COUNCIL AGENDA
Monday, June 17, 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**

4. **Finalization Of Consent Agenda**

5. **Reports And Communications**

   1. Capital Improvement And Public Safety Sales Tax Oversight Committee Semi-Annual Report

      Documents:

      CAP IMP REPORT TO COUNCIL JUNE 2019 (002).PDF

6. **Citizen Requests And Petitions**

7. **Public Hearings**

8. **Consent Agenda**

   1. June 3, 2019 City Council Informal Meeting Notes

      Documents:

      INF NOTES JUNE 3, 2019.PDF

   2. June 3, 2019 City Council Meeting Minutes

      Documents:

      JUNE 3, 2019. CC MINS DOCX.PDF

   3. COUNCIL BILL NO. 2019-263
      AN ORDINANCE approving 1506 and 1510 S. Pearl Avenue to include in District R-3 (Apartments District), Jasper County, Missouri.

      Documents:

      CB2019-263.PDF

   4. COUNCIL BILL NO. 2019-264
      AN ORDINANCE approving the location approximately 500 feet west of the property addressed as 2902 N. St. Louis Avenue to include in District R-2 (Two-Family Residential District), Jasper County, Missouri.

      Documents:

      CB2019-264.PDF

9. **Resolutions**

10. **Ordinances - Emergency**

1. COUNCIL BILL NO. 2019-130
AN ORDINANCE authorizing the acceptance of an agreement with Deborah Pearson & Co. Inc, in the not to exceed amount of Fifty One Thousand Four Hundred Eighty and No/100 Dollars ($51,480.00) for appraisal services for the 32nd Street Widening Project; and containing an emergency clause.

   Documents:

   SUMMARY SHEET CB 2019-130 PEARSON.PDF
   CONTRACT-32ND ST WIDENING 5-24-19.PDF
   CB 2019-130.PDF

2. COUNCIL BILL 2019-131
AN ORDINANCE approving the City of Joplin to enter into an agreement with Hunter Chase & Associates in the amount of One Million Forty-Five Thousand Nine Hundred Eighteen and 00/100 dollars ($1,045,918.00) for the construction of Surface Project 4009.

   Documents:

   CB2019-131 SURFACE 4009 SUMMARY SHEET.PDF
   CB2019-131 4009 AGREEMENT (CITY AND HUNTER CHASE).PDF
   CB2019-131 SURFACE 4009 MAP.PDF
   CB2019-131 SURFACE 4009 BID TAB.PDF
   CB2019-131 SURFACE 4009 COUNCIL ORDINANCE.PDF

3. COUNCIL BILL 2019-132
AN ORDINANCE authorizing the City of Joplin to enter into an agreement with Missouri Network Alliance, L.L.C. d/b/a Bluebird Network ("Bluebird") for the purpose of Bluebird installing, maintaining, and operating facilities for communications related capabilities within the City's Rights-of-Way and ensuring compliance with the City's requirements of such use of City property; authorizing the City Manager to execute the same by and on behalf of the City of Joplin; and containing an emergency clause

   Documents:

   GS 2019-132 RE ROW USE AGREEMENT - BLUEBIRD.PDF
   CB 2019-132 RE ROW USE AGREEMENT - BLUEBIRD EXHIBIT A.PDF
   CB 2019-132 RE ROW USE AGREEMENT - BLUEBIRD.PDF

4. COUNCIL BILL NO. 2019 – 361
AN ORDINANCE approving the contract by and between the City of Joplin and Gator Demolition for the demolition of the structure(s) and clearing of lot area located at 402 N. Joplin Ave. in the City of Joplin, Missouri, for Four Thousand One Hundred Thirty-three and 00/100 Dollars ($ 4,133.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

   Documents:

   CB 2019-361 BIDS.PDF
   CB 2019-361 PICTURES.PDF

CB 2019-361 SUMMARY.PDF
CB 2019-361.PDF

5. COUNCIL BILL NO. 2019 – 362
AN ORDINANCE approving the contract by and between the City of Joplin and Nelson Enterprises for the demolition of the structure(s) and clearing of lot area located at 114 N. Cox Ave. in the City of Joplin, Missouri, for Three Thousand Two Hundred Forty-Nine and 00/100 Dollars ($ 3,249.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

Documents:

CB 2019-362 BIDS.PDF
CB 2019-362 PICTURES.PDF
CB 2019-362 SUMMARY.PDF
CB 2019-362.PDF

6. COUNCIL BILL NO. 2019 – 363
AN ORDINANCE approving the contract by and between the City of Joplin and Gator Demolition for the demolition of the structure(s) and clearing of lot area located at 2206 S. Schifferdecker Ave. in the City of Joplin, Missouri, for Four Thousand Two Hundred Seventy-One and 00/100 Dollars ($ 4,271.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

Documents:

CB 2019-363 BIDS.PDF
CB 2019-363 PICTURES.PDF
CB 2019-363 SUMMARY.PDF
CB 2019-363.PDF

7. COUNCIL BILL NO. 2019 – 364
AN ORDINANCE approving the contract by and between the City of Joplin and Nelson Enterprises for the demolition of the structure(s) and clearing of lot area located at 1218 E. North St. in the City of Joplin, Missouri, for Three Thousand Two Hundred Forty- Nine and 00/100 Dollars ($ 3,249.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

Documents:

CB 2019-364 BIDS.PDF
CB 2019-364 PICTURES.PDF
CB 2019-364 SUMMARY.PDF
CB 2019-364.PDF

8. COUNCIL BILL NO. 2019 – 365
AN ORDINANCE approving the contract by and between the City of Joplin and Nelson Enterprises for the demolition of the structure(s) and clearing of lot area located at 1012 E. 2nd St. in the City of Joplin, Missouri, for Three Thousand Six Hundred Forty- Nine and 00/100 Dollars ($ 3,649.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

Documents:

CB 2919-365 BIDS.PDF
CB 2019-365 PICTURES.PDF
CB 2019-365 SUMMARY.PDF
CB 2019-365.PDF

9. COUNCIL BILL NO. 2019-614

AN ORDINANCE authorizing the City of Joplin to enter into an agreement with DocuWare Corporation, a New York Corporation, for the purpose of providing cloud-based document storage services for the not to exceed price of Twelve Thousand Eight Hundred Sixteen and 00/100 Dollars ($12,816.00); authorizing the City Manager to execute the same by and on behalf of the City of Joplin; and containing an emergency clause.

Documents:

2019-614 SUMMARY SHEET.PDF
2019-614 COUNCIL BILL.PDF
DOCUWARE-APPENDIXA.PDF
DOCUWARE CLOUD SERVICES AGREEMENT.PDF

11. **Ordinances - First Reading**

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 Legal Action, Causes Of Action, Or Litigation Including A Public Governmental Body And Any Confidential Or Privileged Communications Between A Governmental Body Or Its Representatives And Its Attorneys Pursuant To State Law, And To Discuss Leasing, Purchase Or Sale Of Real Estate By A Governmental Body Where Public Knowledge Of The Transaction Might Adversely Affect The Legal Consideration Thereof, Pursuant To State Law; As Set Forth In Section 610.021 (1) (2) RSMo, As Amended, 2018. This Meeting, Record, And Vote To Be Closed. Council Shall Adjourn At The End Of The Session.

    3. At The Expiration Of Closed Session, City Council Shall Reconvene The Open Session To Discuss The RFQ's For The City Manager Search.

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)**

**Office of the Director of Finance**
**602 S. Main Street**
**Joplin, Missouri 64801**
**417-624-0820 Ext. 251**
**417- 624-4620 (Fax)**

# MEMORANDUM

**TO:** **Interim City Manager, Dan Pekarek**
**Mayor Gary Shaw and Members of the City Council**

**FROM:** **Leslie Haase**
**Director of Finance**

**DATE:** **June 12, 2019**

**RE:** **Capital Improvement and Public Safety Sales Tax Oversight Committee Semi-Annual Report**

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Attached please find a copy of the Oversight Committee's report. The Oversight Committee Chairman, Ryan Jackson, will be attending Monday night's City Council meeting to publicly present the report to Council.

As you know, the Oversight Committee is required to meet at least quarterly to review collection and expenditure of revenue from the ¼-cent parks and stormwater sales tax, the 3/8-cent capital improvements sales tax, the ½-cent public safety sales tax, as well as the progress toward completion of the voter-approved projects funded by these taxes. Additionally, the Oversight Committee is required to make a written, public report to the Council twice each year.

**Capital Improvement and Public Safety Sales Tax Oversight Committee**
**Semi-Annual Public Report**
**June 17, 2019**

## Introduction

On November 6, 2001, the voters approved "Proposition B" for the purpose of funding stormwater controls and city park improvements.

The City Council, in response to voter approval of "Proposition B", appointed seven (7) Joplin residents to serve on the Capital Improvement Sales Tax Oversight Committee. The City Council felt it would be in the public's interest to establish a citizen oversight committee to monitor the expenditure of proceeds from the Parks/Stormwater Sales Tax.

The Oversight Committee is to meet at least quarterly to review the collections and expenditures from the sales tax; monitor progress toward completing the voter-approved projects funded therefrom, and make a written, semi-annual public report to the City Council.

On August 3, 2004, the voters approved "Proposition A" for the purpose of funding capital improvements.

On November 7, 2006, the voters approved "Proposition A" for the purpose of improving public safety.

On July 2, 2007, the City Council directed the Capital Improvement Sales Tax Oversight Committee to review collections and expenditures from the one-half cent Public Safety Improvement Sales Tax. The membership was increased from seven (7) to nine (9) members.

On October 15, 2007, the City Council amended the name of the Capital Improvement Sales Tax Oversight Committee to the Capital Improvement and Public Safety Sales Tax Oversight Committee and amended the mission thereof.

## Oversight Committee Members

The current Capital Improvement and Public Safety Sales Tax Oversight Committee membership includes the following:

| | |
|---|---|
| Josh Bard | Leslie Cypret |
| Morris Glaze | Lori Haun |
| Harvey Hutchinson | Ryan Jackson |
| DeWayne Patton | Richard Schlottke |
| Greg Wilkerson | |

**Review of Oversight Committee Meetings**

February 21, 2019

The Oversight Committee began this meeting by reviewing the collections and expenditures of the ¼-cent parks and stormwater sales tax, the 3/8-cent capital improvement sales tax, and the ½-cent public safety sales tax as presented by Leslie Haase. Dan Johnson updated the committee on the FY 2019 stormwater improvements and maintenance activities. Paul Bloomberg updated the committee on the parks activities. Dan Johnson updated the committee on the capital improvements program. Matt Stewart and Jimmy Furgerson updated the committee on the public safety sales tax activities.

May 15, 2019

The Oversight Committee began this meeting by reviewing the collections and expenditures of the ¼-cent parks and stormwater sales tax, the 3/8-cent capital improvement sales tax, and the ½-cent public safety sales tax as presented by Leslie Haase. Dan Johnson updated the committee on the FY 2018 stormwater improvements and maintenance activities. Paul Bloomberg updated the committee on the parks activities. Dan Johnson updated the committee on the capital improvements street program. Matt Stewart and Jimmy Furgerson updated the committee on the public safety sales tax activities. The Committee discussed the semi-annual report that is to be presented to Council and decided that the Oversight Committee Chairman, Ryan Jackson, will present this report on Monday, June 17, 2019.

**Committee Observations**

As of the Oversight Committee's last meeting on May 15, 2019, it is agreed that the revenues from the ¼-cent parks and stormwater sales tax, the 3/8 cent capital improvements sales tax, and the ½-cent public safety sales tax are being collected above the projected level for the 2019 fiscal year.

The projects under Phase I of the Parks/Stormwater Sales Tax have been completed as promised. The projects under Phase II of the Parks/Stormwater Sales Tax are in progress as set forth to the voters.

The projects under Phase I of the Capital Improvements Sales Tax are all complete as promised, except one which is the Traffic Signal Upgrades. This project is expected to be completed during the 2019 fiscal year. The projects under Phase II of the Capital Improvements Sales Tax are in progress as set forth to the voters.

For the public safety sales tax, all capital items have been completed as promised except for the remaining Eastside fire station. All operational items have been completed except the staffing for the remaining Eastside fire station and the remaining street lights.

JOPLIN CITY COUNCIL
INFORMAL MEETING NOTES
JUNE 3, 2019

Mayor Shaw called the June 3, 2019 Informal Meeting of the Joplin City Council to order at 5:15 p.m.

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

**Public Works Update: Neighborhood Traffic Calming Policy**

Public Works Director David Hertzberg and Assistant Director Dan Johnson reviewed the traffic calming policy that the city council had received the previous week. The objective of the policy is to improve the livability of our neighborhoods and to minimize adverse impacts of vehicular traffic on residential and pedestrian safety through a system of education, enforcement and engineering.

The goals the City wishes to accomplish with this policy are:

- Reduce the speed of vehicles on residential streets where an engineering study shows there is a speeding issue.
- Increase safety by reducing crash patterns on impacted residential streets.
- Develop and emphasize focused neighborhood educational programs, which address residential traffic problems.
- Implement selective enforcement actions in neighborhoods with traffic problems.
- Eliminate, or discourage, non-local, cut-through traffic on residential streets.

In implementing the Program Goals, care will be taken to:

- Encourage citizen participation throughout the Program by seeking the input of affected residents and non-resident property owners through neighborhood meetings, written communications, open forum opportunities with Traffic Commission, and with City Council.
- Minimize impacts on emergency vehicle response times caused by the implementation of neighborhood traffic calming measures.
- Respond to complaints in a timely manner.

Program Overview
This Traffic Calming Policy has been designed to ensure that each neighborhood with a proven traffic problem has access to neighborhood traffic calming measures. The program will require significant citizen involvement. The policy has been designed to address neighborhood concerns in a timely manner by relying on staff to take the initial steps to address a perceived problem. Final traffic calming measures must be reviewed by the Traffic Commission and approved by the City Council, and the level of traffic control measures, which may be implemented, is subject to available funding.

Process
The process by which a perceived problem is identified, reviewed, and possibly mitigated is a series of education, enforcement, and engineering steps. The process from notification to solution is illustrated using a flow diagram, see Figure 1.

The process is summarized in the following steps:

1. Initial Complaint and Site Review

The initiation of City involvement in mitigating a neighborhood traffic problem begins with a complaint by an individual resident or a group of residents. The complaint generally involves a perception that a significant number of motorists traveling through a neighborhood are violating the law in some way.

2. Site Review by Staff

Staff conducts a field review of the complaint and responds to the complaint within 15 working days.

3. Joplin Police Department Traffic Unit Evaluation

In the case of speeding, staff will request additional traffic enforcement by the police and/or schedule the placement of a radar speed trailer.

4. Traffic Commission Meeting with the Neighborhood

The Traffic Engineer will meet with the Traffic Commission. This meeting is scheduled on a bimonthly basis. This meeting will provide an opportunity for the neighborhood to express concerns, and for staff and the commission to compare neighborhood conditions to the reasonable expectations of traffic volumes, traffic speeds, crash rates, etc.

5. Engineering Analysis

If a petition signed by 60% of the residents (renters or owners), allowing one signature per residence, on the affected street is submitted to the Public Works Department requesting additional traffic analysis. A neighborhood traffic study will be prepared which reviews street cross-section, crash history, speeds, traffic counts, and conducts appropriate studies. The report will be reviewed by the Engineering Staff, Fire, Planning & Zoning, and Police, and will be made available to concerned citizens.

Necessary Criteria for Consideration:

- Streets with no curb and gutter cannot have speed humps; other traffic calming devices will be considered.
- Crash history for previous three years will be reviewed. If there are no vehicular accidents within the three-year history, the street in question must meet all other criteria.
- Speed studies must indicate an $85^{th}$ percentile speed of greater than 35 miles per hour or traffic calming devices will not be considered. Speed studies will only be conducted once per year per location.
- Traffic count must be over 500 average daily traffic or traffic calming devices will not be considered.
- City Staff will conduct other studies deemed appropriate for the location that could include site distance studies, pedestrian traffic, and vertical alignment.

6. Review by the Traffic Commission

The Traffic Commission and the Public, at a regular scheduled meeting, will review the report outlining the various options and recommendations. If the City Traffic Engineer determines that construction of a traffic calming device meets required criteria, and the Traffic Commission approves, City staff will provide a petition to the concerned Citizens for them to circulate for neighborhood consideration. The petition will describe the appropriate traffic calming device(s) and listing potential benefits and problems associated with the device. The affected area will be determined by the City Traffic Engineer and will not exceed the nearest Arterial/Collector Roads surrounding the affected street N/S and E/W in each direction.

7. Consideration by the Neighborhood/Cost Sharing

If a petition requesting traffic calming device(s) is signed by 60 percent of the residents in the zone defined by the City Traffic Engineer is submitted to the Public Works Department. Preliminary engineering plans and cost estimates for the traffic calming device(s) will be prepared by the Public Works Department. A --%(Residents)/--%(City) Cost Share to be paid by residents requesting the traffic calming device prior to construction.

Traffic Commission Recommendation: A 25%(Residents)/75%(City) Cost Share

Commission members cited availability of funds in the City budget. Per the current pilot project cost of $10,000 and 30 residents on the street, sharing the cost that works out at $83.33 each.

City Staff Recommendation: A 75%(Residents)/25%(City) Cost Share

Staff recommends following the existing ordinance for the assessment process which also includes guidelines for income based assistance for qualifying Citizens. Per the current pilot project cost of $10,000 and 30 residents on the street, sharing the cost that works out at $250.00 each.

8. City Council

The City Council will review minutes from the Traffic Commission.

9. Plans Prepared and Publicly Reviewed

Upon completion, the plans will then be reviewed by the Fire Chief and Police Chief or Designee for Final Approval. Upon approval, the Public, at a regular scheduled Traffic Commission meeting, would review the plans.

10. Traffic Calming Measure Implemented

Construction of traffic calming device(s) will be dependent upon construction season and City budget. Traffic humps will be constructed by City's paving contractor as part of annual paving contract and will be scheduled as such.

11. Follow Up

The implemented traffic calming measures are monitored for effectiveness.

Discussion followed the presentation. There were some concerns about the indication of an 85$^{th}$ percentile speed of greater than 35mph before calming devices would be considered. Other concerns included cost-sharing and whether this issue should be covered under public safety. Council decided to continue the discussion at the June 10 work session.

**Boards & Commissions: Reappointments/New Appointments**: due to time constraints, this item was moved to New Business at the formal meeting.

The meeting adjourned at 5:50 p.m.

Submitted,

Barbara Gollhofer, City Clerk

# JOPLIN CITY COUNCIL
# JUNE 3, 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 Dr. Reid Adams.

## ROLL CALL
Answering Roll Call were Council Members: 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. Absent: Taylor Brown. Motion by Mrs. Colbert-Kean, second by Mr. Monteleone to excuse Taylor Brown. Voting in favor were Council Members: Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 8. Nays: 0.

## PRESENTATIONS
Clifford Wert presented an update on Connect2Culture and Spiva Center for the Arts. He stated 192 donors comprised of individuals, businesses, foundations and groups have committed $14,658,216.00 toward the Harry M. Cornell Arts and Entertainment Complex, satisfying the conditions as set out in the City's MOU in October 2017. Letters of intent to proceed have been signed by Connect2Culture and Spiva Center for the Arts with the architects DLR Group of New York City and Corner Greer& Associates of Joplin, and Crossland Construction Company as the construction manager. The plan is to move forward with design development, leading to construction documents and bidding. The ultimate plan is to begin construction in late 2020 with completion in mid-2022. They will continue their pursuit of the $16 million dollars goal as the architectural and structural work proceeds. Earlier today, a crowdfunding effort with the goal of $5,000 was announced. Any amount of donation is appreciated. Mr. Wert showed a video of people expressing support of the entertainment complex, then thanked the Council, staff and everyone involved in this endeavor.

Presentation and Update of the Joplin Youth Council and confirmation of the appointments: Taylor Cunningham, Assistant to the City Manager, gave a brief review of the JYC background, purpose, recruitment and selection process, and the appointments. After the update, she introduced the high school students who were selected for the council: Audrey Wheeler-McAuley; Kambrea Manning - College Heights; Riley Peterson-College Heights; Dillon Dodge-Thomas Jefferson; Jane Min-Thomas Jefferson; Rosalyn Jourdan-Joplin; Cora Wesley-Joplin; Jake Saunders-Joplin; Chloe Bonds-Joplin; Spencer Vreeland-Joplin; Julian Garrett-Joplin (absent). Motion by Mrs. Colbert Kean, second by Mr. Stanley to approve the slate candidates as presented. Voting in favor were Council Members: Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 8. Nays: 0. Absent: Brown: 1.

Anyone wishing to address the Council should step to the Podium and state their 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 minutes.

Sound enhancement units are available for hearing impaired customers. You will be asked to provide a form of identification as security, which will be returned when you return the unit. If you are in need of disability related auxiliary aids or services, contact the City Clerk's Office at (417) 624-0820 ext. 220. Forty-eight hours' notice is requested.

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

**Reports and Communications**
Finance Director Leslie Haase introduced Kim Wickson, Segal Consulting, who presented the Semi-annual Insurance Budget Report.

Jillian Doherty with the City of Joplin Health Dept. presented information on the new Working on Wellness (WOW) program that involves monthly health challenges that City of Joplin employees are invited to participate. Ms. Doherty stated she's excited about the program and would like to see increased participation.

**Citizen Requests and Petitions**

**Public Hearings**
Public Hearing Procedures read by City Clerk Barbara Gollhofer.

Public Hearing for Council Bill No.2019-263

Mayor Shaw opened the Public Hearing

Jay St. Clair, 4615 E. Newman, Joplin, Executive Director of God's Resort, appeared in favor of this item.

Renita Kitchingham, Joplin, appeared in favor of this item, stating God's Resort does good work for the residents as well as for the whole community.

Suzanne Nelson, 67 Horseshoe Drive, Joplin, appeared in favor of this item, stating she is a long-time supporter and volunteer of God's Resort, which has had a positive impact on the community.

No one appeared in opposition to this item.

The Public Hearing was closed.

Mr. Cortez introduced Council Bill No. 2019-263 - an ordinance approving 1506 and 1510 S. Pearl Avenue to include in District R-3 (Apartments District), Jasper County, Missouri. Motion by Mr. Cortez, second by Mr. Stinnett that Council Bill No. 2019-263 be passed on First Reading and advanced to Second and Third Reading. Voting in favor were Council Members: Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 8. Nays: 0. Absent: Brown, 1. The Council Bill was read as Council Bill No. 2019-263.

Public Hearing for Council Bill No. 2019-264

Mayor Shaw opened the Public Hearing

David Harrell, 111 Gum Rd., Carl Junction, MO appeared in favor of this item stating he wants to build a home with the addition of a mother-in-law quarters.

No one appeared in opposition to this item.

The Public Hearing was closed.

Mr. Stinnett introduced Council Bill No. 2019-264 - an ordinance approving the location approximately 500 feet west of the property addressed as 2902 N. St. Louis Avenue to include in District R-2 (Two-Family Residential District), Jasper County, Missouri. Motion by Mr. Stinnett, second by Mr. Stanley that Council Bill No. 2019-264 be passed on First Reading and advanced to Second and Third Reading. Voting in favor were Council Members: Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 8. Nays: 0. Absent: Brown, 1.

The Council Bill was read as Council Bill No. 2019-264.

**CONSENT AGENDA**

Motion by Mr. Monteleone, second by Mr. Stinnett to approve the Consent Agenda. Voting in favor were Council Members: Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 8. Nays: 0. Absent: Brown, 1.

