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P. Hrngs. \_\_\_\_\_  
Pgs. 12  
Filed: 08-21-18

Sponsored by: Schilling

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

COUNCIL BILL 2018-213

SPECIAL ORDINANCE \_\_\_\_\_

AN ORDINANCE

1 AUTHORIZING the City Manager, or his designee, to enter into a developer's  
2 agreement with Hamburg Properties, LLC, for the recovery of  
3 proportional square foot costs of the construction of a trunk sewer to  
4 serve the Red's Hamburg site, generally located at 2301 West  
5 Sunshine Street, and a sewer basin in the South Creek drainage area;  
6 and establishing a per square foot connection fee to reimburse the  
7 developer for proportional costs of construction of the trunk sewer.  
8 (Environmental Services staff recommends approval.)  
9 \_\_\_\_\_

10  
11 WHEREAS, Hamburg Properties, LLC, is developing a restaurant at 2301 West  
12 Sunshine Street, and has constructed 976 linear feet of trunk sewer through an  
13 unserved portion of the South Creek drainage basin; and  
14

15 WHEREAS, the area served by this trunk sewer is 238,273 square feet and other  
16 property owners in the area may be able to take advantage of the trunk sewer provided  
17 by Hamburg Properties, LLC, for future development; and  
18

19 WHEREAS, the City and Hamburg Properties, LLC, desire to enter into a  
20 developer's agreement wherein the City agrees to establish and collect a per square  
21 foot connection fee to recover, and reimburse the developer for, the proportional  
22 construction costs of the off-site sewer as other property owners take advantage of  
23 connecting to the trunk sewer provided; and  
24

25 WHEREAS, the established connection fee for the trunk line is \$0.4528 per  
26 square foot (\$107,901.54 Developer's construction cost divided by 238,273 square feet  
27 of basin served); and  
28

29 WHEREAS, this public sewer improvement will benefit the citizens of Springfield.  
30

31 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
32 SPRINGFIELD, MISSOURI, as follows, that:  
33

34           Section 1 – The City Manager, or his designee, is hereby authorized to enter into  
35 a developer’s agreement with Hamburg Properties, LLC, said agreement to be in  
36 substantially the form as the document attached hereto and incorporated herein by this  
37 reference as "Exhibit A," and to do all things necessary to carry out the intent of the  
38 agreement.

39  
40           Section 2 – This Ordinance shall be in full force and effect from and after  
41 passage.

42  
43 Passed at meeting: \_\_\_\_\_

44  
45  
46 \_\_\_\_\_  
47 Mayor

48  
49 Attest: \_\_\_\_\_, City Clerk

50  
51 Filed as Ordinance: \_\_\_\_\_

52  
53  
54 Approved as to form: , Assistant City Attorney

55  
56  
57 Approved for Council action: , City Manager

## **EXPLANATION TO COUNCIL BILL 2018 - 213**

FILED: 08-21-18

ORIGINATING DEPARTMENT: Environmental Services

**PURPOSE:** Authorizing the City Manager, or his designee, to enter into a developer's agreement with Hamburg Properties, LLC, for recovery of proportional square foot costs of the construction of a trunk sewer to serve the Red's Hamburg site, generally located at 2301 West Sunshine Street, and a sewer basin in the South Creek drainage area; and establishing a per square foot connection fee to reimburse the developer for proportional costs of construction of the trunk sewer. (Environmental Services staff recommends approval.)

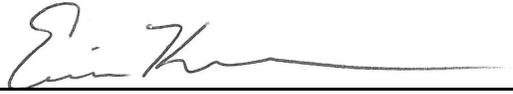
**BACKGROUND INFORMATION:** The developer of Red's Hamburg restaurant has constructed 976 linear feet of trunk sewer through an unserved portion of the South Creek drainage basin to serve the property generally located at 2301 West Sunshine Street. The area served by this trunk sewer is 238,273 square feet. The developer agreement, ("Exhibit A"), if authorized by this Council bill, will establish a connection fee which will reimburse the developer for portions of the cost of this trunk sewer as properties in this basin develop and connect to the trunk sewer.

