COUNCIL AGENDA
Monday, May 6, 2019
6:00 P.M., Council Chambers

1. **Call To Order**
   Invocation
   Pledge of Allegiance of the United States of America

2. **Roll Call**

3. **Presentations**

   1. Proclamation Recognizing May 5-11, 2019 As National Correctional Officers Week

      Documents:

      NATL CORRECTION OFFICERS WK 2019.PDF

4. **Finalization Of Consent Agenda**

5. **Reports And Communications**

   1. Update From Joplin Airport Manager Steve Stockam Regarding The New Air Service From Joplin To Chicago.

      Documents:

      CHICAGO FLIGHTS UPDATE.PDF

6. **Citizen Requests And Petitions**

7. **Public Hearings**

8. **Consent Agenda**

   1. Notes From The April 15, 2019 Informal Council Meeting

      Documents:

      INF NOTES APR 15.PDF

   2. Minutes Of The April 15, 2019 City Council Meeting

      Documents:

      APRIL 15, 2019.PDF

9. **Resolutions**

10. **Ordinances - Emergency**

    1. COUNCIL BILL NO. 2019-123
       AN ORDINANCE approving an amendment (Change Order No. 3) to the construction agreement with Crews Construction Inc., in the not to exceed amount of One Hundred Fifty-One Thousand Six Hundred Thirty-six and no/ Dollars ($151,636.00) for the Tin Cup Lift Station Renovation Project; and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin; and containing an emergency clause.

Documents:

COUNCIL BILL 2019-123 - AMENDMENT TO CONSTRUCTION AGREEMENT-DAN EDIT.PDF
TIN CUP LS CO NO 3.PDF
CB 2019-123 SUMMARY SHEET TIN CUP LIFT STATION RENOVATION CHANGE ORDER NO3-DAN EDIT.PDF

2. COUNCIL BILL NO 2019-124
AN ORDINANCE approving a Purchase Order to be issued to Ace Pipe Cleaning Inc. in the amount of Three Hundred Eighty-Five Thousand Four Hundred Forty-Five and no/100 Dollars ($385,445.00) to cover Evaluation and Rehabilitation of Wastewater Collection and containing an emergency clause.

Documents:

CB 2019-124 SUMMARY SHEET ACE.PDF
EXHIBIT MAP - PO FOR ACE 2019-124.PDF
CB 2019-124 ACE PIPE.PDF

3. COUNCIL BILL NO. 2019-125
AN ORDINANCE amending Chapter 106, "Streets, Sidewalks and Other Public Places," by enacting a new Article VI, "Rights-of-Way Management;" and containing an emergency clause.

Documents:

SUMMARY_CB2019-125 ROW MANAGEMENT CODE - 5-6-19 MTG.PDF
CB2019-125 ROW MANAGEMENT CODE_5-6-19 MTG PW.PDF
EXHIBIT A_ROW MANAGEMENT CODE GOES WITH CB2019-125 FOR PW.PDF

11. Ordinances - First Reading

1. COUNCIL BILL NO. 2019-122
AN ORDINANCE amending Chapter 118, Utilities, Article 2, Sewers and Sewage Disposal, by enacting a new Division 9, Illicit Discharge Detection and Elimination.

Documents:

ILLICIT DISCHARGE SUMMARY SHEET.PDF
ILLICIT DISCHARGE CB.PDF
ILLICIT DISCHARGE ORDINANCE DRAFT 2 4-30-19.PDF

2. COUNCILL BILL NO. 2019-261
AN ORDINANCE authorizing the City of Joplin to enter into an agreement with the Missouri Development Finance Board and Main Street Joplin doing business as Downtown Joplin Alliance for financing through the State Tax Credit for Contribution Program in support of the Empire Market Building Redevelopment Project.

Documents:

CB 2019-261 SUMMARY.PDF
CB 2019-261 TAX CREDIT AGEENMENT.PDF

CB 2019-261.PDF

12. **Ordinances - Second Reading And Third Reading**

13. **Unfinished Business**

14. **New Business**

    1. News From Public Information Officer Lynn Onstot

    2. Vote To Go Into Closed Session, Which Shall Pertain To Leasing, Purchasing Or Sale Of Real Estate By A Public Governmental Body Where Public Knowledge Of The Transaction Might Adversely Affect The Legal Consideration Therefore As Set Forth In Section 610.021 (2) RSMo, As Amended, 2018. This Meeting, Record, And Vote To Be Closed To The Extent Provided By Law. The City Council Shall Adjourn At The End Of The Session.

Anyone wishing to address the Council should step to the podium and state his/her name and address. If the matter is not a Public Hearing, a request to speak to the Council should be prepared prior to the meeting. Speaking time will be limited to five (5) minutes.

Sound enhancement units are available for hearing impaired customers who provide a form of identification as security, which will be returned to the customer upon the return of the unit.

Those in need of disability-related auxiliary aids or services should contact the City Clerk's office at (417) 624-0820, ext. 220 no later than 48 hours prior to the meeting.

Notice posted at ____ p.m. on this the __ day of ____, ____. (RSMo 610.020)

PROCLAMATION

PROCLAIMING MAY 5-11, 2019 AS NATIONAL CORRECTIONAL OFFICERS WEEK

WHEREAS, Correctional officers are trained law enforcement professionals dedicated to maintaining safe correctional facilities and ensuring the public safety; and

WHEREAS, Correctional facilities across the U.S., both civilian and military, public and private, adult and juvenile, are run by highly qualified and experienced individuals with a deep understanding of the challenges within the profession; and

WHEREAS, Correctional officers and employees are responsible for the custody, care and rehabilitation of thousands of offenders every year, as well as the maintenance of safe and secure facilities; and

WHEREAS, Correctional officers and employees are resourceful, capable, committed, patient and persistent professionals in criminal justice and our nation; and

WHEREAS, Correctional officers and employees serve admirably in many different capacities, including jail administrators, wardens, chaplains, nurses, supervisors, social workers, teachers, managers and directors; and

WHEREAS, Correctional officers and employees provide offenders with direction, hope and a new focus while assisting with reentry and life outside corrections; and

WHEREAS, Correctional officers and employees deserve recognition for their service and should be commended by leaders in the profession, the public and our elected officials for the tremendous job they do and exceptional performance of duties under the most difficult of circumstances.

NOW, THEREFORE, I, Gary L. Shaw, Mayor of the City of Joplin, Missouri, do hereby proclaim May 5-11, 2019 as NATIONAL CORRECTIONAL OFFICERS WEEK and urge all citizens to acknowledge the importance of the role of the Correctional officers who are deserving of our respect and our thanks.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused the Seal of the City of Joplin to be affixed this 6th day of May 2019.

_____

Gary L. Shaw, Mayor

FLYING JOPLIN JUST GOT EASIER!

We're adding Chicago to our daily flight schedule

Starting June 6, you can fly direct to Chicago from Joplin.
That means, in addition to our daily Dallas flights, you now have another option to connect to anywhere in the world.

BOOK FLIGHTS NOW AT FLYJOPLIN.COM

FLYJOPLIN.COM



WE WANT TO SAY A SPECIAL THANKS TO OUR COMMUNITY PARTNERS FOR THEIR SUPPORT IN HELPING TO MAKE OUR AIR SERVICE EXPANSION TO CHICAGO A REALITY.

We could not have done it without you!

Able Manufacturing & Assembly, LLC

Ajinomoto Foods North America, Inc.

American Ramp Company

Anderson Engineering , Inc.

Arvest Bank

CFI

Commerce Bank

Community Bank & Trust

Corner Greer Architects

Crowder College

Davis CPA Group, LLC

Downstream Casino Resort

EaglePicher Technologies, LLC

Employer Advantage

Freeman Health System

General Mills

Guaranty Bank

Jasper County Industrial Development Authority

Jasper Products, LLC

Joplin Industrial Development Authority

Kansas City University - Joplin

Liberty Utilities

Mercy Hospital - Joplin

Mid-Missouri Bank

Missouri Southern State University

Owens Corning Mineral Wool LLC

People's Bank of Seneca

Pinnacle Bank

Pittsburg State University

Sidecars, Inc.

Southwest Missouri Bank

The Farber Foundation

Vowels Stovern Wealth Management

Watco Companies

Wildwood Ranch

Airline Agreement for Chicago Service

The new service will begin June 6th with 2 flights per day, except Saturday, with 50 passenger ERJ-145 Regional Jets. In order to secure this service, the Airport/COJ signed a 1-year $600,000 MRG (Minimum Revenue Guarantee) agreement for the service.

Council previously approved a partnership agreement to fund the MRG, if needed. The City will fund $400,000 while the remaining $200,00 was pledged through the Economic Development arm of the JACC. These are our community business partners.

If the monthly revenue fall short of the baseline the difference will be made up from an equal share from each funding source.





FLIGHT SCHEDULE FROM JUNE 7TH - JULY 6TH					
FLIGHT #	DESTINATION	ARRIVAL	DEPARTURE	FREQUENCY	AIRCRAFT TYPE
3448	ORD		544	Daily	MQ E140
3514	DFW		610	Daily	MQ E140
5750	DFW	1147	1217	Ex. Tue, Wed, & Sat	YV CR9
3466	ORD	1341	1415	Daily	MQ 140
4160	DFW	1554	1619	Daily	MQ 140
3835	DFW	1741	1808	Daily	MQ 140
3450	ORD	2203		Daily	MQ 140
3558	DFW	2344		Daily	MQ 140

Growing the Joplin Regional Airport

With the addition of the new service to Chicago and the continued growth of the Dallas route the Airport will need to make some immediate changes/upgrades to some of our operational sectors and facilities.

Immediate Equipment & Facilities Requirements

- Canopy for Bridge #2 (Completed $8000)
- Hold room seating changes (rearranged existing for immediate change)
- Gate Check counter for Bridge #2 (Data & Electrical $1,000)
- Expand Employee Parking (Street Dept. Labor & Base Rock, Paving this summer)
- Expand AA Terminal Lease Space (Additional 660 sq./ft office space)
- Relocate Airport Staff offices to Fire Barn



Growing the Joplin Regional Airport

Operational Issues

- Man Power issues…..With the new flight schedule beginning in June our responsibilities for Safety and Security will demand Police and Airport staff be at post for 10 hours each day.

    - LEO Time – There will be at least 6 additional hours above the current staffing level required at the Screening Checkpoint.
    - Airport ARFF Time – The additional time required to cover the flights will reduce the Airport staff time available for maintenance/Janitorial duties.
    - Develop a stand-alone Airport Police Department under the Airport.

Immediate Proposed LEO Staffing

Airport Police Officers (4 - .75 PT Positions) 3 FTE

This proposal will allow an officer to cover the TSA for all outgoing flights. These will be Airport Positions not JPD. We will develop a new job for this position to be brought for formal council action at the next council meeting, along with a budget amendment.



5-Month Expense/Revenue Impact Summary

Proposed Positions/Changes	Total Budget Amount	Funding Allocation	Total Proposed Amount	General Fund Budget Change	Airport Fund Budget Change	Total Increase/ (Decrease)
Airport Operations Supervisor	$ 21,606	Airport Fund	$ 23,187	$ -	$ 1,580	$ 1,580
Airport Operations Worker	14,805	Airport Fund	15,134	-	329	329
Seasonal Laborer	-	Airport Fund	4,883	-	4,883	4,883
		General Fund 20%				
Reclassify PT Clerk to FT Senior Clerk	4,873	Airport Fund 80%	16,257	2,277	9,107	11,384
Airport Police Officers (4)	-	Airport Fund	66,591	-	66,591	66,591
Total 5-Month Impact	**$ 41,284**		**$ 126,053**	**$ 2,277**	**$ 82,492**	**$ 84,769**

New Revenues	5 Month Revenue
Airline Rental Space	$4,070.00
Airline Landing Fees	$5,834.00
Passenger Facility Charge (PFC)	$33,335.00
Proposed ARFF/Security Fees	$31,250.00
TSA Grant (Only $23,000 left)	$23,000.00
	$97,489.00



Joplin Regional Airport

Our Portal To the World!



JOPLIN CITY COUNCIL
INFORMAL MEETING NOTES
APRIL 15, 2019

An appreciation reception was held for Ron Richard, a former Joplin City Council member and mayor who later became a Missouri State Representative and Missouri State Senator. The reception was in honor and recognition of Mr. Richard's distinguished career in public service.

Mayor Gary Shaw presented Mr. Richard with a proclamation and a Key to the City, to represent the highest honor a city can bestow on an individual in acknowledgement and appreciation for his valuable service and achievements that further the ideals of our community.

The proclamation highlighted some of Ron's accomplishments in Joplin and as a state legislator:

Ron Richard began his public service in 1980 by volunteering to serve on the City of Joplin Health Department Review Board, and later, after serving on many other boards and commissions, ran successfully for the Joplin City Council, and served as mayor from 1994-1997.

During his tenure as mayor, Ron Richard introduced and supported the adoption of business-friendly policies that enabled Joplin to compete for businesses to help jumpstart economic development and growth for the city; he was instrumental in helping to create the Joplin Redevelopment Corporation and initiated the start of the Murphy/Campbell Parkway Trail.

Ron Richard's desire to increase economic growth and draw more people to the state of Missouri led him to pursue a career in state government where he served in the House of Representatives from 2002-2008, and then in the Senate from 2010-2018.

Ron Richard earned the respect and admiration of many by cultivating a remarkable ability to build and maintain bridges between people of varying interests, objectives and politics by working across party lines to get results.

Ron Richard's strong history of sponsoring and promoting legislation to improve Missouri's business climate resulted in the success of many of the state and local economic development efforts.

Ron Richard has accumulated an impressive list of achievements and honors, including being the first person in Missouri's history to serve as both Speaker of the House and President Pro Tem of the Senate, earning him the Lifetime Achievement Award from Lieutenant Governor Mike Kehoe.

Attendees included former mayors, council members, and city clerk; Jasper and Newton County officials; staff from Missouri Southern State University, citizens and City of Joplin employees.

Former Mayor and Council Member Mike Seibert, and former state representative Charlie Davis, gave brief comments, complimenting Ron Richard on his career and accomplishments, and all the efforts Ron put forth to help the city of Joplin grow and prosper.

Cupcakes and punch were served.

The reception ended at 5:55 p.m.

Barbara Gollhofer, City Clerk

JOPLIN CITY COUNCIL
APRIL 15, 2019 MEETING MINUTES

CALL TO ORDER

The regular meeting of the Joplin City Council was called to order at 6:00 p.m.by Mayor Gary Shaw.

INVOCATION was read by City Clerk Barbara Gollhofer.

PLEDGE OF ALLEGIANCE to the United States of America was led by Mr. Cortez.

ROLL CALL

Answering Roll Call were Council Members: Taylor Brown, Melodee Colbert-Kean, Keenan Cortez, Doug Lawson, Anthony Monteleone, Diane Reid Adams, Gary Shaw, Ryan Stanley, and Phil Stinnett. Also, in attendance were Interim City Manager Dan Pekarek and City Attorney Peter Edwards.

PRESENTATIONS

Mayor Gary Shaw presented a proclamation naming April 14-20, 2019 as Public Safety Telecommunicators Week to Public Safety Communications Manager Cheryl Konarski. Also in attendance were April Ford, Director of JASCO Communications; Stephanie Welch, City of Joplin Emergency Communications Dispatcher; and Police Chief Matt Stewart.

FINALIZATION OF CONSENT AGENDA

There being no further business to come before the City Council, the Consent Agenda was finalized.

REPORTS AND COMMUNICATIONS

The FY2018 Annual Audit Report was presented by Michael Keenan of Cochran, Head and Vick. Mr. Keenan thanked the City of Joplin for the opportunity to serve as their auditor. He also thanked Finance Director Leslie Haase and the Joplin staff for their professionalism in assisting with the audit. Mr. Keenan reported the auditors encountered no difficulties in dealing with management in performing and completing the audit.

Before reviewing the annual reports, Finance Director Leslie Haase recognized and thanked her assistant, A.J. Whistler and the rest of her staff for the work they do, not just on the audit, buy all year long. She also thanked the City overall for their job performance that resulted in a good audit report. The Comprehensive Annual Financial Report (CAFR) reflects everything the City is doing. She stated it is a great accomplishment to have no comments on the single audit and no comments on the regular audit.

Finance Director Leslie Haase reviewed the Joplin Sports Authority annual report; City of Joplin Policemen's and Firemen's Pension Plan Actuarial report; and TIF status report.

CITIZEN REQUESTS AND PETITIONS

PUBLIC HEARINGS

Public Hearing Procedures read by City Clerk Barbara Gollhofer

Public Hearing - appeal for Denial of Historic Preservation Commission Case Number 2019-02.

City Attorney Peter Edwards explained this public hearing is an evidentiary hearing.

Planning and Community Development Director Troy Bolander stated the purpose of the hearing is to review the denial of a certificate of appropriateness by the Historic Preservation Commission for the proposed installation of windows of the type and design the HPC believes does not review the Design Review Standards for the Sunshine Lamp District, which was adopted by the City Council in 2005.

Properties in the Historic Sunshine Lamp District require Certificates of Appropriateness on file in the Building Department before pulling building permits. To obtain certificate, property owners consult with City Staff, and obtain applications for certificates of appropriateness from the Planning, Development and Neighborhood Services Department. Upon submittal of an application, staff reviews the application and confirms whether the scope of work is classified as major or minor works. Staff review of the application is conducted in accordance with the Secretary of the Interior's Standards for Historic Rehabilitation and referencing the local Design Review Standards for the Sunshine Lamp District. Minor works can be approved by staff. Major works, and minor works not approved by staff are sent to the Design Review Board. The Design Review Board makes a recommendation on approval or denial of the work to be performed. The Historic Preservation Commission then makes a determination on the historic appropriateness on the scope of work outlined in the application. If the Certificate of Appropriateness is approved, permits may be obtained.

Application for a Certificate of Appropriateness for work proposed on a building located at 218 S. Main was received by the Planning Department on February 22, 2019. Staff reviewed the application, determined the scope was minor works but unable to approve through staff review due to finding windows to be inappropriate. Staff convened an emergency meeting of the Design Review Board on February 27, 2019. Design Review Board unanimously found the proposed windows to be inappropriate and passed a recommendation to the Historic Preservation Commission to deny certificate. On March 19, 2019 the Historic Preservation Commission reviewed the application and recommendation from the Design Review Board and denied the application for Certificate of Appropriateness.

The property owners, ACL Holdings, LLC, are appealing the denial of the Certificate of Appropriateness to City Council in accordance with Appendix B, Historic Preservation, of the Joplin Zoning Code of Ordinances. City Council has the final administrative determination on the historic appropriateness of the proposed work.

City Attorney Edwards asked questions pertaining to Design Review standards and rules of Historic Preservation.
Tom Walters, City Planner and staff representative to the Historic Preservation Commission, and Jill Sullivan, Executive Director of the Post Art Library and Chairperson of the Historic Preservation Commission presented testimony on behalf of the HPC.

Luke Sheafer and his wife presented a power point testimony on behalf of ACL Holdings, LLC, as part of their appeal to the denial of the certificate of appropriateness. After the presentation and

discussion, they thanked the Council for their time and consideration in this matter.

Mr. Edwards stated he would offer Resolution 2005-043 the Design Review Standards, all the photos that were reviewed tonight, the staff packet that was identified as Exhibit 2, to the City Council as evidence for this public hearing. The Council accepted the evidence. The Council needs to decide if the proposed windows meet the Design Standards for the Sunshine Lamp Historic District

Motion by Mr. Stinnett, second by Mrs. Reid Adams for the denial of Case 2019-02. Voting in favor were Council Members: Brown, Cortez, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 7. Nays: Colbert-Kean; Lawson, 2.

CONSENT AGENDA

Motion by Mr. Stanley, second by Mr. Stinnett to approve the Consent Agenda. Voting in favor were Council Members: Brown, Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 9. Nays: 0.

City Attorney Peter Edwards stated as a point of clarification that Council Members Lawson and Stanley abstained from voting on Council Bill No. 2019-260 at the April 1, 2019 council meeting and the minutes and ordinance will reflect those abstentions.

Notes from the April 1, 2019 Informal Council Meeting

Minutes of the April 1, 2019 Council Meeting

COUNCIL BILL NO. 2019-259 - AN ORDINANCE providing to vacate approximately 185 feet of a 20-foot wide utility easement located at 2119 East Highlander Drive. **Ordinance No. 2019-062**

COUNCIL BILL NO. 2019-260 - AN ORDINANCE establishing grades and accepting the Plat of Koinonia Subdivision located immediately west of the intersection of Duquesne Road and Birch Lane in the City of Joplin, Jasper County, Missouri. **Ordinance No. 2019-063**

COUNCIL BILL NO. 2019-610 - AN ORDINANCE approving the application of Special Olympics Missouri for utilization of FY2019 Festivals and Celebrations support pursuant to Ordinance No. 2000-148, as authorized by the voters on November 7, 2000; authorizing the City Manager to execute appropriate agreements with each such organization for the utilization of such funds. **Ordinance No. 2019-064**

RESOLUTIONS

Mr. Stanley introduced Amended Resolution No. 2019-003- an amended resolution creating and directing the Centennial Celebrations Commission. Motion by Mr. Stanley, second by Mr. Lawson to approve Amended Resolution No. 2019-003. Voting in favor were Council Members: Brown, Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 9. Nays: 0. Motion by Mr. Stanley, second by Mrs. Colbert-Kean to appoint Mrs. Reid Adams as council liaison to the commission. Voting in favor were Council Members: Brown, Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 9. Nays: 0. **Amended Resolution No. 2019-**

003

Mr. Lawson introduced Resolution No. 2019-005 - a resolution authorizing the filing of a One Year Action Plan with the U.S. Department of Housing and Urban Development as required for use of the City of Joplin's Community Development Block Grant Program (Entitlement) and the Joplin Consortium HOME Investment Partnership Program for fiscal year 2019; and authorizing the City Manager to execute said Plan for and on behalf of the City of Joplin. Motion by Mr. Lawson, second by Mrs. Reid Adams, to approve Amended Resolution No. 2019-005. Voting in favor were Council Members: Brown, Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 9. Nays: 0. **Resolution No. 2019-005**

ORDINANCES – EMERGENCY

Mr. Stanley introduced Council Bill No. 2019-120 - an ordinance approving the City of Joplin to enter into an agreement with D&E Plumbing and Heating, Inc., in the amount of Five Million Six Hundred Forty-Six Thousand One Hundred Ninety-Seven and 12/100 dollars ($5,646,197.12) for construction of the 44th Street and Connecticut Avenue Improvement Project; and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin; and containing an emergency clause. Motion by Mr. Stanley second by Mr. Cortez that Council Bill No. 2019-120 be approved on an emergency basis. Voting in favor were Council Members: Brown, Colbert-Kean, Cortez, Lawson, Shaw, Stanley and Stinnett, 7. Nays: Monteleone, Reid Adams, 2. The Council Bill was declared adopted and entitled **Ordinance No. 2019-065**

Mr. Brown introduced Council Bill No. 2019-121-an ordinance authorizing the acceptance of an agreement with Allgeier, Martin and Associates Inc., in the not to exceed amount of One Hundred Eighty-Eight Thousand Four Hundred Forty and No/100 Dollars ($188,440.00) for Engineering Services on the Turkey Creek Waste Water Treatment Plant Tertiary Filter Replacement; and, containing an emergency clause. Motion by Mr. Brown, second by Mr. Monteleone that Council Bill No. 2019-121 be approved on an emergency basis. Voting in favor were Council Members: Brown, Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 9. Nays: 0. The Council Bill was declared adopted and entitled **Ordinance No. 2019-066**

Mr. Cortez introduced Council Bill No. 2019–359-an ordinance approving the contract by and between the City of Joplin and Camcor Environmental for the demolition of the structure(s) and clearing of lot area located at 1114 E. Hill. in the City of Joplin, Missouri, for Two Thousand One Hundred Sixty and 00/100 Dollars ($ 2,160.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause. Motion by Mr. Cortez, second by Mr. Brown that Council Bill No. 2019-359 be approved on an emergency basis. Voting in favor were Council Members: Brown, Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 9. Nays: 0. The Council Bill was declared adopted and entitled **Ordinance No. 2019-067**

Mrs. Reid Adams introduced Council Bill No. 2019 – 360 - an ordinance approving the contract by and between the City of Joplin and B & D Yardbuilders for the demolition of the structure(s) and clearing of lot area located at 1419 W. 9TH St. in the City of Joplin, Missouri, for Three Thousand Three Hundred Fifteen and 00/100 Dollars ($ 3,315.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause. Motion by

Mrs. Reid Adams, second by Mr. Lawson that Council Bill No. 2019-360 be approved on an emergency basis. Voting in favor were Council Members: Brown, Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 9. Nays: 0. The Council Bill was declared adopted and entitled **Ordinance No. 2019-068**

Mr. Stanley introduced Council Bill No. 2019-508 - an ordinance amending the Annual Budget of the City of Joplin for the Fiscal Year 2018-2019 as adopted by Ordinance 2018-145 on October 15, 2018, to adjust appropriations and containing an emergency clause. Motion by Mr. Stanley, second by Mr. Stinnett that Council Bill No. 2019-508 be approved on an emergency basis. Voting in favor were Council Members: Brown, Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 9. Nays: 0. The Council Bill was declared adopted and entitled **Ordinance No. 2019-069**

Mr. Lawson introduced Council Bill No. 2019-611- an ordinance approving a Contract for grant money by and between the City of Joplin, Missouri and the Missouri Department of Transportation dealing generally with work zone traffic enforcement in the amount of five thousand dollars ($5,000.00); authorizing the City Manager to execute the same by and on behalf of the City of Joplin, Missouri; and containing an emergency clause. Motion by Mr. Lawson, second by Mr. Cortez that Council Bill No. 2019-611 be approved on an emergency basis. Voting in favor were Council Members: Brown, Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 9. Nays: 0. The Council Bill was declared adopted and entitled **Ordinance No. 2019-070**

ORDINANCES – FIRST READING

ORDINANCES – SECOND READING AND THIRD READING

NEW BUSINESS

News from the Public Information Officer, Lynn Onstot

The Recycling Center is hosting the Annual Tire Drop Off set for Friday, May 3 and Saturday, May 4 from 9 a.m. to 3 p.m. both days. We appreciate Liberty Utilities partnering with us to offer this service to our citizens and their residential electric customers.