May 20, 2019 Informal Council Meeting Notes

Minutes of the May 20, 2019 Council Meeting

COUNCIL BILL NO. 2019-003-AN ORDINANCE of the city of Joplin, Missouri establishing procedures and requirements relating to construction and deployment of small wireless facilities. **Ordinance No. 2019-078**

COUNCIL BILL NO. 2019-262-AN ORDINANCE amending Chapter 29-A, the Zoning Code, of the Code of Ordinances of the City of Joplin, Missouri, by amending Appendix A, Land Use Table, by adding language to permit medical marijuana facilities in certain districts. **Ordinance No. 2019-079**

COUNCIL BILL NO. 2019-612 - AN ORDINANCE authorizing the City of Joplin to enter into an agreement with the Missouri Department of Conservation, an agency of the State of Missouri, ("MDC"), and the National Audubon Society, Inc., a New York not-for-profit corporation, ("Audubon"), for the purpose of terminating the assignment of ground lease and memorandum of understanding between MDC and Audubon; authorizing the City of Joplin to enter into an agreement with MDC to amend the ground lease between the City of Joplin and MDC for the purpose of reducing the leased real estate; and authorizing the Interim City Manager to execute said agreements by and on behalf of the City of Joplin. **Ordinance No. 2019-080**

COUNCIL BILL NO. 2019-613 - AN ORDINANCE authorizing the City of Joplin to enter into a memorandum of understanding with the Wildcat Glades Friends Group, a Missouri Nonprofit Corporation ("Friends Group") for the purpose of establishing responsibilities in maintaining and operating Wildcat Park; and authorizing the Interim City Manager to execute said memorandum of understanding by and on behalf of the City of Joplin. **Ordinance No. 2019-081**

**RESOLUTIONS**

Mr. Lawson introduced Resolution No. 2019-007 - a resolution authorizing the filing of a Seventeenth Amendment of the Round 1 Action Plan with the U.S. Department of Housing and Urban Development (HUD) as required for the use of the City of Joplin's Community Development Block Grant Disaster Recovery (CDBG-DR) Program (Round 1); and authorizing the City Manager to execute said Amendment for and on behalf of the City of Joplin. Motion by Mr. Lawson, second by

Dr. Reid Adams to approve Resolution No. 2019-007. Voting in favor were Council Members: Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 8. Nays: 0. Absent: Brown, 1. **Resolution No. 2019-007**

**ORDINANCES – EMERGENCY**

Mr. Monteleone introduced Council Bill No. 2019-128 -an ordinance authorizing the acceptance with Olsson in the not to exceed amount of Two Hundred Thirty-Eight Thousand and no/100 Dollars ($238,000.00) for ADA & Sidewalk Assessment; and containing an emergency clause. Motion by Mr. Monteleone, second by Dr. Reid Adams that Council Bill No. 2019-128 be passed on an emergency basis. Voting in favor were Council Members: Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 8. Nays: 0. Absent: Brown, 1. The Council Bill was declared adopted and entitled **Ordinance No. 2019-082**

Mr. Stanley introduced Council Bill No.2019-129 - an ordinance approving a Work Authorization with Allgeier Martin & Associates in the not to exceed amount of Sixty-Five Thousand and 00/100 Dollars ($65,000.00) for 2018-2019 Sanitary Sewer Rehabilitation Toolbox and Miscellaneous Rehab Assistance project and containing an emergency clause. Motion by Mr. Stanley, second by Mr. Stinnett that Council Bill No. 2019-129 be approved on an emergency basis. Voting in favor were Council Members: Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 8. Nays: 0. Absent: Brown, 1. The Council Bill was declared adopted and entitled **Ordinance No. 2019-083**

Mr. Lawson introduced Council Bill No. 2019-509 - 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. Lawson, second by Mr. Cortez that Council Bill No. 2019-509 be approved on an emergency basis. Voting in favor were Council Members: Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 8. Nays: 0. Absent: Brown, 1. The Council Bill was declared adopted and entitled **Ordinance No. 2019-084**

**ORDINANCES – FIRST READING**

**ORDINANCES – SECOND READING AND THIRD READING**

**UNFINISHED BUSINESS**

**NEW BUSINESS**

**Request to Address Council:** Mr. Allen Shirley, Joplin, MO addressed Council regarding an upcoming exhibit at the Joplin History and Mineral Museum. The exhibit highlights the 75th anniversary of D-Day and begins June 6 and runs through August 31, 2019.

**News from the Public Information Officer, Lynn Onstot**

Some NEW road projects in Joplin started today, including work from the City as well as the Missouri Department of Transportation.

Micro-surfacing of streets has begun and includes the area of "F" Street to 16th Street from Main Street to Maiden Lane. Streets are selected based on the pavement's condition. A map is posted on the City's website for reference.

Residents living on affected streets will be notified with an informational door hanger on their front doors 48 hours prior to the work. No parking signs will also be posted along both sides of the street. Vehicles should not park on posted streets until the surfacing work has been completed.
Missouri Department of Transportation will be working along east 32nd Street starting today. Improvements to three intersections will be done at Main Street, Indiana Avenue and Connecticut Avenue.

Contractor crews will work nighttime hours between 7 p.m. and 6 a.m., Sunday through Friday, beginning at Main Street and working east. At least one lane in each direction will be open to traffic where crews are working. All lanes on 32nd Street will be open to traffic during daytime hours. The intersection improvements are a 50/50 cost-share with the City of Joplin. Following intersection improvements, contractor crews will remove the current driving surface on 32nd Street and replace it with a new asphalt surface between Main Street and Route 249. Work is scheduled to be completed by July 2020, weather permitting.

If the weather has caused a few tree limbs to fall – don't forget about the FREE limb drop off the City offers on the 3rd Saturday each month. On June 15, bring your limbs out to 1702 North Schifferdecker Avenue, from 8 – 2 p.m. And after you drop off your limbs – get some FREE Wood Chips before you leave! These will be offered every 3rd Saturday at this same location, as supplies allow. **Citizens should b**ring their truck, trailer and/or containers and City Staff will load these chips for you!

Details about these topics and more can be found on our website, www.joplinmo.org. Thank you.

Mrs. Colbert-Kean asked if city staff can look into getting the clumps of asphalt removed that are left behind by the micro surfacing projects. Staff will look into it.

**Boards/Commissions Reappointments & Appointments:**
Motion by Mr. Stanley second by Mr. Monteleone to approve the following reappointments:
Industrial Development: Earl Clements
Planning and Zoning: Kent Eastman (unexpired term)
Voting in favor were Council Members: Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 8. Nays: 0. Absent: Brown, 1.

Motion by Mr. Stanley, second by Mr. Monteleone to appoint Annaliese Vorhees to the Centennial Celebration Commission as a youth representative. Voting in favor were Council Members: Colbert-Kean, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley and Stinnett, 8. Nays: 0. Absent: Brown, 1.

**New appointments:**
**Industrial Development Authority**:
Mr. Stinnett nominated Morris Glaze
Dr. Reid Adams nominated Rob O'Brian
Voting in favor of Mr. Glaze were Council Members: Cortez, Lawson, Monteleone, Shaw, Stinnett, 5. Voting in favor of Mr. O'Brian were Council Members: Colbert-Kean, Reid Adams, Stanley, 3.
Mr. Glaze was appointed to replace Michael Johnson, whose term expired 6/1/19.

**Parks and Recreation**: Dustin Parker
Mr. Monteleone nominated Christina Williams

Mr. Cortez nominated Bryan Bridgford

The first vote resulted in a tie.

The second vote resulted in the following council members voting in favor of Ms. Williams: Lawson, Monteleone, Reid Adams, Shaw, Stanley, Stinnett, 6. Voting in favor of Mr. Bridgford were Council Members; Colbert-Kean and Cortez, 2.

Ms. Williams was appointed to replace Dustin Parker whose term expired 6/3/19

**Comments from Council**:

Dr. Reid Adams stated she had a call from a citizen concerning the recent power outage at the new airport terminal, but the old terminal still had power. She asked about a generator back-up. Assistant PW Director of Operations Lynden Lawson stated the generators are for the runways; we currently do not have a generator back-up for the terminal. Dr. Reid Adams asked if it was possible to switch the generator at the old terminal to the new terminal. Mr. Lawson stated the terminals are on different lines. Mayor Shaw asked if staff could look into the issue and come up with possible solutions. Mr. Lawson replied there has been discussion to research the cost of a generator at the new terminal.

Mr. Stinnett suggested that perhaps the generator at Memorial Hall could be transferred to the airport. Mr. Stinnett agreed with Allen Shirley's comment that the museum is a crown jewel in Joplin. He commended Mr. Shirley for putting so much personal time and effort into the remarkable exhibits at the museum.

Mr. Cortez stated he will be attending the Newly Elected Officials training at the MML Conference in Columbia, MO June 6-7.

Mr. Monteleone asked for an update on the RFP process for the city manager search company. City Attorney Edwards replied the deadline for receiving proposals is June 5, and Council will be receiving a packet on Thursday with the proposals. The Council agreed to discuss the proposals at the June 17 council meeting.

Mayor Shaw stated Kansas City University of Medicine and Biosciences will make a special announcement tomorrow.

Mayor Shaw stated he had the opportunity throw out the first pitch at the Joplin Outlaws baseball game at Joe Becker Stadium on Friday, May 31. He was very pleased to see a full parking lot and many volunteers and fans at the game. He thanked Mark Raines for bringing baseball to Joplin and thanked all those who help with housing the players.

Mayor Shaw stated he had the opportunity to meet with officials from Harris County, TX while they were visiting Joplin to study the process of how Joplin recovered from the 2011 tornado. Harris County was affected by Hurricane Harvey and they are beginning the recovery process. Mayor Shaw stated the Harris County officials were thankful for the generosity, hospitality and graciousness of the city staff. Mayor Shaw stated the time spent with the officials were some of the most enjoyable times he's had since being on the council in 18 years. He stated he's very proud of the city staff and Guidehouse for all they have done for our city.

There being no further business, the meeting adjourned at 7:49.

Respectfully,

Barbara J. Gollhofer, City Clerk

**CITY OF JOPLIN**
**COUNCIL AGENDA ITEM**

**ITEM:**
CB 2019- 263 -Rezone to Apartment House (R-3)

**MEETING DATE:**
June 3, 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.

**SUMMARY REQUEST:**
Case 015-19: 1506 and 1510 S. Pearl Avenue – A request to rezone from Single-Family Residential (R-1) District to Apartment House (R-3) District for the construction of apartments – God's Resort

**BACKGROUND:**
The applicant (God's Resort) has made a significant investment into this neighborhood over the years. This neighborhood was once known for high crime rates and deteriorated housing. But, that trend has changed, and the neighborhood has seen an improvement in the crime rates and the preservation of property values. God's Resort currently owns 30 homes/apartments and a community center that serves the whole neighborhood. Even though single-family property values can sometimes be negatively impacted by adjacent higher density residential developments, the opposite can occur in deteriorating residential neighborhoods as we have already seen in this neighborhood.

**PLANNING & ZONING COMMISSION TESTIMONY:**
Mr. Jay Sinclair, representing God's Resort located 1501 S. Pearl, Joplin, MO. God's Resort is a transitional housing ministry in the heart of Joplin. We have improved the area and now have 30 homes and apartments that we use as a tool to help people who are relationally and economically stuck. We have built a wonderful community in that neighborhood and in the process change the face of the neighborhood. Mr. Eastman asked if there was a floor plan? Mr. Sinclair stated that we have built two (2) five plexus and we propose to build the same floor plan which has been approved by the City in the past. Mr. Eastman asked if they were two story or just one story? Mr. Sinclair stated that they are single story buildings. The front apartment is a two-bedroom home and the four apartments behind it are one-bedroom homes. The rent is considerably lower which is to help with the transition and a stability plan has to be made.

**PUBLIC COMMENT;**
None.

**FUNDING SOURCE:**
These payments are included in the FY 2018-19 budget of the Community Planning Fund.

**RECOMMENDATIONS**:
Planning & Zoning Commission recommends approval (7 in Favor, 0 Nays).
Staff recommends approval of Case 015-19.

**ATTACHMENTS**
CB 2019- 263, Staff Planning Report, P&Z Commission Minutes

CB 2019-263

Case 015-19: 1506 and 1510 S. Pearl Avenue – A request to rezone from Single-Family Residential (R-1) District to Apartment House (R-3) District for the construction of apartments – God's Resort

Mr. Jay Sinclair, representing God's Resort located 1501 S. Pearl, Joplin, MO. God's Resort is a transitional housing ministry in the heart of Joplin. We are known on the streets. eleven (11) years ago when we began there, that area was known as the last resort. It was the heart of a lot of bad things. We have improved the area and now have 30 homes and apartments that we use as a tool to help people who are relationally and economically stuck. We have built a wonderful community in that neighborhood and in the process change the face of the neighborhood. We look forward to more development in that area, not just economically, but socially and the spirit of the Community.

Mr. Ramsour asked if there were any questions from the Commissioners?

Mr. Eastman asked if there was a floor plan?

Mr. Sinclair stated that we have built two (2) five plexus and we propose to build the same floor plan which has been approved by the City in the past.

Mr. Eastman asked if they were two story or just one story?

Mr. Sinclair stated that they are single story buildings. The front apartment is a two-bedroom home and the four apartments behind it are one-bedroom homes. The rent is considerably lower which is to help with the transition and a stability plan has to be made. Most people are behind on their utilities and this lets them catch up on the utilities so eventually they will be able to rent a place on their own or even buy a home on their own.

Mr. Dermott stated that on the application form that north of the property is zone R-3. Does it go to the corner?

Mr. Sinclair stated that the corner lot is a privately-owned home. Just the two in the middle.

Mr. Ramsour asked if there were any other questions from the commissioners? There was not. Also, asked if there was anyone that would like to speak in favor of this case? There was not. Anyone that would like to speak against this case? There was not.

**MRS. KOELKEBECK MOVED, SECONDED BY MR. EASTMAN, TO APPROVE CASE 015-19 AND BE FORWARDED TO THE CITY COUNCIL WITH THE RECOMMENDATION FOR APPROVAL. MOTION CARRIED, WITH MR. RAMSOUR, MR. DERMOTT, MRS. BRUECKNER-SEARS, MRS. KOELKEBECK, MRS. STEELE, MR. MCCULLOUGH, AND MR. EASTMAN VOTING "AYE". (7 IN FAVOR, 0 NAYS).**

Z&P Meeting: May 13, 2019
City Council Meeting: June 3, 2019

# STAFF PLANNING REPORT
## Rezoning

**CASE 015-19** A request to rezone from R-1 (Single Family Residential District) to R-3 (Apartment House District)

**LOCATION** 1506 and 1510 S. Pearl Avenue

**APPLICANT** God's Resort (Jay St. Clair)

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**EXISTING CONDITIONS**

| Zoning | Land Use | Property Size |
|---|---|---|
| R-1 | Vacant Lots | Approximately 0.3 acres |

**SITE CONTEXT**

| | North | East | South | West |
|---|---|---|---|---|
| Existing Zoning | R-1 | R-1 | R-1 | R-1 |
| Land Use | Single Family Residential | Single Family Residential | Single Family Residential | Single Family Residential |

**FUTURE LAND USE**

Joplin's Future Land Use Map shows this lot as Single Family Residential.

**TRANSPORTATION**

| Streets with access | Classification | Right-of-way width |
|---|---|---|
| Pearl Ave. | Local | 60 ft. |

**UTILITIES** Utilities already serve these properties and will not need to be extended.

**FLOOD PLAIN** N/A

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## STAFF ANALYSIS

### CONSISTENT WITH DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN?

Although the Future Land Use map shows this property as appropriate for single-family residential, there are existing multi-family residential districts and apartments nearby towards the north and east of the property. The requested multi-family zoning district is not any different than what currently exists in this neighborhood.

### THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

The existing residential single-family residential zoning does not permit apartments and multi-family residential units.

### THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

Rezoning this property to a multi-family residential district will have the greatest impact on nearby single-family homes. The current density requirements for single-family residential districts permits one living unit per lot for a total of two living units (one living unit or home on each lot). The change to an apartment house district will allow a density of one living unit per 2,500 sq. feet of lot space for a total of 5 living units.

### DISCUSSION

The applicant (God's Resort) has made a significant investment into this neighborhood over the years. This neighborhood was once known for high crime rates and deteriorated housing. But, that trend has changed, and the neighborhood has seen an improvement in the crime rates and the preservation of property values because of God's Resort investment and presence in the neighborhood. God's Resort currently owns 30 homes/apartments and a community center that serves the whole neighborhood. Their transitional housing ministry has a proven track record of improving people's lives in the neighborhood. Staff believes their investment and construction of apartments will yield similar results. Even though single-family property values can sometimes be negatively impacted by adjacent higher density residential developments, the opposite can occur in deteriorating residential neighborhoods as we have already seen in this neighborhood.

*Staff recommends approval of Case 015-19.*

### ATTACHMENTS

- Application

# REZONING APPLICATION FORM

Return Form to:
Planning / Community Development Specialist.
Joplin City Hall
602 South Main Street
Joplin, Missouri 64801
417-624-0820 Ext. 511
FAX 417-625-4738

For Office Use Only

Case No.: 015-19
Filing Fee: $500.00
Date Advertised: 4-28-19
Date Notices Sent 4-26-19
Public Hearing Date: 5-13-19

APPLICANT: God's Resort / Jay St Clair PHONE: (417) 850-0675
ADDRESS: P.O. Box 4981 Joplin, Mo ZIP: 64803
OWNER: God's Resort PHONE:
ADDRESS: P.O. Box 4981 Joplin MO ZIP: 64803
LOCATION OF PROPERTY: 1510 S. Pearl Joplin, MO 64804
LEGAL DESCRIPTION: All of lot Numbered One hundred twenty-seven (127) in John C. Cox Jr's Third Addition to the City of Joplin, Jasper County, Missouri, according to the recorded plat there of.

Present Zoning R-1 Requested Zoning: R-3 Acreage:
Present Use of Property:

SURROUNDING LAND USE AND ZONING:

| | Land Use | Zoning |
|---|---|---|
| North | residential | R-3 |
| South | residential | R-1 |
| East | residential / office | R-1 |
| West | residential | R-1 |

CHARACTER OF THE NEIGHBORHOOD: Residential

RELATIONSHIP TO EXISTING ZONING PATTERN:

1. Would proposed change create a small, isolated district unrelated to surrounding districts?
   NO- multiple fam. to North & east
2. Are there substantial reasons why the property cannot be used in accord with existing zoning?
   If yes, explain: Currently does not allow more than one fam. unit

CONFORMANCE WITH COMPREHENSIVE PLAN:

1. Consistent with Development Policies?
2. Consistent with Future Land Use Map?

THE FOLLOWING MUST ACCOMPANY YOUR APPLICATION:

1. One copy of a legal description of the property proposed to be rezoned.
2. One copy of a statement describing the reasoning for the rezoning, the impact of the proposed change, including any traffic conditions that may result; any danger from fire hazards; how the proposed change may effect the character of the surrounding properties; and how the proposed change will benefit the City of Joplin.
3. Owner Affidavit, if applicant applying for the rezoning is not the owner of the property be rezoned

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: Pearl
2. Classification of Street(s):
   Arterial_____ Collector_____ Local ↘
3. Right-of-Way Width: _____
4. Will turning movements caused by the proposed use create an undue traffic hazard?
   NO

IS PLATTING OR REPLATTING REQUIRED TO PROVIDE FOR:

1. Appropriately Sized Lots? NO
2. Properly Sized Street Right-of-Way? NO
3. Drainage Easements? NO
4. Utility Easements:
   - Electricity? NO
   - Gas? NO
   - Sewers? NO
   - Water? NO
5. Additional Comments: _____

UNIQUE CHARACTERISTIC OF PROPERTY AND ADDITIONAL COMMENT:

The property was previously condemned. It was purchased by a donor & given to us. Subsequently we demolished the structure - would like to build a new 5plex apartment b/ldg for our ministry.

SIGNATURE: [signature] DATE: 2-27-19

BY: _____

TITLE: Executive Director

GOD'S RESORT
1501 S. Pearl Street • PO Box 4981 • Joplin, MO 64803 • 417-553-4080

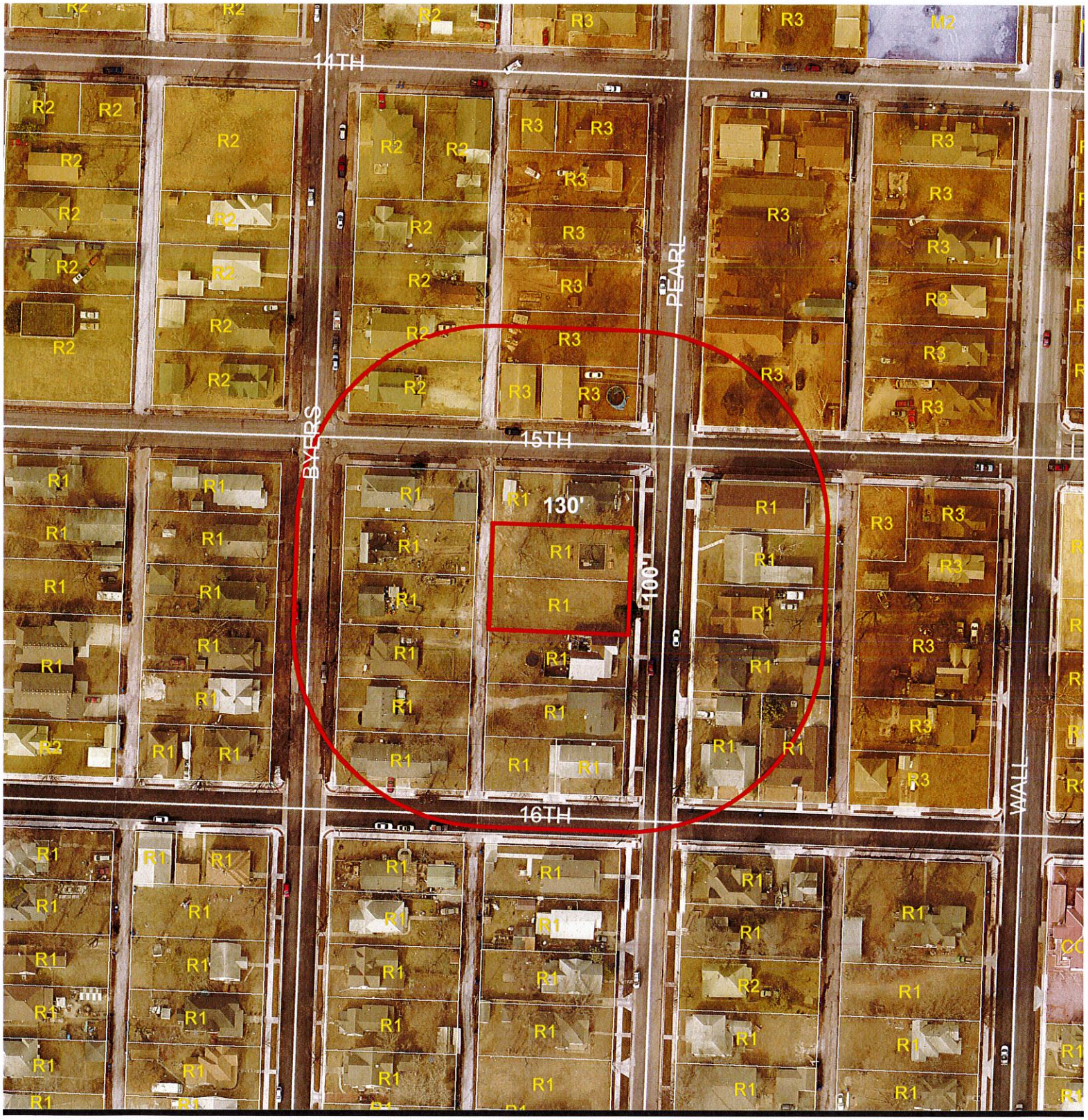
**God's Resort Rezoning Application Appeal**

God's Resort is a relational transitional housing ministry that seeks to come alongside people who desire a new direction in life and just need lots of love, prayer, new friends and supportive resources. We now consist of 30 homes/apartments and a community center in and around Pearl St from 14th to 18th streets. Our goal is clean, affordable and dignified homes where people can find the love and support that makes a home and community worth living in. We want to help people achieve stability and become self-respecting and productive citizens. God's Resort seeks to be a model for transitional housing in Joplin, nationally and globally.

