

FUNDING AGREEMENT FOR CONSTRUCTION OF WATER TRANSMISSION MAIN
IMPROVEMENTS ALONG SHOAL CREEK
PARKWAY BETWEEN NORTH OAK TRAFFICWAY
AND HARRISON STREET

This Funding Agreement for construction of water transmission and related improvements is made by and between Shoal Creek Parkway/North Oak Trafficway Transportation Development District, hereinafter referred to as "TDD", and Kansas City, Missouri, hereinafter referred to as "KANSAS CITY" (collectively, the "PARTIES") on this 7th day of June, 2012.

Recitals

WHEREAS, the Shoal Creek Parkway/North Oak Trafficway Transportation Development District ("TDD") and Kansas City, Missouri ("KANSAS CITY") are working to improve the transportation network in Kansas City; and

WHEREAS, the City desires to construct a water transmission main and related improvements along Shoal Creek Parkway from N. Oak Trafficway to N. Harrison Ave; and

WHEREAS, Committee Substitute for Ordinance No. 110559 provided \$1,200,000.00 from Kansas City, Missouri to the Shoal Creek Parkway/ North Oak Trafficway Transportation Development District for roadway improvements for Shoal Creek Parkway from N. Oak Trafficway to N. Harrison Ave; and

WHEREAS, simultaneous construction of the roadway and water transmission main improvements will provide a substantial cost savings and a better quality infrastructure product; and

WHEREAS, the City desires to contribute up to Five Hundred Forty Five Thousand Dollars (\$545,000.00) to construct the water transmission main shown on Exhibit A.

Agreement

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

PART I : SPECIFIC TERMS AND CONDITIONS

1. **Scope of Agreement.** The purpose of this Agreement is to provide for a cooperative effort between TDD and KANSAS CITY for TDD's performance of the Project in accordance with the terms and conditions set forth herein.
2. **Definitions.** Unless otherwise specified in this Agreement, the following words have the meanings indicated herein, which are applicable to both the singular and plural thereof:
 - A. CONTRACTOR means TDD's Contractor and all Subcontractors.
 - B. PROJECT means the design and construction of the WATER TRANSMISSION MAIN IMPROVEMENTS.
 - C. PAYMENT BOND, PERFORMANCE BOND and MAINTENANCE BOND mean the approved forms of security executed by TDD's Contractors and their Sureties.
 - D. SURETY means the corporation, partnership or individual, duly licensed and authorized to do business in Missouri, bound with and for Contractor to guarantee and assume legal liability for payment of any and all obligations as provided in the KANSAS CITY Charter and Section 107.170 R.S.Mo 1994, as amended, and to guarantee and assume legal liability for the faithful performance of this Agreement.
3. **License to use right-of-way.** KANSAS CITY hereby grants to TDD, its representatives, employees, engineers, consultants and contractors a license to use that portion of the public right-of-way in order to allow the performance of the Project in accordance with the terms of this Agreement. The term of the license shall run concurrently with the term of this Agreement and shall expire at the time KANSAS CITY accepts the Project from TDD. The grant of a license by KANSAS CITY to TDD shall not constitute a conveyance of any interest in the public right-of-way.

4. **Obligations of TDD.** TDD agrees to the following:

A. **CONSTRUCTION CONTRACT.** TDD shall alter its existing construction contract with its CONTRACTOR that has been secured to construct roadway improvements to Shoal Creek Parkway to include provisions to construct the WATER TRANSMISSION MAIN IMPROVEMENTS.

B. **CONSTRUCTION RECORDS.** TDD agrees to furnish to KANSAS CITY, within thirty (30) days following completion of the work, all construction records and as-builts as typically required by the Kansas City Water Services Department.

C. **KANSAS CITY PARTICIPATION.** TDD agrees to obtain inspections and approvals from the Kansas City Water Services Department relating to the construction of the WATER TRANSMISSION MAIN IMPROVEMENTS.

5. **OBLIGATIONS OF KANSAS CITY.** KANSAS CITY agrees to the following:

A. **MAINTENANCE OF IMPROVEMENTS.** Upon both parties final acceptance of the project, KANSAS CITY shall be responsible for maintenance of the WATER TRANSMISSION MAIN IMPROVEMENTS.

