Miscellaneous.

- 8.1 Entire Agreement; Severability.** This Declaration embodies the entire agreement between the parties hereto relative to the subject matter hereof, and there are no oral or other agreements existing between the parties relative to the subject matter hereof which are not expressly set forth herein and covered hereby. This Declaration may be amended only by an instrument in writing signed on behalf of Declarant and Beneficiary. The invalidity or unenforceability of any term or provision of this Declaration or the non-application of such term or provision to any person or circumstance shall not impair or affect the remainder of this Declaration, and its application to other persons and circumstances and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.
- 8.2 Cumulative Rights; No Waiver.** The rights and remedies of each party hereto, as well as those provided or accorded by law, shall be cumulative, and none shall be exclusive of any other rights or remedies hereunder or allowed by law. A waiver by Beneficiary or by any owner(s) of record of the Development Property of any breach or breaches, default or defaults by Declarant shall not be deemed or construed to be a continuing waiver of such breach or default nor as a waiver of or permission, expressed or implied, for any subsequent breach or default.
- 8.3 Counterparts.** This Declaration may be executed in several counterparts (including by facsimile or electronic signatures), each of which is deemed an original. Such counterparts shall, taken together, constitute but one and the same instrument; provided, however, only the version of this Declaration that is actually recorded with the Register of Deeds for Johnson County, Kansas, shall bind or inure to the benefit of Declarant, Beneficiary (and its designees) and their respective successors or assigns.

8.4 Estoppel. Declarant shall, within ten (10) days of Beneficiary's request from time to time, execute, acknowledge and deliver an estoppel certificate (using a form furnished by Beneficiary) stating, if the same be true, that this Declaration is a true and exact copy of the agreement between the parties hereto and that there are no amendments hereof (or stating what the amendments are) that the same is then in full force and effect and that, to the best of Declarant's knowledge, there are no offsets, defense or counterclaims with respect to the performance of any terms, covenants and conditions hereof on the part of Beneficiary to be performed, and that as of such date, no default has been declared hereunder by Beneficiary or Declarant, and that Declarant has no knowledge of any facts or circumstances which it might reasonably believe would give rise to a default hereunder by Declarant or Beneficiary. Notwithstanding anything to the contrary contained herein, and without relieving Declarant of its obligations under this Section 8.4, Declarant's failure to timely execute, acknowledge and deliver to any Beneficiary such estoppel certificate within ten (10) days after written demand shall constitute the acknowledgment of Declarant that all matters set forth in such instrument are true and correct.

8.5 Special Provisions Concerning the Gaar Property.

8.5.1 Beneficiary intends to convey to Declarant, by gift, all of the Gaar Property. Upon such gift conveyance, the Gaar Property shall **(a)** become, immediately and without the need for any further documentation, subject to all of the covenants and restrictions contained herein; **(b)** be deemed to be a part of the Park Property; and **(c)** be utilized solely as part of the City Park.

8.5.2 Notwithstanding the provisions of Section 8.5.1 hereof, in the event that the Gaar Property shall be, at the time of Beneficiary's gift conveyance of it to Declarant, subject to a lease (the "Gaar Lease") to Joanne M. Gaar, then such gift conveyance shall be subject to the Gaar Lease's terms and conditions. In such event, then during the Gaar Lease's term, **(a)** Beneficiary shall be "Landlord" under the Gaar Lease and shall have all of the rights and obligations as Landlord under the Gaar Lease; **(b)** Joanne M. Gaar shall be "Tenant" under the Gaar Lease and shall have all of the rights and obligations

Declaration of Covenants and Restrictions

as "Tenant" under the Gaar Lease (including without limitation the right to use the Gaar Property for her residential use); and **(c)** this Declaration shall be, as to the Gaar Property and during the Gaar Lease's term, subject to the terms and conditions of the Gaar Lease.

[signatures commence on the following page]

IN WITNESS WHEREOF, the parties hereto have caused this Declaration to be executed as of the day and year first above written.

CITY OF WESTWOOD, KANSAS

By: _____
David E. Waters, Mayor

ATTEST:

By: _____
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan Denk, City Attorney

K-FRANS LLC

By: _____
Adam Feldman, Authorized Representative

Table of Exhibits

- Exhibit A: Legal Description of the Park Property
- Exhibit B: Legal Description of the Gaar Property
- Exhibit C: Legal Description of the Development Property
- Exhibit D: Drawing of location of parking, restroom and other facilities
[TO COME]

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

Declaration of Covenants and Restrictions

On this ____ day of _____, before the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared **David E. Waters**, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as his act and deed in his capacity as the Mayor of City of Westwood, Kansas, a political subdivision of the State of Kansas, as the act and deed of such city.

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

Notary Public within and for said County and State
My commission expires _____

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

On this ____ day of _____, before the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared Adam Feldman, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as his act and deed in his capacity as an Authorized Representative of K-Frans LLC, a Missouri limited liability company, as the act and deed of such company.

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

Notary Public within and for said County and State
My commission expires _____

THE CITY OF WESTWOOD, KANSAS

_____, 202_

K-Frans LLC
Suite 400, 2000 Shawnee Mission parkway
Mission Woods, Kansas 662305

Re: Acknowledgement of cash donation

Ladies and Gentlemen,

We write to confirm the following cash donation:

- 1. **Donor: K-Frans LLC**, a Missouri limited liability company
- 2. **Recipient:** The City of Westwood, Kansas, a municipal corporation which is a political subdivision of the State of Kansas (tax ID# _____)
- 3. **Donation:** \$ _____
- 4. **Date of Donation** (date of receipt by The City of Westwood):
- 5. This will confirm that no goods or services were provided by The City of Westwood in exchange for or in connection with such donation.
- 6. This will further confirm that the donation will be used strictly for a public purpose, which is to *[pay for the acquisition of lands for a municipal park] [pay for the demolition of improvements on land that will be used as a municipal park].*

Very truly yours,

THE CITY OF WESTWOOD, KANSAS

By: _____
David E. Waters, Mayor

cc: Neil D. Karbank, Esquire
Adam Feldman, Esquire
Ryan Denk, Esquire

FIRST RIGHTS AGREEMENT

THIS AGREEMENT dated as of _____, 2024 (this "Agreement"), among **THE CITY OF WESTWOOD, KANSAS**, a political subdivision of the State of Kansas ("Grantor") and **KARBANK HOLDINGS LLC**, a Delaware limited liability company ("Grantee"),

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Grantor owns certain real property located between 50th Street and 51st Street, west of Rainbow Boulevard and east of Belinder Avenue, (the "Park Property"), which is legally described in **Exhibit "A"** annexed hereto; and

WHEREAS, Grantee owns certain real property located between 50th Street and 51st Street, west of Rainbow Boulevard and east of Belinder Avenue, (the "Development Property"), which is legally described in **Exhibit "B"** annexed hereto and which adjoins the Park Property; and

WHEREAS, Grantor has subjected the Park Property to a Declaration of Covenants and Restrictions (the "Declaration") which restricts, for a period of forty-three (43) years (the "Restricted Period"), the Park Property to municipal park uses, all as set forth in the Declaration; and

WHEREAS, Grantee has requested that in the event that Grantor offers to sell or transfer or agrees to sell or transfer the Park Property for a period commencing on the date hereof and ending on the date which is twenty-five (25) years after the Restricted Period, Grantee shall have the continuing rights to purchase the Park Property, all on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of Ten (\$10.00) Dollars and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grant of The Negotiation Right and The Refusal Right.

Grantor hereby grants to Grantee a continuing right of first negotiation (the "Negotiation Right") for the purchase of the Park Property as well as a continuing right of refusal (the "Refusal Right", and together with the Negotiation Right, the "First Rights") for the purchase of the Park Property all on and subject to the terms and conditions set forth herein. The "Park Property" shall be deemed to mean the Park Property or any part thereof.

2. Operation of The Negotiation Right.

- 2.1** In the event that Grantor shall, at any time during the Restricted Period and for twenty-five (25) years thereafter (such period is, in the aggregate, the "First Rights Term"), elect to sell the Park Property, Grantor shall, by notice to Grantee (a "Sale Offer Notice"), communicate to Grantee the terms and conditions on which Grantor is willing to sell the Park Property. A Sale Offer Notice shall contain at least the proposed sale price for the Park Property; the form of payment therefor; the amount and form of any earnest money; the proposed closing date; true and complete copies of any encumbrances or interests to which the Park Property is subject; a current commitment for title insurance, concerning the Property, which has been issued by a reputable title company doing business in Johnson County, Kansas (together with copies of the recorded documents referenced therein), and an "as-built" survey of the Park Property that has been prepared, signed and sealed, within six (6) months of the Sale Offer Notice's date, by a surveyor licensed in the State of Kansas.
- 2.2** Grantee shall thereafter have the exclusive right (the "Negotiation Right"), for a period of sixty (60) days from the date on which the Sale Offer Notice is delivered to Grantee (the "Sale Offer Period"), to negotiate the terms and conditions of the sale contained in the Sale Offer Notice. During the Sale Offer Period, Grantee and Grantor shall negotiate in good faith to agree on the terms and conditions of the sale of the Park Property to Grantee and shall undertake to enter into a definitive agreement for the sale of the Park Property to Grantee. Upon the expiration of the Sale Offer Period without the mutual execution and delivery by Grantor and Grantee of such a definitive contract for the sale of the Park Property to Grantee, the Negotiation Right shall be deemed to be waived as to the offer contained in the Sale Offer Notice.

3. Operation of The Refusal Right.

- 3.1** In the event that Grantor shall, at any time during the First Rights Term enter into a contract or letter of intent or any other written understanding to sell the Park Property (except by operation of law in connection with the merger, reorganization or dissolution of the City of Westwood Kansas), Grantor shall, by notice to Grantee (the "Refusal Offer Notice"), deliver to Grantee a true and complete copy of such fully executed instrument including all exhibits thereto (the "Refusal Offer Notice Instrument"), together with a certificate, executed on behalf of Grantor, stating that *"The enclosed instrument is a true and complete copy of the agreement which we have entered into to sell the Park Property"*

3.2 Grantee shall thereafter have the exclusive right (the "Refusal Right"), for a period of thirty (30) days from the date on which the Refusal Offer Notice is delivered to Grantee at the address set forth below (the "Refusal Offer Period"), to execute and deliver to Grantor a notice (the "Acceptance Notice") accepting the terms set forth in the Refusal Offer Notice Instrument (and Grantee's delivery of the Acceptance Notice shall be deemed to bind Grantor to sell the Park Property to Grantee), except that:

- (a) the closing date for Grantee's purchase of the Property shall be a date (the "Acceptance Notice Closing Date"), which shall be the later of **(1)** the closing date set forth in the Refusal Offer Notice Instrument (the "Refusal Offer Notice Closing Date") or **(2)** a business day which is not later than ten (10) days after the Refusal Offer Notice Closing Date;
- (b) regardless of the terms of the Refusal Offer Notice Instrument, Grantee shall not be required to deliver, as earnest money, a sum greater than five (5%) percent of the purchase price for the Refusal Property; and
- (c) the Property shall be delivered to Grantee free and clear of any and all mortgages, deeds of trust, restrictions on sale or conveyance, leases, tenancies, licenses or liens (other than the lien of real estate taxes for the current year) affecting the Refusal Property.

Upon the expiration of the Refusal Offer Period without Grantee's timely delivery of the Acceptance Notice, the Refusal Right shall be deemed to have been waived as to the Refusal Offer Notice Instrument.

3.3 Notwithstanding anything to the contrary contained in this Section 3, in the event that Grantee shall waive (or, by not timely responding to the Refusal Offer Notice, shall be deemed to have waived) the Refusal Right as to the Refusal Offer Notice Instrument but Grantor shall not, within a period of two hundred seventy (270) days after the date of the Refusal Offer Notice, have sold the Refusal Property to the buyer named in the Refusal Offer Notice Instrument for at least ninety-five (95%) percent of the price set forth in the Refusal Offer Notice (subject, however, to customary closing adjustments), then the Refusal Right shall be deemed to be reinstated as to the Refusal Offer Notice Instrument and shall be subject to the terms and conditions set forth herein.

4. Transactions Excepted From The First Rights; Cumulative Rights .

- 4.1** The First Rights shall apply to any and all conveyances of fee simple title to the Park Property except for a conveyance of fee simple title by purchase and sale of the Property at a judicial foreclosure sale.
- 4.2** Any waiver of the First Rights for any particular transaction shall not extinguish such rights as to any further transaction during the First Rights Term and shall be continuing rights, in favor of Grantee, as to any and all further sale transactions as described in Sections 2 or 3 hereof.

5. Confirmation of Waiver of The Refusal Right.

At Grantor's request upon Grantee's waiver of the Refusal Right as to any Refusal Offer Notice Instrument, Grantee shall execute, acknowledge and deliver to Grantor, at Grantor's expense and in recordable form and within ten (10) days of Grantor's request therefor, an instrument reasonably acceptable to Grantee confirming such waiver of the Refusal Right as to the transaction specified in the Refusal Offer Notice Instrument. It is intended that any such waiver shall be limited to the particularly described sale transaction identified in such waiver.

6. Time of Essence.

Time is of the essence as to Grantor's and Grantee's rights and obligations hereunder.

7. Notices.

Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if in writing and mailed by restricted or certified or express United States mail, postage prepaid, or delivered by hand (including by any national recognized overnight delivery service or otherwise), and addressed as follows:

To Grantor:

City of Westwood, Kansas
Attn: City Administrator
4700 Rainbow Blvd.
Westwood, KS 66205

With a copy to:

Ryan B. Denk, Esquire
McAnany, Van Cleave & Phillips, P.A.
10 E. Cambridge Cir. Dr., Ste. 300
Kansas City, KS 66103

To Grantee:

Karbank Holdings LLC
2000 Shawnee Mission Pkwy., Ste. 400
Mission Woods, KS 66205
Attention: Adam Feldman, Esquire

With a copy to:

Karbank Holdings LLC
2000 Shawnee Mission Pkwy., Ste. 400
Mission Woods, KS 66205
Attention: Neil D. Karbank, Esquire

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

8. Successors and Assigns; Covenant Running With The Land; After-Acquired Lands.

- 8.1** This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and this Agreement is and shall be deemed to be a “covenant running with the land” to which the Park Property is subject and which benefits the Development Property and the fee owner or owners thereof.
- 8.2** In the event that Grantor shall acquire lands adjoining the Park Property (including without limitation lands formerly owned by the Joanne M. Gaar Trust and legally described on **Exhibit “D”** annexed hereto), then **(a)** this Agreement shall be deemed to spread to such lands (which shall be deemed to be a part of the Park Property) and **(b)** such lands shall be bound by this Agreement and by all of its terms and conditions.

9. Attorney's Fees; Specific Performance.

In the event that either party shall engage an attorney to enforce its rights hereunder, the party substantially prevailing in litigation shall be entitled to receive from the substantially non-prevailing party the substantially prevailing party's reasonable attorneys' fees and costs for such enforcement. This Agreement may be enforced by a decree of specific performance and through an action for damages. The bond required for any preliminary or temporary injunctive relief shall be One Thousand (\$1,000.00) Dollars in cash, and no showing of irreparable harm shall be required for any such relief.

10. Governing Law; Choice of Forum.

This Agreement shall be governed by and construed in accordance with the local law of the State of Kansas, and any suit to enforce any rights hereunder, or for the interpretation of any of the provisions of this Agreement, or for damages or any other relief arising from or in connection with this Agreement, shall be filed and heard in and only in the Johnson County, Kansas District Court. Grantor and Grantee each hereby irrevocably consent to the jurisdiction of such court over each of them and over the subject matter hereof.

11. Entire Agreement; Severability.

This Agreement embodies the entire agreement between the parties relative to the subject matter hereof and there are no oral or other agreements existing between the parties relative to the subject matter hereof which are not expressly set forth herein and covered hereby. This Agreement may be amended only by an instrument in writing signed by the parties hereto. The invalidity or unenforceability of any term or provision of this Agreement or the non-application of such term or provision to any person or circumstance shall not impair or affect the remainder of this Agreement, and its application to other persons and circumstances and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

12. Counterparts; Recording.

This Agreement may be executed in several counterparts, each of which is deemed an original. Such counterparts shall, taken together, constitute but one and the same instrument. Grantor and Grantee have mutually executed and delivered that certain Memorandum of First Rights Agreement, dated the date hereof and between Grantor and Grantee, which may be recorded in the real estate records of Johnson County, Kansas and which imparts public notice of this Agreement.

13. Captions.

The captions in this Agreement are for convenience only and shall not be construed to be part of or affect the construction or interpretation of any provision of this Agreement.

[Signatures commence on the following page]

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be executed as of the day and year first above written.

CITY OF WESTWOOD, KANSAS
as Seller

By: _____
David E. Waters, Mayor

ATTEST:

By: _____
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan Denk, City Attorney

KARBANK HOLDINGS LLC
as Grantee

By: _____
a Manager

Table of Exhibits

- Exhibit A: Legal Description of the Park Property
- Exhibit B: Legal Description of the Development Property
- Exhibit C: Memorandum of First Rights Agreement
- Exhibit D: Legal Description of the Gaar Trust Property

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

On this _____ day of _____, before the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared **David E. Waters**, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as his act and deed in his capacity as the Mayor of City of Westwood, Kansas, a political subdivision of the State of Kansas, as the act and deed of such city.

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

Notary Public within and for said County and State
My commission expires _____

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this _____ day of _____, _____, before the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared _____, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as his act and deed in his capacity as a Manager of Karbank Holdings LLC, a Delaware limited liability company, as the act and deed of such company

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

Notary Public within and for said County and State
My commission expires _____

MEMORANDUM OF FIRST RIGHTS AGREEMENT

NAME AND ADDRESS OF RIGHTS GRANTOR: City of Westwood, Kansas ("Grantor"), 4700 Rainbow, Westwood, Kansas 66205.

NAME AND ADDRESS OF RIGHTS GRANTEE: Karbank Holdings LLC, a Delaware limited liability company ("Grantee"), or assigns, c/o Karbank Real Estate Company LLC, 2000 Shawnee Mission Parkway, Mission Woods, Kansas 66205

DATE OF FIRST RIGHTS AGREEMENT: as of _____

DESCRIPTION OF BURDENED PROPERTY: The right of first refusal concerns the real property (the "Burdened Property") described in **Exhibit "A"** annexed hereto.

DESCRIPTION OF BENEFITED PROPERTY: The "First" rights are for the benefit of the real property (the "Benefited Property") described in **Exhibit "B"** annexed hereto.

MEMORANDUM OF FIRST RIGHTS AGREEMENT ONLY: This instrument is intended only to convey notice of "first" rights concerning the sale or transfer of the Burdened Property, granted pursuant to that certain First Rights Agreement, dated as of _____, (the "First Rights Agreement"), between Grantor and Grantee. This memorandum shall not be construed to change, vary, modify or interpret the option or any of the terms or conditions of the First Rights Agreement. The First Rights Agreement sets forth the terms and conditions of the right contained therein, and reference should be made to the First Rights Agreement for the terms and conditions thereof.

[signatures commence on the following page]

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

On this _____ day of _____, before the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared **David E. Waters**, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as his act and deed in his capacity as the Mayor of City of Westwood, Kansas, a political subdivision of the State of Kansas, as the act and deed of such city.

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

Notary Public within and for said County and State
My commission expires _____

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this ____ day of _____, before the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared _____, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as his act and deed in his capacity as a Manager of Karbank Holdings LLC, a Delaware limited liability company, as the act and deed of such company

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

Notary Public within and for said County and State
My commission expires _____

REAL PROPERTY DONATION AGREEMENT

THIS AGREEMENT (this “Agreement”) is entered into this ___ day of June, 2024, between **K-FRANS LLC**, a Missouri limited liability company (“Donor”); and **THE CITY OF WESTWOOD, KANSAS**, a political subdivision of the State of Kansas (“Westwood”),

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Donor owns real property located at 2322 West 51st Street, Westwood Kansas (identified as Kansas Uniform Parcel No. RP300000010011, Quick Ref R168896 and legally described as:

- All of Lot 11, Block 1, KLASSEN PLACE, a subdivision in the City of Westwood, Johnson County, Kansas, according to the recorded plat thereof -

(the “Property”); and

WHEREAS, the Property comprises a single-family home together with a paved driveway and other improvements (collectively, the “Improvements”) located on .48 acres of land; and

WHEREAS, the Property is subject to that certain Residential Lease Agreement, dated as of October 31, 2023 (the “Gaar Lease”, a true and complete copy of which is annexed hereto as **Exhibit “A”**), among Donor, as lessor, Joanne M. Gaar (“Joanne Gaar”) , as lessee, and the Joanne Maureen Gaar Trust 11-1-94 (the “Gaar Trust”), as guarantor; and

WHEREAS, Westwood owns neighboring lands which Westwood will be developing into a municipal park (the “City Park”); and

WHEREAS, Donor wishes to donate the Property, subject to the Gaar Lease, to Westwood, all on the terms and conditions set forth herein.

NOW, THEREFORE, Donor and Westwood hereby agree as follows.

1. **Donation.** Not later than June 30, 2025 (the "Donation Deadline"), Donor shall to make a donation (the "Donation"), to Westwood, of the Property, subject, however, to the Gaar Lease if the Gaar Lease shall then be in effect and shall not have been sooner terminated pursuant to its terms.
2. **Restricted Use of the Property.** Donor intends the Property shall be used strictly and exclusively, by Westwood, as part of the City Park; provided, however, that during the term of the Gaar Lease (the "Gaar Lease term", which corresponds, more or less, to the life of Joanne Gaar and which may be sooner terminated according to its terms and conditions), Joanne Gaar shall be entitled to the exclusive use and possession of the Property.
3. **Closing; Inspection Period.**
 - 3.1 The consummation of the transaction contemplated hereby (the "Closing") shall take place at 10:00 a.m. at the offices of First American Title Insurance Company, 1100 Main Street, Suite 1900, Kansas City, Missouri 64105 (the "Title Company") on a business day (the "Closing Date") selected by Donor and which is not later than the Donation Deadline. Donor shall notify Westwood of the Closing Date not later than five (5) business days prior to the Closing Date.
 - 3.2 Westwood and its agents, contractors and invitees may enter onto the Property from time to time through Closing for the purpose of inspecting the Property and for making such investigations and tests as Westwood may require, subject, however, to Sections 3.2.1 and 3.2.2 hereof.
 - 3.2.1 Westwood acknowledges the terms and conditions of the Gaar Lease and further acknowledges that during the Gaar Lease Term, Joanne Gaar may refuse to allow Westwood to inspect or even to enter upon the Property.
 - 3.2.2 In the event that, during the Gaar Lease Term, Joanne Gaar shall grant Westwood permission to enter onto the Property from time to time through Closing for the purpose of inspecting the Property, Westwood shall take such steps as are necessary to respect Joanne's right of quiet enjoyment of the Property.

