

ORDINANCE NO. TDD-3000

AN ORDINANCE MAKING FINDINGS AS TO THE NATURE AND ADVISABILITY OF CREATING A TRANSPORTATION DEVELOPMENT DISTRICT IN THE SOUTHWEST CORNER OF 159TH STREET & US 69 HIGHWAY; CREATING SAID TRANSPORTATION DEVELOPMENT DISTRICT; AUTHORIZING CERTAIN TRANSPORTATION PROJECTS RELATING THERETO; APPROVING THE MAXIMUM COST OF SUCH TRANSPORTATION PROJECTS; ESTABLISHING THE BOUNDARIES OF THE TRANSPORTATION DEVELOPMENT DISTRICT; PROVIDING FOR THE METHOD OF FINANCING OF THE TRANSPORTATION DEVELOPMENT DISTRICT; AND AUTHORIZING THE IMPOSITION OF A TRANSPORTATION DEVELOPMENT DISTRICT SALES TAX WITHIN THE TRANSPORTATION DEVELOPMENT DISTRICT.

WHEREAS, pursuant to the Transportation Development District Act, K.S.A. 12-17,140 *et seq.*, as amended (the “Act”), the City of Overland Park, Kansas (the “City”), is authorized to acquire interests in property and to construct any project or undertaking relating thereto, including improving, constructing, reconstructing, maintaining, restoring, replacing, renewing, repairing, installing, furnishing, equipping or extending any bridge, street, road, highway access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hanger, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail or other mass transit facility or any other transportation related project or infrastructure, including, but not limited to, utility relocation, sanitary and storm sewers and lift stations, drainage conduits, channels and levees, streetlight, fixtures, connection and facilities, underground gas, water, heating and electrical services and connections located within or without the public right-of-way, sidewalks and pedestrian underpasses or overpasses, and water main and extensions (collectively, the “transportation projects”); and

WHEREAS, the Act further authorizes the City, in order to pay the costs of such transportation projects, to levy special assessments in the transportation development district to be paid in installments, to impose a transportation development district sales tax on the selling of tangible personal property at retail or rendering or furnishing services within a transportation development district in any increment of .10% or .25% not to exceed 1.0% and to issue special obligation bonds payable from such transportation development district sales tax; and

WHEREAS, a petition (the “Petition”) was filed by DMP 159/69 LLC, a Kansas limited liability company, KAP 159/69 LLC, a Kansas limited liability company, LBK 159/69 LLC, a Kansas limited liability company, and JEP 159/69 LLC, a Kansas limited liability company (collectively, the “Developer”) with the City Clerk of the City on March 15, 2013, requesting the creation of a transportation development district located generally in the Southwest corner of 159th Street & US 69 Highway within the City (the “SWC 159th Street & US 69 TDD”), the making of transportation project improvements relating thereto and the imposition of a transportation development district sales tax in order to pay the costs of such transportation projects; and

WHEREAS, the Act provides that prior to creating any transportation development district, the City shall, by resolution, direct and order a public hearing on the advisability of creating such transportation development district, construction of such transportation projects therein and the intent of the City to levy a transportation development district sales tax within such district and shall give notice of said public hearing in accordance with the Act; and

WHEREAS, the Governing Body of the City adopted Resolution No. 3991 (the “Resolution”) on March 18, 2013, directing that a public hearing on the proposed SWC 159th Street & US 69 TDD be held on April 15, 2013, and requiring that the City Clerk provide for notice of such public hearing as set forth in the Act; and

WHEREAS, the Resolution was published once each week for two consecutive weeks in an official City newspaper and notice of the public hearing was mailed by certified mail to all owners within the proposed SWC 159th Street & US 69 TDD; and

WHEREAS, on April 15, 2013, the Governing Body of the City conducted a public hearing on the proposed SWC 159th Street & US 69 TDD, the proposed transportation projects relating thereto, the method of financing the same and the imposition of a transportation development district sales tax; and

WHEREAS, the Governing Body of the City hereby finds and determines it to be advisable to create the SWC 159th Street & US 69 TDD and set forth the boundaries thereof, authorize transportation projects relating thereto, approve the maximum costs of such transportation projects, approve the method of financing the same and impose the transportation development district sales tax, all in accordance with the provisions of the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

Section 1. Creation of SWC 159th Street & US 69 Transportation Development District; Approval of Boundaries. The Governing Body of the City hereby finds and determines that it is advisable to create the SWC 159th Street & US 69 TDD within the City and approve the boundaries thereof, and, as such, hereby creates the SWC 159th Street & US 69 TDD and approves the boundaries thereof. A legal description of the property within the SWC 159th Street & US 69 TDD is set forth on **Exhibit A** attached hereto and incorporated by reference. A map generally outlining the boundaries of the SWC 159th Street & US 69 TDD is attached hereto as **Exhibit B** and incorporated herein by reference.