When God's Resort was established, the area was known as the "last resort", because if you couldn't make it there, you were going to be on the street or in a mission. In 2007, when God's Resort was established, KSN did a news story on that beginning. Cpl. Chuck Niess was interviewed and said these words, *"The central part of Joplin is a high crime area, more so than other parts of town and the 1400 block of Pearl is a high for service area (averaging 90+ calls per month)...This kind of community policing can be contagious and hopefully spread to other high crime areas."* We quickly realized, that the neighborhood effects God's Resort and ultimately God's Resort would effect the wider neighborhood, which it has.

A lot has changed and that is because of the great partnership with have enjoyed with the City, our generous supporters, and the blessing of God. Our future plans include finishing the rehabilitation of the property at 1510 S. Pearl. City records will show that until recently, the structure at that location was a condemned property that housed vagrants and was a continual drain on city resources as police were called and monitoring activity there regularly. A local friend of the God's Resort ministry bought the property from an out of state owner and donated it to the ministry. We quickly and gratefully took position and applied for a city permit to demolish it, which was accomplished in January of 2018. We have recently built two new five plex apartment buildings debt free, in the 1400 block of Pearl, thanks to generous donors. We are presently, in the planning stages to build another five plex on the 1510 S. Pearl location across the street from our Community Center at 1501 S. Pearl and next to our community pocket park we established in the fall of 2015. Our need is for this lot to be rezoned to accommodate this structure and the continued betterment of this once forgotten neighborhood.

We again appreciate so much this great city and the City of Joplin staff and administration that has worked with us to accomplish so much for so many and would appreciate your help in this matter.




300 150 0 300

Feet

Case 015-19: Request to Rezone from District R-1 (Single-Family Residential) to District R-3 (Multi-Family) for the construction of Apartments - God's Resort (Jay St. Clair).

P & Z Case 015-19
God's Resort
(P & Z Recommended Approval)

COUNCIL BILL NO. 2019-263 ORDINANCE NO.

AN ORDINANCE approving 1506 and 1510 S. Pearl Avenue to include in District R-3 (Apartments District), Jasper County, Missouri.

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

Section 1. Having referred the subject matter of this ordinance to the City Planning and Zoning Commission and having given at least fifteen days' notice of time and place of hearing on same by publication in the Joplin Globe, Ordinance No. 2004-256 is hereby amended by the following described property and including in District R-3:

All of Lots Numbered One Hundred Twenty-seven (126) and One Hundred Twenty-seven (127) in JOHN C. COX JR.'S THIRD ADDITION to the City of Joplin, Jasper County, Missouri.

Section 2. That the City Clerk is hereby ordered to file this ordinance with the Zoning District Map maintained in her office and to note the changes herein provided thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ 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

**CITY OF JOPLIN**
**COUNCIL AGENDA ITEM**

**ITEM:**
CB 2019- 264 -Rezone to R-2 (Two-Family Residential).

**MEETING DATE:**
June 3, 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.

**SUMMARY REQUEST:**
Case 016-19: Located approximately 500 feet west of the property addressed as 2902 N. St. Louis Avenue – A request to rezone from Single-Family Residential (R-1) District to Two-Family Residential (R-2) District for the construction of a duplex – David & Sarah Harrell.

**BACKGROUND:**
The size of the property in this request to be rezoned to a two-family residential district could potentially allow a maximum of 21 duplexes or 42 living units. One duplex will have minimal impact on this area. The size of the property will allow the property owner to install a septic system to service the proposed duplex since the closest public sewer that can potentially serve this property is located almost a quarter of a mile away through existing easements. Access will also need to be improved and streets installed in the future to accommodate the additional traffic that will be generated by any duplexes or single-family residential development. The construction of one duplex will not warrant that these improvements be made at this time.

**PLANNING & ZONING COMMISSION TESTIMONY:**
David Harrell, 111 Gum Rd., Carl Junction, MO. Mr. Harrell stated he purchased this property approximately two (2) months ago and wanting to build a home with a mother-in-law apartment on the side to be able to take care of my Grandmother or mine or my wife's Mother when they reach a point when they need to have additional assistance.

**PUBLIC COMMENT;**
None.

**FUNDING SOURCE:**
These payments are included in the FY 2018-19 budget of the Community Planning Fund.

**RECOMMENDATION**:
Planning & Zoning Commission recommends approval (7 in Favor, 0 Nay)
Staff recommends approval of Case 016-19.

**ATTACHMENTS**
CB 2019- 264, Staff Planning Report, P&Z Commission Minutes

CB 2019-264

Case 016-19: Located approximately 500 feet west of the property addressed as 2902 N. St. Louis Avenue - A request to rezone from Single-Family Residential (R-1) District to Two-Family Residential (R-2) District for the construction of a duplex – David & Sarah Harrell.

David Harrell, 111 Gum Rd., Carl Junction, MO. Mr. Harrell stated he purchased this property approximately two (2) months ago and wanting to build a home with a mother-in-law apartment on the side to be able to take care of my Grandmother or mine or my wife's Mother when they reach a point when they need to have additional assistance. It won't be a traditional duplex where it is the same on both sides it will be a small apartment.

Mr. Ramsour asked the Commissioners if they had any questions for Mr. Harrell? Mr. Ramsour stated he noticed a for sale sign on the street and does that have to do with your property?

Mr. Harrell stated it did not.

Mrs. Steele wanted to know if the access to the property is off Zora.

Mr. Harrell stated it was.

Mr. Ramsour asked if there was anyone that would like to speak in favor of this case? There was not. Is there anyone to speak against this case? There was not.

**MR. DERMOTT MOVED, SECONDED BY MR. EASTMAN, TO APPROVE CASE 016-19 AND BE FORWARDED TO THE CITY COUNCIL WITH THE RECOMMENDATION FOR APPROVAL. MOTION CARRIED, WITH MR. RAMSOUR, MR. DERMOTT, MRS. BRUECKNER-SEARS, MRS. KOELKEBECK, MRS. STEELE, MR. MCCULLOUGH, AND MR. EASTMAN VOTING "AYE". (7 IN FAVOR, 0 NAYS).**

Z&P Meeting: May 13, 2019
City Council Meeting: June 3, 2019

# STAFF PLANNING REPORT
## Rezoning

**CASE 016-19** A request to rezone from R-1 (Single Family Residential District) to R-2 (Two-Family Residential) for the construction of a duplex.

**LOCATION** Located approximately 500 feet west of the property addressed as 2902 N. St. Louis Avenue

**APPLICANT** David and Sarah Harrell

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### EXISTING CONDITIONS

| Zoning | Land Use | Property Size |
|---|---|---|
| R-1 | Vacant | Approx. 3.9 acres |

### SITE CONTEXT

| | North | East | South | West |
|---|---|---|---|---|
| Existing Zoning | R-1 | R-1 | R-1 | R-1 |
| Land Use | Undeveloped & Single-Family Residence | Single-Family Residence | Electrical Substation | Undeveloped |

### FUTURE LAND USE

The Future Land Use Map shows this property appropriate for single-family residential development.

### TRANSPORTATION

| Streets with access | Classification | Right-of-way width |
|---|---|---|
| Dedicated unnamed street via St. Louis Ave. and/or Zora St. | Local | 30 ft. |

| | |
|---|---|
| **UTILITIES** | Utilities will need to be extended to serve this property. Public sewer is not readily available to this property. Since the sewer is not available, the property owner will have the option of installing a septic system. The county septic system requirements will need to be followed if the owner chooses this option. |
| **FLOOD PLAIN** | N/A |

**STAFF ANALYSIS**

**CONSISTENT WITH DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN?**

Although the Future Land Use map shows this property as appropriate for single-family residential, the property has been difficult to market for single-family residential development.

**THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED**

The existing residential single-family residential zoning does not permit the construction of a duplex or duplexes.

**THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY**

As proposed, staff believe the rezoning for the construction of one duplex will have minimal impact on nearby property and land uses since most of the properties are undeveloped.

**DISCUSSION**

Even though the property owner is proposing to construct one duplex, the size of the property in this request to be rezoned to a two-family residential district could potentially allow a maximum of 21 duplexes or 42 living units. One duplex will have minimal impact on this area. The size of the property will allow the property owner to install a septic system to service the proposed duplex since the closest public sewer that can potentially serve this property is located almost a quarter of a mile away through existing easements. In the future if additional duplexes and/or single-family homes are constructed on this property, public sewer will need to be extended to serve the new development. Access will also need to be improved and streets installed in the future to accommodate the additional traffic that will be generated by any duplexes or single-family residential development. The construction of one duplex will not warrant that these improvements be made at this time.

Also, the former property owner (located next to this property at 2902 N. St. Louis Ave.) has stated this property has been difficult to market for single-family homes due to the large electrical substation that is currently located adjacent to this property. A better use of the property may be for a higher density residential development since the market has already determined the struggle in selling this property under its current zoning restriction for single-family residential development.

*Staff recommends approval of Case 016-19.*

**ATTACHMENTS**

- Application

RECEIVED 4-15-19

# REZONING APPLICATION FORM

Return Form to:
Planning / Community Development Specialist.
Joplin City Hall
602 South Main Street
Joplin, Missouri 64801
417-624-0820 Ext. 511
FAX 417-625-4738

For Office Use Only

Case No.: 016-19
Filing Fee: $500.00
Date Advertised: 4-28-19
Date Notices Sent 4-26-19
Public Hearing Date: 5-13-19

APPLICANT: David + Sarah Harrell PHONE: 417-850-7985
ADDRESS: [redacted] 111 Gum Rd - Carl Junction ZIP: 64834
OWNER: David + Sarah Harrell PHONE: 417-850-7985
ADDRESS: 111 Gum Rd - Carl Junction, MO ZIP: 64834
LOCATION OF PROPERTY:
LEGAL DESCRIPTION:
See Attached

Present Zoning R1 Requested Zoning: R2 Acreage: ~3.8 acres
Present Use of Property: Undeveloped

SURROUNDING LAND USE AND ZONING:

| | Land Use | Zoning |
|---|---|---|
| North | undeveloped | R1 |
| South | undeveloped | R1 |
| East | Single | R1 |
| West | undeveloped | R1 |

CHARACTER OF THE NEIGHBORHOOD: undeveloped - Rural

RELATIONSHIP TO EXISTING ZONING PATTERN:

1. Would proposed change create a small, isolated district unrelated to surrounding districts?
   yes - but near electric substation and busy intersection
2. Are there substantial reasons why the property cannot be used in accord with existing zoning?
   If yes, explain:

CONFORMANCE WITH COMPREHENSIVE PLAN:

1. Consistent with Development Policies? yes
2. Consistent with Future Land Use Map? no - near electric sub station and busy intersection

THE FOLLOWING MUST ACCOMPANY YOUR APPLICATION:

1. One copy of a legal description of the property proposed to be rezoned.
2. One copy of a statement describing the reasoning for the rezoning, the impact of the proposed change, including any traffic conditions that may result; any danger from fire hazards; how the proposed change may effect the character of the surrounding properties; and how the proposed change will benefit the City of Joplin.
3. Owner Affidavit, if applicant applying for the rezoning is not the owner of the property be rezoned

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: Zora
2. Classification of Street(s):
   Arterial_____ Collector_____ Local ✓
3. Right-of-Way Width: _____
4. Will turning movements caused by the proposed use create an undue traffic hazard?
   no

IS PLATTING OR REPLATTING REQUIRED TO PROVIDE FOR:

1. Appropriately Sized Lots? no
2. Properly Sized Street Right-of-Way? no
3. Drainage Easements? no
4. Utility Easements:
   - Electricity? no
   - Gas? no
   - Sewers? no
   - Water? no
5. Additional Comments: _____

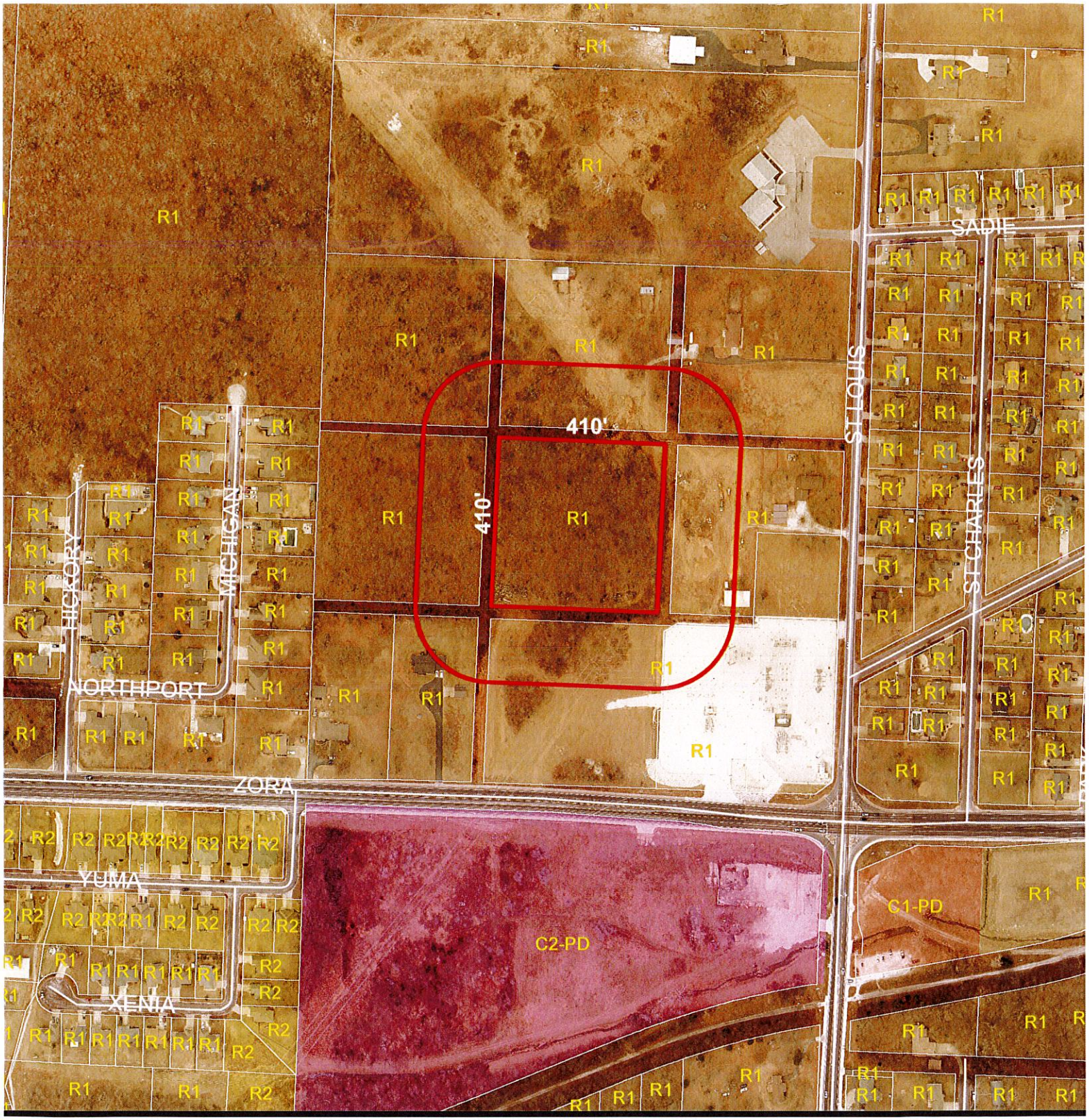
UNIQUE CHARACTERISTIC OF PROPERTY AND ADDITIONAL COMMENT:

Property not developed - zoned R1

SIGNATURE: David W Hall DATE: 4-15-19

BY: _____

TITLE: _____




300 150 0 300 600 900 1,200 1,500 1,800

Feet

Case 016-19: Located approximately 500 feet west of the property addressed as 2902 N. St. Louis Avenue - A request to rezone from Single-Family Residential (R-1) District to Two-Family Residential (R-2) District for the construction of a duplex – David & Sarah Harrell.

P & Z Case 016-19
David & Sarah Harrell
(P & Z Recommended Approval)

COUNCIL BILL NO. 2019-264 ORDINANCE NO.

AN ORDINANCE approving the location approximately 500 feet west of the property addressed as 2902 N. St. Louis Avenue to include in District R-2 (Two-Family Residential District), Jasper County, Missouri.

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

Section 1. Having referred the subject matter of this ordinance to the City Planning and Zoning Commission and having given at least fifteen days' notice of time and place of hearing on same by publication in the Joplin Globe, Ordinance No. 2004-256 is hereby amended by the following described property and including in District R-2:

All of Lots Numbered Fifteen (15), Sixteen (16), Twenty-one (21) and Twenty-two (22) in Joplin-Webb City Acres Subdivision in the City of Joplin, Jasper County, Missouri.

Section 2. That the City Clerk is hereby ordered to file this ordinance with the Zoning District Map maintained in her office and to note the changes herein provided thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ 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

# CITY OF JOPLIN
# COUNCIL AGENDA ITEM

**ITEM**
Council Bill 2019-130
Deborah Pearson & Co. Inc., Appraisal Services Agreement for 32nd Street Widening Project

**MEETING DATE**
June 17, 2019

**ORIGINATING DEPT**
Public Works Engineering

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

**ATTACHMENTS**
Council Bill No. 2019-130; Agreement from Deborah Pearson & Co. Inc.

**SUMMARY**
This Council Bill Authorizing the approval of an agreement with Deborah Pearson & Co. Inc. in the amount not to exceed Fifty One Thousand Four Hundred Eighty and No/100 Dollars ($51,480.00) for appraisal services.

**BACKGROUND**
In August of 2014 the voters passed the Renewal of the Capital Improvement Sales Tax Program for an additional 10 years. One of the projects was the widening of 32nd street from Schifferdecker to Central City Road. In September 2015 the council approved an agreement with Olsson & Associates for the design and construction management of the project. Final right of way plans have been completed, a public meeting was held to review the final plans with area property owners, and the appraisal process is ready to begin.

**DISCUSSION**
City staff followed the procurement policy and sent out a Request for Proposal (RFP) to qualified appraisers. Based on the submitted proposals, city staff selected Deborah Pearson & Co. Inc. as the appraiser for the project.

**FUNDING SOURCE**
Capital Improvement Sales Tax

**RECOMMENDATION**
Staff recommends approval of this Council Bill No. 2019-130, an agreement with Deborah Pearson and Co. Inc. in the amount of Fifty One Thousand Four Hundred Eighty and no/100 Dollars ($51,480.00) for appraisal services for the 32nd Street widening project on an Emergency Basis, in that said ordinance provides for public improvements and is considered 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.

AGREEMENT FOR
PROFESSIONAL RIGHT OF WAY APPRAISAL SERVICES

THIS AGREEMENT, made on this 18th day of June, 2019, by and between the City of Joplin, Missouri, whose address is 602 Main Street, Joplin, Missouri 64801, hereinafter referred to as the "City" and Deborah Pearson & Co, Inc., 2802 Illinois Av, Joplin, MO 64804 hereinafter referred to as the "Appraisal Firm" for professional right of way appraisal services on 32nd Street from Schifferdecker west to Central City Road, herein referred to as the "Project".

WHEREAS, the City desires to retain a professional appraisal firm to assist the City in performing right of way appraisals for fifty (50) parcels on 32nd Street from Schifferdecker west to Central City Road, in Joplin, Missouri, as outlined by your correspondence on April 5, 2019. For purposes of this agreement, a parcel is defined as a tract of land as per County records even if more than one parcel is owned by same owners.

NOW THEREFORE WITNESSETH: That for and in consideration of the mutual covenants and promises between the parties hereto, the parties do hereby agree as follows:

## ARTICLE I - SERVICES

The Appraiser agrees to diligently perform in a professional and workmanlike manner the following services:

A. Perform right of way appraisals on the project as more specifically set forth in the Description of Services, attached hereto as Attachments A & B incorporated by reference.

## ARTICLE II - AGREEMENT TIME

This Agreement becomes effective upon execution of this Agreement and it will terminate upon the completion of Appraiser's duties and obligations under this Agreement. The Appraiser will complete its services in accordance with the Project Timeline as more specifically set forth in Attachment "A".

## ARTICLE III - GENERAL CONDITIONS

1. The Appraisal Firm shall observe and comply with all Federal, State and local laws and ordinances that affect those employed or engaged by it on the project, or the material or equipment used, or the conduct of the work, and shall procure all necessary insurance.

2. The Appraisal Firm shall prosecute the work in a diligent manner.

3. This Agreement, including payment hereunder, shall not be sub-let, assigned or otherwise disposed of, except with the prior written consent of the City.

4. The Appraisal Firm warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Appraisal Firm to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Appraisal Firm, any fee, commission, gift or contingent fee.

5. In performance of the work covered by this Agreement, the Appraisal Firm shall not discriminate against any worker because of race, creed, color, political affiliation, handicap or national origin.

6. Possession of working papers, project reports and other materials produced in connection with this Agreement shall be retained by the Appraisal Firm. The Appraisal Firm shall provide copies for City of such records upon request.

7. City shall have the right to make changes within the general scope, type of report requested, change in project plans creating a change in a report or any other Appraisal Firm's services, with an appropriate change in compensation, upon execution of a mutually acceptable amendment or change order signed by an authorized representative of City and the President of the Appraisal Firm.

**ARTICLE IV - RESPONSIBILITIES**

The Appraisal Firm shall:

1. Provide a staff that is experienced in performing the work.

2. Deliver in a timely manner all services specified herein.

3. Consultant will exercise reasonable skill, care and diligence in the performance of its services and will carry out its responsibilities in accordance with The Uniform Standards of Professional Appraisal Practice. If Appraisal Firm fails to meet the foregoing standard, Appraisal Firm will perform at its own cost, and without additional reimbursement from City the Appraisal practices necessary to correct errors and omissions caused by Appraisal Firms failure to comply with above standard provided said errors or omissions are reported to the Appraisal Firm within one year from the completion of Appraisal Firm's services for this Project.

**ARTICLE** V - **COSTS AND PAYMENTS**

1. The City will be billed by invoice for professional time and services provided by the Appraisal Firm in the amount of $858.00 per parcel and $100 an hour for all other services as outlined in Attachment B. The cost per parcel is based upon the bid for sixty parcels and is subject to change if the number of parcels change hereafter. Each appraisal submitted will include an invoice as described above.

2. Appraisal Firm shall prepare and submit an invoice to the City as each appraisal is delivered to the City and City will pay said invoice within thirty (30) days of receipt; and (b) For any additional services requested or changes, the Appraisal Firm shall submit an invoice for the service at the time the report or service is completed as provided in Attachment "B" for all additional services required and/or rendered. Said additional services shall include, but not limited to: any meetings, phone conversations, appearances, conferences, court appearances, depositions, any requirements of the court, waiting time prior to or after court appearances, being "on call" for court or attorneys, travel time to and from any of the above will be billed at $100 per hour.

**ARTICLE VI - AGREEMENT**

This Agreement contains the complete and full understanding of the parties; it may be varied only by written amendment executed by both parties.