B. **KANSAS CITY FEES.** KANSAS CITY shall assess no permit fees associated with design or construction, road closure fees, land disturbance fees to TDD or any contractor employed by TDD pursuant to this Agreement.

C. **FUNDING.** Upon execution of this agreement by both parties, KANSAS CITY shall provide TDD with funds in the amount of \$545,000.00. If the actual cost of the WATER TRANSMISSION MAIN IMPROVEMENTS are less than, \$545,000.00, TDD

shall return the remaining amounts within thirty (30) calendar days of acceptance of the WATER TRANSMISSION MAIN IMPROVEMENTS by KANSAS CITY.

6. **CONSTRUCTION SCHEDULE.** TDD shall complete construction of improvements within 1 year from the date of this agreement.

PART II: GENERAL TERMS AND CONDITIONS

1. General Indemnification.

- A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

i. "Claims" mean all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees.

ii. "TDD" means TDD's agents, officials, officers, employees, and subcontractors.

iii. "KANSAS CITY" means KANSAS CITY's agents, officials, officers, employees, and subcontractors.

- B. To the extent allowed by law, TDD shall defend, indemnify, and hold harmless KANSAS CITY and any of its agencies, officials, officers, and employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the performance under this Agreement, caused in whole or in part by TDD, its employees, agents, or Contractors, or others for whom TDD is legally liable, regardless of whether or not caused in part by any act or omission of KANSAS CITY, its agencies, officials, officers, or employees.
- C. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Agreement.

D. TDD's contracts with TDD's CONTRACTORS in connection with the Project shall require such CONTRACTORS to defend, indemnify, and hold harmless KANSAS CITY under the terms of this section. The obligations of TDD and its CONTRACTORS under this section with respect to indemnification for acts or omissions of KANSAS CITY, its agencies, officials, officers, or employees shall be limited to the coverage and limits of insurance that TDD and its CONTRACTOR are required to procure and maintain under this Agreement.

2. **Indemnification for Professional Negligence.** If TDD hires any Design Professional in connection with the Project, then TDD's contracts with its CONTRACTORS shall cause such CONTRACTORS to indemnify and hold harmless KANSAS CITY and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, but only to the extent caused by the negligent acts, efforts, or omissions of such CONTRACTORS, its employees, agents or others for whom such CONTRACTORS are legally liable, in the performance of professional services for the construction of the Improvement under this Agreement. TDD and its CONTRACTORS are not obligated under this section to indemnify KANSAS CITY for the negligent acts of the KANSAS CITY'S agencies, officials, officers, or employees.

3. **Insurance.**

A. TDD's CONTRACTORS shall procure and maintain in effect throughout the duration of this Agreement insurance coverage not less than the types and amounts specified below:

- i. Commercial General Liability Insurance: with limits of \$2,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Contractual Liability
 - b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - c. No Contractual Liability Limitation Endorsement
 - d. Additional Insured Endorsement, ISO form CG2010, current edition, or its equivalent.
 - ii. Workers' Compensation Insurance: as required by statute, including
Employers Liability with limits of:

Workers' Compensation	Statutory
Employers' Liability with limits of: \$100,000 each accident	
	\$500,000 disease - policy limit
	\$100,000 disease - each employee
 - iii. Commercial Automobile Liability Insurance: with a limit of \$2,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by TDD or TDD'S CONTRACTORS.
 - iv. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$2,000,000
- B. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to KANSAS CITY, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that KANSAS CITY and its agencies,

officials, officers, and employees, while acting within the scope of their authority, will be named as additional insured's for the services performed under this Agreement. TDD or TDD'S CONTRACTOR shall provide to KANSAS CITY prior to the performance of the Project a Certificate of Insurance showing all required endorsements and additional insured's.

- C. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better and are licensed or approved by the State of Missouri to do business in Missouri.
- D. Regardless of any approval by KANSAS CITY, it is the responsibility of TDD to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of TDD's failure or the failure of its CONTRACTORS to maintain the required insurance in effect, KANSAS CITY may order TDD and its CONTRACTORS to immediately stop work and, upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

4. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Missouri. The parties submit to the jurisdiction of the courts of the State of Missouri and waive venue.

5. **Compliance with Laws.** TDD and all its CONTRACTORS shall comply with all federal, state and local laws, ordinances and regulations applicable to the Project.