Section 2. Authorization of Transportation Development District Projects; Maximum Costs. The Governing Body of the City hereby authorizes the project within the SWC 159th Street & US 69 TDD described on **Exhibit C** attached hereto (the “Project”) and determines the maximum cost of the Project to be financed with TDD Sales Tax (as defined below) is Thirty-Two Million and Zero One Hundredths Dollars (\$32,000,000.00), plus the TDD Administrative Fee as defined by, and imposed pursuant to, that certain Bluehawk Development Agreement between the City and the Developer. Notwithstanding the approval of the Project by this Ordinance, the Project and owner or owners of all property comprising the Project must comply with all applicable zoning, planning, permit and other laws and regulations applicable to the Project.

Section 3. Method of Financing. The Project will be financed on a pay-as-you-go basis from revenues received from the imposition of a transportation development district sales tax in the amount of one percent (1%) imposed on sales within the boundaries of the SWC 159th Street & US 69 TDD (the “TDD Sales Tax”). No special assessments shall be implemented under the Act to pay for the proposed Project and no special obligation notes or bonds will be issued for the Project.

Section 4. Imposition of Transportation District Sales Tax. The Governing Body of the City hereby imposes the TDD Sales Tax within the SWC 159th Street & US 69 TDD in an amount of one percent (1.0%) on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailers’ sales tax act within the SWC 159th Street & US 69 TDD, with such TDD Sales Tax to commence on July 1, 2015, or any other effective date the City may approve by ordinance if a change in the effective date outlined herein is timely requested in writing by all owners of record in the SWC 159th Street & US 69 TDD.

Section 5. Effective Date. This Ordinance shall be in full force and take effect from and after its passage, approval and publication once in the official City newspaper. When this Ordinance becomes effective in accordance with this Section, the City Clerk shall provide a certified copy of the same to the State director of Taxation pursuant to K.S.A. 12-189. The City Clerk is hereby further authorized to submit this Ordinance to the Registers of Deeds, referenced to in Johnson County as the Office of Records and Tax Administration for recording.

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PASSED by the City Council this 15th day of April, 2013.

APPROVED by the Mayor this 15th day of April, 2013.

CITY OF OVERLAND PARK, KANSAS

By: _____
Carl Gerlach
Mayor

(SEAL)

ATTEST:

By: _____
Marian Cook
City Clerk

APPROVED AS TO FORM

By: _____
Tammy M. Owens
Deputy City Attorney

EXHIBIT A

Legal Description of SWC 159th Street & US 69 Transportation Development District

File No. 2007-1192
Coffee Creek
February 18, 2013
Revised February 20, 2013

EXH46

TDD Description

All that part of the Northwest Quarter of Section 18, Township 14 South, Range 25 East, in the City of Overland Park, Johnson County, Kansas, described as follows:

COMMENCING at the Northeast corner of the Northwest Quarter of Section 18, Township 14 South, Range 25 East; thence South 2 degrees 01 minutes 55 seconds East along the East line of the Northwest Quarter of said Section 18 a distance of 138.00 feet to the point of intersection of the West right of way line of U.S. Highway 69 and the South right of way line of 159th Street, the POINT OF BEGINNING; thence continuing South 2 degrees 01 minutes 55 seconds East along the West right of way line of U.S. Highway 69 a distance of 299.70 feet to a point; thence South 6 degrees 51 minutes 56 seconds West along the West right of way line of U.S. Highway 69 a distance of 527.33 feet to a point; thence South 3 degrees 46 minutes 28 seconds West along the West right of way line of U.S. Highway 69 a distance of 1143.65 feet to a point on the Easterly prolongation of the North line of Coffee Creek First Plat, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 87 degrees 19 minutes 04 seconds West along the North line of Coffee Creek First Plat and its prolongation a distance of 517.19 feet to a point; thence in a Southwesterly direction along the North line of said Coffee Creek First Plat and along a curve to the left, having a radius of 230.00 feet, through a central angle of 22 degrees 36 minutes 45 seconds, an arc distance of 90.77 feet to a point; thence South 64 degrees 42 minutes 19 seconds West along the Northerly line of said Coffee Creek First Plat a distance of 23.63 feet to a point; thence North 2 degrees 45 minutes 20 seconds West a distance of 373.75 feet to a point; thence South 87 degrees 19 minutes 04 seconds West a distance of 493.66 feet to a point; thence in a Northwesterly direction along a curve to the right, having a radius of 250.00 feet, through a central angle of 25 degrees 43 minutes 25 seconds, an arc distance of 112.24 feet to a point; thence North 66 degrees 57 minutes 31 seconds West a distance of 81.79 feet to a point; thence in a Northwesterly direction along a curve to the left; having a radius of 250.00 feet, through a central angle of 25 degrees 43 minutes 25 seconds, an arc distance of 112.24 feet to a point; thence South 87 degrees 19 minutes 04 seconds West a distance of 356.04 feet to a point; thence in a Southwesterly direction along a curve to the left, having a radius of 280.00 feet, through a central angle of 26 degrees 02 minutes 57 seconds, an arc distance of 127.30 feet to a point; thence in a Southeasterly direction along a curve to the right whose initial tangent bears South 34 degrees 47 minutes 31 seconds East, having a radius of 1030.00 feet, through a central angle of 6 degrees 11 minutes 35 seconds, an arc distance of 111.33 feet to a point; thence South 28 degrees 35 minutes 56 seconds East a distance of 277.70 feet to a point; thence in a Southeasterly direction along a curve to the left, having a radius of 500.00 feet, through a central angle of 14 degrees 09 minutes 36 seconds, an arc distance of 123.57 feet to a point of compound curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 55 minutes 37 seconds, an arc

distance of 35.55 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 2 degrees 26 minutes 28 seconds, an arc distance of 2.98 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 54 degrees 55 minutes 38 seconds, an arc distance of 38.35 feet to a point of compound curvature; thence along a curve to the left, having a radius of 570.01 feet, through a central angle of 0 degrees 04 minutes 29 seconds, an arc distance of 0.74 feet to a point; thence South 56 degrees 14 minutes 48 seconds East a distance of 60.00 feet to a point; thence in a Southwesterly direction along a curve to the right whose initial tangent bears South 33 degrees 45 minutes 12 seconds West, having a radius of 630.01 feet, through a central angle of 1 degree 01 minutes 51 seconds, an arc distance of 11.33 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 46 degrees 44 minutes 52 seconds, an arc distance of 32.64 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 19 degrees 13 minutes 33 seconds, an arc distance of 23.49 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 28 minutes 44 seconds, an arc distance of 35.24 feet to a point; thence South 43 degrees 13 minutes 00 seconds East a distance of 26.24 feet to a point; thence in a Southeasterly direction along a curve to the right, having a radius of 445.00 feet, through a central angle of 16 degrees 47 minutes 04 seconds, an arc distance of 130.36 feet to a point; thence South 63 degrees 34 minutes 04 seconds West a distance of 60.00 feet to a point; thence in a Northwesterly direction along a curve to the left whose initial tangent bears North 26 degrees 25 minutes 56 seconds West, having a radius of 385.00 feet, through a central angle of 16 degrees 47 minutes 04 seconds, an arc distance of 112.78 feet to a point; thence North 43 degrees 13 minutes 00 seconds West a distance of 26.24 feet to a point; thence in a Northwesterly direction along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 28 minutes 44 seconds, an arc distance of 35.24 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 10 degrees 34 minutes 28 seconds, an arc distance of 12.92 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 46 degrees 44 minutes 52 seconds, an arc distance of 32.64 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 630.01 feet, through a central angle of 37 degrees 57 minutes 32 seconds, an arc distance of 417.38 feet to a point; thence South 88 degrees 05 minutes 25 seconds West a distance of 347.62 feet to a point on the East right of way line of Antioch Road; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 60.00 feet to a point; thence North 88 degrees 05 minutes 25 seconds East a distance of 347.74 feet to a point; thence in a Northeasterly direction along a curve to the left, having a radius of 570.01 feet, through a central angle of 37 degrees 00 minutes 29 seconds, an arc distance of 368.18 feet to a point of compound curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 54 degrees 55 minutes 39 seconds, an arc distance of 38.35 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 70.00 feet, through a central angle of 11 degrees 04 minutes 33 seconds, an arc distance of 13.53 feet to a point of reverse curvature; thence along a curve to the left, having a radius of 40.00 feet, through a central angle of 50 degrees 06 minutes 12 seconds, an arc distance of 34.98 feet to a point of reverse curvature; thence along a curve to the right, having a radius of 560.00 feet, through a central angle of 14 degrees 16 minutes 09 seconds, an arc distance of 139.46 feet to a point; thence North 28 degrees 35 minutes 56 seconds West a distance of 277.70 feet to a point; thence in a Northwesterly direction along a curve to the left, having a radius of 970.00 feet, through a central angle of 7 degrees 30 minutes 35 seconds, an arc distance of 127.14 feet to a point of compound curvature; thence along a curve to the left, having a radius of 270.00 feet, through a central angle of 55 degrees 44 minutes 54 seconds, an arc distance of 262.71 feet to a point; thence South 88 degrees 08 minutes 36 seconds West a distance of 210.26 feet to a point on the East right of way line of Antioch Road; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 73.37 feet to a point;