**REMARKS:** The City has traditionally entered into developer agreements with private entities who provide sanitary sewer in an area that did not previously have access to sewer. This is often a cost-effective method for providing sanitary sewer to unsewered areas and is consistent with the City's policy that sanitary sewer be funded by the properties who benefit from access to the sewer. The City has entered into several such agreements in the past. This developer's agreement allows the developer to recover some of the costs of the off-site sewer as other property owners take advantage of connecting to the trunk sewer extension. The established connection fee for the Hamburg Properties Trunk Line is \$0.4528 per square foot of property (\$107,901.54 Developer's construction cost divided by 238,273 square feet of basin served).

This agreement supports the following Field Guide 2030 goal(s): Chapter 6, Growth Management and Land Use; Major Goal 5, Protect and preserve our natural resources for future generations; Objective 5b, Maintain high water quality and increase water quantity by securing and improving water resources for future generations; and Objective 5c, Protect our caves and karst ecosystems which contain plants, animals, and natural communities that depend on the surrounding land and water to thrive and survive; Chapter 10, Public Health; Major Goal 5, Develop and ensure safe and health environments both indoors and outdoors; Objective 5c, Ensure a clean and sustainable water supply.

**RECOMMENDATIONS:** Because the extension of this trunk sewer will provide sewer availability for undeveloped property and provide relief for existing septic tank systems in this drainage basin, Environmental Services recommends passage of this Council bill.

Recommended by:



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Errin Kemper, Director of Environmental Services

Approved by:



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Jason Gage, City Manager

**Exhibit A**

**SEWER IMPROVEMENT DEVELOPER AGREEMENT**  
(Construction Cost Reimbursement)

AGREEMENT No. \_\_\_\_\_

**THIS AGREEMENT**, made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the City of Springfield, Missouri, a municipal corporation, hereinafter referred to as the “City,” and Hamburg Properties, LLC, hereinafter referred to as the “Developer”.

**WHEREAS**, the Developer, is the owner of a 1.37-acre property which shall be developed as the Red’s Hamburg Development, and has constructed sewage services which will be designated as Joint Sanitary Sewer District No. 110 of Section No. 8, hereinafter referred to as “Trunk Line”; and

**WHEREAS**, the City and the Developer created a plan for adequate sewer to the area according to plans and specifications approved by the City, and known as PW Plan No. 2017PW0090s; and

**WHEREAS**, the Trunk Line was constructed in accordance with City standards and specifications and, upon inspection and approval by the City, Developer will deed convey and assign all right, title, interest and possession of the Trunk Line to the City at no charge. City agrees, once the Trunk Line is inspected and approved, to accept ownership and maintenance of the Trunk Line.

**WHEREAS**, under City ordinance the City shall thereafter collect a Construction Reimbursement Fee from each new connection to Trunk Line, if required, for the privilege of connecting to the publicly owned sewer system, said fee to be used to reimburse Developer and the City (if applicable) for their respective costs in constructing the sewer, as determined by the City.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants, terms and conditions set forth herein, the Developer and the City agree as follows:

**1. Developer Agrees to:**

- a. Upon inspection and approval of the constructed Trunk Line by the City, Developer will dedicate and convey the Trunk Line and its sanitary sewer easements to the City, free and clear of all liens and encumbrances, for its use, operation, and maintenance. This Trunk Line shall be inspected to demonstrate it was constructed in accordance with the plans and specifications on file in the Public Works department and identified as PW Plan No. 2017PW0090s; and
- b. Provide City with a one (1) year warranty of materials and workmanship of the Trunk Line from date accepted by City; and

- c. Warrant and defend the City's title to the Trunk Line and sanitary sewer easements of the Trunk Line and to defend and indemnify the City of Springfield, its successors and assigns, from and against the claims and demands of all persons whatsoever in connection with any claims arising from the acquisition of the easements required for construction of the Trunk Line; and
- d. Defend, indemnify, and hold the City harmless from any and all claims, losses, and liabilities, including but not limited to personal injuries, death, property damage, or property claims, which are caused by the Developer or Developer's contractor, or arise out of or in connection with performance of this Developer's Agreement.