- 3.3** Westwood shall in any event indemnify and hold Donor harmless from and against any injury to persons or damage to property arising from any investigations of the Property conducted by Westwood or by its agent or contractors.
- 3.4** In the event that Westwood shall determine that Westwood does not wish to accept the donation of the Property, then Westwood shall provide written notice to Donor of its termination of this Agreement (“Westwood’s Termination Notice”) not later than 5:00 p.m. local time on June 27, 2025. Notwithstanding anything to the contrary contained in Section 16 hereof, Westwood's Termination Notice may be given by fax to 816-221-4494, attention: Neil D. Karbank, Esquire, and by email to nk@karbank.com, to Mr. Steven Karbank at sk@karbank.com and to Adam Feldman, Esquire, at af@karbank.com, stating that this Agreement is terminated. In the absence of the timely delivery of Westwood's Termination Notice, the inspection condition set forth in Section 3.2 hereof shall be deemed satisfied.
- 3.5** In the event that Westwood shall not timely give Westwood’s Termination Notice and Donor does make the Donation, then Westwood shall be deemed to have elected to accept the Property in absolutely “AS IS” condition, with all its faults, and subject to the Gaar Lease and to all other Permitted Exceptions (as defined in Section 5.1.1 hereof).

4. Warranties, Representations and Covenants.

- 4.1** Donor represents and warrants to and covenants and agrees with Westwood the following as of the date of this Agreement, except where specific reference is made to another date or dates, in which case such date or dates will be applicable hereunder:
- 4.1.1** Donor is a limited liability company, organized and in good standing under the laws of the State of Missouri and qualified to do business in the State of Kansas.
- 4.1.2** All necessary action has been taken by Donor with respect to the execution and delivery of this Agreement and the performance by Donor of its obligations hereunder.
- 4.1.3** This Agreement has been executed and delivered by Donor and constitutes Donor’s valid and binding agreement, enforceable in

accordance with its terms, and there are no consents of any third party required for the consummation of the transaction contemplated herein.

- 4.1.4** Except with respect to a management agreement (together, the “KREC Agreement”) with Karbank Real Estate Company LLC, which is terminable at Closing and which Donor shall terminate at Closing, Donor is not a party to any management or service agreement concerning the Property or to any agreement under which any brokerage commission or finder's fee is payable in connection with the conveyance of all or any part of the Property.
- 4.1.5** Donor has good, marketable and insurable fee simple absolute title to, and is the owner of, the Property, and Donor's ownership of the Property is free and clear of all liens, claims, encumbrances, covenants, conditions, rights-of-way, easements and any other matters affecting title except for the Gaar Lease, matters of record and real estate taxes not yet due and payable.
- 4.1.6** There are no rights or options to purchase all or any part of the Property, and there are no options to lease, license or use all or any part of the Property.
- 4.1.7** To Donor's actual knowledge, there are no actions, suits, proceedings, orders, writs, judgments, rulings, decrees or injunctions, governmental or otherwise, pending or threatened against or affecting the Property, and there are no actions, suits or proceedings pending, contemplated or threatened by Donor in connection with the Property including, without limitation, tax reduction proceedings.
- 4.1.8** Except with respect to any service or utility agreements undertaken by Joanne Gaar or by the Gaar Trust, Donor is not aware of any service agreements which affect the Property. From and after the date hereof, Donor will not enter into any service agreement pertaining to all or any part of the Property which cannot be cancelled effective as of the Closing Date.
- 4.1.9** Donor has no knowledge of any pending or contemplated condemnation of the Property or any part thereof.

- 4.1.10** Pursuant to the Gaar Lease, Joanne Gaar is now maintaining and shall maintain until Closing "replacement cost" fire and extended coverage insurance on the Property as well as liability coverage for acts or omissions in connection with the use, ownership or operation of the Property.
- 4.2** Westwood represents and warrants to and covenants and agrees with Donor the following as of the date of this Agreement:
- 4.2.1** Westwood is a municipal corporation and is a political subdivision of the State of Kansas, duly organized, validly existing and in good standing as a City of the Third Class under the laws of the State of Kansas.
- 4.2.2** All necessary action has been taken by Westwood with respect to the execution and delivery of this Agreement and the performance by Westwood of its obligations hereunder.
- 4.2.3** This Agreement has been executed and delivered on behalf of Westwood and constitutes the valid and binding agreement of Westwood, enforceable in accordance with its terms, and there are no consents of any third party required for the consummation of the transaction contemplated herein.
- 4.2.4** The person executing this Agreement on behalf of Westwood is duly authorized to execute and deliver this Agreement, and Westwood intends to be bound by this Agreement's terms and conditions.
- 4.2.5** Westwood's use of the Donation is and shall be solely and exclusively for public purposes and uses and not for any private purpose or use.
- 4.2.6** Westwood acknowledges that except as provided in Section 4.1 hereof, **(a)** Donor has made no representations or warranties of whatever kind or nature about the Property, **(b)** Donor has made no representation or warranty whatever about the Property's condition, fitness for any particular use, value or otherwise and **(c)** in connection with its purchase of the Property, Westwood is relying solely upon its own judgment and the judgment of its own experts and whatever investigations of the Property that Westwood has

elected to perform in determining whether or not to accept the Donation.

5. Title; Survey.

5.1 Title Commitment. Attached as **Exhibit "B"** hereto is a commitment for an owner's policy of title insurance issued by the Title Company (the "Title Commitment"), together with complete and legible copies of all instruments listed as exceptions therein.

5.1.1 Donor shall donate the Property to Westwood subject to the Gaar Lease, to real estate taxes and assessments outstanding against the Property, to Title Commitment exceptions _____, to any matters caused or suffered by Westwood or by its agents or invitees and to any matters, to any matters cause by Joanne Gaar or by the Gaar Trust and to any matters which an accurate survey of the Property would show (collectively, the Permitted Exceptions"). Any matter which Donor shall cause the Title Company to omit from the Title Commitment or the owner's title policy shall be deemed to be released.

5.1.2 Westwood shall have forty-five (45) days after it has received both the Title Commitment and the Survey (as defined in Section 5.2 hereof) to object to any matters excepted or referenced in the Title Commitment. Matters accepted by Westwood shall be deemed to be part of the Permitted Exceptions. Donor shall have twenty (20) days from the date of its receipt of Westwood's title objections (the "Title Curing Period") within which it shall take any reasonable actions as may be necessary to cure or remove any such defects or objections, at no cost or at nominal cost, and have an amended Title Commitment issued. Any such objection which may be cured at Closing by disbursement of funds may be so cured by Donor at Closing; provided, however, that Donor shall notify Westwood during the Title Curing Period of its intention to cure any defect or objection by disbursement of funds at Closing.

5.1.3 If defects or objections are not cured or removed to Westwood's satisfaction within the Title Curing Period, then Westwood shall have an additional ten (10) days in which to elect to terminate this Agreement by reason of such defects or objections. Alternatively, Westwood may, within such ten (10) day period, elect to accept such

title as Donor can convey. Notwithstanding the foregoing, if at or prior to Closing there is any defect or objection to title not set forth in the Title Commitment and of which Westwood is first made aware after Westwood's receipt of the Title Commitment, and if Westwood shall be unwilling to waive the same, Westwood shall notify Donor at or prior to Closing and Donor may (but need not) take such reasonable actions (at no cost or at nominal cost) as shall be necessary to remove such defects or objections. If such defects or objections are not cured or removed to Westwood's satisfaction within ten (10) days after Westwood's request that the same shall be removed (and if Donor shall not agree to cure such defect or objection by the disbursement of funds at Closing), then Westwood shall, for a period of ten (10) days thereafter, have the same rights with respect to such defect or objection and terminating this Agreement or closing title as are set forth above with respect to any such defect or objection appearing in the initial Title Commitment.

- 5.2** Survey. Annexed hereto as **Exhibit "C"** is that certain ALTA/NSPS Land Title Survey, dated September 7, 2023 (the "Survey"), prepared by George Butler Associates, Inc. Westwood may at its own expense purchase any update of the Survey or any new survey of the Property. Donor shall convey the Property to Westwood subject to the matters shown on the Survey and to any other matters that an accurate and current survey of the Property would show.

6. Condemnation and Casualty.

- 6.1** **Condemnation.** If, at or before Closing, any condemnation proceeding affecting any part of the Property shall be commenced, then Donor shall give written notice of such condemnation proceeding within five (5) days of receiving notice thereof. In the event that such condemnation shall be completed prior to Closing, then Donor shall retain any proceeds paid to Donor as a result of such condemnation (and Donor shall, at Closing, convey to Westwood such interest in the Property that Donor owns at Closing). In the event that such condemnation shall not have been completed prior to Closing, then at Closing, Donor shall assign to Westwood all of Donor's rights to receive any condemnation proceeds in connection with such condemnation, and it is understood that no condemnation shall be grounds for cancellation of this Agreement by Westwood).

- 6.2 Casualty.** If the Property shall be damaged by casualty, Donor (and not Westwood) shall be entitled to receive any insurance proceeds in connection with the casualty, and it is understood that no casualty shall be grounds for cancellation of this Agreement by Westwood.
- 7. Donor's Obligations at Closing.** At Closing, Donor shall perform the following:
- 7.1** Execute, acknowledge and deliver to the Title Company a gift deed which conveys, to Westwood, fee simple title to the Property subject to the Permitted Exceptions.
 - 7.2** If the Gaar Lease shall then be in effect, execute and deliver to Westwood and an assignment and assumption of the Gaar Lease in the form annexed hereto as **Exhibit "D"** (the "Lease Assignment")
 - 7.3** Execute and deliver a quitclaim bill of sale in the form annexed hereto as **Exhibit "E"** conveying to Westwood all of the tangible personal property owned by Donor and which is a part of the Property.
 - 7.4** Execute and deliver a "FIRPTA" certificate confirming that Donor is not a "foreign person" within the meaning of Sections 897 and 1445 of the Internal Revenue Code of 1986, as amended, and any rules, regulations and orders promulgated thereunder.
 - 7.5** Execute and deliver Internal Revenue Service Form 8283 ("Form 8283") concerning "Noncash Charitable Contributions") concerning the Property.
 - 7.6** Terminate the KREC Agreement.
 - 7.7** Execute and deliver such customary miscellaneous closing documents as the Title Company may request.
- 8. Westwood's Obligations at Closing.** At Closing, Westwood shall perform the following:
- 8.1** If the Gaar Lease shall then be in effect, execute and deliver to Donor the Lease Assignment.
 - 8.2** Execute and deliver Form 8283 and the Donation Acknowledgement (as defined in Section 11.2 hereof) concerning the Property.

- 8.3** Execute and deliver such customary miscellaneous closing documents as the Title Company may request.
- 8.4** Execute, acknowledge, deliver and cause to be recorded in the Johnson County Kansas Register's Office (the "Register's Office") an instrument spreading, to the Property, the City Park Covenants (as defined in Section 11.1 hereof).

9. Costs and Fees; Prorations.

- 9.1** Westwood shall pay the cost of recording the deed as well as the cost of any update of the Survey, and Westwood shall pay the cost of its owner's (and if applicable, any lender's) title insurance policy and any endorsements. The parties shall split the Title Company's escrow fees for a standard, all-cash closing, and Westwood shall pay any additional escrow fees. Each party hereto will pay the fees and costs of its own counsel.
- 9.2** No rents are payable pursuant to the Gaar Lease, so there shall be no rents for the Property to be prorated between Donor and Westwood. All real estate taxes and assessments and all utilities as to the Property are payable by Joanne Gaar, so there shall be no proration of real estate taxes or utilities between Donor and Westwood, and if any delinquent taxes or assessments are due and payable with respect to the Property, then Donor's conveyance of the Property to Westwood shall be subject to such delinquent taxes or assessments.

- 10. Notices.** Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if in writing and mailed by restricted or certified or express United States mail, postage prepaid, or delivered by hand (including by any national recognized overnight delivery service or otherwise), and addressed as follows:

To Westwood:

City of Westwood, Kansas
Attn: Mayor
4700 Rainbow Boulevard
Westwood, Kansas 66205

With a copy to:

Ryan B. Denk, Esquire
McAnany, Van Cleave & Phillips, P.A.
10 E. Cambridge Circle Drive, Suite 300
Kansas City, Kansas 66103

To Donor:

c/o Karbank Real Estate Company LLC
2000 Shawnee Mission Parkway, Suite 400
Mission Woods, Kansas 66205
Attention: Adam Feldman, Esquire

With a copy to:

c/o Karbank Real Estate Company LLC
2000 Shawnee Mission Parkway, Suite 400
Mission Woods, Kansas 66205
Attention: Neil D. Karbank, Esquire

Each party may specify that notice be addressed to any other person or address by giving to the other parties ten (10) days prior written notice thereof.

11. Further Assurances; Donation Acknowledgement; Time of Essence.

- 11.1** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by Donor and Westwood, each agrees to perform, execute and/or deliver any and all such further acts, deeds and assurances as may be reasonably required to assist or consummate the transactions contemplated hereby. Westwood shall fulfill its obligation to use the Property only as part of the City Park (pursuant to Section 2 hereof) by, among other things, subjecting the Property to any declaration of covenants or restrictions (the "Park Covenants") to which Westwood agrees and to which Westwood has subjected or has agreed to subject other lands comprising or to comprise all or part of the City Park.
- 11.2** Westwood shall, concurrently with Donor's making of all or part of the Donation, cause the acknowledgment form annexed hereto as **Exhibit "F"** (the "Donation Acknowledgement") to be executed and delivered, by Westwood to and for the benefit of each Donor which has made such portion of the Donations. The Donation Acknowledgement shall contain:

- Donor's name
- Westwood's name
- Westwood's tax identification number
- Confirmation that Westwood is a municipal corporation organized under Kansas law
- The dollar value of the Donation (as set forth on Form 8283) made by Donor and received by Westwood
- A statement that no goods or services were provided by the organization in exchange for or in connection with such Donation and that such Donation is strictly for a public purpose.

11.3 Time shall be of the essence as to Donor's and Westwood's obligations hereunder.

12. Successors and Assigns; Irrevocable Promises; Westwood's Reliance.

12.1 This Agreement shall bind and inure to the benefit of Donor and to Westwood.

12.2 Donors acknowledges that **(a)** its promise to make the Donation provided herein is irrevocable except as to the conditions set forth herein and that **(b)** Westwood is relying upon Donor's promise to make the Donation to Westwood, subject, however, to the terms and conditions set forth herein.

13. Miscellaneous.

13.1 Incorporation of Recitals. The recitals contained in the introduction to this Agreement are intended to provide the factual context for this Agreement and for the parties' respective performances hereunder.

13.2 Entire Agreement; Amendment; Severability. This Agreement embodies the entire agreement between the parties relative to the subject matter hereof and there are no oral or other agreements existing between the parties relative to the subject matter hereof which are not expressly set forth herein and covered hereby. This Agreement may be amended only by an instrument in writing signed by the parties hereto. The invalidity or unenforceability of any term or provision of this Agreement or the non-application of such term or provision to any person or circumstance shall not impair or affect the remainder of this Agreement, and its application to other persons and circumstances and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

- 13.3 Cumulative Rights; No Waiver.** The rights and remedies of each party hereto, as well as those provided or accorded by law, shall be cumulative, and none shall be exclusive of any other rights or remedies hereunder or allowed by law. A waiver by either party hereto of any breach or breaches, default or defaults by the other party hereto shall not be deemed or construed to be a continuing waiver of such breach or default nor as a waiver of or permission, expressed or implied, for any subsequent breach or default.
- 13.4 Applicable Law and Venue; Attorneys' Fees and Costs.** This Agreement shall be deemed to be entered into in the State of Kansas, and shall be construed in accordance with the local laws of the State of Kansas. The sole and exclusive venue for any legal action based upon or in any way relying upon this Agreement shall be in the District Court of Johnson County, Kansas. This Agreement shall be enforceable by one or more actions for damages or for specific performance, in which event the bond required for any action for injunctive relief shall be One Thousand (\$1,000.00) Dollars in cash. In the event of litigation seeking the enforcement or interpretation of this Agreement, the party prevailing in litigation shall be entitled to receive from the non-prevailing party or parties the prevailing party's or parties' reasonable attorneys' fees and costs for such enforcement or interpretation.
- 13.5 Counterparts; Facsimile Execution and Delivery.** This Agreement may be executed in several counterparts (including by facsimile or electronic signatures), each of which is deemed an original. Such counterparts shall, taken together, constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

K-FRANS LLC

By: _____
Adam Feldman, an Authorized Representative

CITY OF WESTWOOD, KANSAS

By: _____
David E. Waters, Mayor

ATTEST:

By: _____
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan Denk, City Attorney

Table of Exhibits

- Exhibit A: Gaar Lease
- Exhibit B: Title Commitment
- Exhibit C: Survey of the Property
- Exhibit D: Lease Assignment
- Exhibit E: Bill of Sale
- Exhibit F: Donation Acknowledgment Form

RESIDENTIAL LEASE AGREEMENT

THIS RESIDENTIAL LEASE AGREEMENT (this "Lease") is made and entered into on this 31st day of October, 2023, by and among **KARBANK HOLDINGS LLC**, a Delaware limited liability company ("Landlord") having an address c/o Karbank Real Estate Company LLC, 2000 Shawnee Mission Parkway, Suite 400, Mission Woods, Kansas 66205; **JOANNE M. GAAR** having an address c/o John L. Gaar, AIA, Finke + Williams Architecture, 8787 Renner Boulevard, Suite 100, Leawood, Kansas 66219 ("Tenant"); and **THE JOANNE MAUREEN GAAR TRUST** dated 11/1/1994 ("Guarantor"),

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Tenant has long lived in a single-family home located at 2322 West 51st Street, Westwood, Kansas (such home, together with the land and all appurtenances and all fixtures, is the "Property", which is Johnson County, Kansas parcel number RP30000001 0011); and

WHEREAS, pursuant to that certain Real Estate Purchase Agreement, dated August 21, 2023 (the "Contract"), between Landlord, as buyer, and Guarantor, as seller, Landlord has purchased the Property from Guarantor; and

WHEREAS, pursuant to the Contract, Landlord's purchase of the Property was intended to be subject to a lease of the Property to Tenant, and this Lease is intended to be such lease to Tenant; and

WHEREAS, it is the intent of this Lease that Tenant may live, rent-free, for the remainder of her life at the Property provided, however, that Tenant or Guarantor timely pay, during such tenancy, all of the real estate taxes and assessments and homeowners' association dues assessed against the Property, all of the utility charges for the Property, all premiums for all homeowners' or renter's fire and extended coverage insurance for the Property and all premiums for liability insurance for the Property and all of the operating costs for the Property (including without limitation the costs of all repairs, maintenance and replacements at the Property) during the term of this Lease; and

NOW THEREFORE, Landlord, Tenant and Guarantor hereby agree as follows.

1. Property.

- 1.1** Landlord hereby leases to Tenant, and Tenant hereby demises from Landlord, the Property, on and subject to the terms contained herein.
- 1.2** The Property has been furnished by Tenant, and all of the furnishings, appliances, furniture and other personal property now located on the Property or to be located on the Property during the Term (as defined in Section 2 hereof) belonging to Tenant shall remain the personal property of Tenant. Accordingly, Landlord is leasing the Property to Tenant in ABSOLUTELY "AS IS" CONDITION.

2. Term; Surrender.

2.1 The term of this Lease (the "Term") shall commence on the date hereof (the "Commencement Date") and shall end on a day (the "Expiration Date") which shall be the earlier of **(a)** Guarantor's and Tenant's surrender of the Property to Landlord, or **(b)** the day which is not later than thirty (30) days after Tenant's death, unless sooner terminated in accordance herewith.

2.2 On the Expiration Date, Tenant (or Guarantor and Tenant, as the context shall require) shall **(a)** surrender the Property to Landlord, after first having removed, from the Property, all of Tenant's personal property and the personal property of any third parties) and **(b)** deliver to Landlord a notice disclaiming any further interest in the Property as of the Expiration Date,

3. No Rent: Tenant shall not be obligated to pay any rent for the Property, provided, however, that Tenant shall timely pay all of the costs described in Sections 4, 5, 6 and 7 hereof.

4. Utilities. Tenant shall at her expense pay all charges for all utilities serving the Property, including electricity, gas, water and sewer, gas, telephone, Internet service, cable television, natural gas, trash collection, lawn and shrub care and snow and ice removal services. Tenant shall be solely responsible for contacting the foregoing utility providers, commencing or maintaining any utility service and arranging for billing and payment.

5. Real Estate Taxes and Assessments. Tenant shall at her expense pay (or at Landlord's option, reimburse Landlord for) all real estate taxes and assessments and homeowners' dues assessed against the Property (collectively, "Taxes") within ten (10) days of Landlord's request thereof.

6. Insurance and Indemnity.

6.1 Landlord shall, throughout the Term, maintain liability, fire and replacement cost extended coverage insurance on the Property. All such insurance shall be for the sole benefit of Landlord and under its sole control. Tenant shall pay the costs of such insurance within ten (10) days of Landlord's billing Tenant therefore.

6.2 Tenant shall, throughout the Term and at its expense, maintain "all risk" (fire, extended coverage, theft, vandalism, etc.) coverage on all of Tenant's personal property and fixtures in or on the Property in an amount equal to the replacement cost thereof, it being understood that, with respect to Tenant's personal property or fixtures, Landlord shall neither be responsible for any loss or damage nor carry any insurance whatever on any of such property or fixtures.