6. **Waiver.** No consent or waiver, express or implied, by any party to this Agreement or of any breach or default by any other party in the performance by such other party of its obligations

under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any of the other parties or to declare any of the other parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. TDD and KANSAS CITY reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the parties reserve the right to exercise any and all of its rights and remedies under this Agreement irrespective of any waiver granted.

7. **Modification.** This Agreement shall not be amended, modified or canceled without the written consent of the parties to this Agreement.

8. **Headings; Construction of Agreement.** The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

9. **Severability of Provisions.** Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent

upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

10. **Audit.** KANSAS CITY shall have the right to audit this Agreement and all books, documents and records relating thereto. TDD shall maintain all its books, documents and records relating to this Agreement during the contract period and for three (3) years after the date of final payment. The books, documents and records shall be made available to KANSAS CITY within ten (10) days after the written request is made. TDD shall require its CONTRACTOR to comply with this provision in connection with services performed on the Project.

11. **Assignment.** Neither KANSAS CITY nor TDD shall sell, assign, transfer, or otherwise convey any of their rights under this Agreement without the prior and expressed written consent of the other party. Each party may, at its sole discretion, refuse to consent to any proposed sale, assignment, transfer, or other conveyance. Any attempted sale, assignment, transfer, or conveyance in violation of this paragraph shall be void and shall relieve the non-consenting party of any further liability under this Agreement, but shall not relieve the violating party of any liability. If a party consents in writing to a sale, assignment, transfer, or conveyance, unless specifically stated to the contrary in the consent, it shall not release or discharge the party receiving consent from any duty or responsibility set forth in the Agreement.

12. **Conflicts of Interest.** TDD and its CONTRACTOR shall certify that no officer or employee of KANSAS CITY has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of KANSAS CITY, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an

arrangement, concerning employment to perform services on behalf of TDD or its CONTRACTOR in this Agreement.

13. **No Partnership.** It is expressly understood that the parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in performance of this Agreement.

14. **Bonds and Surety.**

A. TDD's CONTRACTORS shall furnish a Payment Bond, and Performance and Maintenance Bond on forms provided by KANSAS CITY as shown on Exhibit B, executed by a Surety, in the amount of any contract and the total amount of all contracts entered into between TDD and its CONTRACTOR'S, workers, and material suppliers, guaranteeing CONTRACTOR'S faithful performance of each and every term of such contracts and all authorized changes thereto, including those terms under which TDD or its CONTRACTOR agrees to pay legally required wage rates including the prevailing hourly rate of wages in the locality, as determined by the Department of Labor and Industrial Relations or by final judicial determination, for each craft or type of workman required to perform under this Agreement; guaranteeing the payment of all obligations as provided in Section 107.170 RSMo., 2000, as amended; and guaranteeing the services and work against faulty workmanship and faulty materials as prescribed by the Performance and Maintenance Bond. Surety must:

1. Be approved by KANSAS CITY's Finance Department;

2. Be qualified to issue bonds at amounts specified in the Department of the Treasury Circular 570;
3. Be licensed by the State of Missouri to do business in the State of Missouri; and
4. Retain an A.M. Best Rating of A-class V, or better.

B. The bonds shall remain in full force and effect at least until 3 years after completion of the work and shall name KANSAS CITY as co-obligee.

15. **Prevailing Wage.** TDD and its CONTRACTOR shall comply in all respects with the Prevailing Wage Laws of the State of Missouri, Section 290.210 to 290.340, R.S.Mo, 1994, as amended, and any federal prevailing wage laws that apply to the work. TDD agrees that KANSAS CITY shall not be responsible for assisting TDD and its CONTRACTOR in providing any required documentation necessary to demonstrate compliance with the Prevailing Wage Laws.

16. **Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest, provided neither party may assign this Agreement or the rights or obligations hereunder without the express written consent of the other party.

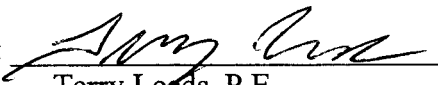
17. **Representations.** TDD and KANSAS CITY certify that they have the power and authority to execute and deliver this Agreement, to use the funds as contemplated hereby and to perform this Agreement in accordance with its terms.