The City is hosting three Public Open Houses to learn more about the Smart Cities initiative that we're exploring. Everyone is invited to the meetings to talk with staff at various informational stations, and to share their ideas for Joplin's future. Meetings are scheduled for 10:30 a.m. to 12:30 on Saturday April 27 at the Public Library; 4:30 to 6:30 p.m. on Tuesday, April 30 at Bookhouse Cinema, and again 4:30 to 6:30 p.m. on Thursday, May 2 at Irving Elementary School. For those who can't attend, we encourage them to join the Live Stream event during these times.

We'll also be in front of City Hall for Third Thursday, April 18, with a cool demonstration of how SMART technology can make yardwork a breeze.

I also want to remind residents that this is the season to be aware of changing weather patterns. There are several different ways to get weather alerts – whether it's on a smartphone, television or radio – we want everyone to please pay attention this time of year. If traveling, get a forecast before hitting the road. For more ideas on storm season preparedness, visit joplinmo.org.

Comments from Council:
Mr. Brown stated he had the opportunity to make a movie for his place of employment that involved using the canine unit at the Joplin City Police Dept.

Mr. Monteleone requested the interim city manager follow up with staff regarding the issue with the Sheafer's public hearing item to see if any changes need to be made to the historic preservation application procedures to avoid this type of issue from arising in the future.

Mayor Shaw offered his condolences to the family of Cat Johnson, who recently passed away. Mr. Johnson was a longtime businessman in our community and a great athlete in his earlier years.

Vote to go into closed session, which shall pertain to leasing, purchasing or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefore; and which shall pertain to the hiring, firing, disciplining, or promotion of an employee or particular employees of a governmental body involving personal information as set forth in Section 610.021(2)(3) RS Mo, as amended, 2018. This meeting, record, and vote to be closed to the extent provided by law. The City Council shall adjourn at the end of the session. Motion by Mr. Stanley, second by Mr. Monteleone to go into closed session. Voting in favor were Council Members: Brown, Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 9. Nays: 0.

There being no further business, the meeting was adjourned at 8:37 p.m.

Respectfully,

Barbara Gollhofer, City Clerk

COUNCIL BILL NO. 2019-123 **ORDINANCE NO**

AN ORDINANCE approving an amendment (Change Order No. 3) to the construction agreement with Crews Construction Inc., in the not to exceed amount of One Hundred Fifty-One Thousand Six Hundred Thirty-six and no/ Dollars ($151,636.00) for the Tin Cup Lift Station Renovation Project; and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin; and containing an emergency clause.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, as follows:

Section 1. That the said amendment (Change Order No. 3) to the agreement by and between the City of Joplin and Crews Construction Inc. in the not to exceed amount of One Hundred Fifty-One Thousand Six Hundred Thirty-six and no/ Dollars ($151,636.00), a true and accurate copy of said agreement being attached hereto; be and the same is hereby approved.

Section 2. That the City Manager of the City of Joplin, Missouri, or his designee, is hereby authorized and directed to execute said agreement amendment, or agreement in substantially similar form, by and on behalf of the City of Joplin.

Section 3. That upon the final approval and acceptance of the contractor's work under said contract, in substantial conformance with the attached agreement, in writing by the Director of Public Works and his certification to the effect to the Director of Finance, the contractor shall be paid from the Wastewater Treatment Fund

Section 4. That the City hereby declares that this Ordinance dealing with a public improvement, is an emergency within the meaning of Section 2.12 (6) of the Home Rule Charter of the City of Joplin, Missouri, and as such, this Ordinance shall become effective immediately upon its passage.

Passed by the Council of the City of Joplin, Missouri, this _____ day of

_____, 2019 by a _____ vote.

_____

ATTEST: Gary L. Shaw, Mayor

_____

Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____

Peter C. Edwards, City Attorney

COUNCIL BILL 2019-123

I hereby certify that a sufficient amount is available in the Wastewater Treatment Fund to pay the amounts called for on the basis of the bids received by the City Engineer.

_____

Leslie Haase, Director of Finance

CHANGE ORDER NO. 3

County: Newton

Project: Tin Cup Lift Station Renovation

To: Mr. Paul Crews
Crews Construction, Inc.
17603 Keisha Drive
Neosho, MO 64850-8551

Job No. _____

You are hereby directed to make the following changes to your contract with the **City of Joplin** for the referenced project.

❖❖❖

2. Estimate of Cost of Work Affected by this Change Order. (Lump Sum Contract Items.)

(A) EST. LINE NO.	(B) CONTRACT ITEM NO.	(C) ITEM DESCRIPTION	(D) UNITS PREVIOUSLY PROVIDED FOR	(E) UNITS TO BE CONSTRUCTED	(F) UNITS OVERRUN, UNDERRUN, CONTINGENT	(G) CONTRACT OR AGREED UNIT PRICE	(H) AMOUNT OF OVERRUN OR PLUS CONTINGENT	(I) AMOUNT OF UNDERRUN OR MINUS CONTINGENT
	5	Bonding, Insurance, Mobilization, and Any Work Required for the Perfection of the Project Not Listed Elsewhere in the Bid Schedule.	Lump Sum					
		Mechanical Subcontractor's cost for materials and labor (1.a)						$77,243.00
		Specialty Subcontractor installation of line-stops (1.b)						$47,520.00
		Isolate pump suction valves, plus pump removal and replacement (1.c)						$5,145.00
		Contractor Bonding Plus Overhead and Profit (d)						$21,728.00
						TOTALS		$151,636.00

Original Contract Completion Date……... ..April 21, 2019
Revised Contract Completion Date……*September 7, 2019
(* Revised completion date assumes 120 Calendar days following the anticipated execution of Change Order No. 3 on May 10, 2019.)

3. Cost Justification for Changes to Bid Item No. 5: The following costs have been discussed with the contractor and have been compared to costs incurred for similar work on other recent projects to verify the reasonableness of anticipated manhours and hourly rates. Material costs have been verified through review of the suppliers invoices. The subcontractor costs for placement of line-stops represent the lesser cost of two proposals received for this work. Contractor's bonding and overhead and profit costs are as allowed by the General Conditions of the Contract.

Item (1.a) – Mechanical Subcontractor costs for replacement of valves and associated materials and labor documented as follows:

<u>Materials</u>	
16-Inch Eccentric Plug Valves, 4 @ $4,295 Each	$17,180
12-Inch Eccentric Plug Valves, 6 @ $2,335 Each	14,010
One 16-Inch Check Valve	6,943
12-Inch Check Valves, 3 @ $3,535 Each	10,605
16-Inch SS Bolt and Gasket Sets, 12 @ $145.26 Each	1,743
12-Inch SS Bolt and Gasket Sets, 20 @ $87 Each	1,740
One 16-Inch Flngd x MJ Mega Adapter	967
12-Inch x 4.25-Inch Filler, 3 @ 895 Each	2,685
Miscellaneous Materials	705
Overhead and Profit (10%)	5,659
<u>Labor</u>	
244 manhours @ $61.50/hour	<u>15,006</u>
	$77,243

Item (1.b) – Line-Stop Subcontractor per least cost proposal as follows:

Two 16-Inch Line-Stops	$40,400
Planned Second Mobilization	2,800
Overhead and Profit (10%)	4,320
	$47,520

Item (1.c) – General Contractor costs for plugging of suction lines, pump removal and reinstallation, and plug rental documented as follows:

Inflatable Plug Rental	$225
Labor, 82 manhours @ $60 per hour	4,920
	$5,145

Item (d) - Per General Conditions of the Contract, contractor's additional bonding costs and 15 percent overhead and profit are allowable costs.

Subcontractor Costs	$124,763
General Contractor Costs	5,145
Additional Bond Costs	1,949
Subtotal	$131,857
Overhead and Profit (15%)	19,779
Total Change Order No. 3 Cost	$151,636

4. Other City Departments Consulted:

_____ Date _____
Name

_____
Department / Title

_____ Date _____
Name

_____
Department / Title

5. Settlement for Cost of the above Change to be made at Contract Unit Price Except as Noted:

1. CONTRACT AMOUNT		$1,380,000.00	The Terms of Settlement outlined above are hereby agreed to.
2. OVERRUN	$151,636.00		Crews Construction, Inc.
3. OVERRUN/UNDERRUN PREVIOUS	($10,895.00)		
4. TOTAL OVERRRUN TO DATE	$140,741.00	$140,741.00	By:_____ _____
5. TOTAL		$1,520,741.00	Paul Crews, President Date
PERCENTAGE OF ORIGINAL CONTRACT		10.2%	

_____ _____
CONSULTING ENGINEER DATE

FOR CITY OF JOPLIN USE:

Emergency Provisions of Change Order Policy Used YES □ NO □ Date approved _____

Reason for Emergency and description of work approved (Check all that apply):

□ Protection of Public Health and Safety _____

□ Avoid Contractor and Project Delays _____

□ Impact to Other Improvement Projects _____

□ Other _____

_____	_____	_____	_____
APPROVAL PROJECT MANAGER	DATE	APPROVAL SUPERVISOR / ENGINEERING REVIEWER	DATE
_____	_____		
APPROVAL OF DEPARTMENT HEAD	DATE		

WHEN REQUIRED BY THE CITY'S CHANGE ORDER POLICY, THE FOLLOWING SIGNATURES ARE MANDATORY:

_____	_____	_____	_____
* DIRECTOR OF FINANCE	DATE	* CITY MANAGER	

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2019-123
Change Order No. 3 for the Tin Cup Lift Station Renovation project

MEETING DATE
May 6, 2019

ORIGINATING DEPT
Public Works – Engineering

ATTACHMENTS
CB2019-123 Ordinance; Change Order No. 3

REVIEWED BY
Director of Public Works – David Hertzberg, Director of Finance – Leslie Haase, City Attorney – Peter C. Edwards, Interim City Manager – Dan Pekarek

SUMMARY
This Council Bill approves Change Order No. 3 with Crews Construction, Inc. for the Tin Cup Lift Station Renovation project in the not to exceed amount of One Hundred Fifty-One Thousand Six Hundred Thirty-Six and 00/100 Dollars, ($151,636.00)

BACKGROUND
On August 20, 2018, Council approved a $1,380,000.00 construction contract with Crews Construction for the Tin Cup Lift Station Renovation project. As the work progressed, two previous change orders were processed with a total net deduct in contract value of $10,895.00. Both change orders added value to the work and to the lift station's operational features. This change order will increase the contract's value to slightly over 10% of the original amount.

The Tin Cup Lift Station has five pumps, each with its own thirty-four-year old set of discharge check and plug valves. Prior to bidding this project it was known that there were issues with the valves on one of the pumps, and so accommodations were included in the bid documents to replace them. As the contractor began to replace the other four pumps, it was revealed that none of the discharge valves could be fully closed due to corrosion. It is clear that replacement of the existing valves will be required in order to replace the pumps and ensure the reliability of this lift station, the primary source of wastewater delivery to the Shoal Creek Wastewater Treatment Plant. Having the contractor perform the work while the pumps are disconnected makes sense, rather than City maintenance staff doing this work in the future. Additionally, isolation valves ("line stops") are needed to keep the lift station operational during the work and these will remain in place for future access. Lastly, the change order provides for the replacement of each pump's suction-side plug valve, as a means of preventative maintenance, as well as an additional time of 120 days to order equipment.

FUNDING SOURCE

Wastewater Treatment fund, Fiscal Year 2018-2019 Budget.

RECOMMENDATION

Staff recommends approval of this council bill for Change Order No. 3 with Crews Construction in the amount of One Hundred Fifty-One Thousand Six Hundred Thirty-Six and no/100 Dollars ($151,636.00) on an Emergency basis; being an ordinance relating to a public improvement is an emergency within the meaning of Section 2.12(6) of the HOME RULE CHARTER of the City of Joplin, Missouri and the Council hereby declares that this ordinance shall be in full force and effect from and after its passage. Appropriations for this contract have been approved in the 2018-2019 budget.

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2019-124
Purchase Order No. 3 for the 2018-2019 Evaluation & Rehabilitation of Wastewater Collection System project

MEETING DATE
May 6, 2019

ORIGINATING DEPT
Public Works, Engineering

ATTACHMENTS
Exhibit Map: CB2019-124 Ordinance;

REVIEWED BY
Director of Public Works – David Hertzberg, Director of Finance – Leslie Haase, City Attorney – Peter C. Edwards, Interim City Manager – Dan Pekarek

SUMMARY
This Council Bill approves a purchase order with Ace Pipe Cleaning, Inc. for the 2018-2019 Evaluation & Rehabilitation of Wastewater Collection System project in the amount of Three Hundred Eighty-Five Thousand Four Hundred Forty- Five and no/100 Dollars, ($385,445.00)

BACKGROUND
City staff drafted a 10-year Bypass Elimination Plan that includes cleaning and evaluating the entire collection system, as well as repairing defects. The plan also includes an annual rehabilitation plan aimed at reducing sewer line collapses, reducing Inflow and Infiltration (I&I) of storm water, and increasing the reliability of the system. Since 2013, City staff have managed successive two-year contracts called the Evaluation and Rehabilitation of Wastewater Collection System Project. These menu-like contracts enable City staff to choose various work items, corresponding to progress on the 10-year Bypass Elimination Plan mentioned above. Over the past five years, a large portion of the City's gravity sewer system has been cleaned and evaluated.

During the Council meeting on Nov. 6, 2017, Council was informed that there would be future purchase orders (POs) using any of the contract unit prices, on an as-needed basis, in conformity with the specific language in the bid documents. CB 2017-164 was then approved, authorizing the City to enter into an Agreement with Ace Pipe Cleaning, Inc.

While repairs can be made throughout the City's sewer system, staff has determined that the majority of the work under this PO will take place in sanitary sewer basins identified by the 2017 flow monitoring study as having excessive I&I. Smoke testing will take place where existing defects in the sanitary sewer system are not yet known. All work under this PO will be funded by the City's Sanitary Sewer Fund No. 415-4542-540-8675, whose budget accommodates staff's anticipated expenditures of approximately $1,000,000 in FY2019. The first PO under this contract focused on reliability of concrete sewer infrastructure all over town. The majority of the work in the second PO involved the rehabilitation of public infrastructure in the Westpark

Addition, located at the SW corner of W. Junge and S. Shifferdecker Ave.). The impact of the rehabilitation of the public infrastructure in the Westpark area is currently being measured as City staff continue to develop a cost-effective strategy for removing I&I throughout the City.

FUNDING SOURCE

Wastewater Maintenance fund, Fiscal Year 2018-2019 Budget.

RECOMMENDATION

Staff recommends adoption of this Council Bill on an Emergency basis; being an ordinance relating to a public improvement is an emergency within the meaning of Section 2.12(6) of the HOME RULE CHARTER of the City of Joplin, Missouri and the Council hereby declares that this ordinance shall be in full force and effect from and after its passage. Appropriations for this contract have been approved in the 2018-2019 budget.

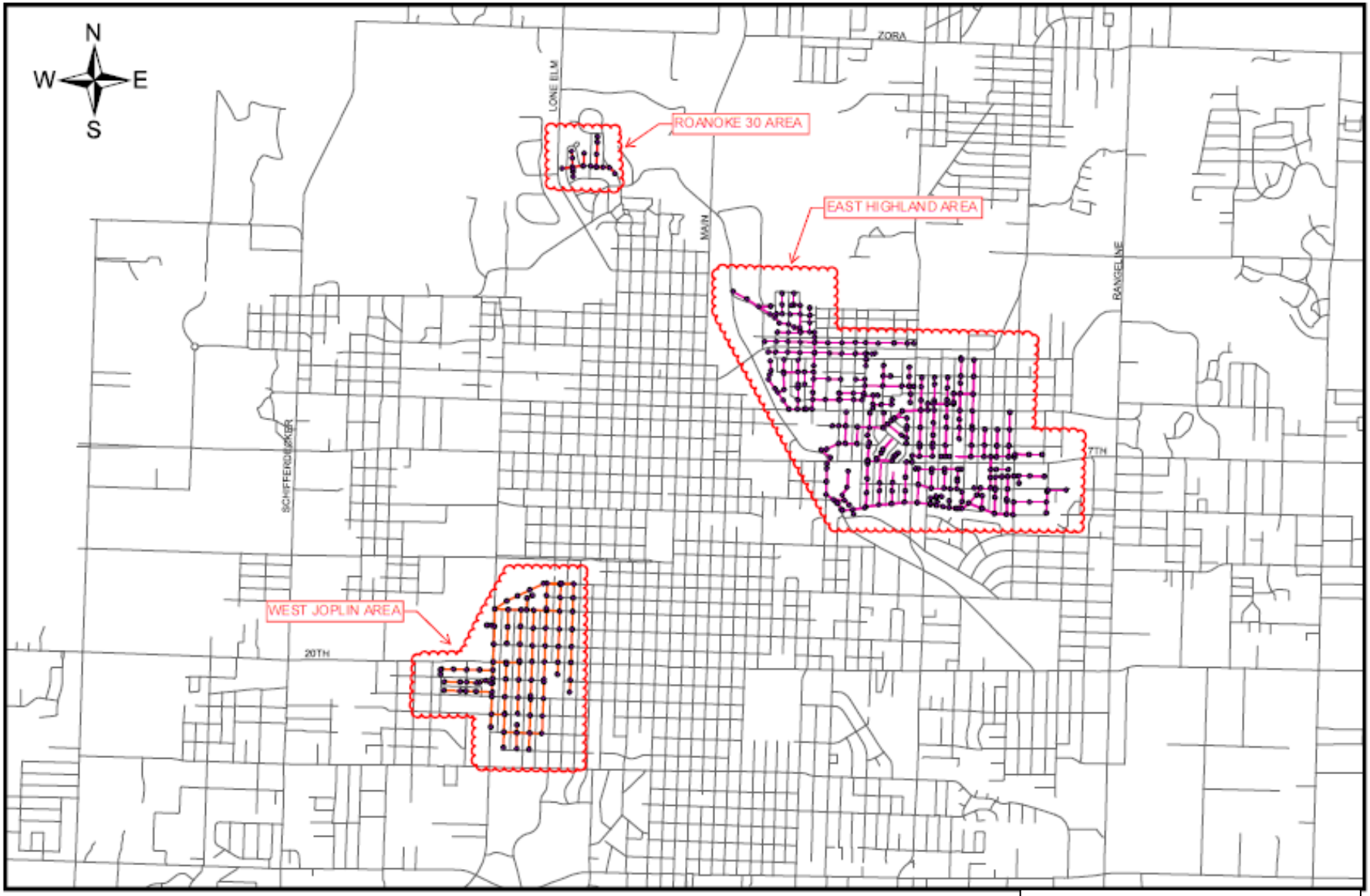
N
W
E
S
ROANOKE 30 AREA
EAST HIGHLAND AREA
WEST JOPLIN AREA
ZORA
LONE ELM
MAIN
RANGELINE
7TH
20TH

EXHIBIT MAP

COUNCIL BILL NO. 2019-124 ORDINANCE NO.

AN ORDINANCE approving a Purchase Order to be issued to Ace Pipe Cleaning Inc. in the amount of Three Hundred Eighty-Five Thousand Four Hundred Forty-Five and no/100 Dollars ($385,445.00) to cover Evaluation and Rehabilitation of Wastewater Collection and containing an emergency clause.

WHEREAS, Ace Pipe Cleaning Inc. was awarded the 2018-2019 evaluation and rehabilitation of wastewater collection systems contract on November 6, 2017.

WHEREAS, in the FY2018 budget process, Council approved and budgeted funds to cover the evaluation and rehabilitation of wastewater collection systems.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That a Purchase Order issued to Ace Pipe Cleaning Inc. in the amount of Three Hundred Eighty-Five Thousand Four Hundred Forty-Five and no/100 Dollars ($385,445.00) covering evaluation and rehabilitation of wastewater collection systems, be and the same is, hereby approved.

Section 2. That the City hereby declares this Ordinance, being an ordinance dealing with a public improvement, to be an emergency within the meaning of Section 2.12(6) of the HOME RULE CHARTER of the City of Joplin, Missouri, and as such, this Ordinance shall become effective immediately upon its passage. Specifically, this Ordinance approves an appropriation that is budgeted.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2019, by a vote of _____.

_____
Gary L. Shaw, Mayor

ATTEST:

_____
Barbara Golhoffer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2019-125: Rights-of-Way Management Code

MEETING DATE
May 6, 2019

ORIGINATING DEPT
Public Works

ATTACHMENTS
CB2019-125 Ordinance; Exhibit A: Rights-of-Way Management Code

REVIEWED BY
Dept. Head: David Hertzberg; Director of Finance: Leslie Haase; City Attorney: Peter Edwards; Interim City Manager: Dan Pekarek

SUMMARY
This Council Bill amends Chapter 106, "Streets, Sidewalks and Other Public Places," by enacting a new Article VI, "Rights-of-Way Management."

BACKGROUND
The City is beginning to see an increase in applications for right-of-way ("ROW") use by public utilities. The General Assembly has increasingly limited the power of municipalities to regulate the ROW. However, the City is grandfathered. The City's grandfathered status needs to be codified through the proposed Rights-of-Way Management Code.

FUNDING SOURCE
N/A

RECOMMENDATION
Staff recommends adoption of this Council Bill on an Emergency basis; being an ordinance dealing dealing with preserving the public peace, property, health, safety, or morals of the citizens, and relating to a public improvement, is an emergency within the meaning of Section 2.12(1) and (6) of THE HOME RULE CHARTER OF THE CITY OF JOPLIN, MISSOURI, and shall be in full force and effect immediately from and after its passage and approval. Specifically, this Ordinance deals with and relates to management of public rights-of-way.