6.3 Tenant covenants at all times to indemnify, defend and hold Landlord harmless from all loss, liability, cost or damages that may occur or be claimed with respect to any person or persons, entity or property on or about the Property resulting from any act done or omission by or through Tenant, its agents, employees, invitees, or any person on the Property by reason of Tenant's use or occupancy

or resulting from Tenant's non-use or possession of the Property and any and all loss, cost, liability, or expense resulting therefrom. Tenant further covenants and agrees to maintain at its expense, at all times during the Term, renter's insurance with a responsible insurance company, licensed to do business in the State of Kansas satisfactory to Landlord, properly protecting and indemnifying Landlord and Landlord's mortgagees (if any) for a single combined limit of not less than Five Hundred Thousand (\$500,000.00) Dollars for personal injury, bodily injury, death or property damage with respect to the Property. Tenant shall furnish Landlord with a certificate or certificates of insurance regarding such insurance so maintained by Tenant, naming Landlord and Landlord's mortgagees as additional insureds and stating that such insurance may not be modified or cancelled, nor the coverage thereunder reduced, except upon thirty (30) days' prior written notice to Landlord and Landlord's mortgagees.

7. **Maintenance, Repairs and Replacements; Inspections.** Tenant shall at her expense and sole discretion maintain the roof, foundations, structure, walls, paving, plumbing, heat and air conditioning systems, all appliances, all landscaping and irrigation and any and all other components of or systems at the Property, so that the residence is habitable. Tenant and Landlord do not anticipate any needed repairs, and they intend to transfer the Property as part of the Contract "as-is" with all defects to the residence and intend that Tenant maintain the property in habitable condition during the Term. Tenant shall cause all of the costs thereof to be timely paid so that no liens against the Property shall be filed (and Tenant shall, at tenant's expenses within ten [10] days' of Landlord's request therefor, clear any such liens that are filed). Landlord shall have no maintenance, repair or replacement obligations, as to the Property or any part thereof, whatever.
8. **Alterations.** Tenant may make alterations, additions or improvements to the Property without Landlord's, but Tenant shall not allow any mechanic's or materialmen's liens to be filed against the Property. In the event that any such liens are filed, Tenant shall at its expense cause such liens to be cleared or bonded over.
9. **Pets.** Tenant shall be allowed to have and keep no more than one (1) dog on the Property.
10. **Residential Use Only; Compliance With Law and Regulation.** The Property may be used by Tenant only for her residential purposes, and shall in no event be used by Tenant for commercial purposes (including, without limitation, renting to other persons). The Property may be occupied only by Tenant and any caretaker hired for Tenant's benefit for so long as Tenant is living at the Property. Tenant agrees not to use the Property for any purpose contrary to applicable law, ordinance, or regulation, and further agrees to prevent any disorderly conduct, noise or nuisance whatsoever in or about the Property. Tenant agrees to prevent overloading or abuse of floors, walls, electrical apparatus and wiring, and to prevent any use of the Property which would render Landlord's insurance void and/or Landlord's insurance risk more hazardous or costly. Tenant has examined the Property at the time of execution of the Lease and accepts them in their present condition. Tenant expressly assumes all risks of any kind or nature to Tenant's personal property located at the Property, and in no event shall Landlord be held liable for any damage to or loss or destruction of such personal property. In no event shall Tenant ever store, keep, or maintain on the Property any gasoline or any other flammable or explosive or hazardous substance except for

reasonable quantities of cleaning solutions for use at the Property.

11. Quiet Enjoyment.

11.1 So long as Tenant is not in default hereunder, Landlord covenants to respect Tenant's right of quiet enjoyment of the home on the Property.

11.2 Landlord and/or Landlord's agents may enter the Property at reasonable hours and upon reasonable notice (except in the event of emergency) to examine or to do anything Landlord may reasonably be required to do hereunder or which Landlord reasonably may deem necessary for the good of the Property and to show the Property to Landlord's lenders or architects or contractors or to any prospective purchaser. If Tenant fails to maintain the Property (including without limitation the lawns, shrubs, sidewalks, driveways and parking lots) in good and sanitary order, condition and repair as required by this lease, or if the Property are damaged by the negligent or willful act or omission of Tenant or any of its agents, employees, invitees or licensees, Landlord shall have the right but no obligation, in addition to all other rights and remedies available to Landlord under this lease or by law, to enter the Property and to do such acts and expend such funds at the expense of Tenant as are reasonably required to keep the Property in good and sanitary order, condition and repair. Any amount so expended by Landlord and that were incurred directly as the result of the residence being uninhabitable and associated repairs or maintenance made by Landlord that rendered the residence habitable shall be reimbursed by Tenant within ten (10) days from the date of Landlord's notice of the amounts so expended. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Property by Tenant resulting from Landlord's performance of maintenance or repair or replacement work.

12. No Assignment or Sublease. Tenant shall not assign its interest in this Lease or sublease or license any of the Property without Landlord's prior written consent, which Landlord may withhold in Landlord's sole and absolute discretion, and Tenant acknowledges that Landlord has leased the Property to Tenant on the terms and conditions set forth herein based on Landlord's assessment of Tenant's character and Landlord's perception of Tenant's and Guarantor's ability to perform all of Tenant's obligations hereunder.

13. Casualty. If the Property is damaged by a casualty, such as (for example and without limitation) fire, and which renders the Property unfit for residential use, Tenant shall vacate the Property and remove all of her personal property from the Property and surrender the Property to Landlord, and upon such surrender (and notice from Tenant and Guarantor that they are surrendering the Property to Landlord pursuant to Section 2.2 hereof), the Term shall end on such date of surrender and notice. If the Property is substantially damaged by a casualty, such as (for example and without limitation) fire, which is caused by the fault or negligence of Tenant, or Tenant's guests or invitees, Tenant shall continue to pay all of the costs described in Sections 4, 5, 6 and 7 through the Expiration Date.

14. Default.

- 14.1** Tenant's failure to timely pay all of the costs described in Sections 4 through 7 hereof, or to perform any covenant under this Lease, after ten (10) days' notice to cure, shall constitute an event of default hereunder.
- 14.2** Upon the occurrence of an event of default, Landlord may at any time, in addition to any other remedy provided herein or under Kansas law, evict Tenant in accordance with the laws of the State of Kansas regarding forcible entry and detainer, and all sums payable by Tenant to Landlord, to the end of the Term, shall be immediately due and payable.
- 14.3** Upon termination of the Lease, Tenant shall peacefully surrender the Property to Landlord, and Landlord may, upon, or at any time after such termination, without further notice, re-enter the Property and repossess it by force, summary proceedings, ejectment, or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Property. At any time after such termination, Landlord may re-rent the Property or any part thereof, in the name of Landlord or otherwise for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions as Landlord, in its sole discretion, may determine, and may collect and receive the rents therefor. No such termination of the Lease shall relieve Tenant of its liability and obligations under the Lease, and such liability and obligations shall survive any such termination.

15. Landlord's Liability. Recourse by Tenant for any claim against Landlord shall at all times be limited to Landlord's interest in the Property, and Tenant hereby waives any right to assert any claims against any other interest of Landlord or of Landlord's members, managers, principals or affiliates. The term "Landlord" as used in this lease, so far as agreements on the part of Landlord to be performed are concerned, shall be limited to mean the owner of the landlord's interest in the Property at the time in question; in the event of any transfer of such interest (except for transfers as security), the particular lessor named herein shall be automatically freed and relieved from and after the date of such transfer of any and all liability for acts then to be performed by Landlord hereunder.

16. Estoppel Certificates; Subordination.

- 16.1** Upon Landlord's request, Tenant shall execute, acknowledge and deliver an estoppel certificate prepared by Landlord stating, if the same be true, that this Lease is a true and exact copy of the lease between the parties hereto and that there are no amendments hereof (or stating what the amendments are) that the same is then in full force and effect and that, to the best of Tenant's knowledge, there are no offsets, defense or counterclaims with respect to the payment of rent reserved hereunder or in the performance of the other terms, covenants and conditions hereof on the part of Tenant to be performed, and that as of such date, no default has been declared hereunder by either party hereto, and that Tenant, at the time, has no knowledge of any facts or circumstances which it might reasonably believe would give rise to a default by either party.

Notwithstanding anything to the contrary contained herein, without relieving Tenant of its obligation under this Section, Tenant's failure to execute, acknowledge and deliver to Landlord such estoppel certificate within ten (10) days after written demand shall constitute the acknowledgment of Tenant that all matters set forth in such instrument are true and correct.

- 16.2** This Lease shall be subject and subordinate to any mortgage now or at any time hereafter constituting a lien or charge upon all or any portion of the Property. Tenant shall at any time hereafter on demand execute any instruments, releases or other documents which may be required by any such mortgagee for the purpose of subjecting and subordinating this lease to the lien of any such mortgage. Landlord may from time to time grant such utility, access or other easements on or over the Property provided, however, that no such easement grant shall disturb Tenant's use or enjoyment of the home on the Property.

17. Holding Over. Tenant acknowledges that any holdover would significantly damage Landlord. If Tenant or Guarantor shall, without Landlord's written consent, continue to occupy the Property after the expiration of the Term, Landlord shall be entitled to damages therefor and Tenant hereby consents to Landlord immediately taking possession of the Property and evicting Tenant without any need to obtain a court order.

18. Binding Effect. The duties and obligations of this Lease shall extend to and be binding jointly upon the parties hereto and their respective heirs, successors and assigns.

19. Section Headings. Section headings employed herein are for convenience of reference only and shall not in any manner be construed as enlarging or limiting the meaning of any text hereof.

20. Choice of Law and Forum. The laws of the State of Kansas shall govern the interpretation, validity, performance and enforcement of this Lease. In the event of any litigation regarding this Lease, such litigation shall be conducted exclusively in the State courts of Johnson County, Kansas, and the parties expressly subject themselves to the jurisdiction of such courts. In the event that this Lease should become the subject of litigation, including upon appeal, between Landlord and Tenant, the court shall award a reasonable attorney's fee as part of the costs to the substantially prevailing party in such litigation.

21. Severability. If any provision of the Lease should be invalid and unenforceable, the remaining provisions shall nevertheless remain unaffected and continue in full force and effect as valid and enforceable.

22. Entire Agreement. This Lease contains the entire understanding of the parties respecting the subject matter hereof. There are no representations, warranties, covenants, or undertakings other than those expressly set forth herein. This Lease is the complete agreement between Landlord and Tenant concerning the Property. There are no oral agreements, understandings, promises or representations between Landlord and Tenant affecting this Lease. All prior negotiations and understandings between Landlord and Tenant with respect to the Property shall be of no force or effect and shall not be used to interpret this Lease. Landlord and Tenant

expressly agree that there are and shall be no implied warranties of merchantability, habitability, fitness for a particular purpose or of any other kind arising out of this Lease and there are no warranties which extend beyond those expressly set forth in this Lease.

23. Modification, Waiver. A modification or waiver of any of the provisions of this Lease shall be effective only if made in writing and executed with the same formality as the Lease. The failure of either party to insist on strict performance of any of the provisions of this Lease shall not be construed as a waiver of any default.

24. Notices. In any case for which notice is required, it will be presumed that notice has been given when delivered by hand or three days following its being sent by overnight delivery service (i.e. FedEx or UPS) or by certified mail, return receipt requested, to the address of either party as set forth in the first paragraph of this Lease or as designated by either party in writing to the other.

25. Time of the Essence. Time is of the essence as to all of Tenant's obligations hereunder.

26. Unconditional Guaranty: Guarantor and Tenant acknowledge that Landlord would not enter in this Lease without the full and unconditional guaranty, by Guarantor, of all of Tenant's obligations hereunder, and Guarantor hereby unconditionally guarantees all of Tenant's obligations hereunder. Landlord may recover from Guarantor any sums or performance owed hereunder or any damages or losses suffered hereunder without first pursuing claims therefore against Tenant, and Guarantor hereby acknowledges the choice of law and forum provisions, and attorneys' fees provisions, provided herein, all of which are deemed to be incorporated into this guaranty and which shall be applicable to Guarantor.

27. Counterparts and Facsimiles. This Lease may be executed in any number of counterparts, each of which shall be effective upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same affect as if all parties hereto had signed the same signature page. Facsimile signatures shall for all purposes be regarded as originals.

28. Tenant's Cooperation. Tenant shall cooperate with and consent to any and all applications in the name of Landlord (or its designee[s], including, without limitation, the City of Westwood, Kansas and Unified School District No. 512, Johnson County, State of Kansas) pertaining to the Property or any portions thereof including, without limitation, applications regarding zoning, platting, development plans, TIF districts, etc. If requested by Landlord (or its designee[s]), Tenant shall evidence such cooperation and/or consent in writing or by executing necessary documents, within three (3) days of any request by Landlord (or its designee[s]). Landlord shall ensure that Tenant's cooperation and/or consent herein shall not impair Tenant's use of the home on the Property as a residence during the term of the Joanne Gaar Lease.

[Signatures commence on the following page]

IN WITNESS WHEREOF, Landlord, Tenant and Guarantor have executed this Lease as of the day and year first above written.

KARBANK HOLDINGS LLC, as Landlord

By: 
~~a Manager~~ Adam Feldman, Authorized Agent

JOANNE MAUREEN GAAR, as Tenant

 . POA

THE JOANNE MAUREEN GAAR TRUST dated 11/1/1994, as Guarantor

By: 
John L. Gaar, Trustee



Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Issuing Agent: First American Title Insurance Company National Commercial Services
Issuing Office: 1100 Main Street, Suite 1900, Kansas City, MO 64105
Issuing Office's ALTA® Registry ID: 1145674
Commitment Number: NCS-1189062-KCTY
Issuing Office File Number: NCS-1189062-KCTY
Property Address: 2322 West 51st Street, Westwood, KS 66205
Revision Number: 1

FIRST AMENDMENT

SCHEDULE A

- 1. Commitment Date: August 09, 2023 at 8:00 a.m.
- 2. Policy to be issued: POLICY AMOUNT
 - a. ALTA® Extended Owner's Policy
Proposed Insured: Harbank Holdings, LLC, a Delaware limited liability company
Proposed Amount of Insurance: \$550,000.00
The estate or interest to be insured: See Item 3 below

3. The estate or interest in the Land at the Commitment Date is:

Fee Simple

4. The Title is, at the Commitment Date, vested in:

Joanne Maurine Gaar, Trustee of the Joanne Maurine Gaar Lifetime Trust Created Under Trust Instrument dated November 1, 1994

5. The Land is described as follows:

In the County of Johnson, State of Kansas, as described in Exhibit A attached hereto and made a part thereof.

If there are any questions concerning this Commitment, please contact:

Alexa Scott at AleScott@firstam.com

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.



First American

Item B. Section X, Item

**Commitment for Title Insurance
Kansas - 2021 v. 01.00 (07-01-2021)**

First American Title Insurance Company
National Commercial Services
1100 Main Street, Suite 1900
Kansas City, MO 64105
(816)410-7911 phone

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2021 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited.
Reprinted under license from the American Land Title Association.

Form 50186120 (10-5-22)

Page 2 of 12



Commitment No. NCS-1189062-KCTY

SCHEDULE B, PART I—Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. If there has been construction, improvements or repairs to or on the property in the last 12 months, or a portion or all of the loan proceeds will be used for such, then unrecorded mechanics lien coverage will not be furnished unless arrangements are made prior to closing. If the property is 1-4 family residential, a Mechanic's Lien Indemnity Agreement secured by a satisfactory Letter of Credit will need to be furnished to the company. If the property is not 1-4 family residential, either the aforesaid secured indemnity or satisfactory financial statements, indemnities, affidavits and possibly lien waivers, will need to be furnished to the company. Failure to notify the company in writing before closing will invalidate any mechanic's lien coverage given in the policy.
6. In order to delete Exceptions 1, 5 and 6 on Schedule B - II, the Company requires a properly completed and executed Owner's Affidavit in a form that is acceptable to the Company.
7. In regard to Karbank Holdings, LLC, we require the following:
 - A) Furnish a copy of the Articles of Organization and the Operating Agreement.
 - B) Furnish a Certificate of Good Standing from the Delaware Secretary of State's office.
 - C) Furnish a resolution of the members authorizing the proposed transaction.
 - D) The proposed transaction should be executed by all the members of the LLC unless provided otherwise in the operating agreement. If the members of the above referenced limited liability company are entities other than individuals, additional requirements will be made.

Upon review of these items we reserve the right to make further requirements.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2021 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



8. Furnish a Certificate of Trust, along with the relevant portions of the Trust that give the powers, the name of the trustee(s), and the legal name of the Trust with date, for the Joanne Maurine Gaar Lifetime Trust Created Under Trust Instrument dated November 1, 1994, and any amendments thereto.

Upon review of the above items requested we reserve the right to request a full copy of the Trust Agreement in the event of inconsistencies.

NOTE: The Trustee's Deed must state a) that the Trust remains in full force and effect b) that the Trust has not been amended other than as stated c) that the trustee executes the Deed pursuant to the power of sale granted him/her in the Trust Agreement.

In the event of a cancellation, there will be a minimum charge of \$550.00.

CLOSING INFORMATION NOTE: If the closing for the Land is to be conducted by First American Title Insurance Company, we require all monies due to be in the form of a cashier's check or wire transfer. If the parties use a cashier's check in lieu of wired funds, it may take 24-48 hours to verify with the institution issuing the check that we have good funds. **We are unable to close until we receive this verification and THIS MAY DELAY CLOSING.**

The above applies to all closings unless other specific arrangements are made. Due to wide variances in banking practices and lack of control over funds "on the wire" we cannot accept financial responsibility for delays in the clearing of funds.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2021 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



Commitment No. NCS-1189062-KCTY

SCHEDULE B, PART II—Exceptions

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
2. Rights or claims of parties in possession not shown by the Public Records.
3. Easements, or claims of easements, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation or adverse circumstances affecting Title that would be disclosed by an accurate and complete survey of the Land or that could be ascertained by an inspection of the Land.
5. Any lien or right to a lien for services, labor, material or equipment, unless such lien is shown by the Public Records at Date of Policy and not otherwise excepted from coverage herein.
6. Taxes, or special assessments, if any, not shown as existing liens by the Public Records.
7. The lien of the general taxes for the year 2023, and thereafter.

Taxes for the year 2022 in the amount of \$3,719.11 are PAID. This amount includes the following installments for special assessments: WWC STRMWATR and WWC TRASH
TAX PARCEL NO. RP30000001 0011

8. Easements, restrictions and setback lines as per plat, recorded as/in Book 12, Page 50.
9. Covenants and restrictions contained in/on Book 34 Misc., Page 573.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2021 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited.
Reprinted under license from the American Land Title Association.



10. An easement to Kansas City Power & Light Company in the document recorded in Book 38 Misc., Page 8 of Official Records.
11. Tenancy rights, either as month to month, or by virtue of written leases of persons in possession of any part of the subject property.
12. The following matters disclosed by an ALTA/NSPS survey made by GBA Architects Engineers on September 7, 2023, designated Job No. 14031.15:
 - A. Southern most corner of the house is 1.0 South of the 40' platted setback line; and
 - B. Utility lines encroach over the Western boundary line, without the benefit of recorded easements.

NOTE: If any requirements shown on Schedule B-Section I of this Commitment are not complied with, then the requirement or the matters constituting the requirement will be shown as an exception or exceptions on the Policy or Policies provided the Company elects to issue such Policy or Policies.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2021 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



Commitment No. NCS-1189062-KCTY

EXHIBIT A

LOT 11, BLOCK 1, KLASSEN PLACE, A SUBDIVISION IN THE CITY OF WESTWOOD, JOHNSON COUNTY, KANSAS.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2021 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



**ALTA COMMITMENT FOR TITLE INSURANCE
issued by
FIRST AMERICAN TITLE INSURANCE COMPANY**

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY’S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, First American Title Insurance Company, a Nebraska Corporation (the “Company”), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company’s liability and obligation end.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: 
Kenneth D. DeGiorgio, President

By: 
Lisa W. Cornehl, Secretary

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.



COMMITMENT CONDITIONS

1. DEFINITIONS

- a. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.
- b. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.
- c. "Land": The land described in Item 5 of Schedule A and improvements located on that land that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- d. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.
- e. "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- f. "Proposed Amount of Insurance": Each dollar amount specified in Schedule A as the Proposed Amount of Insurance of each Policy to be issued pursuant to this Commitment.
- g. "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- h. "Public Records": The recording or filing system established under State statutes in effect at the Commitment Date under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.
- i. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.
- j. "Title": The estate or interest in the Land identified in Item 3 of Schedule A.

- 2.** If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2021 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



- 3.** The Company's liability and obligation is limited by and this Commitment is not valid without:
- a. the Notice;
 - b. the Commitment to Issue Policy;
 - c. the Commitment Conditions;
 - d. Schedule A;
 - e. Schedule B, Part I—Requirements; and
 - f. Schedule B, Part II—Exceptions; and
 - g. a counter-signature by the Company or its issuing agent that may be in electronic form.

- 4.** COMPANY'S RIGHT TO AMEND
The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company is not liable for any other amendment to this Commitment.

- 5.** LIMITATIONS OF LIABILITY
- a. The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - i. comply with the Schedule B, Part I—Requirements;
 - ii. eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - iii. acquire the Title or create the Mortgage covered by this Commitment.
 - b. The Company is not liable under Commitment Condition 5.a. if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
 - c. The Company is only liable under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
 - d. The Company's liability does not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Condition 5.a. or the Proposed Amount of Insurance.
 - e. The Company is not liable for the content of the Transaction Identification Data, if any.
 - f. The Company is not obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
 - g. The Company's liability is further limited by the terms and provisions of the Policy to be issued to the Proposed Insured.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2021 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



- 6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT; CHOICE OF LAW AND CHOICE OF FORUM**
- a. Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
 - b. Any claim must be based in contract under the State law of the State where the Land is located and is restricted to the terms and provisions of this Commitment. Any litigation or other proceeding brought by the Proposed Insured against the Company must be filed only in a State or federal court having jurisdiction.
 - c. This Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
 - d. The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
 - e. Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
 - f. When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.
- 7. IF THIS COMMITMENT IS ISSUED BY AN ISSUING AGENT**
The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for closing, settlement, escrow, or any other purpose.
- 8. PRO-FORMA POLICY**
The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.
- 9. CLAIMS PROCEDURES**
This Commitment incorporates by reference all Conditions for making a claim in the Policy to be issued to the Proposed Insured. Commitment Condition 9 does not modify the limitations of liability in Commitment Conditions 5 and 6.
- 10. CLASS ACTION**
ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS COMMITMENT, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS COMMITMENT, ANY BREACH OF A COMMITMENT PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS COMMITMENT, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING. ANY POLICY ISSUED PURSUANT TO THIS COMMITMENT WILL CONTAIN A CLASS ACTION CONDITION.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2021 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



11. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Amount of Insurance is \$2,000,000 or less may be arbitrated at the election of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Copyright 2021 American Land Title Association. All rights reserved.