thence in a Northeasterly direction along the East right of way line of Antioch Road and along a curve to the right, having a radius of 1940.00 feet, through a central angle of 7 degrees 22 minutes 54 seconds, an arc distance of 249.94 feet to a point; thence North 5 degrees 21 minutes 32 seconds East along the East right of way line of Antioch Road a distance of 100.00 feet to a point; thence in a Northeasterly direction along the East right of way line of Antioch Road and along a curve to the left, having a radius of 2060.00 feet, through a central angle of 7 degrees 22 minutes 54 seconds, an arc distance of 265.40 feet to a point; thence North 2 degrees 01 minutes 22 seconds West along the East right of way line of Antioch Road a distance of 812.33 feet to a point on the South right of way line of 159th Street; thence North 42 degrees 50 minutes 54 seconds East along the South right of way line of 159th Street a distance of 55.30 feet to a point; thence North 87 degrees 43 minutes 05 seconds East along the South right of way line of 159th Street a distance of 1002.36 feet to a point; thence South 2 degrees 16 minutes 55 seconds East along the South right of way line of 159th Street a distance of 10.00 feet to a point; thence North 87 degrees 43 minutes 05 seconds East along the South right of way line of 159th Street a distance of 5.17 feet to a point; thence in an Easterly direction along the South right of way line of 159th Street and along a curve to the right, having a radius of 3730.00 feet, through a central angle of 5 degrees 34 minutes 44 seconds, an arc distance of 363.19 feet to a point of reverse curvature; thence continuing along the South right of way line of 159th Street and along a curve to the left, having a radius of 3870.00 feet, through a central angle of 2 degrees 40 minutes 33 seconds, an arc distance of 180.74 feet to a point; thence South 89 degrees 22 minutes 44 seconds East along the South right of way line of 159th Street a distance of 631.17 feet to a point; thence North 88 degrees 51 minutes 50 seconds East along the South right of way line of 159th Street a distance of 250.48 feet to a point; thence North 87 degrees 42 minutes 43 seconds East along the South right of way line of 159th Street a distance of 72.07 feet to the POINT OF BEGINNING and containing 4,359,461 Square Feet or 100.0794 Acres, more or less.

