

## REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the "Agreement") is made and entered into effective as of the \_\_\_ day of June, 2018, by and between CITY OF LAWRENCE, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas ("City"), and KCI LAWRENCE 153, LLC, a Kansas limited liability company ("Developer"). City and Developer shall be referred to individually as a "Party" to this Agreement and collectively as the "Parties" to this Agreement, with reference to the following:

### RECITALS

A. Developer is the developer and owner of that certain real property at Lawrence VenturePark, City of Lawrence, Douglas County, Kansas, as more particularly identified on Exhibit A attached hereto and incorporated herein by reference (the "Developer Property").

B. The Developer is constructing an approximately 153,310 square foot industrial facility on the Developer Property (the "Development").

C. In connection with the Development, Developer is required to construct a certain main gas line with Atmos Energy ("Atmos") to benefit the Developer Property and certain property adjacent to the gas line owned by the City (the "City Property"). A general depiction of the proposed main gas line is shown on Exhibit B attached hereto and incorporated herein (the "Gas Line").

D. The City acknowledges that the Gas Line is mutually beneficial to the City and Developer and the City has agreed to reimburse the Developer for a portion of the cost of such Gas Line as more fully set forth herein.

E. The purpose of this Agreement is to provide for the construction of the Gas Line and for the partial reimbursement to Developer of Developer's costs in connection with the construction of such Gas Line.

### AGREEMENT

Now, therefore, in consideration of the recitals and mutual obligations of the Parties as herein expressed, City and Developer agree as follows:

1. Description and Completion of Improvements. The project involves the construction and completion of the Gas Line described in and depicted on Exhibit B (collectively, the "Gas Line Extension"). Prior to commencement of construction of the Gas Line Extension, the Developer will deliver the proposed plans for such Gas Line Extension (the "Gas Line Plans") to the City for its review and approval, which approval will not be unreasonably withheld, conditioned or delayed (but subject to City's standard procedures for review and approval of the same). Developer will also coordinate with the City regarding the development of the Gas Line Plans.
2. City Cooperation. Subject to City's approval right pursuant to Section 1 above, the City will otherwise cooperate with the Developer to satisfy its requirements to complete the Gas Line Extension, which may include, without limitation, the issuance of any permits required for the Gas Line and/or the execution of any Gas Line easements in favor of Atmos in connection therewith. The City will otherwise reasonably cooperate with any other requirements of Atmos in connection with such Gas Line Extension.

3. Gas Line Cost. City has approved Developer's estimate of the cost of the Gas Line Extension as set forth in Exhibit C attached hereto and incorporated herein. City acknowledges that the cost estimate is subject to change based on the actual cost of the Gas Line Extension. Notwithstanding the above, and for clarification purposes, the City's agreement for reimbursement shall only relate to the main Gas Line and will not include any connections from such main Gas Line to any buildings to be constructed by Developer for specific projects on the Developer Property.
4. Completion of Gas Line Extension. Developer, through its general contractor, will cause the Gas Line Extension to be completed in connection with the Development pursuant to the approved Gas Line Plans and the City will not be responsible for completion of the Gas Line Extension. Developer or its contractor will be responsible for contracting with Atmos in connection with the Gas Line Extension. Developer will pay the cost for such Gas Line Extension, but subject to the City's obligation to reimburse Developer for the cost upon completion (as provided below).
5. Reimbursement by the City. Following completion of the Gas Line Extension pursuant to the approved Gas Line Plans and acceptance of the Gas Line Extension by Atmos, the Developer shall provide the City with the following: (i) a full accounting of all costs related to the Gas Line Extension, (ii) evidence of payment of such costs by Developer (or its contractor) for such Gas Line Extension and (iii) a lien waiver and/or lien release from the applicable contractor in connection therewith. Upon the City's receipt of items (i)-(iii) above, the City will reimburse the Developer for two-thirds (2/3) of the actual cost of the Gas Line Extension within thirty (30) business days after receipt of such items; provided the reimbursement amount by the City shall not exceed \$55,000 in the aggregate.

Notwithstanding anything to the contrary contained herein, the Parties acknowledge that the Development only relates to the first Phase under that certain Land Transfer and Development Agreement between the City and Developer (the "Development Agreement"). Pursuant to the Development Agreement, the Developer has the right to develop two (2) additional Phases, as more fully set forth therein (the "Future Phases"). The Developer shall not be required to reimburse the City for any costs related to the Gas Line Extension for such Future Phases; provided, however, the Developer will pay any costs to hook into the Gas Line in connection with the actual development of such Future Phases.