**2. City Agrees to:**

- a. *Grant of temporary license, if applicable.* To the extent that construction or additional work on the Trunk Line will occur on easements or rights-of-way owned by the City, the City hereby grants to the Developer, its employees, contractors, and subcontractors working on such construction, a temporary license to complete any such remaining work and to enter upon and use the easements or rights-of-way specifically identified in PW Plan No. 2017PW0090, for the limited construction purposes set forth herein; and
- b. *Reimbursement of costs.* Upon inspection and acceptance of the Trunk Line by the City, and upon collection of costs from new users of the Trunk Line, the City will:
  - i. Reimburse to Developer its pro-rata share of Construction Reimbursement Costs in the sewer basin of the Trunk Line, pursuant to Springfield City Code, less a proportional amount for reimbursement for any costs paid by City, if applicable, and costs of collection as calculated by the Director of Finance of the City.
  - ii. The City's obligation to reimburse Developer for construction costs, out of Construction Reimbursement Costs collected for connections within this sewer basin, shall be in full force and affect for a period of 20 years from the date of this agreement. The Developer shall be responsible during such time to furnish the Director of Environmental Services with Developer's correct mailing address and telephone number for the purpose of remitting collections. In the event the Developer is no longer in existence or has failed to provide the City with Developer's current mailing address for a two-year period from the time each Construction Cost Reimbursement is collected by the City, then any reimbursable costs that are otherwise due under the terms of this Developer's Agreement shall revert to the City's Sewer Use Fund for the benefit of all rate payers.

### **3. Miscellaneous Provisions:**

- A. Right to Terminate: If the Developer shall fail to fulfill in a timely and proper manner Developer's obligations under this Agreement, or if Developer shall violate any of the covenants, terms, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement and any licenses given herein by giving at least 5 days' prior written notice to the Developer of such termination, specifying the effective date thereof. Provisions with respect to indemnity shall survive, notwithstanding termination of the Agreement.
  
- B. Inspection and Approval: Developer acknowledges the City's right to inspect and withhold approval of any and all work done hereunder by the Developer or any of Developer's contractors. The City, through the Director of Environmental Services or the Director of Public Works, reserves the right to place certain restrictions on the time and manner of additional work, in order that the performance of the work will have the least adverse impact on traffic flow and is consistent with the public health and safety. If the City determines that Developer has failed to construct the Trunk Line in accordance with the approved plans, the City may decline to accept the Trunk Line from Developer and shall not be responsible for reimbursing Developer's costs as described in this Developer's Agreement.
  
- C. Developer's Certified Reimbursable Costs: In addition to all other applicable fees and charges the City requires for the privilege of connecting to the publicly-owned sewer system, fees to reimburse Developer and City shall be required of all persons who own land in the Trunk Line area and desire to connect to City sanitary sewer as shown and described on Exhibit 'B' that identifies the basin. This Construction Reimbursement Fee shall be computed in accordance with City Code Sections 98-287 and 120-256. Notwithstanding the actual cost to construct the sewers, any acreage connected to the Trunk Line shall pay a Construction Reimbursement Fee of \$0.4528 per square foot (\$107,901.54 divided by 238,273.2 square feet) of land.

Reimbursement to Developer shall be limited to the reasonable and necessary costs of construction of the Trunk Line (not to exceed actual cost of construction):

- i. Developer shall have a licensed engineer in the state provide an itemized breakout of construction costs for the Trunk Line and shall certify to the City's Director of Environmental Services that all such costs were necessary and were incurred in the construction of the Trunk Line. Reimbursable costs may include the cost of right-of-way acquisition which is determined to be reasonable by the director (not to exceed the actual cost of right-of-way acquisition) and the reasonable cost of blue prints, advertising, mailings, and reasonable engineering and inspection expenses, not exceeding 15 percent of the accepted construction bid.

The Director of Environmental Services shall have the authority to determine whether or not specific costs shall be allowed in computing the Construction Reimbursement Fee.