**ARTICLE VII - MISCELLANEOUS**

A. CHOICE OF LAW. This Agreement has been made, and its validity, performance and effect shall be determined, in accordance with the laws of the State of Missouri and venue for litigation between the parties shall be solely and exclusively in Jasper County, Missouri, or the United States District Court for the Western District of Missouri.

B. HEADINGS. The headings of paragraphs in this Agreement are for convenience only. The headings form no part of this Agreement and shall not affect its interpretation.

C. ENTIRE AGREEMENT. This Agreement (including any Attachments) contains the entire understanding of the parties with respect to the subject matter hereof. It may not be altered or amended except by an agreement in writing signed by both parties.

D. WAIVER OR BREACH. Waiver of any provision of this Agreement or breach of this Agreement shall not thereafter be deemed to be a consent by the waiving party to any further waiver, modification or breach by the other party, whether new or continuing, of the same or any other covenant, condition or provision of this Agreement. Failure by one of the parties to this Agreement to assert its rights for any breach of this Agreement shall not be deemed a waiver of such rights. Should City or Appraisal Firm be required to institute legal action to enforce any of its rights set forth in this Agreement, then each party shall be entitled to reimbursement for all reasonable attorneys' fees and costs incurred as a result of breaching this Agreement, as determined by the Court in any such cause of action.

E. SEVERABILITY. If any of the provisions of this Agreement shall be construed to be invalid or illegal, the legality or validity of the other provisions of this Agreement shall not be affected thereby. Any illegal or invalid provision of this Agreement shall be severable and any other provisions shall remain in full force and effect.

F. BINDING EFFECT. The provisions herein shall operate as a covenant running with the land and shall bind both parties hereunto and their respective successors and assigns.

G. REPRESENTATIONS. The signatories hereto represent and warrant that they have read this Agreement, that they are fully authorized in the capacities shown, that they understand the terms of this Agreement, and that they are executing the same voluntarily and solely for the consideration described herein

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last written above.

FOR THE APPRAISAL FIRM

BY: _____
Deborah Pearson, President

FOR THE CITY

BY: _____
Dan Pekarek, Interim City Manager

ATTEST: _____
Barbara Gollhofer, City Clerk

APPROVED TO FORM:

_____
Peter C. Edwards, City Attorney

**ATTACHMENT "A"**

Whereas the City has requested and the Appraisal Firm has agreed to complete right of way appraisal reports for the following project:

1. 32nd Street from Schifferdecker west to Central City Road (as outlined by the plans submitted to the appraiser as of 5-23-19) completed no later than 6 months after the appraiser receives an executed contract, final plans and all necessary or related documentation.

The total timeline for the 32nd Street and Connecticut Street combined is estimated to be 11 months assuming no delays beyond the appraiser's control. This timeline is subject to the appraiser receiving all necessary documentation, information, title work, final plan sheets, etc. from the City in a timely manner.

The above referenced timelines assume no delays from sources outside the Appraisal Firm. Note the timelines are the last dates all reports will be completed within this section, assuming no delays beyond the appraiser's control.

**ATTACHMENT "B"**

All additional services for the project will be provided at the hourly rate of $100.00 per hour. Said additional services shall include, but not limited to: meetings, phone conversations, appearances, testimonies, conferences, court appearances, depositions, any requirements of the court, waiting time prior to or after court appearances, being "on call" for court or attorneys, travel time to and from any of the above. Appearance and meeting fees will be calculated by the appraiser leaving and returning to the office with a minimum of two-hour fee per appearance or meeting.

Additionally, any changes in the scope of work, plan changes, etc. beyond the appraiser's control that occur after the appraiser receives completed plans and begins working on the project that results in changes to the appraiser's internal documentation or reports shall be billed as outlined in Attachment "B".

If additional parcels are added after the execution of this contract, said parcels with be billed per parcel as stated in the contract.

COUNCIL BILL NO. 2019-130 ORDINANCE NO

AN ORDINANCE authorizing the acceptance of an agreement with Deborah Pearson & Co. Inc, in the not to exceed amount of Fifty One Thousand Four Hundred Eighty and No/100 Dollars ($51,480.00) for appraisal services for the 32nd Street Widening Project; and containing an emergency clause.

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

Section 1. That an agreement be accepted with Deborah Pearson & Co., Inc. in the not to exceed amount of Fifty One Thousand Four Hundred Eighty and No/100 Dollars ($51,480.00) for appraisal services for the 32nd Street Widening Project, for the City of Joplin, Jasper County, a true and accurate copy of said agreement being attached hereto and incorporated herein, be, and the same is hereby approved.

Section 2. That the City Manager or his designee is hereby authorized and directed to execute said agreement on behalf of the City of Joplin.

Section 3. That upon the final approval and acceptance of the consultant's work under said contract, in substantial conformance with the attached exhibits, in writing by the Director of Public Works, and his certification to that effect to the Director of Finance.

Section 4. That the City of Joplin declares that this 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. Specifically, this council bill needs to be approved in order to allow construction to be completed within funding time limitations.

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

_____, 2019 by a _____ vote.

_____

ATTEST: Gary L. Shaw, Mayor

_____

Barbara Golhoffer, City Clerk

APPROVED AS TO FORM:

_____

Peter C. Edwards, City Attorney

**Council Bill 2019-130**

I hereby certify that a sufficient amount is available in the Capital Improvement Sales Tax Fund to pay the amounts called for on the basis of the negotiated fee.

_____

Leslie Haase, Director of Finance

# CITY OF JOPLIN
# COUNCIL AGENDA ITEM

**ITEM**
Council Bill 2019-131 Construction Agreement between City of Joplin and Hunter Chase & Associates for construction of Surface Project 4009

**MEETING DATE**
June 17, 2019

**ORIGINATING DEPT**
Public Works-Engineering

**ATTACHMENTS**
Agreement; Council Bill 2019-131, Bid Tabulation, Location Map

**REVIEWED BY**
Dept. Head: David Hertzberg; Director of Planning & Community Development: Troy Bolander; Finance Director: Leslie Haase; City Attorney: Peter Edwards; Interim City Manager: Dan Pekarek

**SUMMARY**
This Council Bill authorizes the City Manager or his designee to enter into an agreement with Hunter Chase & Associates in the amount of One Million Forty-Five Thousand Nine Hundred Eighteen and 00/100 dollars ($1,045,918.00) for the construction of Surface Project 4009.

**BACKGROUND**
In June 2018, City Council approved a contract with Olsson Associates dba Joplin Joint Engineering Team (JET) for the design, survey, bidding and construction phase services of three additional surface projects as a result of previous CDBG-DR project cost savings. Surface Project 4009, one of these three projects, was included in this scope of work, and includes the replacement of damaged sidewalks, curbs & gutters, ADA ramps and street pavement. The area for Surface Project 4009 in general is from Ohio Street to Connecticut Avenue and 15th Street to 20th Street. In accordance with the City of Joplin's procurement policies, a Request for Proposal for construction of Surface Project 4009 was advertised in the Joplin Globe on May 5, 2019, and bids were received by the City on May 30, 2019. Three proposals were received, with Hunter Chase & Associates selected as the lowest, most responsive bidder. The low bid was within 10% of the engineers estimate. Work will begin after the contract is approved and signed, and is to be completed by September 15, 2019.

**FUNDING SOURCE**
These payments are covered by the CDBG-DR Grant Funds.

**RECOMMENDATION**
Staff recommends approval of Council Bill 2019-131, an agreement with Hunter Chase & Associates in the amount of One Million Forty-Five Thousand Nine Hundred Eighteen and 00/100 dollars ($1,045,918.00) for construction of Surface Project 4009 on an emergency basis, per 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.

**AGREEMENT**

**CITY OF JOPLIN AND HUNTER CHASE & ASSOCIATES**

**THIS AGREEMENT**, made and entered into this ____ day of _____, 2019, by the parties identified above.

**WITNESSETH**: That whereas, the Contractor has become the lowest responsible bidder for furnishing the supervision, labor, tools, equipment, materials and supplies and for constructing the following City improvements:

**SURFACE PROJECT 4009**
**OHIO AVENUE TO CONNECTICUT AVENUE**
**AND 15TH STREET TO 20TH STREET**
**CDBG-DR GRANT NO. B-12-MT-29-0001 & B-13-MS-29-0001**

The City and Contractor agree to the following:

1. **Manner and Time for Completion**. The Contractor will furnish all supervision, labor, tools, equipment, materials and supplies necessary to perform, and to perform said work at Contractor's own expense in accordance with the contract documents and any applicable City ordinances and state and federal laws by September 15, 2019.

2. **Prevailing Wages**. The Contractor shall be required to pay their laborers and mechanics no less than the more stringent of either that required by the Department of Labor and Industrial Relations of the State of Missouri or the Department of Labor as defined in the Davis-Bacon Act.

   a. **Missouri Wage Rate:** All labor utilized in the construction of the aforementioned improvements shall be paid a wage of no less than the "prevailing hourly rate of wages" for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri. At any time the contractor is found to not have paid prevailing wages, the contractor shall forfeit as a penalty to the city one hundred dollars for each underpaid worker employed, for each calendar day, or portion thereof such worker is paid less than the said stipulated rates for any work done under this contract.

   b. **Davis Bacon:** The Davis-Bacon Act, as amended (40 U.S.C. 3141-3148) requires that for all prime construction contracts in excess of $2,000 awarded by non-Federal entities, the Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at

a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor shall pay wages not less than once a week. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Contractor shall report all suspected or reported violations to the Federal awarding agency. Apprentices may be employed at less than predetermined rates if they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department. Trainees may be employed at less than predetermined rates if they are in a training program certified by the Department.

3. **Contract Work Hours and Safety Standards Act**. (40 U.S.C. 3701-3708). Where applicable, in all contracts awarded in excess of $100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. **Insurance Requirements**. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City of Joplin, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City of Joplin against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City of Joplin. Regardless of such approval, it shall be the responsibility of the contractor to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under the Contract Documents.

   The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the City within ten (10) days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. All insurance policies shall require that the insurance company in question provide thirty (30) days written notice prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to:

   City of Joplin - Public Works, 602 S. Main Street, Joplin, MO 64801

   Such policies shall name the City as an additional insured, with limits of liability not less than the sovereign immunity limits for Missouri public entities calculated by the Missouri Department of Insurance as of January 1 each calendar year and published annually in the Missouri Register pursuant to Section 537.610, RSMo. (See, http://insurance.mo.gov/industry/sovimmunity.php)

   As of January 1, 2019, the minimum coverage for the insurance referred to herein shall be as set out below:

   **a. Workers' Compensation….**Statutory coverage per RSMo 287.010 et seq
   **Employer's Liability…….** $1,000,000.00

**b.** **Commercial General Liability Insurance**, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and endorsed for blasting if blasting required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Two Million Eight Hundred Sixty Five Thousand Three Hundred and Thirty and no/100 Dollars ($2,865,330.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Twenty Nine Thousand Seven Hundred Ninety-Nine and no/100 Dollars ($429,799.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least $1,000,000 for all claims to property arising out of a single occurrence and at least $100,000 to any one owner with respect to damages to property. Contractor agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorneys' fees of Contractor, its employees, officers or agents. Contractor agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

**c.** **Automobile Liability Insurance** covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at least Two Million Eight Hundred Sixty Five Thousand Three Hundred and Thirty and no/100 Dollars ($2,865,330.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Twenty Nine Thousand Seven Hundred Ninety-Nine and no/100 Dollars ($429,799.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

**d.** **Owner's and Contractor's Protective Liability Insurance** to protect the City, its agents, servants and employees from claims which may arise from the performance of this Contract, with limits of at least Two Million Eight Hundred Sixty Five Thousand Three Hundred and Thirty and no/100 Dollars ($2,865,330.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Twenty Nine Thousand Seven Hundred Ninety-Nine and no/100 Dollars ($429,799.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

The Owner's and Contractor's Protective Liability Insurance must:

**(1)** Be a separate policy with the named insured being: The City of Joplin, and

**(2)** Contain an endorsement that disclaims coverage for any claim barred by the doctrines of sovereign immunity or official immunity, except attorney's fees and other litigation costs incurred in defending a claim. Nothing contained in this policy (or this endorsement thereto) shall constitute any waiver of whatever kind of these defenses or sovereign immunity or official immunity for any monetary amount whatsoever.

**e.** **Builders Risk Insurance** for contracts involving unoccupied structures. The Contractor shall secure All Risk Builder's Risk Insurance. Unless specifically authorized by the City, the amount of such insurance shall not be less than the total contract price.

**f.** **Subcontracts**. In case any or all of this work is sublet, the Contractor shall require the subcontractor to procure and maintain all insurance required in subparagraphs (a), (b) and (c) hereof and in like amounts. Contractor shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City of Joplin through insurance against applicable hazards or risks and shall, upon request of the City, provide evidence of such insurance.

g. **Notice**. The Contractor and/or subcontractor shall furnish the City prior to beginning the work, the policy as specified in subparagraph (d), and satisfactory proof of carriage of all the insurance required by this contract, with the provision that policies shall not be canceled, modified or non-renewed without thirty (30) days written notice to the City of Joplin.

h. **Legislative or Judicial Changes.** In the event the scope or extent of the City's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo is broadened or increased during the term of this agreement by legislative or judicial action, the City may require Contractor, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

5. **Performance, Labor, and Materials Payment Bond:** The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the City and on the forms approved by the City, each bond shall be in the amount of One Million Forty Five Thousand Nine Hundred Eighteen Dollars an No Cents ($1,045,918.00) conditioned upon the full and faithful performance of all major terms and conditions of this contract and payment of all labor and material suppliers. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bond(s) hereto attached for its faithful performance and payment of labor and material suppliers, the City shall deem the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the City to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Contractor shall be deemed to be due under this contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the City. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds $25,000.00 must be listed in United States Treasury Circular 570.

6. **Certification Regarding Disbarment, Eligibility, Indictments, Convictions or Civil Judgements for all Federal Aid Projects**: By signing and submitting the bid, the president or authorized official of the bidder, under penalty of perjury under the laws of the USA, shall certify that, except as noted in the exceptions, the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor or any position involving the administration of this project:

    a. Is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency.

    b. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years.

    c. Does not have a proposed debarment or suspension pending.

    d. Has not been indicted, convicted or had a civil judgment rendered against any of the listed parties by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

    e. Has not been in breach of contract with the City of Joplin within the last two years.

**6.1** If there are any exceptions, the bidder shall submit the exceptions on company letterhead, signed by the bidder and inserted inside the bid submitted. Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, the bidder shall indicate to whom it applies, the initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

**6.2** By signing the contract, the contractor shall further certify that all related subcontracts of $25,000 shall comply with this requirement. This includes all subcontractors, material suppliers and vendors.

7. **Debarment and Suspension (Executive Orders 12549 and 12689)—**A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 2 CFR §2424 (government debarment and suspension regulations) or by the City of Joplin.

8. **Contractor's Responsibility for Subcontractors**.

   a. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs.

   b. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract.

   c. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City or between any subcontractors.

9. **General Independent Contractor Clause**. This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri Revenue and Taxation laws, Missouri Workers' Compensation and Unemployment Insurance laws. The Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

10. **Personnel.** The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner. All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

11. **Changes.** The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

12. **Breach of Contract Terms.** Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

13. **Liquidated Damages**. Time of completion of work by the Contractor is of the essence. Should Contractor, or in the case of default, the surety, fail to complete the work within the time specified in the contract, or within such extra time as may be allowed in accordance with City of Joplin Standard Specifications, Division 0000, General Requirements and Provisions, Section 0400.19, Contractor (or surety) shall be liable to the City in the amount of $2,000.00 per day for each and every calendar day that the contract remains uncompleted after the time allowed for completion as liquidated damages, and not as a penalty, it being stipulated that actual damages to the City and the public arising from Contractor's failure to timely complete the work would be difficult, if not impossible, to ascertain. The amount assessed as liquidated damages may be withheld from any moneys otherwise due to Contractor from the City.

14. **Termination**. The City reserves the right to terminate this contract by giving at least five (5) days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

15. **City's Right to Proceed**. In the event this contract is terminated pursuant to Paragraph 14, then the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

16. **Termination for Convenience of City**. The City shall have the right at any time by providing at least ten (10) days written notice to Contractor to terminate and cancel this contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

17. **Guards and Lights**. The Contractor agrees that during the performance of said work, adequate barricades, guards and warning signs, lights or devices consistent with the requirements contained in the Manual on Uniform Traffic Control Devices shall be provided by Contractor during construction.

18. **Energy Efficiency.** The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

19. **Liability and Indemnity**.

    a. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this contract.

    b. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

    c. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law. The City can require additional documentation as needed to ensure that the appropriate wage rates are being paid in order to ensure compliance to all state and federal rules, regulations and statutes.

d. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

e. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

f. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Contractor's obligation under this agreement to defend, indemnify, and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance required of the Contractor under this agreement.

g. The Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

h. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

i. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.

j. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

**20. Copyright.** No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

**21. Architectural Barriers.** This Act requires that certain federally funded buildings or facilities be designed, constructed or altered to ensure accessibility to, and use by, physically handicapped persons. Buildings or facilities allocated or reallocated GLO-DR funds after December 11, 1995, that meet the definition of "residential structure" (as defined in 24 CFR 40.2) or the definition of "building" [as defined in 41 CFR 101-19.602(a)] are subject to the Architectural Barriers Act and must comply with the Uniform Federal Accessibility Standards.

22. **Payment for Labor and Materials**. The Contractor agrees and binds itself to pay for all labor done, and for all the materials used in the construction of the work to be completed pursuant to this contract.

23. **Payment**. The City will pay the Contractor in accordance with the rate set forth in the contract documents on file in the Public Works Department and by this reference made a part hereof, which shall constitute full and complete compensation for the Contractor's work provided hereunder. Such compensation will be paid in progress payments (less five (5) percent retainage), as established by the City, subject to receipt of a requisition for payment and a statement of work provided by the Contractor and agreement by both the City and the Contractor that the Contractor has fully performed the work to be paid for in such progress payments in conformance with the contract. If the City or the architect or engineer determines that a higher rate of retainage is required to ensure performance of the contract, the City may withhold up to ten (10) percent retainage until the work is fully completed and accepted by the City.

24. **Contract Documents**. The contract documents shall consist of the following:

    a. This Contract
    b. All Change Orders
    c. Bid Plans and Specifications
    d. City of Joplin Standard Specifications (March 3, 2018 Edition)
    e. Special Conditions
    f. Proposal
    g. Statement of Bidder's Qualifications
    h. Acknowledgment
    i. Performance Bond
    j. Payment and Material Bond
    k. Instructions to Bidders
    l. Non-collusion Affidavit
    m. Notice to Proceed
    n. Restriction on Lobbying
    o. Affidavit for Federal Work Authorization Program
    p. Certification Regarding Government-Wide Waiver and Release of Liens
    q. Certificate of Contractor
    r. Subcontractor Disclosure Form
    s. Affidavit of Compliance with Prevailing Wage Law
    t. Certification of Bidder of Equal Employment Opportunity

    **Notice to Contractors:** This contract, together with the other documents enumerated in this paragraph, forms the contract between the parties. These documents are as fully a part of the contract as if attached hereto or repeated herein. The Contractor agrees to perform all of the work described in the contract documents and to comply with the terms and conditions defined therein for a total sum of One Million Forty Five Thousand Nine Hundred Eighteen Dollars an No Cents ($1,045,918.00), said amount being subject to any approved addenda or change order.

25. **Subsurface Conditions**: Contractor agrees that information contained in the published reports and public actions of the Missouri Division of Geology and Land Survey shall be conclusive and binding upon the Contractor as to what subsurface conditions at the job site are reasonably anticipated or reasonably foreseeable.

26. **Flood Disaster Protection:** This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L.93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood

Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

27. **Environmental Compliance (24 CFR 85.36(i)(12)):** For contracts of amounts in excess of $150,000, the Contractor shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

    In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

    a. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.

    b. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

    c. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.

    d. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. **Procurement of Recovered Materials.** The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

29. **Lead Based Paint Poisoning Prevention Act.** Required the Secretary of Health, Education, and Welfare (now Health and Human Services) to prohibit lead-based paint in residential structures constructed or rehabilitated by the Federal government or with Federal assistance. Major components included: defining lead-based paint chips as the primary health hazard of lead-based paint, setting the level of lead in blood warranting concern at 60 µg/dL, requiring abatement standards that were less rigorous compared to today's standards, and Defining lead-based paint as paint containing more than 1 percent lead by weight.

30. **Contractor Conflict of Interest**. In accepting this contract, Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Joplin, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest, direct or indirect, in this contract. All applicable federal regulations and provisions of R.S.Mo. Section 105.450 et seq. shall not be violated.

    a. The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

31. **Assignment.** The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement.

32. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

    a. The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

    b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

33. **Anti-Kickback Rules.** The Contractor shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that the Contractor shall be prohibited from

inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor shall report all suspected or reported violations to the Federal awarding agency.

34. **Nondiscrimination**. The Contractor agrees in the performance of this contract not to discriminate on the grounds of race, creed, color, national origin or ancestry, sex, religion, handicap, gender identity, sexual orientation, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a)ii and 41 C.F.R. § 60-741.5(a), if applicable.

    a. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

    b. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

    c. No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

35. **Nonresident/Foreign Contractors**. The Contractor shall procure and maintain during the life of this contract:

    a. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 R.S.Mo.

    b. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

36. **Notices**. All notices required or permitted hereinunder and required to be in writing may be given by FAX or by first class mail addressed to City and Contractor at the addresses shown above. The date of delivery of any notice given by mail shall be the date falling on the second full day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

37. **Statement that Project is Federally Funded:** It is understood that this contract is funded in whole or in part with CDBG-DR funds through the City of Joplin Community Development Block Grant Program as administered by HUD and is subject to those regulations and restrictions normally associated with federally-funded programs and any other requirements that the state may prescribe.

38. **Records and Audits.** The Contractor shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper

accounting for all project funds. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for three years after the final grant report is submitted by the City to HUD. The City of Joplin, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

a. All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

**39. Federal Labor Standards Provisions.** The contractor shall comply with the Federal Labor Standards Provisions pursuant to the U.S. Department of Housing and Urban Development Form 4010 and the Office of Labor Relations.

**40. Equal Employment Opportunity**. During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

   Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

d. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States Government to enter into such litigation to protect the interests of the United States.

   The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings (including Section 3 businesses).

i. Contractor shall ensure that the hours of minority and female employment and training must be substantially uniform throughout the length of the contract and throughout each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hour performed.

41. **Women and Minority Business:** The Contractor will use its best efforts to afford small businesses, minority business enterprises, women's business enterprises and veteran –owned businesses the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans and American Indians. The Sub recipient and/or borrower may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation. The contractor must demonstrate to the City of Joplin's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the City of Joplin contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

    Evidence of a "good faith effort" includes, but is not limited to:

    a. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development;

    b. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;

    c. The Contractor shall actively solicit and shall provide the City of Joplin with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media.

42. **Civil Rights Act of 1964**. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

43. **Civil Rights Act of 1968.** Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin.

44. **Section 3 of the Housing and Urban Development Act of 1968.**

    a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

    b. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

    c. The Contractor agrees to send to each labor organization or representative of workers with which the Engineer has a collective bargaining agreement or other understanding, if any,

a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

e. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected by before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Engineer's obligations under 24 CFR part 135.

f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

g. The Contractor shall assist the City of Joplin in obtaining all necessary documentation to support Section 3 goals. The Contractor will complete and submit the Section 3 tables in Attachment A in the Architect's required periodic reporting to the City. Frequently Asked Questions related to Section 3 are also included in Attachment A.