18. **Buy American Preference.** It is the policy of the KANSAS CITY that any manufactured goods or commodities used or supplied in the performance of any KANSAS CITY contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

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

[SIGNATURES BEGIN ON NEXT PAGE]

CITY OF KANSAS CITY, MISSOURI

By: 
Terry Leeds, P.E.
Director, Water Services Department

State of Missouri)
)ss
County of Jackson)

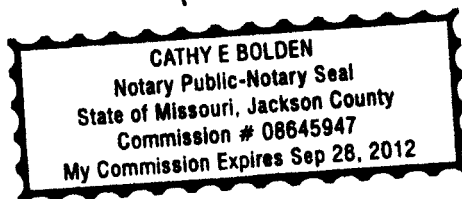
BE IT REMEMBERED, that on this 7th day of June, 2012 before me, the undersigned, a notary public in and for the county and state aforesaid, came Terry Leeds of the **Water Services Department** of Kansas City, Missouri, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as an official, the within instrument on behalf of said municipal corporation, and such person duly acknowledges the execution of the same to be the act and deed of said municipal corporation.

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

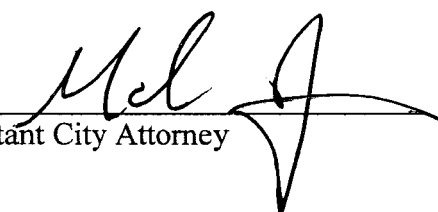

Notary Public

My commission expires:

9/28/12

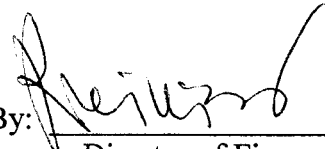


Approved as to form:

By: 

Assistant City Attorney

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, sufficient to meet the obligation hereby incurred, and that there is a balance, otherwise unencumbered, and a cash balance sufficient to meet the obligation hereby incurred from which payment is to be made.

By:  4/14/12

Director of Finance

**SHOAL CREEK PARKWAY/NORTH OAK TRAFFICWAY TRANSPORTATION
DEVELOPMENT DISTRICT**

ATTEST TO:

By: William T. Mann
Secretary

**SHOAL CREEK PARKWAY/NORTH
OAK TRAFFICWAY TRANSPORTATION
DEVELOPMENT DISTRICT**

By: William T. Mann
William T. Mann
Chairman

State of Missouri)
)ss
County of Clay)

BE IT REMEMBERED, that on this 3rd day of May, 2012 before me, the undersigned, a notary public in and for the county and state aforesaid, came **William T. Mann**, Chairman of the Board of Shoal Creek Parkway/North Oak Trafficway Transportation Development District, a transportation development district duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and, Chris Byrd, Secretary of Shoal Creek Parkway/North Oak Trafficway Transportation Development District, who are personally known to me to be the same persons who executed, as officials, the within instrument on behalf of said transportation development district, and such persons duly acknowledge the execution of the same to be the act and deed of said transportation development district.

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

Patti Best
Notary Public

My commission expires: 2/17/2013



Exhibit A

Description and Map of the WATER TRANSMISSION MAIN IMPROVEMENTS

Approximately 2,600 feet of 16-inch DIP water transmission main, 340 feet of 8-inch DIP water main and 205 feet of 6-inch DIP water main along Shoal Creek Parkway between North Oak Trafficway to Harrison Street, along with all appurtenances and branch connections to existing mains, in accordance with the approved plans, specifications, and drawings, Shoal Creek Parkway Water Main Extensions and Relocations – North Oak Trafficway to Harrison Street, D-20018.

Exhibit B

Payment and Performance/Maintenance Bonds



KANSAS CITY
MISSOURI

PERFORMANCE AND MAINTENANCE BOND

Project Number _____

Project Title Shoal Creek Parkway Waterline

KNOW ALL MEN BY THESE PRESENTS: That Hunt Midwest Real Estate Development, Inc., as PRINCIPAL (CONTRACTOR), and Berkley Regional Insurance Company, (SURETY), licensed to do business as such in the State of Missouri, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns unto Kansas City, Missouri, a constitutionally chartered municipal corporation, (OWNER), as obligee, in the penal sum of Five Hundred Forty Five Thousand and No/100 Dollars (\$ 545,000.00) for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

CONTRACTOR has entered into a Contract with OWNER for Shoal Creek Parkway Waterline which Contract, including any present or future amendment thereto, is incorporated herein by reference and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Contract including all duly authorized changes thereto, and including any maintenance requirements contained therein, according to all the terms thereof, including those under which CONTRACTOR agrees to pay legally required wage rates including the prevailing hourly rate of wages in the locality, as determined by the Department of Labor and Industrial Relations or by final judicial determination, for each craft or type of workman required to execute the Contract and, further, shall defend, indemnify, and hold harmless OWNER from all damages, including but not limited to, liquidated damages, loss and expense occasioned by any failure whatsoever of said CONTRACTOR and SURETY to fully comply with and carry out each and every requirement of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect.