The use of this Form (or any derivative thereof) is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

ALTANSPTS LAND TITLE SURVEY

Lot 11, Klassen Place, a subdivision in the
City of Westwood, Johnson County, Kansas

PREPARED FOR:
Adam Feldman
Karbark Real Estate Company
2000 Shawnee Mission
Parkway, Suite 400

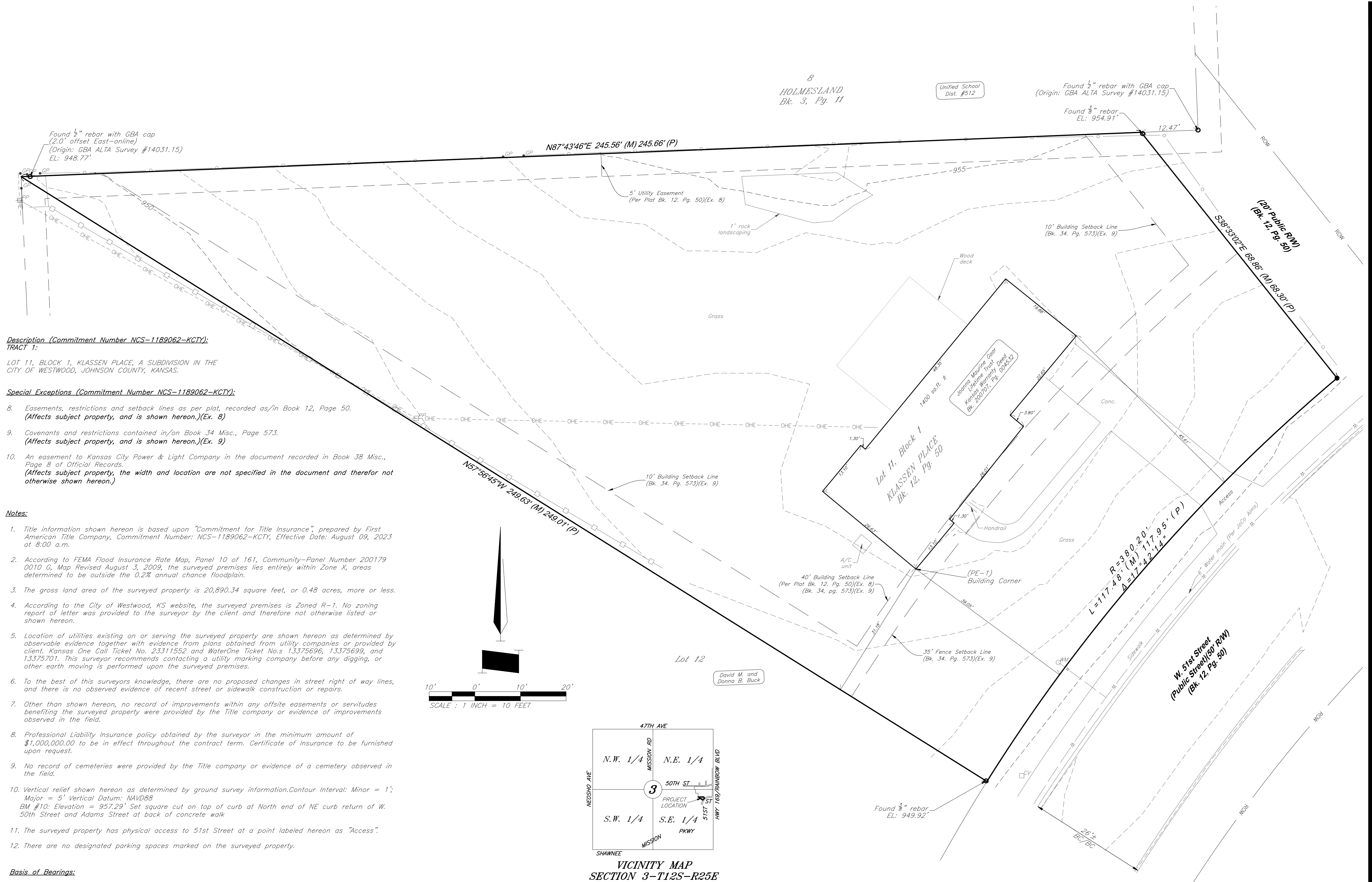
REVISION

PROJECT NUMBER
14031.15
DATE
09/07/2023

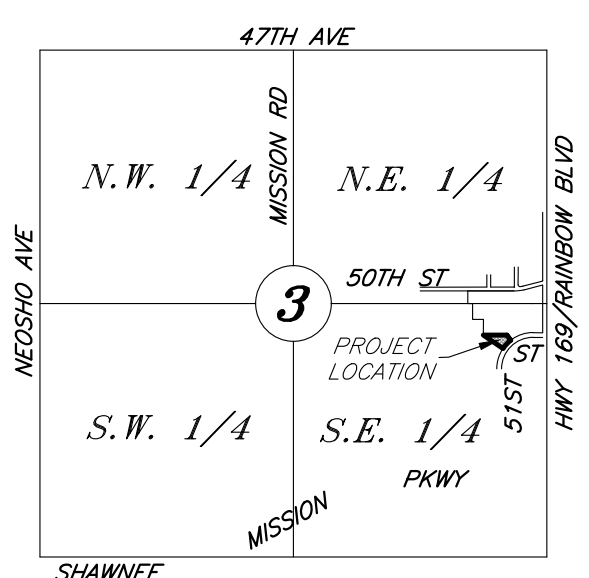
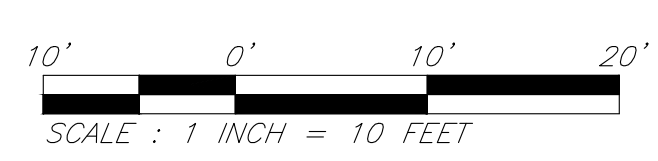
DRAWN
MAP
REVIEWED
TBW

SHEET NUMBER
1 OF 1

Thursday, September 07, 2023, 3:41pm Copyright 2023, George Butler Associates, Inc. G:\14031.15\Civil 3D\Bases Drawings\Survey\1403115F52601-Gear.dwg Layout: 24x36



- Description (Commitment Number NCS-1189062-KCTY):**
TRACT 1:
LOT 11, BLOCK 1, KLASSEN PLACE, A SUBDIVISION IN THE CITY OF WESTWOOD, JOHNSON COUNTY, KANSAS.
- Special Exceptions (Commitment Number NCS-1189062-KCTY):**
- Easements, restrictions and setback lines as per plat, recorded as/in Book 12, Page 50. (Affects subject property, and is shown hereon.)(Ex. 8)
 - Covenants and restrictions contained in/on Book 34 Misc., Page 573. (Affects subject property, and is shown hereon.)(Ex. 9)
 - An easement to Kansas City Power & Light Company in the document recorded in Book 38 Misc., Page 8 of Official Records. (Affects subject property, the width and location are not specified in the document and therefor not otherwise shown hereon.)
- Notes:**
- Title information shown hereon is based upon "Commitment for Title Insurance", prepared by First American Title Company, Commitment Number: NCS-1189062-KCTY, Effective Date: August 09, 2023 at 8:00 a.m.
 - According to FEMA Flood Insurance Rate Map, Panel 10 of 161, Community-Panel Number 200179 0010 G, Map Revised August 3, 2009, the surveyed premises lies entirely within Zone X, areas determined to be outside the 0.2% annual chance floodplain.
 - The gross land area of the surveyed property is 20,890.34 square feet, or 0.48 acres, more or less.
 - According to the City of Westwood, KS website, the surveyed premises is Zoned R-1. No zoning report of letter was provided to the surveyor by the client and therefore not otherwise listed or shown hereon.
 - Location of utilities existing on or serving the surveyed property are shown hereon as determined by observable evidence together with evidence from plans obtained from utility companies or provided by client, Kansas One Call Ticket No. 23311552 and WaterOne Ticket No.s 13375696, 13375699, and 13375701. This surveyor recommends contacting a utility marking company before any digging, or other earth moving is performed upon the surveyed premises.
 - To the best of this surveyors knowledge, there are no proposed changes in street right of way lines, and there is no observed evidence of recent street or sidewalk construction or repairs.
 - Other than shown hereon, no record of improvements within any offsite easements or servitudes benefiting the surveyed property were provided by the Title company or evidence of improvements observed in the field.
 - Professional Liability Insurance policy obtained by the surveyor in the minimum amount of \$1,000,000.00 to be in effect throughout the contract term. Certificate of insurance to be furnished upon request.
 - No record of cemeteries were provided by the Title company or evidence of a cemetery observed in the field.
 - Vertical relief shown hereon as determined by ground survey information. Contour Interval: Minor = 1'; Major = 5' Vertical Datum: NAVD88
BM #10: Elevation = 957.29' Set square cut on top of curb at North end of NE curb return of W. 50th Street and Adams Street at back of concrete walk
 - The surveyed property has physical access to 51st Street at a point labeled hereon as "Access".
 - There are no designated parking spaces marked on the surveyed property.



VICINITY MAP
SECTION 3-T12S-R25E

Legend:

●	Denotes set 1/2" x 24" rebar with GBA cap, CLS - 8, unless otherwise noted	□CV	Cable Vault
○	Denotes Property Corner found as noted	□WM	Water Meter
(P)	Platted Dimension	□PP	Power Pole
(M)	Measured Dimension	---	Existing Contour Major
R/W	Right-of-Way	---	Existing Contour Minor
BC/BC	Back of curb to back of curb	○	Chain Link Fence
		□	Wood Plank Fence
		---	Boundary Line
		---OHE---	Over Head Electric
		---	Underground water line

To: Karbark Holdings LLC, a Delaware limited liability company (and its successors and assigns); Commerce Bank; First American Title Insurance Company;

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 3, 4, 5, 6(a), 7(a), 7(b)(1), 8, 9, 11(a), 17, 18, 19 (\$1,000,000.00), 20 (corner elevations) of Table A thereof. The fieldwork was completed on August 24, 2023.

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE is made as of this ____ day of _____, 2024 (this "Assignment"), by and between **K-FRANS LLC**, a Missouri limited liability company ("**Assignor**"), and **CITY OF WESTWOOD, KANSAS**, a municipal corporation which is a political subdivision of the State of Kansas ("**Assignee**").

FOR NOMINAL CONSIDERATION ONLY, and as part of the donation, by Assignor to Assignee, of all of the real property located at 2322 West 51st Street, Westwood, Kansas (the "Property"), which is legally described as:

- All of Lot 11, Block 1, KLASSEN PLACE, a subdivision in the City of Westwood, Johnson County, Kansas, according to the recorded plat thereof

Assignor hereby assigns, transfers and sets over to Assignee, and to Assignee's successors and assigns, all of Assignor's right, title and interest in and to that certain Residential Lease Agreement, dated October 31, 2023 (the "Lease", a true and complete copy of which is annexed hereto as Exhibit ""A), among Donor (as successor-in-interest to Karbank Holdings LLC, a Delaware limited liability company), as Landlord, Joanne M. Gaar, as Tenant, and The Joanne Maureen Gaar Trust dated 11-1-94, as Guarantor, TO HAVE AND TO HOLD, forever.

Assignee shall have all right, title and interest of Assignor under the Lease as though Assignee were the original party thereunder, and Assignor shall have no right, title, interest or claim whatever in or under the Lease from after the date hereof. Assignee accepts and agrees to perform all of the obligations of Assignor under the Lease arising from and after the date hereof as if it were the original party thereunder, and Assignor shall have no further obligations thereunder.

Assignee agrees to defend and indemnify Assignor against any loss, cost, liability, claim or damages, whenever arising, under the Lease.

This Assignment may be executed in several counterparts, each of which shall be deemed an original, and together such counterparts shall constitute but one and the same instrument. This Agreement may be executed and delivered by the electronic transmission of facsimile signatures, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be executed as of the day and year above written.

K-FRANS LLC
as Assignor

By: _____
a Manager

CITY OF WESTWOOD, KANSAS

By: _____
David E. Waters, Mayor

ATTEST:

By: _____
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan Denk, City Attorney

GIFT BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, as of ____, 2024, that **K-FRANS LLC**, a Missouri limited liability company ("**Donor**"), for no consideration, does hereby donate, quitclaim, transfer, assign and set over unto **CITY OF WESTWOOD, KANSAS**, a municipal corporation which is a political subdivision of the State of Kansas ("**Donee**"), all of Donor's right, title and interest in and to the fixtures and any other personal property (collectively, the "Personalty") incorporated into and comprising part of certain real property and improvements located at 2322 West 51st Street, Westwood, Kansas (the "Property"), which is legally described as:

- All of Lot 11, Block 1, KLASSEN PLACE, a subdivision in the City of Westwood, Johnson County, Kansas, according to the recorded plat thereof -

This Quitclaim Bill of Sale is given to Donee as an element of Donor's donation, to Donee, of all of Donor's right, title and interest in and to the Property.

DONOR MAKES AND HAS MADE NO WRITTEN OR ORAL REPRESENTATIONS OR WARRANTIES OF TITLE OR OTHERWISE, EITHER EXPRESS OR IMPLIED, REGARDING THE PERSONALTY. ALL OF THE PERSONALTY CONVEYED HEREIN BY DONOR IS CONVEYED TO DONEE IN AN "**AS IS**" CONDITION.

K-FRANS LLC

By: _____
Printed name and title:

THE CITY OF WESTWOOD, KANSAS

_____, 2024

K-Frans LLC
Suite 400, 2000 Shawnee Mission parkway
Mission Woods, Kansas 66205

**Re: Acknowledgement of donation of real property located at
West 51st Street, Westwood, Kansas**

Ladies and Gentlemen,

We write to confirm the following donation of real property, and attached is Internal Revenue Service Form 8283 which we have executed.

1. **Donor: K-Frans LLC**, a Missouri limited liability company
2. **Recipient:** The City of Westwood, Kansas, a municipal corporation which is a political subdivision of the State of Kansas (tax ID# _____)
3. **Donation:** All of the real property located at **2322 West 51st Street, Westwood, Kansas 66205**, legally described as:
 - **All of Lot 11, Block 1, KLASSEN PLACE, a subdivision in the City of Westwood, Johnson County, Kansas, according to the recorded plat thereof**
4. **Date of Donation** _____, 2024 (date of receipt by The City of Westwood)
5. This will confirm that no goods or services were provided by The City of Westwood in exchange for or in connection with such donation.
6. This will further confirm that subject to the expiration or termination of an existing residential lease of the Property to 94-year old Joanne Garr, the Property will be used strictly and exclusively for a public purpose, which is as part of a municipal park.

Very truly yours,

THE CITY OF WESTWOOD, KANSAS

By: _____
David E. Waters, Mayor

Attachment: IRS Form 8283

cc: Neil D. Karbank, Esquire
Adam Feldman, Esquire
Ryan Denk, Esquire

COUNCIL ACTION FORM

Meeting Date: June 13, 2024

Staff Contact: Leslie Herring

Agenda Item: Consider Professional Services Agreement with Port Architecture and Urbanism, LLC for park planning and design services

Background/Description of Item

In January 2024, City staff presented a report detailing the history, current status, and future of creating a feature park in Westwood. [That report is available via this link to the January 11, 2024 City Council meeting packet.](#) Since that time, the process has run [generally] as detailed in that report and as reproduced here:

Next Six (6) Months (2024 Q1 – Q2)

- A. Call for steering committee members (November 2023)
- B. City Council work session to review proposed process structure (January 11th)
- C. Selection of steering committee members, determination of calendar for meetings and deliverables (January)
- D. Steering Committee Meeting #1: discuss objectives, expectations, first draft of RFQ for park design consultant (late January/early February)
- E. Steering Committee Meeting #2: agree on final RFQ to publish (i.e. scope of work, selection process dates, requirements of responses, etc.), review where and how RFQ will be publicized (late February/early March)
- F. Issue RFQ (six (6) week response period recommended)
- G. Steering Committee Meeting #3: pre-proposal meeting and hosted site visit with interested firms (late March/early April)
- H. Steering Committee Meeting #4: initial review of responses; selection for interviews (late April/early May)
- I. Steering Committee Meeting #5: interviews; selection and recommendation of planning partner (late May/early June)
- J. City Council consideration of contract with recommended park planning partner (June 13th City Council meeting)
- K. Contract negotiation with selected partner, project kick-off (late June/early July)

The process thereafter would be informed and shaped by the park planning steering committee during the process set forth above.

On March 4, 2024, the Steering Committee first convened to kick-off their work as detailed above. The 15-member committee includes:

Laura Steele (Committee Chair)
(City Councilmember)

Jeff Harris
(City Councilmember)

Sarah Page
(Planning Commission)

Chris Burns
(Communities for All Ages & Applicant)

Steve Karbank, or designee
(Karbank Representative)

Karen Johnson
(Westwood Resident)

Emma Hobick
(Westwood View 6th Grader)

Erica Hartley
(Mission Woods Resident & Applicant)

Chris Minto
(Shawnee Mission East; Westwood)

Kris Boyle
(Westwood Resident & Applicant)

Brandon Joiner
(Westwood Resident & Applicant)

Spencer Day
(Westwood Resident & Applicant)

Jenn Wetzel
(Westwood Resident & Applicant)

Courtney Fitzgerald
(JoCo Developmental Supports)

Greyson Rubin
(Westwood Resident & Applicant)

Upon the completion of the Steering Committee’s work acting in the capacity of design team selection committee, they ultimately selected Port Urbanism through the competitive, open process as detailed in the [RFQ document, available via this link to the City’s website.](#)

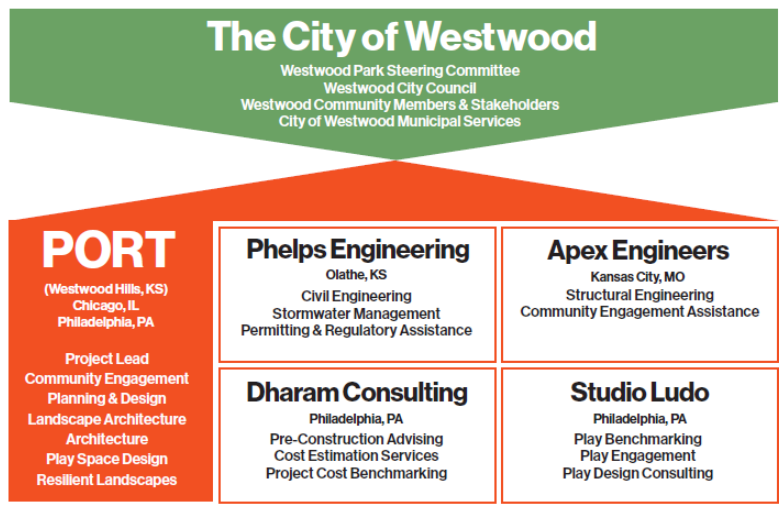
Staff Comments / Committee Recommendation

The RFQ was issued on March 29, 2024 and closed on April 30, 2024. 12 responses were received by the deadline¹ and were reviewed by the Steering Committee. Responses received were submitted by the following team leads:

BBN	HoerrSchaudt	Olsson
Burns & MacDonald	Land3	Port
Confluence	Landworks	SWT
Davidson A+E	Multistudio	Taliaferro & Browne

Through a structured scoring system – followed by a collective qualitative discussion amongst the steering committee – the top four scoring teams were invited to interview with the Steering Committee. These firms are noted with highlight above. Ultimately, following interviews and a final cumulative scoring, Port prevailed as the team recommended by the Committee for consideration by the City Council.

Port submitted the team as shown below (excerpted from their proposal) to lead this work.



We have reserved fees for specialty consultants that may be needed depending on community priorities and the final design scope. These might include a landscape irrigation specialist and a water feature consultant.

¹ A 13th response was later rejected and not reviewed due to City staff not receiving it by the deadline due to a mistype of the submission email address by the submitter and the team not confirming receipt until after the deadline lapsed.

A sampling of Steering Committee notes from the selection process detail the following reasons for the recommendation of this team to lead this important community work:

- “Passion and familiarity with city and efforts that have already happened, extremely creative engagement strategy, love that they are bringing in experts alongside local talent”
- “Studio Ludo and national study of playgrounds. All projects aim for 100% accessibility, not just what is required; feel natural. Include all audiences and engagement methods in the planning too.”
- They have an estimator on the team that they have history working with
- Recognition that “50% of visitors aren't children.”
- “Great framing of memories of old park and new memories in new park”
- “Focused exclusively on public space and making a space for everyone.”
- Focus on preserving and protecting mature trees
- “Understand this is not a linear process and needs to work through the divergent public opinions.”

Likewise, professional references from past projects shared the following comments about Port (this is just a sampling):

- “One of the best firms for value engineering and meeting desires and budget.”
- “They have no weaknesses.”
- “They did the best job of meeting the program with the lightest touch, enhancing the existing attributes of the site, and keeping the scope of the project modest.”
- “Since we started our project, Port has displayed a level of professionalism, creativity and resilience on a level I rarely experience.”
- “From concept to details, extremely well executed.”
- “Once they started the project, they owned this work – and their passion towards the project remains evident today.”
- “They have changed the way we plan and do public engagement.”
- “Great design thinking. Very nimble team. Very creative and engaging. No issues. Very capable, adaptable and detailed oriented.”

Budget Impact

Given the City has not yet closed on its purchase of the future park site (former Westwood View Elementary School site), City staff recommends proceeding at this time only with Phase 1 and a limited Phase 2 scope of the park design process. This work is enumerated in the issued Request for Qualifications and interpreted in Port’s scope of work and proposal included in the meeting packet. City staff has negotiated with Port to conduct this work for a sum of \$46,500.

The sum of \$75,000 was budgeted in fiscal year 2024 in the City’s multi-year Capital Improvement Fund for this work. The work is scheduled to commence August 1st and run through October 18, 2024. Future phases of

the park planning design process are recommended to be considered once there is greater clarity on the timeline and level of certainty for closing on the purchase of the future park site property.²

Suggested Motion

I move to authorize the Mayor to enter into a Professional Services Agreement with Port Architecture and Urbanism, LLC for an amount not to exceed \$46,500 for work as presented in the Proposal included in the meeting packet.