**45. Section 109(a) of the Housing and Community Development Act of 1974**. No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, shall also apply to any such program or activity.

**46. Section 110 of the Housing and Community Development Act of 1974**

a. All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a--276a-5): Provided, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40.

b. Subsection (a) of this section shall not apply to any individual that:

i. performs services for which the individual volunteered;
ii. does not receive compensation for such services; or
iii. is paid expenses, reasonable benefits, or a nominal fee for such services; and
iv. is not otherwise employed at any time in the construction work.

**47. Affirmative Action for Handicapped Workers (Section 503 of the Rehabilitation Act of 1973 (USC793))**

a. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and to otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices, such as employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

b. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

c. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

d. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of the applicants and employees.

e. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

f. The Contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**48. Section 504 of the Rehabilitation Act of 1973**, as amended, provides for nondiscrimination of an otherwise qualified individual solely on the basis of his handicap in benefiting from any program or activity receiving Federal financial assistance. All recipients must certify to compliance with all provisions of this Section.

**49. Age Discrimination Act of 1975**. No person in the United States, on the basis of age, be excluded from participation in, be denied benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

**50. Authorized Employees**. Contractor acknowledges that Section285.530, RSMo, prohibits any

business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Contractor therefore covenants that is not knowingly in violation of subsection 1 or Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully to work in the United States.

51. **Interest of Contractor and Employees**. The Contractor covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.

52. **City of Joplin Conflict of Interest.**

    a. No member of the governing body of the City and no other officer, employee, agent of the City and no other public official of the locality while employed or for one year thereafter, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract, and the Contractor shall take appropriate steps to assure compliance.

    b. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

53. **Affidavit for Contracts Over $5,000.00**. That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, if this contract exceeds the amount of $5,000.00 and Contractor is associated with a business entity, Contractor shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Contractor must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

54. **City Benefits.** The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

55. **Inspection.** The authorized representative and agents of the City of Joplin and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

56. **Reporting Requirements.** The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

57. **Occupational License.** The Contractor shall obtain and maintain an occupational license with the City of Joplin, Missouri, if required by city code and any required state or federal license. The cost for this occupational license shall be borne by the Contractor. No contract will be executed by the City until this occupational license has been obtained and that the Contractor is current on any City taxes is verified.

58. **Safety Training.** Pursuant to Missouri Revised Statute Section 292.675, Contractors and subcontractors who sign a contract to work on public works projects must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within sixty (60) days of beginning work on the construction project. Contractors and subcontractors in violation of this provision will forfeit to the public body $2,500 plus $100 a day for each employee who is employed without

training. Public bodies and contractors may withhold/assess these penalties from the payment due to those contractors and subcontractors if found to be in non-compliance.

59. **Compliance with Laws.** Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

    a. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

60. **Entire Agreement**. This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

61. **Remedies.** Except as may be otherwise found in the contract documents, all claims, disputes, counter-claims, and other matters in question between the Owner and Contractor arising out of or related to this agreement or the breech thereof, will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the state in which the Owner is located.

62. **Jurisdiction**. This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Jasper County, Missouri.

**IN WITNESS WHEREOF,** the parties hereto have set their hands and seals on the day and year herein stated.

**CONTRACTOR:**

**CERTIFICATE OF DIRECTOR OF FINANCE**

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefore.

By: _____

Printed Name:

Title:

Date:

_____
Leslie Haase, Director of Finance

**APPROVED AS TO FORM**

_____
Peter Edwards, City Attorney

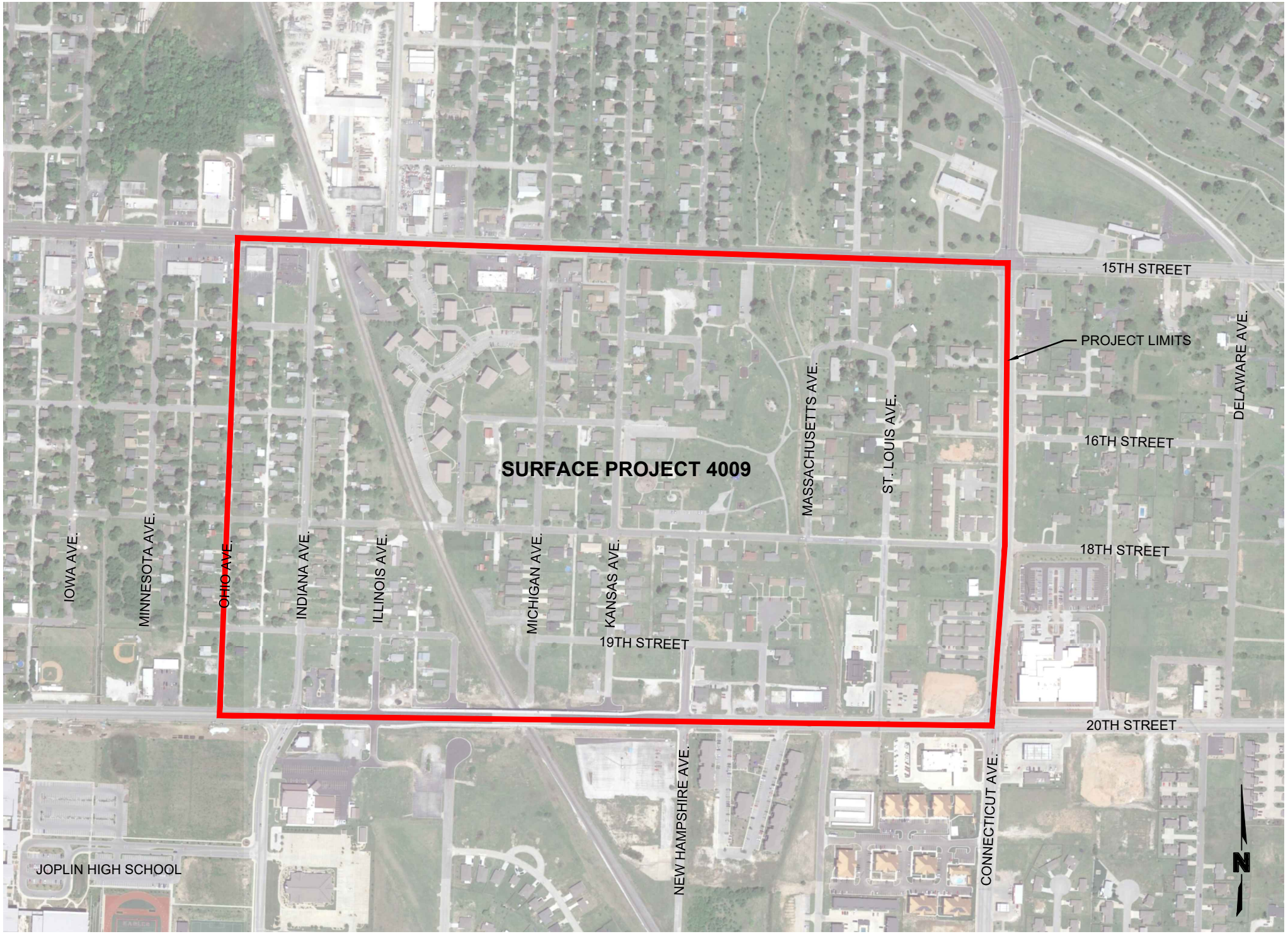
**CITY OF JOPLIN, MISSOURI**

By: _____
David Hertzberg, P.E.
Public Works Director

Date: _____

**APPROVED AS TO CDBG-DR**

_____
Troy Bolander, Director of Planning, Development & Neighborhood Services


SURFACE PROJECT 4009
PROJECT LIMITS
15TH STREET
16TH STREET
18TH STREET
19TH STREET
20TH STREET
IOWA AVE.
MINNESOTA AVE.
OHIO AVE.
INDIANA AVE.
ILLINOIS AVE.
MICHIGAN AVE.
KANSAS AVE.
MASSACHUSETTS AVE.
ST. LOUIS AVE.
DELAWARE AVE.
NEW HAMPSHIRE AVE.
CONNECTICUT AVE.
JOPLIN HIGH SCHOOL
N

# BID TABULATION

**PROJECT: Surface Project 4009**

**DATE OF BID OPENING: May 30, 2019**

| CONTRACTOR | BID |
|---|---|
| Hunter Chase & Associates | 1,045,918.00 |
| Branco Enterprises | 1,186,832.75 |
| Dalton Killinger Construction Co. | 1,200,533.90 |
| Engineers Estimate | 955,874.75 |
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COUNCIL BILL NO. 2019-131 ORDINANCE NO.

AN ORDINANCE approving the City of Joplin to enter into an agreement with Hunter Chase & Associates in the amount of One Million Forty-Five Thousand Nine Hundred Eighteen and 00/100 dollars ($1,045,918.00) for the construction of Surface Project 4009.

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

Section 1. That the City enter into an agreement with Hunter Chase & Associates in the amount of One Million Forty-Five Thousand Nine Hundred Eighteen and 00/100 dollars ($1,045,918.00) for the construction of Surface Project 4009.

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

Section 3. That upon the final approval and acceptance of the contractor's work under said contract, in substantial conformance with the attached exhibits, 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 Community Development Block Grant Disaster Recovery Grant 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 of_____.

Gary L. Shaw, Mayor

ATTEST:

Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

Peter C. Edwards, City Attorney

**Council Bill 2019-131**

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

_____

Leslie Haase, Director of Finance

# CITY OF JOPLIN
# COUNCIL AGENDA ITEM

**ITEM**
Council Bill 2019-132 – authorizing the City of Joplin to enter into an agreement with Missouri Network Alliance, L.L.C. d/b/a Bluebird Network ("Bluebird") for the purpose of Bluebird installing, maintaining, and operating facilities for communications related capabilities within the City's Rights-of-Way and ensuring compliance with the City's requirements of such use of City property.

**MEETING DATE**
June 17, 2019

**ORIGINATING DEPT**
Public Works

**ATTACHMENTS**
CB2019-132 Ordinance; Rights-of-Way Use Agreement for Communications Facilities

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

**SUMMARY**
Council Bill 2019-132 authorizes the City of Joplin to enter into an agreement with Bluebird for the purpose of Bluebird installing, maintaining, and operating facilities for communications related capabilities within the City's Rights-of-Way and ensuring compliance with the City's requirements of such use of City property.

**BACKGROUND**
The City adopted the Rights-of-Way Management Code on May 6, 2019. The City's Rights-of-Way Use Agreement for Communications Facilities with Bluebird is the first such agreement produced under the ROW Management Code. Bluebird will install 36,333 linear feet of underground facilities and pay a linear foot fee of $5,536.48 per month. The agreement is for a term of 10 years.

**FUNDING SOURCE**
N/A

**RECOMMENDATION**
Staff recommends adoption of this Council Bill on an Emergency basis, being an Ordinance dealing with a public improvement, 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.

# RIGHTS-OF-WAY USE AGREEMENT
# FOR COMMUNICATIONS FACILITIES

**THIS RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES** ("Agreement") is made and entered into as of the Effective Date (as defined in Section 11.1), by and between, **Missouri Network Alliance, L.L.C. d/b/a Bluebird Network,** a Missouri limited liability company registered to do business in Missouri (the "Licensee"), and the **City of Joplin, Missouri,** a municipality of the State of Missouri (the "City"). Licensee and City may sometimes be referred to in this Agreement individually as a "Party" or collectively as the "Parties."

**WHEREAS**, Licensee has requested consent from the City to authorize its use of the City's Rights-of-Way to construct, install, maintain, and operate facilities for communications or related capabilities; and

**WHEREAS**, Missouri law provides conditions relating to the City's consent to, and authorizes the City to regulate the use and occupancy of its Rights-of-Way ("Rights-of-Way" or "ROW") for placement of various communications facilities; and

**WHEREAS**, the City is authorized to and has established standards for occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Public Service Commission's duties and jurisdiction; and

**WHEREAS**, the City and Licensee desire to enter into this Agreement, to establish the terms of Licensee's use of the Rights-of-Way, and to incorporate the provisions and definitions of the ROW Code (as defined in Section 1.2); and

**NOW, THEREFORE,** in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

## SECTION 1. GENERAL

**1.1 Preservation of Police Power Authority.** Any rights granted to Licensee pursuant to this Agreement are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

**1.2 Defined Terms.** For purposes of this Agreement, the capitalized terms shall have the meanings as set forth herein and in the Code of Ordinances, City of Joplin, Missouri, including specifically Article VI of Chapter 106, and as may be amended ("ROW Code"). Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning. The following additional capitalized terms shall also apply to this Agreement:

A. **"Communications"** The transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and

received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

B. **"Communications Service"** The transmission of writing, 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, which if proposed must be expressly separately approved in Exhibit A below or sought directly by such third party from City. Any party seeking to provide cable television, video services, or use wireless communication facilities shall be subject to additional and separate requirements, limitations and/or approvals of federal, state and local law and shall have on file with the City such authorization to provide such services prior to commencement.

**1.3 Agreement Subject to Provisions of ROW Code.** This Agreement fully incorporates the provisions of the ROW Code as if fully set forth herein, and Licensee agrees as a part of this Agreement to abide by the provisions of the ROW Code and other applicable ordinances and law of the City as a ROW User, and to be subject to the enforcement by the City as provided therein and in this Agreement as a material term herein. This Agreement may establish Licensee obligations that are supplementary to the ROW Code, but nothing in this Agreement shall be deemed to waive any obligation or requirement applicable to Licensee authorized or established by the ROW Code. The consent to use the Rights-of-Way authorized by this Agreement is subject to the continuing accuracy during the term of this Agreement of the application information provided by and maintained by Licensee for this authorization as provided to and on file with the City.

## SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

**2.1 Agreements Non-Exclusive.** This Agreement shall grant nonexclusive privileges to use the Rights-of-Way. 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 applicable federal and state law. Nothing in this Agreement shall relieve Licensee from its obligations to apply for and obtain all necessary permits for installation of its Facilities including excavation, building, electrical, zoning, etc., before installation of its Facilities within the Rights-of-Way.

**2.2 Nature of Rights Granted by this Agreement.** This Agreement shall not convey title to Licensee, equitable or legal in the Rights-of-Way, and gives only the right to occupy the City's Rights-of-Way for the purposes and for the period stated in this Agreement and subject to the requirements of this Agreement. This Agreement also shall not grant the right to use Facilities owned or controlled by the City or a third-party, without the separate consent of the City or such third-party owning or controlling the Facilities, nor shall it excuse Licensee from obtaining

appropriate access or pole attachment agreements before locating on Facilities controlled or owned by the City or a third-party.

**2.3 Grant.** Subject to the terms and conditions of this Agreement, the ROW Code, and the conditions set forth on Exhibit A attached hereto and incorporated by reference into this Agreement, Licensee is hereby granted the nonexclusive right and privilege to construct, operate, and maintain Facilities in, through, over, above, and along the City's Rights-of-Way for the purposes of supplying **Communications Service** within the City, subject, however, to the terms and conditions herein set forth within this Agreement and the Row Code and all such special conditions as may be set forth in Exhibit A. Licensee agrees that this Rights-of-Way Use Agreement shall supersede any existing franchise or other rights-of-way use agreement between the Licensee and the City, if any. As a condition of this grant, Licensee is required to obtain and maintain any permit, license certification, grant, registration or any other authorization lawfully required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission, or the Missouri Public Service Commission. Licensee shall not have the right to install wireless antennae or antennae support structures in the ROW pursuant to this Agreement, nor provide services not authorized herein, except as provided in Exhibit A, or such subsequent amendment as may be approved thereto. The size, location, and specifications of the underground and above-ground Facilities are subject to prior City approval and consent. In the event that the use of the Rights-of-Way is proposed to change or Licensee desires to provide services other than as described herein, Licensee shall be required to seek amendment hereto prior to commencing such service or changed use.

**2.4 Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate.** The Licensee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, codes and ordinances, including all permit requirements, and fee payments, in effect as of the Effective Date or adopted after the Effective Date, to the extent such are not in contravention of applicable law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Licensee's Facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Licensee. The use of the Rights-of-Way authorized by this Agreement shall in all matters be subordinate to the City's use of, and rights to, the same and Licensee shall be limited to such uses as have been expressly granted to Licensee by the City. Licensee shall excavate in or install Facilities in the Rights-of-Way in locations and in a manner only as authorized by a permit granted by the City. Licensee shall further be subject to the City's exercise of its powers, including but not limited to its administration and regulation related to the management of the Rights-of-Way exercised in a competitively neutral and non-discriminatory reasonable manner.

**2.5 No Interference.** Licensee shall construct and maintain its Facilities to be so located, constructed, and maintained as to avoid interference with the proper use of all Rights-of-Ways and so as not to materially or without authority interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Licensee shall reasonably notify all residents and properties materially affected by the proposed work prior to commencement of such work. All construction and maintenance by Licensee or its subcontractors shall be performed in accordance with generally accepted industry standards and all standard specifications, drawings, and procedures required or approved by the City.

**2.6 Notification, Joint Installation, and Collocation Requirements.** Licensee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way under such generally applicable written policy or direction as may be established by the City. Licensee shall further make its installed Facilities available to other licensees on a nondiscriminatory competitively neutral basis as may be required by federal law codified at 47 U.S.C. § 224.

**2.7 Licensee Responsible for Costs.** The Licensee shall be responsible for all reasonable, lawfully reimbursable, documented costs incurred by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the permit fee established pursuant to the ROW Code and not contrary to any applicable requirements of Sections 67.1830 to 67.1846 RSMo. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Licensee. Licensee shall be responsible for its own costs incurred removing or relocating its Facilities when required to do so by the City due to the City requirements relating to maintenance and use of the Rights-of-Way as set forth in Section 7.6, below.

## SECTION 3. TERM AND COMPENSATION

**3.1 Term.** This Agreement shall be effective for a term commencing for **Ten years from the Effective Date** and subject to earlier termination or forfeiture as provided for elsewhere in this Agreement.

**3.2 Compensation.** The Licensee agrees to pay the User Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the City's policies and ordinances. Unless otherwise established by the City Council, Licensee shall pay to the City as monthly compensation for the use of the Rights-of-Way pursuant to this executed Agreement:

a. 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 $0.16 per linear foot for each additional linear foot of Facilities located in the Rights-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. Unless otherwise provided by law, including lawful action of the Council, the User Fee herein shall increase by two percent (2%) per year during the term of this Agreement (and annually thereafter if the term is extended without a change in this provision).

Licensee represents that it currently has 0 linear feet of Facilities and 0 antennas installed

in City Rights-of-Way ("Existing Facilities"). Licensee intends pursuant to this Agreement to install approximately 33,633 linear feet of underground Facilities and 0 antennas within the City ROW for the purposes authorized herein, as depicted on Exhibit B attached hereto and incorporated herein. The actual authorized installation shall be limited to that which has received approved permits from the City and the User Fee shall be paid based on the sum of the actual linear foot of Facilities installed and any additional linear foot approved by permit for installation. All User Fees shall be due and payable every month of each calendar year within thirty (30) days after the end of each such month for which the payment is owed. Each User Fee payment shall be accompanied by an affidavit, signed as true, which may be sent electronically in advance of payment, stating the greatest total linear feet of Facilities located in the Rights-of-Way during the preceding month, the total amount of antennas located in the Rights-of-Way, any credit taken for gross receipt taxes or business license fees paid to the City, and the payment of the User Fee made. If any fee statement is determined to understate the User Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Any payments due to the City hereunder and not paid at the due date shall bear interest at the rate of one and one-half percent (1.5%) per month, unless such other maximum rate is established by law. On an annual basis by January 31, Licensee shall submit an affidavit certifying as true each statement submitted for the previous twelve (12) months, including the statement for the immediately preceding December. If any statement for the previous twelve (12) months was incorrect, a corrected statement shall be submitted with the affidavit. If an incorrect fee statement understated the User Fee owed, then such additional amount owed, including with interest on said amount as provided herein, shall be submitted with the affidavit. Licensee's credit to the User Fee as authorized above shall be calculated based upon gross receipt taxes paid and attributable to gross receipts received for the same months in which the User Fee is attributable. The User Fee required in this Section shall be paid by Licensee as required herein without offset, credit, refund, or deduction except for such credit as is expressly provided for above for gross receipts taxes paid. Licensee may make the User Fee and eligible tax payment that is subject to credit above all as a single combined payment or in separate payments, and may also send a combined statement or separate monthly statements meeting the applicable requirements.

**3.3 User Fee Not a Tax.** The above required User Fee and other compensation required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the ROW Code, herein, and as set forth in § 67.1846. Licensee acknowledges that the User Fee is compensation for use of the Rights-of-Way, both underground and above ground, and shall in no way be deemed a tax of any kind.

## SECTION 4. TAXES

**4.1 Taxes.** The Licensee agrees to pay all legally applicable taxes including license taxes, business taxes, utility taxes, video services provider fees, and other applicable taxes of the City and failure to pay such taxes shall be considered a breach of this Agreement. Nothing herein is intended to alter, amend, modify or expand the taxes that may be lawfully assessed on Licensee's business activities under applicable law. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Rights-of-Way. Such taxes shall be in addition to compensation, if any, required by the City by ordinance or otherwise subject to any limitations herein and of applicable state or federal law.

## SECTION 5. TRANSFER OF AGREEMENT OR FACILITIES

**5.1 Transfer of Agreement.** Unless otherwise prohibited by law, Licensee shall not sell, transfer, lease, or assign this Agreement or its rights under this Agreement, in whole or in part, without obtaining the City's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing sentence, Licensee may sell, transfer, lease or assign this Agreement or its rights under this Agreement, in whole or in part, with prior thirty (30) days' written notice to the City if to: (a) any entity controlling, controlled by or under common control with Licensee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Licensee. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership or this Agreement. Licensee shall not change its name under which it does business with the public without providing at least thirty (30) days' prior written notice to the City.

**5.2 Agreement Binding.** In the event of a sale, transfer, assignment or any other transaction Licensee may enter into that involves transfer of Licensee's rights, duties, and privileges under this Agreement, all provisions of this Agreement that are obligatory upon, or that inure to the benefit of Licensee, shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of Licensee. Further, all obligations, duties, liabilities, limitations, prohibitions, amendments and forfeitures by this Agreement created or imposed upon Licensee shall be binding upon and be assumed, kept and performed by its legal and bona fide assigns and successors in interest, according to the true intent and purpose of this Agreement, whether expressly so stated or not.

**5.3 Sale or Lease of Facilities.** Except as otherwise may be provided by law, Licensee shall not lease, sell, sublet or otherwise transfer possession or control or use of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Agreement, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. Notwithstanding the foregoing, Licensee may use and maintain Licensee's installed Facilities for the benefit of its customers of its Communications Services provided that any such customer shall have no right of physical access to the Facilities in the ROW without a separate agreement with the City.

## SECTION 6. FORFEITURE OF LICENSE AND PRIVILEGE.

**6.1 Forfeiture.** In case of material failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Agreement, including the provisions of any applicable law, or if the Licensee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, including the provisions of the ROW Code, or if the Licensee loses authority to provide its Communication Services or do business within the City under applicable law, or if the Licensee, its successors and assigns, shall forfeit all rights and privileges permitted herein, 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 proceeds to forfeit this Agreement, it shall first serve a written notice upon the Licensee, setting forth in detail the neglect or failure complained of, and the Licensee shall have thirty (30) days thereafter in which to cure the default

by complying with the conditions of this Agreement. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with, unless said material default could not have been cured within said thirty (30) day period by Licensee exercising reasonable diligence and Licensee is exercising diligence to cure said default, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, at which Licensee may appear and be heard, to terminate the Agreement; setting out the grounds upon which said Agreement is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the City's ordinances, or as may otherwise exist at law. All remedies described in this Section are cumulative and in addition to any other rights and remedies to which City may be entitled at law, in equity or under this Agreement.