WAIVER. That SURETY, for value received, hereby expressly agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder, shall in any way affect the obligations of this Bond; and it does hereby waive notice of any such change, extension of time, or alteration or addition to the terms of the Contract or the Work to be performed thereunder.

IN WITNESS WHEREOF, the above parties have executed this instrument the 5th day of June, 2012.

CONTRACTOR

Name, address and facsimile number of Contractor

Hunt Midwest Real Estate Development, Inc.

8300 N.E. Underground Drive

Kansas City, MO 64161

(816) 455-8701

I hereby certify that I have authority to execute this document on behalf of Contractor.

By: Orin Reynolds

Title: PRESIDENT

(Attach corporate seal if applicable)

SURETY

Name, address and facsimile number of Surety:

Berkley Regional Insurance Company11201 Douglas AvenueUrbandale, IA 50322(203) 629-3073

I hereby certify that (1) I have authority to execute this document on behalf of Surety; (2) Surety has an A.M. Best rating of B+, V, or better; (3) Surety is named in the current list of "Companies Holding Certificates of Authority as Acceptable Reinsuring Companies: as published in Circular 570 (most current revision) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury; and (4) Surety is duly licensed to issue bonds in the State of Missouri and in the jurisdiction in which the Project is located.

By: Title: Debra J. Scarborough, Attorney-in-FactDate: June 5, 2012

(Attach seal and Power of Attorney)

**POWER OF ATTORNEY
BERKLEY REGIONAL INSURANCE COMPANY
WILMINGTON, DELAWARE**

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY REGIONAL INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Urbandale, Iowa, has made, constituted and appointed, and does by these presents make, constitute and appoint: **David M. Lockton, Ronald J. Lockton, Patrick T. Pribyl, Debra J. Scarborough, Mary T. Flanigan, Jeffrey C. Carey, Nancy A. Clover, Kathy L. Fagan, Laura M. Murren, Christy M. McCart, Charissa D. Lecuyer, Evan D. Sizemore, Mark Duggan, Charles R. Teter, III, Kathleen M. Coen or Rebecca S. Gross of Lockton Companies, LLC of Kansas City, MO** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on August 21, 2000:

"RESOLVED, that the proper officers of the Company are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued."

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 2 day of May, 2012.

Attest:

(Seal)

By

Ira S. Lederman

Senior Vice President & Secretary

Berkley Regional Insurance Company

By

Jeffrey M. Hafter

Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 2 day of May, 2012, by Jeffrey M. Hafter and Ira S. Lederman who are sworn to me to be the Senior Vice President, and the Senior Vice President and Secretary, respectively, of Berkley Regional Insurance Company.

**EILEEN KILLEEN
NOTARY PUBLIC
MY COMMISSION EXPIRES JUNE 30, 2012**

Eileen Killeen
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY REGIONAL INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this _____ day of JUN 05 2012.

(Seal)

Andrew M. Tuma
Andrew M. Tuma

WARNING - Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and confirmation (on reverse) must be in blue ink.



KANSAS CITY
MISSOURI

PAYMENT BOND

Bond No. 0163099

Project Number _____

Project Title Shoal Creek Parkway Waterline

KNOW ALL MEN BY THESE PRESENTS: That Hunt Midwest Real Estate Development, Inc., as PRINCIPAL (CONTRACTOR), and Berkley Regional Insurance Company, (SURETY), licensed to do business as such in the State of Missouri, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns unto Kansas City, Missouri, a constitutionally chartered municipal corporation, (OWNER), as obligee, in the penal sum of Five Hundred Forty Five Thousand and No/100 Dollars (\$ 545,000.00) for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