COUNCIL BILL NO. 2019-125 ORDINANCE NO

AN ORDINANCE amending Chapter 106, "Streets, Sidewalks and Other Public Places," by enacting a new Article VI, "Rights-of-Way Management;" and containing an emergency clause.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

WHEREAS, the City of Joplin, Missouri ("City") as a constitutional city has specifically been granted authority pursuant to its charter and other law, including Section 67.1830 RSMo. to establish permitting requirements for structures or equipment for facilities in the public right-of-way ("ROW") and the City desires to reaffirm its intent to regulate and enforce permitting requirements for the facilities in the ROW; and,

WHEREAS, the City Council's legislative findings include that: (a) the ROW is a unique and physically limited resource; (b) the ROW is critical to the travel and transportation of persons and property in the City; (c) the ROW is intended for public uses and must be managed and controlled consistent with that intent and can be partially occupied by Facilities and public service entities to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; (d) such findings require adoption of specific additional regulations to ensure to the extent permitted by various applicable laws that the ROW is managed so as to coordinate users, maximize available space, reduce maintenance and costs to the public and protect the public from any harm caused by private commercial use of Rights-of-Way, avoid unlawful discrimination among providers and protect the regulatory authority of the City in a manner consistent with federal and state law, and facilitate entry of a maximum, most efficient number of Right-of-Way Users that will serve the public interest and provide compensation for use of the public property that benefits the public and avoids distortion of the marketplace; and,

WHEREAS, Missouri law authorizes the City to regulate the use and occupancy of Rights-of-Way for placement of a Facilities as hereinafter defined, and to require compensation and to adopt rules and regulations regarding such use and occupancy; and,

WHEREAS, the City is a "grandfathered" City authorized to impose linear foot fees and antenna fees pursuant to Section 67.1846 RSMo. because the City had, prior to May 1, 2001, one or more ordinances reflecting a policy of imposing a linear foot fee on public Right-of-Way Users; and,

WHEREAS, numerous changes in federal and state law have occurred relating to specific ROW uses and specific types of ROW users, including requirements relating to video service providers, wireless facilities, telecommunications providers, and other types of users, and therefore City Council desires to update and codify its requirements for use of the Rights-of-Way within the City of Joplin, Missouri, consistent with applicable law.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. The City's Chapter 106 on Streets, Sidewalks and Other Public Places is hereby amended by adding a VI, entitled "Rights-of-Way Management," in substantially the form as

attached hereto as Exhibit A and fully incorporated herein by this reference.

Section 2. The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected that it cannot be presumed that the City Council would not have enacted such provisions without the others.

Section 3. This Ordinance, dealing with preserving the public peace, property, health, safety, or morals of the citizens, and relating to a public improvement, is an emergency within the meaning of Section 2.12(1) and (6) of THE HOME RULE CHARTER OF THE CITY OF JOPLIN, MISSOURI, and shall be in full force and effect immediately from and after its passage and approval. Specifically, this Ordinance deals with and relates to management of public rights-of-way.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2019, by a vote of _____.

_____
Gary L. Shaw, Mayor

ATTEST:

_____
Barbara J. Gollhofer,
City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards,
City Attorney

Exhibit A

Article VI – Rights-of-Way Management Code

Section 106-140. – Applicability; Preemption.

1. *Applicability*. Except as provided for herein and where limited by applicable law, this Chapter shall apply to all Excavations and use, construction, operation, and Maintenance of Facilities or structures, in the ROW of the City. No Person shall commence or continue with the operation of any Facilities or structures in the ROW except as provided and in compliance with this Chapter. Because numerous types of users and uses of the ROW may be subject to various or changing regulatory schemes under federal or state law, any such limitation or qualification that may be applicable to less than all users and uses of the ROW are not duplicated herein, but are nevertheless incorporated herein, whenever application is so required by law, including but not limited to applicable provisions of Chapter 67 RSMo. and other applicable state and federal law. This Article shall supplement and establish additional requirements to the other provisions of this Chapter.

2. *Preemption.* No provision of this Chapter shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and furthermore, if any Section, Subsection, sentence, clause, phrase, or portion of this Chapter is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

Section 106-141. – Definitions.

For purposes of this Chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended.

"Abandoned Facilities" means any equipment materials, apparatuses, devices, or Facilities that are: 1) declared abandoned by the owner of such equipment or Facilities, 2) no longer in active use for a period of six months or more, and the owner of such equipment or Facilities fails to respond within thirty (30) days to a written notice sent by the City, the owner allows a franchise, agreement or license to expire and fails to cure within thirty (30) days after notice, or 4) as otherwise may be defined by applicable law.

"Antenna" means any device that transmits and/or receives electromagnetic wireless radio waves or signals for voice, data or video communications purposes including, but not limited to, television, text, AM/FM radio, microwave, cellular telephone, Communications Service, or otherwise.

"Applicant" means any Person who has applied for a ROW Use Agreement, Franchise, License, ROW Permit, or any permit or other authorization to install, maintain, repair or otherwise physically access Facilities in the ROW.

"City Facilities" means any Facilities located in the ROW and owned by the City.

"Communications Service" means the transmission via Facilities, in whole or in part, of any

writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless, or other means, including, but not limited to, any telecommunications service, enhanced service, information service, or internet service, as such terms are now, or may in the future be, defined under applicable law, and including all instrumentalities, Facilities, apparatus (Communications Facilities), and services (among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include "video services" as defined in § 67.2677 RSMo. The term "Communications Service" does not include the rental of conduit or physical Facilities.

"Director" means the Director of Public Works or his/her designee.

"Excavation," "Excavating," or "Excavate" means any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced, by means of any tools, equipment or explosives, except as excluded by applicable law.

"Excavation Permit" means a permit authorizing Excavation for the construction or installation of Facilities in the City's Rights-of-Way.

"Facilities" or "Facility" means any equipment, installation, or structure located in the Rights-of-Way, including without limitation, cables, wires, lines, poles, towers, Antenna, conduit facilities, vaults, pedestals, transmitters, meters, fiber, foundations, and any other equipment, infrastructure, structures or obstruction. Facilities shall **not** include mailboxes, lawful vehicular parking or use or lawful minor incidental uses such as driveway aprons, private utility connections or other incidental Facilities which may be permitted by License issued by the Director as provided herein.

"Facilities Maintenance" or "Maintenance" means the construction, installation, repair, upgrade, or other physical access to the Facility in the ROW that does not involve Excavation.

"Facilities Maintenance Permit" means a permit issued by the City for the ROW User to provide Maintenance to its Facilities or otherwise perform work in the ROW that does not involve Excavation but requires physical access to the Facilities in the ROW.

"Franchise" means a binding and accepted ordinance for certain ROW Users to occupy the Rights-of-Way for the purpose of providing, transporting, or distributing electricity, gas, water, steam, lighting, energy, or sewer service to any Person or area in the City's limits and boundaries.

"License" means the executed agreement between the City and a Person to use and occupy the Rights-of-Way for the purpose of installing incidental temporary Facilities within the Rights-of-Way or incidental uses such as ingress and egress Facilities, lateral utility lines, or driveway aprons.

"Linear Foot" means the length in feet of cable, wire, fiber, conduit or other linear Facilities. Facilities that are physically connected, wrapped or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single Facility for purposes of calculating each linear foot, provided that each conduit or bundle of conduit up to and including four (4) inches in exterior diameter shall constitute a separate facility for calculating linear feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate Facilities but shall be

considered part of the single "conduit" or bundle for purposes of calculating linear feet provided that such fiber optic or other cable or wire installed within a singular "conduit" can physically fit inside four (4) inches of exterior diameter. Each ROW User shall be subject to a separate Linear Foot charge for Facilities used by a ROW User and subject to this Code.

"Person" means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

"Permit" means an Excavation Permit or a Facilities Maintenance Permit.

"Rights-of-Way" or "ROW" means the area on, below, or above a public roadway, highway, street or alleyway in which the City has an ownership interest or right of management, and including such adjacent areas within such public ways within such City control, except as may be limited by law.

"Rights-of-Way Use Agreement" or "ROW Use Agreement" means a document granting consent by the City to use the ROW for the purpose of providing Communications Service or for such other use for which a Franchise or License is not applicable and obtained as provided for herein.

"ROW User" – means all Persons and entities, whether a PSC registered utility or otherwise, owning, controlling, leasing, maintaining, using or installing Facilities in the Rights-of-Way of the City, not otherwise expressly exempted. To the extent permitted by law, ROW User shall not include the City.

Section 106-142. – Rights-of-Way Use Agreement, License, or Franchise Required; Requirements.

1. *ROW Use Agreement, License, or Franchise Required*. Except where otherwise authorized or required by applicable law, no Person may own, control, lease, use, or install Facilities or other structures in the Rights-of-Way without a Franchise, License, or ROW Use Agreement all subject to the requirements of this Chapter and issued by the City as provided herein and as follows:

a. *Franchise.* A Franchise shall be obtained in conformance with all applicable Franchise procedures for any ROW User seeking to use the Rights-of-Way for the purpose of providing, transporting or distributing electricity, gas, water, steam, lighting, energy, or sewer service to any Person or area in the City's limits and boundaries.

b. *ROW Use Agreement*. A ROW Use Agreement shall be required for all other ROW Users, except as provided herein or otherwise required by law. A ROW Use Agreement shall conform to all applicable laws and requirements, including as provided herein, but shall not be subject to procedures applicable to Franchises.

c. *License for Incidental Uses*. Persons desiring to install an incidental use, which includes installation of temporary structures or minor incidental uses in the Rights-of-Way, such as driveway aprons, ingress or egress facilities, and similar incidental uses, that utilize a small area of the Rights-of-Way and serves the principal structure, may be permitted without a Franchise or Rights-of-Way Use Agreement pursuant to a License issued by the Director. The Director shall have discretion to establish such application, requirements, and conditions applicable to such

uses consistent with the purposes of this Chapter or as otherwise established by law. The Applicant shall be required to pay an application fee and an inspection fee as established by the City. Any Person granted a License hereunder shall be subject to the applicable requirements of this Chapter. Unless otherwise stated in the License, a License shall be for an indefinite term and shall be revocable at any time on written notice in the public interest by the City.

d. *Lease Required for Public Lands*. Unless otherwise provided, use or installation of any Facilities in non-Rights-of-Way public property of the City shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the City with such reasonable terms as the City may require.

e. *Temporary License or Construction Permits*. Any ROW-User that has a license or permit for construction of Facilities and is otherwise required to obtain a Franchise or ROW Agreement shall within 90 days of the date of the effective date of this Ordinance: (1) seek and obtain a fully executed franchise or ROW agreement with the City and fully comply with the terms of such franchise or agreement, this Code and other applicable law; or (2) provide written evidence documenting a legal right to operate without such Franchise or ROW Agreement ("Asserted Preemption") and fully comply with the requirements of this Chapter and other applicable law. Nothing in this Paragraph shall waive the City's right to challenge any Asserted Preemption nor shall such preemption be valid if not fully supported by applicable law.

2. *Grant and Nature of Approval.* The authority granted by the City in any ROW Use Agreement, License or Franchise shall be for non-exclusive use of the Rights-of-Way. Such grant does not in any way limit the continuing authority of the City through the proper exercise of its statutory powers to adopt and enforce ordinances necessary to provide for the health, safety, and welfare of the public. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other Person, including itself, as it deems appropriate, subject to all applicable laws. The granting of any ROW Use Agreement, License or Franchise by the City shall not be deemed to create any property interest of any kind in favor of the ROW User nor shall it create any relationship of agency, partnership, joint venture, or employment between the parties. Licenses may be approved by the Director on a non-discriminatory basis provided that the Person is in compliance with all applicable requirements. Each Franchise, License, and ROW Use Agreement shall include terms of use and be deemed to incorporate the terms of this Chapter and other applicable laws of the City, except as may be expressly stated in such Use Agreement, License or Franchise.

3. *Condition Precedent to Permit*. Unless otherwise required by applicable law, no Permit may be issued unless or until such Person has a valid Franchise, License or Rights-of-Way Use Agreement with the City that authorizes that Person's use of the Rights-of-Way. Unless prohibited by applicable law, in addition to any other reason provided herein, the Director may deny a ROW Permit to any person that does not have a valid Franchise, ROW Use Agreement, or License with the City.

4. *Rights-of-Way User Fees*.

a. *User Fee*. Unless otherwise established by the City Council or applicable law, each Right-of-Way User shall pay to the City as compensation for the use of the public way a User Fee as

follows:

> Linear Foot Fee: one thousand dollars ($1,000.00)/month for the first (1st) mile of linear facilities, or part thereof, plus a monthly payment of $.16 per linear foot for each additional linear foot of Facilities located in the Right-of-Way, with the User Fee being capped at eight thousand dollars $8,000.00/month for each user; and

provided that all Right-of-Way Users shall be entitled to a credit against the User Fee due hereunder equal to the payment(s) from such Right-of-Way User in accordance with Section 67.1846 RSMo.; provided, however, such credit cannot exceed the amount due under this subsection and may not be carried forward or back to any other time period and a credit shall not apply to any taxes paid under protest or otherwise paid with qualification unless so required by law. User Fees and rates provided in this Chapter shall be in addition to any prior unpaid rate or obligation relating to such prior use, prior agreement or other obligation to the City, unless expressly released by written settlement with the City.

b. *Rates for Users without an Agreement.* Any Rights-of-User who fails to hold and maintain a current and valid agreement with the City to use the City's ROW or other public land or facilities has no right to holdover, unless otherwise provided by law, and shall be subject to the provisions and City remedies of this Chapter, in addition to all other remedies and penalties as may otherwise exist in applicable law. Because use of public property without an agreement imposes greater uncertainty, risk, and cost on the City and public, greater compensation for use without such agreement, even if occurring under a claim of a lawful exemption allowing such use, is a reasonable requirement to address such user status. Accordingly, where an agreement, lease, or other agreement for use of ROW or other public land or facilities expires and is not renewed or replaced, or a person is using such land or facilities thereon otherwise without a valid current agreement authorizing such use, in addition to other requirements, remedies, and penalties, if applicable, such person for any period without a valid current agreement shall: (1) indemnify the City from any liability arising from the use; (2) pay any damages and costs of the City from such use, including but not limited to attorneys' fees incurred in enforcing this ordinance; (3) otherwise fully comply with this Chapter and other applicable law; and (4) make payment of compensation for each linear foot in the amount established herein for operation without an agreement ("Non-Agreement Rate"). Unless otherwise established by the City Council, the Non-Agreement Rate for the User Fee shall be $0.32/foot per month for each Linear Foot of Facilities in the ROW or other public lands, with the User Fee being capped at sixteen thousand dollars $16,000.00/month for each user. Unless otherwise provided in an unexpired agreement, such person shall also be responsible for interest on all amounts owed and at a rate of one and one-half percent (1.5%) per month. Nothing in these provisions, remedies, or compensation requirements, or acceptance or enforcement thereof by the City, shall be deemed to accept or authorize any use of public property without a required agreement, or after the expiration of such agreement, or otherwise in violation of applicable requirements.

c. *Bundled Services*. The Right-of-Way User expressly acknowledges and agrees that to the extent it markets bundled services, including combination of goods or services, it will fairly reflect to the City an appropriate and reasonable division of services among the various services offered based on the actual value of each separate service. Whether or not the Right-of-Way User separates services on a subscriber's bill, it will provide to the City notice of any

such allocation sufficient for City verification. Should the Right-of-Way User engage in billing or payment practices that, in the reasonable determination of the City, do not fairly reflect a fair and appropriate allocation, the City may nullify such allocation and require payment applicable to the full receipts.

d. *Timing of Payment of User Fees*. Unless otherwise agreed to in writing, all User Fees shall be due and payable every month of each calendar year within thirty (30) days after the end each such month. A credit of the applicable gross receipts tax for that same period may be taken against the Linear Foot payment for that month.

e. *Interest of Late Payments and Under Payments*. If any User Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest on the payment and interest on the unpaid balance shall accrue from the due date until received, at the rate of one and one-half percent (1.5%) per month, of the total amount past due, unless such other maximum rate is established by law, or at such other lower rate as may be required by applicable law.

f. *Fee Statement; Retroactive Adjustments*. Each User Fee payment shall be accompanied by a statement, certified as true, showing the manner in which the User Fee was calculated including the total number of feet of Right-of-Way occupied by the Right-of-Way User's Facilities, the per foot Linear Foot rate applied, any credit or adjustment taken (including setting forth the prior month's gross revenue and describing what revenues or receipts were included and excluded in the User Fee paid), and the payment of the User Fee made. If any fee statement is determined to understate the fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. No refund, credit or offset shall be granted for any claimed payment or overstatement of the amount due or certification of facilities reported, provided that a corrected payment or reported may be filed within the time for the original time for payment

g. *No Accord and Satisfaction*. No acceptance by the City of any User Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any User Fee payment be construed as a release of any claim of the City.

h. *Maintain Records*. Right-of-Way Users shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Right-of-Way User with respect to the Facilities in a manner that allows the City to determine whether the Right-of-Way User has properly calculated its User Fee in compliance with this Section. Should the City reasonably determine that the records are not being maintained in such manner, the Right-of-Way User shall correct the manner in which the books and/or records are maintained so that the Right-of-Way User comes into compliance with this Section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Missouri, and generally accepted accounting principles shall be deemed to be acceptable under this Section. Such books and records shall be maintained for a period of at least three (3) years.

i. *Right of Inspection*. The City or its designated representatives shall have the right to inspect, examine, or audit, during normal business hours and upon seven (7) calendar days' notice, all documents, records, or other information that pertains to the Facilities within the

Right-of-Way and/or Right-of-Way User's User Fee obligations. In addition to access to the records of Right-of-Way User for audits, upon request, Right-of-Way User shall provide reasonable access to records necessary to verify compliance with the terms of this Section.

j. *Fees and Compensation not a Tax.* The fees and costs provided for in this Section, and any compensation charged and paid for the use of the Right-of-Way as provided for in this Section, are separate from, and additional to, any and all federal, state, City or other local taxes as may be levied, imposed, or due.

5. *Transferability.* Except as provided in this Article or as otherwise required by law, no Franchise, ROW Use Agreement, or Permit may be transferred or assigned without the written application to and consent of the City based on the requirements and policies of this Chapter. The City shall not unreasonably withhold its consent as provided herein, but any costs incurred shall be paid by the ROW User to the extent not prohibited by applicable law. In the case of the City granting consent to transfer, the transferee shall be subject to the terms and conditions of this Chapter.

6. *Use of City or Third-Party Facilities*. No ROW Use Agreement, Franchise, or License shall grant the right to use Facilities owned or controlled by the City or a third-party, and except to the extent permitted by applicable law, no such use shall occur, nor shall any Franchise, ROW Use Agreement, or License excuse such Person from first obtaining a pole attachment agreement or other express consent for such right or use before locating on the Facilities controlled or owned by the City or a third-party.

7. *No Warranties.* The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of Rights-of-Way and shall not be liable for any damages therefrom. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the ROW User. The ROW User shall be solely liable for any damages to Facilities or other property due to Excavation, Facilities Maintenance, or other work performed prior to obtaining the location of all Facilities that have been properly identified prior to such work or around. The ROW User shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed Facilities without the approval of the owner of the Facilities.

8. *Forfeiture of Agreement and Privilege.* In case of failure on the part of the ROW User, including its successors and assigns, to comply with any of the provisions of this Chapter or a ROW Use Agreement, Franchise, or License, or if the ROW User, its successors and assigns should do or cause to be done any act or thing prohibited by or in violation of this Chapter or the terms of the authorization of such use, or otherwise loses authority to provide its service in the City, the ROW User, its successors and assigns shall forfeit all rights and privileges permitted by any ROW Use Agreement, Franchise, or License, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Rights-of-Way Use Agreement, Franchise, or License, it shall first serve a written notice upon the Person setting forth in detail the neglect or failure complained of, and the Person shall have thirty (30) days thereafter, or such other reasonable period established by the Director, in which to cure the default by complying with the conditions of such ROW Use Agreement, Franchise, or License and fully remedying any

default or violation. If at the end of such period the City determines that the conditions have not been complied with and that the Person did not reasonably and in the public interest require more than the establish time to cure the default, the City shall take action by an affirmative vote of the City Council present at the meeting and voting to terminate the ROW Use Agreement, Franchise, or License, setting out the grounds upon which said authorization is to be forfeited or revoked. Nothing herein shall prevent the City from invoking any other remedy or from declaring immediate forfeiture where the default is incapable of being cured by the ROW User, including where such defaults or violations have repeatedly occurred.

9. *No Waiver*. No action or omission of the City shall operate as a future waiver of any rights of the City under this Chapter. Except where rights are expressly granted or waived by a ROW Permit, ROW Use Agreement, Franchise, or License they are reserved, whether or not expressly enumerated.

10. *No Cause of Action Against the City*. As a condition for use of the Rights-of-Way, a ROW User shall have no damages, remedy, or monetary recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of any ROW Use Agreement, Franchise, or License, or because of the enforcement thereof by said City, or from the use of the Rights-of-Way. Nothing herein shall preclude the ROW User from seeking injunctive or declaratory judgment relief against the City where such relief is otherwise available, and the requirements therefor are otherwise satisfied.

11. *Enforcement; Attorneys' Fees*. The City shall be entitled to enforce any provision of this Code through all remedies lawfully available, and any person determined to have violated the terms of this Code shall further be liable to pay the City's costs and attorneys' fees in enforcing such Code provisions. Additionally, any user of City services, Rights-of-Way, or other City facilities or property, shall, as a condition of such use or continued use, to the full extent permissible by law, be liable to pay the City's costs and attorneys' fees incurred in enforcing any lawful requirement applicable to such use, whether arising in contract, statute, this or other ordinance, or other enforceable duty as to such use.

Section 106-143. – Application for Franchise or ROW Use Agreement Required.

1. *Application Form*. An application for a Franchise or ROW Use Agreement shall be provided to the City on City forms and shall include all such information as is required by this Chapter and as determined necessary by the Director. The ROW User shall be responsible for accurately maintaining the information in the application during the term of any Franchise or ROW Use Agreement and shall be responsible for all costs incurred by the City due to the failure to provide or maintain as accurate any application information required herein.

2. *Application Deposit Fee.* An application deposit of $500.00, or such other amount determined to be required by the Director, shall be submitted with the application, which shall be utilized to at least partly offset the City's costs in reviewing and issuing an agreement, and not to exceed an amount permitted by applicable law provided that no costs shall be included if such inclusion is prohibited by applicable law as to that Person; any amount not used by the City for its actual lawfully reimbursable costs will be refunded upon request after execution of a ROW Use Agreement or Franchise. If applicable, the applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review, negotiation, and adoption of an appropriate ROW

Use Agreement or Franchise that may exceed the application deposit.

3. *Standard for Approval or Renewal.* In reviewing an application for a new or renewal ROW Use Agreement or Franchise, the City may consider prior conduct of the Person in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. The City may deny or condition any ROW Use Agreement or Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City to fulfill the requirements and objectives of this Chapter or as otherwise provided by law. All ROW Use Agreements or Franchises by ordinance or resolution of the City Council and applications shall be decided on a non-discriminatory basis and shall be approved, conditioned or denied based on compliance with all applicable requirements herein, and conformance with applicable law and the public interest.

4. *Approval Process*. After submission by the Applicant of a duly executed and completed application, deposit fee, and executed Franchise or Rights-of-Way Use Agreement as may be provided by the Director or as modified by the Director in review of the specific circumstances of the application, all in conformity with the requirements of this Chapter and all applicable laws, the Director shall submit such Agreement to the City Council for approval. Upon determining compliance with this Chapter, the City Council may authorize execution of the Franchise or ROW Use Agreement (or a modified Agreement otherwise acceptable to the City consistent with the purposes of this Chapter) and such executed Franchise or ROW Use Agreement shall constitute consent to use the Rights-of-Way; provided that nothing herein shall preclude the rejection or modification of any executed Franchise or ROW Use Agreement submitted to the City to the extent applicable law does not prohibit such rejection or modification, including where necessary to reasonably and in a uniform or non-discriminatory manner reflect the distinct engineering, construction, operation, Maintenance, public work, or safety requirements applicable to the Person or use.