## SECTION 7. GENERAL CONDITIONS

**7.1 Compliance With Laws.** In performing activities and exercising its rights and obligations under this Agreement, the Licensee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, zoning, and other regulations and policies relating to construction, bonding, insurance, and use of public property.

**7.2 Insurance.** In addition to the requirements of Section 106-148 of the ROW Code, except as may be prohibited by law, Licensee shall provide, at its sole expense, and maintain during the term of this Agreement 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 Licensee, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officers, directors, employees and agents, or any subcontractors of Licensee. 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 Licensee 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 at least $2,804,046, but in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo., or its successor, for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City is named 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. The City's additional insured coverage shall have no deductible. **The insurance requirements in this Section or otherwise shall not apply to Licensee to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted and provided that this exemption shall not apply if Licensee uses or obtains the right to use any City poles or other facilities.**

**7.3 Construction Guarantee and Maintenance.** Licensee agrees that it shall be responsible to guarantee for a period of four years the restoration of the Rights-of-Way in the area where such Licensee conducted excavation and performed the restoration minimally as required by § 67.1834 RSMo. A bond, letter of credit or other surety (collectively "Surety") in the form approved by the City shall be posted if required by the City to guarantee construction performance. **Surety shall not be required to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted and provided that this exemption shall not apply if Licensee uses or obtains the right to use any City poles or other facilities.** Licensee shall also be responsible for maintenance of its Facilities and any and all damage caused to the Rights-of-Way, equipment within the Rights-of-Way, or otherwise by Licensee's use of the Rights-of-Way.

**7.4 Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Agreement through all remedies lawfully available, and Licensee shall pay the City its costs of enforcement, including reasonable attorneys' fees, in the event that Licensee is determined judicially to have violated the terms of this Agreement.

**7.5 Relationship of the Parties.** Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties.

**7.6 Relocation or Removal of Facilities.**

**7.6.1** In addition to the requirements of Section 106-147 of the ROW Code, the City may in its exercise of the public interest require that Licensee, at Licensee's sole cost and expense, relocate, adjust, or reinstall any of its Licensee's Facilities. The City shall give reasonable notice of such requirement to Licensee, including the location of Facilities to be relocated and a reasonable time to relocate such Facilities. Licensee shall forthwith remove, adjust, or relocate such Facilities within the reasonable time provided by the City in its written notice. The cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Licensee without expense to the City. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate its Facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate its Facilities.

**7.6.2** Licensee shall upon request of any person other than the City requesting relocation of Facilities and holding a validly issued building or moving permit and within a reasonable period as may be established by the City, temporarily raise, lower, adjust, or relocate its Facilities as may be reasonably necessary for such permit-holder to exercise its rights under the permit. Except where good cause is approved by the City, a permit-holder must make its request at least fourteen (14) days prior to the date it intends to exercise its rights under the permit. If applicable, Licensee will, within seven (7) days of its receipt of such a request, deliver to the

permit-holder an invoice for the services. However, Licensee will not be required to honor any such request unless and until the permit-holder makes payment in advance for any expenses incurred by said Licensee pursuant to said person's request. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate its facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate its Facilities.

7.7 **No Cause of Action Against the City.** The Licensee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Agreement, or because of the enforcement thereof by said City, or for the failure of the City to have the authority to grant, all, or any part, of the rights herein granted; provided that said Licensee expressly acknowledges that it accepted the rights herein granted under this Agreement in reliance upon its independent and personal investigation and understanding of the power or authority of the City to enter into the Agreement herein with Licensee; provided further that the Licensee acknowledges by its acceptance of said Agreement that it has not been induced to enter into this Agreement upon any understanding, or promise, whether given verbally or in writing by or on behalf of any Party, or by any other person concerning any term or condition of this Agreement not expressed herein; provided further that the Licensee acknowledges by the acceptance of this Agreement that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions of this Agreement. Nothing herein shall be deemed to waive the City's sovereign immunity.

## SECTION 8. INDEMNIFICATION

**8.1 Indemnification.** Licensee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, councils, boards, commissions, officers, employees, attorneys, and agents, from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Licensee, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Licensee may be liable, in constructing, operating, using, maintaining, repairing, restoring or removing Facilities, or in carrying on Licensee's business or operations in the City, or out of the fact that the City entered into this Agreement with Licensee, the rights granted to Licensee, or the activities performed, or failed to be performed, by Licensee under this Agreement, 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, or as otherwise may be limited by law. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name,

service mark or patent or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. The indemnification, duty to defend, and hold harmless obligations set forth in this Section shall survive for a period of five (5) years after the date of expiration or termination of this Agreement. Any payments required by Licensee to City pursuant to this indemnification paragraph or otherwise required under this Agreement shall accrue interest from the date due at one and one-half percent (1.5%) interest per month until fully paid.

**SECTION 9. NOTICE**

**9.1** Any notice, demand, consent, approval, request or other communication required or permitted to be given to either Party under or with respect to this Agreement (collectively, "Notice") must be in writing and must be delivered in person, by a reputable overnight delivery service or by certified mail, postage prepaid, return receipt requested, to the appropriate address(es) set forth below:

If Notice to Licensee:

Missouri Network Alliance, L.L.C. d/b/a Bluebird Network
2005 W. Broadway, Building A, Suite 215
Columbia, MO 65203
Attn: Jack Coles, Director, OSP Engineering/Construction

If Notice to City:

City of Joplin, Missouri
602 South Main Street
Joplin, MO 64801
Attn: City Manager

City of Joplin, Missouri
602 South Main Street
Joplin, MO 64801
Attn: Legal Department

**9.2** If notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if notice is given by certified mail or the confirmation of delivery form if notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no proper notice was given will be deemed to be receipt of the notice as of the date of rejection, refusal or inability to deliver. Either Party may change its address for notice by giving notice of address change to the other Party in the manner for giving notice prescribed in Section 9.1.

**SECTION 10. MISCELLANEOUS**

**10.1** This Agreement and all Exhibits constitute the entire Agreement between the

Parties as to the subject matter of this Agreement, and no negotiations or discussions prior to the Effective Date shall be of any effect.

**10.2** The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.

**10.3** No term or condition of this Agreement will be deemed to have been waived by a Party unless the waiver is made in writing and is signed by the Party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the Party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to or any subsequent breach or default of the same term, or condition of this Agreement. No course of dealing or conduct or failure of a Party to strictly enforce any term, right or condition of this Agreement constitutes a general waiver or relinquishment of the term, right or condition.

**10.4** The rights and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Missouri shall govern this Agreement.

**10.5** This Agreement is for the benefit of the Parties and not for any other person or entity. This Agreement creates no third-party beneficiary rights.

## SECTION 11. EFFECTIVE DATE AND ACCEPTANCE

**11.1** This Agreement shall be effective on the date this Agreement is last signed by both Parties ("Effective Date"). The Parties acknowledge that this Agreement is a lawful contract between them, that they entered into this Agreement voluntarily, and have full authority to sign this Agreement.

**IN WITNESS WHEREOF**, this Agreement is entered into as of the Effective Date.

**CITY OF JOPLIN, MISSOURI**

_____
Gary Shaw, Mayor

Date: _____

ATTEST:

_____
Barbara Gollhofer, City Clerk

**MISSOURI NETWORK ALLIANCE, L.L.C. d/b/a BLUEBIRD NETWORK**

By: Stephen M. Crane

Print Name: STEPHEN M. CRANE

Title: COO

Date: 06/10/2019

(CORPORATE SEAL)

STATE OF Missouri )
) ss.
COUNTY OF Cass )

The forgoing instrument was acknowledged before me this 10th day of June, 2019, by Stephen M Crane, on behalf of Missouri Network Alliance, L.L.C. d/b/a Bluebird Network. This person is personally known to me or has produced pers. known as identification.

Rosemary Huffman
(Signature of Notary taking Acknowledgment)

Notary Public, State of Missouri

ROSEMARY F. HUFFMAN
Notary Public - Notary Seal
State of Missouri
County of Cass
My Commission Expires June 21, 2020
Commission #12412090

My Commission Expires: 06/21/2020

## EXHIBIT A

SPECIAL CONDITIONS

The following special conditions shall be a condition of this Agreement and shall supplement and limit any provision in this Agreement to the contrary:

1. All new Licensee Facilities shall be installed underground, except where good cause is shown to authorize use of existing above-ground Licensee Facilities, including (1) when and where nearby similar facilities exist above ground or (2) when conditions are such that underground construction is impossible, impracticable or economically unfeasible, as determined by the City. Above-ground Facilities authorized for good cause shall, in the City's reasonable judgment be limited to construction and Facilities having minimal detrimental impact on the area where construction is proposed. Ground-mounted pedestals customarily installed for underground Facilities shall be authorized subject to applicable permit requirements and design, location, appearance and other reasonable requirements of the City, provided that such pedestals or equipment that are larger than 3 feet in height or otherwise not customarily found within the City limits shall not be deemed authorized by this Agreement without specific separate written authorization of the City.

2. Licensee acknowledges and agrees that pursuant to its obligation to pay all applicable taxes it shall pay the City's license tax as an entity authorized to furnish exchange telephone service, if applicable, and shall remit to the City such tax on gross receipts of its business as required by Division 3 of Article III of Chapter 30 of the City Code of Ordinances, or as may be amended, regardless of technology or nomenclature used by Licensee to provide such services, including but not limited to wire, wireless, internet-based transmissions, and switched or unswitched, to the extent permitted by law.

3. Licensee represents and agrees that it (including its duly licensed contractors acting on its behalf identified on the right-of-way permit application or otherwise to the City) shall not authorize third-parties without a valid license, Right-of-Way Use Agreement, or other lawful authorization in writing from the City to be within the City's Rights-of-Way to install or perform maintenance on its Facilities or have physical access thereto in the Rights-of-Way.

4. For purposes of clarification only, a document providing Communication Service to a third party as authorized herein but nominated or referred to as lease authorizing a service or use to a third-party shall not be deemed to violate Section 5.3, or constitute rent outside the scope of providing a Communication Service, solely because of such nomenclature or reference provided it otherwise complies with the requirements of this Agreement and meets the following conditions:

    - Does not provide the third-party with an ownership or property interest in or any form or type of title in the ROW, ROW Agreement, or any facilities in the ROW, whether temporary or otherwise, and the lessee does not acquire the right to own,

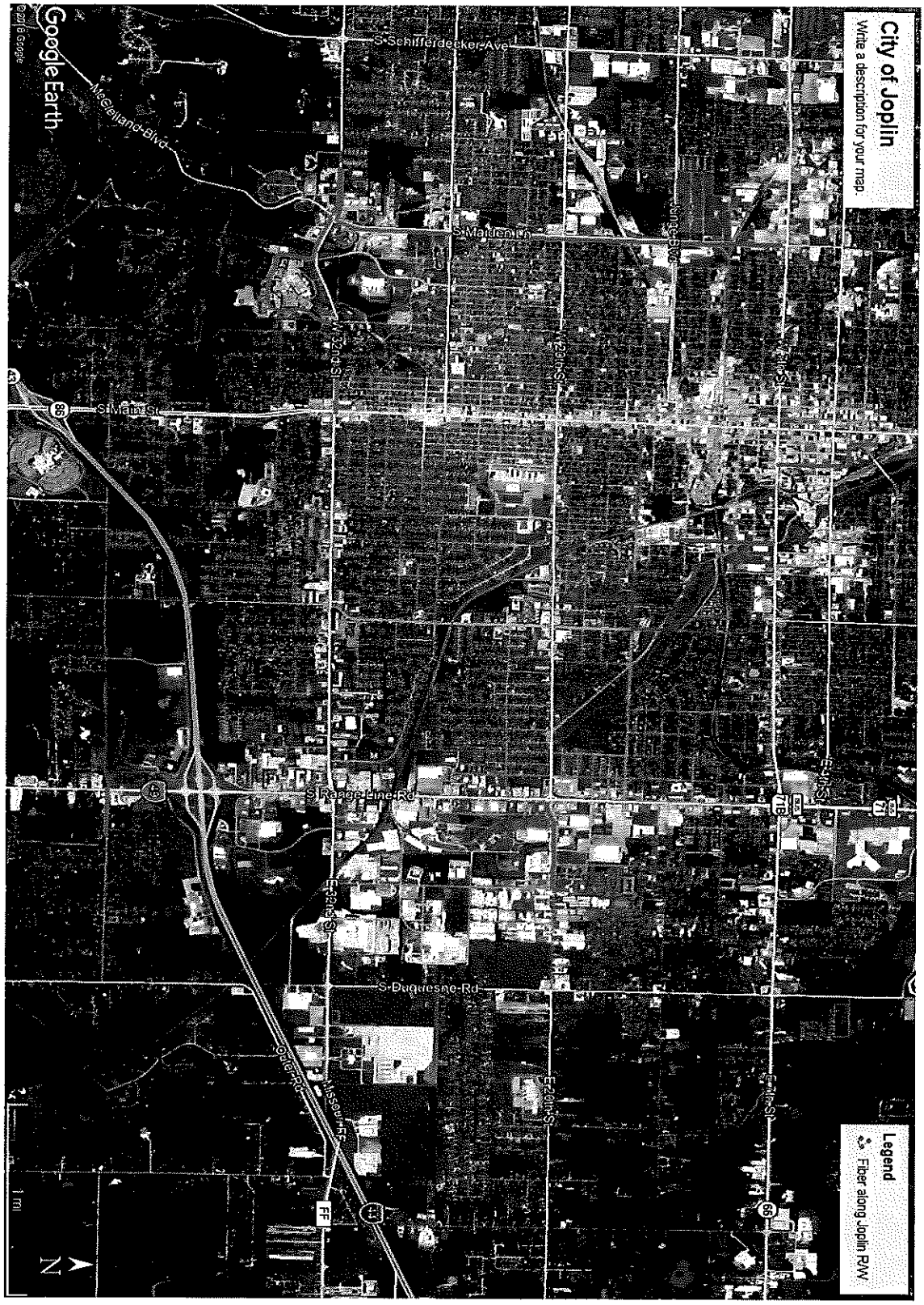
control, maintain, modify, physical access, or revise the facilities in the ROW, whether specific facilities or not; and

- Does not grant any rights or remedies as against the City and any such rights or remedies are limited to those as may be granted herein to be directly exercised by Licensee.

5. Wireless Facility locations or wireless Facilities requested or approved: None.

## EXHIBIT B

## Map of Missouri Network Alliance, L.L.C. d/b/a Bluebird Network's Proposed Facilities



COUNCIL BILL NO. 2019-132 ORDINANCE NO.

AN ORDINANCE authorizing the City of Joplin to enter into an agreement with Missouri Network Alliance, L.L.C. d/b/a Bluebird Network ("Bluebird") for the purpose of Bluebird installing, maintaining, and operating facilities for communications related capabilities within the City's Rights-of-Way and ensuring compliance with the City's requirements of such use of City property; authorizing the City Manager 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 agreement by and between the City of Joplin and Missouri Network Alliance, L.L.C. d/b/a Bluebird Network for the purpose of Bluebird installing, maintaining, and operating facilities for communications related capabilities within the City's Rights-of-Way and ensuring compliance with the City's requirements of such use of City property, a true and accurate copy of said agreement being attached hereto and incorporated as "Exhibit A," be and the same is hereby approved.

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

Section 3. That the City hereby declares that this Ordinance, being an Ordinance relating to a public improvement, is considered 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 relates to Rights-of-Way use.

Passed by the Council of the City of Joplin, Missouri, this _____ day of _____, 2019.

_____
Gary L. Shaw, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____

Peter C. Edwards, City Attorney

| | | | |
|---|---|---|---|
| CLOSING DATE: | 31-May-2019 | DEPT: | Planning & Community Development |
| STARTING TIME | 10:00 AM | | |
| CLOSING TIME: | 10:20 AM | BID OPENED BY: | Kim Newhouse/Jeff Oliver |
| Demolition of all structures | | LOCATION: | 402 N. Joplin Ave |

| COMPANY | BIDS |
|---|---|
| B & D Yardbuilders | $4,600.00 |
| | |
| Black Foot Dirt Works | $5,555.25 |
| | |
| Camcor | $6,300.00 |
| | |
| Gator | $4,133.00 |
| | |
| Nelson's Enterprises | $4,799.00 |
| | |


COUNCIL BILL 2019-361
402 N. JOPLIN AVE.







# CITY OF JOPLIN
# COUNCIL AGENDA ITEM

**ITEM**
Council Bill No. 2019- 361, Building Regulations

**MEETING DATE**
June 17, 2019

**REVIEWED BY**
Building Regulations-Bryan Wicklund, Director of Planning, Development & Neighborhood Services-Troy Bolander, Director of Finance-Leslie Haase, City Attorney- Peter Edwards, Interim City Manager- Dan Pekarek.

**SUMMARY**
This council bill approves the contract by and between the City of Joplin and with Gator Demolition to remove the structures, and any remaining debris including foundation and footings located at 402 N. Joplin Ave.

**BACKGROUND**
The above listed address was "tagged" as a dangerous building on November 29, 2018. The structures were determined to be dangerous under sub sections of the Dangerous Building Code (Section 26-612, Joplin City Code). On May 17, 2019, an advertisement for bids was published in the Joplin Globe with bids being received on May 31, 2019 for the removal of structures and any reaming debris including footings and foundations. At that time bids were received as follows.

| | |
|---|---|
| B & D Yardbuilders | $ 4,600.00 |
| Camcor | $ 6,300.00 |
| Gator Demolition | $ 4,133.00 |
| Black Foot Dirt Works | $ 5,555.25 |
| Nelson Enterprises | $ 4,799.00 |

A Special Tax Bill will be issued after the demolition is completed. The Special Tax Bill acts as a lien against the property until it is paid, with the owner having five years to pay off the assessment. The bill also is a personal debt of the owner.

**FUNDING SOURCE**
These payments are included in the FY 2018-19 budget of the Revolving Fund.

**RECOMMENDATION**
City Staff recommends that the demolition removal contract be awarded to Gator Demolition for $ 4,133.00 and that it be approved on an emergency basis within the meaning of section 2.12 (1) for the immediate preservation of public health and welfare.

**ATTACHMENTS**
Council Bill No. 2018- 361, Photograph of Property, Bid Tabulation

COUNCIL BILL NO. 2019 – 361 ORDINANCE NO.

AN ORDINANCE approving the contract by and between the City of Joplin and Gator Demolition for the demolition of the structure(s) and clearing of lot area located at 402 N. Joplin Ave. in the City of Joplin, Missouri, for Four Thousand One Hundred Thirty-three and 00/100 Dollars ($ 4,133.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

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

Section 1. That the contract with Gator Demolition in the amount of Four Thousand One Hundred Thirty-three and 00/100 Dollars ($ 4,133.00) is hereby approved for the demolition of the structure(s) and clearing of lot area located at 402 N. Joplin Ave.

Section 2. The contractor will be paid in cash for the portion of the work performed by him, and this amount will be appropriated from the Revolving Public Improvement Fund and will be evidenced by a special tax bill made and levied against 402 N. Joplin Ave. and legally described as:

ALL OF LOT NUMBERD (87) IN WILSON AND HUTTON'S FIRST ADDITION TO THE OF THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

Section 3. That the City of Joplin declares that this ordinance is an emergency pursuant to Section 2.12 (1) of the Home Rule Charter in that it is an ordinance for the immediate preservation of public peace, property, health, safety or morals. Specifically, this ordinance approves the award of a contract to a demolition contractor for the demolition and removal of a structure determined to be dangerous by the Joplin Building Board, and because this structure has been deemed dangerous and a nuisance, its immediate removal is required to preserve public safety and health. The City Council hereby declares that this ordinance shall be in full force and effect from and after its passage.

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

| | | | |
|---|---|---|---|
| CLOSING DATE: | 31-May-2019 | DEPT: | Planning & Community Development |
| STARTING TIME | 10:00 AM | | |
| CLOSING TIME: | 10:20 AM | BID OPENED BY: | Kim Newhouse/Jeff Oliver |
| Demolition of all structures | | LOCATION: | 114 N. Cox Ave. |

| COMPANY | BIDS |
|---|---|
| B & D Yardbuilders | $4,400.00 |
| | |
| Black Foot Dirt Works | $4,837.50 |
| | |
| Camcor | $3,598.00 |
| | |
| Gator | $3,875.00 |
| | |
| Nelson's Enterprises | $3,249.00 |
| | |


COUNCIL BILL 2019-362
114 N. COX AVE.







# CITY OF JOPLIN
# COUNCIL AGENDA ITEM

**ITEM**
Council Bill No. 2019- 362, Building Regulations

**MEETING DATE**
June 17, 2019

**REVIEWED BY**
Building Regulations-Bryan Wicklund, Director of Planning, Development & Neighborhood Services-Troy Bolander, Director of Finance-Leslie Haase, City Attorney- Peter Edwards, Interim City Manager- Dan Pekarek.

**SUMMARY**
This council bill approves the contract by and between the City of Joplin and with Nelson Enterprises to remove the structures, and any remaining debris including foundation and footings located at 114 N. Cox Ave.

**BACKGROUND**
The above listed address was "tagged" as a dangerous building on November 29, 2018. The structures were determined to be dangerous under sub sections of the Dangerous Building Code (Section 26-612, Joplin City Code). On May 17, 2019, an advertisement for bids was published in the Joplin Globe with bids being received on May 31, 2019 for the removal of structures and any reaming debris including footings and foundations. At that time bids were received as follows.

| | |
|---|---|
| B & D Yardbuilders | $ 4,400.00 |
| Gator Demolition | $ 3,875.00 |
| Black Foot Dirt Works | $ 4,837.50 |
| Nelson Enterprises | $ 3,249.00 |

A Special Tax Bill will be issued after the demolition is completed. The Special Tax Bill acts as a lien against the property until it is paid, with the owner having five years to pay off the assessment. The bill also is a personal debt of the owner.

**FUNDING SOURCE**
These payments are included in the FY 2018-19 budget of the Revolving Fund.

**RECOMMENDATION**
City Staff recommends that the demolition removal contract be awarded to Nelson Enterprises for $ 3,249.00 and that it be approved on an emergency basis within the meaning of section 2.12 (1) for the immediate preservation of public health and welfare.

**ATTACHMENTS**
Council Bill No. 2018- 362, Photograph of Property, Bid Tabulation

COUNCIL BILL NO. 2019 – 362 ORDINANCE NO.

AN ORDINANCE approving the contract by and between the City of Joplin and Nelson Enterprises for the demolition of the structure(s) and clearing of lot area located at 114 N. Cox Ave. in the City of Joplin, Missouri, for Three Thousand Two Hundred Forty-Nine and 00/100 Dollars ($ 3,249.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

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

Section 1. That the contract with Nelson Enterprises in the amount of Three Thousand Two Hundred Forty-Nine and 00/100 Dollars ($ 3,249.00) is hereby approved for the demolition of the structure(s) and clearing of lot area located at 114 N. Cox Ave.

Section 2. The contractor will be paid in cash for the portion of the work performed by him, and this amount will be appropriated from the Revolving Public Improvement Fund and will be evidenced by a special tax bill made and levied against 114 N. Cox Ave. and legally described as:

ALL OF THE SOUTH HALF OF LOT NUMBERED FOUR (4) ON BLOCK 5 FIVE (5) IN ORIGINAL TOWN OF JOPLIN NOW A PART OF THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

Section 3. That the City of Joplin declares that this ordinance is an emergency pursuant to Section 2.12 (1) of the Home Rule Charter in that it is an ordinance for the immediate preservation of public peace, property, health, safety or morals. Specifically, this ordinance approves the award of a contract to a demolition contractor for the demolition and removal of a structure determined to be dangerous by the Joplin Building Board, and because this structure has been deemed dangerous and a nuisance, its immediate removal is required to preserve public safety and health. The City Council hereby declares that this ordinance shall be in full force and effect from and after its passage.