CONTRACTOR has entered into a contract with OWNER for Shoal Creek Parkway Waterline, which Contract, including any present or future amendment thereto, is incorporated herein by reference and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if in connection with the Contract, including all duly authorized modifications thereto, prompt payment shall be made to all laborers, subcontractors, teamsters, truck drivers, owners or other suppliers or for equipment employed on the job, and other claimants, for all labor performed in such work whether done for CONTRACTOR, a subcontractor, SURETY, a completion contractor or otherwise (at the full wage rates required by any law of the United States or of the State of Missouri, where applicable), for services furnished and consumed, for repairs on machinery, for equipment, tools, materials, lubricants, oil, gasoline, water, gas, power, light, heat, oil, telephone service, grain, hay, feed, coal, coke, groceries and foodstuffs, either consumed, rented, used or reasonably required for use in connection with the construction of the work or in the performance of the Contract and all insurance premiums, both for compensation and for all other kinds of insurance on the work, for sales taxes and for royalties in connection with, or incidental to, the completion of the Contract, in all instances whether the claim be directly against CONTRACTOR, against SURETY or its completion contractor, through a subcontractor or otherwise, and, further, if CONTRACTOR shall defend, indemnify and hold harmless OWNER from all such claims, demands or suits by any such person or entity, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Any conditions legally required to be included in a Payment Bond on this Contract, including but not limited to those set out in §107.170 RSMo. are included herein by reference.

SURETY agrees that, in the event that CONTRACTOR fails to make payment of the obligations covered by this Bond, it will do so and, further, that within forty-five (45) days of receiving, at the address given below, a claim hereunder stating the amount claimed and the basis for the claim in reasonable detail, it (a) will send an answer to the claimant, with a copy to OWNER stating the amounts that are undisputed and the basis for challenging any amounts that are disputed, and (b) will pay any amounts that are undisputed. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

While this Bond is in force, it may be sued on at the instance of any party to whom any such payment is due, in the name of OWNER to the use for such party. OWNER shall not be liable for the payment of any costs or expenses of any such suit.

No suit shall be commenced or pursued hereunder other than in a state court of competent jurisdiction in Jackson, Clay or Platte County, Missouri, or in the United States District Court for the Western District of Missouri.

WAIVER. That SURETY, for value received, hereby expressly agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder, shall in any way affect the obligations of this Bond; and it does hereby waive notice of any such change, extension of time, or alteration or addition to the terms of the Contract or the Work to be performed thereunder.

IN WITNESS WHEREOF, the above parties have executed this instrument the 5th day of June, 2012.

CONTRACTOR

Name, address and facsimile number of Contractor
Hunt Midwest Real Estate Development, Inc.
8300 N.E. Underground Drive
Kansas City, MO 64161
(816) 455-8701

I hereby certify that I have authority to execute this document on behalf of Contractor.

By: Don Reynolds
Title: PRESIDENT

(Attach corporate seal if applicable)

SURETY

Name, address and facsimile number of Surety:
Berkley Regional Insurance Company
11201 Douglas Avenue
Urbandale, IA 50322
(203) 629-3073

I hereby certify that (1) I have authority to execute this document on behalf of Surety; (2) Surety has an A.M. Best rating of B+, V. or better; (3) Surety is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (most current revision) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury; and (4) Surety is duly licensed to issue bonds in the State of Missouri and in the jurisdiction in which the Project is located.

By: Debra J. Scarborough
Title: Attorney-in-Fact
Date: June 5, 2012

(Attach seal and Power of Attorney)

POWER OF ATTORNEY
BERKLEY REGIONAL INSURANCE COMPANY
 WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY REGIONAL INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Urbandale, Iowa, has made, constituted and appointed, and does by these presents make, constitute and appoint: *David M. Lockton, Ronald J. Lockton, Patrick T. Pribyl, Debra J. Scarborough, Mary T. Flanigan, Jeffrey C. Carey, Nancy A. Clover, Kathy L. Fagan, Laura M. Murren, Christy M. McCart, Charissa D. Lecuyer, Evan D. Sizemore, Mark Duggan, Charles R. Teter, III, Kathleen M. Coen or Rebecca S. Gross of Lockton Companies, LLC of Kansas City, MO* its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on August 21, 2000:

"RESOLVED, that the proper officers of the Company are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued."

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 2 day of May, 2012.