Section 106-144. – Permit Required; Requirements.

1. *Excavation Permit Required.* Except as otherwise provided herein, no ROW User or other Person shall perform Excavation work in the ROW without an Excavation Permit. Any Person desiring to Excavate in the ROW shall first apply for an Excavation Permit, on an application form provided by the City, and submit the application fee and pay all applicable fees to obtain an Excavation Permit, in addition to any other building permit, license, easement, or other authorization required by law, unless such Excavation must be performed on an emergency basis as provided herein. The cost of said Permit shall be set out by the Director. The Director is authorized to draft an application form consistent with the requirements of this Chapter. An Excavation Permit should be obtained for each project unless otherwise provided for in this Chapter. A separate special permit or lease shall be required for Excavation in or use of any real property interest of the City that is not ROW. It shall be unlawful for any Person to perform Excavation work within the City at any time other than from 6:00 A.M. to 9:00 P.M., Monday through Friday without prior approval from the City, except in the case of an emergency. No work shall be performed during City holidays, except in the case of an emergency. All Excavation Permits shall expire after sixty (60) days from the date of issuance, unless otherwise specified in the Excavation Permit. An Applicant whose Excavation Permit application has been withdrawn, abandoned or denied for failure to comply with this Chapter shall not be refunded the application fee.

2. *Facilities Maintenance Permit; Exemptions.* No Person shall perform Facilities Maintenance at a specified location in the Rights-of-Way without first obtaining a Facilities Maintenance Permit from the Director, except where such Facilities Maintenance is expressly authorized by an existing valid Excavation Permit for the applicable Facilities Maintenance location or is exempt herein. In addition to the applicable conditions and obligations set forth in this Chapter, conditions of a Facilities Maintenance Permit shall be as established in such Permit and shall include requirements of notice to and approval by the City whenever traffic lanes are to be obstructed, manhole covers or safety barriers removed or altered, temporary or other barricades installed, and other events set forth in the Facilities Maintenance Permit. All Facilities Maintenance Permits shall expire after sixty (60) days from the date of issuance, unless otherwise specified in such Permit. A Facilities Maintenance Permit shall not be required for:

a. ROW Users performing routine Maintenance which does not require Excavation, does not disrupt traffic or pedestrians, and requires no more than four (4) hours to complete, provided that at minimum two (2) hours' notice is provided to the City during normal business hours;

b. Emergency situations as more fully described in Subsection 4 below; or

c. Contractors working on the construction or reconstruction of public improvements and which are operating pursuant to a contract with the City for such construction; or

d. Routine maintenance on previously approved Small Wireless Facilities, replacement of Small Wireless Facilities that are the same or smaller in size, weight, and height, or installation placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between Utility Poles in compliance with applicable safety and building codes, when such work will not involve Excavation, affect traffic patterns, obstruct traffic in the ROW, or materially impede the use of a sidewalk, and provided the ROW User submits as-builts of the new Small Wireless Facilities or Micro Wireless Facilities so the City may maintain an accurate inventory of Facilities installed in the ROW.

3. *Bulk Permits.* The Director shall have the authority to establish procedures for bulk processing of applications and periodic payment of fees.

4. *Emergencies*. In the event of an emergency requiring immediate attention to remedy defects, and in order to avoid loss of damage to Person or property, it shall be sufficient that the Person conducting the work shall as soon as practicable notify the City of the location of the work and shall apply for the required ROW Permit as soon as practicable following the commencement of the work, not to exceed the third (3rd) business day thereafter, or as otherwise directed by the City. In the event the City becomes aware of an emergency requiring Facilities work the City shall attempt to contact a representative of each ROW User affected, or potentially affected, by the emergency work. If no response is received by a particular ROW User to whom contact is attempted, the Director may take whatever action he/she deems necessary to respond to the emergency, the cost of which shall be borne by the Person whose action or inaction occasioned the emergency or by the ROW User if the emergency was occasioned by an act of nature.

5. *ROW Permit Specific Conditions*. The Director may also impose reasonable conditions upon

the issuance of a Permit and the performance of work in order to protect the public health, safety, and welfare, to ensure the structural integrity of the Rights-of-Way, to protect the property and safety of other users of the Rights-of-Way, and to minimize the disruption and inconvenience to the traveling public.

6. *Codes Incorporated.* Every Permit issued hereunder shall incorporate the requirements and terms of this Chapter, agreements, and all applicable ordinances, to the extent permitted by law. The ROW User shall perform such work in accordance with the issued permit and applicable provisions of this Chapter and any subsequent ordinances or regulations that may be adopted by the City regarding Excavation or Facilities Maintenance work. In addition, all ROW Users shall be subject to all technical specifications, design criteria, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to Permits and fees, sidewalk and pavement cuts, Facility location, construction coordination, surface restoration, and other requirements on the use of the Rights-of-Way. A ROW User shall perform all Excavations or Facilities Maintenance in full compliance with all applicable engineering codes adopted or approved by the City, and in accordance with applicable statutes of the State of Missouri, and the rules and regulations of the Public Service Commission, Federal Communications Commission, and any other local, state or federal agency having jurisdiction over the parties. The ROW User shall comply with the Excavation requirements of Missouri One Call established by §§ 319.010 *et. seq.* RSMo., as amended. A ROW User shall be responsible for all Excavations or Facilities Maintenance done in the Rights-of-Way on its behalf, regardless of by whom the Excavation or Facilities Maintenance is done.

7. *Tree and Landscape Protection*. Upon ten (10) days' written notice and with the supervision of the City or as otherwise provided by law or agreement, the City may permit a ROW User to trim trees that overhang Rights-of-Way of the City so as to prevent the branches of such trees from coming in contact with Facilities in the ROW, at its own expense, subject to the supervision and direction of the City. Nothing in this paragraph shall authorize the trimming of trees on private property without permission of the property owner. All cut materials shall be properly disposed. Unless otherwise approved in writing by the City, a ROW User shall not remove, cut or damage any trees or their roots in the Rights-of-Way. In reviewing any Permit application, the City may require the Applicant to directionally bore around or otherwise avoid disturbance to any tree or landscaping, existing Facility, or other protected area in the Rights-of-Way.

8. *Permit Displayed.* At all times during the work, Permits shall be conspicuously displayed at the work site and shall be available for inspection by the Director.

9. *Modification Requiring New Permit*. If at any time it appears that the duration or scope of the work is or will become materially different from that allowed by the Permit, the ROW User shall inform the Director. The Director may issue a waiver, an extension or revised Permit, or require that the ROW User reapply for a Permit in accordance with all requirements of this Chapter.

Section 106-145. – Permit Denial.

1. The Director may deny an application for a Permit if:

   a. To the extent permitted by law, the Person does not have a current Franchise, License, or

Rights-of-Way Use Agreement, or other authorization with the City.

b. The ROW User, or any Persons acting on the behalf of the ROW User, fails to provide all the necessary information requested by the City for managing the Rights-of-Way.

c. The ROW User, or any Persons acting on the behalf of the ROW User, including contractors or subcontractors, has a history of noncompliance or permitting noncompliance within the City. For purposes of this Section, "history of noncompliance or permitting noncompliance within the City" shall include where the ROW User, or any Persons acting on the behalf of the ROW User, including contractors or subcontractors, has failed to return the Rights-of-Way to its previous condition under a previous Permit, or has violated terms, or is in violation of terms of the ROW Users' Franchise, Rights-of-Way Use Agreement, License, or other authorization with the City.

d. The City has provided the ROW User with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the Excavation or Facilities Maintenance identified in the Permit application, or a reasonable alternative route that will not result in additional installation expense of more than ten (10) percent to the ROW User or a declination of service quality.

e. Any other violations or noncompliance caused by or through the ROW User of any applicable City, state, or federal law or regulation, except where such violation is prohibited by applicable law for being a basis for denial.

Section 106-146. – Permit Revocation.

The Director may, after reasonable notice and an opportunity to cure, revoke a Permit without fee refund, but only in the event of a substantial breach of the terms and material conditions of the Permit. A substantial breach by a ROW User includes but is not limited to:

1. A material violation of a provision of the Permit;

2. An evasion or attempt to evade any material provision of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;

3. A material misrepresentation of fact in the Permit application;

4. A failure to complete work by the date specified in the Permit, unless a Permit extension is obtained, or unless the failure to complete the work is due to reasons beyond the ROW User's control;

5. A failure to correct, within the time specified by the City, work that does not conform to applicable national safety codes, industry construction standards, or local safety codes, upon inspection and notification by the City of the faulty condition; or

6. Such other lawful reasons.

Section 106-147. – Relocation of Facilities.

1. *City Required Relocation.* The ROW User shall promptly remove, relocate, or adjust any Facilities located in the Rights-of-Way as directed by the City when such is required by public necessity, or public convenience and security require it, or such other findings in the public interest that may require relocation, adjustment, or removal at the cost of the ROW User. Such removal, relocation, or adjustment shall be performed by the ROW User within the time frames established by the City and at the ROW User's sole expense without any expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations, and schedules of the City pertaining to such.

2. *Emergency Exception.* In the event of an emergency or where construction equipment or Facilities create or are contributing to an imminent danger to health, safety, or property, the City may, to the extent allowed by law, remove, re-lay, or relocate such construction equipment or the pertinent parts of such Facilities without charge to the City for such action or for restoration or repair. The City shall attempt to notify the Person having Facilities in the Rights-of-Way prior to taking such action, but the inability to do so shall not prevent same. Thereafter, the City shall notify the Person having Facilities in the Rights-of-Way as soon as practicable.

3. *Third-Party Relocation.* A Person having Facilities in the Rights-of-Way shall, on the reasonable request of any Person, other than the City, holding a validly issued Permit, after reasonable advance written notice, protect, support, or temporarily disconnect or relocate Facilities to accommodate such Person and the actual cost, reasonably incurred, of such actions shall be paid by the Person requesting such action. The Person having Facilities in the Rights-of-Way taking such action may require such payment in advance.

4. *Abandonment Exception.* Rather than relocate Facilities as requested or directed, a ROW User may abandon the Facilities if approved by the City as provided in Subsection 7 of this Section.

5. *ROW User Responsible for Damage.* Any damages suffered by the City, its agents or its contractors to the extent caused by the ROW User's failure to timely relocate, remove or adjust its Facilities, or failure to properly relocate, remove, or adjust such Facilities, shall be borne by the ROW User. Where the ROW User shall fail to relocate Facilities as required by the City, the City may, but shall not be required to, upon notice to the ROW User remove the obstructing Facilities with or without further delay and the ROW User shall bear all responsibility and liability for the consequences therefrom, and the City shall bear no responsibility to the ROW User or others for damage resulting from such removal.

6. *No Vested Rights.* No action hereunder shall be deemed a taking of property and no Person shall be entitled to any compensation therefor. No location of any Facilities in the Rights-of-Way shall be a vested interest or property right.

7. *Abandoned Facilities; Removal.* A Person owning Abandoned Facilities in the Rights-of-Way must not later than thirty (30) days of notice or of abandonment remove its Facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Director may upon written application and written approval allow underground Facilities or portions thereof to remain in place if the Director determines that it is in the best interest of public health, safety, and

general welfare to do so. The City shall be entitled to all costs of removal and enforcement for any violation of this provision.

8. *Nuisance.* Facilities Abandoned or otherwise left unused in violation of this Chapter are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (a) abating the nuisance, (b) taking possession and ownership of the Facility and restoring it to a useable function, or (c) requiring the removal of the Facility by the ROW User.

Section 106-148. – ROW User Responsibilities and Requirements.

1. *Compliance with Laws*. Each ROW User shall comply with all applicable federal and state laws and regulations and rules as well as all City ordinances, resolutions, rules, and regulations heretofore and hereafter adopted or established.

2. *Zoning, Safety, and Building Code Compliance*. ROW Users shall at all times be subject to the lawful exercise of the police powers of the City, including but not limited to all police powers regarding zoning, supervision of the restoration of the Rights-of-Way, building and safety regulations, and control of the Rights-of-Way currently in effect or as may be amended. Installation of all Facilities in the Rights-of-Way are subject to and must be in compliance with all zoning and safety and building code requirements. For applications for installation of any Facility in the Rights-of-Way, (1) the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically zoned and designated on the official Zoning District Map, and (2) no application shall be submitted for approval without attaching the City's consent to use the Rights-of-Way for the specific construction application in accordance with Chapter 67 RSMo. and compliance with this Chapter.

3. *Advertising, Signs, or Extraneous Markings.* ROW Users shall not place or cause to be placed any sort of signs, advertisements, or other extraneous markings, whether relating to the ROW User or any other Person on the Rights-of-Way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the Facilities for service, repair, Maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

4. *Responsible for Subcontractors*. If Excavation or Facilities Maintenance is being done for the ROW User by another Person, a subcontractor or otherwise, the ROW User shall be responsible for ensuring that the Excavation or Facilities Maintenance of said Person is performed consistent with its Permit and applicable law (including that the contractor shall be properly licensed under the State of Missouri and local ordinances) and shall be responsible for promptly correcting acts or omissions by said Person.

5. *Insurance; Exceptions.* Except as provided in this Section, each ROW User shall provide, at its sole expense, and maintain during the term of any ROW Use Agreement or Franchise or anytime the ROW User has Facilities in the ROW, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A", that shall protect the ROW User, the City, and the City's officials, officers, and employees, from claims which may arise

from such use of the ROW, whether such operations are by the ROW User, its officers, directors, employees, and agents, or any contractors or subcontractors of the ROW User. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all ROW User operations, products, services, or use of automobiles or construction equipment. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall be in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo. for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement which states that the City as an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the Director, along with copies of the policy and other documentation, shall be provided. If the Person is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. The City's additional insured coverage shall have no deductible. The insurance requirements in this Section or otherwise shall not apply to a ROW User to the extent and for such period as the ROW User is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that ROW User has twenty-five million dollars ($25,000,000.00) in net assets and is otherwise therefore so exempted unless otherwise provided by a ROW Use Agreement or Franchise or the City determines such exemption has not been adequately shown. Additionally, in accordance with § 67.5121(3), a self-insured ROW User shall not be required to obtain insurance naming the City as an additional insured solely to the extent such ROW User is utilizing "Small Wireless Facilities" as defined in the Uniform Small Wireless Facility Deployment Act within the ROW. This exception to the City's insurance requirements shall only apply as related to "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide appropriate insurance to the City for any other activities or operations. The City may waive any and all requirements under this Subsection when deemed to be lawful and in the public interest.

6. *Performance and Maintenance Bonds*.

a. *Bond Required.* Prior to any work, a ROW User shall establish in the City's favor a performance and maintenance bond in an amount to be determined by the Director to guarantee the restoration of the Rights-of-Way. The bond shall continue in full force and effect for a period of forty-eight (48) months following completion of the work. The Director may waive this requirement when the work involves, as determined in the sole discretion of the Director, no or only minor disruption or damage to the Rights-of-Way. The bond requirements in this Section or otherwise shall not apply to a ROW User to the extent and for such period as the ROW User is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that ROW User has twenty-five million dollars ($25,000,000.00) in net assets and is otherwise therefore so exempted, unless otherwise provided by a ROW Use Agreement or Franchise or the City determines such exemption has not been adequately shown. The City may waive any and all requirements under this subsection for good cause when deemed to be lawful and in the public interest.

b. *Failure to Satisfactorily Complete Restoration.* If a ROW User fails to complete the work in

a safe, timely, and competent manner or if the completed restorative work fails without remediation within the time period for the bond (as determined by the Director), then after notice and a reasonable opportunity to cure, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or Abandonment of any property of the ROW User and the cost of completing work in or restoring the Rights-of-Way, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.

c. *Bond Terms.* The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the City's Attorney and shall contain the following endorsement: "This bond may not be cancelled or allowed to lapse until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

d. *Exception.* In lieu of the bond required herein, the ROW User may establish in the City's favor such other security as the Director may determine to be commensurate with the noted bonding requirements including, but not limited to, an annual bond to be maintained in the minimum amount of twenty-five thousand dollars ($25,000.00). Additionally, in accordance with § 67.5121(4), the bonds required for “Small Wireless Facilities” as defined in the Uniform Small Wireless Facility Deployment Act shall not exceed one thousand five hundred dollars ($1,500.00) per “Small Wireless Facility” or more seventy-five thousand dollars ($75,000.00) for all “Small Wireless Facilities” within the ROW of a ROW User. This exception to the City’s bonding requirements shall only apply as related to such “Small Wireless Facilities” and shall not otherwise alter the obligations of a ROW User to provide appropriate bonds to the City for any other activities or operations.

7. *Indemnification.* Any Person performing Excavation or a ROW User as a condition of use of the Rights-of-Way shall at its sole cost and expense fully indemnify, protect, defend (with counsel acceptable to the City), and hold harmless the City, its municipal officials, officers, employees, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability, and judgment by other Persons for damages, losses, costs, and expenses, including attorney fees, arising, directly or indirectly, in whole or in part, from the action or inaction of the Person performing Excavation or ROW User, its agents, representatives, employees, contractors, subcontractors, or any other Person for whose acts the Person performing Excavation or ROW User may be liable, in constructing, operating, maintaining, repairing, restoring, or removing Facilities or other structures, or use of the Rights-or-Way or the activities performed, or failed to be performed, by the Person performing Excavation or ROW User under this Chapter or applicable law, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents, or contractors. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the Person from the duty to defend against liability or its duty to pay any judgment entered against the City, or its agents. This indemnification shall survive the expiration or termination of any ROW Use Agreement, License, or Permit. Provided however, that in accordance with § 67.5121(2), a ROW User solely to

the extent a ROW User is operating "Small Wireless Facility" as defined in the Uniform Small Wireless Facility Deployment Act within the ROW shall only indemnify and hold the City, its officers and employees, harmless against any damage or personal injury caused by the negligence of the ROW User, its employees, agents, or contractors. This exception shall only apply to the ROW User's "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide indemnification to the City for any other activities or operations.

8. *ROW User Responsible for Costs*. The ROW User shall be responsible for all reasonable costs borne by the City that are directly associated with ROW User's installation, Maintenance, repair, operation, use, and replacement of its Facilities in the Rights-of-Way that are not otherwise accounted for as part of the Permit fee established pursuant to this Chapter, to the extent permitted by law. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request of the ROW User.

Section 106-149. – Jurisdiction, Inspection, Stop Work Orders, Appeals, and Penalties.

1. *Inspections.* All work and Facilities shall be subject to inspection by the City and the supervision of all federal, state, and local authorities having jurisdiction in such matters to ensure compliance with all applicable laws, ordinances, departmental rules and regulations, and the Permit.

2. *Stop Work Orders.* The Director shall have full access to all portions of the work and may issue stop work orders and corrective orders to prevent unauthorized work or substandard work as established herein. Except in cases of an emergency or with approval of the Director, no work may be done in violation of a stop work order issued by the Director.

3. *Repairs when Defective*. All violations of the standards and requirements herein shall be corrected within the time specified in the issuance of a written notice to correct. Action to correct violations which require immediate action shall be taken upon notification to the Person by the City. Every Person failing to comply with the oral or written notice shall be deemed in violation of this Chapter. If the action is not taken within the time period specified by notice and in addition to any other remedy, the Director may have the violation, including but not limited to, the existence of mud or debris on the Rights-of-Way, immediately remedied and the City's costs shall be reimbursed by the ROW User through the surety or otherwise. Nothing in this Subsection shall prevent prosecution of violation of this Chapter in the absence or in addition to the issuance of notice of violation.

4. *Appeals.* Unless otherwise provided herein or by any other governing ordinance or law, any person aggrieved by a decision, fee or requirement established or made pursuant to this Chapter shall, prior to seeking any judicial or statutory relief, if any, file a written appeal of any such decision, fee, or requirement with the City Council within fifteen (15) days of such decision or imposition of such fee or requirement specifying this provision and including specific details of the alleged claim or grievance, and an evidentiary hearing shall be held on such appeal by the City Council or its designee to render a final decision. Nothing herein shall deny or preclude any additional applicable appeal remedy that may be granted and required by federal or state law after such decision.

5. *Penalties*. In addition to any other penalties and remedies for violations that may exist in law or equity, any Person that violates any provision of this Chapter shall be subject to such penalties as

set forth in 1-5 of the City Code per day for each and every day the violation exists or continues.

Section 106-150. – Reservation of Rights.

In addition to any rights specifically reserved to the City by this Chapter, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, Permit, or other authorization granted under this Chapter, and as may be authorized by Chapter 67 RSMo. and other authority applicable to regulation of the use of the Rights-of-Way. Notwithstanding anything to the contrary set forth herein, the provisions of this Chapter shall not infringe upon the rights of any Person pursuant to any applicable state or federal statutes, including, but not limited to any right that may exist to occupy the Rights-of-Way.

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2019-122 – Approval for the adoption of the City of Joplin's Illicit Discharge Detection and Elimination Ordinance.

MEETING DATE
May 6, 2019

ORIGINATING DEPARTMENT
Public Works – Engineering

ATTACHMENTS
CB 2019-122, IDDE Ordinance

REVIEWED BY
Director of Public Works: David Hertzberg; Director of Finance: Leslie Haase; City Attorney: Peter Edwards; Interim City Manager; Dan Pekarek.

SUMMARY
This Council Bill approves the amendment to the Joplin City Code of Ordinances by amending Chapter 118, Utilities, Article 2, Sewers and Sewage Disposal, by enacting a new Division 9, Illicit Discharge Detection and Elimination which includes new regulations pertaining to the prohibition of Illicit Discharge and setting a date as to when this ordinance shall become effective.

BACKGROUND
The U.S Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) storm water permitting program labels municipal separate storm sewer systems (MS4s) as either "small", "medium" or "large" for the purposes of regulation. The City of Joplin, as a regulated small MS4 operator, is required to submit a permit application and obtain coverage under a NPDES storm water permit. Under the permit, the City is required to develop and implement a storm water management program that includes six minimum control measures (MCMs), evaluation /assessment and reporting efforts, and recordkeeping. Furthermore, the permit requires the City to submit best management practices to the Missouri Department of Natural Resources under the direction of the EPA, identify sources of pollution and contamination, and create and enforce programs and ordinances to eliminate or reduce pollutant discharges into stormwater conveyance systems. As a regulated small MS4 operator, the City of Joplin is federally mandated to develop an ordinance, or other regulatory mechanism, prohibiting (to the extent allowable under State or local law) non-stormwater discharges into the MS4 and develop appropriate enforcement procedures and actions.

DISCUSSION
The City of Joplin is currently in the process of renewing their MS4 permit. As part of this renewal process, the City was federally mandated to submit a stormwater management plan which included the 6 MCMs. These 6 MCMs consist of (1) Public education and outreach of stormwater impact, (2) Public involvement and participation, (3) Illicit Discharge Detection and Elimination, (4) Construction site stormwater runoff and control, (5) Post construction stormwater management in New-development and Re-development, and lastly (6) Pollution prevention/Good housekeeping for municipal operations. City staff worked with the MODNR to develop the 6 MCMs which collectively comprise the City's stormwater management plan.

Through coordinated efforts with the MODNR, City staff were able to submit each MCM to MODNR for review, receive feedback on each MCM, adjust and modify each MCM based on those comments, and subsequently resubmit and receive approval from MODNR for each MCM. MCM #3 however, Illicit Discharge Detection and Elimination, was conditionally approved pending the successful passing of an ordinance by the City to explicitly prohibit non-stormwater discharges into the MS4. To comply with this condition for approval, City staff developed the Illicit Discharge Detection and Elimination Ordinance. A public meeting for stakeholders was subsequently held on April 15th, providing affected stakeholders with an opportunity to view the ordinance and provide feedback on it.