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

| | | | |
|---|---|---|---|
| CLOSING DATE: | 31-May-2019 | DEPT: | Planning & Community Development |
| STARTING TIME | 10:00 AM | | |
| CLOSING TIME: | 10:20 AM | BID OPENED BY: | Kim Newhouse/Jeff Oliver |
| Demolition of all structures | | LOCATION: | 2206 S. Schifferdecker Ave. |

| COMPANY | BIDS |
|---|---|
| B & D Yardbuilders | $9,600.00 |
| | |
| Black Foot Dirt Works | $8,745.00 |
| | |
| Camcor | No Bid |
| | |
| Gator | $4,271.00 |
| | |
| Nelson's Enterprises | $5,700.00 |
| | |


COUNCIL BILL 2019-363
2206 S. SCHIFFERDECKER

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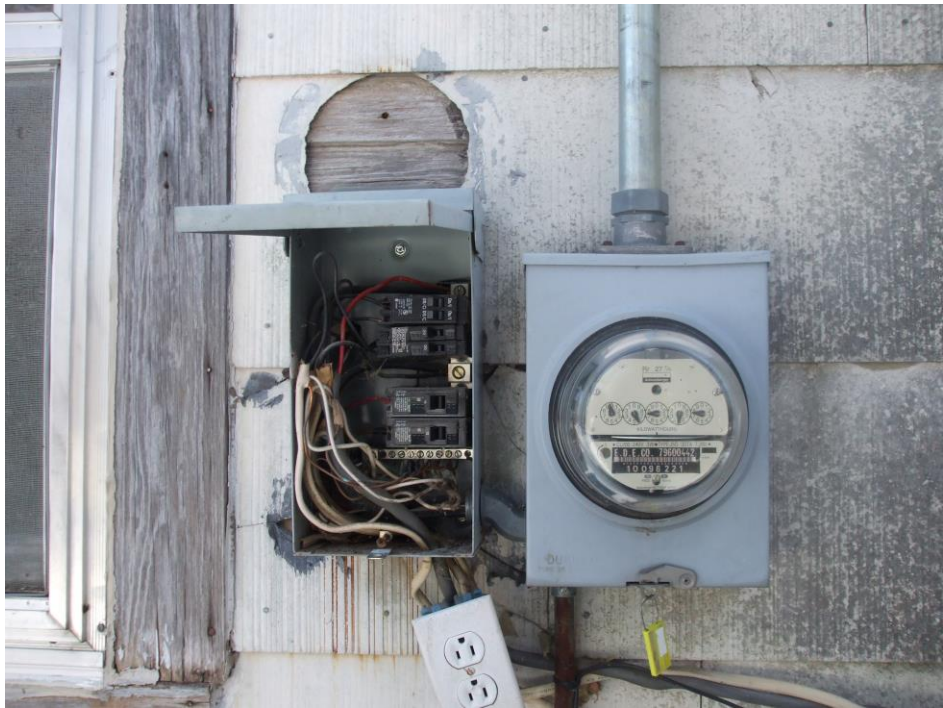

# CITY OF JOPLIN
# COUNCIL AGENDA ITEM

**ITEM**
Council Bill No. 2019- 363, Building Regulations

**MEETING DATE**
June 17, 2019

**REVIEWED BY**
Building Regulations-Bryan Wicklund, Director of Planning, Development & Neighborhood Services-Troy Bolander, Director of Finance-Leslie Haase, City Attorney- Peter Edwards, Interim City Manager- Dan Pekarek.

**SUMMARY**
This council bill approves the contract by and between the City of Joplin and with Gator Demolition to remove the structures, and any remaining debris including foundation and footings located at 2206 S. Schifferdecker Ave.

**BACKGROUND**
The above listed address was "tagged" as a dangerous building on January 19, 2018. The structures were determined to be dangerous under sub sections of the Dangerous Building Code (Section 26-612, Joplin City Code). On May 17, 2019, an advertisement for bids was published in the Joplin Globe with bids being received on May 31, 2019 for the removal of structures and any reaming debris including footings and foundations. At that time bids were received as follows.

| | |
|---|---|
| B & D Yardbuilders | $ 9,600.00 |
| Gator Demolition | $ 4,271.00 |
| Black Foot Dirt Works | $ 8,745.00 |
| Nelson Enterprises | $ 5,700.00 |

A Special Tax Bill will be issued after the demolition is completed. The Special Tax Bill acts as a lien against the property until it is paid, with the owner having five years to pay off the assessment. The bill also is a personal debt of the owner.

**FUNDING SOURCE**
These payments are included in the FY 2018-19 budget of the Revolving Fund.

**RECOMMENDATION**
City Staff recommends that the demolition removal contract be awarded to Gator Demolition for $ 4,271.00 and that it be approved on an emergency basis within the meaning of section 2.12 (1) for the immediate preservation of public health and welfare.

**ATTACHMENTS**
Council Bill No. 2018- 363, Photograph of Property, Bid Tabulation

COUNCIL BILL NO. 2019 – 363 ORDINANCE NO.

AN ORDINANCE approving the contract by and between the City of Joplin and Gator Demolition for the demolition of the structure(s) and clearing of lot area located at 2206 S. Schifferdecker Ave. in the City of Joplin, Missouri, for Four Thousand Two Hundred Seventy-One and 00/100 Dollars ($ 4,271.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

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

Section 1. That the contract with Gator Demolition in the amount of Four Thousand Two Hundred Seventy-One and 00/100 Dollars ($ 4,271.00) is hereby approved for the demolition of the structure(s) and clearing of lot area located at 2206 S. Schifferdecker Ave.

Section 2. The contractor will be paid in cash for the portion of the work performed by him, and this amount will be appropriated from the Revolving Public Improvement Fund and will be evidenced by a special tax bill made and levied against 2206 S. Schifferdecker Ave. and legally described as:

ALL OF LOTS NUMBERED ONE (1) , TWO (2) , THREE (3) AND FOUR (4), A & B IN WANOKA HIGHLAND ADDITION TO THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

Section 3. That the City of Joplin declares that this ordinance is an emergency pursuant to Section 2.12 (1) of the Home Rule Charter in that it is an ordinance for the immediate preservation of public peace, property, health, safety or morals. Specifically, this ordinance approves the award of a contract to a demolition contractor for the demolition and removal of a structure determined to be dangerous by the Joplin Building Board, and because this structure has been deemed dangerous and a nuisance, its immediate removal is required to preserve public safety and health. The City Council hereby declares that this ordinance shall be in full force and effect from and after its passage.

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

| | | | |
|---|---|---|---|
| CLOSING DATE: | 31-May-2019 | DEPT: | Planning & Community Development |
| STARTING TIME | 10:00 AM | | |
| CLOSING TIME: | 10:20 AM | BID OPENED BY: | Kim Newhouse/Jeff Oliver |
| Demolition of all structures | | LOCATION: | 1218 E. North St. |

| COMPANY | BIDS |
|---|---|
| B & D Yardbuilders | $4,400.00 |
| | |
| Black Foot Dirt Works | $4,927.50 |
| | |
| Camcor | $5,875.00 |
| | |
| Gator | $3,785.00 |
| | |
| Nelson's Enterprises | $3,249.00 |
| | |


COUNCIL BILL 2019-364
1218 E. NORTH ST.


ICE MELT





# CITY OF JOPLIN
# COUNCIL AGENDA ITEM

**ITEM**
Council Bill No. 2019- 364, Building Regulations

**MEETING DATE**
June 17, 2019

**REVIEWED BY**
Building Regulations-Bryan Wicklund, Director of Planning, Development & Neighborhood Services-Troy Bolander, Director of Finance-Leslie Haase, City Attorney- Peter Edwards, Interim City Manager- Dan Pekarek.

**SUMMARY**
This council bill approves the contract by and between the City of Joplin and with Nelson Enterprises to remove the structures, and any remaining debris including foundation and footings located at 1218 E. North St.

**BACKGROUND**
The above listed address was "tagged" as a dangerous building on December 18, 2018. The structures were determined to be dangerous under sub sections of the Dangerous Building Code (Section 26-612, Joplin City Code). On May 17, 2019, an advertisement for bids was published in the Joplin Globe with bids being received on May 31, 2019 for the removal of structures and any reaming debris including footings and foundations. At that time bids were received as follows.

| | |
|---|---|
| Camcor Environmental | $ 5,875.00 |
| B & D Yardbuilders | $ 4,400.00 |
| Gator Demolition | $ 3,785.00 |
| Black Foot Dirt Works | $ 4,927.50 |
| Nelson Enterprises | $ 3,249.00 |

A Special Tax Bill will be issued after the demolition is completed. The Special Tax Bill acts as a lien against the property until it is paid, with the owner having five years to pay off the assessment. The bill also is a personal debt of the owner.

**FUNDING SOURCE**
These payments are included in the FY 2018-19 budget of the Revolving Fund.

**RECOMMENDATION**
City Staff recommends that the demolition removal contract be awarded to Nelson Enterprises for $ 3,249.00 and that it be approved on an emergency basis within the meaning of section 2.12 (1) for the immediate preservation of public health and welfare.

**ATTACHMENTS**
Council Bill No. 2018- 364, Photograph of Property, Bid Tabulation

COUNCIL BILL NO. 2019 – 364 ORDINANCE NO.

AN ORDINANCE approving the contract by and between the City of Joplin and Nelson Enterprises for the demolition of the structure(s) and clearing of lot area located at 1218 E. North St. in the City of Joplin, Missouri, for Three Thousand Two Hundred Forty- Nine and 00/100 Dollars ($ 3,249.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

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

Section 1. That the contract with Nelson Enterprises in the amount of Three Thousand Two Hundred Forty-Nine and 00/100 Dollars ($ 3,249.00) is hereby approved for the demolition of the structure(s) and clearing of lot area located at 1218 E. North St.

Section 2. The contractor will be paid in cash for the portion of the work performed by him, and this amount will be appropriated from the Revolving Public Improvement Fund and will be evidenced by a special tax bill made and levied against 1218 E. North St. and legally described as:

ALL OF LOTS NUMBERED TEN (10) & ELEVEN (11) BLK TWENTY (20) IN EAST JOPLIN ADDITION TO THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

Section 3. That the City of Joplin declares that this ordinance is an emergency pursuant to Section 2.12 (1) of the Home Rule Charter in that it is an ordinance for the immediate preservation of public peace, property, health, safety or morals. Specifically, this ordinance approves the award of a contract to a demolition contractor for the demolition and removal of a structure determined to be dangerous by the Joplin Building Board, and because this structure has been deemed dangerous and a nuisance, its immediate removal is required to preserve public safety and health. The City Council hereby declares that this ordinance shall be in full force and effect from and after its passage.

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

| | | | |
|---|---|---|---|
| CLOSING DATE: | 31-May-2019 | DEPT: | Planning & Community Development |
| STARTING TIME | 10:00 AM | | |
| CLOSING TIME: | 10:20 AM | BID OPENED BY: | Kim Newhouse/Jeff Oliver |
| Demolition of all structures | | LOCATION: | 1012 E. 2nd St. |

| COMPANY | BIDS |
|---|---|
| B & D Yardbuilders | $6,600.00 |
| | |
| Black Foot Dirt Works | $12,836.00 |
| | |
| Camcor | $7,270.00 |
| | |
| Gator | $4,173.00 |
| | |
| Nelson's Enterprises | $3,649.00 |
| | |


COUNCIL BILL 2019-365
1012 E. 2ND ST.







# CITY OF JOPLIN
# COUNCIL AGENDA ITEM

**ITEM**
Council Bill No. 2019- 365, Building Regulations

**MEETING DATE**
June 17, 2019

**REVIEWED BY**
Building Regulations-Bryan Wicklund, Director of Planning, Development & Neighborhood Services-Troy Bolander, Director of Finance-Leslie Haase, City Attorney- Peter Edwards, Interim City Manager- Dan Pekarek.

**SUMMARY**
This council bill approves the contract by and between the City of Joplin and with Nelson Enterprises to remove the structures, and any remaining debris including foundation and footings located at 1012 E. 2ND St.

**BACKGROUND**
The above listed address was "tagged" as a dangerous building on February 14, 2019. The structures were determined to be dangerous under sub sections of the Dangerous Building Code (Section 26-612, Joplin City Code). On May 17, 2019, an advertisement for bids was published in the Joplin Globe with bids being received on May 31, 2019 for the removal of structures and any reaming debris including footings and foundations. At that time bids were received as follows.

| | |
|---|---|
| Camcor Environmental | $ 7,270.00 |
| B & D Yardbuilders | $ 6,600.00 |
| Gator Demolition | $ 4,173.00 |
| Black Foot Dirt Works | $ 12,836.00 |
| Nelson Enterprises | $ 3,649.00 |

A Special Tax Bill will be issued after the demolition is completed. The Special Tax Bill acts as a lien against the property until it is paid, with the owner having five years to pay off the assessment. The bill also is a personal debt of the owner.

**FUNDING SOURCE**
These payments are included in the FY 2018-19 budget of the Revolving Fund.

**RECOMMENDATION**
City Staff recommends that the demolition removal contract be awarded to Nelson Enterprises for $ 3,649.00 and that it be approved on an emergency basis within the meaning of section 2.12 (1) for the immediate preservation of public health and welfare.

**ATTACHMENTS**
Council Bill No. 2018- 365, Photograph of Property, Bid Tabulation

COUNCIL BILL NO. 2019 – 365 ORDINANCE NO.

AN ORDINANCE approving the contract by and between the City of Joplin and Nelson Enterprises for the demolition of the structure(s) and clearing of lot area located at 1012 E. 2nd St. in the City of Joplin, Missouri, for Three Thousand Six Hundred Forty- Nine and 00/100 Dollars ($ 3,649.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

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

Section 1. That the contract with Nelson Enterprises in the amount of Three Thousand Six Hundred Forty-Nine and 00/100 Dollars ($ 3,649.00) is hereby approved for the demolition of the structure(s) and clearing of lot area located at 1012 E. 2nd St.

Section 2. The contractor will be paid in cash for the portion of the work performed by him, and this amount will be appropriated from the Revolving Public Improvement Fund and will be evidenced by a special tax bill made and levied against 1012 E. 2nd St. and legally described as:

ALL OF LOT NUMBERED THREE (3) AND THE WEST FOUR (4) Ft. OF LOT FOUR (4) BLOCK 55 IN EAST JOPLIN ADDITION TO THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

Section 3. That the City of Joplin declares that this ordinance is an emergency pursuant to Section 2.12 (1) of the Home Rule Charter in that it is an ordinance for the immediate preservation of public peace, property, health, safety or morals. Specifically, this ordinance approves the award of a contract to a demolition contractor for the demolition and removal of a structure determined to be dangerous by the Joplin Building Board, and because this structure has been deemed dangerous and a nuisance, its immediate removal is required to preserve public safety and health. The City Council hereby declares that this ordinance shall be in full force and effect from and after its passage.

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

# CITY OF JOPLIN
# COUNCIL AGENDA ITEM

**ITEM**
Council Bill 2019-614: authorizing the City of Joplin to enter into an agreement with DocuWare Corporation, a New York Corporation, for the purpose of providing cloud-based document storage services for the not to exceed price of Twelve Thousand Eight Hundred Sixteen and 00/100 Dollars ($12,816.00).

**MEETING DATE**
June 17, 2019

**ORIGINATING DEPT**
Information Technology

**ATTACHMENTS**
CB2019-614 Ordinance; Exhibit A: DocuWare Cloud Services Agreement

**REVIEWED BY**
Dept. Head: Mark Morris; City Attorney: Peter Edwards; Interim City Manager: Dan Pekarek

**SUMMARY**
This Council Bill authorizes the City to enter into an agreement with DocuWare for cloud-based document storage.

**BACKGROUND**
The City Clerk's office selected FileMagic in 2002 for the archival of Ordinances and Resolutions into a digital system. FileMagic later became the current FORTIS system under the same vendor. FORTIS is now a wholly owned subsidiary of DOCUWARE. This migration allows the City to leverage all of the existing investment but move to a cloud services arrangement providing for future growth and capability. The system is also used by HR, Police, and various general departments for research and document storage.

**FUNDING SOURCE**
Currently, the IT Dept funds the $7,980 for annual maintenance for FORTIS. The difference is scheduled to be budgeted in IT annual maintenance for FY2020.

**RECOMMENDATION**
Staff recommends adoption of this Council Bill on an emergency basis.

COUNCIL BILL NO. 2019-614 ORDINANCE NO.

AN ORDINANCE authorizing the City of Joplin to enter into an agreement with DocuWare Corporation, a New York Corporation, for the purpose of providing cloud-based document storage services for the not to exceed price of Twelve Thousand Eight Hundred Sixteen and 00/100 Dollars ($12,816.00); authorizing the City Manager 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 agreement by and between the City of Joplin and DocuWare Corporation for the purpose of providing cloud-based document storage services for the not to exceed price of Twelve Thousand Eight Hundred Sixteen and 00/100 Dollars ($12,816.00), a true and accurate copy of said agreement being attached hereto and incorporated as "Exhibit "A," be and the same is hereby approved.

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

Section 3. That the City hereby declares that this Ordinance, being an Ordinance dealing with a general appropriation, is considered an emergency within the meaning of Section 2.12(4) 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.

_____
Gary L. Shaw, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

## DOCUWARE CLOUD INVESTMENT

| DocuWare Cloud Fees | Capacity | License Fee |
|---|---|---|
| This Offer expires on: | | 6/30/2019 |
| DocuWare Annual Fees (Enterprise Cloud License) | | $12,816.00/year |
| License granted to support City of Joplin limited to the users and storage allocations below. | | |
| Licensed Number of Full Named Users | 40 | Included in Subscription License Fee |
| Licensed Amount of Storage | 300 GB | Included in Subscription License Fee |
| Annual Maintenance and Support: Cloud-Services | | Included in Subscription License Fee |
| Initial Setup & Implementation Services separate per the Migration Quote. | | |
| **Initial Term**. The Initial Term for the Order is for (1) year period, and this Order is subject to the renewal provisions of Section 4.2 of the Agreement.<br><br>**Billing**. DocuWare Annual Fees (Cloud License) due upon signing, Net 30. | | |

**Signatures:**

**DocuWare**:

Name: .....

Date: .....

.....
Signature

**Customer:**

Name: .....

Date: .....

.....
Signature

# DocuWare Cloud Services Agreement

This **DocuWare Cloud Services Agreement** ("**Agreement**") is made this_____date ("**Effective Date**") by and between City of Joplin, Missouri, a city in Missouri, having its principal place of business at _____("**Customer**") and DocuWare Corporation, a New York, corporation, with headquarters located at 4 Crotty Lane, Suite 200, New Windsor, NY 12553 ("**DocuWare**"), each of Customer and DocuWare is individually, a "Party," and together, the"Parties."

**Introduction**

DocuWare is in the business of providing proprietary document storage solutions to customers.

Customer wishes to purchase cloud based document storage services from DocuWare.

The Parties therefore agree as follows:

**1. Scope of this Agreement and Cloud Services**

1.1 This Agreement shall govern Customer´s use of cloud based document management, applications (including Local Application Programs as defined below), storage space, computing capacity and other cloud based services as the same may be made available by DocuWare from time to time (see www.docuware.com/cloud) to the extent agreed by the Parties in an Order (as defined below) (collectively, "**Services**"). DocuWare and Customer hereby agree to the commercial terms and other specifications of the Services (e.g., fees, term, type of Services, etc.) as shall be set forth in an Order executed by the Parties ("**Order**"). The scope and content of Services shall be, as applicable, further described at http://go.docuware.com/CloudFunctions or in DocuWare's most currently published whitepaper.

1.2 DocuWare reserves the right, in its sole discretion, to change, modify or alter the Services at any time (e.g., in relation to the user interface and functionalities of the applications); provided, however, DocuWare will not materially impair the overall functional scope with such modifications. DocuWare will implement changes to the Services through updates and upgrades, and to receive notification of same, Customer must register at least one or more email address(es) with DocuWare.

**2. Authorized Users**

2.1 During the configuration of the Services, Customer shall specifically identify its employees and contractors who shall be authorized to use the Services (hereinafter, "**Authorized User**") solely for Customer´s internal business purposes. Unless specifically authorized by DocuWare in advance and in writing, third parties (including, but not limited to, users employed by or working for companies that are affiliated with Customer) are not authorized to use the Services.

2.2 Authorized Users may access DocuWare-provided local software application programs as part of the Services ("**Local Application Programs**") solely for the purposes of accessing the Services. For the Term of this Agreement, Authorized Users shall have the revocable, non-exclusive, non-sublicensable, non-transferable right: (i) to install such Local Application Programs on hardware devices operated and controlled by Customer; and (ii) to access and display such Local Application Programs for the purpose of accessing the Services in compliance with the online-support-documentation available as part of the Services.

2.3 Neither Customer nor any Authorized User shall: (i) modify, copy, create derivative works decompile or reverse-engineer the Services or Local Application Programs other than as expressly permitted by applicable statute to permit interoperability and then only after notice to DocuWare; (ii) frame or mirror any content forming part of the Services; or (iii) access the Services in order to: (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Services.

2.4 Neither the Customer nor any Authorized User shall: (i) license, sublicense, transfer, sell, resell, rent, lease, distribute, time share, assign, share or otherwise commercially exploit or make the Services available to any third party, other than to Authorized Users or as otherwise expressly

contemplated by this Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, trojan horses or other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (vi) attempt to gain unauthorized access to the Services or related systems or networks; (vii) access the Services if Customer is a direct competitor of DocuWare; or (viii) access the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

2.5 DocuWare will exercise reasonable efforts to provide a 99.5% availability of the Services per calendar year, excluding any Downtime. "**Downtime**" shall mean unscheduled downtime of the Services caused by emergencies or Force Majeure Events (as defined below) and downtime due to scheduled maintenance activities of the Services ("**Scheduled Maintenance**"). DocuWare will use reasonable efforts to limit any downtime due to Scheduled Maintenance to four (4) times per year for up to eight (8) hours each, and to notify by way of e-mail or via the DocuWare website with a notice period of at least five (5) calendar days.

2.6 The Customer will install and configure Services in a way which avoids any excessive utilization of DocuWare systems.

2.7 The Services require Internet access and computing facilities with the system requirements identified in the applicable technical documentation available at http://go.docuware.com/whitepaper-cloud. Customer acknowledges and agrees that such requirements may be changed from time to time, and DocuWare shall use reasonable efforts to provide at least four (4) weeks' notice of any such changes. Customer is responsible for all activities that occur in Authorized User accounts and for Authorized Users' compliance with this Agreement.

## 3. DocuWare´s Rights

3.1 To the limited extent necessary to perform the Services, Customer hereby grants to DocuWare and its subcontractors, on a royalty-free basis, the right to copy, distribute, perform, display, create derivative works and otherwise use any data and documents provided by Customer and any Authorized User in connection with the Services. Customer hereby represents, warrants and covenants to have been effectively granted all necessary rights by its customers, users and all affected third parties which are necessary for the foregoing license grant.

3.2 DocuWare shall process personal data (as defined in **Schedule 1**) within the Services in accordance with **Schedule 1**. The Customer shall ensure that the collection, forwarding and processing of personal data fully complies with all applicable data privacy and protection laws.

3.3 Customer shall be liable and responsible for any acts and omissions of the Authorized Users to the same extent Customer is liable and responsible for its own acts and omissions.