² This certainty and clarity is inextricably related to the slate of documents recommended for consideration and adoption earlier on this City Council meeting agenda.

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into this ____ day of _____, 204, by and between the City of Westwood, Kansas, a municipal corporation (“City,”) and Port Architecture and Urbanism, an Illinois Limited Liability Company having its principle place of business in Chicago, Illinois (“Consultant”).

WHEREAS, the City needs professional assistance to perform the services outlined in the Scope of Services described in Exhibit A; and

WHEREAS, the Consultant represents that it has sufficient experience and qualified personnel to perform the professional services herein described on behalf of the City; and

WHEREAS, The City has determined, based upon information provided by the Consultant, that Consultant is qualified to provide the professional services described herein.

WHEREAS, the City and Consultant desire to enter into this Agreement to set forth the specific terms and conditions of their relationship.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the parties agree as follows:

SECTION 1. Engagement. The City hereby engages Consultant as an independent contractor to perform the services described in this Agreement and Consultant accepts that engagement.

SECTION 2. Services.

- (a) **Scope of Services.** Consultant shall perform those services (“Contract Services”) described under Scope of Services in Exhibit A, which is attached to this Agreement and incorporated herein by reference. The City may also request additional services not anticipated at the time of this Agreement. At the City’s request, the Consultant shall submit a written scope of the additional work including an estimate of additional costs for the performance of the additional work. No change in scope shall be effective nor additional compensation be paid, except on the basis of the provisions of a written supplemental agreement or an amendment signed by the Parties.
- (b) **Subcontracting Services.** Consultant may not, without first obtaining the City’s written consent, subcontract any of the Contract Services. Notwithstanding the City’s consent to any subcontracting, Consultant shall remain fully responsible for all obligations under this Agreement.
- (c) **Time of Performance.** The Consultant agrees to complete the Contract Services within the times listed in Exhibit A, Scope of Service. In absence of written directions to the contrary, receipt of the executed Agreement shall be the Consultant’s Notice to Proceed. At the City’s discretion, an extension of time may be granted to the

Consultant for delays determined by the City as unavoidable. Consultant may request an extension of time stating the reasons for such a request. The term of this Agreement may be extended by mutual agreement of the parties beyond the time periods outlined in Exhibit A for the purpose of the Consultant providing any additional services, as outlined in Exhibit A, as may be requested by City and agreed to by Consultant. The Parties agree that time for performance of the Contract Services is of of the essence and that the Consultant's failure to meet the contractual times for performance shall constitute a material breach of this Agreement.

- (d) **Qualified Personnel.** Consultant shall provide sufficient qualified personnel to perform the Contract Services. If directed by the City, the Consultant shall remove any person the Consultant employs in connection with the work.
- (e) **Performance.** In performing the Contract Services, Consultant agrees to take all steps necessary for the full and effective performance of those tasks.
- (f) **Assistance from City.** To assist Consultant in performing the Contract Services, the City will perform the duties outlined in Exhibit A, if any, in a timely manner so as not to unreasonably delay the Consultant's services.

SECTION 3. Compensation and Expenses. As set forth in Exhibit A, the City shall pay the Consultant for the Contract Services it performs as outlined in Section 2 of this Agreement.

SECTION 4. Termination of Agreement. The City may terminate this Agreement at any time for convenience or cause upon written notice to Consultant. If the City terminates the Agreement under this Section, the City shall pay the Consultant for Contract Services satisfactorily performed by Consultant before the termination, and for all associated expenses incurred by the Consultant before the termination. Under no circumstances will the Consultant be entitled to anticipatory profits or consequential damages. The provisions regarding indemnity and insurance shall survive the termination of this Agreement.

SECTION 5. Reports and Documents. If this section is not needed replace "reports and Documents" with "Reserved"

- (a) **Property and Possession.** All reports, studies, analyses, memoranda, and related data and material, as may be developed during the performance of the Contract Services, shall be submitted to and shall be the exclusive property of the City, which shall have the right to use the same for any purpose without further compensation to the Consultant. Consultant may use its own proprietary software for the purposes of generating the data required by the Agreement. The parties agree that the City shall retain all rights to the data generated, but that the Consultant shall retain all rights to the proprietary software.

- (b) **Status of Documents upon Expiration or Termination.** If this Agreement expires or is terminated for any reason, all finished or unfinished documents prepared as part of the Contract Services shall immediately be transmitted to the City by Consultant, with the exception of the Consultant's proprietary software, as noted in Section 5(a). Consultant shall also immediately upon expiration or termination of this Agreement, return to the City all of the studies, maps, and other data furnished to the Consultant by the City under this Agreement.
- (c) **Confidentiality.** Consultant shall not release to any person except City representatives and others authorized by City any reports or related materials prepared for the City pursuant to the Consultant's performance of the Contract Services. This Agreement, however, does not preclude Consultant from performing any service (whether or not similar in nature to a Contract Service) on behalf of other clients in the city or elsewhere. All reports and documents prepared, assembled, or compiled by Consultant pursuant to the terms of this Agreement are to be considered confidential and Consultant agrees that it will not, without prior written consent of the City, submit or make the same available to any individual, agency, public body, or organization other than the City, except as may otherwise herein be provided, subject to the provisions of the Kansas Open Records Act or as may otherwise be required by law.

SECTION 6. Compliance with Laws. Consultant shall comply with local, state, and federal rules, regulations, and laws pertaining to this Agreement that are applicable at the time the Consultant conducts the Contract Services, regardless of whether such requirements are specifically referred to in this Agreement. Consultant shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents against any claim or liability arising from or based on any violation of the same.

SECTION 7. Compliance with Equal Opportunity Laws, Regulations, and Rules.

- (a) **Discrimination Prohibited.** Consultant agrees to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin or ancestry, or age.
- (b) **Solicitations.** In all solicitations or advertisements for employees, Consultant shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Human Rights Commission (Commission).
- (c) **Non-Compliance.** Consultant shall be deemed to have breached this Agreement and it may be cancelled, terminated, or suspended in whole or in part by the City, if the Consultant:

1. fails to comply with the reporting requirements of K.S.A. 44-1031 or K.S.A. 44-1116, and amendments thereto; or
 2. is found guilty of the Kansas Act Against Discrimination or the Kansas Age Discrimination in Employment Act under a decision or order of the Commission that has become final.
- (d) **Flow Through Requirements.** Consultant shall include the provisions of Section 7(a)-(c) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- (e) **Exempt Contractors.** The provisions of this Section 7(a)-(d) are recommended but not enforceable against Consultant if:
1. Consultant employs fewer than four employees at all times during the term of this Agreement; or
 2. All of Consultant's contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City pursuant to K.S.A. 44-1030(c).
- (f) **ADA Compliance.** Consultant agrees to comply with the American with Disabilities Act of 1990 ("ADA"), codified as amended at 42 U.S.C. § 12101 *et seq.*, as well as all other federal, state, and local laws, ordinances, rules, and regulations applicable to this project and to furnish any and all certification that may be required by federal, state, or local governmental agencies in connection therewith.
- (g) **Code Compliance.** Consultant agrees to comply with Chapter 35, Article III of the Westwood Code, which prohibits discrimination in employment, housing, and public accommodations on the basis of an individual's sexual orientation or gender identity.

SECTION 8. Insurance.

- (a) **General.** Consultant shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed in writing) of such types and in at least such amounts as required herein. The City shall be named as an additional insured for all coverages required herein except workers' compensation coverage and professional liability coverage. All insurance procured for this Agreement by the Consultant, including additional insured designations, shall be primary and noncontributory. Consultant shall provide certificates of insurance on forms acceptable to the City at the time of this Agreement's execution. The Certificate shall specify the date when such insurance expires. A renewal certificate shall be furnished to the City before the expiration date of any coverage. The City shall be notified by receipt of written notice from the insurer at least 30 days before material modification or cancellation of any policy listed on the Certificate.

- (b) **Notice of Claim.** Consultant, upon receiving notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.
- (c) **Reduction of Policy Limits.** Consultant shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by this Agreement) if the Consultant’s limits of protection have been impaired or reduced to such extent that the limits fall below the minimum amounts required hereunder. In that event, Consultant shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.
- (d) **Industry Ratings.** Consultant agrees that its insurance carrier must:
 - 1. a. Be licensed to do business in the State of Kansas;
 - b. Carry a Best’s policyholder rating of “A-” or better and;
 - c. Carry at least a Class VIII financial rating; OR
 - 2. Be acceptable to the City.
- (e) **Insurance Required.** Consultant agrees to secure and maintain the following insurance:
 - 1. **Commercial General Liability.** Consultant shall maintain General Liability coverage including Premises-Operations Liability, Independent Contractors Liability, Products and Completed Operations, and Broad Form Property Damage within these minimum limits:

Bodily Injury & Property Damage	\$1,000,000 combined single limit per occurrence: \$2,000,000 annual aggregate
Fire Damage Liability	\$50,000
Medical Payments	\$5,000

The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damages to underground property.

- 2. **Comprehensive Automobile Liability.** Consultant shall maintain Automobile Liability coverage including coverage for Owned, Hired and Non-owned Auto Liability providing for all injuries to members of the public and damage to property of others arising from the use of motor vehicles on and off the Work site with these minimum limits:

Bodily Injury & Property Damage	\$1,000,000 combined single limit per occurrence
---------------------------------	--

3. **Workers' Compensation and Employer's Liability.** Consultant shall maintain Workers' Compensation coverage for all claims made under applicable state workers' compensation laws. Consultant shall also maintain Employer's Liability coverage for claims made for injury, disease, or death of an employee that, for any reason, may not fall within the provisions of a workers' compensation law. The following minimum limits shall apply:

Workers' Compensation	Statutory Limits
Employers' Liability	\$500,000 each accident
	\$500,000 disease – policy limit
	\$500,000 disease – each employee

4. **Professional Liability Insurance.** Consultant shall maintain Professional Liability Insurance in an amount of no less than \$1,000,000.

(f) **Subcontractor's Insurance.** If a part of this Agreement is to be sublet, the Consultant shall either:

1. Cover all subcontractors under its insurance policies; or
2. Require each subcontractor not so covered to secure insurance that will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Consultant shall indemnify and hold harmless the City as to any and all damages, claims, or losses, including attorneys' fees, arising out of or resulting from the acts or omissions of its subcontractors.

Section 9. Indemnification. Without in any way limiting indemnification obligations that may be set forth elsewhere in this Agreement, Consultant shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents, from all claims, damages, losses, liabilities, costs, and expenses, including attorneys' fees, arising out of or resulting from the performance of Consultant's services, provided that any such claim, damage, loss, liability, cost, or expense is caused in whole or in part by a negligent and/or intentional act, error, or omission of the Consultant, its subcontractors, anyone directly or indirectly employed or retained by any of them, or anyone for whose acts any of them may be liable, whether or not arising before or after completion of Consultant's services. Consultant shall give the City immediate written notice of any claim, suit, or demand that may be subject to this provision.

Section 10. No Third Party Beneficiaries. City and Consultant specifically agree that this Agreement is not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage

pursuant to the terms or provisions of this Agreement; the duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

Section 11. Disputes. The City and Consultant agree that disputes relative to the Contract Services of this Agreement should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis of the dispute shall be free to take such steps as it deems necessary to protect its interest; provided, however, that notwithstanding any such dispute, the Consultant shall proceed with its services under this Agreement as though no dispute exists.

Section 12. Representations. The Consultant certifies that:

- (a) The price submitted and the costs comprising same are independently arrived at without collusion.
- (b) The Consultant has not knowingly influenced and promises that it will not knowingly influence a City employee or former City employee to breach any ethical standard.
- (c) The Consultant has not violated, is not violating, and promises that it will not violate the City's policy of prohibition against gratuities and kickbacks.
- (d) The Consultant represents that it has not retained and will not retain a person to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- (e) The Consultant is currently unaware of any conflict of interest with any party affected by this Agreement. Consultant agrees that if any conflict of interest should arise in the future, it will give notice to the City immediately.
- (f) Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement.
- (g) Consultant warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind the Consultant.

Section 13. Quality Assurance. Consultant warrants that all work and services performed under this Agreement, shall conform to or exceed the recognized professional standards prevalent in their field. Further, the Consultant warrants that all work and service performed under this Agreement shall be performed with the professional expertise, skills, and knowledge of state of the art procedures and techniques in all relevant subject matters. The Consultant accordingly shall be capable of performing the necessary consulting and other services required herein and possess the ready comprehension of the required subject matter and the expertise to provide these services.

Section 14. Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by Consultant without the prior written consent of the City. This

Agreement is binding upon and fully enforceable against the successors and assigns of Consultant, whether consented to or not.

Section 15. Notices. Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if the notice is in writing and personally delivered or sent by First Class mail, postage prepaid, to the party to whom said notice is to be given. Notices delivered in person shall be deemed to be served effective as of the date the notice is delivered. Notices sent by First Class Mail shall be deemed to be served 72 hours after the date the notice is postmarked to the addressee, postage prepaid.

Until changed by written notice given by one party to the other, notice to the Consultant shall be made at the address set forth following the Consultant's signature block. Notice to the City shall be made as follows:

City of Westwood, Kansas
4700 Rainbow Blvd.
Westwood, KS 66202
Attn: _____

Section 16. Independent Contractor. In no event, while performing under this Agreement, shall Consultant be deemed to be acting as an employee of the City; rather, Consultant shall be deemed to be an independent contractor. Consultant shall be responsible for and pay all taxes and withholdings required by law upon the compensation paid under this Agreement, and shall defend, indemnify, and hold harmless the City from liability in connection therewith. Nothing expressed herein or implied herein shall be construed as creating between Consultant and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.

Section 17. Compliance with Kansas Cash Basis Law. This Agreement must comply with the applicable provisions of the Kansas Cash-Basis Law, K.S.A. 10-1101 *et seq.*, as amended. The City is obligated only to pay periodic payments or monthly installments under this Agreement as may lawfully be made from funds budgeted and appropriated for the purposes set forth in this Agreement during the City's current budget year. Notwithstanding any other provision of this Agreement, in the event that the City does not budget and appropriate funds for any renewal term, for any reason in its sole discretion, the parties agree that they shall be relieved of all obligations under this Agreement without penalty. To the extent that the City does budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.

Section 18. Legal Action. The parties agree that the sole and exclusive venue for any legal actions arising out of this Agreement shall be the District Court of Johnson County, Kansas.

Section 19. Governing Law. This Agreement, the rights and obligations of the parties, and any claim or dispute arising hereunder shall be construed in accordance with the laws of the State of Kansas.

Section 20. Phraseology. In this Agreement, the singular includes the plural, the plural includes the singular and any gender includes the other gender.

Section 21. Descriptive Headings and Capitalization. The descriptive headings of the provisions of this Agreement are formulated and used only for convenience and shall not be deemed to affect the meaning and construction of any such provision. Some terms are capitalized throughout the Agreement, but use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

Section 22. Invalidity. If any provision in this Agreement shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.

Section 23. Waiver. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.

Section 24. Merger. This Agreement and the documents incorporated by reference constitute the entire agreement between the parties with respect to the professional services set forth herein. There are no verbal understandings, agreements, representations or warranties between the parties that are not expressly set forth herein. This Agreement supersedes all prior agreements and understandings between the parties, both written and oral.

Section 25. Verbal Statements Not Binding. It is understood and agreed that the written terms and provisions of this Agreement supersede all verbal statements of any and every official or other representative of the City, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, this written Agreement.

Section 26. Amendments. This Agreement may not be amended unless such amendment is in writing and signed by both parties.

Section 27. Survivorship. Notwithstanding the termination of this Agreement, Consultant’s obligations with respect to Insurance (Section 8) and Indemnification (Section 9), and any other terms and conditions that by their nature should survive termination, shall survive the termination of this Agreement.

Section 28. Incorporation of Exhibits and Conflicts. Exhibit XX (City’s Request for Proposal) and Exhibit XX (the Proposal) are incorporated herein by reference and are a part of this Agreement to the same extent as if fully set forth herein. If there is a conflict or inconsistency in the terms or provisions of this Agreement and the terms and provisions of any incorporated exhibit, the terms and provisions of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement the day and year first above written.

CITY OF WESTWOOD, KANSAS

By: _____

Title: _____

CONTRACTOR

By: _____

Title: _____

Address: _____

EXHIBIT A: Proposal

June 11th, 2024

Dear Leslie—

We are pleased to submit PORT’s proposal for *Phase 1 Park Design Services* for *The City of Westwood’s* new park project planned for the grounds of the old Westwood View Elementary School. PORT’s proposal for Phase 1 services is outlined below and principally relates to site documentation and existing conditions analysis, as well as developing and kicking-off the community engagement campaign that will guide the park design process.

**PHASE 1: PROJECT KICK-OFF
EXISTING CONDITIONS DOCUMENTATION & ANALYSIS
COMMUNITY ENGAGEMENT CAMPAIGN PLANNING & KICKOFF**

Task 1.1 Initial Kick-Off Meetings, Site Walks + Stakeholder Introductions

This task will begin with kickoff meeting(s) with the members of the 15-person new park Design Steering Committee (SC) and City’s Project Management & Advisory Team (PM&AT). The PM&AT includes the City of Westwood City Administrator; City Engineer; Public Works Director; and Building Official. These initial meetings are intended to:

- introduce the PORT Team and review roles/responsibilities;
- review the project work plan including work schedule, milestones, and deliverables;
- discuss and identify key site issues and stakeholders; and
- review an initial public engagement strategy and timeline.

The PORT team will convene one-on-one meetings and new park site walks with the SC, PM&AT, park stakeholders, local-businesses and social groups/organizations. These conversations will not only begin the initial documentation of community goals for the park but inform our approach for community outreach to make sure we are involving the widest possible audience in the park design process. The PORT Team will also convene a meeting with the PM&AT, Karbank and Karbank’s development partners in order to begin coordination between the proposed park site and the Karbank development project at 50th & Rainbow Boulevard.

Task 1.2 Community Engagement Campaign Planning & Development

Our team is fully committed to fostering a dynamic and inclusive community engagement campaign throughout the design process. This collaborative endeavor involves working closely with the SC, PM&AT and community stakeholders in order to develop and plan to actively engage diverse voices and ensure the park design is guided by neighborhood priorities and ultimately resonates

with the collective aspirations of the Westwood community. As currently proposed, the complete engagement campaign will include three public community events, as follows:

- Event #1: Grounding, Awareness & Visioning (October 5th, 2024, *tentative date*)
- Event #2: Concept Design Alternatives (Date TBD)
- Event #3: Final Concept Design (Date TBD)

The Phase 1 scope of work outlined in this proposal includes collaboratively planning the full engagement campaign and completing the Grounding, Awareness and Visioning Event, preliminarily proposed to occur during the city’s Oktoberfest Event in Joe D. Dennis Park scheduled for Saturday, October 5th. (The final two events will be carried out as part of the concept design process to be completed during the next phases of work under a separate contract.)

Task 1.3 Existing Conditions Documentation & Analysis

- GIS Mapping & Drone Photography
- Ecology, Hydrology, Habitat & Biodiversity Assessment
- Infrastructure, Access & Connectivity Assessment
- Site History, Demographics & Community/Stakeholder Assessment

Our team will document the full extents of the new park site and surrounding neighborhood context, including both cartographic analysis and drone photography. We will also work closely with the city arborist to complete a tree health, stormwater and site grading review in anticipation of the demolition of the old Westwood View Elementary School. We will also develop a base mapping of the project area utilizing available cartographic and GIS data; publicly available historic aerials and maps; as well as additional available survey data. This base data will be foundational to the both the park design process and community engagement campaign.

Task 1.4 Peer Project Benchmarking

The PORT team will undertake a Peer Project Benchmarking exercise in which local, regional and national park projects of similar scale, neighborhood context and construction budget will be evaluated in comparison with the new park. The purpose of this work is to understand potential park amenity and programming opportunities as they relate to the cost implications of particular park design features and strategies, inclusive of capital and operational costs.

Task 1.5 Online Survey and Website Development

The PORT Team will develop a custom website and survey platform for the new park. The website will help reach a wider audience during the process, as well as create a platform to collect and publicly share community input on park priorities and design feedback. We will continuously update

the website and survey, publicly sharing overall progress updates and the detailed schedule for upcoming project milestones and public engagement events. The website will be developed to be approved for launch prior to the first community event.

Task 1.6 Community Event #1: Grounding, Awareness & Visioning

In order to kick-off engagement with the Westwood community that will continue throughout the new park design process, we will organize, develop and staff a pop-up Grounding, Awareness and Visioning installation *tentatively proposed* to be included as part of the City of Westwood's Oktoberfest event in Joe D. Dennis Park on Saturday, October 5th. The goals of the event are as follows:

- Raise community awareness about the park design process and opportunities to be involved.
- Celebrate the history of the new park site, the new and old Westwood View Elementary school grounds, as well as the history of greater Westwood by reflecting on the past and documenting community memories.
- Collect community input and priorities for new park program and design attributes. We will utilize the existing site conditions material with programming examples from local, regional and national parks of similar scope and budget in order to prompt detailed community input.

Task 1.7 Existing Conditions Documentation & Analysis Summary Report

The PORT Team will create an Existing Conditions Documentation & Analysis Summary Report PDF that will include all work completed throughout all Phase 1 Tasks, including a summary of park design priorities and feedback collected online and in-person during Community Engagement Event #1.

SCHEDULE

The Phase 1 scope of work is anticipated to begin in August 2024 and will conclude with submission of the Existing Conditions Documentation & Analysis Summary by October 18th (allowing our team adequate time to document and summarize community input collected during the Oktoberfest community event on October 5th).

FEE PROPOSAL

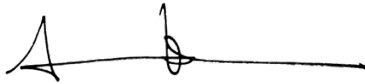
The total proposed fee for Phase 1 is allocated to the project consultant team as follows:

PORT	\$36,500
Phelps Engineering	\$3,000
Apex Engineers	\$2,500
Studio Ludo	\$2000
Expenses	\$2500 (Website, Engagement Materials & Printing Expenses)
TOTAL:	\$46,500

Payment for services rendered as part of this agreement will be submitted to the Project Manager at the end of each calendar month. Payment due will be based upon percentage of work complete.