RECOMMENDATION

Amending the Joplin City Code of Ordinances by adding a new Division 9, Illicit Discharge Detection and Elimination Ordinance in Chapter 118, Utilities, Article 2, Sewers and Sewage Disposal of the City of Joplin's Code of Ordinances which includes new regulations pertaining to the prohibition of Illicit Discharge and setting a date as to when this ordinance shall become effective.

COUNCIL BILL NO. 2019-122 ORDINANCE NO

AN ORDINANCE amending Chapter 118, Utilities, Article 2, Sewers and Sewage Disposal, by enacting a new Division 9, Illicit Discharge Detection and Elimination.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

WHEREAS, the City of Joplin is in the process of renewing its MS4 permit; and,

WHEREAS, the City of Joplin is required to submit a stormwater management plan which includes illicit discharge detection and elimination; and

WHEREAS, the attached illicit discharge detection and elimination ordinance satisfies this requirement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That Chapter 118, Utilities, Article 2, Sewers and Sewage Disposal, Division 9, Illicit Discharge Detection and Elimination, be enacted in substantially the form as attached hereto as Exhibit A and incorporated herein by this reference.

Section 2. That this Ordinance shall be in full force and effect from and after its passage and approval.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2019, by a vote of _____.

_____
Gary L. Shaw, Mayor

ATTEST:

_____
Barbara J. Gollhofer,
City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards,
City Attorney

Division 9. – Illicit Discharge Detection and Elimination (IDDE)

Section 118-301. General Provisions

a) Findings of Fact.

It is hereby determined that:

1) Federal regulations define an illicit discharge as "...any discharge to an MS4 that is not composed entirely of stormwater..." with some exceptions.
2) Illicit discharges are considered "illicit" because MS4s are not designed to accept, process, or discharge such non-stormwater wastes.
3) Illicit discharges result in untreated discharges that contribute high levels of pollutants, including heavy metals, toxics, oil and grease, solvents, nutrients, viruses and bacteria to receiving waterbodies.

b) Purpose

The purpose and intent of this Ordinance is to ensure the health, safety and general welfare of citizens of the City of Joplin through the regulation of non-stormwater discharges to the storm drain system to the maximum extent practicable BMPs and found them to be effective for the Joplin region and in accordance with current city codes, as required by federal and state law. This Ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit. The objectives of this Ordinance are:

1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges from any user,
2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system, and
3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Ordinance
4) Enforcement – See Section 16

c) Authority.

The City of Joplin, a Missouri Municipal Corporation.

d) Applicability

This Ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Joplin.

Section 118-302. Definitions

a) *Authorized Enforcement Agency*: Employees or designees of the City of Joplin designated to enforce this Ordinance.

b) *Best Management Practices (BMPs):* Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to

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control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

c) *Clean Water Act*. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

d) *Construction Activity*. Activities subject to NPDES Construction Permits, which generally include construction projects resulting in land disturbance of 1 acre or more, or less if part of a larger common project. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

e) *Hazardous Materials*. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

f) *Illegal Discharge*. Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 7 of this Ordinance.

g) *Illicit Connections*. An illicit connection is defined as any of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system; and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

h) *Industrial Activity*. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

i) *MS4*. Municipal Separate Storm Sewer System; a municipality which has a sanitary sewer system and a stormwater sewer system so that the two systems are completely separate.

j) *National Pollutant Discharge Elimination System (NPDES) Permit*. A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

k) *Non-Stormwater Discharge*. Any discharge to the storm drain system that is not composed entirely of stormwater.

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l) *Person*. Means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

m) *Pollutant*. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinance, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

n) *Premises*. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

o) *Storm Drain System*. Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any road drainage systems, municipal street, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

p) *Stormwater*. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

q) *Stormwater Pollution Prevention Plan (SWPPP):* A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

r) *Wastewater*. Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Section 118-303. Applicability
This Ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

Section 118-304. Responsibility for Administration
The City of Joplin shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted, or duties imposed upon the authorized enforcement agency may be delegated in writing by the administrator of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

Section 118-305. Severability.
The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment,

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or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

Section 118-306. Ultimate Responsibility.
The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore, this Ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Section 118-307. Discharge Prohibitions.

a) Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

b) The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:
    1) The following discharges are exempt from discharge prohibitions established by this Ordinance:
        a. landscape irrigation or lawn watering;
        b. diverted stream flows,
        c. rising groundwater;
        d. uncontaminated groundwater infiltration to storm drains;
        e. uncontaminated pumped groundwater;
        f. foundation or footing drains (not including active groundwater dewatering systems);
        g. uncontaminated water from crawl space/basement sump pumps;
        h. air conditioning condensation;
        i. springs;
        j. individual residential car washing as prescribed in Article IV – Section 114-358 (2)
        k. natural riparian habitat or wetland flows;
        l. flows through mine tailings;
        m. emergency fire-fighting activities; and
        n. any other water source not containing pollutants.
    2) The following discharges are not exempt from discharge prohibitions established by this Ordinance:
        a. Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water.
            1. However, planned discharges from potable water sources may be discharged to the MS4 provided that the City has determined that they are not substantial contributors of pollutants.
        b. Swimming pool discharges
            1. Certain swimming pool discharges are permitted under the MO Department of Natural Resources' NPDES Industrial Permits;
            2. Discharges from swimming pools not subject to MO Department of Natural Resources' NPDES Industrial Permits may be discharged to the MS4 provided

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that they are dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, and volumetrically and velocity controlled.

c. Street and sidewalk wash water containing detergents, water used to control dust containing detergents, and routine external building wash down containing detergents. (Also prohibited in City Code Chapter 118 – Utilities – Article II – Sewers and Sewage Disposal - Section 118-86; and Chapter 54 – Environments - Section 54-35 (4)
    1. Street and sidewalk wash water, water used to control dust, and routine external building wash down water may be discharged to the MS4 provided it does not contain detergents, streets and sidewalks are swept and material removed prior to washing. Active construction sites shall be scraped and swept daily prior to washing the street, as outlined in Appendix 29-F. Erosion and Sediment Control Regulations Section VI, 8. b. and c.
d. Discharges specified in writing by the City of Joplin as being necessary to protect public health and safety.
e. Dye testing is an allowable discharge but requires a written/verbal notification to the City of Joplin prior to the time of the test.
f. The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the permitting authority, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

c) Prohibition of Illicit Connections.
1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. (Also prohibited in Chapter 118 Utilities – Article II – Sewers and Sewage Disposal - Section 118-86; and Chapter 54 - Environment - Section 54-35 (17)
2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3) A person is considered to be in violation of this Ordinance if the person connects a line conveying sewage to the MS4 or allows such a connection to continue. (Also prohibited in Chapter 118 Utilities – Article II – Sewers and Sewage Disposal - Section 118-86; and Chapter 54 - Environment - Section 54-35 (17).

Section 118-308. Suspension of MS4 Access.

a) Suspension due to Illicit Discharges in Emergency Situations

The City of Joplin may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the State, or to minimize danger to persons.

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b) Suspension due to the Detection of Illicit Discharge
   1) Any person discharging to the MS4 in violation of this Ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Joplin will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.
   2) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City of Joplin.

Section 118-309. Powers and Authority of Inspectors

a) The City of Joplin inspector bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, records examination and copying, observation, measurements, sampling, and testing pertinent to discharge or potential to discharge, and for repair and maintenance to the municipal separate storm sewer system.

b) Information and data on a non-domestic source obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction, unless the non-domestic source specifically requests and is able to demonstrate to the satisfaction of the City of Joplin that the release of such information would divulge information, processes or methods of production entitled to protection as confidential information according to the criteria set forth in 40 CFR 2.208 and 2.302, as may be amended from time to time. When requested by the person furnishing a report, the portions of a report which might disclose confidential information shall not be made available for inspection by the public. Stormwater constituents and characteristics will not be recognized as confidential information. Information accepted by the City of Joplin as confidential shall be made available upon request to any agency meeting the requirements of Section 308 of the Clean Water Act, including officers, employees or authorized representatives of the United States concerned with carrying out the Clean Water Act, bound by the confidentiality rules in 40 CFR Part 2, as may be amended from time to time.

c) While performing inspections the City of Joplin shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the authorized representative(s), and the City of Joplin shall indemnify the company against loss or damage to its property by City of Joplin employees and against liability claims and demands for personal injury or property damage asserted against the company by City of Joplin employees and growing out of the inspection and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions.

d) Unreasonable delays in allowing the City of Joplin access to the premises or other interference with the activities of the City of Joplin shall be a violation of this law. Access to property and/or records of a non-domestic source may not be refused on the basis that the City of Joplin refuses to sign any waiver, access agreement, or similar document.

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e) If the City of Joplin has been refused access to a building, structure or property or any part thereof, and if the City of Joplin has demonstrated probable cause to believe that there may be a violation of this law or that there is a need to inspect as part of a routine inspection program of the City of Joplin to verify compliance with this law or any permit or order issued hereunder, or to protect the environment and overall public health, safety and welfare of the community, then the City of Joplin will make an application to a court of competent jurisdiction for a search and/or seizure warrant describing therein the specific location subject to the warrant. The warrant application shall specify what, if anything, may be searched and/or seized on the property described. If granted by the court, such warrant shall be served at reasonable hours by the City of Joplin in the company of a uniformed officer of the law enforcement agency with jurisdiction over the property. In the event of an emergency affecting public health and safety, inspections may be made without the issuance of a warrant.

Section 118-310. Industrial or Construction Site Activity Discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Joplin prior to the allowing of discharges to the MS4.

Section 118-311. Monitoring of Discharges.

a) Applicability.

This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

b) Access to Facilities.

1) The City of Joplin shall be permitted to enter and inspect facilities subject to regulation under this Ordinance as often as may be necessary to determine compliance with this Ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.
2) Facility operators shall allow the City of Joplin ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
3) The City of Joplin shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City of Joplin to conduct monitoring and/or sampling of the facility's stormwater discharge.
4) The City of Joplin has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City of Joplin and shall not be replaced. The costs of clearing such access shall be borne by the operator.

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6) Unreasonable delays in allowing the City of Joplin access to a permitted facility is a violation of a stormwater discharge permit and of this Ordinance. A person who is the operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.
7) If the City of Joplin has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the environment and overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

Section 118-312. Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices.

The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural Best Management Practices (BMPs). Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

Section 118-313. Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. In addition, the owner or lessee shall maintain existing privately-owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Section 118-314. Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately

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notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Joplin within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

Section 118-315. Illegal Dumping Prohibited

No person shall dump or otherwise deposit outside an authorized landfill or other authorized garbage or trash collection point, including but not limited to any grass clippings, leaves, motor oil, paint, wash water, chemicals, trash or garbage of any kind or description on any private or public property, occupied or unoccupied, with the potential to discharge to the municipal storm sewer system.

Section 118-316. Enforcement.

a) Notice of Violation.

Whenever the City of Joplin finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible parties. Such notice may require without limitation:

1) The performance of monitoring, analyses, and reporting;
2) The elimination of illicit connections or discharges;
3) That violating discharges, practices, or operations shall cease and desist;
4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
5) Payment of a fine to cover administrative and remediation costs; and
6) The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Section 118-317. Appeal of Notice of Violation.

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within fifteen (15) days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

Section 118-318. Enforcement Measures After Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within fifteen (15) days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are

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authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Section 118-319. Cost of Abatement of the Violation.

a) Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within fifteen (15) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

b) Any person violating any of the provisions of this Ordinance shall become liable to the City of Joplin by reason of such violation. The liability shall be paid in not more than 12 equal payments beginning thirty (30) days following final notification of the abatement costs. Interest at the rate of ten (10) percent per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.

Section 118-320. Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this Ordinance, the City of Joplin may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Section 118-321. Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the City of Joplin may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Section 118-322. Violations Deemed A Public Nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a danger to the environment and threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Section 118-323. Criminal Prosecution.

Any person who shall violate the provisions of this article shall be guilty of an ordinance violation and shall be subject to the penalties set forth in City Code Section 1-5. – General penalty; continuing violations; violations deemed public nuisance (a), (b), and (c).

Section 118-324. Cost Recovery.

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The City of Joplin may recover all attorney's fees, court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

Section 118-325. Remedies Not Exclusive.
The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Joplin to seek cumulative remedies.

Section 119-326. Adoption of Ordinance.
This Ordinance shall be in full force and effect immediately after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

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CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM:
CB 2019-261: State Tax Credit for Contribution Agreement

MEETING DATE:
May 5, 2019

ORIGINATING DEPARTMENT:
Planning, Development and Neighborhood Services

REVIEWED BY:
Director of Planning, Development & Neighborhood Services-Troy Bolander, Director of Finance-Leslie Haase, City Attorney- Peter Edwards, Interim City Manager- Daniel Pekarek.

BACKGROUND:
The Downtown Joplin Alliance (DJA), owner of the Empire Market Building, continues to convert the former Empire Electric Company warehouse and equipment storage building into a Farmer's/Artisan market. When completed the Empire Market Building will have an outdoor covered market pavilion for both farmers and vendors to sell their produce and merchandise, plus, DJA will provide additional space for offices, businesses incubators, classrooms and community gardens. The redevelopment project is eligible for financing through the Missouri Development Finance Board's (MDFB) Tax Credit for Contribution Program. The program allows a taxpayer to contribute to the MDFB's infrastructure development fund. Up to a 50% tax credit may be issued to the taxpayer on the value of their eligible contribution. In return, the project beneficiary (DJA) will receive a grant to help finance some of the redevelopment costs associated with the rehabilitation of the building and grounds of the Empire Market Building.

The City approved a resolution of support for the project on December 4, 2017. Since that time DJA was approved for financing through the program. The approval of the agreement will obligate the credits to the Empire Market Building project.

For the Empire Market Redevelopment Project to be eligible for financing, the agreement for the tax credits must also be signed by a unit of local government (City of Joplin). The attached agreement does not financially commit the city to the project and no city funds will be used on the Empire Market Redevelopment Project. The city will monitor the project for the MDFB and will act as a "pass" through for the invoices. A Memorandum of Understanding between the City of Joplin and the DJA identifying the responsibilities of each organization concerning project monitoring and and invoice processing will be presented to the city council at a future meeting before the program is implemented.

FUNDING SOURCE
N.A.

RECOMMENDATION:
Staff recommends approval of Council Bill No. 2019-261

ATTACHMENTS
CB 2019- 261, Tax Credit Agreement

TAX CREDIT AGREEMENT

(City of Joplin, Missouri – Main Street Joplin D/B/A Downtown Joplin Alliance)

THIS TAX CREDIT AGREEMENT, dated as of _____ ___, 2018 (the "Agreement"), by and among the **MISSOURI DEVELOPMENT FINANCE BOARD**, a body corporate and politic of the State of Missouri (the "Board"), the **CITY OF JOPLIN, MISSOURI,** a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the "Public Entity"), and **MAIN STREET JOPLIN D/B/A DOWNTOWN JOPLIN ALLIANCE,** a Missouri non-profit corporation ("Nonprofit Entity");

WITNESSETH:

WHEREAS, Section 100.286.6 of the Revised Statutes of Missouri (the "Tax Credit Statute") provides that any taxpayer shall be entitled to a tax credit against any tax otherwise due under the provisions of Chapter 143, RSMo, excluding withholding tax imposed by Sections 143.191 to 143.261, RSMo, Chapter 147, RSMo, or Chapter 148, RSMo, in the amount of fifty percent of any amount contributed in money or property by the taxpayer to the development and reserve fund, the infrastructure development fund or the export finance fund during the taxpayer's tax year; and

WHEREAS, the Public Entity and the Nonprofit Entity have requested that the Board accept contributions from donors and make the proceeds of such contributions available to the Public Entity for the purpose of paying a portion of the cost of financing the project described on **Exhibit A** hereto (the "Project"), all as more fully described in the application documentation for assistance submitted to the Board (all as attached hereto as **Exhibit B**, collectively, the "Application"); and

WHEREAS, at a meeting of the Board held on December 19, 2017, the Board adopted a motion approving the Application and the award of Tax Credits in an amount up to $500,000; and

WHEREAS, the Project will significantly benefit the Public Entity and the State of Missouri by: (i) aiding farmers of southern Missouri in becoming more financially stable through increased sales through a regional farmers market; (ii) developing socially disadvantaged and beginning farmers; (iii) improving access to healthy foods in underserved communities; (iv) increasing local and state tax revenues, and (v) increasing entrepreneurial and educational opportunities for residents of the Public Entity and the State of Missouri; and

WHEREAS, the Board, the Public Entity and the Nonprofit Entity desire to enter into this Agreement for the purpose of setting forth the terms and conditions pursuant to which the Board will accept contributions with respect to tax credits described herein and deposit such contributions into the Infrastructure Development Fund (defined herein) for the purposes set forth herein, all subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the Board, the Public Entity and the Nonprofit Entity hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

In addition to the terms defined in the Recitals to this Agreement and elsewhere herein, as used in this Agreement the following terms shall have the following meanings:

"Application" means the request for assistance submitted to the Board by the Public Entity and the Nonprofit Entity attached hereto as **Exhibit B**.

"Compliance Period" means the period commencing upon the execution of this Agreement and ending upon completion of the construction of the Project as evidenced by the delivery to the Board of the certificate in the form attached hereto as **Exhibit G**, or the later of the last day of the third full fiscal year following (i) the execution of this Agreement or (ii) the first issuance of Tax Credits pursuant to this Agreement.

"Contribution" means any contribution received by the Board pursuant to and in accordance with this Agreement.

"Disbursement Request" means the Disbursement Request referred to in **Section 4.2** hereof and the form of which is attached hereto as **Exhibit C**.

"Donor" means any person making a Contribution to the Board.

"Infrastructure Development Fund" means the fund by that name held by the Board.

"Material" means a standard for materiality pursuant to which any change or amendment would, when added to all such other changes or amendments, result in a prudent person considering such change or amendment material or would impact the Project Budget by 10% or more. Any change in the Project Budget shall be deemed Material if the Board notifies the Department, prior to the effective date of such change, that the Board considers such change to be Material. Notwithstanding the foregoing, no change to the Project Budget shall be deemed Material if the cost of such change is less than 10% of the total Project Budget.

"Maximum Contributions" shall have the meaning set forth in **Section 3.1** hereof.

"Maximum Tax Credits" shall have the meaning set forth in **Section 3.1** hereof.

"MBE/WBE Policies" shall have the meaning set forth in **Section 5.5(f)** hereof.

"Project" means the project described in **Exhibit A**, and any amendments, revision or additions thereto made in accordance with **Section 5.5(b)** of this Agreement.

"Project Abandonment" means the failure by the Nonprofit Entity to commence construction of the Project within three years of the execution of this Agreement, where no agreement exists between the Board and the Public Entity to extend such deadline. Commence construction shall mean the entering into of a contract with a general contractor for the Project and commencement of material work on the Project.

"Project Budget" means the aggregate Project Budget described in the Application, and any amendments, revision or additions thereto made in accordance with **Section 5.5(b)** of this Agreement.

"Project Costs" means all reasonable or necessary costs and expenses, relating to the Project, subject to the limitations contained in **Exhibit A** and **D**.

"Tax Credits" means tax credits issued by the Board in accordance with the Tax Credit Statute and this Agreement in consideration of Contributions.

"Tax Credit Statute" shall have the meaning set forth in the Recitals.

ARTICLE II

FINDINGS AND DETERMINATIONS; REPRESENTATIONS AND WARRANTIES

Section 2.1. Board's Determination of Project Benefit. The Board hereby finds and determines as follows:

(a) The Project will significantly benefit the Public Entity and the State of Missouri by (i) aiding farmers of southern Missouri in becoming more financially stable through increased sales through a regional farmers market; (ii) developing socially disadvantaged and beginning farmers; (iii) improving access to healthy foods in underserved communities; (iv) increasing local and state tax revenues, and (v) increasing entrepreneurial and educational opportunities for residents of the Public Entity and the State of Missouri; all as described in more detail in the Application;

(b) The benefits to be derived by the State of Missouri are expected to exceed the benefits provided by the Board by this Agreement; and

(c) The Board's participation is a material precondition to the completion of the Project, and the Project would not proceed without the assistance provided by the Board.

Section 2.2. Public Entity's Determination of Project Benefit and Representations and Warranties. The Public Entity hereby finds, determines, represents and warrants as follows:

(a) The Project will significantly benefit the Public Entity and the State of Missouri by (i) aiding farmers of southern Missouri in becoming more financially stable through increased sales through a regional farmers market; (ii) developing socially disadvantaged and beginning farmers; (iii) improving access to healthy foods in underserved communities; (iv) increasing local and state tax revenues, and (v) increasing entrepreneurial and educational opportunities for residents of the Public Entity and the State of Missouri; all as described in more detail in the Application;

(b) The benefits to be derived by the State of Missouri are expected to exceed the benefits provided by the Board by this Agreement;

(c) The Project would not proceed without the assistance provided by the Board;

(d) The Public Entity (1) is a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri and (2) has lawfully executed and delivered the Agreement; and

(e) The execution and delivery of the Agreement by the Public Entity will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreements or instrument to which the Public Entity is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory rules or regulations applicable to the Public Entity or its property.

Section 2.3. Nonprofit Entity's Determination of Project Benefit and Representations and Warranties. The Nonprofit Entity hereby finds, determines, represents and warrants as follows:

(a) The Project will significantly benefit the Public Entity and the State of Missouri by (i) aiding farmers of southern Missouri in becoming more financially stable through increased sales through a regional farmers market; (ii) developing socially disadvantaged and beginning farmers; (iii) improving access to healthy foods in underserved communities; (iv) increasing local and state tax revenues, and (v) increasing entrepreneurial and educational opportunities for residents of the Public Entity and the State of Missouri; all as described in more detail in the Application;

(b) The benefits to be derived by the State of Missouri are expected to exceed the benefits provided by the Board by this Agreement;

(c) The Project would not proceed without the assistance provided by the Board;

(d) The Nonprofit Entity (1) is a non-profit corporation organized and existing under the laws of the State of Missouri, (2) has lawful power and authority to execute and deliver this Agreement and to carry out its obligations thereunder and hereunder, and (3) by all necessary corporate action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and

(e) The execution and delivery of this Agreement by the Nonprofit Entity will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Nonprofit Entity is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory rules or regulations applicable to the Nonprofit Entity or its property.

Section 2.4. No Private Benefit. The Public Entity and the Nonprofit Entity represent and warrant that no portion of the Project or the proceeds of the Contributions shall benefit any private person, except for such benefits as may be conferred to private persons through the ordinary course of business of the Nonprofit Entity in the development, construction and operation of the Project, and in furtherance of its nonprofit, charitable purposes.

ARTICLE III

CONTRIBUTIONS AND TAX CREDITS

Section 3.1. Agreement to Accept Contributions and Issue Tax Credits. Subject to the requirements set forth herein and so long as the Board is authorized under the Tax Credit Statute to issue Tax Credits, the Board hereby agrees to accept Contributions from Donors in a maximum aggregate amount of $1,000,000 (**"Maximum Contributions"**), resulting in the potential issuance of Tax Credits in the maximum amount of $500,000 (the **"Maximum Tax Credits"**) and to deposit such Contributions into the

Board's infrastructure development fund, and to issue such Donors' Tax Credits in an amount equal to 50% of the amount of such Contribution.

The date of the award and authorization for the Tax Credits shall be December 19, 2017.

All Contributions must be received by December 31, 2020~~19~~[MK1], unless the Board, in its sole and absolute discretion elects to extend the period for which Contributions may be received. This paragraph shall not restrict the owner of any Tax Credit from utilizing the benefits of the carry-forward provisions contained in the Tax Credit Statute.