Attest:

Berkley Regional Insurance Company

(Seal)

By

Ira S. Lederman

Senior Vice President & Secretary

By

Jeffrey M. Hafter
 Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 2 day of May, 2012, by Jeffrey M. Hafter and Ira S. Lederman who are sworn to me to be the Senior Vice President, and the Senior Vice President and Secretary, respectively, of Berkley Regional Insurance Company.

EILEEN KILLEEN
NOTARY PUBLIC
 MY COMMISSION EXPIRES JUNE 30, 2012

Eileen Killeen
 Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY REGIONAL INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this _____ day of JUN 05 2012, _____.

(Seal)

Andrew M. Tuma
 Andrew M. Tuma

WARNING - Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and confirmation (on reverse) must be in blue ink.

Instructions for Inquiries and Notices Under the Bond Attached to This Power

Berkley Surety Group, LLC is the affiliated underwriting manager for the surety business of: Acadia Insurance Company, Berkley Insurance Company, Berkley Regional Insurance Company, Carolina Casualty Insurance Company, Union Standard Insurance Company, Continental Western Insurance Company, and Union Insurance Company.

To verify the authenticity of the bond, please call (866) 768-3534 or email BSGInquiry@berkleysurety.com

Any written notices, inquiries, claims or demands to the surety on the bond to which this Rider is attached should be directed to:

**Berkley Surety Group, LLC
412 Mount Kemble Avenue
Suite 310N
Morristown, NJ 07960
Attention: Surety Claims Department**

Or

email BSGClaim@berkleysurety.com

Please include with all notices the bond number and the name of the principal on the bond. Where a claim is being asserted, please set forth generally the basis of the claim. In the case of a payment or performance bond, please identify the project to which the bond pertains.

GENERAL

Ordinance Fact Sheet

120442

Ordinance Number

Brief Title**Approval Deadline****Reason**

Funding Agreement between the Shoal Creek Parkway/
North Oak Trafficway Transportation Development District and
the City of Kansas City, MO

Execution of Funding Agreement

Details**Positions/Recommendations****Reason for Legislation**

Authorizing Director of the Water Services Department to enter into a \$545,000.00 Funding Agreement between the Shoal Creek Parkway/North Oak Trafficway Transportation Development District and Kansas City, Missouri for the construction of a water transmission main and related improvements along Shoal Creek Parkway.

Sponsor

Water Services Department

**Programs,
Departments,
or Groups
Affected**

Water Services Department

**Applicants /
Proponents****Applicant**

Water Services Department
City Department
Water Services Department

Other

Opponents**Groups or Individuals**

None Known
Basis of opposition

**Staff
Recommendation**☒ For☐ Against

Reason Against

**Board or
Commission
Recommendation****By**☐ For ☐ Against ☐ No action taken☐ For, with revisions or conditions
(see details column for conditions)**Council
Committee
Actions**☐ Do pass☐ Do pass (as amended)☐ Committee Sub.☐ Without Recommendation☐ Hold☐ Do not pass**Discussion**

Ordinance No. 941443 provided acceptance of the recommendations of the Tax Increment Financing Commission as to the Shoal Creek Parkway Tax Increment Financing Plan; approving the Shoal Creek Parkway Tax Increment Financing Plan; and designating a Redevelopment Area.

Committee Substitute for Ordinance No. 110559 provided \$1,200,000.00 from Kansas City, Missouri to the Shoal Creek Parkway/North Oak Trafficway Transportation Development District for roadway improvements for Shoal Creek Parkway from N. Oak Trafficway to N. Harrison Avenue.

The City desires to contribute up \$545,000.00 for construction of a water transmission main along Shoal Creek Parkway. Simultaneous construction of the roadway and water transmission main improvements will provide a substantial cost savings and a better quality infrastructure product.

This project is located in City Council District 2.

Details

Is it good for the children? Yes.

How will this contribute to a sustainable Kansas City? The overall Shoal Creek Parkway improvements include creating bicycle lanes, a natural median and new connections from existing neighborhoods to the City's road network. The improvements create a new green transportation network with the bicycle lanes, a natural median area for native habitat and will reduce vehicle trips. The proposed water transmission main, an important component of the parkway improvements, will provide for future water demand for adjacent northland communities. Water Services will be coordinating its waterline work with the Shoal Creek Parkway/North Oak Trafficway Transportation Development District and Public Works Department for efficiencies and to avoid costly rework.