- ii. All change orders in excess of \$1,000 may be audited by the Director of Environmental Services to determine if the additional costs caused by the change order are reasonable and necessary. The Director of Environmental Services may inform the Developer that he has determined that the costs, or a portion thereof, are not reasonable and necessary; and upon such information, such costs shall not be included in determining the cost of construction for purposes of determining the Construction Reimbursement Fee, as set forth herein.
- iii. Notwithstanding any other provisions herein contained, Developer may authorize the City, with the City's consent, to waive the Construction Reimbursement Fee (and thereby reimbursement) with respect to specific tracts of land. In the event of a fee waiver, Developer will provide both City and property owner with documentation of said waiver, presentation of which will be required to obtain the waiver.
- iv. Connection to the Trunk Line is a onetime fee for reimbursement of a landowner's pro-rata share of approved Trunk Line construction costs. Subject to a waiver or prior payment at the time a Construction Reimbursement Fee is calculated, the Director of Environmental Services shall determine what land is owned in the Trunk Line area by the person for which the fee is being paid; and upon payment of the required fee, no further Construction Reimbursement Fee shall be required by this Developer's Agreement for connecting such land, it being intended that the person paying the fee shall have paid the fee for their successors in title, regardless if the property has or has not connected to the sewer line.
- v. If at the time a Construction Reimbursement Fee is paid the owner of the land owns a residential dwelling located on a tract which is larger than five (5) acres, the Construction Reimbursement Fee shall be computed only for a five (5) acre tract at such time, but if such tract is later subdivided or additional connections to the sewer made thereon, additional Construction Reimbursement Fees shall be required based upon the entire area of the tract, less the five (5) acres for which the Construction Reimbursement Fee has already been paid.
- vi. Nothing in this agreement shall eliminate or change the requirement to pay any other applicable fees for utilizing or connecting to City sewer.

D. Insurance and Bonds: Developer or Developer's contractor shall procure and maintain at its own cost and expense until the sanitary sewer Trunk Line has been inspected, approved, and accepted by the City, insurance and bonds of such types and in such amounts as may be necessary to protect it and the interests of the City of Springfield, and the citizens of

Springfield against all hazards or risks of loss.

- E. Procedures: The Construction Reimbursement Fee required to be paid to the City shall be paid to the Director of Finance in accordance with procedures established by the Director.
- F. Exclusion of City from Liabilities for Non-Collection: Nothing contained herein shall be construed to create any liability on behalf of the City, nor shall this Developer's Agreement create any liability of the City or its departments, agents or employees for any failure by, or legal inability of, the City to collect a Construction Reimbursement Fee, irrespective of any negligence on the part of the City or agent or employee in failing to collect said Construction Reimbursement Fee.
- G. Conflict of Interest: No salaried officer or employee of the City, and no member of the City Council, shall have a financial interest, direct or indirect, in this Developer's Agreement. A violation of this provision renders this Developer's Agreement void. Developer warrants that no federal regulations relating to conflict of interest or applicable provisions in Section 105.450 et seq., RSMo. are violated by this Developer's Agreement.
- H. Non-Discrimination: The Developer agrees, in the performance of this Developer's Agreement, not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Developer or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- I. Independent Contractor: The Developer is an independent contractor, and nothing contained herein shall constitute or designate the Developer, or any of the Developer's agents or employees, as agents or employees of the City of Springfield, Missouri.
- J. Liability and Indemnification: The parties mutually agree to the following:
  - a. In no event shall the City be liable to the Developer for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of, or in any way connected with, a breach of this Developer's Agreement. The maximum liability of the City shall be limited to the amount of money received by the City under this Developer's Agreement.
  - b. The Developer shall defend, indemnify, and hold the City harmless from all claims, losses, and liabilities, including but not limited to personal injuries, death and/or property damage, which are caused by the Developer or its agents, representatives or assigns, or arise out of or connected with performance of this Developer's Agreement.
  - c. The Developer assumes full responsibility for relations with its contractors and subcontractors, and shall defend, indemnify and hold harmless the City from and

against, any and all liability from contractor and subcontractor suits, claims, damages, costs (including attorneys fees), losses, outlays, and expenses in any manner caused by, arising out of or connected with performance of this Developer's Agreement, notwithstanding any possible contributory negligence on the part of the City or its agents or employees.

- K. Entire Agreement: This Developer's Agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Developer's Agreement shall be effective unless in writing specifically referring hereto, and signed by all parties affected by such modification, amendment or waiver.
- L. Assignment: This Developer's Agreement may not be assigned by Developer without the express written consent of the City.
- M. Applicable Laws: The Developer shall comply with all applicable federal, state, and local laws in the performance of this Developer's Agreement and shall include a similar provision in all subcontracts awarded hereunder. Developer will be responsible for all construction permits required from local or state agencies. This Developer's Agreement and every question arising hereunder shall be construed or determined per the laws of the State of Missouri.
- N. Jurisdiction and Venue: Should any part of this Developer's Agreement be litigated, venue shall be proper only in the Circuit Court of Greene County, Missouri.