If this proposal meets your approval, please sign below to indicate acceptance of this agreement, and return an executed copy to PORT.

Sincerely,



Andrew Moddrell, AIA
Partner, PORT Architecture and Urbanism, LLC

City of Westwood Representative

Date

COUNCIL ACTION FORM

Meeting Date: June 13, 2024

Staff Contact: Leslie Herring, City Administrator

Agenda Item: Consider Ordinance No. 1042 designating certain funds of the City of Westwood as multi-year capital improvement funds

Background / Description of Item

On May 9, 2024, the City Council authorized a Professional Services Agreement with Columbia Capital Management to provide financial advisory and investment services to the City. By way of implementing that Agreement and leveraging the services sought and provided by Columbia Capital, the City must designate certain funds as multi-year capital funds as prescribed by State law prior to investing the City's idle funds (reserves).

Staff Comments/Recommendation

Columbia Capital staff prepared a draft Ordinance for consideration by the City Council. The recommended Ordinance has been reviewed by the City Treasurer, City Attorney, and City Administrator and is included for consideration in a form agreeable to those officers.

Budget Impact

As stated in the May 9, 2024 staff report supporting the City Administrator's recommendation to enter into a Professional Services Agreement with Columbia Capital, the City's current annual percentage yield using FNBO as our depository is 1.46%. In 2023, the City earned a total of \$44,015 in interest on the bank balance we carried. Columbia Capital is realizing north of 5% interest on even fairly short-term Treasury or Agency investments.

Suggested Motion

I move the City Council adopt Ordinance 1042 designating certain funds of the City of Westwood as multi-year capital improvement funds.

(Published in The Legal Record on _____)

ORDINANCE NO. 1042

AN ORDINANCE designating certain funds of the City of Westwood, Kansas, as municipal equipment reserve funds pursuant to K.S.A. 12-1,117 and amendments thereto, and as multi-year capital improvement funds pursuant to K.S.A. 12-1,118 and amendments thereto.

WHEREAS, K.S.A. 12-1,117 authorizes the governing body to establish by ordinance a municipal equipment reserve fund to finance the acquisition of equipment; and

WHEREAS, K.S.A. 12-1,118 authorizes the governing body to establish by ordinance a multi-year capital improvement plan setting forth the public improvement and infrastructure needs of the City on a prioritized basis and to create a capital improvement fund for the purpose of funding the public improvements and infrastructure needs; and

WHEREAS, state law permits a broader range of permitted investments for municipal equipment reserve funds and multi-year capital improvement funds which enables cities to generate higher yields, without a significant increase in risk; and

WHEREAS, the City has created, maintains and routinely updates a multi-year capital improvement plan; and

WHEREAS, it will be beneficial to the City to designate certain funds as either municipal equipment reserve funds or multi-year capital improvement funds so that the City can take advantage of the expanded investment opportunities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WESTWOOD, KANSAS, that:

Section 1. It hereby designates or ratifies the prior designation of the following funds as a municipal equipment reserve funds within the meaning of K.S.A. 12-1,117 and amendments thereto:

- (a) Equipment Reserve Fund

Section 2. It hereby designates the following funds as a multi-year capital improvement funds within the meaning of K.S.A. 12-1,118 and amendments thereto:

- (a) Capital Improvement Fund

Section 3. This ordinance shall take effect and be in full force immediately after its passage and approval.

PASSED AND APPROVED by the Governing Body on June 13, 2024.

CITY OF WESTWOOD, KANSAS

David E. Waters, Mayor

ATTEST:

Abby Schneweis, City Clerk

Approved as to form:

Ryan B. Denk, City Attorney

COUNCIL ACTION FORM

Meeting Date: June 13, 2024

Staff Contact: Leslie Herring, City Administrator

Agenda Item: Consider Resolution No. 128-2024 adopting an amended Financial and Purchasing Policy

Background / Description of Item

On May 9, 2024, the City Council authorized a Professional Services Agreement with Columbia Capital Management to provide financial advisory and investment services to the City. By way of implementing that Agreement and leveraging the services sought and provided by Columbia Capital, the City must adopt an Investment Policy as prescribed by State law prior to investing the City's idle funds (reserves).

Staff Comments/Recommendation

Columbia Capital staff prepared a draft Investment Policy, which is proposed for inclusion in the City's existing Financial and Purchasing Policy, adopted by Resolution of the City Council. The recommended Investment Policy has been reviewed by the City Treasurer, City Attorney, and City Administrator and is included for consideration in a form agreeable to those officers.

No other revisions to the Policy are recommended at this time.

Budget Impact

As stated in the May 9, 2024 staff report supporting the City Administrator's recommendation to enter into a Professional Services Agreement with Columbia Capital, the City's current annual percentage yield using FNBO as our depository is 1.46%. In 2023, the City earned a total of \$44,015 in interest on the bank balance we carried. Columbia Capital is realizing north of 5% interest on even fairly short-term Treasury or Agency investments.

Suggested Motion

I move the City Council adopt Resolution No. 128-2024 adopting an amended Financial and Purchasing Policy for the City of Westwood.

**CITY OF WESTWOOD, KANSAS
RESOLUTION NO. 128-2024**

A RESOLUTION OF THE CITY OF WESTWOOD, KANSAS, ADOPTING AN AMENDED FINANCIAL AND PURCHASING POLICY.

WHEREAS, the City of Westwood desires to amend its financial and purchasing policy for use as reference by City employees in furtherance of administering the affairs of the City;

WHEREAS, the City desires to institute an Investment Policy to ensure maximum benefit of its funds an optimal fiscal stewardship;

WHEREAS, the guidelines in this policy promote efficiency, effectiveness, equity, and fairness in financial management and public purchasing; and

WHEREAS, this policy is intended to be reviewed and updated from time to time by the City Council to ensure its continued benefit to the operations of the City of Westwood.

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

SECTION 1. The City Council does hereby adopt the amended Financial and Purchasing Policy attached hereto as Exhibit A and incorporated herein by reference in its entirety.

SECTION 2. The administrative officers of the City shall develop such further administrative procedures and take such actions to implement this Resolution as may be reasonably necessary.

SECTION 3. The Resolution shall take effect upon its approval by the City Council.

ADOPTED by the Governing Body of the City of Westwood, Kansas, this 13th day of June, 2024.

David E. Waters, Mayor

ATTEST:

Abby Schneweis, City Clerk

APPROVED AS TO FORM AND LEGALITY

Ryan B. Denk, City Attorney



FINANCIAL AND PURCHASING POLICY

Adopted by the Westwood City Council
March 11, 2021

Amended November 10, 2022

Amended June 13, 2024

Accounting, Auditing, and Financial Reporting Policy

- A. The City will establish and maintain accounting records in such a manner that reports may be issued on a basis consistent with statutory requirements.
- B. The City will maintain a record of fixed assets which identifies all material City assets, except for general infrastructure assets. General Infrastructure assets are assets such as streets and drainage facilities which, if properly maintained, have an indeterminate life.
- C. The City will contract for an annual audit of City accounting records. The audit shall be conducted in accordance with the Kansas Municipal Audit and Accounting Guide as well as the Federal Single Audit Act, if required.
- D. The City will comply with all financial reporting requirements set forth in Kansas law, including publishing annually, in January, the City's financial statements showing, by fund for the previous year: beginning and ending balances, receipts, and expenditures along with obligation/liability information.
- E. The City Treasurer will provide the City Council with a yearend summary (unaudited) financial report within 90 days of the end of the fiscal year. Monthly financial reports shall also be provided to the City Council within 20 days of the end of each month.
- F. The Governing Body will designate its depositories for public funds at least bi-annually (once every two years), which depositories shall meet the requirements of K.S.A. 9-1401, et. seq. as amended and K.S.A. 12-1675, et seq.

General Accounting

Journal Entries

- A. Budgeted interfund transfers shall be planned in the annual budget submitted to the State and so approved by the City Council. Operationally, they shall be performed by the City Administrator, reviewed by the City Treasurer, and approved by the City Council by appropriations ordinance in the month in which they occur. Every effort should be made to coordinate transfers between funds in December and June of each year.
- B. Coding/line item reclassifications shall be performed as needed by the City Administrator and reviewed by the City Treasurer. These journal entries shall be reflected in the account and fund totals on the monthly Treasurer's Report as accepted by the City Council during the course of regular monthly business agendas.

Encumbrances

An employee or officer of the City may not obligate the City to make payment for goods, services or any other purpose, until it has been determined that funds are actually available in the proper account for the specific purpose (each department is responsible for determining the availability of

funds). As such, an encumbrance must occur prior to disbursement of funds. Once funds have been encumbered, they cannot be expended for anything other than what was authorized under the original encumbering authority.

Encumbrances are to be created by purchase order approved by Department Heads in alignment with the adopted purchasing policy, included in this document. Funds shall be disencumbered using the same authority and approval process from which they were originally created (i.e. upon request of the Department Head with approval of either the City Administrator or the City Council, depending on purchasing authority outlined in the purchasing policy).

City departments may disencumber and re-encumber funds within the same fiscal year. Prior-year encumbered funds may not be increased but may be disencumbered by a City department. Exceptions to this rule are continuing appropriations (e.g. expenditures budgeted in funds outside the General Fund, which are carried forward to the next budget year) which may be increased or decreased. Prior-year disencumbered funds may only be reprogrammed by the Mayor and City Council. At the end of a fiscal year, all unencumbered funds will revert to General Fund balance carryforward (i.e. reserve balance).

If the funds are not disencumbered, they will continue to be regarded as obligated balances, thereby reducing the available unobligated account balances. Consequently, the timely disencumbrance of funds is necessary to reflect an accurate and updated status on the availability of funds. As a general rule, any encumbered funds that remain unspent by June 30th of each year shall be reverted to the General Fund balance carryforward (i.e. reserve balance). Material long-term contracts are exceptions to this rule.

Fund Management

Special Highway Fund

Purpose

To construct, reconstruct, alter, repair, and maintain the streets and highways of the city and for the payment of bonds, and interest thereon.

Statutory Authority

K.S.A. 12-1,119; K.S.A. 68-590; K.S.A. 79-3425c(c)

Establishing Ordinance

Unknown. State statute passed in 1987; no ordinance on file for Westwood.

Revenue Sources

- Motor Vehicle Fuel Tax/Special Highway Funds, received from the County on or after January 15, April 15, and October 15 of each year; and
- City Connecting Links/State Highway Maintenance distributions, received from the State on or after January 1, April 1, July 1, and October 1; State-established amount per lane mile for Rainbow Blvd. (approximately 3 miles).

Allowable Expenditures

- The construction, reconstruction, alteration, repair, and maintenance of streets, sidewalks, and highways
- Payment of bonds for such activities

Operational Management

Budgeting – Annual fund activity shall be shown on the state budget form of the City for the information of the taxpayers.

Coding – Expenditures for eligible projects should be coded to this Fund based on resource availability. Projects funded across multiple funds should be tracked by project number assigned by the City Administrator so as to ensure comprehensive project accounting. City Connecting Links/State Highway Maintenance distributions are to only be utilized for construction, reconstruction, alteration, repair and maintenance on Rainbow Blvd. (US-169 Hwy) within the City of Westwood.

Transfers – Annual transfer from the Special Highway Fund to the Capital Improvement Fund budgeted to cover eligible project costs for planned/programmed projects.

Reserve Target – There is no reserve target for this fund.

(Special) Law Enforcement Trust Fund*Purpose*

For deposit of proceeds of sale and any monies forfeited when the police department is involved in the investigation and seizure of illegal controlled substance activity.

Statutory Authority

K.S.A. 60-4117

Establishing Ordinance

732, approved February 9, 1989

Revenue Sources

- Any remaining proceeds of sales of property which is not required by law to be destroyed and which is not harmful to the public, and following disposition of proceeds in the manner set forth by state law pursuant to K.S.A. 60-4117(c).

Allowable Expenditures

Expenditures are allowed only upon approval of the Governing Body and for only the following purposes:

- Defraying costs of protracted or complex investigations;
- Providing additional technical equipment or expertise;
- Providing matching funds for federal grants; and
- Other law enforcement purposes deemed appropriate by the Governing Body.

Operational Management

Budgeting – This fund is not budgeted. Neither the Police Department nor Governing Body shall anticipate future forfeitures or proceeds therefrom in the adoption and approval of its annual budget.

Reporting – Pursuant to Westwood Ordinance No. 732, should there be proceed in this fund, a quarterly report shall be submitted by the Police Department to the Governing Body specifying the type and approximate value of any forfeited property received and the amount of any proceeds received. Pursuant to K.S.A. 60-4117(d)2, the Police Department shall submit annually a special law enforcement trust fund report to the State of Kansas and such report shall specify, for such period, the type and approximate value of the forfeited property received, the amount of any forfeiture proceeds received, and how any of those proceeds were expended.

Transfers – The Governing Body may transfer amounts not needed, by adoption of a resolution, to the originating fund. Transfers into this Fund may include the equivalent of the annual depreciation on any given piece of equipment necessary to replace the used item when necessary.

Reserve Target – There is no reserve target for this fund.

Equipment Reserve Fund

Purpose

To finance the acquisition of equipment.

Statutory Authority

K.S.A. 12-1,117

Establishing Ordinance

752, approved August 21, 1991

Revenue Sources

- Proceeds of sales of surplus equipment;
- Grant proceeds; and
- Budgeted transfers from:
 - General Fund.

Allowable Expenditures

New and replacement equipment, including:

- Machinery;
- Vehicles;
- Computer hardware and software; and
- Any other equipment or personal property which the City is authorized to purchase for municipal purposes.

Operational Management

Budgeting – Adopt a five (5) year Equipment Replacement Plan during the annual budget process. Annual fund activity shall be shown on the state budget form of the City for the information of the taxpayers. This is a non-budgeted fund and, as such, budget authority is not annually adopted.

Coding – Revenues and expenditures from this fund shall be tracked by operating department. Generally, equipment with less than a five (5) year usable life or with a current value of less than \$10,000 should be acquired through the City’s operating budget.

Transfers – The Governing Body may transfer amounts not needed, by adoption of a resolution, to the originating fund. Transfers into this Fund may include the equivalent of the annual depreciation on any given piece of equipment necessary to replace the used item when necessary.

Reserve Target – The reserve target for this fund is a minimum of 30% of the following fiscal year’s revenue.

Capital Improvements Fund

Purpose

To fund the City’s adopted multi-year capital improvement plan (CIP), setting forth the public improvement and infrastructure needs of the City on a prioritized basis.

Statutory Authority

K.S.A. 12-1,118

Establishing Ordinance

935, approved August 15, 2013

Revenue Sources

- 10 year ½-cent special sales tax (October 2018 – September 2028);
- Budgeted transfers from:
 - General Fund,
 - Special Highway Fund (including City Connecting Links/State Highway Maintenance distributions), and
 - Stormwater Utility Fund – amount shall reflect stormwater related project expenses;
- Year-end interfund transfers from operating budgets as recommended by City staff to be applied to reserve balance
- Intergovernmental cost share/aid proceeds (e.g. Johnson County CARS, State of Kansas KLINK);
- Grant proceeds;
- Reimbursements from bond proceeds, when active; and
- Special assessments, when active.

Allowable Expenditures

- Repair, restoration, and rehabilitation of existing public facilities;
- Engineering and other advance public improvement plans and studies; and
- Cost of issuance of debt issues for capital projects.

Operational Management

Budgeting – Adopt a five (5) year Capital Improvement Plan during the annual budget process. This is a non-budgeted fund and, as such, budget authority is not annually adopted.

Coding – Revenues and expenditures from this fund shall be tracked by project.

Transfers – The Governing Body may transfer amounts not needed, by adoption of a resolution, to the originating fund.

Reserve Target – The reserve target for this fund is 30% of annual expenditures.

Stormwater Utility Fund*Purpose*

To provide services to real property within the incorporated city limits through collection, conveyance, detention, retention, treatment, and release of stormwater.

Establishing Ordinance

Charter Ord. No. 16, approved June 13, 2013

Ord. No. 936, approved August 15, 2013

Revenue Sources

- Stormwater utility fee

Allowable Expenditures

- Costs of capital improvements to operate, construct, maintain, repair and replace the public stormwater management system;
- Administration of the stormwater utility, including payment of employee salaries;
- Debt service of the stormwater management system; and
- Payment of interest on outstanding bonds issued for construction or extension.

Statutory Authority:

K.S.A. 12-631; K.S.A. 12-825d

Operational Management

Budgeting – Adopt an operating budget for the stormwater utility during the annual budget process. Annual fund activity shall be shown on the state budget form of the City for the information of the taxpayers.

Coding – Street sweeping and annual leaf pickup program expenses, including related equipment costs, are coded directly to this fund.

Transfers – May be transferred and merged into the General Fund or any other fund or funds of such city.

Reserve Target – The reserve target for this fund is 15% of annual expenditures.

Woodside Tax Increment/Special Allocation Fund

Purpose

Payment or reimbursement of project costs as described and set forth in the Redevelopment Agreement.

Establishing Ordinance

947, March 13, 2014 (repealed by Ord. No. 949)

949, June 12, 2014

Revenue Sources

- 1.1% CID [1] sales tax (on sales generated within Woodside Village and Woodside Club); and
- 0.9% CID [2] sales tax (on sales generated within Woodside Club, only).

Pursuant to the Redevelopment Agreement, two separate, segregated accounts shall be maintained by the City Treasurer for the following revenue sources:

1. *100% of the City's Incremental Real Property Taxes shall be deposited into the Real Property Taxes Account within the Special Allocation Fund,*
 - a. *Increment of property tax above base, established at \$848,874 in the 2013 redevelopment plan; and*
2. *40% of the City's Incremental Sales Taxes shall be deposited into the Sales Tax Account within the Special Allocation Fund,*
 - a. *40% of the City's local sales tax increment generated within the project area for the full term that the redevelopment plan is in place; base sales approximated to be \$4,918,787 as of the year prior to adoption of 2013 redevelopment plan.*
 - b. *This sum is calculated based upon the sales and use tax collected from businesses within the TIF project area, and does not include the City's portion of county sales tax receipts, nor any active special sales tax, nor does it include CID sales tax receipts or receipts.*
 - c. *The remaining 60% of the City's Incremental Sales Taxes are the City's to use at its discretion.*

Allowable Expenditures

- Reimbursable project costs detailed in the 2013 redevelopment plan include: sitework, parking, infrastructure construction, and interest;
- Repayment of bonds:

- Series 2014 SO Tax Increment (TIF) Revenue Bonds in the principal amount of \$3,150,000;
- Series 2014A & 2014B Community Improvement District (CID) Revenue Bonds in the principal amount of \$1,700,000; and
- Payment of interest on the bonds.

Statutory Authority:

The Kansas Tax Increment Redevelopment Act, K.S.A. 12-1770 *et seq.*, as amended.

Operational Management

Budgeting – This Fund is not subject to statutory debt limitation or restriction and therefore does not need to be published on the state budget form.

Coding – Only expenditures to be coded to this Fund are disbursements to UMB.

Transfers – Annually, as a year-end transfer from the General Fund, the City Treasurer shall transfer 40% of the City’s local sales tax increment generated within the project area for the full term that the redevelopment plan is in place; base sales approximated to be \$4,918,787 as of the year prior to adoption of 2013 redevelopment plan. These tax proceeds are then disbursed to the bond holder.

Reserve Target – There is no reserve target for this fund.

Expiration – Except for CID Sales Taxes as set forth in the Redevelopment Agreement, no Real Property Taxes or Sales Taxes shall be collected within the Special Allocation Fund after that date which is twenty (20) years from the date of the approval of the Redevelopment Project Plan by the City Council.

Bond & Interest Fund/Debt Service Reserve Fund

Purpose

To repay the City’s general obligation debt as well as capital lease purchase payments.

Statutory Authority

K.S.A. 10-113

Establishing Ordinance

Resolution No. 79-2020

Revenue Sources

- ½ mill, deposited directly; and
- Budgeted transfers from:
 - General Fund,
 - Capital Improvement Fund, and
 - Stormwater Utility Fund (amount shall reflect stormwater related project expenses).

Allowable Expenditures

- Interest and principal on lease purchase agreements
- Interest and principal on bond payments for public capital projects

Operational Management

Budgeting – Annual fund activity shall be shown on the state budget form of the City for the information of the taxpayers.

Coding – Following the establishment of a sales tax trend, a corresponding amount of sales tax should be directly deposited into the debt service fund from the State.

Transfers – Annual transfer from the Capital Improvement Fund and Stormwater Utility Fund budgeted to cover debt payments. Should the City Council wish to pay down a debt issuance more expediently, annual transfers should be adjusted during budget adoption to pay down additional principle or interest.

Reserve Target – There is no reserve target for this fund. The fund should be budgeted to cover budgeted expenditures only, to enable flexibility of City resources.

Debt Management Policy

- A. The City will confine long-term borrowing to capital improvements which have an extended service life to the community, or to the acquisition of real property in situations where the City Council believes the acquisition of that property to be advantageous for purposes of carrying out objectives of the City's strategic plan.
- B. The City may use short-term debt (up to four years maturity) for bond anticipation purposes, or for the purposes of financing capital improvements for which it is not practicable to rely on cash financing, and for which long term debt is not deemed to be appropriate. Upon maturity of temporary notes, they should either be rolled into a longer term bond issuance or otherwise paid off.
- C. The City will follow a policy of full disclosure on every financial report and preliminary or official statement used to evaluate the City's financial condition for bond rating or investment purposes.
- D. General Obligation debt may be used for enterprise activities (including stormwater improvements), providing the specific enterprise fund makes the debt service payments on the bonds.
- E. General Obligation Bonds (City at-large portion) will normally be issued with a maturity similar to the life of the project funded not to exceed 20 years. The District portion for Special Assessment Bonds may not exceed the life of the GO Bond. Revenue Bonds or GO bonds for which enterprise revenue has been pledged, will be issued with a maturity not to exceed 40 years.

- F. General Obligation Bonds shall be issued with approximately level principal payments. Revenue Bonds shall be issued with approximately level debt service payments.
- G. The City will review the necessity of an application for a bond rating for every bond issue, and make all reasonable efforts necessary to maintain the City's bond ratings and seek upgrades when financial conditions merit.

The limit to debt issued by the city is equal to 30% of the total equalized assessed tangible valuation of the City.