Policy/Program Impact

Policy or Program Change	☒ No ☐ Yes
Operational Impact Assessment	

Finances

Cost & Revenue Projections -- Including Indirect Costs	
Financial Impact	
Fund Source (s) and Appropriation Account Codes	AL-8072-808082-B-611060 Water & Sewer CD2 Project No. 80001642

(Use this space for further discussion, if necessary)

Applicable Dates: Term ends either after the reimbursement of all Project Costs in accordance with the Certification Policy, or the termination of this Agreement in accordance with Section 4.4.

Fact Sheet Prepared by:

Leona Walton 5/1/2012
Contracts Manager

Reviewed by:

Brian L. Schroeder 5/1/2012
Acting Asst. Director of Engineering

Reference Numbers

CAPITAL PROJECT

Ordinance Fiscal Note

120442

Ordinance Number

Ordinance Title (in Brief)

Funding Agreement between the Shoal Creek Parkway/North Oak Trafficway Transportation Development District and the City of Kansas City, MO

Is this ordinance for the following:

- ☒ New Construction
☐ Replacement
☐ Repair

Was this project programmed in the Five-Year Capital Improvement Plan?

☐ No
FY12

☒ Yes

If yes, please identify year in which this project was funded.

If no, please detail the reasons why this project was not included and need for present funding request.

Does this project leverage non-city funds for design/construction?

☒ No

☐ Yes

If yes, please identify source and amount.

Source of Funds:

Year Funded:

Amount of Non-City Funds:

\$

If no, please identify source and amount of city funds.

Acct #:

Name of Fund:

Year Funded:

Amount of City Funds:

AL-8072-808082-B-611060

Water & Sewer CD2

FY12

\$ 545,000.00

If ordinance is for new construction or replacement of asset please provide the following information:

Total estimated costs (design through construction): \$ 545,000.00

Estimated lifespan of project in years \$ 100 yrs

Estimated annual operating and maintenance costs \$ 250.00

(Please detail type of maintenance or operating costs needed, additional staffing, capital maintenance costs, utilities, etc.)

Annual maintenance includes pumping costs.

Are these O&M costs reflected in the current budget?

☐ No

☒ Yes

If yes, please provide source of funds.

8010-802310

If no, please identify year in which additional operating and maintenance costs will be needed.

Reference Numbers: (Previously approved legislation):

941443

110559

Reviewed by:

OMB Approval Date

ORDINANCE NO. 120442

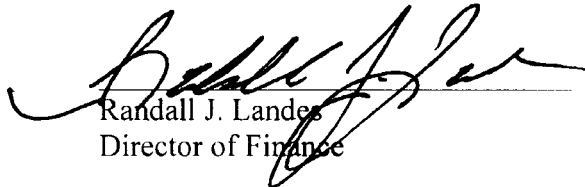
Authorizing Director of the Water Services Department to enter into a \$545,000.00 Funding Agreement between the Shoal Creek Parkway/North Oak Trafficway Transportation Development District and Kansas City, Missouri for the construction of a water transmission main and related improvements along Shoal Creek Parkway.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

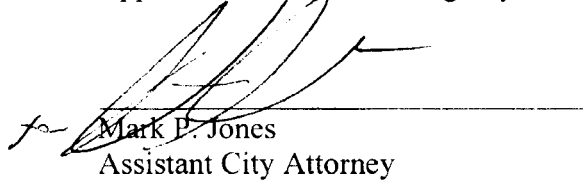
Section 1. That the Director of Water Services Works is hereby authorized to execute a public infrastructure funding agreement with the Shoal Creek Parkway/North Oak Trafficway Transportation Development District for the construction of a water transmission main and related improvements along Shoal Creek Parkway. A copy of the agreement is on file in the office of the Director of Water Services.

Section 2. That the Director of Water Services is authorized to expend \$545,000.00 from Account No. AL-8072-808082-B-611060, Water & Sewer CD2, for the financial obligations contained in the agreement.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

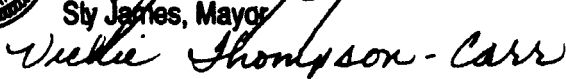

Randall J. Landes
Director of Finance

Approved as to form and legality:


Mark P. Jones
Assistant City Attorney



Authenticated as Passed


Sty James, Mayor

Vickie Thompson-Carr, City Clerk

MAY 17 2012

Date Passed