6. City's Right to Collect. The City shall have the right to collect and be reimbursed from any subsequent purchaser or developer of the City Property benefited from the Gas Line Extension as determined by the City, provided the City shall have no right to collect from the Developer as to Future Phases as provided above.
7. Insurance and Indemnity. During construction of the Gas Line Extension, insurance and indemnity will be provided by Developer's contractor and the City will not be responsible for the Gas Line Extension.
8. Notices. Any demands or notice required or permitted under this Agreement may be personally served on the other party, by the party giving notice, or may be served by certified mail, return receipt requested, to the following addresses:

To City: City of Lawrence, Kansas  
Attn. City Manager  
City Hall, 6 East 6th Street  
Lawrence, Kansas 66044

Copy to: City of Lawrence, Kansas  
Attn. City Attorney  
City Hall, 6 East 6th Street  
Lawrence, Kansas 66044

To Developer: VanTrust Real Estate, LLC  
Attn: M. Grant Harrison  
4900 Main Street, Suite 400  
Kansas City, Missouri 64112

9. Waiver. No failure of either City or Developer to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
10. Whole Agreement. This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. The recitals set forth above are also incorporated herein by this reference. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties.
11. Consent. Where the consent or approval of a party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld.
12. Cooperation. The parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
13. Force Majeure. If the performance of any act required of City or Developer is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays (provided, however, delays by the City shall not excuse the City's performance), acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the Party required to perform an act, that Party shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event City or Developer claims the existence of such a delay, the Party claiming the delay shall notify the other Party in writing of that fact within 10 calendar days after the beginning of any such claimed delay.
14. Assignment. Developer may assign the obligations and rights under this Agreement, to any successor in interest of the Developer Property, but subject to the terms and conditions of the Development Agreement and any other agreements between the City and Developer.

15. Successors-in-Interest. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all parties to this Agreement have been succeeded by another entity, and all rights and obligations of the parties signatory to this Agreement shall be vested and binding on their successors-in-interest.
16. Laws and Venue. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of Kansas. Venue for actions arising out of the Agreement shall be in the City of Lawrence, County of Douglas, Kansas.
17. Negotiated Agreement. The parties agree that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Agreement, and the decision whether to seek advice of counsel with respect to this Agreement is the sole responsibility of each of the parties. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of this Agreement.
18. Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.
19. Authority to Sign. Each party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that he, she, or it has the authority to sign on behalf of his, her or its respective corporation, partnership, joint venture, entity and agrees to hold the other party or parties hereto harmless if he, she or it does not have such authority.
20. Term of Agreement. The term of this Agreement will commence on, and the effective date of this Agreement will be the date of execution and the term will extend for a period of two (2) years following the date of execution unless this Agreement is earlier terminated, or its term modified in writing agreed to by both Parties.

*[The remainder of this page is intentionally left blank]*

IN WITNESS WHEREOF, City and Developer have duly executed this Agreement pursuant to all requisite authorizations as of the Effective Date.

**CITY:**

CITY OF LAWRENCE, KANSAS

By: \_\_\_\_\_  
Thomas M. Markus, City Manager

**ATTEST:**

\_\_\_\_\_  
Sherri Riedemann, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Toni R. Wheeler, City Attorney

**DEVELOPER:**

KCI LAWRENCE 153, LLC  
a Kansas limited liability company

By: \_\_\_\_\_  
Printed Name: David Harrison  
Title: Manager

STATE OF KANSAS )  
 ) ss.  
COUNTY OF DOUGLAS )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, a Notary Public in and for said state, personally appeared Thomas M. Markus, who stated that he is the City Manager of the City of Lawrence Kansas, known to me to be the person who executed the within instrument on behalf of said city and acknowledged to me that he executed the same for the purposes therein stated.

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

\_\_\_\_\_  
Notary Public in and for said County and State

My Commission Expires:

\_\_\_\_\_  
(Type, print or stamp Notary's name)

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF Jackson )

On this 24 day of MAY, 2018 before me, a Notary Public in and for said state, personally appeared DAVID HARRISON who stated that (s)he is the MANAGER of KCI Lawrence 153, LLC, a Kansas limited liability company, known to me to be the person who executed the within instrument on behalf of said limited liability company and acknowledged to me that (s)he executed the same for the purposes therein stated and with the authority of the members of said limited liability company.

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

Cynthia Aitken  
\_\_\_\_\_  
Notary Public in and for said County and State

My Commission Expires:

4-26-2019  
\_\_\_\_\_  
(Type, print or stamp Notary's name)



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Lot 1, Block "A", VENTUREPARK SUBDIVISION NO. 1, A Minor Subdivision/Replat of Lot 1 and Lot 2, Block "B" Former Farmland Property, in the City of Lawrence, Douglas County, Kansas, as shown by the recorded plat thereof.

**EXHIBIT B**

**DEPICTION OF GAS LINE**

Approximately 4,400 feet of gas main extension from East Hills Business Park west along Venture Park Drive to O'Connell Road





**EXHIBIT C**

**COST ESTIMATE - GAS LINE EXTENSION**

<b>Description</b>	<b>Prospective Estimate / Less Rock Removal and Mitigation</b>		
	<b>Units</b>	<b>Cost</b>	<b>Total</b>
Steel to PE transition - ea	1	\$ 3,000.00	\$ 3,000.00
4" PE gas main - lin ft	4,350	\$ 13.50	\$ 58,725.00
4" Directional boring - lin ft	700	\$ 20.00	\$ 14,000.00
<b>Other line items that may apply</b>			
Pad or sleeving 4" main - lin ft, per 6" lift	-	\$ 4.25	\$ -
Rock trench ft x ft	-	\$ 5.50	\$ -
6" Rock bore adder - lin ft	-	\$ 25.00	\$ -
2 Man crew w/ equipment - hr	-	\$ 225.00	\$ -
Flowable fill as required	-	\$ 250.00	\$ -
<b>Prospective Total</b>			<b>\$ 75,725.00</b>

Staking and grading to be done by others if applicable.

NPL excludes hard surface and existing landscape restoration if applicable.