Purchasing Policy

Purposes

- A. Encourage procurement of goods and services for use by the City of Westwood on the basis of the best necessary quality at the least cost (best value).
- B. Provide for ready availability of goods and services to support timely and effective service delivery, with a minimum of cumbersome procedure.
- C. Maintain a competitive private sector purchasing environment for the City of Westwood.
- D. Provide for appropriate budgetary control and financial oversight of the procurement process.

General

- A. In the interests of eliminating delays in service provision, the City will use a de-centralized purchasing system by which individual departments may make operational purchases independent of a central designated procurement coordinator, subject to the control of this policy, and, within that, at the discretion of the Department Head.
- B. Departments of the City are encouraged and expected to coordinate the purchase of similar items. Bulk or large quantity purchasing is encouraged in those areas where storage space is available, and inventory can be controlled.
- C. Any single purchases made in excess of \$500 are to have prior authorization of the Department Head and are subject to the further general oversight of the City Administrator. The Department Head's signature on the invoice, purchase order, or vendor quote shall be considered as an affirmative statement that they have reviewed all items on such purchasing commitment. As such, the invoice, purchase order, or vendor quote is required to be signed by the Department Head in all cases. Staff involved in purchasing is expected to use common sense and good judgment in the application of these guidelines.
- D. All goods must be verified as received prior to processing purchase orders for payment. Packing slips or sales receipts which are received and sent to the Department Head are regarded as acknowledgment that the goods were received. The Department Heads

submission of the invoice or purchase order is an affirmative statement that the goods or services were properly ordered and received for City services.

- E. Goods and services purchased by the City are intended to provide services to the public. Diversion of materials or services purchased by the City to personal or private use (without public purpose) is considered to be misuse and will result in administrative and/or criminal justice system consequences.
- F. Where departments are spending federal grant money federal purchasing policies may supersede these policies. It is an expectation that departments maintain an awareness of when this is necessary.

Operational Purchasing

Purchases totaling less than \$500, needed in the routine course of work may be made by employees subject to the discretion and review of Department Heads. Purchases of more than \$500 but less than \$5,000 may be authorized by the Department Head.

Staff is encouraged to use informal quotes or written competitive bidding for supplies or materials acquired in bulk, or whenever appropriate in their best judgment. If taken, a tabulation of quotes shall be attached to the invoice or purchase order.

Purchases of items, material, or services less than \$5,000 in value, or when purchases of groups of items exceed \$5,000 in value, which items are of a routine operational nature and are regularly purchased by the Department, may be made by the Department Head subject to final approval by the City Administrator, without prior approval of the City Council. This specifically excludes equipment purchases or purchases that are not routine needs of the Department.

Purchases of items, material, or services less than \$25,000 in value, or when purchases of groups of items exceed \$25,000 in value, which items are of a routine operational nature and are regularly purchased by the Department, may be made by the City Administrator, without prior approval of the City Council.

For unavoidable emergency repairs to equipment that were not planned nor expected and exceed \$5,000 in value, Department Heads may approve such expenditures but such expenditures shall be also approved by the City Administrator and noted on the monthly Treasurer’s Report for the month the emergency expenditure occurred and a full explanation of the circumstances of such emergency shall be documented in the minutes of the City Council Meeting and in the General Ledger for auditing purposes.

Non-routine, non-budgeted purchases over \$25,000 shall require the prior approval of the City Council.

Competitive Bidding

For purchases more than \$10,000 but less than \$100,000, written competitive bids or price quotations are required, except in the case where a pre-negotiated contract through another governmental agency for the product or service exists. Normally, a minimum of three (3) quotes

should be solicited. A quote tabulation should be attached to the invoice or purchase order. These purchases shall be requested by Department Heads and contracts and purchase orders are to be approved by City Council.

Sole-sourced procurement is allowed when requested by a Department Head and determined in writing to the City Administrator that the purchase meets the following conditions:

- A. Supplies or services are proprietary and only available from the manufacturer or a single distributor;
- B. Based on past procurement experience, it is determined that only one (1) distributor services the region in which the supplies are needed;
- C. Supplies or services are available at a discount from a single distributor for a limited period of time; or
- D. A firm has significant previous or specialized knowledge on a proposed project that would result in significant monetary and/or time savings in completion of the project.

Sole source purchases shall be subject to approval as follows:

- \$.01 – \$9,999.99: Department Head prior to purchase.
- \$10,000.00 - \$24,999.99: City Administrator prior to purchase, with written recommendation from the above.
- \$25,000.00 and over: City Council prior to purchase with written recommendation from the above.

Capital items that are specifically scheduled in the annual budget, and for which the cost exceeds \$100,000, shall be awarded by the City Council only after a closed bid process. The City Clerk shall solicit and receive closed bids in coordination with the Department Head.

Contracts for professional services, or similar services or items of a nature which render development of detailed specifications difficult or impossible; may be procured through the use of Requests for Proposals and negotiation of those proposals. The City Council may choose to award contracts procured by Request for Proposal based on qualifications rather than price alone.

Public works contracts exceeding \$100,000 shall be properly bonded. A surety bond shall be received from the contractor in a sum of not less than the sum total in the contract conditioned that such contractor shall pay all indebtedness incurred for labor, materials, equipment, or supplies consumed in the construction described in the contract.

Competitive bidding requirements may be satisfied through City participation in cooperative purchasing relationships which utilize competitive bidding.

Non-Competitive Bidding

Non-competitive bidding can be used when 1) The use of competitive bidding is not feasible, such as only one source is available, 2) There is a public emergency, or 3) The results of competitive bidding are inadequate.

- A. The scope of the proposed goods and/or services shall be defined as in competitive bidding. The scope will include the proposed goods and/or services, time frame, terms of compensation as defined by the City.

- B. The contract will be approved by City Council prior to executing a formal contract including bonds, if applicable. All unsuccessful bidders will be notified in writing with copies of the documentation retained in the City’s files.

Change Orders

In the case of change orders on contracted purchases or projects, change orders up to 10% of the contract amount may be approved by the City Administrator upon request by the Department Head.

Purchasing Card Policy

Recordkeeping

In order to facilitate prompt payment on the account it is important that employees obtain appropriate documentation for purchases made with a purchasing card. Acceptable forms of documentation are:

- A. Itemized suppliers sales receipt.

- B. Charge slip with itemized description of the products purchased.

In any case, the documentation should clearly provide a description of the items purchased, in plain language. If it does not, the employee making the purchase should make a note describing the purchase. If needed, direction on this can be obtained from departmental supervisory staff.

Each employee cardholder will be responsible for submitting a detailed receipt for every purchase made on their card during the billing cycle. If a receipt is missing it will be the supervisor and/or employee’s responsibility to locate the receipt or obtain a copy of the receipt. In the case no receipt copy is attainable, the employee who made the purchase should create a document describing the details of the purchase, which document shall be reviewed and approved by the Department Head. It is also the responsibility of the employee to ensure sales tax is not applied to the purchase on applicable sales within the state of Kansas.

Reconciling Statements

Purchasing card statements are to be reconciled to the detailed purchase records first by the employee to whom the purchasing card is issued and reviewed and approved by the Department Head before payment can be made. It is the card user’s responsibility to obtain documentation for each purchase and to submit the same to the Department Head.

The Department Head is responsible for gathering that information and for presenting it to the City Administrator for reconciling it to the monthly statement.

Card Security

Each employee is responsible for the card provided to them. Any lost or misplaced cards must be reported to the Department Head immediately. The Department Head will report the lost or misplaced cards to the City Administrator.

The card is to be used for business expenditures only.

Purchases made with the card must comply with the other requirements of the City purchasing policy.

Balance Limits

The cards have been issued with initial balance limits of \$6,500. Employees that are aware that the balance is going to exceed the limit should notify the Department Head. The Department Head will contact the City Administrator to discuss obtaining a higher limit.

Changes in Staff

When an employee resigns or is otherwise separated from employment with the City of Westwood, cards in their care must be accounted for before the final paycheck is issued, as is the case with other City property.

Audit

The Department Head is responsible for ensuring that the required documentation is obtained and on file for each purchase. It is critical that any users of the card obtain sales receipts specifically identifying the nature of the purchase.

ACH Transactions and Wire Transfers

The City receives receipts and makes disbursements electronically, either through the ACH or wire transfer systems. These transactions may be initiated either by the City or by others.

For non-typical City-initiated transactions over \$100,000 in value, the City Administrator is responsible for creating the transaction and the City Treasurer is responsible for reviewing and approving such transaction prior to final disbursement.

In the case of ACH transactions and wire transfers initiated by others, it is normally (but not always) the practice for the initiating party to provide notice of the impending transaction.

All transactions are initiated by the City Administrator. Transactions initiated by outside agencies are done only upon some form of prior authorization (payroll reporting, sales tax return, etc.). Detailed documentation supporting the transactions is to be retained in the City Clerk's office.

Electronic transactions of this nature include:

- A. State provided revenue receipts (Sales Tax, Property Tax, Alcohol Tax, etc.). Notice for these are typically provided to the City Administrator, who will forward the notice to the City Clerk's receipting station to be entered as a receipt.

- B. Interest earnings.
- C. Grant proceeds from some State and Federal Agencies.

End of month procedure

Reconciliation should be completed monthly by the City Treasurer, with final approval by the City Administrator. In order to accomplish that, the following will need to happen:

- A. When the bank statement is first available, the City Treasurer will verify the credit card receipts against the statement.
- B. Interest income on the bank statement will be processed as a journal entry through the General Ledger. These entries will be approved by the City Administrator.
- C. The City Administrator will review the bank statements, and make any supplemental entries that are necessary or that have been missed during the month.
- D. Assemble the statements from the bank and the Investments report.
- E. The City Administrator will run a balance sheet for cash only and an outstanding transaction register from the financial software. The total of these reports must equal the total of the bank statements.

The following reports and information will be maintained as documentation:

- A. The final reconciliation report
- B. The bank statements
- C. The computer-generated Treasurer's Report
- D. The outstanding check register
- E. Distribution Notices from the State of Kansas, Johnson County, or other taxing jurisdictions
- F. Voided checks
- G. Insufficient fund notifications

Investment Policy

1.0 POLICY

It is the policy of the City of Westwood to invest public funds in a manner which will provide the highest investment return, with the maximum security, while meeting the daily cash flow demands of the City of Westwood and conforming to all state, county, and local statutes governing the investment of public funds.

2.0 SCOPE

The City Administrator will establish and maintain written procedures for the operation of the cash management and investment program consistent with this policy. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the City Administrator.

3.0 DELEGATION OF AUTHORITY

Responsibility for the management of the City's investment portfolio is delegated to the City Administrator. This policy applies to the cash management and investment activities of the City of Westwood, Kansas, except for the debt service funds, reserve funds, and other financial assets held by various fiscal agents and trustees as provided by the appropriate bond ordinance. The financial assets of all other funds shall be administered in accordance with the provisions of this policy.

4.0 OBJECTIVES

The City of Westwood recognizes that effective cash management is an integral component of good financial management. Therefore, it is the policy of the City that funds deemed idle, based on projected cash flow, be invested in a manner that seeks to maximize their productivity until such time as they are needed for the operations of the City. Investments shall be at the highest rates obtainable at the time of investment, within the limitations of the law and our prudent investment policy. The City's investment portfolio shall be designed and managed in accordance with the responsibility of ensuring the public's trust and consistent with state, county, and local laws.

4.1 Safety

The primary tenet of the City of Westwood investment strategy is ensuring the safety of principal. Cash investments of the City of Westwood shall be undertaken in a manner that seeks to maximize investment income while ensuring the preservation of capital in the portfolio.

4.2 Return on Investment

The investment portfolio shall be designed to attain, at a minimum, a market-based rate of return throughout budgetary and economic cycles, taking into account the City's investment risk constraints, Kansas State Statutes, and the cash flow needs of the City's operations. Investments will be made at the highest rates obtainable at the time of investment, within the limitations of the law, and the City's prudent investment policy.

4.3 Liquidity

The City of Westwood's investment portfolio shall remain sufficiently liquid to enable the City to meet all operating requirements and expenses without early redemption of securities. In a situation where an unforeseen event arises that creates the need for securities in the portfolio to be sold, the following procedure will be followed. The amount and timing of the cash requirements will first be determined. A compilation of anticipated revenue and maturing investments will be made. The net amount of any cash shortage will then be calculated. The City's portfolio will be reviewed and those investments that can be sold prior to maturity will be evaluated to determine the order that the investments should be sold. Consideration will be given to the size of the investment, interest rate on the investment, and maturity date. In most cases, any investments that have gained in value will be sold first. In some cases, it may be necessary to negotiate the early liquidation of certificates of deposit. If those deposits are with more than one financial institution, the institution that requires the lowest penalty will be sold first. The City Administrator must approve all such sales.

5.0 INTERNAL CONTROL

5.1 Written Process

The City Administrator shall establish a system of written internal controls, which shall be reviewed annually by the independent auditor. These controls shall be designed to prevent loss of public funds due to fraud, error, misrepresentation, or imprudent actions. No security will be purchased without the approval of the City Administrator, or their designee

5.2 Delivery vs. Payment

All securities purchased under this policy will be on a delivery versus payment basis.

5.3 Investment Staff

Investments will be made either by the City Administrator, or employees, or third parties with experience and knowledge of investments by Kansas local governments. The quality and capability of the investment staff will be demonstrated by having prior experience in investing funds in accordance with K.S.A.12-1675, prior employment with a broker-dealer, or registered investment adviser that involved investing funds in

United States Government Agencies or Sponsored Corporations, or participating in training sponsored by an agency such as the Government Finance Officers Association that is familiar with governmental investing.

6.0 PRUDENCE

All participants in the investment process shall seek to act responsibly as custodians of the public trust. Investment officials shall avoid any transaction that might impair public confidence in the effectiveness of the government of the City of Westwood.

The standard of prudence to be used by investment officials shall be the “prudent investor” rule, which states, “Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.”

The rule shall be applied in the context of managing the entire portfolio.

Investment officers acting in accordance with written procedures and exercising due diligence shall be relieved of personal responsibility for a specific security’s credit risk or market price changes, providing deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

7.0 LEGAL AUTHORITY AND LIMITATIONS OF INVESTMENT INSTRUMENTS

All investments purchased for operating portfolios (i.e., not including bond proceeds or moneys held for expenditure pursuant to a multi-year capital improvement program or equipment reserve fund) under this policy shall be governed by K.S.A. 12-1675, et. seq. and all revisions thereto, as may be made by the Kansas Legislature. Investments are limited to a maximum maturity of two years unless the City’s investment policy is approved by the State of Kansas Pooled Money Investment Board (the “PMIB”), in which case the maximum maturity of investments can be for up to four years.

7.1 Presumption of Bank Deposits for Idle Operating Funds

With respect to operating portfolios (that is, not including bond proceeds or moneys to be used with respect to a multi-year capital improvement program or equipment reserve fund), Kansas law makes a presumption that idle funds will be deposited with commercial banks. As a result, the deposits below are permitted at any time:

7.1.1 Commercial Bank Deposits ^[1]_[SEP]

All bank deposits that qualify for protection from Federal deposit insurance also qualify as permitted

investments.

7.1.2 Certificates of Deposit (CDs)

Instruments issued by banks or savings and loans that state specified sums have been deposited for specified periods of time and at specified rates of interest. Certificates of deposit are required to be backed by acceptable collateral securities as dictated by K.S.A 9-1402.

7.2 Alternative Investments

To the extent commercial banks with main offices or branches located within the corporate boundaries of Johnson County, Kansas are unable or unwilling to provide deposits at rates meeting or exceeding those set forth by Kansas law, the City may, at its discretion, invest idle operating funds in the alternative investment provided by state law.

7.2.1 Repurchase Agreements (REPOs)

Repurchase agreements are contractual agreements between the City and commercial banks, trust companies, state or federally chartered savings and loan associations, or federally chartered savings banks. The repurchase agreement issuer receives cash and, in turn, sells securities to the City. The City agrees to resell the securities to the issuer on a specific future date at the original purchase price plus a negotiated interest payment. Repurchase agreements are required to be backed by acceptable collateral securities as dictated by K.S.A 9-1402. If the City's investment policy is approved by the PMIB, a repurchase agreement may be executed with a primary dealer or a broker-dealer registered in accordance with K.S.A.17-12a401.

7.2.2 United States Treasury Obligations

These are direct obligations that are insured as to principal and interest by the United States Government.

7.2.3 United States Government Agency Securities

United States Government Agency securities include indirect obligations of the federal government, issued by the Government National Mortgage Association and the Small Business Administration. These securities are backed by the full faith and credit of the United States Government.

7.2.4 Government Sponsored Corporations Instruments

Obligations of enterprises sponsored by the United States Government, such as Federal Farm Credit System, Federal Home Loan Mortgage Association, Federal National Mortgage Association, and the

Student Loan Marketing Association.

7.2.5 Kansas General Obligation Bonds

General obligation municipal bonds or other general obligations issued by any municipality of the state of Kansas as defined in K.S.A. 10-1101.

7.2.6 Kansas Municipal Investment Pool

A pool of investments consisting of CD's, United States Treasuries, United States Agencies, Commercial Paper, and Repurchase agreements. The pool is administered by the Pooled Money Investment Board.

7.2.7 Temporary Notes of the City ^[1]_[SEP]

Although the City is permitted to hold its own temporary notes as investments, in most cases, the City's purchase of its own notes will result in the cancellation of such notes.

7.3 Modifications to Permitted Investments

The City Administrator may add other types of investments or modify this list at his/her reasonable discretion as changes to the statutes governing such investments are revised. The above instruments may be purchased from any financial institution permitted by Kansas law.

8.0 BOND AND TEMPORARY NOTE PROCEEDS

The City of Westwood may invest any bond or temporary note proceeds, as well as the balances in an equipment reserve fund designated by ordinance pursuant to K.S.A. 12-1,117, or balances in a multi-year capital improvement fund designated by ordinance pursuant to K.S.A. 12-1,118, which are not immediately needed, in accordance with Kansas Statute 10-131 and the specific bond or note resolution. Funds will be invested as required by federal regulations regarding arbitrage on tax-exempt bond proceeds.

The interest received on the investment of bond and note proceeds shall be used for the purpose of paying interest on the bonds or notes issued, or for paying the cost of the project for which the bonds or notes were issued.

9.0 CONTRACTS WITH FINANCIAL INSTITUTIONS

The City of Westwood may place funds with depositories having their main offices or branch locations located in Johnson County, Kansas as provided by K.S.A. 9-1401. All depositories of the City of Westwood shall execute a contract with the City of Westwood which shall designate the requirements of serving as a depository for the City, including collateralization of City funds invested at such depository, and the related

safekeeping requirements of the pledged securities. The City shall have a separate contract with the “operating bank” which will execute a contract once every three years in accordance with the practice of bidding banking services every three years. Any financial institution in which the City has funds shall provide such financial data to the City Administrator as may be required by the City to evaluate the financial condition of the institution. Such data will be in the form of audited financial statements, Federal Deposit Insurance Corporation regulatory reports, and shall be provided at least annually by the financial institutions to the City Administrator. Any refusal to provide such information to the City may be cause for termination of the depository contract with such institution.

9.1 Safekeeping of Securities

All securities will be perfected in the name of the City and held by the City or a third party custodian. A third party institution will hold securities pledged as collateral by the City’s financial institutions. The City is authorized to use the Federal Reserve Bank of Kansas City as a custodian, but may use other custodians as permitted by state law.

Safekeeping records of pledged securities may be mailed, faxed or emailed to the City in order to accommodate timely and legal investment transactions.

9.2 Collateralization

The City requires full collateralization of all deposits held by commercial banks that exceed the FDIC coverage limit, as required by Kansas State Statutes. Collateral underlying repurchase agreements is limited to obligations of the United States Government and its agencies. The City will accept as collateral for such deposits those securities listed in K.S.A. 9-1402 in the following manner:

- A. All deposits shall carry FDIC insurance (current protection extends to deposits up to a maximum of \$250,000 per institution), or
- B. If deposits on-hand at any eligible depository of the City exceed the then applicable FDIC insurance limit, such depository is required to pledge securities with a market value equal to not less than 100% of City deposits on hand (less \$250,00 per institution).
- C. Securities eligible to be pledged against City deposits include those listed below. The City may, at its sole discretion, reject any pledged securities proposed by any institution:
 - 1. Direct obligations of or obligations insured by the United States Government (By policy, market value equal to or exceeding 100% of deposits on hand.)
 - 2. United States Government Agency Securities (By policy, market value equal to or exceeding 105% of deposits on hand.)
 - 3. Bonds of any Kansas municipality or quasi-municipality that have been refunded in advance of their maturity and are fully secured by an irrevocable escrow consisting of non-callable US

Treasury and Agency securities. (By policy, market value equal to or exceeding 100% of deposits on hand.)

4. Bonds of the State of Kansas. (By policy, market value equal to or exceeding 102% of deposits on hand.)
5. General obligation bonds of any Kansas municipality. (By policy, market value equal to or exceeding 105% of deposits on hand.)
6. Revenue bonds of any Kansas municipality or quasi-municipality. (By policy, market value equal to or exceeding 105% of deposits on hand.)
7. Temporary notes of any Kansas municipality or quasi-municipality. (By policy, market value equal to or exceeding 102% of deposits on hand.)

The City Administrator or his/her designee will monitor the adequacy of collateralization weekly. The City requires monthly reports with market values of pledged securities from all financial institutions with which the City has certificates of deposit or repurchase agreements.

10.0 [RESERVED]

11.0 INVESTMENT PROCEDURES

As required by K.S.A. 12-1675, the City of Westwood gives preference to local financial institutions when investing idle operating funds. Before investing any funds, the City shall conduct a competitive bid process. Investment bids will be taken by the City Administrator, or his/her designee, at times when investment of idle funds would be in the best interest of the City.

Such bid requests may be made in writing and any required collateral forwarded to the City prior to the investment being purchased.

If one or more qualified financial institution is unable to meet or exceed the state calculated benchmark investment rate for a given maturity, the City may invest in the alternate permitted investments listed in Section 7.2 above.

12.0 INVESTMENT DIVERSIFICATION

Investment maturities shall be scheduled to coincide with projected cash flow needs. Cash flow needs will be projected based upon the weekly amount of claims paid, the biweekly payroll and anticipated revenue.