SWC 159th Street & US 69 Transportation Development District

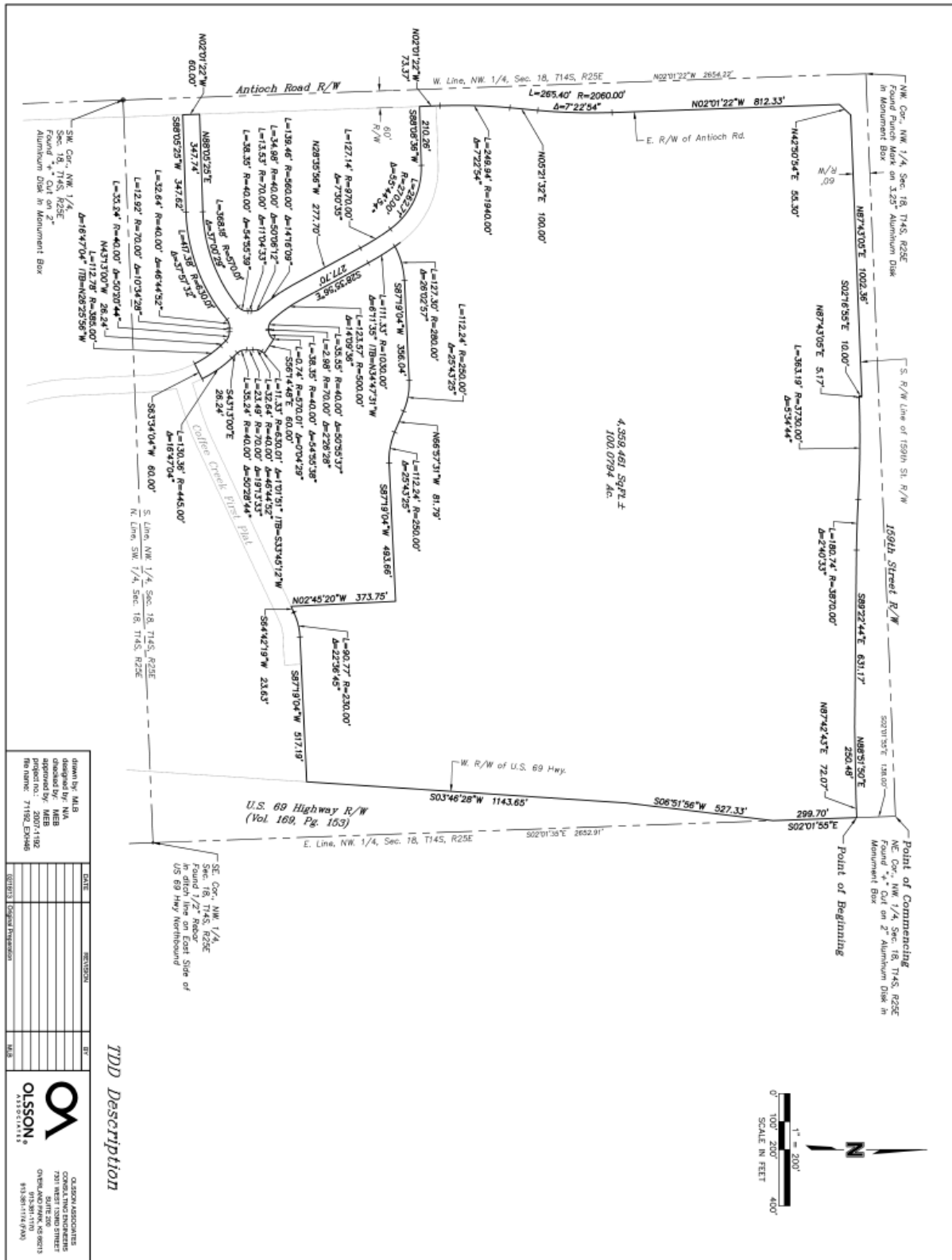


EXHIBIT C

SWC 159th Street & US 69 Transportation Development District Project

The design and construction of on-ramps and off-ramps at the intersection of US Highway 69 and 159th Street, widening existing bridges over US Highway 69 at 159th Street, widening 159th Street to include left and right turn lanes in the vicinity of the aforementioned on-ramps and off-ramps, widening southbound, and northbound US Highway 69 to include auxiliary lanes, traffic signals, sidewalks, bike/hike trail, storm drainage systems, street lights, retaining walls, landscaping and other incidental items as required to complete an interchange at US 69 Highway and 159th Street.

AND

To provide for the design and construction of other transportation related and/or infrastructure improvements, as defined in K.S.A. 12-17,141(k), within or adjacent to the TDD, which are anticipated to include, but shall not be limited to: public and private streets; surface and structured parking facilities; signalization; sidewalks and associated pedestrian amenities; signage; bus stops and facilities; landscaping and irrigation; streetscape improvements; utility and other infrastructure, including, but not limited to water mains, gas mains, electrical services lines, and stormwater management facilities, such as storm sewers and detention facilities; fencing and walls; street lighting; and site work and land acquisition costs associated with any and all of the above.