Section 3.2. Submission of Form 100. The Board shall process each Contribution which is accompanied by a properly completed Form 100 (currently available at http://www.mdfb.org/pdfs/Form100.pdf) and any other documents required by Missouri law. Any Contribution which is received for which the Board does not have a properly completed Form 100 and any other documents required by Missouri law shall be held by the Board until such documents are provided or, at the option of the Board, returned to the Donor with a written notation stating why such Contribution is being returned. A copy of the written correspondence by which each Contribution is returned shall also be sent to the Nonprofit Entity. The Board reserves the right to require any additional information which the Board determines to be necessary to comply with the Board's statutes, as they may be amended from time to time.

Section 3.3. Minimum Contribution. The Board shall not accept any Contribution in an amount less than $500. Unless the Board, in its sole and absolute discretion, elects to waive the foregoing limitation, any Contribution which is received for less than such minimum amount shall be returned to the Donor with a written notation explaining that Contributions must be made in the minimum amount of $500. A copy of the written correspondence by which each Contribution is returned shall also be sent to the Nonprofit Entity.

Section 3.4. Processing Contributions. The Board shall promptly process all completed Contributions. The Board expects that once a properly completed Form 100 and all other required documents are received by the Board, together with the Contribution, the Board will issue or cause to be issued the Tax Credits within thirty (30) business days.

Section 3.5. Determination of Amount of Contribution. The amount (or value) of each Contribution shall be determined by the Board as follows:

Cash. The amount (or value) of cash Contributions shall be the face amount of such Contribution.

Marketable Securities. The amount (or value) of marketable securities shall be the proceeds received by the Board from the liquidation of such marketable securities in accordance with the Donor's instructions approved and accepted by the Board, less the Board's costs of selling such securities.

Unmarketable Securities and Other Property. No contributions of unmarketable securities or other property (other than as described above), including real property, shall be permitted under this Agreement.

All determinations by the Board of the amount (or value) of each Contribution shall, absent manifest error, be conclusive and binding upon the Donors, the Non-Profit Entity and the Public Entity. The Board reserves the right to reject any Contribution.

Section 3.6. Contributions in Excess of Maximum Contributions. The Board, the Public Entity and the Nonprofit Entity agree that in the event the Board receives in any year Contributions in excess of the Maximum Contribution set forth in **Section 3.1** hereof, the Board shall return such amount of the contribution that exceeds the Maximum Contribution to the Donor thereof with a statement that Tax Credits are no longer available for such Contributions.

ARTICLE IV

APPLICATION OF CONTRIBUTIONS

Section 4.1. Board's Application of Contributions. All Contributions received by the Board for the Project described herein shall be deposited in the same manner as other amounts received by the Board, and the amount of such Contributions shall be maintained by the Board on its books and records in a separate ledger account (the **"Board Project Account"**). All moneys on deposit in the Board Project Account shall be invested by the Board in accordance with its investment guidelines. All interest earnings on such amounts shall accrue to the Board and shall not be credited to the Board Project Account.

Section 4.2. Disbursements from the Board Project Account. The Board shall disburse amounts from the Board Project Account upon receipt of fully executed disbursement requests in the form attached hereto as **Exhibit C** (each a **"Disbursement Request"**). The Board shall be entitled to rely upon each Disbursement Request in disbursing amounts from the Board Project Account and it shall have no duty to conduct any investigation into the authenticity of the signatures on such Disbursement Request or the accuracy of the information set forth therein.

Section 4.3. Procedures and Conditions for Disbursements. The Board, the Public Entity and the Nonprofit Entity hereby agree to the following procedures in connection with disbursements from the Board Project Account:

(a) All Disbursement Requests shall be submitted to the Board for approval as provided in **Section 4.2** hereof. All payments from the Board Project Account shall be made payable to the Public Entity for further disbursement to the Nonprofit Entity or directly to the payees set forth in the Disbursement Request, as appropriate.

(b) No Contributions shall be disbursed until the condition(s) set forth on **Exhibit D** have been satisfied in a manner acceptable to the Board.

(c) In no event shall the Nonprofit Entity submit more than one Disbursement Request to the Board each month, unless approved by the Board's Executive Director.

(d) All disbursements shall be subject to satisfaction of the following conditions:

(i) no disbursement shall be used for funding any costs payable to acquire any real property owned by any member of the Nonprofit Entity, any employee or board member of the Nonprofit Entity or other person or entity affiliated with or related to the Nonprofit Entity (including any legal entity formed by or on behalf of such entity);

(ii) all proceeds of the Contributions shall be used only for costs described on **Exhibit A**; and

(iii) in the event any bonds are issued in connection with the Project, the Board shall have a first right of refusal to issue such bonds if it is empowered under applicable Missouri law to do so.

(e) The Board shall have the right to cease funding Disbursement Requests upon the occurrence of any of the following events:

(i) there has been an event of Project Abandonment; or

(ii) the Nonprofit Entity shall fail to perform any material covenant, condition or other provision of this Agreement.

The Board shall promptly notify the Public Entity or the Nonprofit Entity of its election to cease funding Disbursement Requests and such notice shall contain a description of the basis upon which the Board has exercised such right to cease funding Disbursement Requests. If the Board, the Public Entity and the Nonprofit Entity are unable to agree to a waiver, extension or modification of such conditions, the Board shall have the right to terminate this Agreement and shall cause all moneys remaining in the Board Project Account to be applied as provided in **Section 4.6** hereof.

Section 4.4. Processing of Disbursement Requests. Within ten (10) business days after the submission of a fully completed Disbursement Request to the Board, the Controller shall process such request for payment or immediately notify the Nonprofit Entity of any information needed to process such Disbursement Request.

Section 4.5. Deduction of Board Fees and Expenses. Concurrently upon the receipt of each Contribution the Board shall deduct an administrative fee in an amount equal to 4.0% of the amount of the Contribution, and shall furnish the Public Entity and the Nonprofit Entity a detailed description of such deductions at least quarterly. Such fees shall be in addition to any interest earned for the account of the Board on moneys invested in the Board Project Account.

Section 4.6. Return of Contributions or Recapture of Credits Issued in the Event of Default or Project Abandonment. In the event of a declaration of Project Abandonment by the Board, if the Public Entity or the Nonprofit Entity has been unable to satisfy the conditions set forth in **Section 4.3** above and in **Exhibit D** to the satisfaction of the Board, in the event the Public Entity or the Nonprofit Entity shall notify the Board of an event of Project Abandonment, or upon an event of default under **Section 6.1**, any Contributions received shall become the property of the Board and this Agreement shall be terminated. In the event the Board seeks to declare an event of Project Abandonment, the Board shall provide the Public Entity and the Nonprofit Entity with a notice of default in accordance with **Section 6.1** stating its intent to deem the Contributions property of the Board and to terminate this Agreement in accordance with **Section 6.1** herein. Notwithstanding the foregoing, if requested by a Donor in writing, a Contribution made by a Donor shall be returned to the Donor after reimbursement to the State for the cost of Tax Credits issued hereunder and actually used by the Donor with respect to such Contributions. In the event of a declaration of Project Abandonment or default, the Board agrees that it will provide a written notice to each Donor who would be entitled to any Contribution return. In determining the cost to the State of such Tax Credits the Board shall assess interest on such Tax Credits in an amount equal to *The Bond Buyer's* 20 Bond Index published in *The Bond Buyer* on the day such calculation is made. Notwithstanding any other provision of this Agreement, Contributions which are expended by the Public Entity or the Nonprofit Entity in accordance with this Agreement shall not be subject to return nor shall such Tax Credits be subject to recapture.

Section 4.7. Nonprofit Entity Assumes All Responsibility for the Project. The Nonprofit Entity acknowledges and agrees that any and all costs and expenses incurred in connection with the acquisition, construction and equipping of the Project in excess of the amounts on deposit with the Board Project Account (including amounts which are ineligible for payment from the Board Project Account) shall be paid by the Nonprofit Entity and neither the Board nor the Public Entity shall have any liability in connection therewith. The Nonprofit Entity recognizes that since the construction and equipping of the Project is being completed at the request of and under the direct supervision of the Nonprofit Entity and by contractors and suppliers selected by and under contract with the Nonprofit Entity in accordance with plans and specifications prepared on behalf of the Nonprofit Entity, neither the Board nor the Public Entity makes any representation or warranty, express or implied, with respect to the merchantability, condition or workmanship of any part of the project or its suitability for the Nonprofit Entity's purposes or the extent to which funds in and expected to be deposited into the Board Project Account will pay the cost to be incurred in connection with the work.

Section 4.8. Nonprofit Entity Responsible For Construction; Required Liability Insurance. The Nonprofit Entity shall have the right and the obligation to hire, retain and employ all persons, including, but not limited to, subcontractors, to complete the acquisition, construction and equipping of the Project. The Nonprofit Entity shall be responsible to the Board and the Public Entity for the acts and omissions of all said employees and subcontractors and their agents and employees, and all other persons performing any work in connection with the Project. The Nonprofit Entity shall, in connection with the construction and equipping of the Project, obtain public liability insurance in such amounts and in such coverages as shall be customary and reasonable for projects of similar size and scope and all such liability policies shall name the Board and the Public Entity as additional primary insureds. The Nonprofit Entity shall require the provider of such insurance policy to give at least 30 days prior written notice to the Board and the Public Entity of any cancellation or material change in the terms of such insurance. The Nonprofit Entity shall obtain all necessary endorsements to fulfill the foregoing requirements and shall provide certificates of insurance to demonstrate such compliance upon request. The construction and equipping of the Project shall be performed in good and workmanlike manner.

Section 4.9. Compliance With Laws. The Nonprofit Entity agrees to comply with the provisions of all federal, state and local statutes and regulations, including, but not limited to, the Fair Labor Standards Act, Fair Employment Practices Act, Equal Opportunity Act, Missouri Prevailing Wage Law, Contract Work Hours and Safety Standards Act, Copeland Anti-Kick Back Act and the provisions of any other applicable federal, state or local statutes and regulations and amendments thereto pertaining to employment, labor relations and equal employment opportunity and applicable to the construction and equipping of the Project, and pertaining to laws and regulations concerning environmental safety and remediation and applicable to the construction and equipping of the Project. The Nonprofit Entity agrees to take affirmative action to provide equal employment opportunity pursuant to the provisions of said laws, statutes and regulations as amended from time to time.

ARTICLE V

THE PROJECT; RECORDS AND REPORTS; COVENANTS

Section 5.1. Access to the Project and Inspection; Operation of the Project. The Board and the duly authorized agents of the Board shall have the right, at all reasonable times upon the furnishing of reasonable advance notice under the circumstances, to enter upon the Project and to examine and inspect the Project. The Board and the duly authorized agents of the Board shall also be permitted, at all reasonable times upon reasonable advance notice under the circumstances, to examine the books and records of the Public Entity, the Nonprofit Entity or any other legal entity created by or on behalf of the Nonprofit Entity

with respect to the Project and the Contributions and the obligations of the Public Entity and the Nonprofit Entity hereunder.

Section 5.2. Reports by the Board to the Nonprofit Entity and the Public Entity. Upon the written request of the Nonprofit Entity or the Public Entity, the Board shall furnish such information concerning the Board's receipt and disbursement of Contributions as the Nonprofit Entity or the Public Entity may reasonably request, but not more frequently than monthly.

Section 5.3. Reports by the Public Entity to the Board. The Public Entity shall furnish to the Board any written reports relating to the Project prepared by the Public Entity for distribution to the Public Entity's governing body.

Section 5.4. Reports and Financial Statements by the Nonprofit Entity. The Nonprofit Entity shall cause the following reports to be filed with the Board:

(a) During the Compliance Period the following items not later than the times indicated:

(i) All audit and compliance reports prepared for submission to any federal or state agency or authority as soon as practicable after they are available;

(ii) Any other reports and any and all financial statements prepared by employees or agents of the Nonprofit Entity (including the Nonprofit Entity's accountants) relating to the financial condition of the Nonprofit Entity and the status of the Project for distribution to the Nonprofit Entity or members of the Nonprofit Entity's governing board as soon as practicable after they are available;

(iii) As soon as practicable after they are available but in no event more than **150** days after the last day of each fiscal year, the audit report and audited financial statements of the Department for such fiscal year certified by the Nonprofit Entity's independent certified public accountants; and

(iv) Such additional information as the Board may reasonably request concerning the Nonprofit Entity, including such statistical and other operating information requested on a periodic basis;

(b) Not later than each **June 30th** following the first issuance date of the Tax Credits, and continuing on each June 30th thereafter following the end of the Compliance Period, the Annual Compliance Report substantially in the form attached hereto as **Exhibit E**, pursuant to subsections 3 and 10 of Section 135.805, RSMo.

(c) Not later than **60** days following the end of each calendar quarter during the construction of the Project, a report describing the level of MBE/WBE participation in the Project, containing the information set forth in **Exhibit F**, and any other relevant information reasonably requested by the Board relating to MBE/WBE participation in the construction of the Project.

(d) Not later than **60** days following the completion of the construction of the Project, the certificate in the form attached hereto as **Exhibit G**.

(e) Prompt written notice of the filing of any action, suit or proceeding by it or against it at law or in equity, or before any governmental instrumentality or agency, which, if adversely

determined, would materially impair the right of the Nonprofit Entity to carry on the business which is contemplated in connection with the Project, or would materially and adversely affect its business, operations, properties, assets or condition.

Section 5.5. Affirmative Covenants of the Nonprofit Entity. The Nonprofit Entity covenants and agrees that:

(a) All Contributions shall be expended strictly in accordance with the Project Budget. The Project Budget may be amended from time to time by the Nonprofit Entity in accordance with **Section 5.5(b)**.

(b) Changes to the Project which are Material may only be made with the prior written approval of the Board's Executive Director or designee. The Nonprofit Entity will notify the Board at least quarterly of any non-Material changes to the Project.

(c) The Nonprofit Entity shall not transfer, pledge, lease or permit any assignment or lien to exist or in any other manner dispose of the Nonprofit Entity's ownership interest in the Project without the prior written consent of the Board.

(d) If moneys in or from the Board Project Account shall be insufficient to pay fully all Project Costs and to complete the Project lien free, the Nonprofit Entity shall complete the Project at its sole cost and shall pay, in cash, the full amount of any such deficiency by making payments thereof directly to the contractors and to the suppliers of materials and services as the same shall become due.

(e) The Nonprofit Entity shall maintain in effect a designation from the Internal Revenue Service as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "**Code**").

(f) The Nonprofit Entity shall comply with the Board's "Policy Regarding Utilization of MBE and WBE Businesses in Connection with the Tax Credit for Contribution Program" attached hereto as **Exhibit H** (the "**MBE/WBE Policies**").

(g) The Nonprofit Entity shall not use the name of the Board, the Department of Economic Development or the State of Missouri or refer to the participation of the Board, the Department of Economic Development or the State of Missouri in the business affairs or investment program of the Nonprofit Entity in any publication, brochure or similar promotional documents without first obtaining the prior written consent of the Board to such reference. Nothing in this paragraph shall limit the right of the Nonprofit Entity to solicit donations for Contributions in accordance with this Tax Credit Agreement.

(h) The Nonprofit Entity shall comply with all applicable provisions of federal, state and local statutes and regulations.

(i) ~~No disbursements shall be made from the Board Project Fund until such time as the Nonprofit Entity has provided the Board with written evidence that 90% of the sources required to fund the Project Budget have been received by or pledged to the Nonprofit Entity and a contract for the Project has been awarded.~~ At the election of the Nonprofit Entity, either (1) no disbursements shall be made from the Board Project Fund until such time as the Nonprofit Entity has provided the Board with written evidence that 80% of the sources required to fund the Project Budget have been received by or pledged to the Nonprofit Entity or (2) disbursements from the

Board Project Fund shall be requested at a rate of no more than 50% of the total Project expenses incurred by the Nonprofit Entity (as evidenced by written supporting documentation) from sources other than Contributions as of the date of the Disbursement Request; provided that the Board's Executive Director may grant a waiver from the requirements of this subsection on a case by case basis. Only those monies expended prior to the date of such Disbursement Request shall be eligible to satisfy such match requirement[MK2][MK3][MK4].

Section 5.6. Negative Covenant of the Public Entity. The Public Entity shall promptly notify the Board in writing if it receives actual notice of any failure of the Nonprofit Entity to comply with the provision of this Agreement.

The Public Entity shall promptly notify the Board and the Nonprofit Entity in writing of any changes to its MBE/WBE policies.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1. Default. In the event the Public Entity or the Nonprofit Entity shall fail to perform any material covenant, condition or other provision of this Agreement and such failure shall continue for 30 days after written notice thereof by the Board, the Board shall be entitled to (1) retain all Contributions in the Board Project Account; provided, however, if such failure is correctable but is such that it cannot be corrected within such 30-day period, such failure shall not constitute a failure within the meaning of this **Section 6.1** if the Public Entity or the Nonprofit Entity is diligently pursuing such corrective action and such failure is corrected within 120 days, or (2) seek to enforce this Agreement through bringing an action for specific performance. Amounts retained by the Board pursuant to this Section shall be applied in accordance with **Section 4.6** hereof. In the event the Board commences litigation to enforce the provisions of this Agreement all cost of such litigation shall be paid by the Public Entity and the Nonprofit Entity whether or not the Board dismisses such proceedings or is ultimately the prevailing party.

Section 6.2. Transfer of Tax Credits. Any transfers of Tax Credits under this Agreement shall be made in accordance with Section 100.286.7 of the Revised Statutes of Missouri, as from time to time amended or supplemented.

Section 6.3. Notices. Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Agreement shall be in writing and shall be deemed duly given or filed if the same shall be (i) given by facsimile or e-mail, receipt confirmed by telephone, or in writing, or (ii) delivered by courier or nationally-recognized overnight delivery service or duly mailed by first-class mail, postage prepaid, addressed as follows:

(a) To the Board:

Missouri Development Finance Board
Governor Office Building
200 Madison Street, Suite 1000
Jefferson City, Missouri 65101
Attention: Controller
Telephone No. (573) 751-8479
Fax No. (573) 526-4418
E-mail: erica.griffin.mdfb@ded.mo.gov

(b) To the Public Entity:

City of Joplin, Missouri
602 S. Main
Joplin, Missouri 64801
Attention: Director of Planning, Development & Neighborhood
Telephone No. (417) 624-0820
E-mail: tbolander@joplinmo.org

(c) To the Nonprofit Entity:

Main Street Joplin D/B/A Downtown Joplin Alliance
931 E. 4th
Joplin, Missouri 64801
Attention: Executive Director
Telephone No. (417) 529-3888
E-mail: lori@downtownjoplin.com

The Board, the Public Entity and the Nonprofit Entity may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 6.4. Limited Obligations. The obligations of the Board to disburse funds hereunder are limited obligations of the Board, payable solely out of the amounts on deposit in the Board Project Account, and such obligations shall not constitute a debt or liability of the Board within the meaning of any State of Missouri constitutional provision or statutory limitation or Charter provision, and shall not constitute a pledge of the full faith and credit of the Board. The execution of this Agreement shall not, directly, indirectly or contingently, obligate the Board to levy any form of taxation therefore or to make an appropriation of any payment hereunder.

Section 6.5. Immunity of Officers and Employees of the Board and the Public Entity. No recourse shall be had for any payment hereunder against any past, present or future officials, commissioners, directors, members, council members, officers, attorneys, accountants, employees or agents of the Board or the Public Entity, and all such liability of any such persons shall be expressly waived and released as a condition of and consideration for the execution of this Agreement.

Section 6.6. Relationship of Board to Public Entity, Nonprofit Entity and Donors. The parties hereto acknowledge and agree that: (i) the only obligations of the Board with respect to the transaction contemplated hereby are expressly set forth in this Agreement; (ii) the Nonprofit Entity shall advise each potential Donor to consult its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it deems appropriate, including with respect to tax consequences of Contributions and the application of Tax Credits; (iii) the Board is not acting as a financial advisor or fiduciary and has not assumed any advisory or fiduciary responsibility to the Public Entity, the Nonprofit Entity, and any Donor, or successor or assignee of the same, with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto.

Section 6.7. Indemnification.

(a) The Nonprofit Entity releases the Board and the Public Entity from, and agrees that the Board and the Public Entity shall not be liable for, and indemnifies the Board and the Public

Entity against, any liabilities, losses, damages (including attorneys' fees), causes of action, suits, claims, costs and expenses, demands and judgments of any nature imposed upon or asserted against the Board or the Public Entity (except to the extent that any of the foregoing arises as a result of the gross negligence or willful misconduct of the Board or the Public Entity, as applicable, or any of their officials, commissioners, directors, officers, attorneys, accountants, employees or agents) on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquiring, constructing, demolishing, renovating, improving and operation of the Project; (ii) any breach or default on the part of the Nonprofit Entity in the performance of any covenant or agreement of the Nonprofit Entity under this Agreement or any related document, or any of its agents, contractors, servants, employees or licensees; (iii) violation of any law, ordinance or regulation affecting the ownership, occupancy or use of the Project; (iv) any loss suffered by any Donor as a result of the inability of the Donor to use any Tax Credit issued by the Board, other than as a result of the failure of the Board to issue such Tax Credit upon receipt by the Board of the necessary information, (v) any loss resulting from any environmental violation at the Project, and (vi) any claim or action or proceeding with respect to the matters set forth in subsections (i), (ii), (iii), (iv) or (v) above brought thereon.

(b) In case any action or proceeding is brought against the Board or the Public Entity in respect of which indemnity may be sought hereunder, the Board and/or the Public Entity shall promptly give notice of that action or proceeding to the Nonprofit Entity, and the Nonprofit Entity upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Nonprofit Entity from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Nonprofit Entity. Any one or more of the indemnified parties shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such indemnified party or indemnified parties unless the employment of such counsel has been specifically authorized, in writing, by the Nonprofit Entity or the indemnified parties reasonably conclude that there is a conflict of interest that would prevent counsel for the Nonprofit Entity from adequately representing both the Nonprofit Entity and the indemnified parties. The Nonprofit Entity shall not be liable for any settlement without its consent.

(c) The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, attorneys, accountants, financial advisors and employees of the Board and the Public Entity. That indemnification is intended to and shall be enforceable by the Board and the Public Entity to the full extent permitted by law.

(d) The Public Entity releases the Board from, and agrees that the Board shall not be liable for, any liabilities, losses, damages (including attorneys' fees), causes of action, suits, claims, costs and expenses, demands and judgments of any nature on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquiring, constructing, demolishing, renovating, improving and operation of the Project; (ii) any breach or default on the part of the Nonprofit Entity in the performance of any covenant or agreement of the Nonprofit Entity under this Agreement or any related document, or arising from any act or failure to act by the Nonprofit Entity, or any of its agents, contractors, servants, employees or licensees; (iii) violation of any law, ordinance or regulation affecting the ownership, occupancy or use of the Project; (iv) any loss suffered by any Donor as a result of the inability of the Donor to use any Tax Credit issued by the Board, other than as a result of the failure of the Board to issue such Tax Credit upon receipt by the Board of the necessary information, (v) any loss resulting from any environmental violation at the Project, and

(vi) any claim or action or proceeding with respect to the matters set forth in subsections (i), (ii), (iii), (iv) and (v) above brought thereon.

Section 6.8. Further Assurances and Corrective Instruments. The Board, the Public Entity and the Nonprofit Entity from time to time will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project and for carrying out the intention or facilitating the performance of this Agreement.

Section 6.9. Severability. If any provision of this Agreement shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever.

Section 6.10. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.11. Electronic Storage of Documents. The Board, the Public Entity and the Nonprofit Entity agree that the transaction described herein may be conducted and related documents may be stored by electronic means.

Section 6.12. Governing Law. This Agreement shall be governed exclusively by and be construed in accordance with the applicable laws of the State of Missouri.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be signed in its respective name and behalf and its official seal to be hereunto affixed and attested by its duly authorized officers, all as of the date first above written.

MISSOURI DEVELOPMENT FINANCE BOARD

By:_____
Name: Robert V. Miserez
Title: Executive Director

CITY OF JOPLIN, MISSOURI

By:_____
Name: Troy Bolander
Title: Director of Planning, Development & Neighborhood

MAIN STREET JOPLIN D/B/A DOWNTOWN JOPLIN ALLIANCE

By:_____
Name: Lori Haun
Title: Executive Director

EXHIBIT A

DESCRIPTION OF THE PROJECT

The Project will consist of renovating the existing Empire District Electric Company building into a four-season market place, entrepreneurial center, and destination anchor for the downtown Joplin area.