12.1 Investment Limitations per Institution

Pursuant to current policy of the Pooled Money Investment Board, the City may not limit the amount of bank deposits (including certificates of deposit) that can be held in its investment portfolio. In order to protect the City from the failure of any one financial institution, the City shall not invest more than 50% of

idle funds with any one financial institution. The 50% limitation does not apply to securities held in safekeeping by an institution on behalf of the City. The 50% limitation shall be determined prior to the solicitation of bids. If an institution exceeds the 50% limitation after the bids have been awarded, no further bids will be accepted from the financial institution until sufficient maturities have occurred to reduce their share of the portfolio to below 50%.

12.2 Investment Type

- A. The City imposes no restrictions on the amount of Bank Deposits it can hold in its investment portfolio.
- B. The City imposes no restrictions of the amount of U.S. Treasury or Agency obligations (including receipts evidencing ownership in such securities) it can hold in its investment portfolio.
- C. The City limits the amount of repurchase agreements it can hold to no more than 50% of its portfolio.
- D. The City limits the amount of investments in the Municipal Investment Pool to no more than 30% of its portfolio, except in January, February, July, and August each year (during which months the City may use the MIP to hold funds pending deposit with the State Treasurer for payment of principal and interest on its bonds.)
- E. The City imposes no restrictions on the amount of municipal refunding bonds with principal and interest fully secured by an irrevocable deposit of U.S. Treasury and Agency securities it can hold in its portfolio.
- F. The City limits the amount of Kansas general obligation bonds with a credit rating below "A3", "A-", or "A-" from Moody's, Standard and Poor's, or Fitch, respectively, to no more than 5% of its portfolio.
- G. The City limits the amount of Kansas general obligation bonds with a credit rating of "A3", "A-", or "A-" or higher from Moody's, Standard and Poor's, or Fitch, respectively, to no more than 30% of its portfolio.

12.3 Maturity

The maximum maturity for an investment for an operating fund is two years. The maximum maturity for an investment of bond proceeds or moneys to be used for a multi-year capital improvement program coincides with the expected timing of expenditure of such moneys. Investment maturities shall be distributed to coincide with projected cash flow needs to meet the objectives of Section 4.3.

13.0 REPORTING REQUIREMENTS

The investment officer shall generate investment reports for management purposes at least quarterly. The reports will be made available to the Westwood City Council as part of the quarterly financial report. In addition, the auditors will be provided a report on the City's investments that shows the investment type, rating, and maturity. The report will also discuss interest rate risk, credit risk, concentration of credit risk,

and custodian credit risk.

14.0 ETHICS AND CONFLICTS OF INTEREST

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and investment officials shall disclose to the City Administrator any material financial interests in financial institutions that conduct business within their jurisdiction, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the City of Westwood.

15.0 SEPARATE PROVISIONS OF POLICY AND CONFLICTS WITH KANSAS LAW

The above policies shall remain in full force and effect until revoked by the City Council. If, after adoption of this policy, there is any conflict of this policy with Kansas laws and/or statutes, current law shall dictate.

16.0 GLOSSARY

The following is a glossary of key investing terms that appear in The City of Westwood's Investment Policy.

Cash Flow—Cash receipts minus disbursements from a given asset, or group of assets, for a given period. An analysis of the movement of cash through a venture as contrasted with the earnings of the venture.

Certificate of Deposit—A time deposit with a commercial bank with a specific maturity evidenced by a certificate.

Collateralization—Process by which a borrower pledges securities or deposits for the purpose of securing the repayment of a loan and/or security.

Cost—An amount paid or required in payment for a purchase of an investment.

Fannie Mae—Fannie Mae (formerly the Federal National Mortgage Association) is a private stockholder-owned corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed rate mortgages. Fannie Mae's securities are also highly liquid and are widely accepted. Fannie Mae assumes and guarantees that all security holders will receive timely payment of principal and interest.

Federal Home Loan Bank (FHLB) —Government-sponsored wholesale banks, which lend funds and provide correspondent banking services to member commercial banks, thrift institutions, credit unions and insurance companies. The mission of the FHLB is to liquefy the housing-related assets of its members who

must purchase stock in their district Bank.

Federal Home Loan Mortgage Corporation (FHLMC) —A federal agency which purchases first mortgages from members of the Federal Reserve System and the Federal Home Loan Bank System, referred to as “Freddie Mac.”

Interest Rate—The interest rate is the annual rate of interest received by an investor from the issuer of fixed income securities. It is also the percentage of an amount of money that is paid for its use for a specified time.

Internal Controls—An internal control structure designed to ensure that the assets of the entity are protected from loss, theft, or misuse. The internal control structure is designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management.

Investment—Commitment of money to gain profit or interest as by purchasing securities.

Investment Agreements—An agreement with a financial institution to borrow public funds subject to certain terms and conditions regarding collateralization, liquidity and interest rates.

Kansas Municipal Investment Pool (MIP) —The State of Kansas offers a Local Government Investment Pool (LGIP) entitled “State of Kansas Municipal Investment Pool,” which is governed by the State of Kansas Pooled Money Investment Board.

Kansas Statutes—A written law enacted by the Kansas State Legislature.

Liquidity—Refers to the ability of an instrument to be converted into cash rapidly without substantial loss of value.

Market Value—The price at which a security is trading and could be purchased or sold on a given day.

Portfolio—Collection of securities held by an investor.^[SEP]

Principal—(1) The face amount or par value of a debt security. (2) One who acts as a dealer buying and selling for his own account.

Repurchase Agreement (Repo) —An agreement of one party to sell securities at a specified price to a second party and a simultaneous agreement of the first party to repurchase the securities at a specified price at a specified later date.

Safekeeping—The holding of securities by a financial institution on behalf of the securities owners.

Safety—The measure of the degree of freedom from risk.

Securities—Documents that can be traded for value; an instrument of ownership or debt used to finance government and corporate entities.

Time Deposits—Another term for a savings account or certificate of deposit in a commercial bank.

United States Government Securities (Treasuries) —Bonds, notes, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to the full and timely payment by the United States of America.

COUNCIL ACTION FORM

Meeting Date: June 13, 2024

Staff Contact: Leslie Herring, City Administrator

Agenda Item: Consider Passing Resolution No. 129-2024 Waiving the GAAP Requirement for Financial Reporting

Background/Description of Item

The State of Kansas requires audits for cities and their financial statements be based on Generally Accepted Accounting Principles (GAAP), which has proven to be a very cumbersome and expensive accounting standard to comply with for smaller municipalities.

The provisions of K.S.A. 75-1120A(A) do allow for cities to adopt the Cash Receipts and Disbursements method of accounting for the audit, where the audit testing procedures remain the same and it allows cities to report an audit based on the annual budget cycle.

Staff Comments/Recommendation

As has been the past practice of the City of Westwood, waiving the requirements of GAAP principles during the annual financial audit is recommended to allow for a more straightforward auditing process. As this Resolution waiving GAAP was not presented simultaneously with the audit due to an oversight of City staff, it is being presented for adoption on this month's regular agenda.

Budget Impact

None

Suggested Motion

I move to approve Resolution No. 129-2024 waiving the requirements of K.S.A. 75-1120A(A) as they apply to the City of Westwood for the fiscal year that ended December 31, 2023.

CITY OF WESTWOOD, KANSAS

RESOLUTION NO. 129-2024

**A RESOLUTION OF THE CITY OF WESTWOOD, KANSAS,
WAIVING THE REQUIREMENTS OF K.S.A. 75-1120A(A) AS THEY APPLY TO
THE CITY OF WESTWOOD FOR THE YEAR ENDED DECEMBER 31, 2023.**

WHEREAS the City of Westwood, Kansas, has determined that the financial statements and financial reports for the year ended December 31, 2023 prepared in conformity with the requirements of K.S.A. 75-1120a(a) are not relevant to the requirements of the cash basis and budget laws of this state and are of no significant value to the Governing Body or the members of the general public of the City of Westwood, and

WHEREAS there are no revenue bond ordinances or resolutions or other ordinances or resolutions of the municipality which require financial statements and financial reports to be prepared in conformity with. K.S.A. 75-1120a(a) for the year ended December 31, 2023.

NOW, THEREFORE BE IT RESOLVED, by the Governing Body of the City of Westwood, Kansas, in regular meeting duly assembled this 13th day of June, 2024 that the Governing Body waives the requirements of K.S.A. 75-1120a(a) as they apply to the City of Westwood for the year ended December 31, 2023.

BE IT FURTHER RESOLVED that the Governing Body shall cause the financial statements and financial reports of the City of Westwood to be prepared on the basis of cash receipts and disbursements as adjusted to show compliance with the cash basis and budget laws of this State.

This resolution shall take effect and be in force from and after its adoption by the Governing Body.

PASSED by the Governing Body of the City of Westwood, Kansas and approved by the Mayor this 13th day of June, 2024.

David E. Waters, Mayor

ATTEST:

Abby Schneweis, City Clerk

APPROVED AS TO FORM:

Ryan B. Denk, City Attorney

COUNCIL ACTION FORM

Meeting Date: June 13, 2024

Staff Contact: Leslie Herring, City Administrator

Agenda Item: Consider Resolution No. 130-2024 Appointing Mary Bosco Heinrich to the Westwood Foundation Board

Background

The Westwood Foundation is a Kansas not-for-profit corporation organized and existing as an instrumentality of the City of Westwood, Kansas and is governed in the conduct of its affairs by its Board of Directors, its articles of incorporation, and its bylaws. The Westwood Foundation bylaws as amended state that residents of the City of Westwood, Kansas may be appointed by the Mayor and confirmed by a resolution adopted by a majority of the members of the Westwood City Council to serve terms of four (4) years on the Westwood Foundation Board of Directors. Pursuant to Section 3.2(b) of the Amended and Restated Bylaws of the Westwood Foundation, the Mayor transitioned to ex-officio membership resulting a vacancy on the Westwood Foundation Board of Directors with a term expiring May 31, 2025, which is to be filled.

Mayoral Recommendation

Following adoption of the Amended and Restated Bylaws in July 2023 , the Mayor issued an open call for candidates. Statements of interest from two (2) residents were received. Following review of those statements of interest, Mayor David Waters and Westwood Foundation President Justin Bridges conferred, and the Mayor is recommending the Governing Body consent to the appointment of Mary Bosco Heinrich.

Ms. Bosco Heinrich is a 9-year resident of Westwood. She holds a professional position as Philanthropic Director of Strategy & Communications at Children’s Mercy and has served in a variety of board roles including most recently as President of the KC Healthy Kids Board. In Westwood, she has served on the Westwood View Educational Enrichment Fund (EEF).

Staff Comments

With the adoption of Resolution No. 130-2024, the Westwood Foundation Board of Directors would be as follows:

Westwood Foundation Board of Directors	Date Appointed	Term Expiration Date
Justin Bridges	May 2021	May 2025
Mary Bosco Heinrich	June 2024	May 2025
Sean O’Brien	April 2013	May 2027
Kumud Pyakuryal	September 2013	February 2027
Thomas Scott	May 2021	May 2025
Robert C.J. Thompson	April 2013	February 2027
Rita Zeller	May 2021	May 2025

Budget Impact

N/A

Suggested Motion

I move to adopt Resolution No. 130-2024 confirming the appointment of Mary Bosco Heinrich to the Westwood Foundation Board of Directors.

**CITY OF WESTWOOD, KANSAS
RESOLUTION NO 130-2024**

**A RESOLUTION OF APPOINTMENT OF A
BOARD MEMBER TO THE WESTWOOD FOUNDATION**

WHEREAS, the Westwood Foundation is an Kansas not-for-profit corporation organized and existing as an instrumentally of the City of Westwood, Kansas and is governed in the conduct of its affairs by its Board of Directors, its Articles of Incorporation and its Bylaws, and

WHEREAS, the Westwood Foundation Bylaws as amended state that residents of the City of Westwood, Kansas may be appointed by the Mayor and confirmed by a resolution adopted by a majority of the members of the Westwood City Council to serve terms on the Westwood Foundation Board of Directors, and

WHEREAS, pursuant to Section 3.2(b) of the Amended and Restated Bylaws of the Westwood Foundation, the Mayor transitioned to ex-officio membership resulting a vacancy on the Westwood Foundation Board of Directors with a term expiring May 31, 2025.

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

Section 1. That Mary Bosco Heinrich, 2321 W. 51st Terrace, shall serve on the Westwood Foundation Board of Directors for a term that expires May 31, 2025.

Section 2. This Resolution shall take effect and be in force from and after its adoption by the Governing Body.

**ADOPTED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD,
KANSAS, ON JUNE 13, 2024.**

(Seal)

David E. Waters, Mayor

ATTEST:

Abby Schneweis, City Clerk

APPROVED AS TO FORM:

Ryan Denk, City Attorney

COUNCIL ACTION FORM

Meeting Date: June 13, 2024

Staff Contact: John Sullivan, Director of Public Works

Agenda Item: Consider Authorization of Purchase of 2024 ¾ Ton Crew Cab Pickup Truck

Background/Description of Item

In April 2024, the City's 2015 Ford Police Interceptor experienced an engine failure and needs to be replaced. The vehicle to be replaced is the vehicle I have been driving so the replacement would be the vehicle I would be driving.

I have found a Ford and a Chevrolet that will fit our needs and would be negotiating a purchase price for whichever vendor provides the best overall deal with the approval of the Council not to exceed number. As both the Chief and I have expressed, ordering a vehicle as we have done in previous years is nearly impossible or can be delayed by over a year as was demonstrated by the last vehicle we purchased. We had planned to replace a truck in the 2025 year, and I am asking you to move that purchase up to now. I have checked with our treasurer, and this is acceptable since the equipment reserve fund has sufficient budget authority.

Staff Comments/Recommendation

Staff recommends that the City Council authorize the purchase of a ¾ ton crew cab pickup truck with equipment in an amount not to exceed \$70,000 from whichever vendor provides the best pricing and equipment to be paid from the Equipment Reserve Fund in FY24 and not in FY25.

Budget Impact

Funds for the purchase have been allocated in the 2025 Equipment Replacement Plan in the amount of \$63,800. I am asking for a not to exceed budget of \$70,000 for the truck and equipment to allow some leeway but believe I can purchase the vehicle for closer to \$63,800. Both truck brands I have identified are both work trucks and are snow plow prep packaged and trailer towing equipped.

Suggested Motion

I move to authorize the purchase of a ¾ ton crew cab truck with equipment as specified from either Ford or Chevrolet dependent on the vehicle and terms of sale that provide the best value for the City in an amount not to exceed \$70,000 to be paid from the Equipment Reserve Fund in 2024.

COUNCIL ACTION FORM

Meeting Date: June 13, 2024
Staff Contact: Nick Finck, Building Official

Agenda Item: Consider Fence Variance Request –2330 Shawnee Mission Parkway.; variance requested for placement of an 8’ wooden picket fence.

Background / Description of Item

On June 3, 2024, City staff received an application for a fence variance for 2330 Shawnee Mission Parkway. Galyn Gorup, Director of Regional Facility Services for the University of Kansas Health System, has applied for a building permit for an 8’ wood picket fence to replace the existing 6’ wood picket fence that runs along the north side of the property separating the hospital from the residences on 51st Terrace. This application requires a variance for:

Westwood Zoning Ordinance 4.3.9.B.1./5.6.3.A.1 limiting fences to 6’ in height.

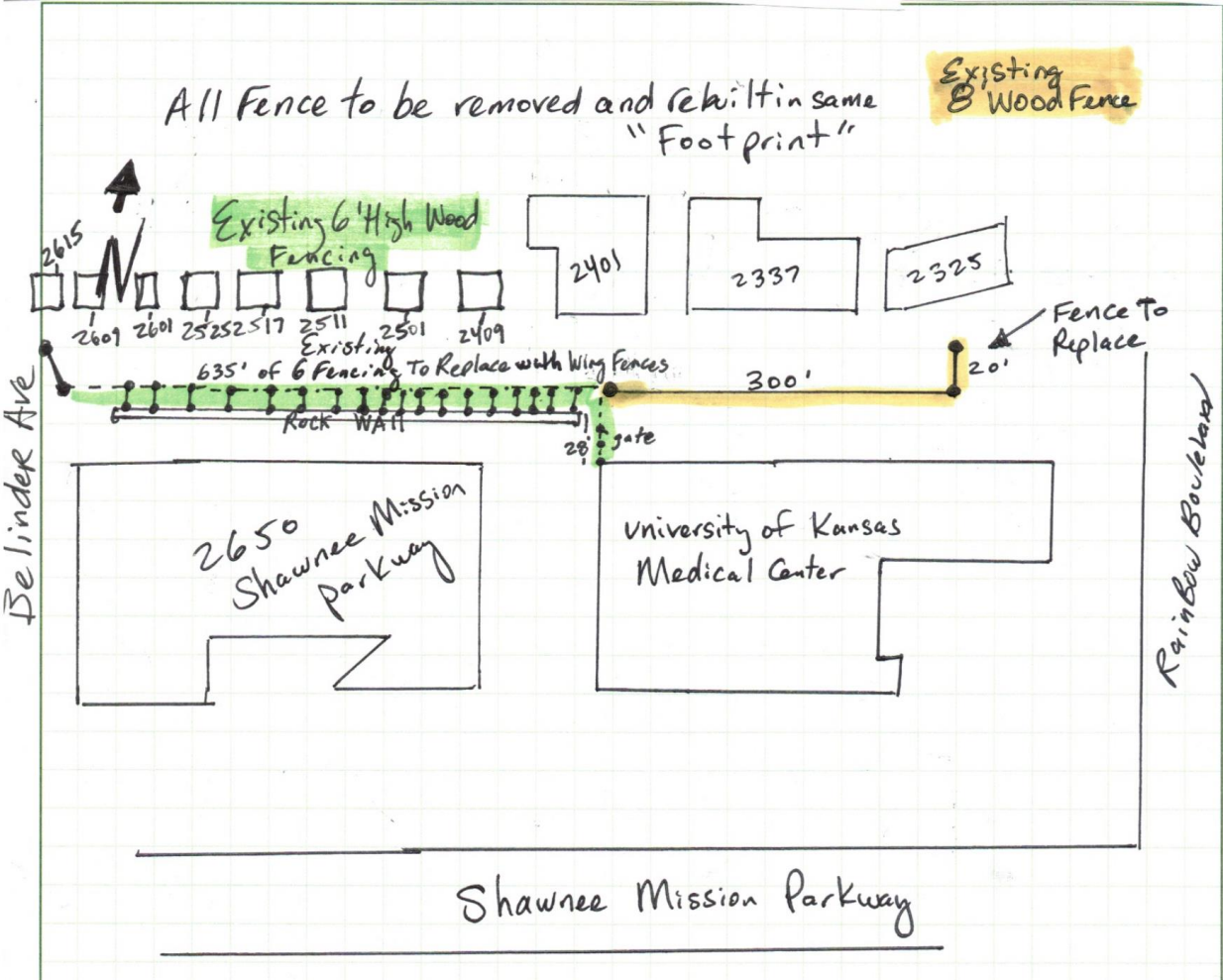
The City Council may approve fence variances pursuant to Westwood Zoning Ord. Section 4.3.9.F, and as set forth below.

4.3.9 Fence and Wall Standards

- F. *Fences or walls which would fail to comply with any other requirement of this Ordinance may be constructed and maintained, contingent upon the following:*
 - 1. *Application shall be made to the Governing Body, which shall study said application to determine the following:*
 - a. *the fence or wall will not adversely affect the general welfare of the immediate neighborhood in which the fence or wall is to be erected, taking into consideration factors including, but not limited to, the value of the property and the safety of residences in said neighborhood;*
 - b. *the appearance, location, and purpose of the proposed fence or wall;*
 - c. *the effect on adjoining properties;*
 - d. *the size of the area to be enclosed; and*
 - e. *the desirability of open views with regard to beauty, value and safety of the neighborhood; and*
 - f. *with respect to any fence on a lot adjacent to a street, a variance shall not be granted if the proposed fence would interfere with a safe view of the street for vehicular traffic, or would impair the view from any nearby driveway, or would extend closer to the street than the adjacent front yard setbacks.*
 - 2. *Said application must be approved by at least four of the five members of the Governing Body.*

Proposed Fence

An illustration of the location of the proposed fence is provided below.



The applicant desires to replace the existing fence, part of which is already 8' tall and part which is 6' tall with a continuously 8' tall wooden picket fence. The new fence would be built in the exact same location as the existing fence providing more shielding from light and noise. A strict application of this Zoning Ordinance provision would require that the fence not exceed 6' in height.

Staff Comments/Recommendation

Pursuant to previous City Council direction, City staff has evaluated the following factors:

- a. Neighbor acknowledgement/consent – Applicant has written letters notifying neighboring properties of this plan. Direct contact was made with three residents adjacent to the 6' portion of the fence who were in favor of increasing height to 8'.
- b. ROW impediment – No;
- c. Established tree impact/removal – Existing trees will be worked around and trimmed if necessary; and

d. Resulting sight lines issues - No.

City staff has no objections to the requested variance.

Suggested Motion

I move to approve the requested fence variance at 2330 Shawnee Mission Parkway to build an 8' wooden picket fence along the entire south side of the property as described in the application.

RECEIVED

Item I, Section X, Item

JUN 03 2024

Application for a Fence Variance



City of Westwood KS

City of Westwood
4700 Rainbow Blvd
Westwood, Kansas 66205
Phone: (913) 362-1550
www.westwoodks.org

TO THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS:

The undersigned hereby affirms:

- That he/she is the owner/duly authorized agent of the owner of the following described real property located at

2330 Shawnee Mission Parkway in the City of Westwood, with the Legal Description

- That said premises are now located in a Westwood City District, and zoned accordingly under the Zoning Ordinances of the City of Westwood.

- That said premises are now being used as follows: Barrier from KU Cancer Center from Residents on north side of Facility

- That the petitioner desires to erect a fence on said premises, as follows (also give reasons which, in the opinion of the petitioner, justify issuance of a fence variance): Replace current fence from Rainbow Blvd to Belinder with 8' acc fencing

Wherefore, petitioner hereby applies for a variance to allow erection of a fence as follows: 8' fence vs current 6' + 8' sections

Form with fields: Date Filed, Accepted by, Date of Hearing, Decision, CITY OF WESTWOOD USE

Owner-Agent Printed Name: Gayla Gorup
Owner-Agent Signature: [Signature]
Phone Number: 913-269-3393