3.4 The Customer and the Authorized User shall immediately notify DocuWare of any loss of any access codes and/or of any use of the Services not in compliance with the terms of this Agreement.

3.5 Other than as expressly set forth in this Agreement, no other rights are granted to Customer. DocuWare reserves all rights, title and interest in and to the Services, including all related intellectual property rights.

## 4. Term and Termination

4.1 This Agreement commences on the Effective Date and continues until all Orders executed under this Agreement have expired or been terminated ("**Term**"). Upon expiration or termination of this Agreement or the applicable Order, DocuWare will delete data in accordance with Section 3.5 of **Schedule 1**.

4.2 Any Order executed under this Agreement shall have an initial minimum term of at least twelve (12) months (or such longer period as set forth in the applicable Order; the "**Initial Term**"). Thereafter, each Order shall automatically renew for consecutive twelve (12) month periods (each, a "**Renewal Term**") upon the expiration of the Initial Term and any Renewal Term; provided, however, either Party may elect not to renew an Order upon at least thirty (30) days' written notice prior to end of the Initial Term or any Renewal Term of such Order. Upon at least thirty (30) days' notice to DocuWare prior to the end of the Initial Term and/or Renewal Term of an Order, Customer may also elect to reduce or increase the scope under the applicable Order (i.e., volumes and/or capacities), which reduction or increase shall take effect upon the end of the applicable Initial Term and/or Renewal Term.

4.3 Either Party may terminate this Agreement and the applicable Order for cause. For purposes of this Agreement, "cause" shall exist: (i) in case of a material breach of the Agreement to the extent such breach remains uncured for more than thirty (30) days following receipt of a written notice of such material breach; or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

4.4 Non-Appropriation. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Agreement, the Customer shall immediately notify DocuWare of such occurrence and this Agreement shall terminate on the last day of the fiscal year for which the appropriation was made without penalty or expense to the Customer of any kind whatsoever. Notwithstanding the foregoing, Customer shall pay to DocuWare for all Services provided prior to the effective date of such termination.

## 5. Payment Terms/Invoicing

5.1 Customer shall pay to DocuWare monthly (i.e., only available for on-line orders with a credit card account), yearly or multiyear fees for the relevant Services in advance as set forth in the applicable Order or as modified pursuant to Section 5.2.

5.2 DocuWare may, at any time, adjust prices by issuing a new price list. Unless the price list expressly specifies a different start date for the price adjustment, such new price list shall apply with immediate effect for: (i) Orders placed after the issuance of the new price list and (ii) existing Orders entering into a Renewal Term more than thirty (30) days after the earlier to occur of either: (x) issuance of the new price list or (y) notification to Customer of the new price list.

5.3 In the event of any late payment by Customer to either (i) DocuWare or (ii) in connection with Customer's third party financing of Services procured under this Agreement, DocuWare may, at its option, terminate or suspend the provision of the Services to Customer, and such termination or suspension shall be effective upon ten (10) days' notice to Customer. In the event of any such suspension and/or termination of the Services, Customer shall remain responsible for the payment of any and all fees to DocuWare through the date of termination on a pro rata basis. DocuWare shall have no liability or responsibility for any termination or suspension pursuant to this Section 5.3. Any fees not paid when due to DocuWare shall incur interest at the rate of one and a half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is lower.

5.4 Unless otherwise expressly provided, DocuWare's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder, excluding taxes based on DocuWare's net income or property. If DocuWare has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides DocuWare with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 6. Cooperation duties of Authorized User

Customer and the Authorized User shall implement effective measures and processes enabling and safeguarding an additional backup archiving of all relevant documents and data outside of the IT system provided by the Services as protection against any temporarily or permanent failures of the Services.

## 7. DocuWare Warranty

7.1 Customer shall immediately notify DocuWare in writing of any Defects (as defined below) associated with the provision of the Services, which notification shall describe the Defect and root cause in detail. Subject to receipt of a proper notice as provided in this Section, DocuWare shall endeavor to remedy Defects within a reasonable time. DocuWare may, in its discretion, remedy Defects either by providing patches, workarounds, updates or upgrades or by providing or having provided remote support as available under http://support.docuware.com. In the event that the remediation of a warrantied Defect requires commercially unreasonable expenditures or efforts, DocuWare may terminate the affected Order without any further liability upon thirty (30) days' notice. For purposes of this Section 7, "**Defect**" shall mean a material deviation of the quality of the Services from the quality described in Section 1.1 provided (i) such defect must be reproducible or documented by automatically created output; (ii) the usability of the Services must be materially adversely affected; and (iii) written notice of the defect must be provided to DocuWare by Customer on a timely basis pursuant to this Section 7.1.

7.2 In no event shall DocuWare be responsible for defects, operational, performance issues or other events resulting from Customer's technology infrastructure, including, but not limited to, software applications, drivers, network hardware or software or broadband service, to the extent not provided by DocuWare. Customer shall not report issues associated with such Customer technology infrastructure to DocuWare as Defects in the Services. Customer shall compensate DocuWare for any efforts related to such non-warranty issues at DocuWare´s then current rates.

7.3 EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 7, DOCUWARE MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY OF THE SERVICES, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 8. Copyright- Indemnification

8.1 Subject to Sections 8.2 to 8.4, DocuWare will indemnify the Customer against any third party claim that the Services infringes the copyrights of such third party.

8.2 The Customer shall: (i) give DocuWare prompt notice of any relevant claim; (ii) not admit any liability or attempt to settle the claim without DocuWare's prior consent; (iii) provide reasonable cooperation at its own expense to DocuWare in the defense and settlement of the claim; and (iv) give DocuWare sole authority to defend or settle the claim.

8.3 In the defense or settlement of any claim under Section 8.1, DocuWare may, in its sole discretion, procure the right for the Customer to: (i) continue using the Services; or (ii) replace or modify the Services to be non-infringing; or (iii) if these remedies are not reasonably available, terminate this Agreement and applicable Order on thirty (30) days' notice to the Customer without any additional liability or costs.

8.4 DocuWare will not be liable under this Section 8 to the Customer if an alleged copyright infringement is based on: (i) any modification of the Services by anyone other than DocuWare; or (ii) the Customer's use of the Services contrary to the instructions or documentation provided by DocuWare; or (iii) the Customer's continued use of the Services after receiving notice of the alleged or actual infringement; or (iv) a combination of the Services with any other product or service which in the absence of such combination would not have resulted in any infringement.

## 9. Limitation of Liability

9.1 EXCEPT FOR PAYMENT OF THE FEES HEREUNDER, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY ORDER HEREUNDER, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, IN RELATION TO COSTS FOR ANY AND ALL CLAIMS EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER UNDER THE APPLICABLE ORDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM.

9.2 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COMPENSATORY, PUNITIVE, OR CONSEQUENTIAL DAMAGES,

OR DAMAGES BASED ON DAMAGE TO OR LOSS OF, CUSTOMER DATA, REVENUE, PROFITS, GOODWILL OR ANTICIPATED SAVINGS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.3 ALL CLAIMS AND CAUSES OF ACTION BROUGHT BY EITHER PARTY UNDER AN ORDER SHALL BE BROUGHT BY SUCH PARTY WITHIN ONE (1) YEAR OF THE TERMINATION OR EXPIRATION OF THIS AGREEMENT OR THE APPLICABLE ORDER AS THE CASE MAY BE OR WITHIN ONE (1) YEAR OF THE DATE THE EVENT GIVING RISE TO THE CLAIM OCCURRED.

## 10. Confidentiality

10.1 As used herein, "**Confidential Information**" means all confidential and proprietary information of a Party ("**Disclosing Party**") disclosed to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement or the applicable Order (including pricing), the Services, business and marketing plans, technology and technical information, product designs, and business processes. The Services are deemed DocuWare Confidential Information (as defined below). Each Party shall keep confidential and use any such Confidential Information only to the extent required for the purposes of this Agreement, and each Party shall impose similar obligations to persons who have a right and need to know such Confidential Information (e.g., Authorized Users).

10.2 Confidential Information does not include information which (and only to the extent that) the Receiving Party can establish through documentary evidence that such information: (i) was rightfully received without restrictions from third parties who owe no obligations of confidentiality to the Disclosing Party with respect to such information; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) was already publicly known at the time of disclosure or subsequently becomes publicly known through no breach by the Receiving Party of its obligations under this Section.

10.3 Each Party agrees to protect the confidentiality of the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).

10.4 If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

10.5 If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the Parties that any other available remedies are inadequate.

10.6 If Customer is a HIPAA Covered Entity or Business Associate under the rules and regulations of the Health Insurance Portability and Accountability Act of 1996, the Business Associate Agreement, attached hereto as **Schedule 2** (Business Associate Agreement), is deemed incorporated by reference herein. In the event of any conflict between the terms of this Section 10 and the terms of the Business Associate Agreement, the terms of the Business Associate Agreement shall govern.

## 11. Miscellaneous

11.1 Customer represents and warrants that it will comply with all applicable laws, statutes, regulations, rules, ordinances, codes, and standards, including, but not limited to, any export control laws of the EU and U.S. Without limiting the foregoing, (i) Customer represents that it and any Authorized User is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not permit Authorized Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction. DocuWare is also not responsible for determining the requirements of laws applicable to Customer's business.

11.2 Where a Force Majeure Event gives rise to a failure or delay in either Party performing its obligations under this Agreement (other than obligations to make payment hereunder), those obligations will be suspended for the duration of the Force Majeure Event. A Party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, will: (i) forthwith notify the other; and (ii) inform the other of the period for which it is estimated that such failure or delay will continue. The affected Party will take reasonable steps to mitigate the effects of the Force Majeure Event. "**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the Party affected (including, but not limited to, power failures, industrial disputes affecting any third party, changes in the law, natural disasters, epidemics, explosions, fires, floods, riots, terrorist attacks and wars).

11.3 This Agreement shall be governed by the laws of the State of Missouri, United States of America without regard to its conflicts of law rules, and all actions shall be brought in the appropriate state or federal district court located in or servicing Jasper County, Missouri, USA. The provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply.

11.4 Customer shall not assign its rights or delegate its obligations under this Agreement or Order without the prior written consent of DocuWare. DocuWare may, in its sole discretion, subcontract the provision of the Services to third parties (e.g., external data centers) without notice to or approval of Customer (subject to **Schedule 1**).

11.5 Changes to this Agreement must be made by a written agreement.

11.6 Should any provision of this Agreement or Order be held by a court to be invalid, the validity of the remaining provisions shall not be affected thereby.

11.7 The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

11.8 No failure or delay by either Party in exercising any right under this Agreement or Order shall constitute a waiver of that right.

11.9 Any notice, request, demand, or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (i) when delivered personally; (ii) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (iii) when sent by email, with written confirmation of receipt by email; (iv) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (v) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. All notices shall be sent to the address listed below (or to such other address or person as may be designated by a Party by giving written notice to the other Party pursuant to this Section).

| If to DocuWare, to: | If to Customer, to: |
|---|---|
| DocuWare Corporation<br>35 Thorpe Avenue, Suite 201<br>Wallingford, CT 06492<br>Attention:<br>Chief Financial Officer<br>Fax: (203) 269-0322<br>Email: Paul.Remington@docuware.com | _____<br>_____<br>_____<br>Attention:<br>_____<br>Fax: _____<br>Email: _____ |

Customer and DocuWare have executed this Agreement as of the Effective Date.

| **Customer** | **DocuWare Corporation** |
| --- | --- |
| By_____ | By_____ |
| Name:_____ | Name:_____ |
| Title:_____ | Title:_____ |
| Date:_____ | Date:_____ |

**Schedule 1**

This Schedule 1 specifies the obligations of the Parties regarding the Services described in the DocuWare Cloud Services Agreement ("Agreement").

## § 1 Data Processing

### 1. Subject-Matter, Nature and Term of the Data Processing

DocuWare processes personal data forwarded by the Customer or Authorized Users solely on behalf of the Customer. This Schedule 1 shall govern all issues between the Customer and DocuWare concerning such processing. As used herein, "personal data" means information that personally identifies a natural person, including without limitation name, personal address, personal telephone number, personal e-mail address, government identifiers (such as a Social Security number, passport number or driver's license number), unique biometric identifiers, financial account numbers or health or medical treatment or payment information, as well as any other personal information that is regulated under applicable U.S. state and federal data privacy or data protection laws ("Privacy Laws").

## § 2 Obligations of the Customer

1. The Customer shall have sole responsibility for the accuracy, quality, and legality of personal data and for the means by which the Customer or Authorized User has acquired personal data.

2. The Customer may, not more than once in any calendar year, request from DocuWare reasonable written assurance of DocuWare´s compliance with this Schedule 1. DocuWare shall provide to Customer information to respond to such request (e.g., a summary of any applicable audit reports on DocuWare's controls applicable to personal data received from Customer). DocuWare shall be entitled to compensation for expenses resulting from instructions from the Customer that exceed the legal requirements related to an audit or exceeds commercially reasonable audit assistance on the basis of the then-current hourly rates of DocuWare.

3. The Customer shall inform DocuWare immediately, if errors/irregularities are encountered in the audit results.

## § 3 Obligations of DocuWare

1. DocuWare personnel engaged in the processing of personal data have received appropriate training on their responsibilities and are subject to obligations of confidentiality with DocuWare.

2. DocuWare shall only process personal data on behalf of and in accordance with Customer's instructions and shall treat personal data as Confidential Information. The Customer instructs DocuWare to process personal data for the following purposes: (i) processing in accordance with the Agreement and applicable orders placed by Customer under the Agreement, and (ii) processing to comply with other reasonable instructions provided by the Customer where such instructions are consistent with the terms of the Agreement. DocuWare shall not use the data provided for data processing for other purposes and shall not store this data for a period longer than that specified by the Customer or required by law.

3. The data shall be processed exclusively within the United States of America, except when Customer provides documents or data in a support case to DocuWare or as otherwise mutually agreed in writing by Customer and DocuWare. Any other forwarding of data to a third country requires the prior consent of the Customer and is subject to the Parties' compliance with the special requirements of applicable data protection laws.

4. DocuWare shall promptly notify the Customer if DocuWare becomes aware of any unlawful access to any Customer personal data stored on DocuWare's equipment or in DocuWare's facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of the Customer's personal data. DocuWare will investigate the incident and provide the Customer with information about the incident and take reasonable steps to mitigate the effects and to minimize any damage resulting from the incident. The Customer agrees that DocuWare's obligation under this Section is not and will not be constructed as an acknowledgement by DocuWare of any fault or liability with respect to the incident or an obligation on the part of DocuWare to provide legal advice or otherwise to advise Customer or monitor Customer's legal obligations with respect to Privacy Laws.

5. Upon termination of the Services, DocuWare will keep any data produced in connection with the Services at least for further 60 days and will delete them no later than 90 days after the end-date ofthe Agreement, and this Schedule 1 shall continue to apply within this period of time. The Customer shall have the right to request an earlier deletion in writing. The Customer hereby acknowledges and agrees to these cancellation rules. Notwithstanding the foregoing, the Customer is responsible for saving of all personal data provided to DocuWare during the Term of the Agreement. Documentation intended as proof of proper data processing shall be kept by DocuWare beyond the end of the Agreement as may be required under laws applicable to DocuWare and DocuWare's data retention policies.

**§ 4 Subcontractors**

1. The Customer acknowledges and agrees, that DocuWare's affiliates, as well as third-party sub-contractors engaged by an affiliate or DocuWare itself (including Microsoft Azure) are permitted have access to personal data in connection with the provision of the Services. Any of such sub-contractors will be permitted to obtain personal data only to deliver the service DocuWare has retained them to provide.

**§ 5 Technical and Organizational Security Measures**

1. DocuWare shall maintain administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of personal data as it determines in its reasonable discretion.

**Schedule 2 – Business Associate Agreement**

This Schedule 2 is included as part of the DocuWare Cloud Services Agreement (the "Cloud Services Agreement") by and between DocuWare (as defined in the Cloud Services Agreement) and Customer (as defined in the Cloud Services Agreement). This Business Associate Agreement (this "Agreement") is made as of the Effective Date of the Cloud Services Agreement, by and between DocuWare and Customer, each individually a "Party" and together the "Parties."

**BACKGROUND STATEMENTS**

A. **Purpose.** The purpose of this Agreement is to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and the associated regulations, 45 C.F.R. parts 160-164, as may be amended (including the "Privacy Rule" and the "Security Rule") ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act and the associated regulations, as may be amended ("HITECH"). "HIPAA" and "HITECH" are hereafter collectively referred to in this Agreement as "HIPAA." Unless otherwise defined in this Agreement, capitalized terms have the meanings given in HIPAA. This Agreement is only effective when Required by Law, when Customer is either a HIPAA Covered Entity or Business Associate, and when HIPAA requires DocuWare to provide reasonable assurances to Customer that DocuWare will appropriately safeguard Protected Health Information ("PHI").

B. **Relationship.** DocuWare and Customer have entered into a relationship under which DocuWare may receive, use, obtain, access, maintain, transmit, or create PHI from or on behalf of Customer in the course of performing services for Customer (the "Services").

**AGREEMENT**

The Parties agree as follows:

**Section 1. Permitted Uses and Disclosures.**

DocuWare may use and/or disclose PHI only as permitted or required by this Agreement or as otherwise Required by Law. DocuWare may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives to the extent directly related to and necessary for the performance of the Services. DocuWare will request from Customer no more than the minimum PHI necessary to perform the Services. DocuWare will request, use and disclose only PHI that constitutes a Limited Data Set, if practicable, and will otherwise limit any request, use or disclosure of PHI to the minimum necessary for the intended purpose of the request, use or disclosure. DocuWare will not use or disclose PHI in a manner (i) inconsistent with Customer's obligations under HIPAA, or (ii) that would violate HIPAA if disclosed or used in such a manner by Customer if and to the extent DocuWare's performance of the Services involves carrying out Customer's Privacy Rule obligations.

**Section 2. Safeguards for the Protection of PHI.**

DocuWare will implement and maintain appropriate administrative, physical and technical security safeguards to ensure that PHI obtained by or on behalf of Customer is not used or disclosed by DocuWare in violation of this Agreement. Such safeguards will be designed to protect the confidentiality and integrity of such PHI obtained, accessed, created, maintained, or transmitted from or on behalf of Customer. DocuWare will comply with the applicable requirements of the Security Rule.

**Section 3. Reporting and Mitigating the Effect of Unauthorized Uses and Disclosures.**

DocuWare will promptly report, upon discovery, in writing and in accordance with Section 11.9 of the Cloud Services Agreement, any Security Incident or Breach (as defined below) by it or any of its employees, directors, officers, agents, subcontractors or representatives concerning the use or disclosure of PHI. For purposes of this Agreement, "Breach" means any acquisition, access, use or disclosure of PHI under this Agreement that is (a) in violation of the Privacy Rule or (b) not permitted under this Agreement. DocuWare will be deemed to have discovered a Breach as of the first day on which the Breach is, or should reasonably have been, known to (a) DocuWare or (b) any employee, officer, or other agent of DocuWare other than the individual committing the Breach. DocuWare further will investigate the Breach and promptly provide to Customer information Customer may require to make notifications of the Breach to Individuals and/or other persons or entities ("Notifications"). DocuWare will cooperate with Customer in addressing the Breach.

DocuWare will establish and implement procedures and other reasonable efforts for mitigating any harmful effects arising from any improper use and/or disclosure of PHI.

**Section 4. Use and Disclosure of PHI by Subcontractors, Agents, and Representatives.**

DocuWare will require any subcontractor, agent, or other representative that is authorized to receive, use, maintain, transmit, or have access to PHI obtained or created under the Agreement, to agree, in writing, to: (1) adhere to the same restrictions, conditions and requirements regarding the use and/or disclosure of PHI and safeguarding of PHI that apply to DocuWare under this Agreement; and (2) comply with the applicable requirements of the Security Rule.

**Section 5. Individual Rights.**

DocuWare will comply with the following individual rights requirements as applicable to PHI used or maintained by DocuWare:

5.1 Right of Access. DocuWare agrees to provide access to PHI, at the request of Customer, as necessary to satisfy Customer's obligations with regard to the individual access requirements under HIPAA. DocuWare will otherwise comply with its obligations regarding an Individual's right of access to PHI under HIPAA.

5.2 Right of Amendment. DocuWare agrees to make any amendment(s) to PHI as necessary to meet the amendment requirements under HIPAA.

5.3 Right to Accounting of Disclosures. DocuWare agrees to document any disclosures of PHI as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA, and to provide all such documentation to Customer or to an Individual, as necessary to satisfy Customer's obligations with regard to an Individual's right to an accounting of disclosures. DocuWare will otherwise comply with its obligations regarding an Individual's right to an accounting of disclosures under HIPAA.

**Section 6. Use and Disclosure for DocuWare's Purposes.**

6.1 Use. Except as otherwise limited in this Agreement, DocuWare may use PHI for the proper management and administration of DocuWare or to carry out the legal responsibilities of DocuWare.

6.2 Disclosure. Except as otherwise limited in this Agreement, DocuWare may disclose PHI for the proper management and administration of DocuWare or to carry out the legal responsibilities of DocuWare, provided the disclosures are Required by Law, or DocuWare obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies DocuWare immediately upon discovery of any instances in which the confidentiality of the PHI has been Breached, as defined and described in Section 3 of this Agreement.

**Section 7. Access to Records.**

DocuWare will make its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI received from, or created or received by DocuWare on behalf of Customer, available to the federal Department of Health and Human Services ("HHS"), the Office for Civil Rights ("OCR"), or their agents for purposes of monitoring compliance with HIPAA.

**Section 8. Term and Termination.**

8.1 Term. This Agreement will become effective on the Effective Date. Unless terminated sooner pursuant to Section 8.2, this Agreement will remain in effect for the duration of all Services provided by DocuWare and for so long as DocuWare will remain in possession of any PHI received from Customer, or created or received by DocuWare on behalf of Customer.

8.2 Termination. In the event of a material breach of this Agreement, the non-breaching Party may immediately terminate this Agreement. Alternatively, in the non-breaching Party's sole discretion, the non-breaching Party may provide the breaching Party with written notice of the existence of the material breach and afford the breaching party thirty (30) days to cure the

material breach. In the event the breaching Party fails to cure the material breach within such time period, the non-breaching Party may immediately terminate this Agreement.

8.3 Effect of Termination. Upon termination of this Agreement, DocuWare will recover any PHI relating to this Agreement in the possession of its subcontractors, agents or representatives. DocuWare will return to Customer or destroy all such PHI plus all other PHI relating to this Agreement in its possession, and will retain no copies. If DocuWare cannot feasibly return or destroy the PHI, DocuWare will ensure that any and all protections, requirements and restrictions contained in this Agreement will be extended to any PHI retained after the termination of this Agreement, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.

**Section 9. Miscellaneous.**

9.1 Survival. The respective rights and obligations of the Parties under Sections 7 (Access to Records), 8.3 (Effect of Termination) and 9 (Miscellaneous) will survive termination of this Agreement indefinitely.

9.2 Amendments. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter. It may not be modified, nor will any provision be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The Parties agree to amend this Agreement from time to time as necessary for the Parties to comply with their respective obligations under HIPAA.

9.3 Waiver. A waiver with respect to one event will not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

9.4 Compliance with HIPAA. Any ambiguity in this Agreement will be resolved in favor of a meaning that permits the Parties to comply with their respective obligations under HIPAA.

9.5 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the Parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

9.6 Inconsistencies. If any of the terms of this Agreement conflict with or are inconsistent with the terms of the Services agreement, the terms of this Agreement will prevail.

9.7 Notices. Any notice to be given under this Agreement to a Party will be made in accordance with Section 11.9 of the Cloud Services Agreement.