The Project is more specifically described in the Application.

EXHIBIT B

APPLICATION TO THE BOARD

EXHIBIT C

FORM OF DISBURSEMENT REQUEST

Disbursement Request No. ____

To: Missouri Development Finance Board
Governor Office Building
200 Madison Street, Suite 1000
Jefferson City, MO 65101
Attention: Finance Programs Manager
Fax No. (573) 526-4418

Re: City of Joplin, Missouri – Main Street Joplin D/B/A Downtown Joplin Alliance – Disbursement Request from the Board Project Account

You are hereby requested pursuant to **Section 4.2** of the Tax Credit Agreement dated as of _____, 2018 (the "Agreement"), to electronically transfer or issue a check to the City of Joplin, Missouri (the "Public Entity") for transfer without recourse to Main Street Joplin D/B/A Downtown Joplin Alliance (the "Nonprofit Entity") to permit it to issue checks to or otherwise pay the following named payee to provide for the payment or reimbursement of the following Project Costs (as defined in the Agreement): *[Note: The Public Entity must provide wire instructions to the Board to complete this transfer].*

Payee/Address/Tax ID No.	Amount	Description of Project Costs

Wire Instructions:

Bank:
Bank Address:
Routing & Transit Number:
Account Number:
Account Name:
Reference Information:
Wire contact information:

The undersigned hereby states and certifies that:

1. Each item listed above is a proper Project Cost (as defined in the Agreement). Attached hereto are invoices, statements, bills or other documents evidencing the fact that such payment is due.

MISSOURI DEVELOPMENT FINANCE BOARD

TAX CREDIT FOR CONTRIBUTION PROGRAM APPLICATION

The undersigned Applicant hereby submits this Application and requests the Missouri Development Finance Board (the "Board") accept a Contribution, and, to the extent described herein, apply the proceeds of such Contribution for the purpose of financing the Project described below (the "Project") pursuant to the Board's Tax Credit for Contribution Program.

The undersigned has read the Board's Tax Credit for Contribution Program Description and Guidelines.

Date: 11-20-17

Total Estimated Project Budget/Cost: $ 4,135,000
Total Amount of Proposed Contribution: $ 1,000,000
Total Tax Credit Amount (50% of Contribution): $ 500,000

Name: City of Joplin
Address: 602 S Main
City Joplin County: Jasper Zip Code: 64801
Contact: Troy Bolander Telephone: 624-0820 EXT 510
Title: Director of Planning, Development & Neighborhood Fax:
E-mail: TBolande@joplinmo.org

A. THE APPLICANT

1. Organization:

What type of governmental entity is the Applicant?
City

2. Legal or In-House Counsel to the Applicant:

Firm Name: IN HOUSE
Address: 602 S MAIN
City JOPLIN State: MO Zip Code: 64801
Contact: Peter Edwards Telephone: 624-0820 EXT 225
Title: CITY ATTORNEY Fax:
E-mail: pedwards@joplinmo.org

3. What is the total population of the Applicant? 51,000

4. In which state legislative District(s) is the Project located:

House: 127 Senate: 32
In which U.S. Congressional District: 7

5. Taxpayer Identification Number: 43-1561015 (DOWNTOWN JOPLIN ALLIANCE)

6. Facility's NAICS* Number: 44529 (OTHER SPECIALTY FOOD STORE)

(Use the NAICS number for the facility(s) to be constructed or improved with the contribution.)

*NAICS — North American Industry Classification System. The Federal Office of Management and Budget (OMB) adopted the NAICS as the industry classification system used by the statistical agencies of the United States. NAICS replaces the 1987 Standard Industrial Classification (SIC). The NAICS is used for classifying business establishments to assist with gathering data related to measuring productivity, unit labor costs, and the capital intensity of production, employment and other information. Missouri businesses are assigned a NAICS when the company files a "Report to Determine Liability Status" with the Missouri Department of Labor and Industrial Relations, Division of Employment Security to determine Unemployment Tax Liability. Normally, a general business employer becomes liable for the tax and responsible for providing unemployment insurance for its workers when it:

- Pays $1,500 in wages (cash and in-kind) in a calendar quarter, or
- Has an employee in some portion of a day in each of 20 different weeks, or
- Becomes liable under the Federal Unemployment Tax Act (FUTA) and employs a worker in Missouri, or
- Acquires and continues without interruption substantially all the business of a liable employer.

B. THE PROJECT

1. Project Description:

Type of Project:

- ☐ Construction of new infrastructure
- ☐ Acquisition of real estate
- ☑ Construction of new facilities
- ☐ Acquisition of existing facilities
- ☑ Additions or improvements to existing facilities
- ☐ Acquisition of equipment

Business Address/Location of Project Site:

931 E 4TH STREET	JOPLIN	JASPER
(Street)	(City)	(County)

Legal Description of Property:

Taylor subdivision lot 1, East Joplin 2nd lots 1 to 6 block 63 and misc TR 88, Taylor Subdivision Lots 3 and 4, East Joplin 2nd Lots 1 to 6 block 64 and misc lots 85, 86, 87.

What is the expected date of commencement of construction of the Project?

Date: March 2018

What is the date the Project is expected to commence operations?

Date: April 2018; 2020 phase 2

2. Project Costs:

On the following table, state the costs reasonably necessary for the acquisition of the site and/or construction of the proposed Project together with any machinery and equipment in connection therewith, including any utilities hook-up, access roads, or appurtenant structures.

Description of Estimated Project Costs		Non-Contribution Amount	Cost Financed With Contribution Proceeds
A.	Acquisition of Land	$ 430,000	$
	Acquisition of Existing Buildings	$ 1,270,000	$
B.	Infrastructure Costs:		
	1. Filling, grading and provision of drainage	$	$
	2. Storm water retention	$	$
	3. Installation and extension of utilities (offsite):	$	$
	a. water	$	$
	b. sewer	$	$
	c. sewage treatment	$	$
	d. gas	$	$
	e. electricity	$	$
	f. communications and similar facilities	$	$
	4. Installation and extension of utilities (onsite):	$	$
	a. water	$	$
	b. sewer	$	$
	c. sewage treatment	$	$
	d. gas	$	$
	e. electricity	$	$
	f. communications and similar facilities	$	$
	5. Construction, Extension or Improvement of Roads and/or Rail Lines	$	$
	6. Extension of sidewalks and curbing	$	$
	7. Elimination of Blight (please describe)	$	$
	8. Other (please describe)	$	$
C.	Facility Construction Costs (exclude inventory and working capital):		
	1. Architectural and Engineering	$	$ 225,000
	2. Site Preparation	$	$ 420,000
	3. Materials	$	$
	4. Labor	$	$
	5. Construction Contracts	$	$
	6. Utilities Connection	$	$ 20,000
	7. Paving and Landscaping	$	$ 185,000
D.	Renovation Costs	$	$ 1,485,000
E.	Machinery and Equipment	$	$
F.	Furniture and Fixtures	$	$
G.	Interest During Construction From _____ To _____	$	$
H.	Accounting, Legal, Miscellaneous	$	$
I.	Contingency	$	$ 100,000
	TOTAL PROJECT COSTS	$ 1,700,000	$ 2,435,000

Source of Funds:

State amount and sources of financing for all of the Project costs listed above.

Sources	Amount	
Contribution Proceeds	$ 1,000,000	leveraged w/ MDFB building value
Applicant's Funds (Describe Sources)	$ 1,700,000	
Federal Funds (Describe Sources)	$	
State Funds (Describe Sources)	$ 42,000	Specialty Crop Block Grant
Private Funds (non-Contributions)	$ 1,218,000	Local contributions
Other (Describe Sources)	$ 175,000	Walton Foundation, Mabee Foundation, Coover Foundation, other
TOTAL	$ 4,135,000	

Provide a detailed description for all State, Federal, Private or Other funding sources listed above. Include agency and program name, respective amounts if more than one source is involved on the same line, and a copy of the funding commitment or approval setting forth the terms of funding. If approval has not been received, provide an explanation of where the application or request is in the review process, and the expected date of approval. The ability to demonstrate a high level of certainty in obtaining all funding identified to complete the project as presented is a factor the Board considers.

Applicant funds are property (931 E 4th) owned by Downtown Joplin Alliance. Building and grounds donated December 2016 by Empire District Electric.

State Funds are Specialty Crops Grant via Department of Agriculture. Paperwork is not finalized yet.

Private funds will be local businesses and individual donations.
Other are foundation and grants we are in process of applying for including Mabee Foundation, Bramledge Foundation, Coover Foundation.

3. Certified Minority (MBE) and Women-Owned Business Enterprise (WBE) Participation

The Board encourages the involvement of minority and women-owned businesses as certified by either the Missouri Office of Administration (OA) for state agency applications, or the municipality submitting the application for local projects. If the application is from a local government, please attach a copy of the Applicant's MBE/WBE Policy and Procedures pertaining to this subject, or the link to the local government's web site where this information can be obtained. If the Applicant has policies and procedures in place, adherence to these policies and procedures will be a stipulation of the use of Contributions. If policies are not in place, please denote same and note that you will be required to contact OA to develop a plan to address this matter. The Office of Administration list of certified businesses by region can be found at http://oeo.mo.gov/ for those communities that do not maintain their own certification program.

Please estimate the number of each type business the Applicant and/or Principal User expects to utilize in the construction and equipping of the Project.

	No. of Firms	Amount
Minority Business Enterprise (MBE)	_____	$ _____
Women Business Enterprise (WBE)	_____	$ _____

Please note that the MDFB will require the Applicant, or Principal User if different from the Applicant, to submit a written report upon the completion of the Project providing the number of firms used, dollar amount of contracted value, and brief description of the type work or services contacted for each category above.

4. Ownership:

Present legal owner of Project site:

Main Street Joplin DBA Downtown Joplin Alliance

If presently owned by Applicant, indicate date of purchase, reason for purchase, and current use of site:

Is there a relationship legally or by virtue of common control between either the current Project user or owner or the proposed Project owner and user or seller of the Project:

☐ Yes ☑ No If yes, please give details.

5. Employment:

New Full-Time Jobs	2	Average Wage	$40,000
Part-Time Jobs	2	Average Wage	25,000
Temporary Jobs	_____	Average Wage	_____

Jobs during Construction _____

Average Wage _____

Estimated length of Construction period _____

C. FINANCIAL INFORMATION

1. Financial Statements:

Attach audited financial statements for at least the last three (3) fiscal years, including the most recent interim statement (not more than 90 days old).

2. Financial Difficulties:

Has the Applicant, or any corporation formed by or on behalf of the Applicant, ever defaulted on its debt obligations, been involved in bankruptcy, creditor's rights, or receivership proceedings, or been involved in criminal proceedings bearing on the handling of financial matters?

☐ Yes ☑ No If yes, please give details.

3. Litigation:

Is the Applicant presently involved in any litigation which could have a material effect on its financial solvency?

☐ Yes ☑ No If yes, please give details.

4. Please list the Applicant's general fund and other key fund surpluses (or deficits) for the last four years.

Year	General Fund ( ) for deficits	_____ Fund ( ) for deficits	_____ Fund ( ) for deficits
N.A.			
N.A.			
N.A.			
N.A.			

5. Has the Applicant ever defaulted on any obligation or failed to appropriate for any lease or any other annual appropriation obligation during the last 20 years?

☐ Yes ☑ No If yes, please give details.

D. PROJECT REVENUES

Attach a cost benefit analysis showing the total tax revenues generated that will be collected by the local governmental jurisdictions and the state as a result of the Project, and the cost of all local and state governmental assistance provided to the Project. Revenues and costs should be identified by each recipient or payee (private and governmental). Submission of a cost benefit analysis for Small Cities category and social services-focused projects may be waived at the discretion of the Board.

E. IDENTIFICATION OF CONTRIBUTORS

Has the Applicant identified who the contributors would be?

☐ Yes ☑ No

If Yes, please list below or attach a list of names of potential contributors.

If No, please explain why the Applicant believes such Contributions are likely to be obtained.

NAP credits were widely used in Joplin after the tornado; same contributors will be approached.

Provide a timeline of fundraising activities. Include when you expect the first contribution to be made and when you expect to have the fundraising for this project complete. Please be as specific as possible.

November 2017 Fundraising has just begun.
We anticipate to actively raise capital funds for 24 months. Capital gifts will be paid out over 3 years, so all funds should be received by end of 2022.

F. USE OF THE PROJECT

If the Project will be used for (or will substantially benefit) an entity in addition to the Applicant, please complete Exhibit C for such user of beneficiary.

G. CERTIFICATION OF APPLICANT

The undersigned hereby represents and certifies that, to the best knowledge and belief of the undersigned, this Application contains no information or data, contained herein or in the exhibits or attachments, that is false or incorrect.

Dated this 12TH day of December, 2017

SIGNATURE: _____

NAME: Samuel L Anselm

TITLE: City Manager

Certification

- I certify that I am an authorized representative of the applicant and as such am authorized to make the statement of affirmation contained herein.
- I certify that the applicant does NOT employ illegal aliens and that the applicant has complied with federal law (8 U.S.C. § 1324a) requiring the examination of an appropriate document or documents to verify that an individual is not an unauthorized alien.
- I understand that if the applicant is found to have employed an illegal alien in Missouri and did not for that employee examine the document(s) required by federal law, that the applicant shall be ineligible for any state-administered or subsidized tax credit, tax abatement or loan for a period of five years following any such finding.
- I attest that I have read and understand the Missouri Development Finance Board Tax Credit for Contribution Program guidelines, specifically as it relates to the Tax Credit Accountability Act of 2004 (SB 1099).
- I hereby agree to allow representatives of the Department and Board access to the property and applicable records as may be necessary for the administration of this Program.

Program Assessment and Administrative Fees are due upon execution of a Tax Credit Agreement in an amount equal to 4% of the amount of all authorized Contributions.

STATE OF MISSOURI

(SS)

COUNTY/CITY OF Joplin

On this 12th day of December, 2017, before me, Lindsay Dunn, a Notary Public in and for said state, personally appeared Samuel L Anselm, known to me to be the person who executed the Certification and acknowledged and states on his/her oath to me that he/she executed the same for the purposes therein stated.

_____ Notary Public

(SEAL)

LINDSAY J. DUNN
NOTARY PUBLIC
NOTARY SEAL
#12380334
JASPER COUNTY
STATE OF MISSOURI
MY COMMISSION EXPIRES 6-29-2020

My commission expires 6-29-2020

EXHIBIT C

Project Narratives

Please address each of the following statements. (Provide separate attachments as necessary.)

1. Provide a description of the project, including land, buildings, improvements, machinery and equipment to be acquired or constructed, and the principal use of the facilities once complete.

   Please see attached.

2. Describe the public policy objective(s) that will be supported by the Project.

3. Describe and quantify the project's primary beneficiaries or targeted audience/clientele served.

4. Explain the economic impact this project will have on the State of Missouri and the community in which it is located.

5. Explain the non-economic benefits this project will have on the community and state.

6. Describe the local Governmental financial support for the project, both direct and indirect.

7. How did you determine the amount of local city/county cash or local non-profit cash to be dedicated to the project?

8. Describe the fundraising history of the organization and how they intend to be successful in raising funds for this project using tax credits.

9. Explain how this project will be financially self-sustainable upon completion.

EXHIBIT D

Project User Beneficiary Information

PROJECT USER BENEFICIARY INFORMATION

(Only to be completed when the Project will be used by or will benefit a non-profit or for profit business or other private person.)

A. THE PROJECT USER OR BENEFICIARY

Name: Main Street Joplin DBA Downtown Joplin Alliance

Address: 931 E 4th

City Joplin State: MO Zip Code: 64801

Contact: Lori Haun Telephone: 417-529-3888

Title: Executive Director Fax: _____

E-mail: lori@downtownjoplin.com

1. Business Organization:

- ☐ Corporation
  - ☐ C-Corporation
  - ☐ S-Corporation
  - ☐ LLC
- ☐ Partnership (☐ General ☐ Limited)
- ☐ Sole Proprietorship

- ☐ Publicly Held
- ☐ Privately Held

Is the Project User or the Beneficiary a subsidiary or affiliated directly with any other organization?

☐ Yes ☑ No

If so, indicate relationship and name of related organization.

Is the Project User or the Beneficiary a 501(c)(3) corporation? If so, provide Proof of Status as a Not-for-Profit organization.

☑ Yes ☐ No

2. Officers and Directors

Title	Name	Address of Residence
President	See Attached	
Vice President		
Secretary		
Treasurer		
Directors		

3. Principal Stockholders, Members or Partners:

Name	%	City/State
NA		

4. Legal Counsel to the Project User or the Beneficiary:

Name: Charles Genisio
Address: 702 S Pearl Ave
City, State, ZIP: Joplin MO 64801
Telephone: 417-623-1020
Fax:
E-mail:

5. Project User or the Beneficiary's Principal Banker:

Name: Arvest Bank
Address: 701 S MAIN
City, State, ZIP: JOPLIN, MO 64801
Telephone: 417-627-8000
Fax:
E-mail: Karma Wright <kwright@arvest.com>

6. Project User or the Beneficiary's Current Operations:

Briefly, describe the Project User's or the Beneficiary's operations, including description of existing products, facilities, services and in general, its method of operations, customers, clients and suppliers.

DOWNTOWN JOPLIN ALLIANCE is a 501c3. We guide community-based revitalization efforts focusing on Downtown Joplin, following the National/State "Main Street" model. 2017 was the 10th season of Joplin's signature event, Third Thursday. This 8 times per year event brings 5000-8000 people downtown each event. We also host other events throughout the year. We are the go-to resource for business or property downtown and the specialists on historic preservation. See enclosed brochure.

7. Financial Statements:

Attach audited financial statements for at least the last three (3) fiscal years, including the most recent interim statement (not more than 90 days old).

8. Relationship to the Project:

Describe in detail the Project User's or the Beneficiary's relationship to the Project described in the Application to which this Exhibit is attached.

Downtown Joplin Alliance will be the owner and managing entity for the Empire Market.

9. Litigation:

Is the Project User presently involved in any litigation which could have a material effect on its financial solvency?

☐ Yes ☑ No If yes, please give details.

B. CERTIFICATION OF PROJECT USER OR THE BENEFICIARY

The undersigned hereby represents and certifies that, to the best knowledge and belief of the undersigned, this Exhibit and the Application to which it relates contains no information or data contained herein or in the exhibits or attachments, is true and correct.

Dated this 6 day of December, 2017

SIGNATURE: Lori Haun

NAME: LORI HAUN

TITLE: EXECUTIVE DIRECTOR

Certification

- I certify that I am an authorized representative of the project user or beneficiary and as such am authorized to make the statement of affirmation contained herein.
- I certify that the project user or beneficiary does NOT employ illegal aliens and that the applicant has complied with federal law (8 U.S.C. § 1324a) requiring the examination of an appropriate document or documents to verify that an individual is not an unauthorized alien.
- I understand that if the project user or beneficiary is found to have employed an illegal alien in Missouri and did not, for that employee examine the document(s) required by federal law, that the project user or beneficiary shall be ineligible for any state-administered or subsidized tax credit, tax abatement or loan for a period of five years following any such finding.
- I attest that I have read and understand the Missouri Development Finance Board Tax Credit for Contribution Program guidelines, specifically as it relates to the Tax Credit Accountability Act of 2004 (SB 1099).
- I hereby agree to allow representatives of the Department and Board access to the property and applicable records as may be necessary for the administration of this Program.

MDFB Tax Credit for Contribution Program
Exhibit C

Project Narratives

1. Description

Our Vision: The Empire Market will be an economic and community centerpiece that strengthens and engages the entire city. A vibrant four-season market where you can find the best of what this area has to offer; produce, meats, cheeses, crafters, artisans and any number of other vendors, set up in a collection of permanent and rotating stalls. In conjunction with that, we will become a basecamp for entrepreneurs and makers of all types. This will be the place to find affordable workspaces, meaningful resources, and a diverse community of passionate individuals who are focused on creating long-lasting, impactful businesses for Joplin. This is truly a game changer for the next generation of entrepreneurs and creatives in and around Joplin.

Our plan is to kick off phase one in April of 2018 with a Saturday farmer's market. There will be 20-30 vendors initially. Teaching gardens and community gardens will be installed as part of phase one as well. By 2022, with successful fundraising, remodeling and upgrades of the facility will allow for multi-day market each week, classes in the teaching kitchen, use of commercial kitchen by market vendors and community businesses to add to their product line. We will be growing vendors during this time to a goal of 60 year round vendors and up to 150 in peak months/events.

What we have: 931 E 4th Street, Joplin
In December of 2016, the Empire District Electric Company donated to DJA over 33,000sf of buildings on 3.34 acres in the center of Joplin. The primary structure, built in 1907, is located at 4th and Railroad. Downtown Joplin Alliance plans to repurpose this historic building and its attached 11,000 sf garage as the new four-season Joplin Empire Market. The property and structures are valued at $1.7 million. This generous donation is the foundation of the Market Plan.

See enclosed booklet for additional details on the market and grounds plan.

2. Objectives

The 2011 Joplin tornado was a catastrophic event that left many lower income families at a complete loss, and the area is still recovering economically. This project aims at rebuilding a healthy food system for all in the Joplin area and beyond through educating lower income residents that are within a 10 minutes drive time of the market. Joplin is a community with over 50,000 residents, where over 20% are below the poverty level, more than the state's average. There are also 21.3% of children that are below the poverty line in the city, therefore the consumer nutritional education cultivated by this proposal will focus on adults and children.
In community input sessions following the tornado, both community gardens and farmers market were identified as key projects by the Citizens' Advisory Recovery Team.

The project will be key in bringing healthy foods to food desert neighborhoods of Downtown and East Town, as well as increasing access for whole foods for the entire city. Classes and teaching gardens with educate on growing and preparing all sorts of healthy foods. In addition, the Market will increase business opportunities and sales for area farmers and ranchers as well as artisans and makers.

Finally, the Empire Market is located in what was historically some of the oldest part of Joplin. The neighborhood has long suffered decline and neglect, with many historic building being demolished and little commerce or activity to encourage attention to this area. This will create a thriving center for East Town neighborhood and connect it to Downtown. This historic building, once restored, will be a community destination and will trigger growth and redevelopment in the surrounding area.

3. Project Beneficiaries

The benefits: This destination anchor will draw shoppers from outside the metropolitan area producing increased sales tax revenue while providing local opportunities for employment and small businesses both in Joplin as well as surrounding agricultural areas. For every $100 spent at a farmers market, $62 stays in the local economy, and $99 stays in state.(1)

Key components:

- Connect local producers to shoppers with farmers market
- Community gardens
- Classrooms
- Teaching gardens
- Instructional kitchens
- Entrepreneurial hub
- Arts & Cultural center

Current Market: The Empire Market will increase access to healthy local foods to Joplin as a whole and the East Town and Downtown neighborhoods specifically. Today, the nearest food access of any type for either of these neighborhoods are chain stores in other neighborhoods. For locally produced foods and fresh vegetables, it's a drive of several miles to the other side of town or to neighboring communities. There has been consistent interest in Joplin having a quality ongoing fresh food market.

The general population of southwest Missouri will learn about a variety of aspects of local specialty crops, allowing them to significantly improve their food options and diets and positively impact their health. This project will enable lower income families new access to high-quality specialty crops in the Joplin area. The immediate neighborhood the market will be located in is a food desert with no food access currently.

4. Economic Impact

1. Farmers of southern Missouri will become more financially stable through increased sales through a regional farmers market. In addition, the market will work with MU Extension and Lincoln University to develop socially disadvantaged and beginning farmers to sell crops at the market.
2. Farmers in the target areas will become more viable through increased sales of specialty crops. Increased customers and sales will significantly improve their prospects for long-term service to their communities.