CITY OF SPRINGFIELD, MISSOURI

By: \_\_\_\_\_  
City Manager

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

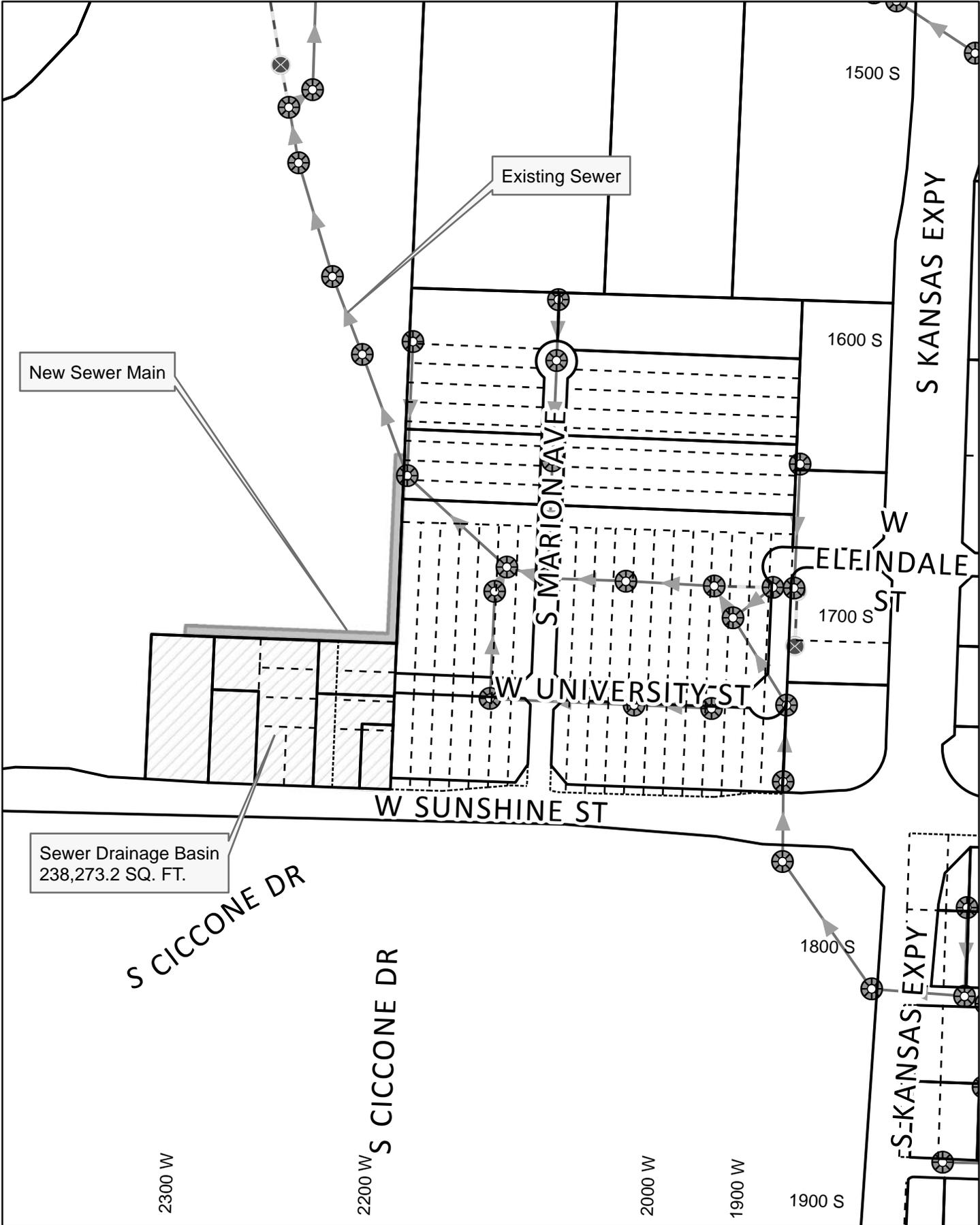
DEVELOPER

BY: \_\_\_\_\_  
Authorized signatory for Developer

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit B



LOCATION MAP

HAMBURG LLC SEWER DISTRICT



DISCLAIMER: All information included on this map or digital file is provided "as-is" for general information purposes only. The City of Springfield, and all other contributing data suppliers, make no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of the data for any particular use. Furthermore, the City of Springfield, and all other contributing data suppliers, assume no liability whatsoever associated with the use or misuse of the data.