The proposed market will reach specialty crop producers in 110 counties and the data gathered through the U.S. Census and Google Earth shows the tremendous reach the project will have. According to 2010 Census data we expect this market to reach a three state region.
Possible Market Impact

- Counties Included (150 mile radius): 110
- Number of households in counties: 1,928,651
- Population in 2010 in counties: 5,782,345
- Population Under 18 years of age: 2,241,328

This project has the capabilities to assist socially disadvantaged and beginning farmers in 110 counties in the region through providing an additional marketplace to sell crops direct to the consumer and build a successful small farm business. The market will work with MU Extension and Lincoln University to extend vendor information to these farmers and provide a conducive location for farmers to sell specialty crops direct to the consumer.

Gross sales of over 1 million are anticipated in the first year. This will contribute to both local and state sales tax revenues.

5. Other Benefits

Why It Matters: Markets are anchored in community, connect people with each other and valued commodities, and create opportunities for business. Farmers Markets are an important part of a strong local food system and local economy. Through this project, we will improve food access in underserved communities through education.

This project will impact issues of local and national concern, regarding health care and personal cost of poor health, plus enable lower income families new access to high-quality specialty crops in the Joplin area. The increasing interest of high-quality fresh produce in the culinary arts makes this project extremely timely, especially with a growing need for local produce by many of the downtown Joplin restaurants.

Additionally, the market will target a regional base of specialty crop producers including beginning farmers and socially disadvantaged farmers, therefore this project has the potential to impact specialty crop farmers of Missouri, Oklahoma, Kansas and Arkansas which according to USDA specialty crop studies account for over 3,000 potential farmers.

6. Local Government Financial Support

City of Joplin is investing in significant stormwater drainage and sidewalks in the immediate vicinity of the proposed market of over $610,000 by March 2018. In addition, the city has recently provided local match dollars of $9600 for a People Energizing Places Grant through Missouri Main Street. This grant is for a two year mentoring and program building for the Downtown Joplin Alliance. This will increase the organization capacity and effectiveness which will be key as the organization grows with the Market project.

7. Amount of city and organization dollars

This was determined by the project scope. On the property renovation, we will be leveraging local in-kind and trade dollars where possible to maximize our expenditures. We have figured our costs with expenses estimates from local architect and construction firms.

Storm water dollars are earmarked for projects like the re-working of the adjacent storm water system and sidewalks. Again, the amount was determined by project scope.

8. DJA Fundraising History

Downtown Joplin Alliance is a long-time 501c3 in Joplin. Our original articles of incorporation date to 1990. We host Joplin's signature Third Thursday event, which is beginning its 11th season in 2018. This event is held 8 months of the year on Main Street and brings 5000-8000 people out for each event. We have been self-sustaining for the last several years through donations, sponsorships, and other fundraising. This will be our first capital campaign, but have resources within the community including Community Foundation of the Ozarks to help guide us through the process. We also have several community members serving as guidance on this fundraising project who have been key in past significant fundraising projects in the Joplin area.

9. Management and Sustainability

Organizers of the market have already begun recruitment of vendors and anticipate 30 vendors by the start of the Phase 1 market in April 2018. The market will increase the consumption and awareness of specialty crops grown in the Ozarks and expand current market share to specialty crop vendors in a three state basis. The market plans to use strategic promotions to prompt consumers to shop local for distinctive specialty crops grown in the region and to construct educational gardens at the market to use for garden tours on market days to create customer awareness for specialty crops and increase market share for producers.

We have just received $42,000 through the 2017 Specialty Crop Block Grant from the Missouri Department of Agriculture for the promotion and development of the Empire Market through specialty crops specifically.

The market, once established, will be a self-sustaining endeavor. As you can see from below projections, income will exceed general expenses even in 2018. We anticipate the market being a self-managing entity by 2020 under the umbrella of Downtown Joplin Alliance. Income

from the endeavor above and beyond expenses will serve to further other market and education projects as well as downtown and general community improvement.

DJA Executive Director, Lori Haun, will be initial management. She has over 20 years experience in project management, customer service, and community development. Lori is a long-time resident of Joplin. She is a developer of historic downtown properties and has over 14 years experience as well as a lighting designer and account manager for The Better Living Store. Lori also serves on the Historic Preservation Commission for the City of Joplin and Connect to Culture, a local arts board. In redeveloping historic properties, Lori has managed the record and accounting processes for the renovation itself as well as applying for and receiving state and federal Historic Tax Credits.

In addition, Ivy Hagedorn will serve as the market manager for the market and currently serves as Vice President of the Downtown Joplin Alliance Board. She has over 12 of management experience in a dual foodservice and retail environment, where her responsibilities included daily direct management of a staff of over thirty employees, with indirect support of a staff totaling nearly 160. After growing up in the Joplin area and graduating from the local university, Ms. Hagedorn moved to Kansas City and Arizona for a time, only to repatriate back to Joplin five years ago. She started her own jewelry business, Tarnished Charm, and has owned and operated that for the last four years. During this time, she has traveled to and participated in many different sizes and types of markets. For the last two years, she has been one of the volunteer staff of the Downtown Joplin Maker's Market and monthly Third Thursday events. Responsibilities there have included vendor solicitation, marketing, layout planning, and day of operation logistics.

EMPIRE MARKET PROFORMA 2018-2022

Income	2018	2019	2020	2021	2022
Vendors	$15,300	$21,000	$35,000	$40,000	$40,000
Event space rental	$8,000	$8,000	$12,000	$16,000	$16,000
Office rental	$34,000	$21,000	$42,000	$42,000	$42,000
Property rental (901 E 4th)	$14,400	$18,000	$22,000	$22000	$22000
Shared space fees	0	$9600	$12,500	$16200	$16200
Sponsorships	$12,000	$26,000	$34,000	$40,000	$44,000
TOTAL ANNUAL INCOME	$83,700	$103,600	$157,500	$176,200	$180,200
Expenses					
Utilities, Insurance	$29,500	$32,500	$35,900	$38,350	$38,350
Maintenance	$4,000	$5,000	$5,000	$6,000	$6,000
Staff	$40,000	$40,000	$60,000	$65,000	$65,000

Marketing	$10,000	$12,000	$15,000	$15,000	$15,000
TOTAL ANNUAL EXPENSES	$83,500	$89,500	$115,900	$124,350	$124,350

RESOLUTION NO. 2017-011

A RESOLUTION authorizing the City of Joplin to apply to the Missouri Development Finance Board (MDFB) for financing through the State Tax Credit for Contribution Program in support of the Empire Market Building Redevelopment Project.

WHEREAS, THE City of Joplin is expressing its support for the Empire Market Redevelopment Project located at 931 E. 4th St.; and

WHEREAS, THE Downtown Joplin Alliance, the owner of the Empire Market Building, has requested tax credits to help with the rehabilitation of the building and grounds; and

WHEREAS, The Empire Market Redevelopment Project is eligible for financing through the State Tax Credit for Contribution Program administered by the MDFB;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Joplin, that the Council authorized the City Manager of the City of Joplin, or his designee, to submit an application to the MDFB for financing through the Tax Credit for Contribution Program in support of the project through the use of tax credits.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 4th day of December 2017.

Michael L. Seibert, Mayor

ATTEST:

Barbara J. Gollhofer, Assistant City Clerk

APPROVED AS TO FORM:

Peter C. Edwards, City Attorney

2017 Board Roster

Downtown Joplin Alliance

Name	Company	Email	Phone	Title	Term	Address
Sam Anselm	City of Joplin	sam.anselm@gmail.com	417-891-0132	Ex-officio	NA	602 S Main, Joplin, MO 64801
John Coleman	RSVPaint	coleman@rsvpaint.com	417-225-8311		Jan 2014-Dec 2017	217 W 3rd St, Joplin, MO 64801
Chad Evans	Arvest Bank	cevans@arvest.com	417-437-7532		Dec 2015-Dec 2018	PO Box 450, Joplin, MO 64802
Ivy Hagedorn	Tarnished Charm	ivythagedorn@gmail.com	928-514-7713	Vice-President	Dec 2016-Dec 2019	3401 S Moffet St, Joplin, MO 64804
Drew Hartley	Freeman Hospital	akhartley@freemanhealth.com	417-499-0380		Dec 2012-Dec 2018	2710 N Missouri, Joplin, MO 64801
Conrad Kelley	TAMKO	conrad.kelley@gmail.com	417-540-1325	Secretary	May 2017- Dec 2020	40 Garden Ln, Joplin, MO 64801
Miranda Lewis	Mercy Hospital	Miranda.lewis76@gmail.com	417-499-1842	Ex-officio	NA	100 Mercy Way, Joplin, MO 64804
Jeff Neal	Neal Group Construction	jneal@nealgroupconstruction.com	417-849-1605	President	March 2016-Dec 2020	307 Metalwood Circle, Carl Junction, MO 64834
Jessica Struckhoff	Paragon Architects	struckhoff@paragonarchitecture.com	417-350-5953	Treasurer	March 2015-Dec 2018	1310 S Main St, Joplin, MO 64801
Chelsea Conley	MSSU	conley-c@mssu.edu	417-438-1516		July 2017-Dec 2021	3950 Newman Rd, Joplin, MO 64801

August 2017

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
P O BOX A-3290 DPN 22-2
CHICAGO, IL 60690

Date: MAR 16 1994

MAIN STREET JOPLIN
P O BOX 486
JOPLIN, MO 64802

Employer Identification Number:
43-1561015
Case Number:
364055057
Contact Person:
C. FUNCHES
Contact Telephone Number:
(312) 886-[redacted]6532
Our Letter Dated:
July 28, 1989
Addendum Applies:
no

Dear Applicant:

This modifies our letter of the above date in which we stated that you would be treated as an organization that is not a private foundation until the expiration of your advance ruling period.

Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect. Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(2).

Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(2) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(2) organization.

If we have indicated in the heading of this letter that an addendum applies, the addendum enclosed is an integral part of this letter.

Because this letter could help resolve any questions about your private foundation status, please keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Marilyn M. Day

Marilyn M. Day
District Director

Letter 1050 (DO/CG)

STATE OF MISSOURI

ROY D. BLUNT
SECRETARY OF STATE

CORPORATION DIVISION

CERTIFICATE OF INCORPORATION

GENERAL NOT FOR PROFIT

WHEREAS, DUPLICATE ORIGINALS OF ARTICLES OF INCORPORATION OF

MAIN STREET JOPLIN

HAVE BEEN RECEIVED AND FILED IN THE OFFICE OF THE SECRETARY OF STATE, WHICH ARTICLES, IN ALL RESPECTS, COMPLY WITH THE REQUIREMENTS OF THE GENERAL NOT FOR PROFIT CORPORATION LAW;

NOW, THEREFORE, I, ROY D. BLUNT, SECRETARY OF STATE OF THE STATE OF MISSOURI, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY LAW, DO HEREBY CERTIFY AND DECLARE THIS ENTITY A BODY CORPORATE, DULY ORGANIZED THIS DATE AND THAT IT IS ENTITLED TO ALL RIGHTS AND PRIVILEGES GRANTED CORPORATIONS ORGANIZED UNDER THE GENERAL NOT FOR PROFIT CORPORATION LAW.

IN TESTIMONY WHEREOF, I HAVE SET MY HAND AND IMPRINTED THE GREAT SEAL OF THE STATE OF MISSOURI, ON THIS, THE 28TH DAY OF JULY, 1989.

Roy D. Blunt
Secretary of State

$10.00

DBA DOWNTOWN JOPLIN ALLIANCE
Balance Sheet
As of October 31, 2017

	Oct 31, 17
ASSETS	
Current Assets	
Checking/Savings	
10200 · Arvest Bank	18,486.14
Total Checking/Savings	18,486.14
Other Current Assets	
12600 · Prepaid Insurance	825.50
Total Other Current Assets	825.50
Total Current Assets	19,311.64
Fixed Assets	
14000 · Land	430,000.00
14500 · Empire Market	1,270,000.00
15000 · Furniture and Fixtures	1,817.98
15100 · Accum Depr - F & F	-875.12
Total Fixed Assets	1,700,942.86
Other Assets	
18700 · Security Deposits Asset	-3,012.50
Total Other Assets	-3,012.50
TOTAL ASSETS	**1,717,242.00**
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
20000 · Accounts Payable	12,543.89
Total Accounts Payable	12,543.89
Credit Cards	
21000 · Corporate Credit Card	104.04
Total Credit Cards	104.04
Other Current Liabilities	
24000 · Payroll Liabilities	923.64
Total Other Current Liabilities	923.64
Total Current Liabilities	13,571.57
Total Liabilities	13,571.57
Equity	
32000 · Retained Earnings	1,711,157.52
Net Income	-7,487.09
Total Equity	1,703,670.43
TOTAL LIABILITIES & EQUITY	**1,717,242.00**

2. These Project Costs have been incurred and are presently due and payable or have been paid by the Nonprofit Entity in connection with the Project and are eligible for payment or reimbursement in accordance with the requirements of the Agreement.

3. No item listed above has previously been included in any other Disbursement Request previously approved by the Board under the provisions of the Agreement.

4. All necessary permits and approvals required for the portion of the work on the Project for which this withdrawal is to be made have been issued and are in full force and effect.

5. [No material change in the Project Budget is necessary as a result of the payment of this request.] [As a result of this request we are hereby requesting that the Board approve a modification of the Project Budget as follows: _____ _____.]

Dated this _____ day of _____, 201_.

MAIN STREET JOPLIN D/B/A DOWNTOWN JOPLIN ALLIANCE

By:_____
Title:_____

Approved for Payment on _____ ___, 201__:

CITY OF JOPLIN, MISSOURI

By:_____
Title:_____

Approved for Payment on _____ ___, 201__:

MISSOURI DEVELOPMENT FINANCE BOARD

By:_____
Title:_____

EXHIBIT D

ADDITIONAL CONDITIONS PRECEDENT TO DISBURSEMENTS

Eligible costs include actual hard costs (costs of constructing, equipping and furnishing the Project), costs for material and labor, architectural and engineering costs, costs for appraisals, title insurance, and environmental assessments. Reimbursable costs must be properly documented by acceptable accounting practices.

EXHIBIT E

TAX CREDIT ACCOUNTABILITY ACT REPORTING FORM

ANNUAL COMPLIANCE REPORT

(pursuant to RSMo Section 135.805.2, as amended)

Reporting period Ended December 31, 20__

Organization Name:
Property use is: ☐ residential ☐ commercial/ industrial ☐ 501(c)(3) nonprofit ☐ governmental
Describe current use of project:
Projected or actual project cost:
Total labor costs:
Projected or actual date of Completion:
To the best of my knowledge, the information above and below are true and correct as of _____ __, 20__. Authorized Representative_____ Printed Name_____ Title_____

Return this form via e-mail or to the address below by JUNE 30, 20__:

Missouri Development Finance Board
P.O. Box 567
200 Madison St., Ste. 1000
Jefferson City, MO 65102
-or-
Fax No. (573) 526-4418

TAX CREDIT ACCOUNTABILITY ACT REPORTING FORM ATTACHMENT

BUSINESS/ORGANIZATION NAME:		
NUMBER OF JOBS CREATED AT PROJECT LOCATION EACH MONTH AS A RESULT OF THE ISSUED TAX CREDIT		
MONTHS	**FULL-TIME PERMANENT JOBS**	**PART-TIME PERMANENT JOBS**
JANUARY 20_ _		
FEBRUARY 20_ _		
MARCH 20_ _		
APRIL 20_ _		
MAY 20_ _		
JUNE 20_ _		
JULY 20_ _		
AUGUST 20_ _		
SEPTEMBER 20_ _		
OCTOBER 20_ _		
NOVEMBER 20_ _		
DECEMBER 20_ _		
TOTALS:		

EXHIBIT F

MBE/WBE REPORT

Missouri Development Finance Board
Governor Office Building
200 Madison Street, Suite 1000
Jefferson City, MO 65101
Telephone No. (573) 751-8479
Fax No. (573) 526-4418
E-mail: kimberly.martin.mdfb@ded.mo.gov

Re: City of Joplin, Missouri – Main Street Joplin D/B/A Downtown Joplin Alliance – MBE/WBE Participation Report

The undersigned hereby certifies pursuant to the Tax Credit Agreement dated as of _____ __, 2018, that the undersigned has utilized the following contractors in the construction of the project for the period beginning upon the construction of the project and ending on _____ __, 20__, the last day of the most recent fiscal quarter:

MBE or /WBE	Name of Vendor	Description of Work or Service/Dates of Work	Contract Amount

Signed this ___ day of _____, 20__.

MAIN STREET JOPLIN D/B/A DOWNTOWN JOPLIN ALLIANCE

By:_____
Name:_____
Title:_____

EXHIBIT G

FORM OF COMPLETION CERTIFICATE

Missouri Development Finance Board
Governor Office Building
200 Madison Street, Suite 1000
Jefferson City, MO 65101
Telephone No. (573) 751-8479
Fax No. (573) 526-4418
E-mail: kimberly.martin.mdfb@ded.mo.gov

Re: City of Joplin, Missouri – Main Street Joplin D/B/A Downtown Joplin Alliance – Notice of Final Completion

The undersigned hereby certifies pursuant to the Tax Credit Agreement dated as of _____ __, 2018 (the "Agreement"), that:

(a) The Project was completed on _____ __, 20__;

(b) The Project has been fully completed substantially in accordance with the Application, as modified by any changes permitted by the Agreement;

(c) The Nonprofit Entity commenced operations in the Project on _____ __, 20__.

(d) All costs of the Project have been fully paid for and no claim or claims exist against the Project out of which a lien based on furnishing labor or material exists or might ripen. [*Note*: There may be excerpted from the foregoing statement any claim or claims out of which a lien exists or might ripen in the event that the Nonprofit Entity intends to contest provided a brief description of the claim is provided to the Board.]

Signed this ___ day of _____, 20__.

MAIN STREET JOPLIN D/B/A DOWNTOWN JOPLIN ALLIANCE

By:_____
Name:_____
Title:_____

EXHIBIT H

MDFB POLICY REGARDING UTILIZATION OF MBE AND WBE BUSINESSES IN CONNECTION WITH THE TAX CREDIT FOR CONTRIBUTION PROGRAM

I. General Policy Statement.

It is the policy of the Board to encourage the participation of minority and women-owned businesses (MBE and WBE collectively, the "Targeted Businesses") for projects financed with contributions received by the Board pursuant to the Tax Credit for Contribution Program.

II. Legal Obligations.

In the event the Board approves an application to this program, each Applicant and the Project Beneficiary of a project financed with contributions shall be required to contractually commit to one of the following:

A. Applicants With Existing Targeted Business Policies.

Applicants with Targeted Business Policies that include requiring the development and implementation of a plan designed to solicit and encourage the use of MBE/WBE in capital projects funded or partially funded with public money shall be required to submit such policies to the Board after approval and prior to execution of the Tax Credit Agreement (the "TCA"). The TCA evidences the terms, conditions, and responsibilities of the parties. Applicant shall agree in the TCA to (1) follow their existing policies and procedures and to require the Project Beneficiary to follow the Applicant's existing policies and procedures, to include the development of a plan to solicit and encourage MBE/WBE participation, (2) notify the Board in writing of any changes to the existing policies, (3) provide copies of all reports required by the existing policies to the Board, and (4) provide a final report to the Board summarizing adherence to the plan and the utilization of Targeted Industries on a form provided by the Board.

B. Applicants Without Targeted Business Policies.

Applicants that do not have Targeted Business Policies that include requiring the development and implementation of a plan designed to solicit and encourage the use of MBE/WBE in capital projects funded or partially funded with public money shall have the following provisions included in the Tax Credit Agreement:

(a) The Applicant or the Project Beneficiary shall include in all contracts for the project the following statement: "The Applicant and the Project Beneficiary have agreed with the Board to encourage the participation of minority and women-owned businesses (MBE and WBE collectively, the "Targeted Businesses") for work completed in connection with the project. Neither the Applicant nor the Project Beneficiary will knowingly exclude any person from participation in bidding or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, national origin, or religion."

(b) The Applicant or the Project Beneficiary shall contact the Missouri Office of Equal Opportunity housed within the Office of Administration to discuss ways in which the Applicant and the Project Beneficiary can encourage participation of Targeted Businesses in the Project, and develop a written plan to solicit and encourage said participation. The Applicant or Project Beneficiary shall use its good faith efforts in achieving the goals of its plan.

(c) The Applicant or the Project Beneficiary shall review the list of approved Targeted Businesses maintained by the Office of Equal Opportunity to determine whether any of such businesses provide the relevant services within the trade area of the Applicant. If there are such businesses, the Applicant and the Project Beneficiary agree to send such businesses information concerning the work to be performed and to encourage the business to contact the Applicant or the Project Beneficiary to obtain additional information concerning the work.

(d) Upon completion of construction of the project, the Applicant or the Project Beneficiary shall provide a final report to the Board summarizing its adherence to the plan and the utilization of Targeted Industries on a form provided by the Board.

III. Additional Policy Objectives.

The forgoing policies are intended to accomplish the following Board objectives:

(a) Provide Targeted Businesses with equal opportunity to participate in work to be performed with the proceeds of contributions received by the Board pursuant to the Tax Credit for Contribution Program.

(b) Widen opportunities for participation by Targeted Businesses, to increase competition, and to reduce costs to the Applicant and the Project Beneficiary.

(c) Provide information or other opportunities to Targeted Businesses that may also be available to all other business enterprises.

(d) It is not the intent of these policies to require the Applicant or the Project Beneficiary to go beyond its trade area in order to utilize Targeted Businesses.

IV. Reporting.

Board staff will submit quarterly reports to the members of the Board containing the level of participation by Targeted Businesses in projects financed through the Tax Credit for Contribution Program.

V. Definitions.

As used herein the following definitions shall apply:

"MBE" means a business that is at least 51% owned and controlled by one or more minority persons. A racial minority is, for the purposes of the State of Missouri's MBE program, defined as individuals who are Black, American Indian, Hispanic, Asian American and other similar racial minority groups as per Missouri Revised Statutes Chapter 33 Section 33.750. Also included are Alaskan Natives, Pacific Islanders, and Aleuts.

"Targeted Businesses" mean businesses that are either an MBE or a WBE.

"WBE" means a business that is at least 51% owned and controlled by a woman.

Adopted April 17, 2012

COUNCIL BILL NO. 2019 – 261 ORDINANCE NO.

AN ORDINANCE authorizing the City of Joplin to enter into an agreement with the Missouri Development Finance Board and Main Street Joplin doing business as Downtown Joplin Alliance for financing through the State Tax Credit for Contribution Program in support of the Empire Market Building Redevelopment Project.

WHEREAS, The Downtown Joplin Alliance, the owner of the Empire Market Building, has requested tax credits to help with the rehabilitation of the building and grounds; and

WHEREAS, The City of Joplin approved a resolution of support for the Joplin Downtown Alliance to make an application to the Missouri Development Finance Board for tax credits through the State Tax Credit for Contribution Program.

WHEREAS, The Downtown Joplin Alliance application for tax credits for contribution was approved by the Missouri Development Finance Board to help with the rehabilitation of the building and grounds of the Empire Market Building which would aid farmers in southern Missouri in becoming more financially stable through increased sales through a regional farmers market and improve access to healthy foods in underserved communities and populations.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That an agreement between the City of Joplin, Missouri, the Missouri Development Finance Board and the Downtown Joplin Alliance is entered into that permits the Downtown Joplin Alliance to receive financing for the rehabilitation of the Empire Market Building and Grounds through the State Tax Credit for Contribution Program.

Section 2. That the City Manager of the City of Joplin, Missouri or his designee is hereby authorized and directed, upon recommendation and approval of the City Council, to execute said Agreement or Agreement in substantially similar form, by and on behalf of the City of Joplin, Missouri.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2019, by a _____ vote.

_____
Gary L. Shaw – Mayor

ATTEST:

_____
Barbara J. Gollhofer – City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney