COUNCIL AGENDA
August 1, 2016
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. Report And Communication
      Bi-annual insurance report by Segal Co.

6. **Citizen Requests And Petitions**

   1. Request To Address Council

      Rod Harsh, 1200 N. Rangeline Rd # 202, requests to address Council regarding the Low Water Bridge Committee Presentation.

7. **Public Hearings**

   1. PUBLIC HEARING PROCEDURES

   2. PUBLIC HEARING FOR COUNCIL BILL NO. 2016-012

      AN ORDINANCE approving a plan for an industrial development project (heartland pet food manufacturing project), consisting of the acquisition, construction, improvement and equipping of an expansion of a pet food manufacturing facility for Heartland Pet Foods Manufacturing, Inc., a Delaware corporation; authorizing the city of Joplin, Missouri to issue its taxable industrial development revenue bonds (Heartland Pet Foods Manufacturing Project), series 2016, in a principal amount not to exceed $83,250,000 to finance the costs of such project; authorizing and approving certain documents; and authorizing certain other actions in connection with the issuance of the bonds. (Action will be taken under First Reading).

   3. COUNCIL BILL NO. 2016-269
      AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District C-1 property as described below and located at 2201 North Main Street in the City of Joplin, Jasper County, Missouri.

      Documents:

      SUMMARY SHEET CB 2016-269 .PDF
      COUNCIL BILL 2016-269 .PDF
      SUPPLEMENTAL CB 2016-269.PDF

   4. COUNCIL BILL NO. 2016-270
      AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-

1 and including in District R-2 property as described below and located at 2024 Maryland Avenue, 2025 Maryland Avenue, and 2119 Maryland Avenue in the City of Joplin, Jasper County, Missouri.

Documents:

SUMMARY SHEET CB 2016-270 .PDF
COUNCIL BILL 2016-270 .PDF
SUPPLEMENTAL CB 2016-270.PDF

5. RESOLUTION NO. 2016-016
A RESOLUTION granting a Special Use Permit (First Request) to Yvonne Vonderosa for the operation of a day care home located at 2306 Xenia Street, in the City of Joplin, Jasper County, Missouri.

Documents:

SUMMARY SHEET RES 2016-016.PDF
RESOLUTION 2016-016 .PDF
SUPPLEMENTAL RES 2016-016.PDF

6. RESOLUTION NO. 2016-017
A RESOLUTION granting a Special Use Permit (First Request) to Rachel and Stephen Grindle for the operation of a Bed and Breakfast located at 602 North Wall Avenue, in the City of Joplin, Jasper County, Missouri.

Documents:

SUMMARY SHEET RES 2016-017 .PDF
RESOLUTION 2016-017 .PDF
SUPPLEMENTAL RES 2016-017.PDF

8. **Consent Agenda**

1. Minutes Of The July 18, 2016 City Council Meeting

Documents:

CC MINUTES 7-18-16.PDF

2. COUNCIL BILL NO. 2016-365

COUNCIL BILL NO. 2016-365 - AN ORDINANCE approving an Agreement by and between the City of Joplin, Missouri, and HS Baking Enterprises, LLC; and, authorizing the City Manager or his designee, the Director of Planning, Development, and Neighborhood Services to execute the same by and on behalf of the City of Joplin, Missouri.

9. **Resolutions**

10. **Ordinances - Emergency**

1. COUNCIL BILL NO. 2016-013
AN ORDINANCE approving a Purchase Order to be issued to Microsoft Corporation to cover the annual support payment for the Public Safety and Financial software and related systems as budgeted in the Annual Budget of the City of Joplin for the Fiscal Year 2015-2016 as adopted by Ordinance

2015-168 on October 19, 2015; and containing an emergency clause.

Documents:

CB2016-013 SUMMARY SHEET.PDF
CB2016-013.PDF
CB2016-013 PRICE QUOTATION.PDF

2. COUNCIL BILL NO. 2016-134
AN ORDINANCE amending Chapter 114, Traffic Section 114-822, Specific Speed Limits, of the Code of Ordinances of the City of Joplin, Missouri to amend the speed limit on Indiana Avenue from 23rd Street to 24th Street to 25 m.p.h.; and containing an emergency clause.

Documents:

CB 2016-134 SUMMARY.PDF
CB-2016-134.PDF
INDIANA SPEED EXHIBIT (2016-07-25).PDF
SEC._114_822. INDIANA.PDF

3. COUNCIL BILL NO. 2016-135
AN ORDINANCE approving Work Authorization HDR-OC-03 for HDR Engineering, Inc., for Three Hundred Twenty One Thousand and no/100 Dollars ($321,000.00) for design and construction management of the Wildwood Business Park Sanitary Sewer project, and containing an emergency clause.

Documents:

SUMMARY SHEET HDR-OC-03 EDA WILDWOOD SANITARY EXTENSION.PDF
CB 2016 135 HDR-OC-03 EDA WILDWOOD SANITARY EXTENSION.PDF
WILDWOOD BUSINESS PARK SEWER AGREEMENT 7-26-16.PDF

4. COUNCIL BILL NO 2016-366
AN ORDINANCE approving the contract by and between the City of Joplin and Nelson demolition for the demolition of the structure(s) and clearing of lot area located at 506 S. Cox in the City of Joplin, Missouri, for the amount of One Thousand Nine Hundred Forty-Nine and 00/100 Dollars (1,949.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

Documents:

CB 2016-366 BID.PDF
CB 2016-366 PICTURES.PDF
CB 2016-366 SUMMARY.PDF
CB 2016-366.PDF

5. COUNCIL BILL NO 2016-367
AN ORDINANCE approving the contract by and between the City of Joplin and Nelson demolition for the demolition of the structure(s) and clearing of lot area located at 315 N. Wall in the City of Joplin, Missouri, for the amount

of Two Thousand Seven Hundred Forty-Nine and 00/100 Dollars (2,749.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

Documents:

CB 2016-367 BIDS.PDF
CB 2016-367 PICTURES.PDF
CB 2016-367 SUMMARY.PDF
CB 2016-367.PDF

**11. Ordinances - First Reading**

**1.** COUNCIL BILL NO. 2016-011

AN ORDINANCE re-adopting Chapter 2, Administration, of the Joplin City Code, Section 2-107, "Financial interest disclosure", requiring certain officials and employees of the City of Joplin to file Financial Interest Disclosure Statements as described herein.

Documents:

CB2016-011 -_SUMMARY SHEET -ETHICS RE-ADOPTION OF FINANCIAL INTEREST DISCLOSURE STATEMENT.PDF
CB2016-011-COUNCIL BILL.PDF

**2.** COUNCIL BILL NO. 2016-012

AN ordinance approving a plan for an industrial development project (Heartland Pet Food Manufacturing Project), consisting of the acquisition, construction, improvement and equipping of an expansion of a pet food manufacturing facility for Heartland Pet Foods Manufacturing, Inc., a Delaware corporation; authorizing the City of Joplin, Missouri to issue its taxable industrial development revenue bonds (Heartland Pet Foods Manufacturing Project), series 2016, in a principal amount not to exceed $83,250,000 to finance the costs of such project; authorizing and approving certain documents; and authorizing certain other actions in connection with the issuance of the bonds.

Documents:

CB2016-012 - PERFORMANCE AGREEMENT.PDF
CB2016-012 - PLAN FOR INDDEV - FINAL.PDF

CB2016-012 - TRUST INDENTURE.PDF
CB2016-012 -BOND PURCHASE AGREEMENT.PDF
CB2016-012 COUNCIL BILL.PDF
CB2016-012 LEASE AGREEMENT.PDF
CB2016-012 -SUMMARY SHEET - HEARTLAND PET CH 100 BONDS.PDF

3. COUNCIL BILL NO. 2016-369
AN ORDINANCE approving an Agreement between the City of Joplin, Missouri, and Missouri Highway and Transportation Commission which will provide FHWA Metropolitan Planning Assistance and FTA Section 5303 assistance, hereafter known as Consolidated Planning Funds, from November 1, 2015, through October 31, 2016, in accordance with the rules of the U.S. Department of Transportation, Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) under 49 U.S.C. Section 5303 and 23 U.S. Code Sections 104(F) and 134 to conduct comprehensive and transportation planning programs, as the City of Joplin has been designated to conduct transportation planning programs for the Joplin Area Transportation Study Organization; authorizing the City Manager to execute said Agreement for the City.

Documents:

6-23-16 UPWP UPDATE.PDF
TP02 FIRST AMENDMENT TO CONSOLIDATED GRANT AGREEMENT.PDF
CB 2016-369 SUMMARY.PDF
CB 2016-369.PDF

4. COUNCIL BILL NO. 2016-370
AN ORDINANCE authorizing the City of Joplin to enter into an Agreement with Gould Evans Affiliates for Planning Services relating to the update of the City of Joplin Zoning Code; authorizing the City Manager to execute said Agreement for the City, and amending the Annual Budget of the City of Joplin for the Fiscal Year 2015-2016 as adopted by Ordinance 2015-168 on October 19, 2015

Documents:

CB 2016-370 SUMMARY.PDF
CB 2016-370.PDF
JOPLINMO_CONTRACT_REVISED063016.PDF
RESONSETOSCOPE_REVISED_160609 (003).PDF
BID TABS FOR ZONING CODE UPDATE.PDF

## 12. Ordinances - Second Reading And Third Reading

1. COUNCIL BILL NO. 2016-132
COUNCIL BILL NO. 2016-132 - an ordinance declaring a public necessity for the acquisition by condemnation proceedings of real property and easements from property described as, All that part of the Southeast Quarter of the Southeast Quarter of Section 13, Township 27 North, Range 33 West, City of Joplin, Jasper County, Missouri, being all that part of the tract of land described in the General Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 1802, at Page 715, for the construction of public road and storm water public improvements near 29th and Arizona Avenue, directing the City Attorney to commence an action to obtain said property.

13. **Unfinished Business**

14. **New Business**

    1. Set The Date For The Public Hearing On The FY 2016-17 Proposed Budget For August 15, 2016.

    2. Set The Date For The Public Hearing On The Property Tax Rate For August 29, 2016.

    3. APPOINTMENTS/REAPPOINTMENTS TO BOARDS AND COMMISSIONS

    4. NEWS FROM THE PIO

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)**

City of **JOPLIN** City Council Agenda Item

**Requested Council Meeting Date: August 1, 2016**

**Item: COUNCIL BILL NO. 2016-269**
**Originating Department: PLANNING & COMMUNITY DEVELOPMENT**

Attachments: 1) Copy of Council Bill
2) Planning Report
3) Commission Minutes

Planning/Community Development Manager: Troy Bolander
City Attorney: Peter C. Edwards
City Manager: Samuel L. Anselm
Board or Commission: Planning and Zoning Commission Date: 7/11/2016

Recommended Action: Planning and Zoning Commission recommended approval by a vote of "6 in favor, 1 abstention, and 0 absent"

SUMMARY/REQUEST:
Case 021-16: 2201 North Main Street – A request to rezone from R-1 (Single-Family Residential) to C-1 (Neighborhood Commercial) – Christ in Youth.

STAFF SUMMARY:
This property is located northwest of the current Christ in Youth (CIY) facilities located at 2201 North Main. CIY is a non-profit organization that puts on 100 annual program events for students and leaders across the United States. The organization plans to construct a warehouse for their large stock of audiovisual equipment used at these events. In the future, CIY would like to rent out this equipment to other churches and similar organizations, warranting a commercial zoning designation.

Staff recommends approval of Case 021-16.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Brown abstained from the discussion and vote on Case 021-16 due to a conflict of interest.

Mr. Ryan Claborn appeared representing Christ in Youth, the owner of the property in this request. They purchased a 20-acre plot adjacent to their existing land. They are requesting the rezoning of the southwest five acres for the construction of a warehouse for storage of equipment owned by Christ in Youth.

Mr. Ramsour asked if the property where site preparation is occurring is the property rezoning is being requested for, and Mr. Claborn replied yes. He understood dirt work could be done as long as Christ in Youth wasn't constructing anything.

Mr. Cortez asked if this will require the presentation of development plans to this commission before the warehouse can be constructed. Ms. Cunningham replied this won't require a site plan

review since the property is not within any of the planned development corridors. Christ in Youth will still proceed through the regular commercial building permit process with the City staff.

Mr. Ramsour asked if access will be provided by the current existing roads up to Main Street. Mr. Claborn replied a private drive comes off from Main Street that accesses their existing property, with the warehouse being accessed from that drive.

PUBLIC COMMENT:
None.

P & Z Case 021-16
Christ in Youth
(P & Z Recommended Approval)

COUNCIL BILL NO. 2016-269 ORDINANCE NO.

AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District C-1 property as described below and located at 2201 North Main Street in the City of Joplin, 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 removing the following described property from District R-1 and including same in District C-1:

ALL OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 28, RANGE 33 IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI. CONTAINING 5 ACRES MORE OR LESS. SUBJECT TO ANY EASEMENTS OR RESTRICTIONS ON RECORD.

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 for thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 2016, by a vote of _____.

_____
ATTEST: Michael L. Seibert, Mayor

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

Z&P Meeting: July 11, 2016
City Council Meeting: August 1, 2016

# STAFF PLANNING REPORT
## Rezoning

**CASE 021-16** A request to rezone from R-1 (Single-Family Residential) to C-1 (Neighborhood Commercial)

**LOCATION** 2201 North Main Street

**APPLICANT** Christ in Youth

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### EXISTING CONDITIONS

| Zoning | Land Use | Property Size |
|---|---|---|
| C-O-PD Planned Non-Retail Commercial District | Christ in Youth offices | 5 acres |

### SITE CONTEXT

| | North | East | South | West |
|---|---|---|---|---|
| **Existing Zoning** | R-1 Single-Family Residential | R-1 Single-Family Residential | R-1 Single-Family Residential and C-2-PD Planning Central Business District Development | R-1 Single-Family Residential and C-2-PD Planning Central Business District Development |
| Land Use | Retail Commercial and Residential | Commercial | Commercial | Residential |

### FUTURE LAND USE

The City of Joplin's future land use map classifies the area long North Main Street as future commercial/retail development.

**TRANSPORTATION**

| Streets with access | Classification | Right-of-way width |
|---|---|---|
| Private Drive | N/A | N/A |

**UTILITIES** No. CIY will be extending the sewer line from the west to an existing manhole. Approval has been issued by the City of Joplin engineering staff.

**FLOOD PLAIN** N/A

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**STAFF ANALYSIS**

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

**THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED**
Currently, this site is zoned R-1 (Single-Family Residential). In order to store and rent out CIY's equipment, a commercial zoning designation is required.

**THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY**
This zoning change would not detrimentally affect nearby property.

**DISCUSSION**
This property is located northwest of the current Christ in Youth (CIY) facilities located at 2201 North Main. CIY is a non-profit organization that puts on 100 annual program events for students and leaders across the United States. The organization plans to construct a warehouse for their large stock of audiovisual equipment used at these events. In the future, CIY would like to rent out this equipment to other churches and similar organizations, warranting a commercial zoning designation.

*Staff recommends approval of Case 021-16.*

# 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.: 02/-16
Filing Fee: $450.00
Date Advertised: 6-27-16
Date Notices Sent: 6-27-16
P&Z Date: 7-11-16
City Council Date: 8-1-16

APPLICANT: Christ In Youth, Inc. PHONE: 417-781-2273
ADDRESS: 2201 N. Main; Joplin, MO ZIP: 64801
EMAIL: ryan.claborn@ciy.com
OWNER: Christ In Youth, Inc. PHONE: 417-781-2273
ADDRESS: 2201 N. Main; Joplin, MO ZIP: 64801
EMAIL: ryan.claborn@ciy.com
LOCATION OF PROPERTY: East of Main St on Zora
LEGAL DESCRIPTION: All of the West Half of the Southwest Quarter of the Northeast Quarter of the Northwest Quarter of Section 35, Township 28, Range 33 in the City of Joplin, Jasper County, Missouri. Containing 5 Acres According to Surveyor's Calculations. Subject to any existing easements or restriction of record.
Parent Tract: described in book 2367 at Page 348
Present Zoning R-1 Requested Zoning: C-1 Acreage: 5
Present Use of Property: None
Proposed Use of Property: Warehouse

SURROUNDING LAND USE AND ZONING:

| | Land Use | Zoning |
|---|---|---|
| North | None | R-1 |
| South | Christ In Youth offices | R-1 |
| East | None | R-1 |
| West | Good News Int'l Offices | R-1 |

CHARACTER OF THE NEIGHBORHOOD: Immediate vicinity is unoccupied, areas to the west and south have small office buildings. To the north there are 4 rental houses. To the east is empty, residential neighborhood further to the east.

RELATIONSHIP TO EXISTING ZONING PATTERN:

1. Would proposed change create a small, isolated district unrelated to surrounding districts?
   The zoning would be different, but nearby structures are light commercial used for religious purposes.
2. Are there substantial reasons why the property cannot be used in accord with existing zoning?
   yes
   If yes, explain: Proposed warehouse would need a commercial zoning.

CONFORMANCE WITH COMPREHENSIVE PLAN:

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

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
4. For Planned Developments the following must be submitted and reviewed before the rezoning can be advertised for public hearing:
   ___ Site Plan ___ Landscape Plan ___ Building Elevations

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: Access is from Main Street via existing private drive.
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. Traffic changes due to the proposed facility will be minimal and similar in nature to current.

IS PLATTING OR REPLATTING REQUIRED TO PROVIDE FOR:

1. Appropriately Sized Lots?_____
2. Properly Sized Street Right-of-Way?_____
3. Drainage Easements?_____
4. Utility Easements:
   - Electricity?_____
   - Gas?_____
   - Sewers?_____
   - Water?_____
5. Additional Comments:_____

UNIQUE CHARACTERISTIC OF PROPERTY AND ADDITIONAL COMMENT:

The property is joined on 3 sides by property that Christ In Youth owns. The proposed warehouse would serve as a storage facility for CIY property and a workshop for CIY. Site plan places it in a location not visible from Main Street or nearby property owners due to existing tree cover.

SIGNATURE: _____ DATE: 5/27/16

BY: Ryan Claborn

TITLE: Senior Director - Operations

Rezoning Application
Statement describing reasoning for rezoning, etc.

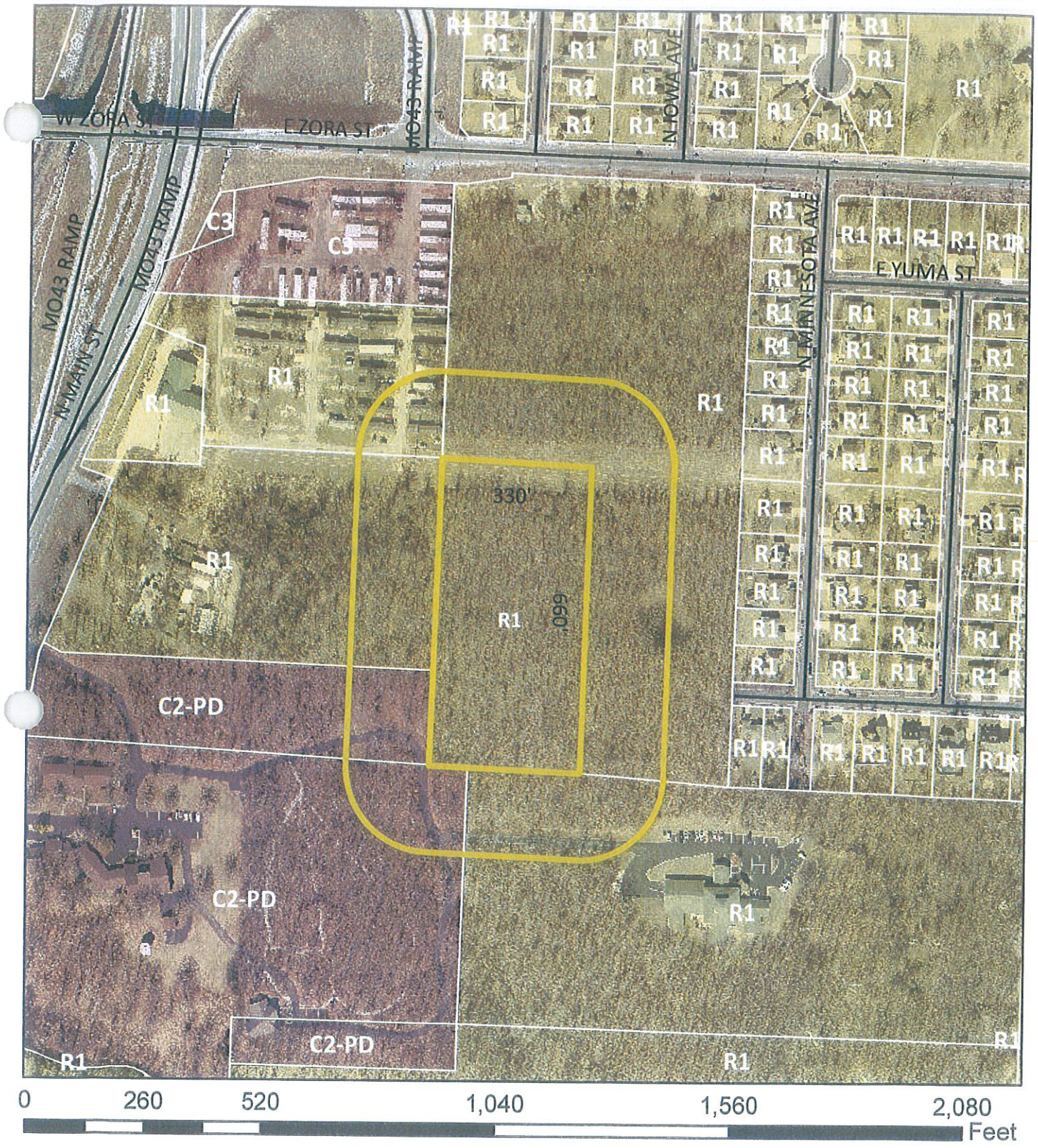
Christ In Youth seeks rezoning of the described property for the purpose of building a warehouse/workshop to facilitate its ministry. CIY currently stores assets in an offsite warehouse and works out of a garage attached to its offices. Ministry expansion opportunities have created a need to expand storage space as well as provide an area for building props and stage backdrops. The proposed facility would serve both purposes on property owned by Christ In Youth that is adjacent to its existing offices.

Rezoning would enable CIY to construct the proposed facility. Impact on surrounding property owners would be negligible. Traffic to the facility would be of a similar nature to current traffic to / from CIY offices via private drive already in place. Some additional traffic on that drive would result as equipment is transported to/from the warehouse. Main Street traffic would not be impacted, trucks carrying equipment to/from CIY's current storage facility already travel the same portion of North Main Street.

The proposed facility does not represent or introduce fire hazards and would be in compliance with applicable codes related to fire safety.

The proposed change would not change the character of surrounding properties. While surrounded by R-1, nearby structures are religious offices. A buffer of empty R-1 would remain between existing residential structures to the east and north.

The proposed change benefits the city of Joplin by enabling Christ In Youth to continue to grow and expand in Joplin. Growth in CIY's ministry represents additional economic activity in the community and continued positive influence from CIY.




Case 021-16: 2201 North Main - A request to rezone from R-1 (Single-Family Residential) to C-3 (Commercial) - Christ in Youth.

Case 021-16: 2201 North Main Street – A request to rezone from R-1 (Single-Family Residential) to C-1 (Neighborhood Commercial) – Christ in Youth.

Mr. Brown wished to abstain from the discussion and vote on Case 021-16 due to a conflict of interest. He left the dais at this point.

Mr. Smith opened the public hearing for Case 021-16.

Mr. Ryan Claborn, 2201 North Main Street, appeared representing Christ in Youth, the owner of the property in this request. They purchased a 20-acre plot adjacent to their existing land. They are requesting the rezoning of the southwest five acres for the construction of a warehouse for storage of equipment owned by Christ in Youth.

Mr. Ramsour asked if the property where site preparation is occurring is the property rezoning is being requested for, and Mr. Claborn replied yes. He understood dirt work could be done as long as Christ in Youth wasn't constructing anything.

Mr. Cortez asked if this will require the presentation of development plans to this commission before the warehouse can be constructed. Ms. Cunningham replied this won't require a site plan review since the property is not within any of the planned development corridors. Christ in Youth will still proceed through the regular commercial building permit process with the City staff.

Mr. Ramsour asked if access will be provided by the current existing roads up to Main Street. Mr. Claborn replied a private drive comes off from Main Street that accesses their existing property, with the warehouse being accessed from that drive.

Mr. Smith asked for comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 021-16.

**MR. DUNCAN MOVED, SECONDED BY MR. DERMOTT, THAT CASE 021-16 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MS. BRUECKNER-SEARS, MR. CORTEZ, MR. DERMOTT, MR. DUNCAN, MR. RAMSOUR, AND MR. SMITH VOTING "AYE"; AND WITH MR. BROWN ABSTAINING (6 IN FAVOR, 1 ABSTENTION, 0 ABSENT).**

Mr. Brown returned to the dais at this point.

City of **JOPLIN** City Council Agenda Item

**Requested Council Meeting Date: August 1, 2016**

**Item: COUNCIL BILL NO. 2016-270**
**Originating Department: PLANNING & COMMUNITY DEVELOPMENT**

Attachments: 1) Copy of Council Bill
2) Planning Report
3) Commission Minutes

Planning/Community Development Manager: Troy Bolander
City Attorney: Peter C. Edwards
City Manager: Samuel L. Anselm
Board or Commission: Planning and Zoning Commission Date: 7/11/2016

Recommended Action: Planning and Zoning Commission recommended approval by a vote of "6 in favor, 1 opposed, and 0 absent"

SUMMARY/REQUEST:
Case 023-16: 2024, 2025, and 2119 Maryland Avenue – A request to rezone from R-1 (Single Family Residential) to R-2 (Two-Family Residential) for the construction of duplexes – Brad Allphin Investments.

STAFF SUMMARY:
This property is located at 22nd Street and Maryland Avenue. Currently, Maryland Avenue dead ends at the northern edge of the property and does not go through from 20th Street to 22nd Street. The developer will be improving the street to City of Joplin specifications in order to connect 20th Street to 22nd Street at Maryland Avenue. The duplex rentals will be three bedroom, two and a half bedrooms with storm shelters. There are a total of thirteen proposed duplexes on the site.

Staff recommends approval of Case 023-16.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Eric Allphin appeared on behalf of Brad Allphin Investment, who plan to extend Maryland Avenue between 20th Street and 22nd Street. Following completion of the roadway, they plan to construct duplexes as show on the plot plan.

Mr. Allphin's engineer will develop the storm water detention plans. He did not want to proceed with detention plans pending the outcome of the rezoning request. Preliminary plans are for the water to drain onto the new Maryland Avenue towards 22nd Street.

Mr. Allphin stated the construction would be really nice, with the duplexes being something he would like to live in. The duplexes will contain granite countertops and tile floors, with these not being low-income units. He would like to cater to the housing needs for the new medical school.

Mr. Duncan asked how many units these duplexes would contain, and Mr. Allphin replied 13 duplexes containing 26 units.

Mr. Smith asked about the rent, and Mr. Allphin replied around $1,000 monthly.

Mr. Duncan asked Mr. Allphin where the water will be retained. He replied along the west side of Maryland Avenue and along the back side of the duplexes on the west side of Maryland. There is sufficient room behind the duplexes along the east side of Maryland to retain the water.

Mr. Smith asked about a retaining wall. Mr. Allphin replied there will be a concrete retaining wall or a berm type, depending on how much room there is and how high it would have to be.

Mr. Duncan asked if there will be condominiums on both sides of Maryland Avenue, and Mr. Allphin replied yes.

Mr. Smith asked if a roadway will be constructed, and Mr. Allphin replied Maryland Avenue will be extended through where it doesn't currently exist. Maryland Avenue can be accessed from 20th Street or from 22nd Street. This will improve traffic flow through the area.

Mr. Allphin also owns the duplexes along the west side of Delaware Avenue south of 20th Street. He maintains very nice places and keeps residents who are really nice.

Mr. Ramsour discussed the planning report, which states the request is consistent with the comprehensive plan. He asked if this is before or after the tornado. Ms. Cunningham stated the plan was adopted during 2012, after the tornado.

Mr. Ramsour asked if duplexes that far from 20th Street are consistent with the comprehensive plan. Ms. Cunningham stated the future land use map shows some low-density and moderate-density residential uses in this area. Because of the development to the north and west and along 20th Street, there will be some depth where mixed-use corridor will exist just by the nature of everything that is being rebuilt. The staff saw no inconsistencies with the comprehensive plan or the design guidelines since these are nice-looking facilities.

PUBLIC COMMENT:
Comments in opposition were received from the following:

Keith Adams, 2102 South Patterson Avenue, Joplin
Margaret Kannady, 2211 McConnell Avenue, Joplin
Gail Francis, 2115 Delaware Avenue, Joplin

They commented this area is a wonderful, family-oriented neighborhood and requested the zoning remain R-1 since the property in this request is surrounded by single-family homes. They expressed concerns regarding drainage issues, a decrease in residential property values, the construction of two-story duplexes versus one-story duplexes, and the use of wood privacy fencing versus plastic fencing.

In response to the neighbors' concerns, Ms. Cunningham stated all these requests are reviewed by the City engineers who work with sanitary sewer and storm water. They are totally aware of this development, and building permits would be totally dependent on an adequate storm water detention system based on engineering calculations that must be approved by a licensed engineer. No permits can be issued without an adequate storm water detention system.

Mr. Allphin thought the storm water will actually improve the situation since some of the water does run towards Ms. Francis' property. The water won't run that direction after he builds there.

P & Z Case 023-16
Brad Allphin Investments
(P & Z Recommended Approval)

COUNCIL BILL NO. 2016-270 ORDINANCE NO.

AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District R-2 property as described below and located at 2024 Maryland Avenue, 2025 Maryland Avenue, and 2119 Maryland Avenue in the City of Joplin, 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 removing the following described property from District R-1 and including same in District R-2:

TRACT 1: ALL OF THE EAST ONE-HALF OF LOT NUMBERED ONE (1) AND ALL OF LOT NUMBERED TWO (2) EXCEPT THE WEST 179.83 FEET IN DELAWARE ADDITION TO THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF. TRACT 2: ALL OF THE EAST ONE-HALF OF A TRACT OF LAND DESCRIBED AS BEGINNIGN AT POINT 412.5 FEET SOUTH OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 27, RANGE 33, RUNNING THENCE SOUTH 302.93 FEET, THENCE EAST A DISTANCE OF 359.65 FEET, THENCE NORTH 302.63 FEET, THENCE WEST 359.65 FEET TO THE POINT OF BEGINNING, BEING PART OF MISCELLANEOUS TRACT NUMBERED THIRTEEN (13) IN SAID SECTION, TOWNSHIP, AND RANGE IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, EXCEPT THE SOUTH 150 FEET THEREOF. TRACT 3: ALL THAT PART OF A TRACT OF LAND BEGINNIN AT POINT 359.65 FEET EAST AND 412.5 FEET SOUTH OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, THENCE SOUTH 302.68 FEET, THENCE NORTH 887 DEGREES 19 MINUTES EAST A DISTANCE OF 359.65 FEET, THENCE NORTH 302.46 FEET, THENCE WEST TO POINT OF BEGINNING. ALSO, A TRACT BEGINNING AT A POINT 359.65 FEET EAST AND 715.18 FEET SOUTH OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, THENCE SOUTH 302.68 FEET, THENCE NORTH 88 DEGREES 17 MINUTES EAST A DISTANCE OF 35.65 FEET, THENCE NORTH A DISTANCE OF 302.46 FEET, THENCE WEST TO THE POINT OF BEGINNING, THE ABOVE TRACTS BEING PART OF MISCELLANEOUS TRACT NUMBERED THIRTEEN (13) IN SECTION 13, TOWNSHIP 27, RANGE 33 IN THE CITY OF JOPLIN, JASPER COUNTY MISSOURI, EXCEPT ALL OF THE EAST 150 FEET OF A TRACT OF LAND DESCRIBED AS BEGINNING AT A POINT 359.65 FEET EAST

AND 412.5 FEET SOUTH OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 27, RANGE 33, THENCE SOUTH 605.36 FEET, THENCE NORTH 88 DEGREES 17 MINUTES EAST A DISTANCE OF 359.65 FEET, THENCE NORTH 604.925 FEET, THENCE WEST TO POINT OF BEGINNING, BEING PART OF MISCELLANEOUS TRACT NUMBERED THIRTEEN (13) IN SECTION 13, TOWNSHIP 27, RANGE 33 IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI SUBJECT TO A SEWER EASEMENT BEGINNING AT A POINT 162.60 FEET SOUTH OF THE NORTHEAST CORNER OF MISCELLANEOUS TRACT 13 IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 27, RANGE 33, JOPLIN, JASPER COUNTY, MISSOURI, THENCE WEST 150.0 FEET, THENCE SOUTH 10.0 FEET, THENCE EAST 150.0 FEET, THENCE NORTH 10.0 FEET TO THE POINT OF BEGINNING.

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 for thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 2016, by a vote of _____.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

Z&P Meeting: July 11, 2016
City Council Meeting: August 1, 2016

# STAFF PLANNING REPORT
## Rezoning

**CASE 023-16** A request to rezone from R-1 (Single Family Residential) to R-2 (Two-Family Residential) for the construction of duplexes

**LOCATION** 2024, 2025, and 2119 Maryland Avenue

**APPLICANT** Brad Allphin Investments

---

### EXISTING CONDITIONS

| Zoning | Land Use | Property Size |
|---|---|---|
| R-1<br>Single-Family Residential | Undeveloped | 3.95 acres |

### SITE CONTEXT

| | North | East | South | West |
|---|---|---|---|---|
| Existing Zoning | R-1<br>Single-Family Residential | R-2-PD<br>Planned Two-Family Residential District | R-1<br>Single-Family Residential and | R-1<br>Single-Family Residential and |
| Land Use | Residential | Residential | Residential | Residential |

### FUTURE LAND USE

The City of Joplin's future land use map classifies this area as moderate and low-density residential.

### TRANSPORTATION

| Streets with access | Classification | Right-of-way width |
|---|---|---|
| 22nd Street | Secondary | 50' |
| Future Maryland Ave | Secondary | 50' |

**UTILITIES** No. Utilities will be added in future construction.

**FLOOD PLAIN** N/A

---

**STAFF ANALYSIS**

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

**THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED**
Residential duplexes are not permitted in the R-1 zoning district.

**THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY**
This zoning change would not detrimentally affect nearby property.

**DISCUSSION**
This property is located at 22nd Street and Maryland Avenue. Currently, Maryland Avenue dead ends at the northern edge of the property and does not go through from 20th Street to 22nd Street. The developer will be improving the street to City of Joplin specifications in order to connect 20th Street to 22nd Street at Maryland Avenue. The duplex rentals will be three bedroom, two and a half bedrooms with storm shelters. There are a total of thirteen proposed duplexes on the site.

*Staff recommends approval of Case 023-16.*

RECEIVED 6-2-16

# Application for Rezoning

Please return form to:
Joplin City Hall
Planning Division, 4th Floor
602 South Main Street
Joplin Missouri, 64801
Phone: 417-624-0820, ext. 511
Fax: 417-625-4738

For office use only

| | |
|---|---|
| Case Number | 023-16 |
| Filing Fee | $450.00 |
| Date Advertised | 6-26-16 |
| Date Notices Sent | 6-27-16 |
| P&Z Date | 7-11-16 |
| City Council Date | 8-1-16 |

Applicant Brad Allphin Investments Phone 417-850-5652

Address 12607 Raccoon Rd Granby, MO Zip 64844

Email eallphin_jr@msn.com

Owner SAME Phone

Address Zip

Email

Location of Property 2024 Maryland 2025 Maryland & 2119

Legal Description (Attached)

Present Zoning R-1 Requested Zoning R-2 Acreage 3.95

Proposed Use of Property Luxury Duplex Rentals

**Surrounding Land Use and Zoning**

| | Land Use | Zoning |
|---|---|---|
| North | Duplexs | R-2 |
| South | Houses | R-1 |
| East | Houses | R-1 |
| West | Vacant ~~Land~~ + House | R-2 - R-1 |

**Character of the Neighborhood**

Vacant Land Since the Tornado

**Relationship to Existing Zoning Pattern**

| | Yes | No |
|---|---|---|
| 1. Would proposed change create a small, isolated district unrelated to surrounding districts? | | X |
| 2. Are there substantial reasons why the property cannot be used in accord with existing zoning? | X | |

If yes, explain:

No access to structures constructed without finishing Maryland

**Conformance with Comprehensive Plan**

| | Yes | No |
|---|---|---|
| 1. Consistent with Development Policies? | X | |
| 2. Consistent with Future Land Use Map? | X | |

**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 affect 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
4. For Planned Developments the following must be submitted and reviewed before the rezoning can be advertised for public hearing:
    a. Site Plan
    b. Landscape Plan
    c. Building Elevations

**Traffic Conditions:**

| Streets with Access to Property | Classification (Arterial, Collector, or Local) | Right-of-Way Width |
|---|---|---|
| E 20th & Maryland North | | |
| | | |
| | | |

Will turning movements caused by the proposed use create an undue traffic hazard?

**Is platting or replatting required to provide for:** We would like to keep the Lots for Tax Purpos as is. And not have lots devided for each Duplex.

| | Yes | No |
|---|---|---|
| 1. Appropriately sized lots? | X | X |
| 2. Properly sized street right-of-way? | X will be finishing City Street | |
| 3. Drainage easements? | X | |
| 4. Utility easements? | X | |
| Electricity | X | |
| Gas | X | |
| Sewers | X | |
| Water | X | |

**Unique characteristics of property and additional comments:**

See Attached paper

Signature: [signature]

By: Brad Allphin

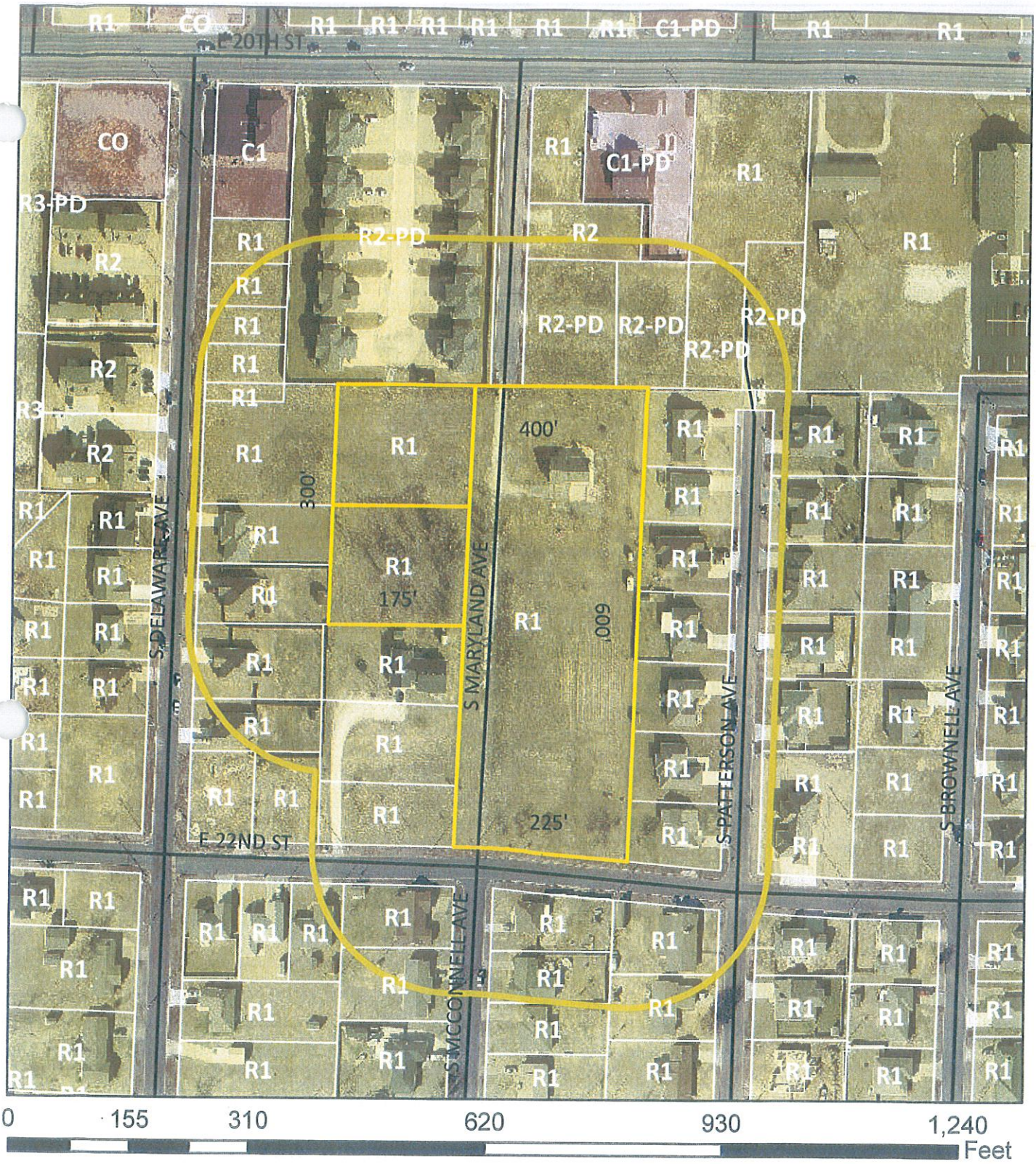
Date: June 2, 2016 Title: Owner

Answers To Questions

The land is currently zoned for R-1 residential. We are proposing to build luxury duplex rentals. With Maryland Ave not being completed or having a cut through from 20th street down to E 22nd it makes building residential homes on the property impossible. By us completing the road through the property it make it cost effective for us to split the cost among the number of rentals.

The proposed change will better the surrounding community with Maryland being completed because the current residents will have a cut through, emergency vehicles will have easier access and it will complete the street as designed years ago. This change will relive traffic on surrounding roads because there will be access to go straight down from 20th street.

The proposed change will increase the value of the surrounding properties and fill the void the city currently has on rentals on the high-end market. We plan to cater to the needs of the incoming medical students and their families. The duplex rentals will be three bedroom, 2.5 baths with granite countertops, custom cabinets, tile flooring, storm shelters, etc. They will be visibly appealing and well maintained.




Case 023-16: 2024, 2025, and 2119 Maryland Ave - A request to rezone from R-1 (Single-Family Residential) to R-2 (Two-Family Residential) for the construction of residential duplexes - Bradd Allphin Investments.

# Brad Allphin Investments



OWNER/BUILDER TO VERIFY ALL DIMENSIONS AND DESIGN DETAILS

ARTISTIC RENDERING
N.T.S.

| REVISION TABLE | | | |
|---|---|---|---|
| NUMBER | DATE | REVISED BY | DESCRIPTION |
| | | | |

BRAD ALLPIN INVESTMENTS
MARYLAND PROJECT
JOPLIN, MO

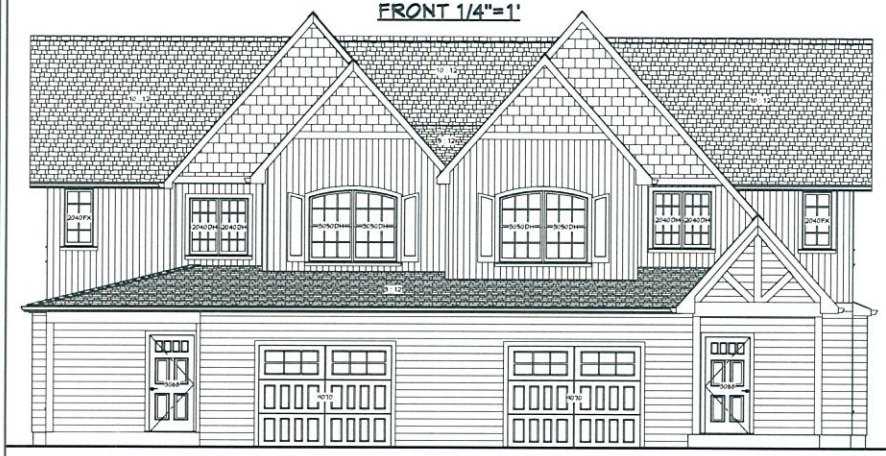
DRAWINGS PROVIDED BY:
Fyock Home Design
Chuck Fyock
417-438-6120

DATE:
7/8/2016

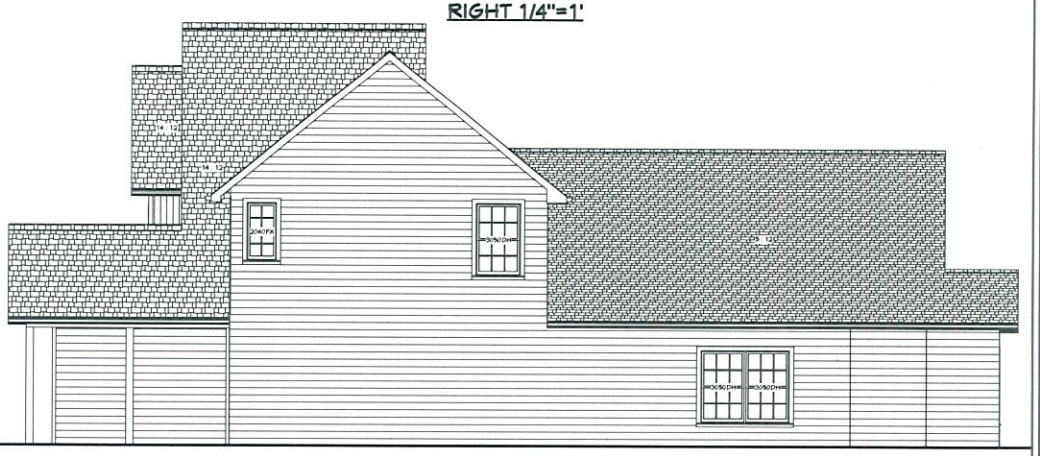
SCALE:
1/4"=1'

SHEET #
1

FRONT 1/4"=1'



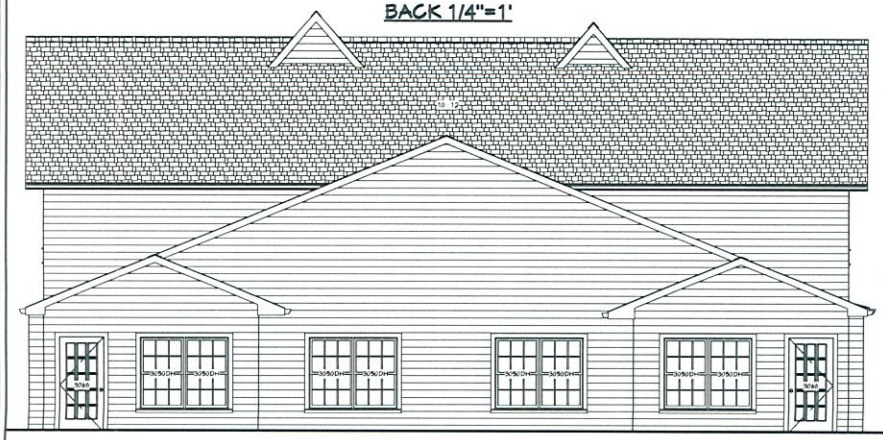
RIGHT 1/4"=1'



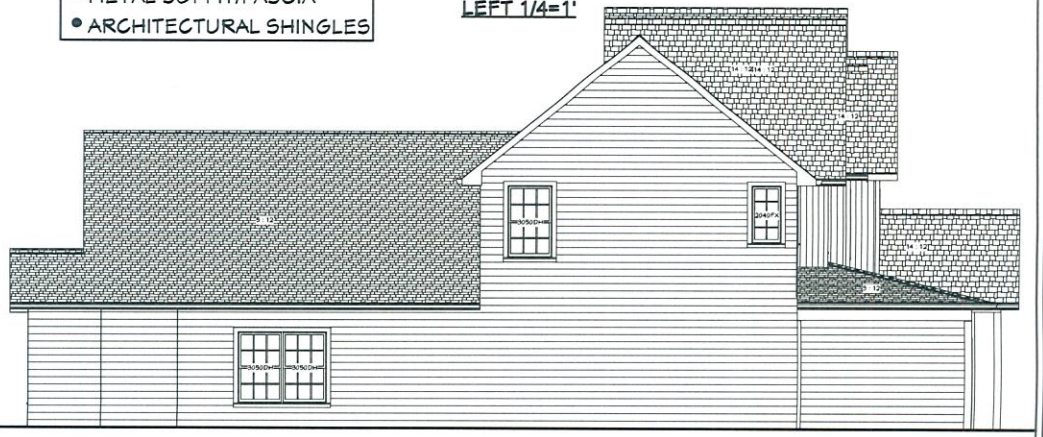
ELEVATION NOTES:

- EXTERIOR AS PER OWNER
- VINYL WINDOWS
- METAL SOFFIT/FASCIA
- ARCHITECTURAL SHINGLES

BACK 1/4"=1'



LEFT 1/4=1'



ELEVATIONS

REVISION TABLE

| NUMBER | DATE | REVISED BY | DESCRIPTION |
|---|---|---|---|
| | | | |

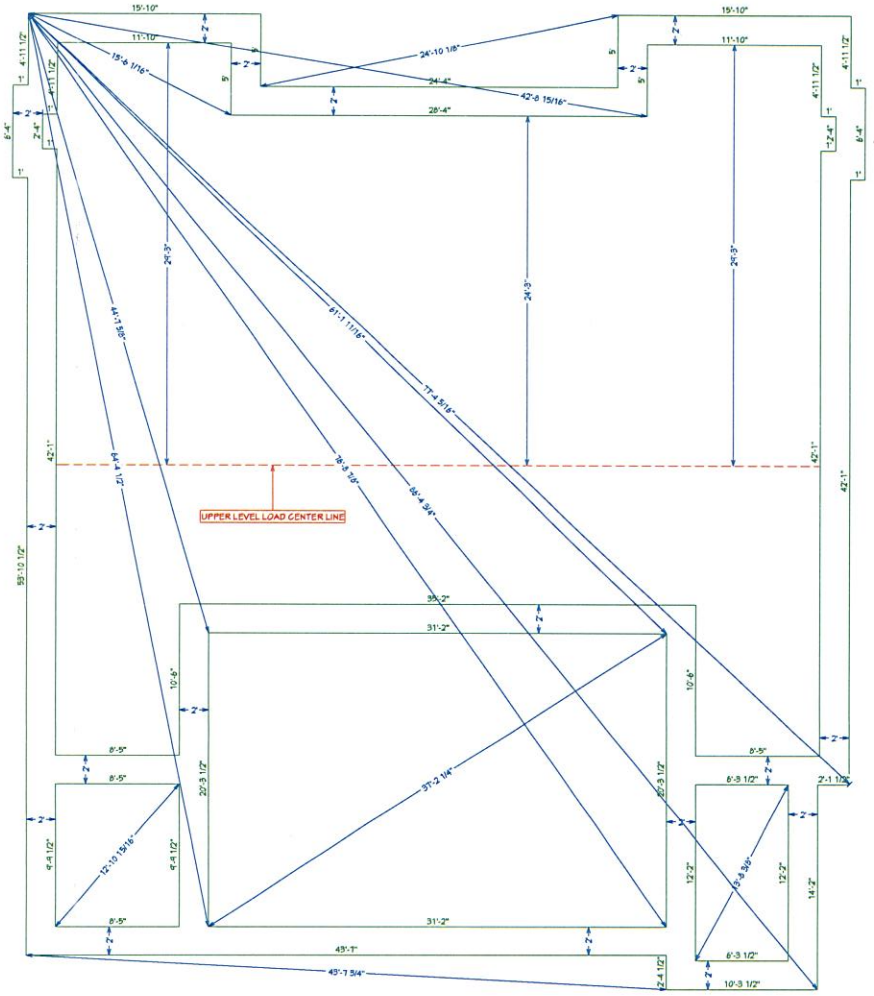
BRAD ALLPIN INVESTMENTS
MARYLAND PROJECT
JOPLIN, MO

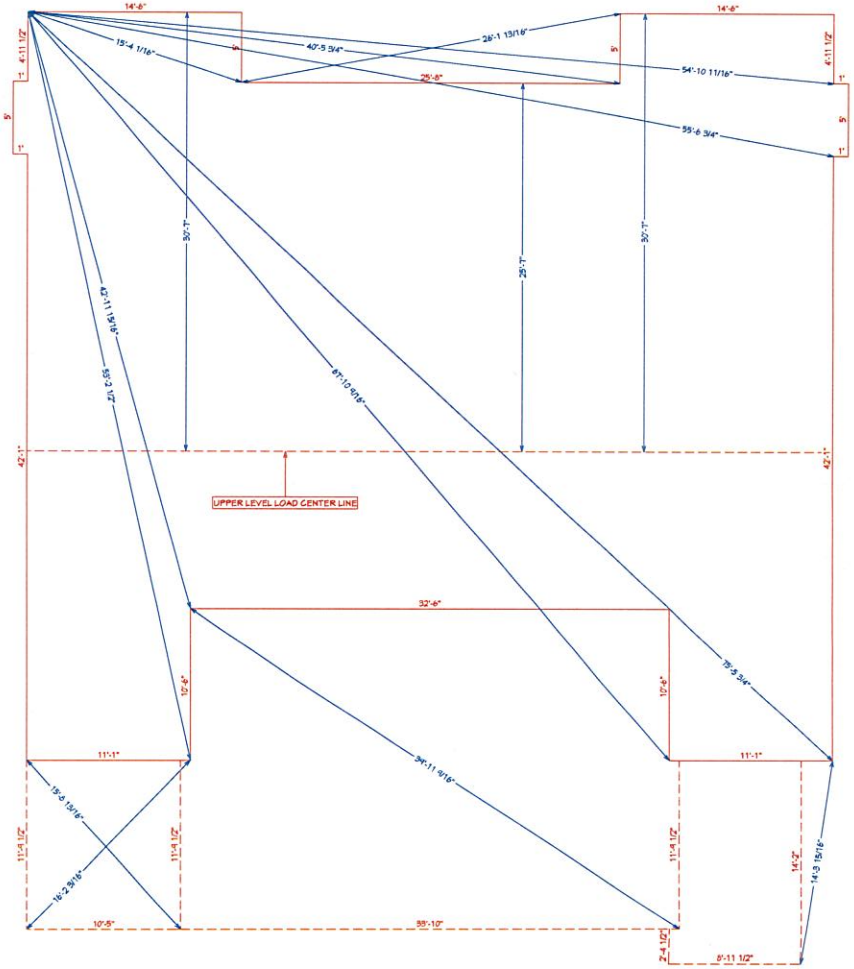
DRAWINGS PROVIDED BY:
Fyock Home Design
Chuck Fyock
417-438-0120

DATE:
7/8/2016

SCALE:
1/4"=1'

SHEET #
2




**FOOTING NOTES:**

- FOOTING DEPTH: 30" TO BOTTOM OF FINISHED GRADE
- 24" WIDE-12" DEEP
- PROVIDE SEWER/WATER LINE SLEEVES BELOW FOOTINGS

**FOOTING LAYOUT**
**MAIN BUILDING LINE**

REVISION TABLE

| NUMBER | DATE | REVISED BY | DESCRIPTION |
|---|---|---|---|
| | | | |

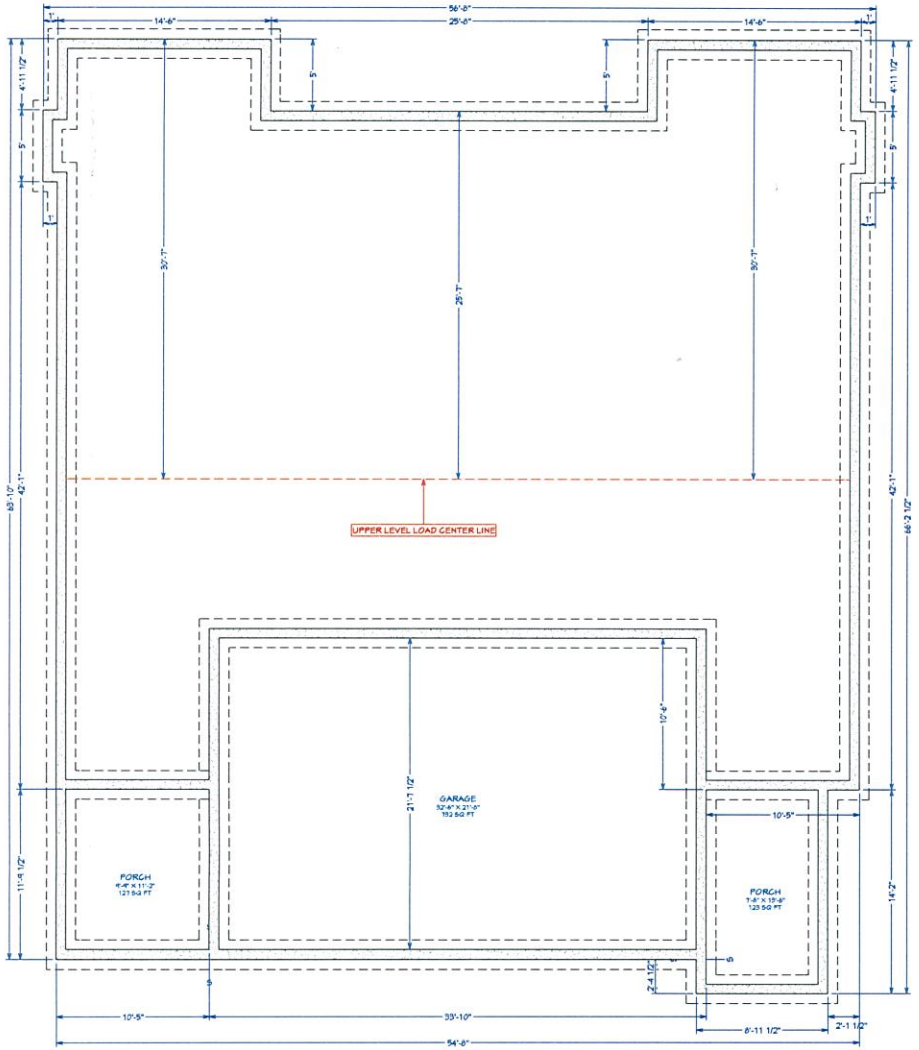
BRAD ALLPIN INVESTMENTS
MARYLAND PROJECT
JOPLIN, MO

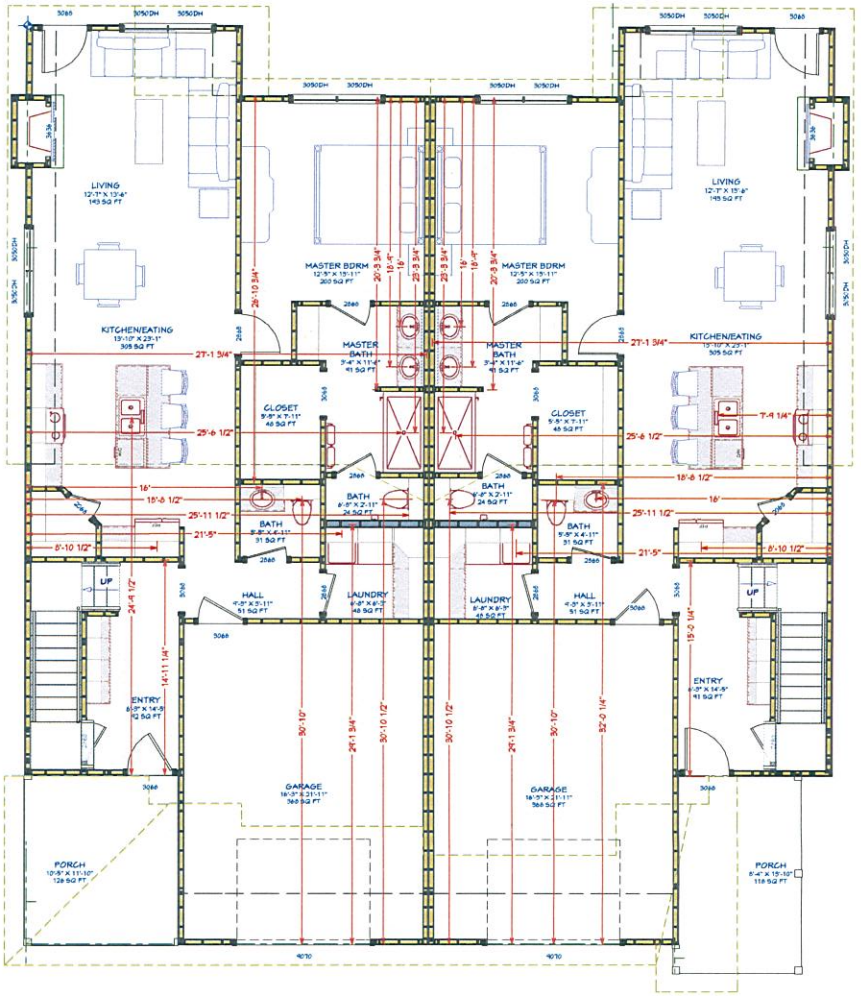
DRAWINGS PROVIDED BY:
Fyock Home Design
Chuck Fyock
417-438-0120

DATE: 7/8/2016

SCALE: 1/4"=1'

SHEET # 3




**FOUNDATION NOTES:**

- SLAB FOUNDATION
- PROVIDE PEA GRAVEL GROUND COVER
- PROVIDE PLASTIC VAPOR BARRIER

## LIVING AREA
2376 SQ FT

= 4" WALL

= 6" WALL

**FOUNDATION PLUMBING LOCATIONS**

REVISION TABLE

| NUMBER | DATE | REVISED BY | DESCRIPTION |
|---|---|---|---|

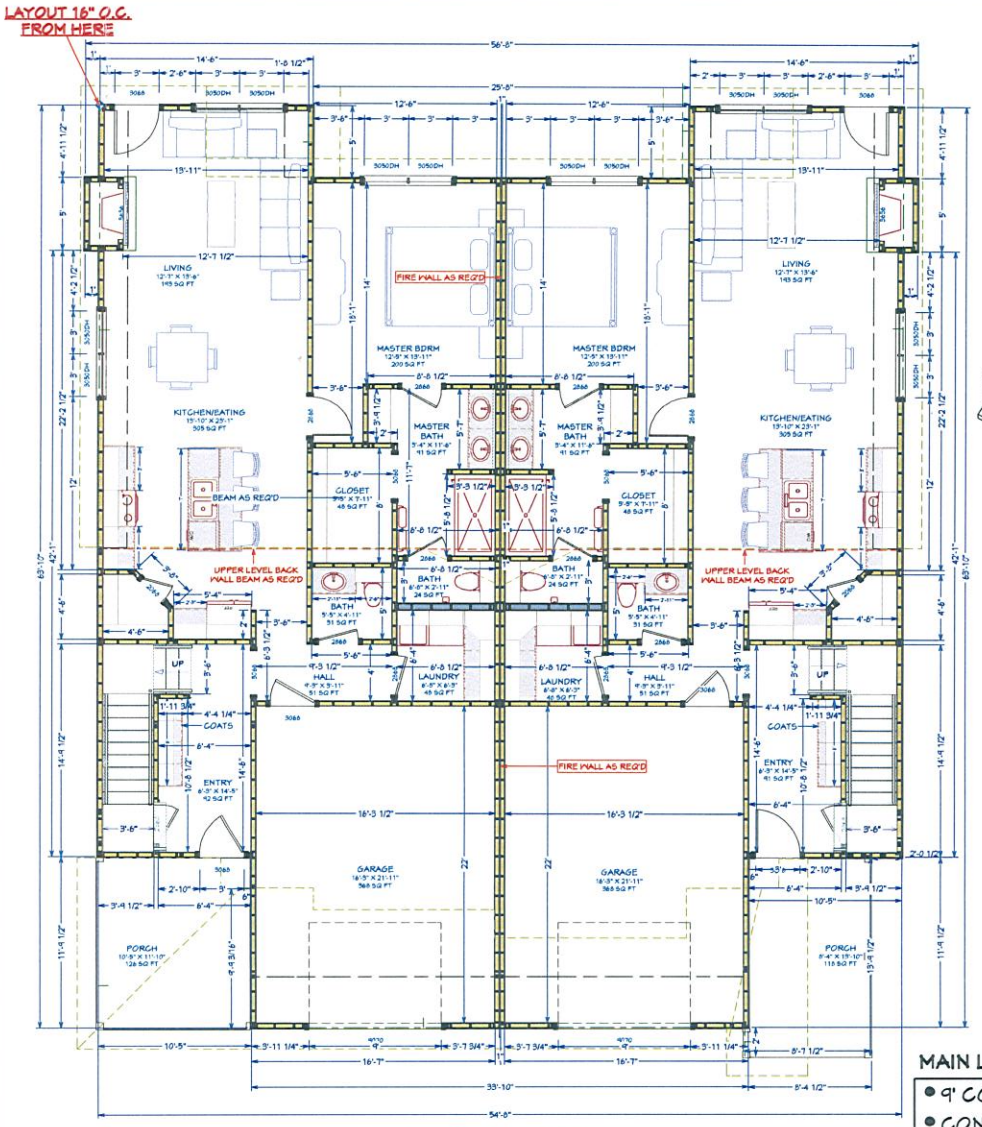
BRAD ALLPIN INVESTMENTS
MARYLAND PROJECT
JOPLIN, MO

DRAWINGS PROVIDED BY:
Fyock Home Design
Chuck Fyock
417-438-0120

DATE: 7/8/2016

SCALE: 1/4"=1'

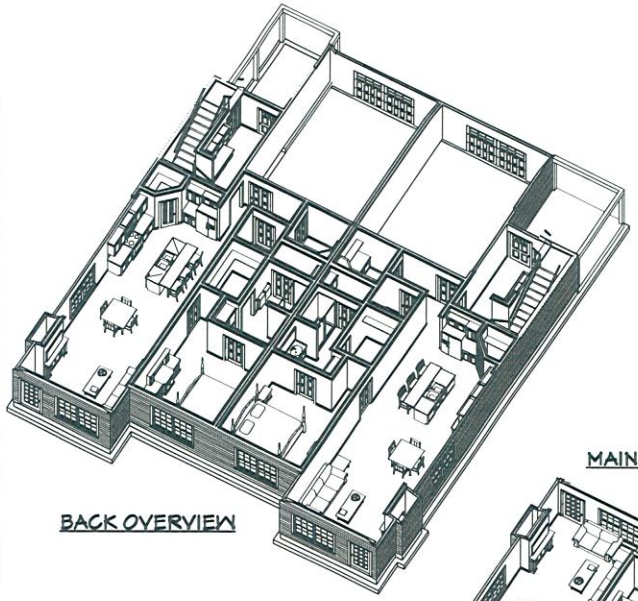
SHEET # 4



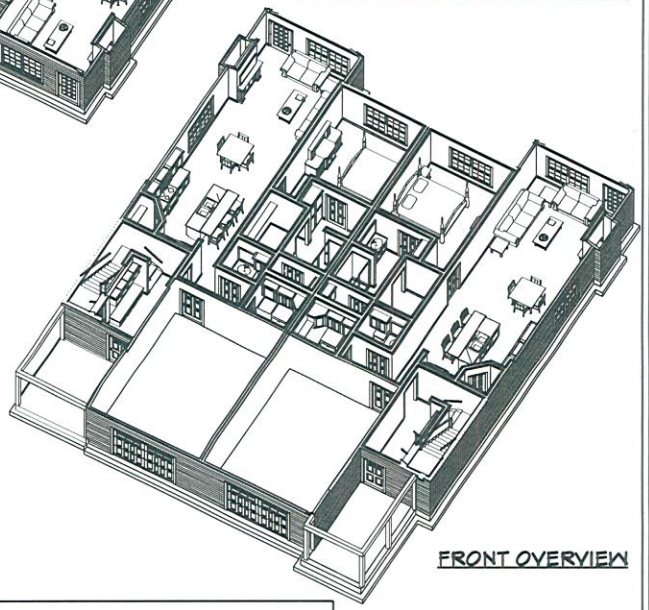

## LIVING AREA
2376 SQ FT

= 4" WALL

= 6" WALL



BACK OVERVIEW



FRONT OVERVIEW

MAIN LEVEL FLOOR OVERVIEWS

**MAIN LEVEL NOTES:**

- 9' COMMON WALL HEIGHT
- CONSTRUCT FIRE WALL FROM LOWER LEVEL SLAB FLOOR THROUGH LOWER AND UPPER LEVELS TERMINATING AT THE ROOF DECKING IN THE ATTIC SPACE
- STACK FRAMING
- INTERIOR DOORS ARE LOCATED EITHER 6" FROM THE INSIDE CORNER, CENTERED ALONG WALL, OR AS NOTED ON THE PLAN

MAIN LEVEL FLOOR PLAN

REVISION TABLE

| NUMBER | DATE | REVISED BY | DESCRIPTION |
|---|---|---|---|
| | | | |

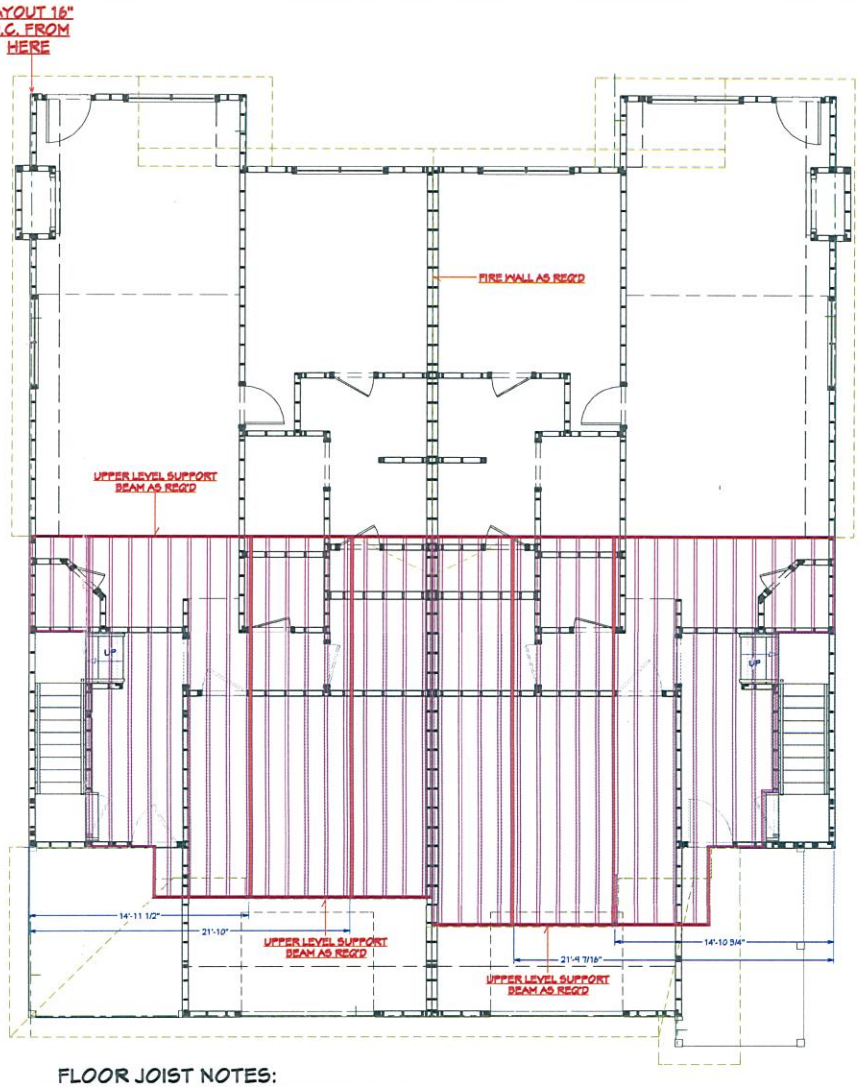
BRAD ALLPIN INVESTMENTS
MARYLAND PROJECT
JOPLIN, MO

DRAWINGS PROVIDED BY:
Fyock Home Design
Chuck Fyock
417-438-0120

DATE: 7/8/2016

SCALE: 1/4"=1'

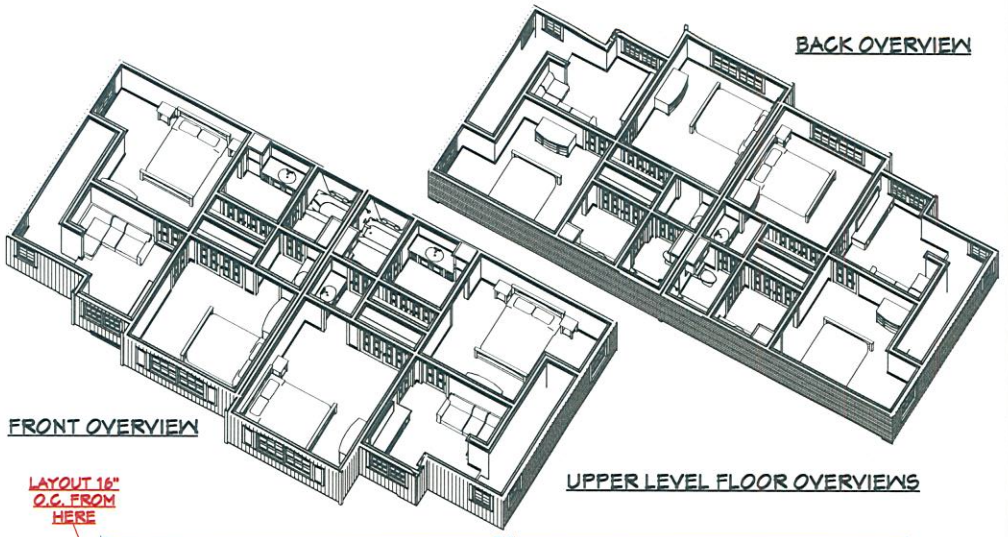
SHEET # 5



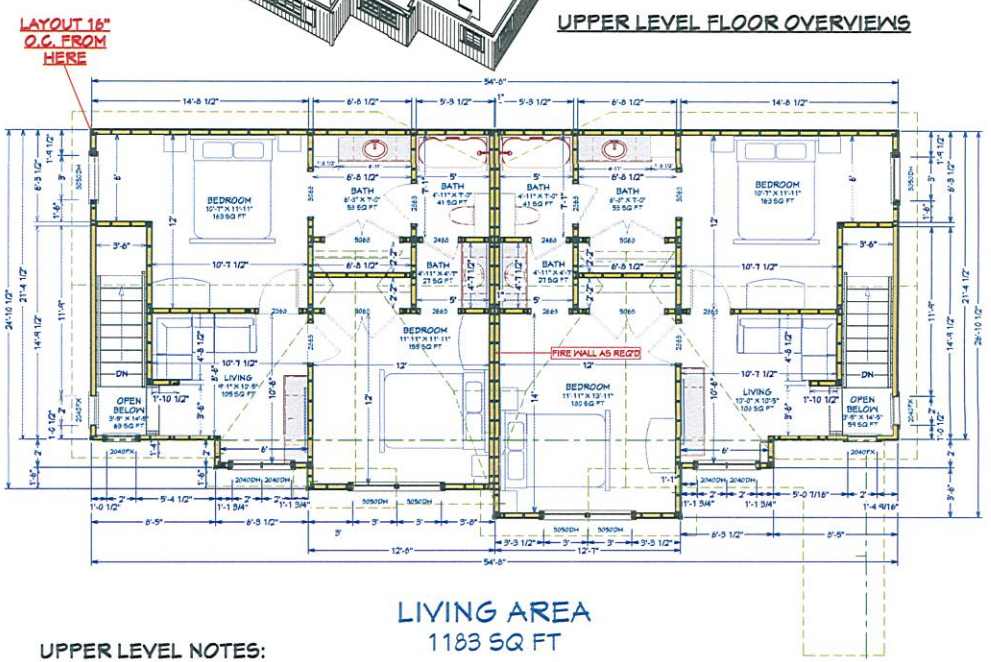

## FLOOR JOIST NOTES:

- FLOOR JOIST 16" O.C. AS PER MFR.
- CRUSH BLOCKS OVER WALLS OR BEAMS AS REQ'D
- PARALLEL LOAD JOISTS APPEAR IN RED
- LOAD BEAMS AT BACK OF UPPER LEVEL AS REQ'D
- STACK FRAMING

= PARALLEL LOAD JOIST




UPPER LEVEL FLOOR OVERVIEWS




LIVING AREA
1183 SQ FT

## UPPER LEVEL NOTES:

- 8' COMMON WALL HEIGHT
- STACK FRAMING
- INTERIOR DOORS ARE LOCATED EITHER 6" FROM THE INSIDE CORNER, CENTERED ALONG WALL, OR AS NOTED ON THE PLAN

UPPER LEVEL FLOOR JOIST LAYOUT
UPPER LEVEL FLOOR PLAN

REVISION TABLE

| NUMBER | DATE | REVISED BY | DESCRIPTION |
|---|---|---|---|
| | | | |

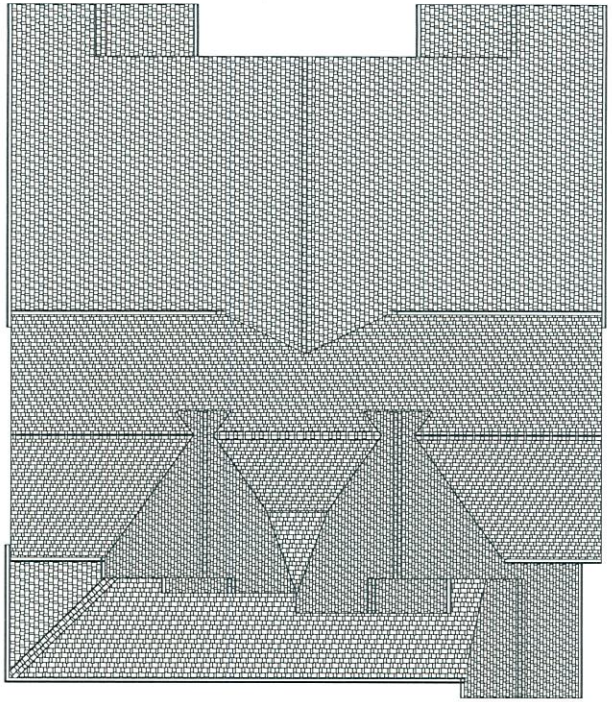
BRAD ALLPIN INVESTMENTS
MARYLAND PROJECT
JOPLIN, MO

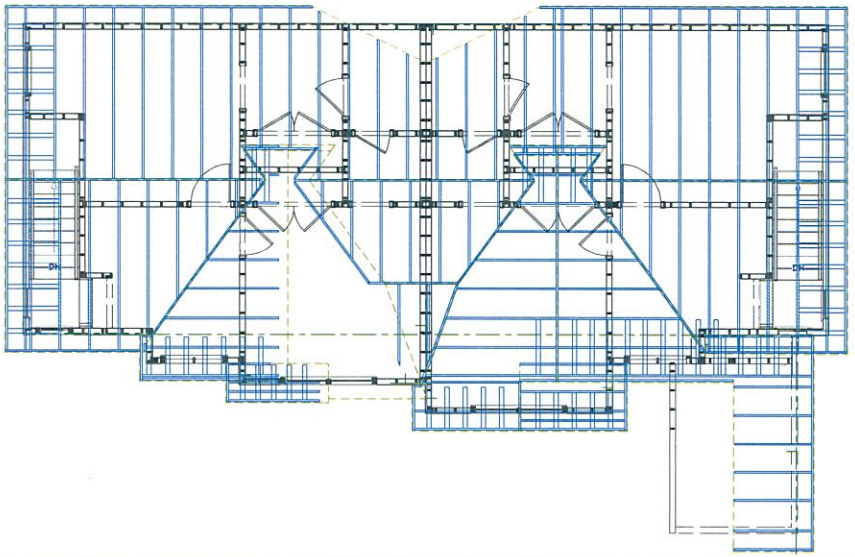
DRAWINGS PROVIDED BY:
Fyock Home Design
Chuck Fyock
417-438-0120

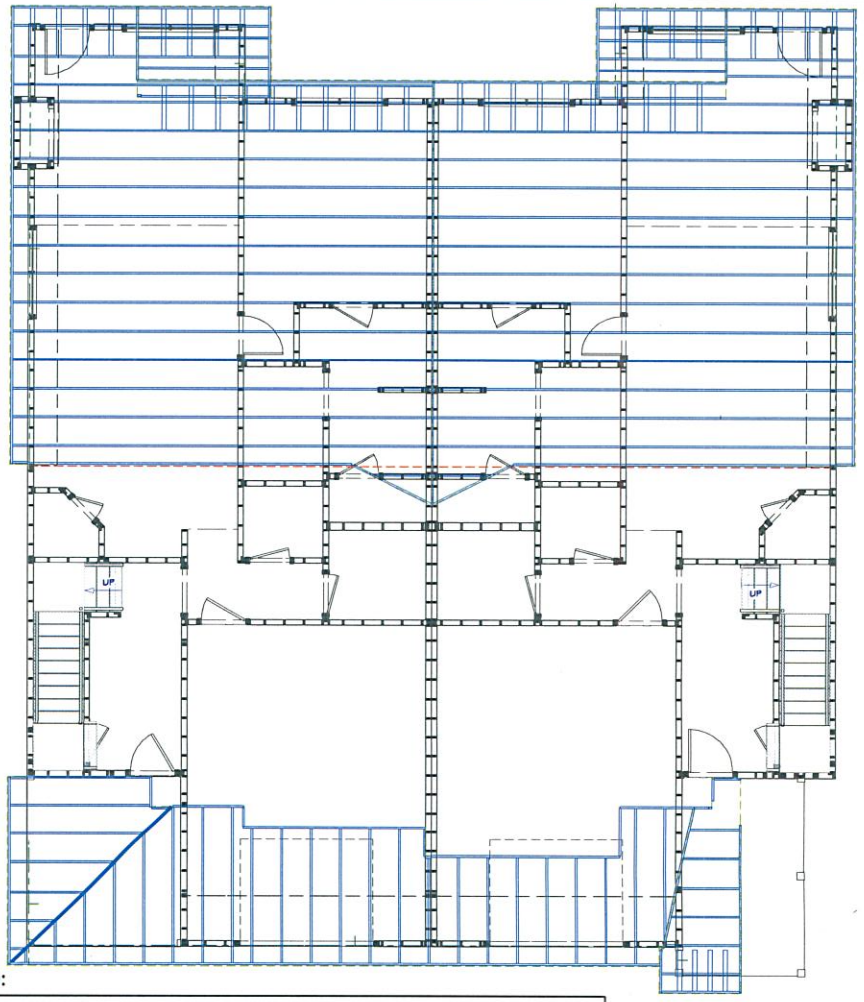
DATE: 7/8/2016

SCALE: 1/4"=1'

SHEET # 6








**ROOF NOTES:**

- MULTIPLE ROOF PITCHES AS NOTED ON FLOOR PLANS
- TAKE NOTE OF VARYING FASCIA HEIGHTS AND OVERHANG WIDTHS
- 2X6 RAFTERS 24" O.C.
- PURLIN UPRIGHT BRACING 4' O.C.
- 16" COMMON O.H.
- STACK FRAMING
- 7/16 O.S.B. DECKING
- ARCHITECTURAL SHINGLES
- CONTINUOUS RIDGE VENT

**ROOF OVERVIEW-RAFTER LAYOUT**

REVISION TABLE

| NUMBER | DATE | REVISED BY | DESCRIPTION |
|---|---|---|---|
| | | | |

BRAD ALLPIN INVESTMENTS
MARYLAND PROJECT
JOPLIN, MO

DRAWINGS PROVIDED BY:
Fyock Home Design
Chuck Fyock
417-438-0120

DATE: 7/8/2016

SCALE: 1/4"=1'

SHEET # 7

Allgood

SCALE: ONE INCH EQUALS 50 FEET

0 25 50 75 100

STEWART & NEECE LAND SURVEYING COMPANY INC.
1201 EAST 15TH STREET, JOPLIN, MISSOURI 64804
PHONE: 417-6240311 FAX: 417-6240365
SERVING SOUTHWEST MISSOURI SINCE THE YEAR 1922.
LAND SURVEYS, LOT SURVEYS, SUBDIVISIONS, MINE DATA, BLUEPRINTS

Total Area = 4.07 Acres = 177265.29 sq ft

Case 023-16




Case 023-16

Case 023-16: 2024, 2025, and 2119 Maryland Avenue – A request to rezone from R-1 (Single Family Residential) to R-2 (Two-Family Residential) for the construction of duplexes – Brad Allphin Investments.

Mr. Smith opened the public hearing for Case 023-16.

Mr. Eric Allphin appeared on behalf of Brad Allphin Investments, 12607 Raccoon Road, Granby, Missouri. Their plan is to extend Maryland Avenue between 20th Street and 22nd Street. Following completion of the roadway, they plan to construct duplexes as show on the plot plan.

Mr. Allphin's engineer will develop the storm water detention plans. He did not want to proceed with detention plans pending the outcome of the rezoning request. Preliminary plans are for the water to drain onto the new Maryland Avenue towards 22nd Street.

Mr. Allphin stated the construction would be really nice, with the duplexes being something he would like to live in. The duplexes will contain granite countertops and tile floors, with these not being low-income units. He would like to cater to the housing needs for the new medical school.

Mr. Duncan asked how many units these duplexes would contain, and Mr. Allphin replied 13 duplexes containing 26 units.

Mr. Smith asked about the rent, and Mr. Allphin replied around $1,000 monthly.

Mr. Duncan asked Mr. Allphin where the water will be retained. He replied along the west side of Maryland Avenue and along the back side of the duplexes on the west side of Maryland. There is sufficient room behind the duplexes along the east side of Maryland to retain the water.

Mr. Smith asked if there will be some type of retaining wall. Mr. Allphin replied there will either be a concrete retaining wall or a berm type, depending on how much room there is and how high it would have to be.

Mr. Duncan asked if there will be condominiums on both sides of Maryland Avenue, and Mr. Allphin replied yes.

Mr. Smith asked if a roadway will be constructed, and Mr. Allphin replied Maryland Avenue will be extended through where it doesn't currently exist. Maryland Avenue can be accessed from 20th Street or from 22nd Street. This will improve traffic flow through the area.

Mr. Smith asked for comments from the audience.

Mr. Keith Adams, 2102 South Patterson Avenue, Joplin, appeared in opposition to the request. He and his wife reside immediately east of the proposed addition.

Mr. Adams gave a brief history of the property in the request and stated Frank Rook inherited that property from his grandfather. Former Public Works Director Harold McCoy stated even though Maryland Avenue was never a street, you could traverse through it as long as the City of Joplin maintained that roadway. Mr. Adams understood Brad Allphin has purchased the entire piece of property, and it would be quite costly for the City to construct a street through there.

Mr. and Mrs. Adams' home was totally destroyed in the tornado, and they made a decision to build back. He would like for the zoning to continue as R-1 since it is surrounded by single-family homes. He stated Eric Allphin has constructed some nice homes, and that the duplexes are nice apartments.

Mr. Adams stated Mr. Allphin convinced him that the single-family property values would increase, but he thought that was hard to believe with apartments being built among houses.

Mr. Adams apologized that he hasn't seen the drawings to really know enough to provide any feedback as to what he thought the development should be. He looks at the back side of the apartments in the 2000 block of Maryland Avenue and is looking at wood fences and the back of the roofs. He stated his wife may be agreeable to the proposed development if Mr. Allphin erects while plastic fencing rather than wood fencing.

Mr. Duncan asked Mr. Adams if his objection is that Mr. Allphin is constructing apartments or condominiums in a neighborhood. Mr. Adams had no opposition to duplexes but expressed concern about high-rise buildings.

Mr. Ramsour asked Mr. Adams if most of the houses in the area are one story or two stories, and he replied one story.

Mr. Duncan asked Mr. Adams if he has seen the drawings of the proposed duplexes, and he replied not yet. Mr. Allphin showed Mr. and Mrs. Adams the development plans.

Mr. Adams asked Mr. Allphin if the residents along Patterson Avenue would be looking at the back side of the duplexes, and he replied yes.

Mr. Adams asked Mr. Allphin if he proposes a privacy fence along the rear property line, and he replied yes. Mr. Adams asked Mr. Allphin if he proposes plastic or wood fencing, and he replied wood. Mr. Adams discussed the number of wood fences being erected in the neighborhood.

Mr. Ramsour asked Mr. Adams if he represents any other property owners in the neighborhood or is basically speaking for himself. He stated one gentleman is pretty unhappy and immediately put his house up for sale.

Ms. Margaret Kannady, 2211 McConnell Avenue, Joplin, appeared in opposition to the request. Her house was gutted and totally rebuilt after the tornado. Only a small portion of her property lies within the 185 feet for which the City staff mailed letters notifying the surrounding owners of this hearing.

Ms. Kannady stated this area is a wonderful, family-oriented neighborhood. She has resided there 21 years and stated that the neighbors watch out for each other. She mentioned a lot of children in the neighborhood, and they love to play basketball in the edge of the street. The cul-de-sac on McConnell makes it easy for drivers to see them when they come up through there.

Ms. Kannady would like for Maryland Avenue to be opened and to be called McConnell Avenue since it is difficult to give someone directions. She expressed concern about the neighborhood staying a family-oriented neighborhood and about the water retention project. She stated 22nd

Street is lower than all the surrounding property in that area. She wished Mr. Allphin was building single-story duplexes but expressed concern about the drainage situation and the type of neighbors she would have.

Mr. Duncan stated there are apartments on the other end of Maryland near 20th Street, and he asked Ms. Kannady if those have presented any problem to the neighborhood. She replied those duplexes are two blocks away from her home, with the proposed duplexes being within one-half block of her home.

Mr. Duncan stated the existing duplexes on Maryland near 20th Street abut single-family areas and asked Ms. Kannady if she is aware of any problems in that area. She was not aware of any issues and just knows the people who reside in the 2200 block on McConnell, Patterson, and Delaware Avenues.

Ms. Gail Francis, 2115 Delaware Avenue, Joplin, appeared and stated she cannot say she is 100 percent in favor of the request. Her property and her neighbor's property are to the west of the property in this request. Her biggest concern is the storm water runoff problem, in that the detention basin will be on the back side of her back yard.

Ms. Francis and her neighbors currently have enough water the way the land is behind her house. The water flows north and west, so it comes across her property and the property immediately to the north, which is 2111 Delaware. There is some absorption since the property to the north of her is currently vacant.

Ms. Francis is not very familiar with the landscape on the east side of Delaware but stated there is a small slope, so some of the water would run to 22nd Street, but there is no storm drain on 22nd Street. She thought any water would flow to 22nd Street, west to Delaware, and then north on Delaware. A small ditch exists between the two apartment complexes on either side of Delaware, with that street becoming flooded, and the water going into that ditch. The ditch is not well-maintained. Additional water coming in that direction would make the flooding situation worse.

Ms. Francis discussed the possibility of the water running in another direction if the ditch was maintained better. She expressed concern about the detention basin overflowing. She has no problems with the existing apartments off 20th Street and Maryland Avenue. That complex is well-maintained and mowed regularly. She hasn't had any problems with the residents. The rain water is her biggest concern, and how that will be addressed so it won't flow into her yard and cause more problems.

Ms. Cunningham stated all these requests are reviewed by the City engineers who work with sanitary sewer and storm water. They are totally aware of this development, and building permits would be totally dependent on an adequate storm water detention system based on engineering calculations that must be approved by a licensed engineer. No permits can be issued without an adequate storm water detention system.

Mr. Cortez asked Ms. Francis if she has any issues with the two-story design. She would prefer one story, but she hasn't seen any problems with the two-story duplexes north of her property.

Mr. Allphin thought the storm water will actually improve the situation since some of the water does run towards Ms. Francis' property. The water won't run that direction after he builds there.

Mr. Allphin also owns the duplexes along the west side of Delaware Avenue south of 20th Street. He maintains very nice places and keeps residents who are really nice. He is not a slumlord by any means, and people who live in his duplexes can attest to that.

Mr. Ramsour discussed the planning report, which states the request is consistent with the comprehensive plan. He asked if this is before or after the tornado. Ms. Cunningham stated the plan was adopted during 2012, after the tornado.

Mr. Ramsour asked if duplexes that far from 20th Street are consistent with the comprehensive plan. Ms. Cunningham stated the future land use map shows some low-density and moderate-density residential uses in this area. Because of the development to the north and west and along 20th Street, there will be some depth where mixed-use corridor will exist just by the nature of everything that is being rebuilt. The staff saw no inconsistencies with the comprehensive plan or the design guidelines since these are nice-looking facilities.

Mr. Smith asked for additional comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 023-16.

**MR. CORTEZ MOVED, SECONDED BY MR. DUNCAN, THAT CASE 023-16 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. BROWN, MS. BRUECKNER-SEARS, MR. CORTEZ, MR. DERMOTT, MR. DUNCAN, AND MR. RAMSOUR VOTING "AYE"; AND WITH MR. SMITH VOTING "NAY" (6 IN FAVOR, 1 OPPOSED, 0 ABSENT).**

City of **JOPLIN** City Council Agenda Item

## Requested Council Meeting Date: August 1, 2016

## Item: RESOLUTION NO. 2016-016
## Originating Department: PLANNING & COMMUNITY DEVELOPMENT

Attachments: 1) Copy of Resolution
2) Planning Report
3) Commission Minutes

Planning/Community Development Manager: Troy Bolander
City Attorney: Peter C. Edwards
City Manager: Samuel L. Anselm
Board or Commission: Planning and Zoning Commission Date: 7/11/2016

Recommended Action: Planning and Zoning Commission recommended tabling this request by a vote of "7 in favor, 0 absent"

SUMMARY/REQUEST:
Case 022-16: 2306 Xenia Street – A request for a Special Use Permit (First Request) for the operation of a Day Care Home – Yvonne Vonderosa.

STAFF SUMMARY:
This Special Use Permit request is for the operation of a Day Care Home at 2306 Xenia Street. This is a permitted home occupation conditional upon the issuance of a Special Use Permit from the City of Joplin. The day care will be limited to ten children and will have one employee. Operational hours will be from 6:30 a.m. to 5:30 p.m., Monday through Friday. There are two off street parking spaces provided by the property owner.

The following items are conditions for consideration of the Special Use Permit:

1. This Special Use Permit is issued to Yvonne Vonderosa for the operation of a Day Care Home at 2306 Xenia Street.
2. The permit shall be valid for two (2) years renewable in July 2018.
3. Care shall be given to no more than ten (10) children not related to the provider.
4. One (1) parking space for each employee shall be provided.
5. Compliance with all provisions of Code of State Regulations, Title 19 – Department of Health and Senior Services, Division 30 – Division of Health Standards and Licensure, Chapter 60 – License-Exempt Child Care Facilities, Chapter 61 – Licensing Rules for Family Day Care Homes RSMo, as amended is required.
6. The compliance with all provisions of the Fire/Safety codes as required by the State Fire Marshall is required.
7. The number of children allowed in the facility at any one time shall be limited to the amount determined by the Department of Health and Senior Services, Bureau of Child Care.

8. The operator of the facility located at 2306 Xenia Street shall provide information from a certified laboratory indicating that the corrected lead levels for lead in the soil does not exceed 400 ppm (parts per million) as required by the Missouri Department of Health letter to the City of Joplin dated August 30, 1995. This condition is placed on those areas for the permitted Child Care Facility used as playgrounds by the children under the Permittee's supervision.
9. All regulations as stated in Appendix 29-A (Zoning Code) of the Joplin Municipal Code shall be followed at all times.
10. Any other conditions set by the City Council of the City of Joplin.

PLANNING & ZONING COMMISSION TESTIMONY:
Ms. Yvonne Vonderosa appeared to request a special use permit for the operation of a home day care. She has 21 years' experience with the school district and some commercial day cares.

Mr. Duncan noticed Ms. Vonderosa's back yard is fenced and asked if there is a playground area for the children. She has some tricycles and small toys but plans on purchasing a Little Tykes slide and a small playhouse.

Mr. Duncan asked about a square footage requirement per child. Ms. Vonderosa isn't exactly sure of the square footage requirement but stated she is in compliance with everything.

Mr. Ramsour asked if the chain link fence is sufficient, and Ms. Vonderosa replied yes. The bikes will be stored inside the garage.

Mr. Cortez asked if it will be difficult for people to turn around when they drop off children since Xenia Street is not a through street. Ms. Vonderosa replied they can drive to Florida Avenue or Independence Avenue and circle around the block.

PUBLIC COMMENT:
Mr. Randy Owens owns the property at 2306 Xenia Street where Ms. Vonderosa plans to open the day care. He supports her plans and believes she would do a good job for the city and the families she would serve. However, he has a problem with the liability insurance as long as he owns the property. His insurance agent and his attorney have advised him to speak in opposition until the liability issues are resolved.

Mr. Owens stated his name is still on the deed. He has a contract for deed where Ms. Vonderosa is purchasing the property, and he is selling. He believes the issue can be resolved to remove his name from the deed since he doesn't want any liability with this venture whatsoever. He wants Ms. Vonderosa to continue to buy the house and to succeed with what she wants to do.

Mr. Ramsour asked Mr. Owens about his timeline on resolving these issues, and he replied as soon as possible. He can ask his attorney to prepare the financial documents, with the recording of the deed with Jasper County. He thought the process will take three weeks if everything cooperates. He owns the house "free and clear" with the purchase just being between Ms. Vonderosa and himself, his attorney, and the recorder of deeds.

Mr. Smith asked if Ms. Vonderosa could purchase a rider on her insurance to satisfy Mr. Owens' requirements. Mr. Owens replied not at this time.

Ms. Cunningham would recommend tabling this request, with a permit not being granted until all the legal issues between Mr. Owens and Ms. Vonderosa are resolved.

P & Z Case 022-16
Yvonne Vonderosa
(P & Z Recommended Tabling this Request)

RESOLUTION NO. 2016-016

A RESOLUTION granting a Special Use Permit (First Request) to Yvonne Vonderosa for the operation of a day care home located at 2306 Xenia Street, in the City of Joplin, Jasper County, Missouri.

WHEREAS, the Planning and Zoning Commission at a Public Hearing held on July 11, 2016, recommended that a Special Use Permit be granted for the operation of a day care home located at 2306 Xenia Street, in the City of Joplin, Jasper County, Missouri.

WHEREAS, a public hearing was held before the City Council on August 1, 2016, in compliance with said request;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Joplin, as follows:

That a Special Use Permit be granted to Yvonne Vonderosa for the operation of a day care home in the City of Joplin, Missouri, on the following described real estate, to-wit:

> ALL OF THE EAST 52.5 FEET OF LOTS NUMBERED SIX HUNDRED AND SEVENTY-ONE (671) AND SIX HUNDRED SEVENTY-TWO (672) AND THE WEST 15.5 FEET OF LOT NUMBERED SIX HUNDRED SEVETY-THREE (673) IN ROYAL HEIGHTS SUB-DIVISION OF PART OF THE NORTH HALF OF SECTION 36, TOWNSHIP 28, RANGE 33, NOW IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

and the said Special Use Permit is hereby issued with the following conditions and made a part thereof:

1. This Special Use Permit is issued to Yvonne Vonderosa for the operation of a Day Care Home at 2306 Xenia Street.

2. The permit shall be valid for two (2) years renewable in July 2018.

3. Care shall be given to no more than ten (10) children not related to the provider.

4. One (1) parking space for each employee shall be provided.

5. Compliance with all provisions of Code of State Regulations, Title 19 – Department of Health and Senior Services, Division 30 – Division of Health Standards and Licensure, Chapter 60 – License-Exempt Child Care Facilities, Chapter 61 – Licensing Rules for Family Day Care Homes RSMo, as amended is required.

6. The compliance with all provisions of the Fire/Safety codes as required by the State Fire Marshall is required.

7. The number of children allowed in the facility at any one time shall be limited to the amount determined by the Department of Health and Senior Services, Bureau of Child Care.

8. The operator of the facility located at 2306 Xenia Street shall provide information from a certified laboratory indicating that the corrected lead levels for lead in the soil does not exceed 400 ppm (parts per million) as required by the Missouri Department of Health letter to the City of Joplin dated August 30, 1995. This condition is placed on those areas for the permitted Child Care Facility used as playgrounds by the children under the Permittee's supervision.

9. All regulations as stated in Appendix 29-A (Zoning Code) of the Joplin Municipal Code shall be followed at all times.

10. Any other conditions set by the City Council of the City of Joplin.

The violation of any condition set forth in this Resolution shall be interpreted as a violation of Appendix 29-A (Zoning Code) of the Municipal Codes of the City of Joplin and shall be administered in accordance with the provisions of Section 34 (Violation and Penalty) of Appendix 29-A of that Code. Conviction in Municipal Court for violation of any condition as set forth in this Resolution shall cause the immediate termination of this Special Use Permit and require the applicant as named in Item No. 1 above to reapply for renewal.

The Municipal Planner is hereby authorized and directed to issue said permit to Yvonne Vonderosa in accordance with the plans and specifications on file in the Office of the Building Official.

The City Clerk is hereby ordered to file this Resolution with the Zoning District Map maintained in her office and to note the changes herein provided for thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2016.

_____
Michael L. Seibert, Mayor

ATTEST: _____
Barbara L. Hogelin, City Clerk

Z&P Meeting: July 11, 2016
City Council Meeting: August 1, 2016

# STAFF PLANNING REPORT
## Special Use Permit

**CASE 022-16** A request for a Special Use Permit (1st Request) for the operation of a Day Care Home.

**LOCATION** 2306 East Xenia Street

**APPLICANT** Yvonne Vonderosa

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### EXISTING CONDITIONS

| Zoning | Land Use | Property Size |
|---|---|---|
| R-1<br>Single Family Residential | Residential | 8,160 sq ft |

### 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 |

### TRANSPORTATION

| Streets with access | Classification | Right-of-way width |
|---|---|---|
| Xenia Street | Secondary | 40' |

### WILL TURNING MOVEMENTS OF THE PROPOSED USE CREATE AN UNDUE TRAFFIC HAZARD?

No.

**UTILITIES** Yes.

**FLOOD PLAIN** N/A

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**STAFF ANALYSIS**

**DISCUSSION**

This Special Use Permit request is for the operation of a Day Care Home at 2306 Xenia Street. This is a permitted home occupation conditional upon the issuance of a Special Use Permit from the City of Joplin. The day care will be limited to ten children and will have one employee. Operational hours will be from 6:30 a.m. to 5:30 p.m., Monday through Friday. There are two off street parking spaces provided by the property owner.

**Conditions**

1. This Special Use Permit is issued to Yvonne Vonderosa for the operation of a Day Care Home at 2306 Xenia Street.
2. The permit shall be valid for two (2) years renewable in July 2018.
3. Care shall be given to no more than ten (10) children not related to the provider.
4. One (1) parking space for each employee shall be provided.
5. Compliance with all provisions of Code of State Regulations, Title 19 – Department of Health and Senior Services, Division 30 – Division of Health Standards and Licensure, Chapter 60 – License-Exempt Child Care Facilities, Chapter 61 – Licensing Rules for Family Day Care Homes RSMo, as amended is required.
6. The compliance with all provisions of the Fire/Safety codes as required by the State Fire Marshall is required.
7. The number of children allowed in the facility at any one time shall be limited to the amount determined by the Department of Health and Senior Services, Bureau of Child Care.
8. The operator of the facility located at 2306 Xenia Street shall provide information from a certified laboratory indicating that the corrected lead levels for lead in the soil does not exceed 400 ppm (parts per million) as required by the Missouri Department of Health letter to the City of Joplin dated August 30, 1995. This condition is placed on those areas for the permitted Child Care Facility used as playgrounds by the children under the Permittee's supervision.
9. All regulations as stated in Appendix 29-A (Zoning Code) of the Joplin Municipal Code shall be followed at all times.
10. Any other conditions set by the City Council of the City of Joplin.

*Staff recommends approval of Case 022-16.*

# SPECIAL USE PERMIT APPLICATION

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.: 022-16
Filing Fee: $ 450.00
Date Advertised: 6-26-16
Date Notices Sent 6-27-16
Public Hearing Date: 7-11-16

APPLICANT: Yvonne Verderosa PHONE: 417-621-1680
ADDRESS: 2306 E. Xenia Street EMAIL: vons.kidz@gmail.com

OWNER: Yvonne Verderosa PHONE: 417-621-1680
ADDRESS: 2306 E. Xenia Street EMAIL: vons.kidz@gmail.com
LOCATION OF PROPERTY: 2306 E. Xenia street Joplin Mo. 64801

LEGAL DESCRIPTION: ALL OF THE EAST 52.5 FEET OF LOTS NUMBERED SIX HUNDRED SEVENTY-ONE (671) AND SIX HUNDRED SEVENTY-TWO (672) AND THE WEST 15.5 FEET OF LOT NUMBERED SIX HUNDRED SEVENTY-THREE (673) IN ROYAL HEIGHTS SUB-DIVISION OF PART OF THE NORTH HALF OF SECTION 36, TOWNSHIP 28, RANGE 33, NOW IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

PRESENT ZONING CLASSIFICATION: R-1 ACREAGE: .2 acres

PRESENT USE OF PROPERTY: Single-Family Residence

PROPOSED LAND USE ACTIVITY: In Home Daycare

ADJACENT ZONING AND LAND USE:

| | Land Use | Zoning |
|---|---|---|
| North | Single-family residence | R-1 |
| South | Single-family residence | R-1 |
| East | Single-family residence | R-1 |
| West | Single-family residence | R-1 |

Does the proposed special use meet the following standards? If yes, attach a separate sheet explaining why.

| | YES | NO |
|---|---|---|
| 1. Is deemed necessary for the public convenience at that location. | X | |
| 2. Is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected. | X | |

3. Is found to be generally compatible with the neighborhood in which it is proposed. ____X____ _____

4. Will comply with the height and area regulations of the district in which it is located unless specifically granted. ____X____ _____

5. Off-street parking and loading areas will be provided in accordance with the standards set forth in the zoning regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential use from any injurious effect. ____X____ _____

6. Adequate utility, drainage, and other such necessary facilities have been or will be provided. ____X____ _____

Should this special use be valid only for a specific time period? Yes _____ No __X__
If Yes, what length of time? _____

Attachments Required:

1. One copy of a legal description of the property on which the use is to be located.
2. One copy of the necessary descriptive material related to the intensity and extent of the proposed use, including any traffic conditions that may result; any danger from fire hazards; how the proposed use may impact the character of the surrounding properties; and how the proposed use will benefit the City of Joplin.
3. Site plans and landscape plans must be submitted for the site before a Special Use Permit can be advertised for public hearing.

The Special Use Permit that will be issued will have set of conditions that will require information regarding the following: (Additional conditions may be imposed by the Commission and Council)

1. Hours of Operation. 6:30am to 5:30 pm
2. Days of Operation. Monday through Friday
3. Number of Off-street Parking Spaces. Two
4. Signs (Generally signs are limited to one sign not larger that one (1) foot by two (2) feet set no more than six (6) feet off the ground and at least ten (10) feet inside the property line.) None
5. Number of Assistants or employees: One.
6. Nature of the Business. Childcare
7. Location of the Business. 2306 E. Xenia street Joplin Mo. 64801

Violation of any condition will cause a complaint to be filed with the Municipal Court and the Permit will be suspended immediately requiring reapplication.

SIGNATURE: _____ DATE: _____

BY: Yvonne Verderosa TITLE: Owner

Does the proposed special use meet the following standards? If yes, attach a separate sheet explaining why.

| | Yes | No |
|---|---|---|
| 1. Is deemed necessary for the public convenience at that location. | ☐ | ☐ |
| 2. Is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected. | ☐ | ☐ |
| 3. Is found to be generally compatible with the neighborhood in which it is proposed. | ☐ | ☐ |
| 4. Will comply with the height and area regulations of the district in which it is located unless specifically granted. | ☐ | ☐ |
| 5. Off-street parking and loading areas will be provided in accordance with the standards set forth in the zoning regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential use from any injurious effect. | ☐ | ☐ |
| 6. Adequate utility, drainage, and other such necessary facilities have been or will be provided. | ☐ | ☐ |

Should this special use be valid only for a specific time period? Yes ☐ No ☐

If Yes, what length of time? _____

SIGNATURE: Joanne Henderson DATE: 6-9-16

BY: _____ TITLE: _____

Attachments Required:

1. One copy of a legal description of the property on which the use is to be located.
2. One copy of the necessary descriptive material related to the intensity and extent of the proposed use, including any traffic conditions that may result; any danger from fire hazards; how the proposed use may effect the character of the surrounding properties; and how the proposed use will benefit the City of Joplin

The Special Use Permit that will be issued will have set of conditions that will require information regarding the following: (Additional conditions may be imposed by the Commission and Council)

1. Hours of Operation. _____
2. Days of Operation. _____
3. Number of Off-street Parking Spaces. _____
4. Signs (Generally signs are limited to one sign not larger that one (1) foot by two (2) feet set no more than six (6) feet off the ground and at least ten (10) feet inside the property line.) _____
5. Number of Assistants or employees. _____
6. Nature of the Business. _____
7. Location of the Business. _____

Violation of any condition will cause a complaint to be filed with the Municipal Court and the Permit will be suspended immediately requiring reapplication.




Case 022-16: 2306 East Xenia - A request for a Special Use Permit (1st Request) for the operation of a Day Care Home - Yvonne Vonderosa.

Case 022-16: 2306 Xenia Street – A request for a Special Use Permit (First Request) for the operation of a Day Care Home – Yvonne Vonderosa.

Mr. Smith opened the public hearing for Case 022-16.

Ms. Yvonne Vonderosa, 2306 Xenia Street, Joplin, appeared to request a special use permit for the operation of a home day care. She believes it would be an asset to the community. She has 21 years' experience with the school district and some commercial day cares.

Mr. Duncan noticed Ms. Vonderosa's back yard is fenced and asked if there is a playground area for the children. She has some tricycles and small toys but plans on purchasing a Little Tykes slide and a small playhouse.

Mr. Duncan asked about a square footage requirement per child, and Ms. Vonderosa replied she is in compliance. She isn't exactly sure of the square footage requirement but stated she is in compliance with everything.

Mr. Ramsour asked if the chain link fence is sufficient, and Ms. Vonderosa replied yes. The bikes will be stored inside the garage.

Mr. Cortez asked if it will be difficult for people to turn around when they drop off children since Xenia Street is not a through street. Ms. Vonderosa replied they can drive to Florida Avenue or Independence Avenue and circle around the block.

Mr. Smith asked for comments from the audience.

Mr. Randy Owens, 2289 County Road 176, Carthage, Missouri, owns the property at 2306 Xenia Street where Ms. Vonderosa plans to open the day care. Mr. Owens supports the concept of what she plans to do and believes she would do a good job for the city and the families she would serve. However, he has a problem with the liability insurance as long as he owns the property. His insurance agent and his attorney have advised him to speak in opposition until the liability issues are resolved.

Mr. Owens stated his name is still on the deed. He has a contract for deed where Ms. Vonderosa is purchasing the property, and he is selling. He believes the issue can be resolved to remove his name from the deed since he doesn't want any liability with this venture whatsoever. He wants Ms. Vonderosa to continue to buy the house and to succeed with what she wants to do.

Mr. Ramsour asked Mr. Owens about his timeline on resolving these issues, and he replied as soon as possible. Everything is being handled in Jasper County. He can ask his attorney to prepare the financial documents, with the recording of the deed with the county. He thought the process will take three weeks if everything cooperates. He owns the house "free and clear" with the purchase just being between Ms. Vonderosa and himself, his attorney, and the recorder of deeds.

Mr. Smith asked if Ms. Vonderosa could purchase a rider on her insurance to satisfy Mr. Owens' requirements. Mr. Owens replied not at this time.

Ms. Cunningham would recommend tabling this request, with a permit not being granted until all the legal issues between Mr. Owens and Ms. Vonderosa are resolved.

Mr. Smith asked for additional comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 022-16.

**MR. CORTEZ MOVED, SECONDED BY MR. BROWN, THAT CASE 022-16 BE TABLED, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. BROWN, MS. BRUECKNER-SEARS, MR. CORTEZ, MR. DERMOTT, MR. DUNCAN, MR. RAMSOUR, AND MR. SMITH VOTING "AYE" (7 IN FAVOR, 0 ABSENT).**

City of **JOPLIN** City Council Agenda Item

**Requested Council Meeting Date: August 1, 2016**

**Item: RESOLUTION NO. 2016-017**
**Originating Department: PLANNING & COMMUNITY DEVELOPMENT**

Attachments: 1) Copy of Resolution
2) Planning Report
3) Commission Minutes

Planning/Community Development Manager: Troy Bolander
City Attorney: Peter C. Edwards
City Manager: Samuel L. Anselm
Board or Commission: Planning and Zoning Commission Date: 7/11/2016

Recommended Action: Planning and Zoning Commission recommended approval for a two-year Special Use Permit by a vote of "7 in favor, 0 absent"

SUMMARY/REQUEST:
Case 024-16: 602 North Wall Avenue – A request for a Special Use Permit (First Request) for the operation of a Bed and Breakfast – Stephen Grindle.

STAFF SUMMARY:
This Special Use Permit request is for the operation of a Bed and Breakfast at 602 North Wall Avenue. It is run by owner-occupants who use the property as their primary residence. It is bordered by single-family residential zoning designations on all sides and is in the North Heights neighborhood. There are two guest bedrooms that are currently available for rental.

The following items are conditions for consideration of the Special Use Permit:

1. This Special Use Permit to be issued to Rachel and Stephen Grindle for the use of a Bed and Breakfast.
2. The permit shall be for two (2) years, renewable in July 2018.
3. Bed and Breakfast use only. No more than five rooms may be rented.
4. Off-street parking will be required.
5. Any other conditions set by the City Council of the City of Joplin.

PLANNING & ZONING COMMISSION TESTIMONY:
Ms. Ann Leach appeared representing Mr. Grindle, who was out of town. He is a member of her young professionals' group that she coaches through the Chamber of Commerce, so she knows him professionally. She has had the opportunity to tour his home in anticipation of this meeting.

Ms. Leach stated Mr. Grindle was interested in her representation because she appeared before this commission and went through the same process. She is familiar with his desires for the property.

Ms. Leach's space has a private entrance off-street, and Mr. Grindle is interested in making two rooms available in their home. Ms. Leach understood there will be no meal preparation, as Mr. and Mrs. Grindle are not interested in providing the "breakfast" in bed and breakfast.

Ms. Leach asked Mr. Grindle if there would be a big neon sign announcing the location, and he stated there will not be. He has ample off-street parking available. He has a lovely home and neighborhood in the North Town area.

Mr. Grindle has the support of his neighbors, and if this does move forward to the City Council, he is prepared to share copies of those support letters with the Council.

When Ms. Leach requested the special use permit for her facility, she mentioned her space could be utilized for small lunches and work groups. She does not prepare the meals but stated the participants can bring in their own lunches.

Mr. Brown asked if there is a reason the letters of support weren't provided for this commission. Ms. Leach didn't make them available for Planning and Zoning but prepared a packet for the City Council. Mr. Grindle has those letters and would be happy to share, but Ms. Leach did not believe it was necessary at this point.

Mr. Cortez asked how Mr. Grindle plans to inform the public about the facility without signage. Ms. Leach makes this available through online bed and breakfast free marketing sites and also through referrals from downtown businesses and the Convention and Visitors Bureau. There is a huge amount of traffic coming to Joplin, and people are seeking housing especially in this part of the city.

PUBLIC COMMENT:
None.

P & Z Case 024-16
Stephen Grindle
(P & Z Recommended Approval)

RESOLUTION NO. 2016-017

A RESOLUTION granting a Special Use Permit (First Request) to Rachel and Stephen Grindle for the operation of a Bed and Breakfast located at 602 North Wall Avenue, in the City of Joplin, Jasper County, Missouri.

WHEREAS, the Planning and Zoning Commission at a Public Hearing held on July 11, 2016, recommended that a Special Use Permit be granted for the operation of a Bed and Breakfast located at 602 North Wall Avenue, in the City of Joplin, Jasper County, Missouri.

WHEREAS, a public hearing was held before the City Council on August 1, 2016, in compliance with said request;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Joplin, as follows:

That a Special Use Permit be granted to Rachel and Stephen Grindle for the operation of a Bed and Breakfast in the City of Joplin, Missouri, on the following described real estate, to-wit:

> ALL OF LOTS NUMBERED ONE HUNDRED TWENTY-FIVE (125) AND ONE HUNDRED TWENTY-SIX (126) IN NORTH HEIGHTS ADDITION TO THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

and the said Special Use Permit is hereby issued with the following conditions and made a part thereof:

1. This Special Use Permit to be issued to Rachel and Stephen Grindle for the use of a Bed and Breakfast.

2. The permit shall be for two (2) years, renewable in July 2018.

3. Bed and Breakfast use only. No more than five rooms may be rented.

4. Off-street parking will be required.

5. Any other conditions set by the City Council of the City of Joplin.

The violation of any condition set forth in this Resolution shall be interpreted as a violation of Appendix 29-A (Zoning Code) of the Municipal Codes of the City of Joplin and shall be administered in accordance with the provisions of Section 34 (Violation and Penalty) of Appendix 29-A of that Code. Conviction in Municipal Court for violation of any condition as set forth in this Resolution shall cause the immediate termination of this Special Use Permit and require the applicant as named in Item No. 1 above to reapply for renewal.

The Municipal Planner is hereby authorized and directed to issue said permit to Rachel and Stephen Grindle in accordance with the plans and specifications on file in the Office of the Building Official.

The City Clerk is hereby ordered to file this Resolution with the Zoning District Map maintained in her office and to note the changes herein provided for thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2016.

_____
Michael L. Seibert, Mayor

ATTEST: _____
Barbara L. Hogelin, City Clerk

Z&P Meeting: July 11, 2016
City Council Meeting: August 1, 2016

# STAFF PLANNING REPORT
## Special Use Permit

**CASE 024-16** A request for a Special Use Permit (1st Request) for the operation of a Bed and Breakfast.

**LOCATION** 602 North Wall Avenue

**APPLICANT** Rachel and Stephen Grindle

---

### EXISTING CONDITIONS

| Zoning | Land Use | Property Size |
|---|---|---|
| R-1<br>Single Family Residential | Residential | 12,000 sq ft |

### 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 |

### TRANSPORTATION

| Streets with access | Classification | Right-of-way width |
|---|---|---|
| Wall Avenue | Secondary | 60' |
| E Street | Secondary | 50' |

### WILL TURNING MOVEMENTS OF THE PROPOSED USE CREATE AN UNDUE TRAFFIC HAZARD?

No.

**UTILITIES** Yes.

**FLOOD PLAIN** N/A

**STAFF ANALYSIS**

**DISCUSSION**

This Special Use Permit request is for the operation of a Bed and Breakfast at 602 North Wall Avenue. It is run by owner-occupants who use the property as their primary residence. It is bordered by single-family residential zoning designations on all sides and is in the North Heights neighborhood. There are two guest bedrooms that are currently available for rental.

**Conditions**

1. This Special Use Permit to be issued to Rachel and Stephen Grindle for the use of a Bed and Breakfast.
2. The permit shall be for two (2) years, renewable in July 2018.
3. Bed and Breakfast use only. No more than five rooms may be rented.
4. Off-street parking will be required.
5. Any other conditions set by the City Council of the City of Joplin.

*Staff recommends approval of Case 024-16.*

RECEIVED 6-21-16

## SPECIAL USE PERMIT APPLICATION

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.: 024-16
Filing Fee: $ 450.00
Date Advertised: 6-26-16
Date Notices Sent 6-27-16
Public Hearing Date: 7-11-16

APPLICANT: STEPHEN + RACHEL GRINDLE PHONE: 417-396-5200

ADDRESS: 602 N. WALL AVE EMAIL: sagrindle@gmail.com

OWNER: STEPHEN + RACHEL GRINDLE PHONE: 417-396-5200

ADDRESS: 602 N. WALL AVE EMAIL: sagrindle@gmail.com

LOCATION OF PROPERTY: 602 N WALL AVE

LEGAL DESCRIPTION: NORTH HEIGHTS LOTS 125 + 126

PRESENT ZONING CLASSIFICATION: R1 ACREAGE: .28

PRESENT USE OF PROPERTY: Private residence

PROPOSED LAND USE ACTIVITY: Bed and Breakfast run by owner - occupants who live there and use property as their primary residence.

ADJACENT ZONING AND LAND USE:

| | Land Use | Zoning |
|---|---|---|
| North | Private Residence | R1 |
| South | Private Residence | R1 |
| East | Private Residence | R1 |
| West | Private Residence | R1 |

Does the proposed special use meet the following standards? If yes, attach a separate sheet explaining why.

| | YES | NO |
|---|---|---|
| 1. Is deemed necessary for the public convenience at that location. | | X |

2. Is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected. Y ____

3. Is found to be generally compatible with the neighborhood in which it is proposed. Y ____

4. Will comply with the height and area regulations of the district in which it is located unless specifically granted. Y ____

5. Off-street parking and loading areas will be provided in accordance with the standards set forth in the zoning regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential use from any injurious effect. Y ____

6. Adequate utility, drainage, and other such necessary facilities have been or will be provided. Y ____

Should this special use be valid only for a specific time period? Yes ____ No X
If Yes, what length of time? ____

Attachments Required:
1. One copy of a legal description of the property on which the use is to be located.
2. One copy of the necessary descriptive material related to the intensity and extent of the proposed use, including any traffic conditions that may result; any danger from fire hazards; how the proposed use may impact the character of the surrounding properties; and how the proposed use will benefit the City of Joplin.
3. Site plans and landscape plans must be submitted for the site before a Special Use Permit can be advertised for public hearing.

The Special Use Permit that will be issued will have set of conditions that will require information regarding the following: (Additional conditions may be imposed by the Commission and Council)

1. Hours of Operation. Based on reservation days and times
2. Days of Operation. Monday - Sunday
3. Number of Off-street Parking Spaces. Four
4. Signs (Generally signs are limited to one sign not larger that one (1) foot by two (2) feet set no more than six (6) feet off the ground and at least ten (10) feet inside the property line.) N/A (no signs are needed
5. Number of Assistants or employees. zero
6. Nature of the Business. Bed and Breakfast
7. Location of the Business. 602 N. Wall Ave., Joplin, MO 64801

Violation of any condition will cause a complaint to be filed with the Municipal Court and the Permit will be suspended immediately requiring reapplication.

SIGNATURE: [signature] DATE: 3/30/2016

BY: ____ TITLE: ____

**SPECIAL USE PERMIT**
*Descriptive Material*

***Property:*** *602 N. Wall Ave*
***Owners:*** *Stephen and Rachel Grindle*

1. Not Applicable
2. The two rooms to be used for guests are well-maintained and are operated so that the health, safety and welfare of the public is protected.
3. The exterior and interior of the building have remained unchanged and fits the historic character of this neighborhood.
4. As mentioned above, the original building is intact and no new height or area regulations should be of concern.
5. The property has four off-street parking spots. Two in the garage (to be used by the owners) and two in the driveway (to be used by guests).
6. All utility, drainage and other necessary facilities have already existed on the property and are in good repair.




Case 024-16: 602 North Wall Ave - A request for a Special Use Permit (1st Request) for the operation of a Bed and Breakfast - Stephen Grindle.

Case 024-16: 602 North Wall Avenue – A request for a Special Use Permit (First Request) for the operation of a Bed and Breakfast – Stephen Grindle.

Mr. Smith opened the public hearing for Case 024-16.

Mr. Bolander excused himself from the discussion on Case 024-16 since Stephen Grindle is a direct employee of his, so Ms. Cunningham addressed any questions.

Ms. Ann Leach, 523 South Sergeant Avenue, Joplin, stated she is a colleague of Mr. Grindle. He is a member of her young professionals' group that she coaches through the Chamber of Commerce, so she knows him professionally. She has had the opportunity to tour his home in anticipation of this meeting.

Ms. Leach stated Mr. Grindle was interested in her representation because she appeared before this commission and went through the same process. She is familiar with his desires for the property.

Ms. Leach's space has a private entrance off-street, and Mr. Grindle is interested in making two rooms available in their home. Ms. Leach understood there will be no meal preparation, as Mr. and Mrs. Grindle are not interested in providing the "breakfast" in bed and breakfast.

Ms. Leach asked Mr. Grindle if there would be a big neon sign announcing the location, and he stated there will not be. He has ample off-street parking available. He has a lovely home and neighborhood in the North Town area.

Mr. Grindle has the support of his neighbors, and if this does move forward to the City Council, he is prepared to share copies of those support letters with the Council.

Ms. Leach stated when she requested the special use permit for her facility, she mentioned her space could be utilized for small lunches and work groups. She does not prepare the meals but stated the participants can bring in their own lunches.

Mr. Brown asked if there is a reason the letters of support weren't provided for this commission. Ms. Leach didn't make them available for Planning and Zoning but prepared a packet for the City Council. Mr. Grindle has those letters and would be happy to share, but Ms. Leach did not believe it was necessary at this point. Ms. Cunningham stated Mr. Grindle is out of state at this time.

Mr. Cortez asked how Mr. Grindle plans to inform the public about the facility without signage. Ms. Leach makes this available through online bed and breakfast free marketing sites and also through referrals from downtown businesses and the Convention and Visitors Bureau. There is a huge amount of traffic coming to Joplin, and people are seeking housing especially in this part of the city.

Mr. Smith asked for comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 024-16.

Mr. Ramsour stated the staff report mentions the special use permit is renewable in July, 2016, and Ms. Cunningham replied she meant July, 2018. She will change that for the City Council.

**MR. RAMSOUR MOVED, SECONDED BY MR. BROWN, THAT CASE 024-16 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR A TWO-YEAR SPECIAL USE PERMIT BE ISSUED TO RACHEL AND STEPHEN GRINDLE, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. BROWN, MS. BRUECKNER-SEARS, MR. CORTEZ, MR. DERMOTT, MR. DUNCAN, MR. RAMSOUR, AND MR. SMITH VOTING "AYE" (7 IN FAVOR, 0 ABSENT).**

CITY OF JOPLIN
CITY COUNCIL MEETING
MINUTES July 18, 2016

CALL TO ORDER
The regular meeting for the Joplin City Council was called to order at 6:00 p.m.by Mayor Michael Seibert.

INVOCATION - read by City Clerk Barbara Hogelin

PLEDGE OF ALLEGIANCE to the United States of America –led by Mr. Stinnett

ROLL CALL – Answering Roll Call were: Dan McCreary, Gary Shaw, Ryan Stanley, Phil Stinnett, Jim West and Mayor Michael Seibert. Also in attendance were City Manager Sam Anselm and City Attorney Peter Edwards. Motion by Mr. West to excuse Ms. Colbert-Kean. Voting in favor were Council Members: McCreary, Seibert, Stanley, Stinnett, West 5. Nays: 1, Shaw. Motion by Mr. Stanley, to excuse Miranda Lewis, from this council meeting, the June 20th meeting, and the July 18th, finding that the cause of her absences is acceptable to this Council. Voting in favor were Council Members: McCreary Seibert, Shaw, Stanley, Stinnett, West 6. Nays: 0. Motion by Mr. West to excuse Mr. Brown. Voting in favor were Council Members: McCreary Seibert, Shaw, Stanley, Stinnett, West 6. Nays: 0.

PRESENTATIONS

REPORTS AND COMMUNICATIONS

FINALIZATION OF CONSENT AGENDA - There being no further business to come before the Council, the Consent Agenda was finalized.

CITIZEN REQUESTS AND PETITIONS

PUBLIC HEARINGS

CONSENT AGENDA – Motion by Mr. Stanley, Second by Mr. Stinnett to approve the Consent Agenda. Motion by Mr. West to excuse Mr. Brown. Voting in favor were Council Members: McCreary Seibert, Shaw, Stanley, Stinnett, West 6. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis.

Minutes of the July 5, 2016 Council Meeting

COUNCIL BILL NO. 2016-267 - AN ORDINANCE providing for the vacation of a 20-foot wide public utility easement located at 2030 Connecticut Avenue in the City of Joplin, Jasper County, Missouri. **Ordinance No. 2016-101**

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.

COUNCIL BILL NO. 2016-268 - AN ORDINANCE providing for the vacation of a 20-foot wide public utility easement located at 2030 Connecticut Avenue in the City of Joplin, Jasper County, Missouri. **Ordinance No. 2016-102**

COUNCIL BILL NO. 2016-515 - AN ORDINANCE repealing Section 58-66, Sale of Fireworks, Article II, Fire Prevention Code, of Chapter 58, Fire Prevention and Protection, of the Code of Ordinances of the City of Joplin and enacting in lieu thereof a new Section 58-66, Sale of Fireworks, Article II, Fire Prevention Code, of Chapter 58, Fire Prevention and Protection, of the Code of Ordinances of the City of Joplin to implement certain fee changes; and setting a date when this Ordinance shall become effective. **Ordinance No. 2016-103**

COUNCIL BILL NO. 2016-607 - AN ORDINANCE amending the Classification and Pay Plan adopted by Ordinance No. 2012-173 and authorizing a new classification title for the Fire Department. **Ordinance No. 2016-104**

RESOLUTIONS

Mr. Stanley introduced RESOLUTION NO. 2016-014 - A resolution authorizing the filing of a One Year Action Plan with the U.S Department of Housing and Urban Development as required for use of the City of Joplin's Community Development Block Grant Program (Entitlement) and the Joplin Consortium HOME Investment Partnership Program for fiscal year 2016; and authorizing the City Manager or his designee, the Director of Planning, Development and Neighborhood Services to execute said Plan for and on behalf of the City of Joplin. Motion by Mr. Stanley, Second by Mr. McCreary to Approve Resolution No. 2016-014. Voting in favor were Council Members: McCreary Seibert, Shaw, Stanley, Stinnett, West 6. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis. The Resolution was read as being **Resolution No. 2016-014**

Mr. Stinnett introduced RESOLUTION NO. 2016-015 - A resolution extending the time for completion of the 15th Street Improvements in the 1717 Market Place Tax Increment Financing Plan pursuant to the Agreement Regarding Repayment Rights. Motion by Mr. Stinnett, Second by Mr. West to Approve Resolution No. 2016-015. Voting in favor were Council Members: McCreary Seibert, Shaw, Stanley, Stinnett, West 6. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis. The Resolution was read as being **Resolution No. 2016-015.**

ORDINANCES - EMERGENCIES

Mr. Stanley introduced COUNCIL BILL NO. 2016-131 - an ordinance approving an agreement with HDR Engineering Incorporated in the not to exceed amount of Three Hundred Sixteen Thousand, Three Hundred Forty- Six Dollars, ($316,346.00) for Engineering Services Associated with the Connecticut Avenue Bridge Replacement Project authorizing the City manager to execute the same; and containing an emergency clause. Motion by Mr. Stanley, Second by Mr. West that Council Bill No. 2016-131 be approved on an emergency basis. Voting in favor were Council Members: McCreary Seibert, Shaw, Stanley, Stinnett, West 6. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis. The Council Bill was declared Adopted and entitled **Ordinance No. 2016-105**

Mr. West introduced COUNCIL BILL NO. 2016-132 - an ordinance declaring a public necessity for the acquisition by condemnation proceedings of real property and easements from property described as, All that part of the Southeast Quarter of the Southeast Quarter of Section 13, Township 27 North, Range 33 West, City of Joplin, Jasper County, Missouri, being all that part of the tract of land described in the General Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 1802, at Page 715, for the construction of public road and storm water public

improvements near 29th and Arizona Avenue, directing the City Attorney to commence an action to obtain said property; and containing an emergency clause. Motion by Mr. West, second by Mr. McCreary that Council Bill No. 2016-132 be approved on an emergency basis. Voting in favor were Council Members: McCreary Seibert, Shaw, Stinnett, West 5. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis. Abstention: 1, Stanley. The Council Bill did not pass as an emergency and will be placed on Second Reading.

Mr. Stinnett introduced COUNCIL BILL NO. 2016-133- an ordinance approving Amendment 1 to the agreement for Olsson Associates for Two Hundred Seventy-Two Thousand Three Hundred Ninety-One no/100 Dollars ($272,391.00) for Engineering Services of Design & Construction Management Associated for the 32nd Street Widening from Schifferdecker to Central City Road Project and containing an emergency clause. Motion by Mr. Stinnett, second by Mr. Stanley that Council Bill No. 2016-133 be approved on an emergency basis. Voting in favor were Council Members: McCreary Seibert, Shaw, Stanley, Stinnett, West 6. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis. The Council Bill was declared Adopted and entitled **Ordinance No. 2016-106**

Mr. West introduced COUNCIL BILL NO. 2016-453 - an ordinance authorizing a Program Services Contract Amendment, by and between the State of Missouri, Department of Health and Senior Services, and the City of Joplin, Missouri, for the City of Joplin Health Department to receive compensation, for Thirty-Six Thousand, Three Hundred Thirty-Seven Dollars, no Cents, ($36,337.00); and, authorizing the City Manager to execute the same by and on behalf of the City of Joplin, Missouri; and, containing an emergency clause. Motion by Mr. West, second by Mr. McCreary that Council Bill No. 2016-453 be approved on an emergency basis. Voting in favor were Council Members: McCreary Seibert, Shaw, Stanley, Stinnett, West 6. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis. The Council Bill was declared Adopted and entitled **Ordinance No. 2016-107**

Mr. West introduced COUNCIL BILL NO.2016-608 - an ordinance approving a Contract for Technical Support by and between the City of Joplin, Missouri and Motorola, Inc., dealing generally with the provision of customer support, maintenance, and technical support for the City's Motorola Digital Radio System for the annual amount of Seventy- Nine Thousand, Six Hundred Thirty-Six Dollars and Eighty cents ($79,636.80); authorizing the City Manager to execute the same by and on behalf of the City of Joplin, Missouri; and containing an emergency clause. Motion by Mr. West, second by Mr. Stanley that Council Bill No. 2016-608 be approved on an emergency basis. Voting in favor were Council Members: McCreary Seibert, Shaw, Stanley, Stinnett, West 6. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis. The Council Bill was declared Adopted and entitled **Ordinance No. 2016-108**

ORDINANCES – FIRST READING

Mr. Stanley introduced COUNCIL BILL NO. 2016-365 - an ordinance approving an Agreement by and between the City of Joplin, Missouri, and HS Baking Enterprises, LLC; and, authorizing the City Manager or his designee, the Director of Planning, Development, and Neighborhood Services to execute the same by and on behalf of the City of Joplin, Missouri. Motion by Mr. Stanley, second by Mr. West to Pass Council Bill No. 2016-365 on First Reading and Advance to Second and Third Reading. Voting in favor were Council Members: McCreary Seibert, Shaw, Stanley, Stinnett, West 6. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis. The Bill was read as being **Council Bill No. 2016-365.**

ORDINANCES – SECOND AND THIRD READING

Mr. Stanley introduced COUNCIL BILL NO. 2016-009 - an ordinance approving and authorizing payment into the Circuit Court of Jasper County, Missouri, the amount of the jury award in the case styled City of Joplin v. Randal and Shelly Kraft, Case No. 14AO-CC00088, from the Capital Improvement Sales Tax Fund, Account No. 145-4565-520-8105, Project No. TG-0522, to satisfy the jury award in the case related to the acquisition of property generally located at 20th Street & Wisconsin, for the 20th Street Overpass Project, in Joplin, Jasper County, Missouri. Motion by Mr. Stanley, Second by Mr. West to remove Section 2 from Council Bill 2016-009 dealing with emergency passage. Voting in favor were Council Members: McCreary Seibert, Shaw, Stinnett, West 5. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis. Abstention: 1, Stanley. Motion by Mr. Stanley, second by Mr. West to Pass Amended Council Bill No. 2016-009 on Second Reading and Advance to Third Reading and Pass. Voting in favor were Council Members: McCreary Seibert, Shaw, Stinnett, West 5. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis. Abstention: 1, Stanley The Bill was read as being **Council Bill No. 2016-009**.

Mr. Stanley introduced COUNCIL BILL NO. 2016-266 - an ordinance amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District C-0 and District R-1 and including in District C-3 property as described below and located at 1530 South Range Line Road, 2929 East 16th Street, 2925 East 16th Street, and 2921 East 16th Street in the City of Joplin, Jasper County, Missouri. Motion by Mr. Stanley, second by Mr. West to Pass Council Bill No. 2016-266 on Second Reading and Advance to Third Reading and Pass. Voting in favor were Council Members: McCreary Seibert, Shaw, Stanley, Stinnett, West 6. Nays: 0. Absent: 3, Brown, Colbert-Kean, Lewis. The Bill was read as being **Council Bill No. 2016-110**.

UNFINISHED BUSINESS

NEW BUSINESS:

News from the CVB Director

The Health Dept. will be offering vaccines to school aged children. August 2, 2016 is National Night Out including a free swim at Cunningham pool. The Joplin Police Department will be available to answer questions, and games and food will be provided.

Upcoming Parks programs - Mom/Son Swim, Youth Soccer Development Program and Youth Football. JSA will be hosting Premier Baseball this week and that the Joplin Blasters will have a 7-game home stand next week. This Thursday is Third Thursday.

There being no further business the meeting adjourned at 7:40 p.m.

Submitted,

Barbara L Hogelin

Barbara L. Hogelin, MMC/MPCC, City Clerk

**City of Joplin** **City Council Agenda Item**

**REQUESTED COUNCIL MEETING DATE:** August 01, 2016
**ITEM:** Council Bill No. 2016-013 approving a Purchase Order between the City of Joplin and Microsoft Corporation for the annual fee of Enterprise software licensing budgeted for Fiscal Year 2016.

**ORIGINATING DEPARTMENT:** Information Technology Dept.
**ATTACHMENTS:** Council Bill No. 2016-013; Price Quotation.

| | |
|---|---|
| **DEPARTMENT HEAD:** | Mark A. Morris |
| **FINANCE:** | Leslie Haase |
| **LEGAL:** | Peter C. Edwards |
| **CITY MANAGER:** | Samuel L. Anselm |

## INTRODUCTION:

This is the annual renewal payment of our Microsoft Enterprise Agreement. This Council Bill authorizes the purchase order as it exceeds the $100,000 threshold set by Council.

## DISCUSSION:

The licensed base of computers for the City of Joplin is 450 units. The Agreement covers the entire desktop professional platform for each computer. This is the Windows Operating System, Microsoft Office 365, and Core Client Access license (also known as CAL). Annually, the City of Joplin and Microsoft will participate in a "true up" process to determine the number of licenses to be covered and renewed.

This is the 3rd year of a 3 year agreement with an annual base cost of $111,917.56.

This is a budgeted item for Fiscal Year 2016.

## RECOMMENDATION:

Staff recommends adoption of this Council Bill on an emergency basis. A large percentage of the software licenses would fall under Public Safety and would be out of compliance at the renewal date of 08/01/2016

MAM
Attachments

COUNCIL BILL NO. 2016-013 ORDINANCE NO.

AN ORDINANCE approving a Purchase Order to be issued to Microsoft Corporation to cover the annual support payment for the Public Safety and Financial software and related systems as budgeted in the Annual Budget of the City of Joplin for the Fiscal Year 2015-2016 as adopted by Ordinance 2015-168 on October 19, 2015; and containing an emergency clause.

WHEREAS, in the FY2015-2016 budget process, Council approved and budgeted funds to cover the annual support payment for technical activities.

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

Section 1. That a Purchase Order issued to Microsoft Corporation for the amount of One Hundred Eleven Thousand, Nine Hundred Seventeen Dollars, Fifty-Six Cents ($111,917.56), covering the annual fee for the Enterprise software licensing for the Public Safety and Financial software and related systems, be and the same is, hereby approved.

Section 2. That the City hereby declares this Ordinance, being an ordinance dealing generally with payment of current city government expenses, to be an emergency within the meaning of Section 2.12(3) 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 _____, 2016, by a vote of _____.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin,
City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards,
City Attorney

**World Wide Technology**
**State of MO-PVC-ST -- C211034001**
**Quote #2180992.1**


**Prepared By:** Gonzalez, Andrew M
World Wide Technology

Maryland Heights, MO 63043
**Phone:** 3149191435
**Fax:**
**Email:** Andrew.Gonzalez@wwt.com
**P.O.C.:** GONZALEZ, ANDREW M
**Account Manager:**
**Acct. Mgr. Phone:**
**Acct. Mgr. e-mail:**


**Submitted:**
**Submitted To:** Morris, Mark
**Customer:** City of Joplin, MO
**Phone:** 417-624-0820 x 247
**Fax:**
**Email:** mmorris@joplinmo.org
**Bid Number:** EA payment

| Item | Description | Manufacturer | Part Number | Qty | Customer Unit Price | Customer Extended Price | Lead Time |
|---|---|---|---|---|---|---|---|
| 1 | Off365PE1 shrdsvr Per user | MICROSOFT CORPORATION | T6A-00024. | 125 | $59.12 | $7,390.00 | 0 |
| 2 | Off365PE3 ShrdSvr ALNG SubsVL MVL PerUsr | MICROSOFT CORPORATION | UT6-00005.. | 350 | $167.32 | $58,562.00 | 0 |
| 3 | Off365PE3 ShrdSvr ALNG SubsVL MVL AddOn todeviceECALw/OPP | MICROSOFT CORPORATION | UT6-00064 | 50 | $38.80 | $1,940.00 | 0 |
| 4 | Microsoft Enterprise CAL Suite Bridge for Office 365 - Software assurance - 1 user CAL - Platform - Enterprise - Win - All Languages | MICROSOFT CORPORATION | U5J-00004 | 350 | $28.17 | $9,859.50 | 0 |
| 5 | Microsoft Enterprise CAL Suite - Software assurance - 1 device CAL - Platform - Enterprise - All Languages - with services | MICROSOFT CORPORATION | 76A-00013 | 50 | $79.71 | $3,985.50 | 0 |
| 6 | Microsoft Office Professional Plus - Software assurance - 1 PC - Platform - Enterprise - Win - All Languages | MICROSOFT CORPORATION | 269-12442. | 50 | $88.08 | $4,404.00 | 0 |
| 7 | Microsoft Windows Professional - Software assurance - 1 PC - Platform - Enterprise - All Languages | MICROSOFT CORPORATION | FQC-02460 | 400 | $32.35 | $12,940.00 | 0 |
| 8 | Microsoft Project - Software assurance - 1 user - Enterprise, Select, Select Plus - All Languages | MICROSOFT CORPORATION | 076-01912 | 1 | $108.13 | $108.13 | 0 |
| 9 | Microsoft Project Server - Software assurance - 1 user CAL - additional product - Enterprise, Select, Select Plus - Win - All Languages | MICROSOFT CORPORATION | H21-00591 | 5 | $32.11 | $160.55 | 0 |
| 10 | Microsoft SQL Server Standard Edition - Software assurance - 1 server - additional product - Enterprise, Select - Win - All Languages | MICROSOFT CORPORATION | 228-04433. | 3 | $148.48 | $445.44 | 0 |
| 11 | SysCtrDatactr ALNG SA MVL 2Proc | MICROSOFT CORPORATION | T6L-00238 | 1 | $398.08 | $398.08 | 0 |
| 12 | SysCtrStd ALNG SA MVL 2Proc | MICROSOFT CORPORATION | T9L-00223. | 1 | $146.02 | $146.02 | 0 |
| 13 | Microsoft Visio Standard - Software assurance - 1 user - EDU - Enterprise, Select, Select Plus - Win - All Languages | MICROSOFT CORPORATION | D86-01253 | 90 | $47.86 | $4,307.40 | 0 |
| 14 | Microsoft Windows Remote Desktop Services - Software assurance - 1 device CAL - EDU - Enterprise, Select, Select Plus - Win - All Languages | MICROSOFT CORPORATION | 6VC-01253 | 25 | $16.74 | $418.50 | 0 |
| 15 | WinSvrDataCtr ALNG SA MVL 2Proc | MICROSOFT CORPORATION | P71-07282 | 2 | $1,019.16 | $2,038.32 | 0 |
| 16 | WinSvrStd ALNG SA MVL 2ProcGovernment Enterprise 6 | MICROSOFT CORPORATION | P73-05898 | 14 | $146.02 | $2,044.28 | 0 |
| 17 | SQLSvrStdCore ALNG LicSAPk MVL 2Lic CoreLic | MICROSOFT CORPORATION | 7NQ-00302. | 2 | $1,384.92 | $2,769.84 | 0 |

| | |
|---|---|
| **Total Price:** | **$111,917.56** |
| **Hardware:** | **$111,917.56** |
| **Maintenance:** | **$0.00** |
| **Shipping Charges:** | **$0.00** |

**Comment:**

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go online to http://www.wwt.com/ciscotraining.html or call WWT today at (800) 432-7008
Please call 888-234-8898
Option #1 - Sales/Place Order
Option #2 - Order Status/Return
Option #3 - Hardware Maintenance Pricing
Any items that have been opened prior to return could be refused by the vendor/supplier.
Items returned after 30 days may not be returnable due to vendor restrictions.

City of **JOPLIN** City Council Agenda Item

## Requested Council Meeting Date: August 1, 2016
## Council Bill No. 2016-134

**Item: Amend Chapter 114-822, Traffic, of the Code of Ordinances of the City of Joplin dealing with the speed limits established on Indiana Avenue from 23rd Street to 24th Street**

**Originating Department: PUBLIC WORKS – ENGINEERING**

Attachments: 1) Location Map
2) Current Sections of Code being amended
3) Council Bill No. 2016-134

| | |
|---|---|
| Department Head: Nicholas A. Heatherly | Date: |
| Finance Department: Leslie Haase | Date: |
| City Attorney: Peter C. Edwards | Date: |
| City Manager: Samuel L. Anselm | Date: |

**Recommended Action:** 1) Approval of an Ordinance to change the existing 35 mph speed limit on Indiana Avenue from 23rd Street south to 24th Street; to 25 mph speed limit.

**Background:** A citizen brought to our attention high speeds along Indiana Avenue in front of the High School. From June 8, 2016, a speed study was conducted on Indiana from 22nd Street to 26th Street. The study was done based on AASHTO standards, which is a set of nationally recognized engineering standards. Guidelines for the study used criteria from speed limit determination such as prevailing speed, accident rate, and access points along this section of roadway. Prevailing speed or 85th percentile speed was between 35 and 40 MPH. The speed limit on Indiana between 23rd Street and 24th Street is 35 MPH. Our recommended speed is 25 MPH. This is a 10 MPH decrease in speed from the posted 35 MPH limit. This decrease is expected to reduce both the number and severity of accidents on this section of Indiana. It will also decrease the speed limit to 25 MPH in advance of the hill between 23rd and 24th.

**Discussion:** The Traffic Commission took up the issue on July 14, 2016, and approved a recommendation to the Joplin City Council for the permanent establishment of the said 25 mph zone. After review, the City of Joplin's engineering staff recommends this speed decrease.

**Recommendation:** The Traffic Commission approved a motion to forward the decrease speed recommendation to City Council for an Ordinance to change the existing speed limit of 35 mph to a 25 mph speed limit on Indiana Avenue from 23rd Street to 24th Street. Approval of ordinance is requested on an emergency basis within the meaning of Section 2.12 (1) in that said ordinance is providing for public safety as provided by the Home Rule Charter for the City of Joplin.

**COUNCIL BILL NO. 2016-134 ORDINANCE NO.**

AN ORDINANCE amending Chapter 114, Traffic Section 114-822, Specific Speed Limits, of the Code of Ordinances of the City of Joplin, Missouri to amend the speed limit on Indiana Avenue from 23rd Street to 24th Street to 25 m.p.h.; and containing an emergency clause.

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

Section 1. That the portion of Section 114-822, Specific Speed Limits which reads "Indiana 23rd Street to 41st Street" be amended to read as follows:

| *Street* | *Extent* | *Speed* |
|---|---|---|
| "Indiana Avenue | 23rd Street to 24th Street | 25" |
| "Indiana Avenue | 24th Street to 41st Street | 35" |

Section 2. This Ordinance is an emergency within the meaning of Section 2.12 (1) in that said ordinance provides for public health and safety and is considered an emergency by the Council and as such shall become effective immediately upon this passage as provided by the Home Rule Charter for the City of Joplin.

Passed by the Council of the City of Joplin, Missouri, this _____ day of _____, 2016, by a _____ vote.

_____
Michael L. Seibert, Mayor

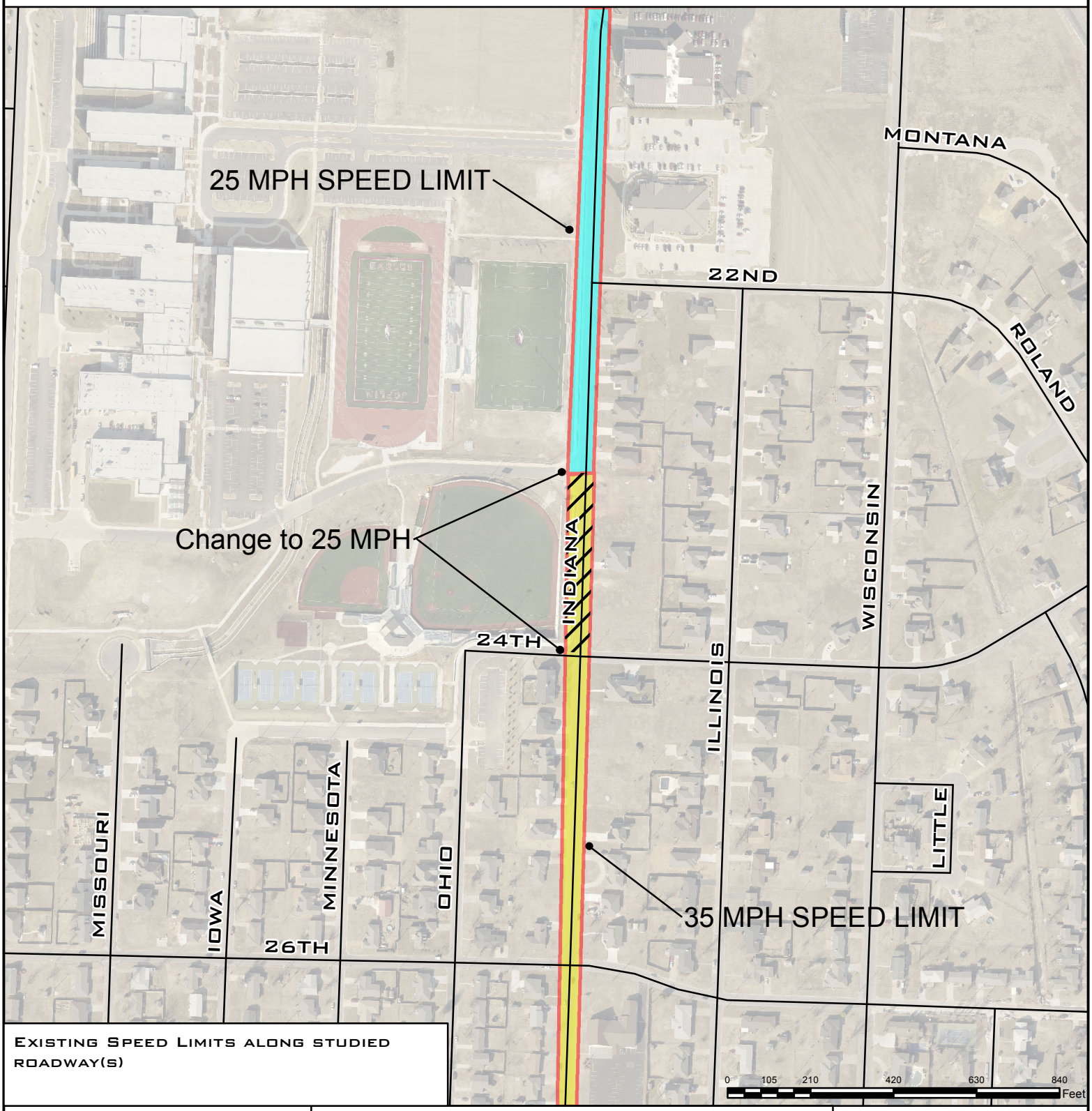
ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

# Attachment A - Reduced Speed




Existing Speed Limits along studied roadway(s)


City of Joplin
602 S. Main St.
Public Works Department
Engineering Division
Phone: (417) 624-0820
Fax: (417) 625-4738


## DISCLAIMER:


This drawing is neither a legally recorded map for a survey and is not intended to be used as one. This map is compilation of records, information, and data located from the City of Joplin, Jasper and Newton Counties, and other State and Federal Offices, and other sources, affecting the area shown, and is to be used for reference purposes only. The City is not responsible for any inaccuracies herein.


## Legend

- Joplin Streets
- Existing 25 MPH Zone
- Existing 35 MPH Zone
- Proposed Speed Change

N W E S

## *Current Speed Limits*

Sec. 114-822. - Specific speed limits.

Pursuant to the provisions of section 114-233, it shall be unlawful for any person to operate any vehicle on the following streets or portions of streets in excess of the indicated speeds:

| Street | Extent | Speed |
|---|---|---|
| Indiana | 23rd Street to 41st Street | 35 |
| | | |

(Code 1977, § 39-472; Ord. No. 96-027, § 1, 2-5-96; Ord. No. 2002-086, § 1, 4-10-02; Ord. No. 2006-229, § 1, 12-18-06; Ord. No. 2013-186, § 1, 8-19-13)

## *Proposed Speed Limits*

Sec. 114-822. - Specific speed limits.

Pursuant to the provisions of section 114-233, it shall be unlawful for any person to operate any vehicle on the following streets or portions of streets in excess of the indicated speeds:

| Street | Extent | Speed |
|---|---|---|
| Indiana | 23rd Street to 24th Street | 25 |
| | 24th Street to 41st Street | 35 |

(Code 1977, § 39-472; Ord. No. 96-027, § 1, 2-5-96; Ord. No. 2002-086, § 1, 4-10-02; Ord. No. 2006-229, § 1, 12-18-06; Ord. No. 2013-186, § 1, 8-19-13)

City of **JOPLIN** City Council Agenda Item

**Requested Council Meeting Date: August 1, 2016**
**Council Bill No. 2016-135**

## Item: Work Authorization HDR-OC-03 with HDR Engineering, Inc. for Engineering Services Associated with the Wildwood Business Park Sanitary Sewer Project

## Originating Department: Public Works – Engineering

Attachments: 1) Agreement-Work Authorization
2) Council Bill No. 2016-135

Public Works: Nicholas A. Heatherly
Community Development & Planning: Troy Bolander
Finance Department: Leslie Haase
City Attorney: Peter C. Edwards
City Manager: Samuel L. Anselm

**Recommended Action:** Approval of Work Authorization HDR-OC-03 for HDR Engineering, Inc., in the not to exceed amount of $321,000.00 for design and construction management of the Wildwood Business Park Sanitary Sewer project.

**Background:** In accordance with the City's procurement policy, the City advertised for on-call consulting services in seven categories, including Storm & Sanitation Engineering Services. Of the eighteen firms that expressed interest in providing these services, four firms were selected using the qualifications based selection method, as required by state statute. HDR Engineering, Inc., was selected from that group as being best qualified to provide design, bidding, and construction management services for this project. This was done in order to meet the EDA grant requirement of expending all such funds prior to May 22, 2018.

**Discussion:** This Work Authorization for HDR Engineering, Inc. is for the not-to-exceed amount of $321,000.00, and is funded by the Economic Development Administration Library & Infrastructure grant funds for the design and construction management services associated with the sanitary sewer infrastructure improvements at the Wildwood Business Park, located within the Wildwood Ranch development. This Work Authorization is contingent upon final EDA approval.

**Recommendation:** City staff recommends that approval of Work Authorization HDR-OC-03 with HDR Engineering, Inc. for the not-to-exceed amount of $321,000.00 for design and construction management of the Wildwood Business Park Sanitary Sewer project be approved on an emergency basis per Section 2.12 (6) of the Joplin City Charter.

**COUNCIL BILL NO. 2016-135 ORDINANCE NO**

AN ORDINANCE approving Work Authorization HDR-OC-03 for HDR Engineering, Inc., for Three Hundred Twenty One Thousand and no/100 Dollars ($321,000.00) for design and construction management of the Wildwood Business Park Sanitary Sewer project, and containing an emergency clause.

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

Section 1. Approval of Work Authorization HDR-OC-03 for HDR Engineering, Inc., for Three Hundred Twenty One Thousand and no/100 Dollars ($321,000.00) for design and construction management of the Wildwood Business Park Sanitary Sewer project in the City of Joplin, Jasper County.

Section 2. That the Director of Public Works is hereby authorized for final approval and acceptance of the consultant's work under said contracts.

Section 3. That the Director of Public Works is hereby authorized to enter into an agreement on behalf of the City of Joplin with HDR Engineering, Inc., and to administer said agreement with all local, state, and federal rules & regulations.

Section 4. City Council recognizes that all Public Improvement projects are subject to needed alterations. This authorizes the Director of Public Works to make these needed alterations within the limits of the program funding.

Section 5. This ordinance is an emergency within the means of Section 2.12 (6) in that said ordinance provides for public improvements and is considered an emergency by the Council and as such shall become effective immediately upon this passage as provided by the Home Rule Charter for the City of Joplin. Specifically, this Ordinance requires the City of Joplin to initiate public improvement planning and construction of the Wildwood Business Park Sanitary Sewer project and associated infrastructure under the grant award from the Economic Development Administration (EDA). It is important that these events take place so that the construction can begin and can be completed in accordance with the EDA grant required completion date of May 22, 2018. Appropriations for this contract have been approved by the 2015-2016 budget.

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

_____, 2016 by a _____ vote.

_____

ATTEST: Michael L. Seibert, Mayor

_____

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____

Peter C. Edwards, City Attorney

| CITY | | ENGINEER | |
|---|---|---|---|
| **CITY OF JOPLIN**<br>**602 S. MAIN STREET**<br>**JOPLIN, MO 64801** | | Name: HDR Engineering, Inc.<br>Address: 2139 E. Primrose Street, Suite E<br>Springfield, MO 65804 | |
| Attention: Chris Parker, P.E. | | Attention: Bryce Banion, P.E. | |
| Department: Public Works | | Phone: (816) 347-1157 | Fax: (816) 347-1197 |
| Phone: (417) 624-0820 ext 584 | Fax: | | |

**WORK AUTHORIZATION NUMBER** HDR-OC-003
**TO AGREEMENT FOR PROFESSIONAL ENGINEERING CONSULTING SERVICES**

City and Engineer agree to amend their Agreement for Professional Engineering Consulting Services to include a scope of work and fees for engineering services, by adding the following terms to their Agreement.

1. **Services**. The City agrees to engage the services of the Engineer and the Engineer agrees to perform the services hereinafter set forth in connection with projects described in ***Exhibit A***.

2. **Addition to Services**. The City may add to the Engineer services or delete therefrom activities of a similar nature to those set forth in ***Exhibit A***, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 5 hereof. The Engineer shall undertake such changed activities only upon the direction of the City. All such directives and changes shall be in written form and prepared and approved by the City and shall be accepted and countersigned by the Engineer.

3. **Term**. The services of the Engineer shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract, but in any event, all of the services required hereunder shall be completed as set forth in the schedule for the project which is attached hereto as ***Exhibit A***.

4. **Costs not to Exceed**. The City of Joplin is limited by law with respect to the amount of money it can pay. Therefore, the City has established a fixed sum for this contract, which cannot be exceeded unless this contract is amended. The Engineer providing services hereunder shall be required to keep track of the amount of hours billable under this contract at all times; and any work in excess of the fixed sum shall not be eligible for payment. The Engineer shall notify the City if Engineer anticipates that the contract amount may be exceeded, in order to determine whether or not the City is prepared to increase the total compensation. The Engineer shall establish a billing system showing the amount of money remaining on the contract, which shall be shown in each monthly billing.

5. **Payment**.

a. **Conditioned upon acceptable performance**. The City agrees to pay the Engineer in accordance with the terms set forth in ***Exhibit A***, which shall constitute complete compensation for all services to be rendered under this contract; provided, that where payments are to be made periodically to Engineer for services rendered under this contract, the City expressly reserves the right to disapprove in whole or in part a request for payment where the services rendered during the period for which payment is claimed are not performed in a timely and satisfactory manner in accordance with the schedule and description of services set forth in ***Exhibit A***.

b. **Total compensation not to exceed**. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Engineer under the terms of this work Authorization Number HDR-OC-003 exceed the sum of three hundred twenty-one thousand Dollars ($ 321,000.00).

6. **Insurance**. Without limiting any of the other obligations or liabilities of the Engineer, the Engineer 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 Engineer to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Engineer to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability under the Contract Documents.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the City at the time that this contract is signed by the Engineer. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company in question 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, Joplin, MO 64801; and

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, 2016, 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 Contractual Liability and Independent Contractors Liability. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Two Million Seven Hundred Twenty-Seven Thousand Four Hundred Eighty-Nine and no/100 Dollars ($2,727,489.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Nine Thousand One Hundred Twenty-Three and no/100 Dollars ($409,123.00) 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. Engineer 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 Engineer, its employees, officers or agents. Engineer 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 Seven Hundred Twenty-Seven Thousand Four Hundred Eighty-Nine and no/100 Dollars ($2,727,489.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Nine Thousand One Hundred Twenty-Three and no/100 Dollars ($409,123.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

d. Errors and Omissions Insurance. The Engineer shall maintain a professional liability insurance policy in the amount of $1,000,000.00. This policy shall remain in full force and effect for a period of one year after completion and acceptance by the City of the construction of the project.

e. Subcontracts. In case any or all of this work is sublet, the Engineer shall require the subcontractor to procure and maintain all insurance required in subparagraphs (A), (B) and (C) hereof and in like amounts. Engineer 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.

f. Notice. The Engineer and/or subcontractor shall furnish the City prior to beginning the work 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.

g. 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 Engineer, upon 10 days written notice, to execute a contract addendum whereby the Engineer

agrees to provide, at a price not exceeding Engineer'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.

7. All other terms and conditions of the original Agreement shall remain in effect.

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

**REVIEWED FOR APPROVAL**

_____
Tony Robyn
Assistant Director
Planning, Development & Neighborhood Services

**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.

_____
Leslie Haase, Director of Finance

**APPROVED AS TO FORM**

_____
Peter Edwards, City Attorney

**Engineer:** HDR Engineering, Inc.

By: _____

Printed Name: Joseph E. Drimmel

Title: Vice President

Date: _____

**CITY OF JOPLIN, MISSOURI**

By: _____
Nicholas A. Heatherly, P.E.
Public Works Director

Date: _____

## EXHIBIT A – TABLE OF CONTENTS

Rate Schedule ..... 6

Engineering Services Agreement ..... 7

Job Specific Scope of Services ..... 21

Project Schedule ..... 29

Fee Summary ..... 30

Special Provisions to the Contract ..... 31

# Attachment One (rev 7/7/2016)
# Rate Schedule
## (January 1, 2016 – December 31, 2016)

| Role | Hourly Rate |
|---|---|
| Principal/Quality Control/Senior Specialist | $225.00 |
| Senior Project Manager | $198.00 |
| Project Manager | $150.00 |
| Senior Project Engineer | $205.00 |
| Project Engineer | $135.00 |
| Senior Process/Civil Engineer | $160.00 |
| Process/Civil Engineer | $130.00 |
| Senior Structural Engineer | $225.00 |
| Structural Engineer | $140.00 |
| Senior Electrical Engineer | $196.00 |
| Electrical Engineer | $105.00 |
| Senior Mechanical Engineer | $175.00 |
| Mechanical Engineer | $110.00 |
| Engineering Intern | $100.00 |
| Asset Management Specialist | $205.00 |
| GIS Manager | $140.00 |
| Senior CAD Technician | $115.00 |
| CAD Technician | $ 90.00 |
| Registered LAnd Surveyor | $135.00 |
| 2 Person Survey Crew | $140.00 |
| Survey GPS Technician | $ 85.00 |
| Senior Resident Project Representative | $110.00 |
| Resident Project Representative | $ 85.00 |
| Sr. Administration Personnel | $ 95.00 |
| Administration Personnel | $ 75.00 |
| Sr. Environmental Planner | $190.00 |
| Sr. Environmental Scientist | $160.00 |
| Environmental Scientist | $105.00 |
| REIMBURSABLES: | |
| Printing & Reproduction | Cost |
| Travel | Current IRS Rate |
| Phone | Cost |
| Mapping | Cost |
| Subconsultants | Cost |

Project Name/Description Wildwood Business Park Sewer

Consultant HDR Engineering, Inc.

**Engineering Services Agreement**

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

**PART 1- BASIC SERVICES** *All deliverables referred to in the agreement shall also be provided in an electronic format to be specified by the City.*

A1.01 *Conceptual Phase*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.

   If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions. Options will be discussed and agreed to by Engineer at seeping meeting.

2. Identify potential solution(s) to meet Owner's Project requirements, as needed.

3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.

4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.

7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.

8. Prepare a conceptual report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information

furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.

9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.

~~10.~~ When mutually agreed, assist Owner in~~ evaluating the possible use of building information modeling; civil integrated management;~~ geotechnical baselining of subsurface site conditions~~; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."~~

~~11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.~~

~~12. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.~~

~~13. Perform or provide the following other Study and Report Phase tasks or deliverables:~~

14. Furnish 6 review copies of the Report and any other Study and Report ~~Phase~~ deliverables to Owner by the due date and review by phone or in person with Owner.

15. Revise the Report and any other ~~Study and Report~~ Conceptual Phase deliverables in response to Owner's comments, as appropriate, and furnish 6 copies of the revised Report and any other Study and Report Phase deliverables to the Owner by the agreed upon due date.

B. Engineer's services under the ~~Study and Report~~ Conceptual Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

C. Billing/Payment Processing Options:

1. Request for payment may be submitted at appropriate intervals during the contract.

   Application for payment must include a detailed breakdown of deliverables completed as well as specific tasks or percentages of specific tasks completed. Payment schedule will be at the approval of the city.

~~2. Deliverables option as determined by engineering staff on a project by project basis. Example: 30 percent- Preliminary plans, 60 percent Right of Way plans, 90 percent Final plans and bid documents, 100 percent project completion.~~

*A1.02 Preliminary Design Phase - (30 percent plans)*

A. Proceed with Preliminary Design Phase after the completion of the Conceptual phase which includes: Acceptance by Owner of the Conceptual Report and any other Study and Report ~~Phase~~ deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design, and Indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner.

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

2. Include on plans, property lines, structure locations, ownership names and contact information.

3. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during ~~or following the Study and~~ Conceptual Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.

4. Provide necessary field surveys, topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities as defined by Section A1.03 "Utility Requirements" and Section A1.04 "Survey Services"

5. Visit the Site as needed to prepare the Preliminary Design Phase documents.

6. Advise Owner if additional reports, data, information, or services of the types described are necessary and assist Owner in obtaining such reports, data, information, or services .

7. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.

8. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs. Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s') methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

9. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of

Owner's design and construction standards, Owner's standard forms, general conditions, supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

10. ~~Development communication plan for project: considering the use of door hangers, letters, public meetings, changeable message boards.~~

11. Furnish 6 review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner by established due date, and review them with Owner. Owner shall submit to Engineer any comments regarding the furnished items.

12. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner 6 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables by the specified due date.

13. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

*A1.03 Utility Requirements*

A. Make notification to utilities during conceptual phase of preliminary design process. Communication to be made in a specific, documented format. (As detailed in item D).

B. Based on specific utility feedback, and field observation, identify potential high expense utility relocation issues.

C. Prepare and present plan for city review, detailing significant utility conflicts, proposed pothole locations, and associated costs for verifying existing utilities. Potholing process to include horizontal and vertical alignment and depth details. Details will be included in 30 percent plan completion, final right of way plans, and final construction plans. Necessary corrective action to address incomplete or inaccurate details from the potholing may be subject to errors and omissions insurance claim.

D. Submit utility report at 30 percent submittal and close out of project. Utility report to include representatives contacted, meeting dates, and a summary of discussions, requests, observations and/or concerns. (See City of Joplin utility notification form.)

*A1.04 Surveying Services - General*

A. Control Survey

All horizontal control for the project will be based on the Missouri State Plane Coordinate System of 1983, West Zone.

All vertical control for the project will be based on the North American Vertical Datum of 1988 (NAVD 88) provided by NOAA's National Geodetic Survey (NGS).

Control points and temporary bench marks will be set inter-visible and in strategic locations along the project route so as to be conveniently used during all phases of the project, including construction.

B. Engineering Survey

Provide topographic engineering survey for the length of the project to facilitate design. Provide a survey of all ~~existing~~ field identified surface and sub-surface utilities in the project corridor.

C. Property Boundary Survey/Right-of-way Survey/Easements

Provide a boundary survey or surveys to locate the existing Right-of-Way/Easements for the length of the project, the adjacent property lines of the parcels along the project, and all existing easements of record encumbering each property that will affect the project. Consultant will be responsible for ordering title work for each parcel along the project route and procuring existing right-of-way documents and/or right-of- way plans.

D. Right-of-way and Easement Description Preparation

Upon final approval of the Right-of-Way/Project Plans consultant will provide descriptions and exhibit drawings for all property right acquisitions including, but not limited to: right-of-way takings, permanent easements and temporary easements.

E. Right-of-way and Easement Staking

During the property negotiation phase of the project it may be necessary to stake the proposed right-of-way and/or easement locations to assist the right-of-way agent. Upon request, the consultant will temporarily stake the proposed right-of- way/easement locations with wooden lathe to allow the property owner to visually inspect the location of such.

Pre-Construction Phase - On projects that will require the relocation of existing utilities prior to the award of the construction contract the consultant shall temporarily stake the location of the Right-of-Way and/or easements at points predetermined by Owner. This service will be provided one (1) time as a part of the contract. Any additional staking, if required by utility contractors due to the destruction of the temporary stakes, will be done at the advertised hourly rate and billed back to the utility contractor who is found to be responsible for removing the original stakes.

F. Existing United States Public Land Survey System Corners

All existing USPLSS corners that may/will be removed or altered as a result of this project must be referenced and re-established according to 20 CSR 2030-17.020 and 20 CSR 2030-17.030.

G. Survey Records

Consultant shall provide to Owner originals or copies of all survey records relevant to the project. These records shall include, but are not limited to: survey notes, research records, computations, calculations and drawings.

H. Other Services

Services not covered by A through F that are determined in the scoping meeting to be necessary for completion of the project.

*A1.05 Right of Way Plan Phase - 60 percent plans*

A. Determine parcels and parcel ownership information to be included on right of way plans.

B. Determine parcel size.

C. Prepare R.O.W. plan tabulation sheet.

D. Prepare R.O.W. plan sheets showing easement and right of way takings.

E. Furnish 6 review copies of the Right of Way Plan Phase documents, opinion of probable Right of Way Cost, and ~~any~~ other Right of Way Plan Phase deliverables to Owner by established due date, and review them with Owner. Owner shall submit to Engineer any comments regarding the furnished items.

F. Revise the Right of Way Plan Phase documents, opinion of probable Right of Way Cost, and any other Right of Way Plan Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner 6 copies of the revised Right of Way Plan Phase documents, revised opinion of probable Right of Way Cost, and any other deliverables by the specified due date.

G. Engineer's services under the Right of Way Plan Phase will be considered complete on the date when Engineer has delivered to Owner the revised Right of Way Plan Phase documents, revised opinion of probable Right of Way Cost, and any other Right of Way Plan Phase deliverables.

*A1.06 Final Design Phase*

A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and/or any other Right of Way plan documents, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.

3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.

4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.

5. After consultation with Owner, include in the Construction Contract Documents ~~any~~ specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post- Construction Phase, and unless agreed otherwise

shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.

6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.

7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.

8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.

~~9. Contract shall include contractor provided changeable message signs to communication construction information.~~

10. Furnish for review by Owner, its legal counsel, and other advisors, 6 copies of the final drawings and Specifications, assembled drafts of other construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and ~~any other~~ final design Phase deliverables, by the established due date, with the Final Design Phase, and review them with Owner. Owner shall submit to Engineer ~~any~~ written comments regarding the furnished items, and ~~any~~ instructions for revisions.

B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast- tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts.

*A1.07 Bidding Phase*

A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Advertise for and obtain bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.

2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.

3. Provide readily available information ~~or assistance~~ needed by Owner in the course of ~~any~~ review of proposals with prospective contractors.

4. If Federal funding is involved, set up prequalification's for contractor. This includes researching all applicable debarment & qualified contractor's lists & providing this documentation in the project file

5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.

6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents

7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.

B. The Bidding Phase will be considered complete upon commencement of the Construction Phase.

*A1.08 Construction Phase*

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned below. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer (unless provided by the city), and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth.

3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified.

4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.

5. *Electronic Transmittal Protocols:* Consultant shall follow City of Joplin protocols shown below.

6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

    a) Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

    b) The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation-RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

13. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.

14. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.

    a) Identify discrepancy
    b) Contractor submits pricing
    c) Cost analysis by Project Manager
    ~~d) Submit Conceptual Plan to MoDOT and FHWA, if applicable~~
    e) Receive conceptual approval from both agencies and give contract Notice to Proceed
    ~~f) Change in work complete, submit official change Order with Justification and copy of conceptual to MoDOT and FHWA if applicable (justification provided by City Project Manager)~~
    g) After signatures on Change order are complete, notify the contractor.

15. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.

16. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents . Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

17. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.

18. *Inspections and Tests:*

    a) Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

    b) As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.

    c) Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

19. *Change Proposals and Claims:*

    a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal.

    b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

20. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

    a) Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set- offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

b) By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement.

21. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

22. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

23. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:

24. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form of the acceptance identified in MoDOT's LPA Manual, that the Work is acceptable (subject to the provisions of the Notice and Paragraph Al.OS.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

25. *Standards for Certain Construction-Phase Decisions*: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

26. *Duration of Construction Phase:* The Construction Phase will commence with the execution oft he first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract, then Construction Phase services may be rendered at different times in respect to the separate contracts. Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original

date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

*A1.09 Post-Construction Phase*

A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:

1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

3. Full payment of the final invoice will not be considered until the consultant has electronically furnished the following documents:

a) The city's semi-final inspection letter stating the date of semi-final inspection and listing those who were present.

b) The city's final acceptance letter showing the number of working days or calendar days charged, completion date and the amount of liquidated damages, if any.

c) A final list of acceptance testers used on the project and a certification stating:

"The results of the tests or acceptance samples indicate that material incorporated in the construction work and the construction operations controlled by sampling and testing were in reasonably close conformity with the approved plans and specifications, and such results compare favorably with the results of independent assurance sampling and testing." Any deviations from the specifications must be explained along with the reason for acceptance.

"All field tests were performed in conformity with the governing specifications and the results were in reasonably close conformity with the specifications." Explain any deviations and why the work was accepted.

"The project was constructed substantially in conformity with the plans and specifications for the project."

d) Contractor certification and city recommendation:

Showing the final DBE participation on the project including the DBEs used, the type of work performed, and the dollar amount paid to each DBE.

The city's recommendation regarding the contractor's fulfillment of the DBE requirements. The consultant shall also provide written documentation from each DBE that they were paid in full for the work identified in the Contractor DBE Certification. Examples of documentation from DBEs may include a letter,

e-mail, lien waiver or copies of reimbursement checks. If DBE goals were not met, include documentation as to why.

e) Final Invoice

f) Final Detailed Estimate of Quantities

g) Contractor's Affidavit Regarding Settlement of Claims

h) Final Change Order (if needed)

i) Affidavit (Compliance with Prevailing Wage Law)

j) These documents are to be received within 60 days of the Final Inspection date. Final Reimbursement will be processed once all close out documentation has been reviewed and accepted.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified, will terminate twelve months after the commencement of the Construction Contract's correction period.

## PART 2 - ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Undertaking investigations and studies including, but not limited to:

a) Detailed consideration of operations, maintenance, and overhead expenses.

**Exhibit A3.01**
**Wildwood Business Park Sanitary Sewer**
**City of Joplin, Missouri**

**JOB SPECIFIC SCOPE OF SERVICES**

## Project Description

The City of Joplin plans to install a new sanitary sewer trunk main to serve the new Wildwood Business Park located in the southwest part of Joplin. The City reviewed the site with the Engineer on June 13, 2016 during the scoping meeting. The proposed gravity system will flow northwestward approximately 6,800 feet from near 32nd Street to 20th Street. The new gravity system will flow into a new lift station located near 20th Street and Malang Road. The new lift station will then pump the sewage approximately 7,200 feet via a new force main back to an existing manhole and gravity sewer system near the 32nd Street and Central City Road. A large portion of the new gravity sewer and force main will be parallel. Sewage will flow through existing pipes to the existing Lift Station #19. Lift Station #19 will be upgraded to handle the additional flow.

The gravity and force main pipes will cross the BNSF Railroad, ideally in the same pipe sleeve. There is a Southern Star Central Gas Pipeline which operates a high-pressure transmission line which roughly parallels the railroad berm that will also need to be crossed. Easement preparation and negotiations with BNSF and Southern Star Central Gas Pipeline are included in the Engineers scope of services.

A portion of the project funding is provided by the Economic Development Agency (EDA). The City of Joplin is coordinating directly with EDA. Federal funding will require an Environmental Narrative, preparing a Preliminary Engineering Report discussed below as well as additional requirements identified in Exhibit C.

## General

The general scope of the project is to prepare conceptual, preliminary and final plans for the construction of the Wildwood Business Park sanitary sewer trunk main and lift stations in the City of Joplin, Missouri. The Engineer will be responsible for the site survey, environmental permitting, utility coordination, geotechnical investigation, easement negotiation, and conceptual, preliminary and final plans as well as construction services for the project.

## Additions to Part 1 – Basic Services

The basic services are indicated in Exhibit "A". The following detailed scope of services further refines Engineer's services to be provided as part of Part 1 – Basic Services.

### 1. Project Administration

a. Project Administration – Includes general administration items and standard coordination and correspondence thru design and construction services. Includes routine internal project team meetings and project management.

b. Project Controls – Includes budget and cost monitoring activities thru design and construction services.

c. Status Reports and Invoicing – Preparation of monthly invoices and status reports by project manager and accounting staff thru design and construction services.

d. Survey and Subconsultant Coordination – Coordination of geotechnical subconsultant for site access and activities where survey crew is required.

e. Project Kickoff Meeting and Site Visit – The ENGINEER Project Manager and a Senior Engineer will attend a kickoff meeting with the City of Joplin to discuss the project, visit the project site and review design criteria. The City will provide record drawings for the existing sanitary sewer system and any updated land use plans and/or plats that have been submitted to or prepared by the City. ENGINEER will prepare a meeting agenda prior to the meeting and forward minutes to the City afterwards.

**2. Concept Design Phase**

a. The proposed land use developed by KTGY and Olsson Associates will be reviewed by the Engineer and assumptions developed for future sewage flow rates. The Engineer will review the assumptions with the City, however, since these are future flows based on assumed land development patterns, neither the Engineer nor the City will be held responsible if future development patterns differ from the assumptions.

b. There will be two deliverables in this Phase.

i. The first deliverable will be HDR's revision of "M.3. Preliminary Engineering Report" (PER) prepared by the City of Joplin. The PER shall include the following requirements:

a) Description of Project Components – Provide a general description of all project components involved in the project. Indicate where the project involves the construction of new facilities or the renovation or replacement of existing ones. Describe each of the project components in terms of dimensions, quantities, capacities, square footage, etc.

b) A statement verifying the project components described in the engineering report are consistent with the EDA investment project description that is provided in Section A.2 of Form ED-900. Engineering reports that describe project components that are inconsistent with the EDA investment project description in Section A.2 of Form ED-900 will not be considered valid.

c) Sketches of schematics showing the general layout and location of the existing site conditions and of the project components as well as location of project beneficiary(s) identified in Section B.5 of Form ED-900 that provide economic justification for the project, if any. Rough dimensions and quantities for major project components should be shown and labeled on the drawings. Drawings should clearly identify the project components that are being proposed. Applicants are encouraged to clarify such drawings, for example, through color coding, labeling, and other appropriate methods.

d) A feasibility analysis for the constructability of the project, including a review of the existing conditions and noting particular features, alignments, and events affecting construction of project components.

e) The proposed method of construction. Indicate whether construction procurement shall be done through competitive bid or other method. Indicate if any portion of the project is to be done by design/build, construction management at risk, by the applicant's own forces, or whether a third party construction manager will be used. If an alternate construction procurement method (other than traditional design/bid/build with sealed competitive bid process) is proposed, a construction services procurement plan must be provided to EDA for approval in accordance with EDA's regulation at 13 C.F.R. 305.6(a).

f) The number of construction contracts anticipated. If multiple contracts are proposed, provide a description of the project components included in each contract. If separate contracts are anticipated for demolition or site work, the budget information cost classification should reflect the estimated costs for these components. If project phasing

is proposed, a project phasing request must be provided to EDA for approval per EDA's regulation at 13 C.F.R. 305.9(a).

g) A current detailed construction cost estimate for each of the project components, showing quantities, unit prices, and total costs. Provide a basis for the determination of construction contingencies.

h) If the budget includes costs for real property acquisition, the Applicant should include a current fair market value appraisal completed by a certified appraiser for the property to be purchased.

i) A list of all permits required for the proposed project and their current status. Identify all permits required; include the timeline to obtain the permits and discuss how the permitting relates to the overall project schedule. If the project crosses a railroad right-of-way or is within a railroad right-of-way, provide an explanation of any permitting or approvals that may be required from the railroad or other authority and the timeframe for obtaining these permits or approvals.

j) An overall estimated project schedule, including the number of months for each of the following:

1) design period;
2) period of time to obtain required permits;
3) period of time to obtain any required easements of rights-of-way;
4) solicitation of bids and awarding of contracts, and
5) construction period.

ii. The second deliverable shall be a Conceptual Report (Design Memorandum) which will be a maximum of five pages with exhibits that includes the following information:

a) Calculation of the wastewater design flows for the project.

b) Preliminary sizing of the proposed sanitary sewer, force main, the new pumps and the modifications to the existing pumps.

c) Definition of the preliminary alignments for the sanitary sewer and force main.

d) Preliminary estimates of construction costs.

c. The design of odor control units and excess flow holding facilities are not included in this scope of services.

d. ENGINEER shall submit requests for payment on a monthly basis.

**3. Utility Requirements**

a. Sub-surface utility investigations or researching record drawings are not included in the basic services fees. If potholing is required, the Engineer shall submit a proposed scope and fee for the additional services.

**4. Environmental Assessment**

a. The City of Joplin (City) has requested assistance preparing a federal Economic Development Administration (EDA) Environmental Narrative (EN) in support of a federal grant to fund construction of gravity and pressurized sanitary sewer lines and pump station. The Engineer shall

analyze, write and prepare mapping requirements consist with the EDA EA template outline and consist with generally accepted NEPA planning and documentation standards sufficient to identify impacts and mitigate those impacts. The EDA EA template requirements are itemized at: https://www.eda.gov/about/prelim-engineering-and-environmental-templates.html. Resource areas and topics to be documented in the EN include beneficiaries, project construction, purpose and need, alternatives, historic properties, affected area, coastal zone, wetlands, floodplains, endangered species, land use and zoning including USDA Form 1006 as needed, solid waste management, hazardous and toxic substances, water resources, water supply and distribution, wastewater collection and treatment, environmental justice, transportation, air quality, noise, permits, public notification, cumulative impacts, mitigation, attachments as available or necessary as referenced on the EDA EN template.

b. The Engineer endeavors to work within the EDA EA template guidance found throughout the template. As such, some information or attachments to the EA, such as permits, may not be included. In general, ENGINEER would endeavor to identify required permits as mitigation measures in the mitigation section of the EN.

c. The Preliminary Engineering Report (PER) is assumed to contain sufficient information for the Project Description, Purpose and Need, and alternative actions for the permitting agencies use. A second build alternative will be reviewed for the project and consist of the alignment provided sent to ENGINEER via email June 23, 2016 (gravity alignment). Impacts analysis of this second alternative will consist only of minimum necessary to reject as a feasible or less damaging alternative.

d. City maintains a GIS database of Zoning, Land Use, and other relevant resources considerations that will be made available to ENGINEER upon request.

e. City has obtained a Section 106 NHPA clearance from Missouri State Historic Preservation Office and will provide to ENGINEER to satisfy historic property considerations. No historic or archaeological surveys are included. No tribal consultation services are provided; however, a list will be obtained of potential tribal interests.

f. A preliminary desktop and field assessment determination for wetlands and streams will be provided. The field portion will essentially be a determination sufficient enough to document presence of potential wetland and approximate GPS boundary of wetlands and streams at proposed pipe crossings; however, detailed wetland delineation (datasheets, delineation report, etc) would be a supplemental service in support of a Section 404/401 Nationwide Permit. Wetland and stream impacts would be approximated with engineering judgment of the pipe trench impacts. A formal or preliminary jurisdictional determination submittal to the Corps of Engineers is not provided. However, jurisdictional assessment for NEPA purposes will be based on best professional judgment.

g. Corps of Engineers and MDNR Section 404/401 Nationwide permitting services are not included in this SOW. However, the need for permits will be identified as a mitigation measure in the EDA EA.

h. A FEMA floodmap will be included in the narrative, but floodplain permitting and No-Rise Certification services are not provided in this SOW and assumed to be completed by the City with the Jasper County Floodplain Administrator.

i. No threatened and endangered (T&E) species habitat assessments or surveys are included in this SOW. A desktop and literature review will be completed. Note that if the project is selected for EDA funding, direct coordination with the U.S. Fish and Wildlife Service may be required at that time.

j. Environmental Justice census block groups information will be provided within the narrative, but a detailed analysis is not provided in the SOW.

k. No traffic study services are provided in this SOW. We assume the City has done adequate traffic analysis in support of future development that would be supported by the sanitary lines project.

l. No air quality or noise modeling services are provided in this SOW.

m. ENGINEER assumes City will or has conducted public notification/hearings. No public involvement or notification services are provided in this SOW. City to provide any public notices, hearing minutes, or other documentation of public input.

n. Cumulative effects analysis will consider the overall future development within Wildwood Business Park.

o. City will provide Phase I Environmental Site Assessment previously prepared. City is responsible for signing EA certification regarding hazardous substances and/or waste material.

p. EDA comments, if received on Draft EA, are assumed to be minor and not require new or additional information or analysis.

q. Attachments to the EA not provided in this SOW include Coastal Zone consistency determination; Section 404/401 or Section 10 permits; habitat/species surveys or biological assessments for federal T&E species; sole source aquifer review by U.S. EPA; federal, state, and local permits.

r. A one day site visit by the ENGINEER's environmental scientist is proposed.

s. Up to 3 periodic internal and client coordination meetings by phone are included in the basic services. Meeting minutes of phone call will be prepared by the Engineer.

t. A draft EDA EA document will be sent to the City for review.

u. A final EDA EA document will be developed by the Engineer incorporating EDA and City comments.

v. Schedule:
Draft EN submitted with 45 days or sooner of NTP.
Final EN narrative submitted with 10 days of receipt of all City and EDA comments.

**5. Preliminary Design Phase**

a. The alignments of the sanitary sewer and force main shall be roughly parallel to each other and in close proximity (10-15 feet) to each other, whenever possible. The sanitary sewer and force main shall be drawn on the same plan and profile sheets whenever possible. The sanitary sewer and force main will occupy the same casing pipe as they traverse under the railroad tracks and gas pipeline, if possible.

**6. Surveying Services**

a. Survey Management and Coordination – Task management activities of the survey manager for coordinating survey sub-consultant, Olsson Associates and the logistics necessary for the completion of the survey.

b. Site Control – Set level and tie project control and benchmarks. Includes four control points and two benchmarks.

c. Topographic and Utility Survey – Perform topographic survey. The survey limits are approximately a corridor that is 7,200 feet long along by approximately 50' wide along the alignment identified in the Conceptual Design Phase. Survey will locate the necessary visible features needed for use in preparation of design documents. Utilities existing within the survey limits will be located and shown according to markings provided by the Missouri One-Call system. Utilities will not be potholed. Contours will be produced at one foot intervals for use in design. The services include coordination of utility locates and necessary permits from BNSF for access to the project site.

d. Right-of-Way Survey – A sufficient amount of boundary survey of the subject properties along the proposed sanitary alignment within Wildwood Ranch will be performed for use in developing easements.

e. Geotechnical Boring Staking Survey – Coordinate with the geotechnical sub-consultant to locate the proposed sounding locations and to record the final location and surface elevation of the actual sounding locations for use in design and plan development.

**7. Right-of-Way Phase**

a. The Engineer's sub-consultant, Olsson Associates, shall negotiate with property owners for the acquisition of sanitary sewer easements for the construction and maintenance. Negotiations shall consist of three visits with the landowner, upon which Client direction shall be required prior to continuing negotiations.

b. HDR will subcontract with a local land appraiser who will perform an appraisal of the proposed sewer easement.

**8. Final Design Phase**

a. A geotechnical investigation is included in this scope of services. This service will be performed by Palmerton & Parrish as a subconsultant to ENGINEER. Bores will be taken approximately every 500 feet, at the railroad crossing and at the new lift station site. The bores will penetrate to a depth of two feet below the anticipated flow line of the sewer or to refusal. The bore at the railroad crossing will be taken to a depth of two feet below the casing. The bore at the new lift station will be taken to a depth of five feet below the wetwell. Testing will be performed on the soil samples from the wetwell to determine the bearing capacity of the material.

b. HDR's performance of environmental permitting assistance will include the following scope of work:

   i. Waters of the US Determinations/Reporting – Document Clean Water Act potential jurisdictional waters (wetlands and streams) and submit for jurisdictional determination. Determine the type, size and location of jurisdictional waters impacted by the project.

      - Conduct wetland and stream channel delineations by two experienced wetland scientists. Delineate in accordance with the USACE 1987 wetland delineation manual and Midwest regional supplemental delineation manual. Photo documentation will be provided to include a photo log and corresponding description of each photo.

      - Prepare a written determination/delineation report consisting of an introduction/project overview, methods, results and discussion, and temporary and permanent impacts. Wetland and waters of the U.S. data sheets will be completed, as well as project location map, NWI and soils mapping information, photo log, wetland/pond/stream channel delineation boundary map, and project engineering plans.

      - Develop wetland and/or stream crossing restoration plans for USACE submittal.

      - The City will provide full access to all properties requiring determinations /delineations.

   ii. 404/401 Permit Application – Coordinate and complete applicable USACE 404 permit application to be used as a joint 404/401 application.

a) Complete Form 4345 and supplemental attachments, brief discussion of avoidance and minimization, brief proposal to purchase credit in existing wetland and/or stream mitigation banks (only if required), agency coordination documentation as necessary, cover letter to the USACE, project engineering figures.

b) Include in Form 4345 an engineer's estimate of volume and surface area of fill placed in wetlands or other waters of the U.S. and linear feet of stream channel impacted (if any). The surface area estimate will also include consideration for grading limits within wetlands beyond the proposed fill area, as this can be considered wetlands impacts.

c) A 404/401 permit application (including determination/delineation report) and other supporting information described above in Task 3 HDR Activities.

d) The City will likely require Nationwide Permit # 12 (NWP # 12) Section 404 permit from the USACE and a conditionally certified 401 water quality certification for NWP # 12 from Missouri Department of Natural Resources (MDNR).

e) No practical alternatives to avoid jurisdictional water impacts for the proposed project exist.

f) No mitigation is anticipated, though potential for temporary and very minor permanent impacts to jurisdictional waters is at least acknowledged in the development of this scope of work that would require delineation and pre-construction notification to the USACE, but could be covered under NWP#12 without mitigation. No mitigation banking, in-lieu fee, or mitigation site development costs are provided in this scope of services, as they are not anticipated. A restoration plan sheet will address temporary environmental resource damages for wetland and stream crossings.

g) The City will provide permission for site access by the USACE Regulatory Office for purposes of determination/delineation verification (only if requested).

iii. T&E Species Habitat Assessment – Evaluate tree habitat in field for potential Indiana and Northern Long-eared bat habitat. Develop brief habitat assessment memo as needed (does not include detailed USFWS habitat assessment forms). Coordinate with Corps on City's potential commitment to clear potential bat habitat roost trees and tree clearing in general only between November 1 and March 31st for the Indiana and Northern Long-eared bat species as an avoidance measure for potential take and may adversely affect opinion.

a) Coordinate with Corps on the City's commitment to avoid potential roost tree and tree clearing in general relative to active and inactive bat seasons (active April 1st – October 31$^{st}$ and inactive November 1$^{st}$ to March 31st).

b) Provide habitat assessment memo to Corps as part of 404 NWP application.

c) No detailed USFWS habitat or species survey services are provided in this scope of work.

d) Should a "likely to adversely affect" determination result, HDR can provide further formal or informal USFWS consultation services such as acoustic and/or mist netting surveys, Biological Assessment, etc. as a supplemental service.

e) No mitigation services for bat habitat are provided in this scope of work.

Assumptions:

- Section 106 Clearance provide previously to City and HDR will use same letter as part of 404 application.
- City has advised HDR that it will secure NPDES stormwater construction permit for land disturbance through its local authority. No stormwater permit or plan services included in this scope or services.

c. HDR shall perform the engineering work required for the applications for the permits/licenses from the railroad (assumed to be the BNSF) and Southern Star Central Gas Pipeline on behalf of the City. The City shall be responsible for paying all permit/license fees that are required.

**9. Bidding Phase**

a. ENGINEER will distribute contract document to prospective bidders from its office in Springfield, MO. The costs associate with reproduction, delivery services, postage and clerical staff will be covered in the price charged for a set of contract documents to plan holders.

b. Only one (1) construction contract will be issued for this project that will include all proposed improvements.

**10. Construction Phase**

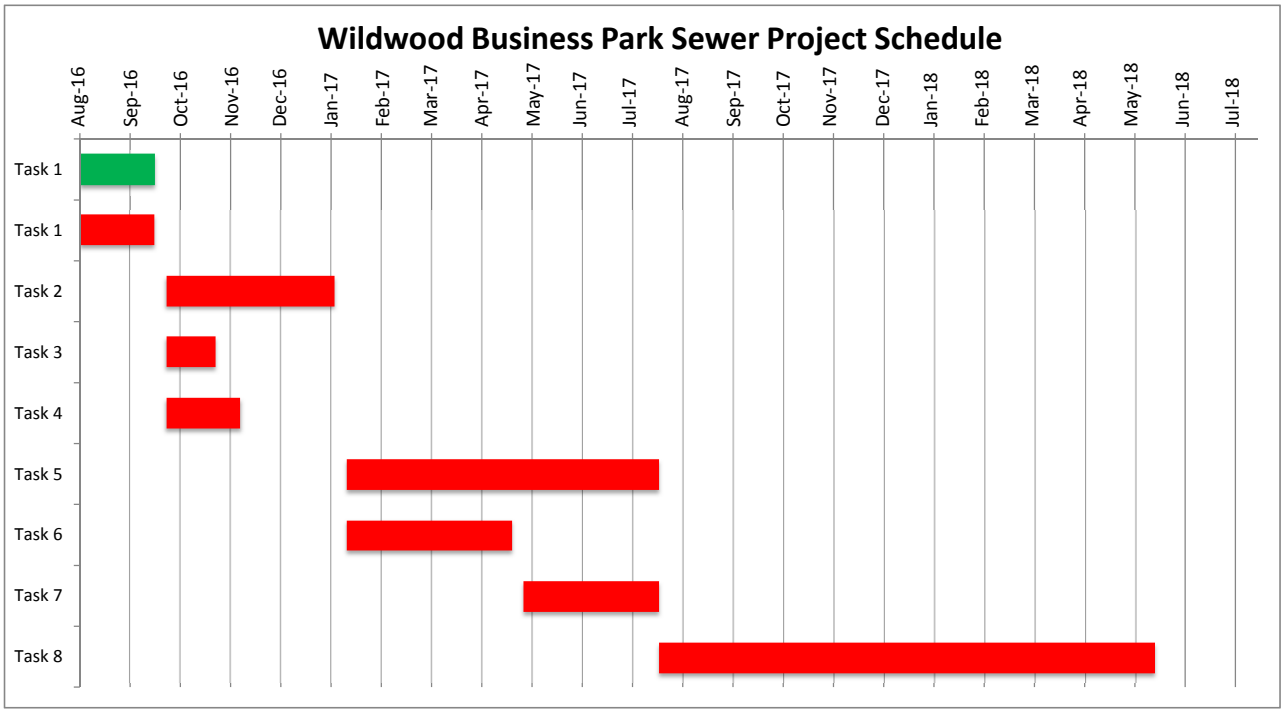
a. ENGINEER's scope of services and fee proposal are based upon the following conditions:

i. The construction period shall be 300 calendar days from the notice to proceed to issuance of the certification of completion to the Contractor. This constitutes approximately 210 working days. ENGINEER has included 942 hours of part time RPR services in its fee proposal, calculated as follows:

- 157 days at 6 hours/day = 942 hours

ii. The scope of services and fee proposal include one regularly scheduled construction progress meeting per month attend by the Project Engineer for a total of nine (9). There is also one meeting in the fee proposal for a final inspection to be attended by the Project Manager, Project Engineer and one other staff Engineer.

## Schedule




**NOTE: THIS SCHEDULE ASSUMES AN OWNER REVIEW PERIOD OF 1 WEEK AFTER TASKS 1, 2, AND 6.**

| Task Number | Task Description | Duration (days) |
|---|---|---|
| | Phase 1 | |
| Task 1 | Environmental Assessment | 45 |
| | Phase 2 | |
| Task 1 | Conceptual Phase | 45 |
| Task 2 | Preliminary Design Phase | 102 |
| Task 3 | Utility Coordination | 30 |
| Task 4 | Surveying | 45 |
| Task 5 | Right of Way Plan Phase | 189 |
| Task 6 | Final Design Phase | 100 |
| Task 7 | Bid Phase | 82 |
| Task 8 | Construction Phase | 300 |

**Exhibit A3.03**

# City of Joplin, MO - Wildwood Business Park Sewer

## Fee Summary

| | Sr. Project Mgr. | Sr. Process/Civil Engineer | CAD | Process/Civil Engineer | Electrical Engineer | Reg Land Surveyor | 2 Person Survey | Admin | Sr. Admin | Sr. Environmental Scientist | Environmental Scientist | Olsson Associates | Palmerton & Parrish | HDR Expenses | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Allowable Billing Rates per Client Contract** | **198.00** | **160.00** | **90.00** | **130.00** | **105.00** | **135.00** | **140.00** | **75.00** | **95.00** | **160.00** | **105.00** | **1.00** | **1.00** | | |
| **TASKS** | | | | | | | | | | | | | | | |
| ***A. Phase 1 - Environmental Assessment*** | | | | | | | | | | | | | | | |
| *1* Enviromental Assessment | | | | | | | | | | 65 | 31 | | | $345 | $14,000 |
| | | | | | | | | | | | | | | | $0 |
| ***Subtotal Hours*** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **65** | **31** | **0** | **0** | | |
| ***Subtotal Dollars*** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **0** | **10400** | **3255** | **0** | **0** | **345** | **$14,000** |
| ***Total Phase 1*** | | | | | | | | | | | | | | | **$14,000** |
| | | | | | | | | | | | | | | | |
| ***B. Phase 2 - Basic Services*** | | | | | | | | | | | | | | | |
| *1* Conceptual Phase | 16 | 38 | 12 | 7 | 8 | | | 8 | | | | 2000 | | $322 | $15,000 |
| *2* Preliminary Design Phase | 24 | 49 | 176 | 69 | 25 | | | 44 | 4 | | | 1000 | | $300 | $45,007 |
| *3* Utility Coordination | 2 | 8 | | 8 | | | | 2 | | | | | | | $2,866 |
| *4* Surveying | | | | | | 104 | 102 | | | | | 5000 | | $3,700 | $37,020 |
| *5* Right of Way Phase | | | | | | 16 | | | | | | 2500 | | $1,500 | $6,160 |
| *6* Final Design Phase | 23 | 59 | 176 | 60 | 23 | | | 20 | 8 | 30 | 60 | | 7000 | $638 | $61,047 |
| *7* Bid Phase | 12 | 54 | | | 14 | | | 18 | | | | | | $146 | $13,982 |
| *8* Construction Phase | 34 | 123 | 24 | 2 | 20 | | | 16 | 12 | | | 89500 | | $928 | $123,700 |
| *9* Post-Construction Phase | 1 | 12 | | | | | | | | | | | | $100 | $2,218 |
| | | | | | | | | | | | | | | | |
| ***Subtotal Hours*** | **112** | **343** | **388** | **146** | **90** | **120** | **102** | **108** | **24** | **30** | **60** | **100000** | **7000** | | |
| ***Subtotal Dollars*** | **22176** | **54880** | **34920** | **18980** | **9450** | **16200** | **14280** | **8100** | **2280** | **4800** | **6300** | **100000** | **7000** | **7634** | **$307,000** |
| ***Total Phase 2*** | | | | | | | | | | | | | | | **$307,000** |
| | | | | | | | | | | | | | | | |
| **Total Hours** | **112** | **343** | **388** | **146** | **90** | **120** | **102** | **108** | **24** | **95** | **91** | **100,000** | **7,000** | | **108,619** |
| **Total Fee Amount** | **$22,176** | **$54,880** | **$34,920** | **$18,980** | **$9,450** | **$16,200** | **$14,280** | **$8,100** | **$2,280** | **$15,200** | **$9,555** | **$100,000** | **$7,000** | **$7,979** | **$321,000** |

**Estimated Project Fee** **$321,000**

**Special Provisions to the**
**On-Call Professional Engineering Consulting Services Contract**
**Between City of Joplin and HDR Engineering, Inc.**
**Dated February 22, 2016**

The City of Joplin desires to engage the Engineer on the Wildwood Sanitary Sewer Project (Project). The Project is in part funded using Federal funds and modifications to the contract are required to comply with the funding requirements. The Contract shall be amended as follows:

Delete Paragraph **10. Discrimination** and replace with the following:

> **10. Discrimination**. The Engineer agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Engineer 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 engineer and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations 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 engineer 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.

Insert the following Paragraphs:

> **5.1 Equal Employment Opportunity**. During the performance of this Contract, the Engineer agrees as follows:
>
> a) The Engineer will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, religion, or sex. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, religion, or sex. Such action shall include, but not be limited to, 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 Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.

b) The Engineer will, in all solicitation or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, religion, or sex.

c) The Engineer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

d) In the event of the Engineer's noncompliance with the non-discrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Engineer may be declared ineligible for further Government 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.

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

**5.2 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.

**5.3 Affirmative Action for Handicapped Workers**

a. The Engineer 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 Engineer 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 Engineer 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 Engineer'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 Engineer 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 Engineer 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 Engineer 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 Engineer 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.

**5.4 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.

**5.5 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.

**5.6 Authorized Employees**. Engineer 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. Engineer 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.

**7.1 Interest of Engineer and Employees**. The Engineer covenants that he 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 Engineer further covenants that in the performance of this Contract, no person having any such interest shall be employed.

**7.2 Interest of Members of a City**. No member of the governing body of the City and no other officer, employee, or agent of the City 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 Engineer shall take appropriate steps to assure compliance.

**7.3 Interest of Other Local Public Officials**. No member of the governing body of the locality and no other public official of such locality, 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 Engineer shall take appropriate steps to assure compliance.

**9.4 Copyright**. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Engineer.

**18.1 Reports and Information**. The Engineer, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

**18.2 Records and Audits**. The Engineer 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 expiration of this Contract unless permission to destroy them is granted by the City.

| | | | |
|---|---|---|---|
| CLOSING DATE: | 15-Jul-2016 | DEPT: | Public Works |
| STARTING TIME | 10:00 AM | | |
| CLOSING TIME: | 10:20 AM | BID OPENED BY: | Jeff Oliver, Kim Newhouse |
| Demolition | | LOCATION: | 506 S. Cox Ave |

| COMPANY | BIDS |
|---|---|
| B & D Yardbuilders | $2,765.00 |
| | |
| Big John's | $3,500.00 |
| | |
| Jodan Disposal | $2,299.50 |
| | |
| Nelson's Enterprises | $1,949.00 |
| | |
| Wheelers Excavating | NO BID |







**COUNCIL BILL 2016-366**
**506 S. COX**



City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: August 1, 2016

Item: COUNCIL BILL NO. 2016-366
Originating Department: BUILDING REGULATIONS

Attachments: 1) Council Bill No. 2016- 366
2) Photograph of Property
3) Bid Tabulation

Building Regulations: Brian Wicklund
Planning and Community Development Manager: Troy Bolander
Finance Department: Leslie Haase
City Attorney: Peter C. Edwards
City Manager: Samuel L. Anselm

Recommended Action: Approval of Contract with Nelson Demolition to remove the structures and any remaining debris including foundation and footings located at 506 S. Cox.

Summary: The above listed address was "tagged" as a dangerous building on January 16, 2016. The structure was determined to be dangerous under sub sections of the Dangerous Building Code (Section 26-612, Joplin City Code). On July 1, 2016. An advertisement for bids was published in the Joplin Globe with bids being received on July 15, 2016. At that time bids were received as follows:

| | |
|---|---|
| Big Johns | $ 3,500.00 |
| B & D Yard builders | $ 2,765.00 |
| Jordan Disposal | $ 2,299.50 |
| Nelson Demolition | $ 1,949.00 |

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.

**Recommendation:** City Staff recommends that the demolition contract be awarded to Nelson Demolition for the amount of $ 1,949.00 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.

COUNCIL BILL NO. 2016 – 366 ORDINANCE NO.

AN ORDINANCE approving the contract by and between the City of Joplin and Nelson demolition for the demolition of the structure(s) and clearing of lot area located at 506 S. Cox in the City of Joplin, Missouri, for the amount of One Thousand Nine Hundred Forty-Nine and 00/100 Dollars (1,949.00); 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 Demolition in the amount of One Thousand Nine Hundred Forty-Nine 00/100 Dollars ($1,949.00) is hereby approved for the demolition of the structure(s) and clearing of lot area located at 506 S. Cox.

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 506 S. Cox and legally described as:

ALL OF LOT NUMBERED SEVEN (7) IN TAYLOR'S SUBDIVISION, IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI. ACCORDING TO THE RECORDED PLAT THEROF

Section 3: That the City of Joplin declares that this ordinance an emergency pursuant to Section 2.12 (1) of the Home Rule Charter in that it is an ordinance for the immediate preservation of the public peace, property, health, safety or morals. Specifically, this ordinance approves the award of 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 herby declares that this ordinance shall be in full force and effect from after its passage.

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

_____, 2016, by a _____ vote.

_____ATTEST:
Michael L. Seibert – Mayor

_____
Barbara Hogelin – City Clerk

APPROVED AS TO FORM
:_____
Peter C. Edwards, City Attorney

| | | | |
|---|---|---|---|
| CLOSING DATE: | 15-Jul-2016 | DEPT: | Public Works |
| STARTING TIME | 10:00 AM | | |
| CLOSING TIME: | 10:20 AM | BID OPENED BY: | Jeff Oliver, Kim Newhouse |
| Demolition | | LOCATION: | 315 N. Wall Ave. |

| COMPANY | BIDS |
|---|---|
| B & D Yardbuilders | $4,900.00 |
| | |
| Big John's | $4,500.00 |
| | |
| Jodan Disposal | $3,157.00 |
| | |
| Nelson's Enterprises | $2,749.00 |
| | |
| Wheelers Excavating | NO BID |







COUNCUL BILL 2016-367
315 N. WALL



City of **JOPLIN** City Council Agenda Item

## Requested Council Meeting Date August 1, 2016

## Item: COUNCIL BILL NO. 2016-367
## Originating Department: BUILDING REGULATIONS

Attachments: 1) Council Bill No. 2016- 367
2) Photograph of Property
3) Bid Tabulation

Building Regulations: Brian Wicklund
Planning and Community Development Manager: Troy Bolander
Finance Department: Leslie Haase
City Attorney: Peter C. Edwards
City Manager: Samuel L. Anselm

Recommended Action: Approval of Contract with Nelson Demolition to remove the structures and any remaining debris including foundation and footings located at 315 N. Wall.

Summary: The above listed address was "tagged" as a dangerous building on February 16, 2016. The structure was determined to be dangerous under sub sections of the Dangerous Building Code (Section 26-612, Joplin City Code). On July 1, 2016. An advertisement for bids was published in the Joplin Globe with bids being received on July 15, 2016. At that time bids were received as follows:

| | |
|---|---|
| Big Johns | $ 4,500.00 |
| B & D Yard builders | $ 4,900.00 |
| Jordan Disposal | $ 3,157.50 |
| Nelson Demolition | $ 2,749.00 |

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.

**Recommendation:** City Staff recommends that the demolition contract be awarded to Nelson Demolition for the amount of $ 2,749.00 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.

COUNCIL BILL NO. 2016 – 367 ORDINANCE NO.

AN ORDINANCE approving the contract by and between the City of Joplin and Nelson demolition for the demolition of the structure(s) and clearing of lot area located at 315 N. Wall in the City of Joplin, Missouri, for the amount of Two Thousand Seven Hundred Forty-Nine and 00/100 Dollars (2,749.00); 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 Demolition in the amount of Two Thousand Seven Hundred Forty-Nine 00/100 Dollars ($2,749.00) is hereby approved for the demolition of the structure(s) and clearing of lot area located at 315 N. Wall.

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 315 N. Wall and legally described as:

ALL OF LOT NUMBERED ONE HUNDRED TWO (102) IN WILSON AND HUTTON'S FIRST ADDITION TO THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI. ACCORDING TO THE RECORDED PLAT THEROF.

Section 3: That the City of Joplin declares that this ordinance an emergency pursuant to Section 2.12 (1) of the Home Rule Charter in that it is an ordinance for the immediate preservation of the public peace, property, health, safety or morals. Specifically, this ordinance approves the award of 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 herby declares that this ordinance shall be in full force and effect from after its passage.

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

_____, 2016, by a _____ vote.

_____ATTEST:
Michael L. Seibert – Mayor

_____
Barbara Hogelin – City Clerk

APPROVED AS TO FORM
:_____
Peter C. Edwards, City Attorney

City of Joplin City Council Agenda Item

**REQUESTED COUNCIL MEETING DATE:** August 1, 2016
**ITEM:** Council Bill No. 2016-011 (Re-adoption of Code of Ethics Ordinance)

| | |
|---|---|
| **ORIGINATING DEPARTMENT:** | Legal Department |
| **ATTACHMENTS:** | Council Bill No. 2016-011 |
| **DEPARTMENT HEAD:** | Peter C. Edwards |
| **CITY MANAGER:** | Sam Anselm |
| **CITY CLERK:** | Barbara L. Hogelin |
| **FINANCE DEPARTMENT:** | Leslie Haase |

**INTRODUCTION:**

This Council Bill re-adopts Chapter 2, Administration, of the Joplin City Code, Section 2-107, "Financial interest disclosure", which requires certain officials and employees of the City of Joplin to file Financial Interest Disclosure Statements.

**DISCUSSION:**

Each year by September 15th, it is necessary to re-adopt our Code of Ethics for the Council, and certain City employees in order to "opt out" of the provisions of Section 105.485.2.

A certified copy of this Council Bill will be forwarded to the Missouri Ethics Commission prior to September 15, 2016.

**RECOMMENDATION:**

Staff recommends this Council Bill be placed on First Reading.

PCE:ab
attachment

COUNCIL BILL NO. 2016-011 ORDINANCE NO.

AN ORDINANCE re-adopting Chapter 2, Administration, of the Joplin City Code, Section 2-107, "Financial interest disclosure", requiring certain officials and employees of the City of Joplin to file Financial Interest Disclosure Statements as described herein.

WHEREAS, Missouri Statute Section 105.483, RSMo. (2014), requires certain financial interest disclosures by certain officials and employees of the City of Joplin; and

WHEREAS, the City of Joplin has an Ethics Code for its Council, as codified in Section 2-50, "Code of Ethics", and the Charter of the City of Joplin provides certain ethical mandates and prohibitions for officials and employees of the City of Joplin; and

WHEREAS, pursuant to the provisions of Section 105.485.4, RSMo. (2014), the Council desires to establish its own method of disclosing potential conflicts of interest and substantial interests of its officials and certain employees, thus excluding itself from the provisions of Section 105.485.2, RSMo (2014); and

WHEREAS, on the day of September 8, 2015, the Council of the City of Joplin, Missouri, re-enacted and adopted Section 2-107, "Financial interest disclosure", requiring certain officials and employees of the City of Joplin to file Financial Interest Disclosure Statements as described therein; and,

WHEREAS, the Missouri Ethics Commission requires each affected municipality to re-adopt the Financial Interest Disclosure Ordinance by September 15, 2016.

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

Section 1. That Section 2-107, "Financial interest disclosure" be re-adopted so that it shall continue to read as follows:

"Section 2-107. Financial interest disclosure.

(a) Conflicts of interest.

(1) All elected and appointed officials as well as employees of the City of Joplin shall comply with Section 105.454 of the Missouri Revised Statutes on conflicts of interest as well as any other state law, or ordinance of the City of Joplin governing official conduct.

(2) Any member of the city council who has a "substantial or private interest" in any measure, bill, order or ordinance proposed or pending before the city council, must disclose that interest to the city clerk, and such disclosure shall be recorded in the appropriate journal of the city council. Substantial or private interest is defined as ownership by the individual, his spouse, or his dependent children, whether singularly or collectively, directly or indirectly of:

a. Ten percent (10%) or more of any business entity; or

b. An interest having a value of Ten Thousand Dollars ($10,000.00) or more; or

c. The receipt of a salary, gratuity, or other compensation or remuneration of Five Thousand Dollars ($5,000.00) or more, per year, from an individual, partnership, organization, or association within any calendar year.

(b) Disclosure reports.

(1) Each City Council Person, the City Manager, the City Purchasing Agent, or the Director of Finance, if no such Purchasing Agent is appointed, and the full-time City Attorney, shall disclose the following information by May 1, if any such transaction occurred during the previous calendar year:

a. For such person, and all persons within the first degree of consanguinity or affinity of such person, the date and the identities of the parties to each transaction with a total value in excess of Five Hundred Dollars ($500.00), if any, that such person had with the City of Joplin, other than compensation received as an employee or payment of any tax, fee, or penalty due to the City of Joplin, and other than transfers for no consideration to the City of Joplin;

b. The date and the identities of the parties to each transaction know to the person with a total value in excess of Five Hundred Dollars ($500.00), if any, that any business entity in which such person had a substantial interest, had with the City of Joplin, other than payment of any tax, fee or penalty due to the City of Joplin or transactions involving payment for providing utility service to the City of Joplin, and other than transfers for no consideration to the City of Joplin.

(2) The City Manager, and the City Purchasing Agent, or the Director of Finance if no such purchasing agent is appointed, and the full-time City Attorney, also shall disclose by May 1, for the previous calendar year, the following information:

a. The name and address of each of the employers of such person from whom income of One Thousand Dollars ($1,000.00) or more was received during the year covered by the statement;

b. The name and address of each sole proprietorship
that he owned; the name, address and general nature of the business conducted of each general partnership and joint venture in which he was a partner or co-participant for each partnership or joint venture unless such names and addresses are filed by the partnership or joint venture with the Secretary of State; the name, address and general nature of the business conducted of any closely held corporation or limited partnership in which the person owned ten percent (10%) or more of any class of the outstanding stock or limited partnership units; and the name of any publicly traded corporation or limited partnership that is listed on a regulated stock exchange or automated quotation system in which the person owned two percent (2%) or more of any class of outstanding stock, limited partnership units or other equity interests;

c. The name and address of each corporation for which such person served in the capacity of a director, officer or receiver.

(c) Filing of reports.

(1) The financial interest statements shall be filed at the following times, but no person is required to file more than one financial interest statement in any calendar year:

a. Every person required to file a financial interest statement shall file the statement annually not later than May 1, and the statement shall cover the calendar year ending the immediately preceding December 31; provided that any member of the City Council may supplement the financial interest statement to report additional interests acquired after December 31 of the covered year until the date of filing of the financial interest statement;

b. Each person appointed to office shall file the statement within thirty (30) days of such appointment or employment.

(2) Financial disclosure reports giving the financial information required in subsection (b) shall be filed with the City Clerk's office and the Missouri Ethics Commission. The reports shall be available for public inspection and copying during normal business hours."

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2016.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

**PERFORMANCE AGREEMENT**

**Dated as of August 1, 2016**

**BETWEEN**

**THE CITY OF JOPLIN, MISSOURI**

**AND**

**HEARTLAND PET FOODS MANUFACTURING, INC.**

**PERFORMANCE AGREEMENT**

**THIS PERFORMANCE AGREEMENT**, dated as of August 1, 2016, as from time to time amended and supplemented in accordance with the provisions hereof (this "Agreement"), between the **CITY OF JOPLIN, MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the "City"), and **HEARTLAND PET FOODS MANUFACTURING, INC.,** a Delaware corporation (the "Company").

**RECITALS:**

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), to purchase, construct, extend, improve and equip certain "projects" (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or businesses for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable;

2. Pursuant to the Act, the City Council passed an ordinance (the "Ordinance") on August 15, 2016, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016, in the maximum principal amount of $83,250,000 (the "Bonds"), for the purpose of acquiring, constructing, improving, purchasing, equipping and installing an expansion of an existing dry pet food manufacturing facility on approximately 46 acres of land located at 8101 East 32nd Street in the City (the "Project Site"), including such land and the associated buildings, structures and fixtures (the "Project Improvements") and equipment (the "Project Equipment," with the Project Site, the Project Improvements, and the Project Equipment collectively being the "Project");

3. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture with UMB Bank, N.A. (the "Trustee") for the purpose of issuing and securing the Bonds, as therein provided, and to enter into a Lease Agreement of even date herewith (the "Lease Agreement"), under which the City will acquire, purchase, construct, improve and equip the Project and will lease the Project to the Company, as Company under the Lease Agreement, in consideration of rental payments by the Company which will be sufficient to pay the principal of and interest on the Bonds; and

4. In connection with the foregoing, the City desires to enter into this Agreement with the Company, in consideration of the Company's desire to cause the purchase, construction, improvement, equipping and installation of the Project as more fully described in the Lease Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Company hereby represent, covenant and agree as follows:

## ARTICLE I

## DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** In addition to the words and terms defined in the Recitals, the Indenture and the Lease Agreement, the following words and terms as used herein shall have the following meanings:

**"Additional PILOT Payment"** means an amount (in addition to the PILOT Payments set out in **Section 3.2**) that becomes due upon a failure of the Company to comply with certain covenants, as described in **Section 3.3**.

**"Agreement"** means this Performance Agreement dated as of August 1, 2016, between the City and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

**"Annual Jobs Report"** means the report required to be filed by the Company pursuant to **Section 3.6** hereof in the form of **Exhibit A** hereto.

**"Average County Wage"** means the most recently reported average annual wage (excluding benefits) for the preceding calendar year, for persons employed in the County, as calculated in the Census of Employment and Wages and reported by the Missouri Department of Economic Development. If the Missouri Department of Economic Development does not report such information for a given year, "Average County Wage" shall mean the most recent average annual wage (excluding benefits) for the preceding calendar year for persons employed in the County as reported by the Missouri Department of Economic Development.

**"Chamber"** means the Joplin Area Chamber of Commerce.

**"County"** means Jasper County, Missouri.

**"Event of Default"** means any Event of Default as provided in **Section 6.1** hereof.

**"Exemption"** has the meaning given in **Section 3.1** hereof.

**"Indenture"** means the Trust Indenture executed by the City in connection with the issuance of the Bonds.

**"Job"** means a full-time equivalent employment position of the Company created on or after August 1, 2016 of not less than 35 hours per week at the Project Site (provided that part time positions can be aggregated to equal a full time equivalent position, i.e. two .50 full-time equivalent employment positions equals one Job), which includes employee benefits offered by the Company to similarly situated employees and all such Jobs, when averaged together, pay an average wage equivalent (when aggregated to a full time basis) equal to or greater than the current Average County Wage. Positions filled by workers who are not directly employed by the Company do not qualify as "Jobs" for purposes of this definition. Accordingly, Jobs may be full time or part time. Jobs may pay more or less than Average County Wage, provided all Jobs, when averaged together, equal or exceed the Average County Wage.

**"Lease Agreement"** means the Lease Agreement between the City and the Company dated as of the date hereof.

**"PILOT Payments"** means the payments in lieu of taxes provided for in **Section 3.2** hereof and shown on **Exhibit B** hereto.

**"Project"** means, collectively, the Project Site, the Project Improvements and the Project Equipment and all additions, modifications, improvements, replacements and substitutions made to the Project pursuant to the Lease Agreement as they may at any time exist.

**"Project Costs"** means all costs of acquiring, purchasing, equipping, constructing and installing the Project Improvements and the Project Equipment.

**"Project Equipment"** has the meaning given in the Lease Agreement.

**"Project Improvements"** has the meaning given in the Lease Agreement.

**"Project Site"** means the land upon which the Project Improvements and Project Equipment will be situated, as described in the Lease Agreement.

**"Property Taxes"** has the meaning given in **Section 3.1** hereof.

**"Required Number of Jobs"** means 175 Jobs, including 130 existing Jobs and 45 new Jobs that the Company commits to providing at the Project Site as part of this Agreement. The Company commits to creating at least 45 new Jobs at the Project by September 30, 2019 and maintaining a total of 175 Jobs at the Project thereafter for the term of this Agreement.

**"Taxes Otherwise Due"** means, for any given calendar year, the ad valorem property taxes that would otherwise have been due in such year on the Project if the Project were not exempt by virtue of the Exemption, as calculated by applying the ad valorem tax rates assessed by all local governments or taxing districts for such calendar year to the assessed valuation (determined by the Assessor of the County) that would have been attributable to the Project for such calendar year if the City did not hold title to such property.

**"Test Date"** means September 30 of each year, beginning on September 30, 2020, and ending on September 30, 2027.

**"Trustee"** means UMB Bank, N.A., as trustee under the Indenture.

## ARTICLE II

## ISSUANCE OF BONDS

**Section 2.1. Issuance of the Bonds.** As described herein, the City will issue the Bonds under the Act for the purpose of paying Project Costs. In connection with the issuance of the Bonds and the payment of Project Costs from the proceeds of the Bonds, the City will acquire the fee simple interest in the Project Site at the time of the issuance of the Bonds and will acquire title to the Project Improvements and the Project Equipment as acquired and constructed.

## ARTICLE III

## PROPERTY TAX EXEMPTION; PILOT PAYMENTS

**Section 3.1. Property Tax Exemption.** So long as the City owns the Project, the Project will be exempt from all ad valorem taxes assessed by all local governments and taxing districts (collectively "Property Taxes") on real and personal property (the "Exemption").

**Section 3.2. Payments in Lieu of Taxes.** The City and the Company covenant and agree that the Project purchased with the proceeds of the Bonds is exempt from Property Taxes by reason of the City's ownership thereof. The Company will annually pay to the City (or to the County if so directed by the City) payments in-lieu-of tax (the "PILOT Payments") with respect to the Project for each year that any portion of the Project is owned by the City in the amounts for each year as set out on **Exhibit B** hereto (except as adjusted as described in **Section 3.3(g)** herein).

Each PILOT Payment shall be paid no later than December 1st of each year. In the event the PILOT Payments are not paid by December 1st of each year, the PILOT Payments shall bear interest commencing December 2nd at the rate of 5% per annum until paid. Each PILOT Payment shall be paid to the City at the address set forth in **Section 1403** of the Indenture.

**Section 3.3. Additional PILOT Payments; Adjustments to PILOT Payments.**

(a) The Company covenants to complete the Project Improvements and the installation of the Project Equipment by September 1, 2018. The Company also covenants to operate the Project as a commercial facility and to maintain the Required Number of Jobs at the Project Site for so long as this Agreement is in effect.

(b) If the Company fails to complete the construction of the Project Improvements and the installation of the Project Equipment by September 1, 2018, then in addition to any other remedies that may be available to the City under the Lease Agreement or hereunder, the Company shall make Additional PILOT Payments in an amount equal to **50%** of difference between the PILOT Payments and the Taxes Otherwise Due during the year in which the failure occurs and any subsequent year during which such failure persists and during which the Exemption applies by virtue of City ownership.

(c) In the event the Company fails to spend at least $66,000,000 (approximately 80% of anticipated Project Costs) on the Project on or before September 1, 2018 (as certified to the Trustee and the City through requisition certificates submitted to the Trustee in accordance with the Lease Agreement), the Company shall make Additional PILOT Payments in an amount equal to the Investment Deficiency Percentage (calculated as shown below) multiplied by the difference between the PILOT Payments and the Taxes Otherwise Due during the year in which the failure occurs and any subsequent year during which such failure persists and during which the Exemption applies by virtue of City ownership. The Investment Deficiency Percentage shall be calculated, beginning at zero percent (0%) for compliance, in accordance with the following formula, with the result expressed as a percentage:

Investment Deficiency Percentage = (1 – (certified Project Costs / $66,000,000)) x 100.

(d) If for any reason (unless the Project has been subject to a casualty and the Company is rebuilding the Project) the Company completely vacates, abandons and completely ceases operations and fails to occupy any portion of the Project Site for a period exceeding 180 days during the term of this

Agreement or exercise its option to purchase the Project under the Lease Agreement within 180 days after such total vacancy, abandonment, cessation of operations or failure to occupy, the Company shall make Additional PILOT Payments in an amount equal to the difference between the PILOT Payments and the Taxes Otherwise Due during the year in which such vacation, abandonment, or cessation occurs and any subsequent year during which such vacation, abandonment, or cessation persists and during which the Exemption applies by virtue of City ownership.

(e) In the event the Company fails to maintain the Required Number of Jobs at the Project Site, measured by determining the highest actual number of Jobs during the 90-day period ending on each Test Date, the Company shall make Additional PILOT Payments in an amount equal to the Jobs Deficiency Percentage (calculated as shown below) multiplied by the difference between the PILOT Payments and the Taxes Otherwise Due during the year in which the failure occurs and any subsequent year during which such failure persists and during which the Exemption applies by virtue of City ownership. The Jobs Deficiency Percentage shall be calculated, beginning at zero percent (0%) for compliance, in accordance with the following formula, with the result expressed as a percentage:

Jobs Deficiency Percentage = $(1 – (a / b)) \times 100$, where

a = Highest number of Jobs during the 90 day period ending on Test Date, and
b = Required Number of Jobs for the Test Date.

Notwithstanding the foregoing, upon recommendation of the Chamber and certification by the Company that unforeseeable business conditions have caused the Company to employ fewer Jobs than projected at the time this Agreement was executed, the City Council may by ordinance waive the Additional PILOT Payments, or any portion thereof, otherwise required by this subsection.

(f) Additional PILOT Payments shall be due on December 1 of the year in which the failure giving rise to the Additional PILOT Payment occurs and on December 1 of each subsequent year during any portion of which such failure persists. In no event shall the sum of the Additional PILOT Payments payable under this Section, together with the PILOT Payments pursuant to **Section 3.2** hereof, for any given tax year exceed 100% of the Taxes Otherwise Due.

(g) In the case of any partial or complete purchase of the Project Equipment by the Company in accordance with **Section 11.1(b)** of the Lease Agreement, the PILOT Payments shown on **Exhibit B** for years 2025, 2026 and 2027 shall be reduced by the amount calculated as follows (provided that the reduction amount shall not exceed $53,231.39 in any single year):

reduction amount = $(a / b) \times \$53,231.39$, where

a = the total Project Costs paid with respect to the Project Equipment so purchased under **Section 4.4** of the Lease Agreement, and
b = the total of all Project Costs paid under **Section 4.4** of the Lease Agreement with respect to all Project Equipment.

**Section 3.4. Obligation to Effect Tax Abatement.** The City shall take all actions, subject only to limitations imposed by applicable law, to obtain and/or maintain in effect the Exemption, including any timely filing required with any governmental authorities ("Abatement Obligations"); provided that the City shall not be liable for any failure of any other governmental taxing authority to recognize the exemption provided herein. Notwithstanding the forgoing, the City shall only be required to instigate litigation to effect the Exemption if the Company agrees in writing that the Company shall be

responsible for the reasonable costs of such litigation actually incurred by the City. In the event that the Exemption is not recognized by any taxing authority, the amount paid to the City for PILOT Payments and Additional PILOT Payments shall be reduced by the amount of Property Taxes actually paid, if any.

The City covenants that it will not act or fail to act in a manner that may cause or induce the Exemption to not be recognized. The City covenants that it will not act or fail to act in a manner that may cause or induce any levy or assessment of Property Taxes on the Project. In the event such a levy or assessment of Property Taxes should occur, the City shall, at the Company's request and at the Company's expense, cooperate with the Company in all reasonable ways to prevent and/or remove any levy or assessment of Property Taxes against the Project. Nothing herein shall prevent the Company from paying any such levy or assessment of Property Taxes under protest.

**Section 3.5. Other Property Taxes in Connection with the Project; Credits.** The Exemption provided by the City's ownership of the Project shall apply to all interests in the Project during the period they are owned by the City. If any Property Taxes are levied by or on behalf of any taxing jurisdiction against any interest in the Project during the period the City owns the Project (including, without limitation, any ad valorem taxes levied against the Company's rights in the Lease Agreement), the amount of Property Tax payments related to such levy or levies that are paid by Company and received by the City, the County, or any other Missouri taxing jurisdiction shall be credited against and reduce on a *pro rata* basis the amount payable by the Company to the City for PILOT Payments and Additional PILOT Payments pursuant to this Agreement. The Company shall be responsible for any taxes related to any interest in the improvements or equipment on the Project Site which the Company owns in its own name or possession of which is granted to the Company other than pursuant to the Lease Agreement. There shall be no reduction in PILOT Payments or Additional PILOT Payments for any sales taxes imposed by any governmental authority, including the Missouri Department of Revenue, in connection with the Company's acquisition of construction materials for the Project Improvements or the Company's acquisition of the Project Equipment.

**Section 3.6. Annual Jobs Report.** On or before November 15th after each Test Date, the Company shall provide to the City and the Chamber a completed Annual Jobs Report, in the form attached hereto as **Exhibit A**. A failure to provide any Annual Jobs Report in a timely fashion shall result in the application of a zero value for the "Highest number of Jobs during the 90 day period ending on Test Date" variable for purposes of **Section 3.3(e)** hereof for the year in which such Annual Jobs Report is due.

**Section 3.7. No Abatement on Special Assessments, Licenses or Fees.** The City and the Company hereby agree that the Exemption described in this Agreement shall not apply to special assessments except to the extent that such are Property Taxes or are levied in lieu of Property Taxes ("Special Assessments") and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project. The Company hereby agrees to make payments with respect to all Special Assessments, licenses and fees which would otherwise be due with respect to the Project if the Project were not owned by the City. Notwithstanding the foregoing, nothing herein shall waive the Company's right to any notice required under law or limit the ability of the Company from protesting any Special Assessments, licenses or fees.

## ARTICLE IV

## COVENANTS, REPRESENTATIONS AND AGREEMENTS

**Section 4.1. Inspection.** The City may conduct such periodic inspections of the Project as may be generally provided in the City's code. In addition, the Company agrees that the City and its duly authorized agents may at reasonable times (during business hours but without disruption to the business), subject to at least two (2) business days' advance written notice and in observance of the Company's usual business proprietary, safety and security requirements, to enter upon the Project Site to examine and inspect the Project and the records of the Company that demonstrate compliance with this Agreement.

**Section 4.2. Representations and Warranties.**

(a) The Company represents that as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:

(1) The Company is a corporation duly organized and existing under the laws of the State of Delaware, has power and authority to own its properties (and interests therein) and carry on its business as now being conducted, and is duly qualified to do such business in the State of Missouri and wherever else such qualification is required;

(2) The Company has the right, power and authority to enter into, execute, deliver and perform its duties and obligations under this Agreement;

(3) The execution, delivery and performance by the Company of this Agreement has been duly authorized by all necessary action, and does not violate the articles of incorporation or bylaws of the Company, as the same may be amended and supplemented, or to the best of the Company's knowledge, any applicable provision of law, nor does it constitute a breach of or default under or require any consent under any agreement, instrument or document to which the Company is now a party or by which the Company is now or may become bound;

(4) To the best of the Company's knowledge, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Company that would impair its ability to enter into or perform its obligations under this Agreement;

(5) The Company has obtained (or prior to the applicable time required will obtain) and will maintain all government permits, certificates and consents (including without limitation appropriate environmental approvals) necessary to conduct its business and to complete the Project;

(6) To the best of the Company's knowledge, the Project is and will be in material compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project, including environmental laws, subject to all applicable rights of the Company to contest the same; and

(7) The Project will be completed by the Company in a manner that is consistent with the description of the Project herein and in the Lease Agreement.

(b) The City represents that as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:

(1) The City is a constitutional charter city duly organized and validly existing under the laws of the State of Missouri;

(2) The execution, delivery and performance by the City of this Agreement has been duly authorized by all necessary City actions;

(3) The City has the right, power and authority to enter into, execute, deliver and perform its duties and obligations under this Agreement; and

(4) To the best of the City's knowledge, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the City that would impair its ability to enter into or perform its obligations under this Agreement.

**Section 4.3. Survival of Covenants.** All warranties, representations, covenants and agreements of the Company contained herein shall survive termination of this Agreement for any reason.

**Section 4.4. Indemnification of City.** The Company shall indemnify and defend the City to insure that the City is held harmless from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Project during the term of the Lease Agreement. This Section shall not apply to negligence or willful misconduct of the City or its officers, employees or agents or any breach of this Agreement by the City.

**Section 4.5. Sales Tax Exemptions.** In order to obtain an exemption from state and local sales taxes, the City will provide a project exemption certificate to the Company in connection with the Company's acquisition of the construction materials for the Project Improvements. The project exemption certificate shall not be used by the Company in the acquisition of the Project Equipment.

## ARTICLE V

## SALE AND ASSIGNMENT

The benefits granted by the City to the Company pursuant to this Agreement shall belong solely to the Company, and such benefits shall not be transferred, assigned, pledged or in any other manner hypothecated, except as provided in **Section 13.1** of the Lease Agreement.

## ARTICLE VI

## DEFAULT AND REMEDIES

**Section 6.1. Events of Default.** If any one or more of the following events occurs and is continuing, it is hereby defined as and declared to be and to constitute an Event of Default hereunder:

(a) The Company fails to make any PILOT Payment or Additional PILOT Payment required to be paid hereunder, and such failure continues for 10 business days following written notice to the Company from the City of such failure;

(b) The Company fails to perform any of its material obligations hereunder for a period of 30 days (or such longer period as the City may agree in writing) following written notice to the Company from the City of such failure, or if such failure is not subject to cure within such 30 days after such notice, the Company fails to initiate action to cure the default within such 30 days after such notice and fails to pursue such action diligently; or

(c) Any representation of the Company contained herein proves to be materially false or erroneous and is not corrected or brought into compliance within 30 days (or such longer period as the City may agree in writing) after the City has given written notice to the Company specifying the false or erroneous representation and requiring it to be remedied, or if such matter is not subject to cure within such 30 days after such notice, the Company fails to initiate action to cure the default within such 30 days after such notice and fails to pursue such action diligently.

**Section 6.2. Remedies on Default.** Any Event of Default referred to in **Section 6.1** hereof shall also constitute an Event of Default under the Lease Agreement, affording the City the remedies specified therein.

**Section 6.3. Interest on Late Payments.** Any amounts due hereunder which are not paid when due shall bear interest at the interest rate of 5% per annum from the date such payment was first due.

**Section 6.4. Enforcement.** In addition to the remedies specified in **Section 6.2**, upon the occurrence of an Event of Default, the City or any taxing jurisdictions that would benefit from the PILOT Payments and Additional PILOT Payments provided for in this Agreement may bring an action for specific performance to enforce such payments. In the event of litigation pertaining to the enforcement of this Agreement, the losing party shall pay all costs of litigation, including reasonable attorneys' fees.

## ARTICLE VII

## TERM OF AGREEMENT

**Section 7.1. Term of Agreement.** This Agreement shall become effective upon execution by the parties hereto and shall terminate upon the earliest to occur of the following:

(a) the payment in full of the Bonds (or any bonds issued to refund the Bonds) and the payment of all amounts due under this Agreement;

(b) the occurrence and continuance of an Event of Default and the subsequent termination of this Agreement pursuant to the provisions of the Lease Agreement and this Agreement;

(c) the expiration of the Lease Term set forth in **Section 3.2** of the Lease Agreement; or

(d) the exercise by the Company of its option to purchase.

**Section 7.2. Payments in Last Year.** The foregoing provisions of **Section 7.1** shall not relieve the Company of its obligation to make any PILOT Payment or Additional PILOT Payment owing during the year in which the Bonds are paid, to the extent the Company receives the tax abatement contemplated for that year.

## ARTICLE VIII

## MISCELLANEOUS PROVISIONS

**Section 8.1. Mutual Assistance**. The City and the Company agree to take such actions as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**Section 8.2. Notices**. All notices, certificates or other communications required or desired to be given hereunder shall be given in the manner specified in the Lease Agreement.

**Section 8.3. Severability; Effect of Invalidity.** If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, such invalid or unenforceable term will be deemed severed from this Agreement and the validity and enforceability of the other provisions hereof shall not be affected thereby (except in the event that the Exemption is determined to be invalid or unenforceable, then the provisions requiring any PILOT Payments or Additional PILOT Payments shall also be deemed invalid and unenforceable). If this Agreement, or any portion hereof, or any agreements related hereto, are determined to be invalid, the City may not recover or recapture any taxes subject to abatement as provided herein or benefits accruing to the Company prior to such determination if the Company has paid taxes in an amount at least equal to the PILOT Payments and Additional PILOT Payments due under this Agreement.

**Section 8.4. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

**Section 8.5. Execution in Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 8.6. Waiver.** The City and the Company acknowledge and agree that the amounts payable hereunder shall constitute payments due the City under the Lease Agreement executed in connection with the Bonds. The Company shall not be entitled to any extension of payment of such amounts as a result of a filing by or against the Company or any affiliate in any bankruptcy court.

**Section 8.7. Entire Agreement.** This Agreement, together with the Lease Agreement, the Indenture and any other documents entered into of even date herewith in connection with the issuance of the Bonds, constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior agreements, representations, negotiations and understandings, both written and oral, between the City and the Company with respect to the subject matter hereof.

**Section 8.8. Electronic Storage.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 8.9. Employee Verification.** The Company will comply with and satisfy the requirements of Section 285.530.2, RSMo., which requires (1) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and

participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Company shall provide such affidavits and documentation to the City on or before December 1 of each year during the term of this Agreement, beginning December 1, 2016.

*[remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

**CITY OF JOPLIN, MISSOURI**

By: _____
Name: Michael Seibert
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Barbara Hogelin
Title: City Clerk

Approved as to form:

_____
City Attorney

**HEARTLAND PET FOODS MANUFACTURING, INC.**,
a Delaware corporation

By: _____
Name:
Title:

**EXHIBIT A**

**ANNUAL JOBS REPORT – 2016 EXPANSION PROJECT**

To be filed with the City and the Chamber on or before November 15 of each year during the term of the Lease Agreement:

| | |
|---|---|
| Business Name<br><br>**HEARTLAND PET FOODS MANUFACTURING, INC.** | MO. Tax I.D. Number |
| County, State, Zip Code | Federal Employer I.D. Number (FEIN) |
| Highest number of Jobs during the 90 day period ending on Test Date | "Test Date"<br>(during the Reporting Period) |
| PILOT Payment Due Per Section 3.3 (if applicable) | Report Due |

**The undersigned, duly authorized representative of Heartland Pet Foods Manufacturing, Inc., hereby states and certifies that the information set forth in this report is true and correct.**

| | |
|---|---|
| Authorized Signature | Date |
| Contact Name | Phone Number |

For questions, please contact Rob O'Brian at (417) 624-4150 or email at rob@joplincc.com.

Please send form to:

Rob O'Brian
President of Joplin Area Chamber of Commerce
320 East 4th Street
Joplin, Missouri 64801

**EXHIBIT B**

**SCHEDULE OF PILOT PAYMENTS**

| Year | PILOT Payment |
|---|---|
| 2016 | $1,868.68 |
| 2017 | 4,162.01 |
| 2018 | 4,162.01 |
| 2019 | 4,245.26 |
| 2020 | 4,245.26 |
| 2021 | 4,330.16 |
| 2022 | 4,330.16 |
| 2023 | 4,416.75 |
| 2024 | 116,488.50 |
| 2025 | 169,808.22 |
| 2026 | 169,808.22 |
| 2027 | 169,898.33 |

**NOTICE TO TAXING JURISDICTIONS ON ATTACHED LIST**

**Re: Notice of Public Hearing – Industrial Development Project**

On behalf of the City of Joplin, Missouri (the "City"), please find enclosed a copy of the proposed Plan for Industrial Development Project for the Heartland Pet Food Manufacturing Project (the "Plan"), which also contains a Cost Benefit Analysis on the affected taxing jurisdictions.

The City anticipates considering the first reading of an ordinance to approve the Plan following a public hearing on the Plan at a meeting on Monday, August 1, 2016 at 6:00 PM at City Hall located at 602 S. Main St., Joplin, MO 64801.

The City invites all affected taxing districts to attend the public hearing and to make oral comments on the proposed Plan to the City or to provide written comments to the City on the Plan prior to the hearing. All comments of the taxing districts will be fairly and duly considered by the City.

A copy of the Plan and Cost Benefit Analysis for the proposed project is enclosed and also will be on file in the office of the City Clerk and will be available for public inspection during normal business hours.

Any questions should be directed to Rob O'Brian, President of The Joplin Area Chamber of Commerce, at (417) 624-4150.

Dated: July 11, 2016

**CITY OF JOPLIN, MISSOURI**
602 S. Main St.
Joplin, MO 64801

TAX ENTITY MAILING LIST

| | |
|---|---|
| **Jasper County, Missouri**<br>Presiding Commissioner<br>Jasper County Courthouse<br>302 South Main Street<br>Carthage, MO 64836 | **Jasper County Assessor**<br>Jasper County Courthouse<br>302 S. Main, Room 201B<br>Carthage, MO 64836 |
| **Jasper County Collector**<br>Jasper County Courthouse<br>302 S. Main-Room 107<br>Carthage, MO 64836 | **Jasper County Mental Health Fund Board**<br>Attn: Mary Kyser<br>P. 0. Box 2526<br>Joplin, MO 64803 |
| **City of Joplin, Missouri**<br>City Clerk<br>602 S. Main St.<br>Joplin, MO 64801 | **Jasper County Sheltered Facilities Board**<br>Attn: Alecia Archer<br>2000 Maiden Lane<br>Joplin, MO 64804 |
| **Joplin Schools Board of Education**<br>Attn: Superintendent<br>310 West 8th Street<br>Joplin, MO 64801 | **Joplin Special Road District**<br>1016 Picher<br>Joplin, MO 64801 |
| **Common Road District**<br>Attn: Robert Burris<br>125 North River<br>Carthage, MO 64836 | **Duenweg Fire Protection District**<br>P. 0. Box 488<br>Duenweg, MO 64841 |
| **Missouri Department of Revenue**<br>Tax Administration Bureau<br>Harry S Truman State Office Building<br>301 West High Street<br>Jefferson City MO 65101<br>1-573-751-4249 | **Department of Economic Development**<br>Nathan Potter, Development Finance<br>Missouri Department of Economic Development<br>301 West High<br>Post Office Box 118 – Room 770<br>Jefferson City MO 65102<br>1-573-751-4962 |
| **Missouri Department of Economic Development**<br>Mike Downing, Director<br>Post Office Box 118 – Room 770<br>Jefferson City MO 65102<br>1-573-751-4962 | **Missouri Department of Revenue**<br>County Tax Section<br>State Blind Pension Fund<br>Harry S Truman State Office Building<br>*P.O. Box 453*<br>301 West High Street<br>Jefferson City MO 65101 |

**BEFORE THE**

**CITY COUNCIL**

**OF THE**

**CITY OF JOPLIN, MISSOURI**

# PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT (HEARTLAND PET FOOD MANUFACTURING PROJECT)

**August 1, 2016**

**PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT**

---

**TO: THE CITY COUNCIL OF THE CITY OF JOPLIN, MISSOURI**

A plan for an industrial development project as described herein has been proposed to the City of Joplin, Missouri (the "City"), for approval, to be carried out pursuant to Article VI, Section 27(b) of the Missouri Constitution, as amended, Sections 100.010 to 100.200, inclusive, of the Missouri Revised Statutes, as amended, and in support of said application the following is submitted:

**1. Description of the Project**. The Project consists of acquiring, constructing, improving purchasing, equipping and installing an expansion of an existing dry pet food manufacturing facility on approximately 46 acres of land in the City, including the land and associated buildings, structures, fixtures and equipment (the "Project"). The Project is designed to be used for the manufacturing, packaging and distributing of dry pet food products. The Project will be located at 8101 East 32nd Street, Joplin, MO 64804 and will be operated for commercial purposes.

**2. Estimate of the Cost of the Project.** The total cost of the Project is estimated to be $83,250,000 (approximately $43,250,000 for land and real property improvements and approximately $40,000,000 for personal property consisting of manufacturing equipment). The Project involves the acquisition of an existing manufacturing facility (the "Existing Building") and site (the "South Parcel"), the purchase of approximately 12.3 additional acres of real property (the "North Parcel") located immediately to the north of the existing site, and extending the manufacturing facility by adding an approximately 100,000 square foot extension to the existing facility (the "Building Expansion"). The manufacturing equipment to be acquired (the "Personal Property") will be installed in the expanded facility.

**3. Source of Funds to be Expended for the Project.** The source of funds to be expended for the Project will be the proceeds of $83,250,000 estimated aggregate principal amount of taxable industrial revenue bonds in one or more series (collectively, the "Bonds"), to be issued by the City for the Project and to pay costs of issuing the Bonds.

**4. Statement of the Terms Upon Which the Project is to be Leased and Otherwise Disposed of by the City.** The City will take title to the land underlying the Project. The Project will be leased by the City (with an option to purchase the City's interest in the Project) to a company (the "Company"). The lease payments collectively will equal the principal and interest on the Bonds plus certain payments in lieu of taxes, as applicable. The Bonds will be payable solely from the revenues derived by the City from the lease to the Company or other disposition of the Project and the Bonds will not be an indebtedness or general obligation, debt or liability of the City.

**5. Bond Purchase Arrangements.** The Bonds will be offered at a public sale in accordance with the City's charter. It is anticipated that the Company or an affiliate or a related entity will purchase the Bonds in the estimated aggregate principal amount of $83,250,000.

**6. Affected School District, Community College District, County and City.** The Joplin R-VIII School District of Jasper County, Missouri; the City; and Jasper County, Missouri, will be affected by the Project as well as the other taxing jurisdictions shown on the attached Cost Benefit Analysis. There is no community college district affected by the Project.

**7.** **Equalized Assessed Valuation.** The most recent equalized assessed valuation of the real property underlying the Project is $34,164. The Existing Building has no equalized assessed valuation because the City has granted 100% tax abatement to improvements located on the South Parcel as part of Enhanced Enterprise Zone incentives. The most recent equalized assessed valuation of the Personal Property to be included in the Project is $-0-. The total equalized assessed valuation of the real property and improvements included in the Project after construction is estimated at $1,315,231 (the Existing Building is not included as it will continue to be subject to 100% tax abatement under the Enhanced Enterprise Zone incentives at the time of Project completion). The estimated total equalized assessed valuation of the personal property to be included in the Project is $10,297,084.

**8.** **Cost/Benefit Analysis.** Attached hereto as **Exhibit A** is the Cost Benefit Analysis for the affected school district, Jasper County, the City and the other affected taxing jurisdictions, which assumes a maximum total period of 10 years of tax abatement from the first year in which Building Expansion improvements will be subject to taxation and a maximum total period of 7 years of tax abatement from the first year in which the newly acquired Personal Property will be subject to taxation.

**9.** **Payments in Lieu of Taxes.** The Company will agree to make payments in lieu of taxes during each year in which title to the Project is held by the City. The amounts shown below represent the value of such payments in lieu of taxes, subject to the option of the Company to purchase portions of the Personal Property from the City at any time during the abatement period and return such Personal Property to the tax rolls, in which case the payments in lieu of taxes will be reduced on a pro rata basis corresponding to the value of the Personal Property so purchased. The payments in lieu of taxes represent the value of taxes that would have been due on the following portions of the Project if title to the Project were not conveyed to the City: (1) the underlying South Parcel and North Parcel real property, (2) the Existing Building after the Enhanced Enterprise Zone tax abatement terminates on December 31, 2023, and (3) the Personal Property after seven years of abatement (starting with tax year 2025).

| Year | Payment in Lieu of Taxes |
|---|---|
| 2016 | $1,868.68 |
| 2017 | 4,162.01 |
| 2018 | 4,162.01 |
| 2019 | 4,245.26 |
| 2020 | 4,245.26 |
| 2021 | 4,330.16 |
| 2022 | 4,330.16 |
| 2023 | 4,416.75 |
| 2024 | 116,488.50 |
| 2025 | 169,808.22 |
| 2026 | 169,808.22 |
| 2027 | 169,898.33 |

**10.** **Sales Tax Exemption on Construction Materials.** Qualified building materials purchased for the construction of the Building Expansion are expected to be exempt from sales tax pursuant to the provisions of Section 144.062 of the Revised Statutes of Missouri and the underlying bond documents upon delivery of a project exemption certificate by the City to the Company. For purposes of determining the impact of the sales tax exemption of the qualified building materials on the affected taxing jurisdictions, it was assumed that: (1) the sales tax levies shown below will remain constant through the construction period; (2) $11,550,000 will be spent on qualified construction materials purchased in the State of Missouri, and (3) $5,775,000 will be spent on qualified construction materials purchased in Jasper County, all of which $5,775,000 will be purchased in the City. Please note that any

variance in these assumptions will alter the fiscal impact of the sales tax exemption on the affected taxing jurisdictions.

Based on the assumptions set forth above, the fiscal impact on the affected taxing jurisdictions of the sales tax exemption on qualified building materials is as follows:

| | **Estimated Sales Tax Revenues Subject to Exemption** |
|---|---|
| State of Missouri (4.225%) | $487,988 |
| City of Joplin | |
| General Revenue (1.0%) | 57,750 |
| Capital Improvement (0.375%) | 21,656 |
| Public Safety (0.5%) | 28,875 |
| Park & Stormwater (0.25%) | 14,438 |
| Transportation (0.5%) | 28,875 |
| Jasper County | |
| General Revenue (0.375%) | 21,656 |
| General - Bridge (0.25%) | 14,438 |
| Emergency Services (0.1%) | 5,775 |
| Law Enforcement (0.25%) | 14,438 |
| Total Value of Exemption | $695,889 |

Additionally, the Company anticipates that all or a portion of the Personal Property to be included in the Project will be exempt from sales tax pursuant to the provisions of Section 144.030 of the Revised Statutes of Missouri as manufacturing equipment.

* * *

**EXHIBIT A**

**COST/BENEFIT ANALYSIS**

The accompanying spreadsheet shows the detailed cost/benefit amounts of the proposed Project. It assumes a fixed schedule of payments in lieu of taxes for real and personal property taxes through tax year 2027 for the real and personal property to be included in the Project, subject to the option of the Company to purchase portions of the Personal Property from the City at any time during the abatement period and return such Personal Property to the tax rolls, in which case the payments in lieu of taxes will be reduced on a pro rata basis corresponding to the value of the Personal Property so purchased.

The Personal Property is assumed to be depreciated over a 7 year period. The depreciated value of personal property is based on depreciation schedules designated by Section 137.122 of the Revised Statutes of Missouri for such property.

The 2015 ad valorem tax levy rates were utilized for all taxing jurisdictions. Amounts shown as payments in lieu of taxes attributable to any particular taxing jurisdiction are subject to change based on the then-current levy rates of all relevant taxing jurisdictions.

**City of Joplin, Missouri**
**(Heartland Pet Food Manufacturing Project)**

COST BENEFIT ANALYSIS
PLAN FOR INDUSTRIAL DEVELOPMENT PROJECT

GILMORE BELL
GILMORE & BELL, P.C.

## Project Assumptions

- Initial year taxes assessed on North and South Parcels (underlying real estate) 2016
- Initial year taxes assessed on Building Expansion and Personal Property 2018
- Appraised value of North Parcel - 2016 (Agricultural) $ 9,367
- Appraised value of North Parcel - 2017 (Commercial, reassessed) $ 125,460
- Appraised value of South Parcel - 2016 (Commercial) $ 103,250
- Appraised value of new equipment ("Personal Property") $ 34,600,000
- Bi-annual growth rate of appraised value of real property (underlying real estate only) 2.0%
- Assessed value as a percentage of appraised value (real property) 32.0%
- Assessed value as a percentage of appraised value (personal property) 33.33%
- Terms of abatement (abatement begins in tax year 2018):

  Real property improvements (Building Expansion)
  Years 1 to 10 100%
  Personal Property
  Years 1 to 7 100%
  Years 8 to 10 0%

- Personal property is depreciated using the following 7 year recovery period schedule:

| Year | Recovery Period in Years | | | | | |
|---|---|---|---|---|---|---|
| | 3 | 5 | 7 | 10 | 15 | 20 |
| **0** | 100.00% | 100.00% | 100.00% | 100.00% | 100.00% | 100.00% |
| **1** | 75.00% | 85.00% | 89.29% | 92.50% | 95.00% | 96.25% |
| **2** | 37.50% | 59.50% | 70.16% | 78.62% | 85.50% | 89.03% |
| **3** | 12.50% | 41.65% | 55.13% | 66.83% | 76.95% | 82.35% |
| **4** | 5.00% | 24.99% | 42.88% | 56.81% | 69.25% | 76.18% |
| **5** | 5.00% | 10.00% | 30.63% | 48.07% | 62.32% | 70.46% |
| **6** | 5.00% | 10.00% | 18.38% | 39.33% | 56.09% | 65.18% |
| **7** | 5.00% | 10.00% | 10.00% | 30.59% | 50.19% | 60.29% |
| **8** | 5.00% | 10.00% | 10.00% | 21.85% | 44.29% | 55.77% |
| **9** | 5.00% | 10.00% | 10.00% | 15.00% | 38.38% | 51.31% |
| **10** | 5.00% | 10.00% | 10.00% | 15.00% | 32.48% | 46.85% |
| **11** | 5.00% | 10.00% | 10.00% | 15.00% | 26.57% | 42.38% |
| **12** | 5.00% | 10.00% | 10.00% | 15.00% | 20.67% | 37.92% |
| **13** | 5.00% | 10.00% | 10.00% | 15.00% | 15.00% | 33.46% |
| **14** | 5.00% | 10.00% | 10.00% | 15.00% | 15.00% | 29.00% |
| **15** | 5.00% | 10.00% | 10.00% | 15.00% | 15.00% | 24.54% |
| **16** | 5.00% | 10.00% | 10.00% | 15.00% | 15.00% | 20.08% |
| **17** | 5.00% | 10.00% | 10.00% | 15.00% | 15.00% | 20.00% |

## Summary of Chapter 100 Tax Impact Analysis
## (Real and Personal Property)

| Tax Distribution | Tax Rate | Tax Revenue for Real and Personal Property Without Chapter 100 Abatement | Revenue Generated from PILOT Payments | Value of Chapter 100 Abatement |
|---|---|---|---|---|
| State Blind Pension | 0.0300 | $ 18,362.41 | $ 3,689.44 | $ 14,672.97 |
| Jasper County | 0.1050 | 64,268.20 | 12,913.00 | 51,355.20 |
| Sheltered Workshop | 0.0852 | 52,149.10 | 10,478.00 | 41,671.10 |
| Mental Health | 0.0852 | 52,149.10 | 10,478.00 | 41,671.10 |
| R-VIII School District | 3.6600 | 2,240,206.44 | 450,110.55 | 1,790,095.89 |
| Joplin Road District | 0.2226 | 136,175.11 | 27,302.06 | 108,873.05 |
| City of Joplin | 0.4279 | 261,766.88 | 52,482.17 | 209,284.71 |
| Surtax | 1.0200 | 216,761.82 | 90,140.72 | 126,621.10 |
| Duenweg Fire District | 0.2998 | 99.05 | 99.05 | - |
| Common Road District | 0.2136 | 70.57 | 70.57 | - |
| | 6.1493 | $ 3,042,008.68 | $ 657,763.56 | $ 2,384,245.12 |

Note: 1. Due to the annexation of the South Parcel by the City of Joplin, which will be recognized by the County Assessor beginning with tax year 2017, the Duenweg Fire District and the Common Road District levies will no longer apply to the South Parcel after tax year 2016. The North Parcel has already been recognized as having been annexed by the City of Joplin. The Duenweg Fire District and the Common Road District will receive payments in lieu of taxes for tax year 2016 equal to 100% of the taxes otherwise due, calculated as shown herein.

2. The existing manufacturing plant located on the South Parcel (the "Existing Building") is subject to 100% abatement on real property improvements until December 31, 2023 by virtue of its location in an Enhanced Enterprise Zone and an ordinance of the City of Joplin granting such abatement. For that reason, the Existing Building is excluded from this Cost Benefit Analysis until tax year 2024, at which point payments in lieu of taxes begin at 100% of the taxes otherwise due, calculated as shown herein.

3. This Cost Benefit Analysis reflects 100% abatement for 10 years on the Building Expansion and 100% abatement for 7 years on the Personal Property to be installed in the expanded building. The underlying real estate and the Existing Building receive no abatement under the Chapter 100 plan. Once the Enhanced Enterprise Zone abatement terminates for the Existing Building, a 100% payment in lieu of taxes will commence based on the estimated value of the Existing Building. The underlying real estate will be subject to a 100% payment in lieu of taxes throughout the Ch 100 abatement period.

**Anticipated Total PILOT Payments**
**to Taxing Jurisdictions**

| Taxing Jurisdiction | Tax Rate per $100 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|---|---|---|---|---|---|---|---|---|
| State Blind Pension | 0.0300 | $ 10.25 | $ 22.15 | $ 22.15 | $ 22.60 | $ 22.60 | $ 23.05 | $ 23.05 |
| Jasper County | 0.1050 | 35.87 | 77.54 | 77.54 | 79.09 | 79.09 | 80.68 | 80.68 |
| Sheltered Workshop | 0.0852 | 29.11 | 62.92 | 62.92 | 64.18 | 64.18 | 65.46 | 65.46 |
| Mental Health | 0.0852 | 29.11 | 62.92 | 62.92 | 64.18 | 64.18 | 65.46 | 65.46 |
| R-VIII School District | 3.6600 | 1,250.40 | 2,702.84 | 2,702.84 | 2,756.90 | 2,756.90 | 2,812.03 | 2,812.03 |
| Joplin Road District | 0.2226 | 2.50 | 164.39 | 164.39 | 167.68 | 167.68 | 171.03 | 171.03 |
| City of Joplin | 0.4279 | 4.81 | 316.00 | 316.00 | 322.32 | 322.32 | 328.76 | 328.76 |
| Surtax | 1.0200 | 337.01 | 753.25 | 753.25 | 768.31 | 768.31 | 783.69 | 783.69 |
| Duenweg Fire District | 0.2998 | 99.05 | - | - | - | - | - | - |
| Common Road District | 0.2136 | 70.57 | - | - | - | - | - | - |
| | 6.1493 | $ 1,868.68 | $ 4,162.01 | $ 4,162.01 | $ 4,245.26 | $ 4,245.26 | $ 4,330.16 | $ 4,330.16 |

| Taxing Jurisdiction | Tax Rate per $100 | 2023 | 2024 | 2025 | 2026 | 2027 | Total |
|---|---|---|---|---|---|---|---|
| State Blind Pension | 0.0300 | $ 23.51 | $ 620.07 | $ 966.51 | $ 966.51 | $ 966.99 | $ 3,689.44 |
| Jasper County | 0.1050 | 82.28 | 2,170.24 | 3,382.77 | 3,382.77 | 3,384.45 | 12,913.00 |
| Sheltered Workshop | 0.0852 | 66.77 | 1,761.00 | 2,744.88 | 2,744.88 | 2,746.24 | 10,478.00 |
| Mental Health | 0.0852 | 66.77 | 1,761.00 | 2,744.88 | 2,744.88 | 2,746.24 | 10,478.00 |
| R-VIII School District | 3.6600 | 2,868.28 | 75,648.60 | 117,913.74 | 117,913.74 | 117,972.25 | 450,110.55 |
| Joplin Road District | 0.2226 | 174.45 | 4,600.93 | 7,171.47 | 7,171.47 | 7,175.04 | 27,302.06 |
| City of Joplin | 0.4279 | 335.33 | 8,844.26 | 13,785.59 | 13,785.59 | 13,792.43 | 52,482.17 |
| Surtax | 1.0200 | 799.36 | 21,082.40 | 21,098.38 | 21,098.38 | 21,114.69 | 90,140.72 |
| Duenweg Fire Dept. | 0.2998 | - | - | - | - | - | 99.05 |
| Common Road District | 0.2136 | - | - | - | - | - | 70.57 |
| | 6.1493 | $ 4,416.75 | $116,488.50 | $169,808.22 | $169,808.22 | $169,898.33 | $ 657,763.56 |

**Projected Tax Revenues**
**Underlying Real Property (North Parcel)**
**(0% abatement, amounts shown will be paid as PILOTs)**

| Estimated Assessed Value of Base North Parcel | | $ 1,124 | $ 40,147 | $ 40,147 | $ 40,950 | $ 40,950 | $ 41,769 | $ 41,769 |
|---|---|---|---|---|---|---|---|---|
| Taxing Jurisdiction | Tax Rate per $100 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
| State Blind Pension | 0.0300 | $ 0.34 | $ 12.04 | $ 12.04 | $ 12.29 | $ 12.29 | $ 12.53 | $ 12.53 |
| Jasper County | 0.1050 | 1.18 | 42.15 | 42.15 | 43.00 | 43.00 | 43.86 | 43.86 |
| Sheltered Workshop | 0.0852 | 0.96 | 34.21 | 34.21 | 34.89 | 34.89 | 35.59 | 35.59 |
| Mental Health | 0.0852 | 0.96 | 34.21 | 34.21 | 34.89 | 34.89 | 35.59 | 35.59 |
| R-VIII School District | 3.6600 | 41.14 | 1,469.39 | 1,469.39 | 1,498.78 | 1,498.78 | 1,528.75 | 1,528.75 |
| Joplin Road District | 0.2226 | 2.50 | 89.37 | 89.37 | 91.16 | 91.16 | 92.98 | 92.98 |
| City of Joplin | 0.4279 | 4.81 | 171.79 | 171.79 | 175.23 | 175.23 | 178.73 | 178.73 |
| Surtax | 1.0200 | - | 409.50 | 409.50 | 417.69 | 417.69 | 426.05 | 426.05 |
| | 5.6359 | $ 51.89 | $ 2,262.66 | $ 2,262.66 | $ 2,307.93 | $ 2,307.93 | $ 2,354.08 | $ 2,354.08 |

| Estimated Assessed Value of Base North Parcel | | $ 42,605 | $ 42,605 | $ 43,457 | $ 43,457 | $ 44,326 | |
|---|---|---|---|---|---|---|---|
| Taxing Jurisdiction | Tax Rate per $100 | 2023 | 2024 | 2025 | 2026 | 2027 | Total |
| State Blind Pension | 0.0300 | $ 12.78 | $ 12.78 | $ 13.04 | $ 13.04 | $ 13.30 | $ 139.00 |
| Jasper County | 0.1050 | 44.73 | 44.73 | 45.63 | 45.63 | 46.54 | 486.46 |
| Sheltered Workshop | 0.0852 | 36.30 | 36.30 | 37.03 | 37.03 | 37.77 | 394.77 |
| Mental Health | 0.0852 | 36.30 | 36.30 | 37.03 | 37.03 | 37.77 | 394.77 |
| R-VIII School District | 3.6600 | 1,559.33 | 1,559.33 | 1,590.51 | 1,590.51 | 1,622.32 | 16,956.98 |
| Joplin Road District | 0.2226 | 94.84 | 94.84 | 96.73 | 96.73 | 98.67 | 1,031.33 |
| City of Joplin | 0.4279 | 182.30 | 182.30 | 185.95 | 185.95 | 189.67 | 1,982.48 |
| Surtax | 1.0200 | 434.57 | 434.57 | 443.26 | 443.26 | 452.12 | 4,714.26 |
| | 5.6359 | $ 2,401.15 | $ 2,401.15 | $ 2,449.18 | $ 2,449.18 | $ 2,498.16 | $ 26,100.05 |

Note: Surtax is not applied to 2016 because the North Parcel will be treated as agricultural until tax year 2017.

**Projected Tax Revenues**
**Underlying Real Property (South Parcel)**
**(0% abatement, amounts shown will be paid as PILOTs)**

| Estimated Assessed Value of Base South Parcel | | $ 33,040 | $ 33,701 | $ 33,701 | $ 34,375 | $ 34,375 | $ 35,062 | $ 35,062 |
|---|---|---|---|---|---|---|---|---|
| Taxing Jurisdiction | Tax Rate per $100 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
| State Blind Pension | 0.0300 | $ 9.91 | $ 10.11 | $ 10.11 | $ 10.31 | $ 10.31 | $ 10.52 | $ 10.52 |
| Jasper County | 0.1050 | 34.69 | 35.39 | 35.39 | 36.09 | 36.09 | 36.82 | 36.82 |
| Sheltered Workshop | 0.0852 | 28.15 | 28.71 | 28.71 | 29.29 | 29.29 | 29.87 | 29.87 |
| Mental Health | 0.0852 | 28.15 | 28.71 | 28.71 | 29.29 | 29.29 | 29.87 | 29.87 |
| R-VIII School District | 3.6600 | 1,209.26 | 1,233.45 | 1,233.45 | 1,258.12 | 1,258.12 | 1,283.28 | 1,283.28 |
| Duenweg Fire District | 0.2998 | 99.05 | - | - | - | - | - | - |
| Common Road District | 0.2136 | 70.57 | - | - | - | - | - | - |
| Joplin Road District | 0.2226 | - | 75.02 | 75.02 | 76.52 | 76.52 | 78.05 | 78.05 |
| City of Joplin | 0.4279 | - | 144.21 | 144.21 | 147.09 | 147.09 | 150.03 | 150.03 |
| Surtax | 1.0200 | 337.01 | 343.75 | 343.75 | 350.62 | 350.62 | 357.64 | 357.64 |
| | 6.1493 | $ 1,816.79 | $ 1,899.35 | $ 1,899.35 | $ 1,937.33 | $ 1,937.33 | $ 1,976.08 | $ 1,976.08 |

| Estimated Assessed Value of Base South Parcel | | $ 35,764 | $ 35,764 | $ 36,479 | $ 36,479 | $ 37,208 | |
|---|---|---|---|---|---|---|---|
| Taxing Jurisdiction | Tax Rate per $100 | 2023 | 2024 | 2025 | 2026 | 2027 | Total |
| State Blind Pension | 0.0300 | $ 10.73 | $ 10.73 | $ 10.94 | $ 10.94 | $ 11.16 | $ 126.29 |
| Jasper County | 0.1050 | 37.55 | 37.55 | 38.30 | 38.30 | 39.07 | 442.06 |
| Sheltered Workshop | 0.0852 | 30.47 | 30.47 | 31.08 | 31.08 | 31.70 | 358.69 |
| Mental Health | 0.0852 | 30.47 | 30.47 | 31.08 | 31.08 | 31.70 | 358.69 |
| R-VIII School District | 3.6600 | 1,308.95 | 1,308.95 | 1,335.13 | 1,335.13 | 1,361.83 | 15,408.95 |
| Duenweg Fire Dept. | 0.2998 | - | - | - | - | - | 99.05 |
| Common Road District | 0.2136 | - | - | - | - | - | 70.57 |
| Joplin Road District | 0.2226 | 79.61 | 79.61 | 81.20 | 81.20 | 82.83 | 863.63 |
| City of Joplin | 0.4279 | 153.03 | 153.03 | 156.09 | 156.09 | 159.21 | 1,660.11 |
| Surtax | 1.0200 | 364.79 | 364.79 | 372.08 | 372.08 | 379.53 | 4,294.30 |
| | 6.1493 | $ 2,015.60 | $ 2,015.60 | $ 2,055.90 | $ 2,055.90 | $ 2,097.03 | $23,682.34 |

**Projected Tax Revenues - Existing Building**
**(0% abatement after EEZ expires, amounts shown will be paid as PILOTs)**

| Estimated Assessed Value of Existing Building | | $ 1,988,533 | $ 1,988,533 | $ 1,988,533 | $ 1,988,533 | |
|---|---|---|---|---|---|---|
| Taxing Jurisdiction | Tax Rate per $100 | 2024 | 2025 | 2026 | 2027 | Total |
| State Blind Pension | 0.0300 | $ 596.56 | $ 596.56 | $ 596.56 | $ 596.56 | $ 2,386.24 |
| Jasper County | 0.1050 | 2,087.96 | 2,087.96 | 2,087.96 | 2,087.96 | 8,351.84 |
| Sheltered Workshop | 0.0852 | 1,694.23 | 1,694.23 | 1,694.23 | 1,694.23 | 6,776.92 |
| Mental Health | 0.0852 | 1,694.23 | 1,694.23 | 1,694.23 | 1,694.23 | 6,776.92 |
| R-VIII School District | 3.6600 | 72,780.32 | 72,780.32 | 72,780.32 | 72,780.32 | 291,121.28 |
| Joplin Road District | 0.2226 | 4,426.48 | 4,426.48 | 4,426.48 | 4,426.48 | 17,705.92 |
| City of Joplin | 0.4279 | 8,508.93 | 8,508.93 | 8,508.93 | 8,508.93 | 34,035.72 |
| Surtax | 1.0200 | 20,283.04 | 20,283.04 | 20,283.04 | 20,283.04 | 81,132.16 |
| | 5.6359 | $112,071.75 | $112,071.75 | $112,071.75 | $112,071.75 | $448,287.00 |

Note: The existing manufacturing plant located on the South Parcel (the "Existing Building") is subject to 100% abatement on real property improvements until December 31, 2023 by virtue of its location in an Enhanced Enterprise Zone and an ordinance of the City of Joplin granting such abatement. For that reason, the Existing Building is excluded from this Cost Benefit Analysis until tax year 2024, at which point payments in lieu of taxes begin at 100% of the taxes otherwise due, calculated as shown herein.

**Projected Tax Revenues Without Abatement**
**Building Expansion**

| Estimated Assessed Value of Real Property Improvements | | $1,241,383 | $1,241,383 | $1,241,383 | $1,241,383 | $ 1,241,383 | $1,241,383 |
|---|---|---|---|---|---|---|---|
| Taxing Jurisdiction | Tax Rate per $100 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| State Blind Pension | 0.0300 | $ 372.42 | $ 372.42 | $ 372.42 | $ 372.42 | $ 372.42 | $ 372.42 |
| Jasper County | 0.1050 | 1,303.45 | 1,303.45 | 1,303.45 | 1,303.45 | 1,303.45 | 1,303.45 |
| Sheltered Workshop | 0.0852 | 1,057.66 | 1,057.66 | 1,057.66 | 1,057.66 | 1,057.66 | 1,057.66 |
| Mental Health | 0.0852 | 1,057.66 | 1,057.66 | 1,057.66 | 1,057.66 | 1,057.66 | 1,057.66 |
| R-VIII School District | 3.6600 | 45,434.63 | 45,434.63 | 45,434.63 | 45,434.63 | 45,434.63 | 45,434.63 |
| Joplin Road District | 0.2226 | 2,763.32 | 2,763.32 | 2,763.32 | 2,763.32 | 2,763.32 | 2,763.32 |
| City of Joplin | 0.4279 | 5,311.88 | 5,311.88 | 5,311.88 | 5,311.88 | 5,311.88 | 5,311.88 |
| Surtax | 1.0200 | 12,662.11 | 12,662.11 | 12,662.11 | 12,662.11 | 12,662.11 | 12,662.11 |
| | 5.6359 | $69,963.13 | $69,963.13 | $69,963.13 | $69,963.13 | $ 69,963.13 | $69,963.13 |

| Estimated Assessed Value of Real Property Improvements | | $1,241,383 | $1,241,383 | $1,241,383 | $1,241,383 | |
|---|---|---|---|---|---|---|
| Taxing Jurisdiction | Tax Rate per $100 | 2024 | 2025 | 2026 | 2027 | Total |
| State Blind Pension | 0.0300 | $ 372.42 | $ 372.42 | $ 372.42 | $ 372.42 | $ 3,724.20 |
| Jasper County | 0.1050 | 1,303.45 | 1,303.45 | 1,303.45 | 1,303.45 | 13,034.50 |
| Sheltered Workshop | 0.0852 | 1,057.66 | 1,057.66 | 1,057.66 | 1,057.66 | 10,576.60 |
| Mental Health | 0.0852 | 1,057.66 | 1,057.66 | 1,057.66 | 1,057.66 | 10,576.60 |
| R-VIII School District | 3.6600 | 45,434.63 | 45,434.63 | 45,434.63 | 45,434.63 | 454,346.30 |
| Joplin Road District | 0.2226 | 2,763.32 | 2,763.32 | 2,763.32 | 2,763.32 | 27,633.20 |
| City of Joplin | 0.4279 | 5,311.88 | 5,311.88 | 5,311.88 | 5,311.88 | 53,118.80 |
| Surtax | 1.0200 | 12,662.11 | 12,662.11 | 12,662.11 | 12,662.11 | 126,621.10 |
| | 5.6359 | $69,963.13 | $69,963.13 | $69,963.13 | $69,963.13 | $699,631.30 |

**Projected PILOT Amount - Building Expansion**
**(100% abatement for 10 years)**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Estimated Assessed Value of Real Property | | | | | | | |
| Improvements | | $ 1,241,383 | $ 1,241,383 | $ 1,241,383 | $ 1,241,383 | $ 1,241,383 | $ 1,241,383 |
| PILOT Payment | | 0% | 0% | 0% | 0% | 0% | 0% |
| Taxing Jurisdiction | Tax Rate per $100 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| State Blind Pension | 0.0300 | $ - | $ - | $ - | $ - | $ - | $ - |
| Jasper County | 0.1050 | - | - | - | - | - | - |
| Sheltered Workshop | 0.0852 | - | - | - | - | - | - |
| Mental Health | 0.0852 | - | - | - | - | - | - |
| R-VIII School District | 3.6600 | - | - | - | - | - | - |
| Joplin Road District | 0.2226 | - | - | - | - | - | - |
| City of Joplin | 0.4279 | - | - | - | - | - | - |
| Surtax | 1.0200 | - | - | - | - | - | - |
| | 5.6359 | $ - | $ - | $ - | $ - | $ - | $ - |

| | | | | | | |
|---|---|---|---|---|---|---|
| Estimated Assessed Value of Real Property | | | | | | |
| Improvements | | $ 1,241,383 | $ 1,241,383 | $ 1,241,383 | $ 1,241,383 | |
| PILOT Payment | | 0% | 0% | 0% | 0% | |
| Taxing Jurisdiction | Tax Rate per $100 | 2024 | 2025 | 2026 | 2027 | Total |
| State Blind Pension | 0.0300 | $ - | $ - | $ - | $ - | $ - |
| Jasper County | 0.1050 | - | - | - | - | - |
| Sheltered Workshop | 0.0852 | - | - | - | - | - |
| Mental Health | 0.0852 | - | - | - | - | - |
| R-VIII School District | 3.6600 | - | - | - | - | - |
| Joplin Road District | 0.2226 | - | - | - | - | - |
| City of Joplin | 0.4279 | - | - | - | - | - |
| Surtax | 1.0200 | - | - | - | - | - |
| | 5.6359 | $ - | $ - | $ - | $ - | $ - |

**Projected Abatement Amount- Building Expansion**
**(100% abatement for 10 years)**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Estimated Assessed Value of Real Property | | | | | | | |
| Improvements | | $1,241,383 | $1,241,383 | $1,241,383 | $1,241,383 | $ 1,241,383 | $1,241,383 |
| Abatement Percentage | | 100% | 100% | 100% | 100% | 100% | 100% |
| Taxing Jurisdiction | Tax Rate per $100 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| State Blind Pension | 0.0300 | $ 372 | $ 372 | $ 372 | $ 372 | $ 372 | $ 372 |
| Jasper County | 0.1050 | 1,303 | 1,303 | 1,303 | 1,303 | 1,303 | 1,303 |
| Sheltered Workshop | 0.0852 | 1,058 | 1,058 | 1,058 | 1,058 | 1,058 | 1,058 |
| Mental Health | 0.0852 | 1,058 | 1,058 | 1,058 | 1,058 | 1,058 | 1,058 |
| R-VIII School District | 3.6600 | 45,435 | 45,435 | 45,435 | 45,435 | 45,435 | 45,435 |
| Joplin Road District | 0.2226 | 2,763 | 2,763 | 2,763 | 2,763 | 2,763 | 2,763 |
| City of Joplin | 0.4279 | 5,312 | 5,312 | 5,312 | 5,312 | 5,312 | 5,312 |
| Surtax | 1.0200 | 12,662 | 12,662 | 12,662 | 12,662 | 12,662 | 12,662 |
| | 5.6359 | $69,963.13 | $69,963.13 | $69,963.13 | $69,963.13 | $ 69,963.13 | $69,963.13 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Estimated Assessed Value of Real Property | | | | | | |
| Improvements | | $1,241,383 | $1,241,383 | $1,241,383 | $1,241,383 | |
| Abatement Percentage | | 100% | 100% | 100% | 100% | |
| Taxing Jurisdiction | Tax Rate per $100 | 2024 | 2025 | 2026 | 2027 | Total |
| State Blind Pension | 0.0300 | $ 372 | $ 372 | $ 372 | $ 372 | $ 3,724 |
| Jasper County | 0.1050 | 1,303 | 1,303 | 1,303 | 1,303 | 13,035 |
| Sheltered Workshop | 0.0852 | 1,058 | 1,058 | 1,058 | 1,058 | 10,577 |
| Mental Health | 0.0852 | 1,058 | 1,058 | 1,058 | 1,058 | 10,577 |
| R-VIII School District | 3.6600 | 45,435 | 45,435 | 45,435 | 45,435 | 454,346 |
| Joplin Road District | 0.2226 | 2,763 | 2,763 | 2,763 | 2,763 | 27,633 |
| City of Joplin | 0.4279 | 5,312 | 5,312 | 5,312 | 5,312 | 53,119 |
| Surtax | 1.0200 | 12,662 | 12,662 | 12,662 | 12,662 | 126,621 |
| | 5.6359 | $69,963.13 | $69,963.13 | $69,963.13 | $69,963.13 | $699,631.30 |

**Projected Tax Revenues Without Abatement**
**New Equipment ("Personal Property")**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Estimated Assessed Value of Personal Property Improvements | | $10,297,084 | $ 8,090,977 | $ 6,357,691 | $ 4,944,999 | $ 3,532,307 | $ 2,119,615 |
| Taxing Jurisdiction | Tax Rate per $100 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| State Blind Pension | 0.0300 | $ 3,089.13 | $ 2,427.29 | $ 1,907.31 | $ 1,483.50 | $ 1,059.69 | $ 635.88 |
| Jasper County | 0.1050 | 10,811.94 | 8,495.53 | 6,675.58 | 5,192.25 | 3,708.92 | 2,225.60 |
| Sheltered Workshop | 0.0852 | 8,773.12 | 6,893.51 | 5,416.75 | 4,213.14 | 3,009.53 | 1,805.91 |
| Mental Health | 0.0852 | 8,773.12 | 6,893.51 | 5,416.75 | 4,213.14 | 3,009.53 | 1,805.91 |
| R-VIII School District | 3.6600 | 376,873.26 | 296,129.78 | 232,691.48 | 180,986.96 | 129,282.43 | 77,577.90 |
| Joplin Road District | 0.2226 | 22,921.31 | 18,010.52 | 14,152.22 | 11,007.57 | 7,862.91 | 4,718.26 |
| City of Joplin | 0.4279 | 44,061.22 | 34,621.29 | 27,204.56 | 21,159.65 | 15,114.74 | 9,069.83 |
| | 4.6159 | $475,303.10 | $373,471.43 | $293,464.65 | $228,256.21 | $ 163,047.75 | $ 97,839.29 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Estimated Assessed Value of Personal Property Improvements | | $ 1,153,218 | $ 1,153,218 | $ 1,153,218 | $ 1,153,218 | |
| Taxing Jurisdiction | Tax Rate per $100 | 2024 | 2025 | 2026 | 2027 | Total |
| State Blind Pension | 0.0300 | $ 345.97 | $ 345.97 | $ 345.97 | $ 345.97 | $ 11,986.68 |
| Jasper County | 0.1050 | 1,210.88 | 1,210.88 | 1,210.88 | 1,210.88 | 41,953.34 |
| Sheltered Workshop | 0.0852 | 982.54 | 982.54 | 982.54 | 982.54 | 34,042.12 |
| Mental Health | 0.0852 | 982.54 | 982.54 | 982.54 | 982.54 | 34,042.12 |
| R-VIII School District | 3.6600 | 42,207.78 | 42,207.78 | 42,207.78 | 42,207.78 | 1,462,372.93 |
| Joplin Road District | 0.2226 | 2,567.06 | 2,567.06 | 2,567.06 | 2,567.06 | 88,941.03 |
| City of Joplin | 0.4279 | 4,934.62 | 4,934.62 | 4,934.62 | 4,934.62 | 170,969.77 |
| | 4.6159 | $ 53,231.39 | $ 53,231.39 | $ 53,231.39 | $ 53,231.39 | $1,844,307.99 |

**Projected PILOT Amount**
**New Equipment ("Personal Property")**
**(100% abatement for 7 years, 100% PILOT after 7 years)**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Estimated Assessed Value of Personal Property | | | | | | | |
| Improvements | | $10,297,084 | $ 8,090,977 | $ 6,357,691 | $ 4,944,999 | $ 3,532,307 | $2,119,615 |
| PILOT Payment | | 0% | 0% | 0% | 0% | 0% | 0% |
| Taxing Jurisdiction | Tax Rate per $100 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| State Blind Pension | 0.0300 | $ - | $ - | $ - | $ - | $ - | $ - |
| Jasper County | 0.1050 | - | - | - | - | - | - |
| Sheltered Workshop | 0.0852 | - | - | - | - | - | - |
| Mental Health | 0.0852 | - | - | - | - | - | - |
| R-VIII School District | 3.6600 | - | - | - | - | - | - |
| Joplin Road District | 0.2226 | - | - | - | - | - | - |
| City of Joplin | 0.4279 | - | - | - | - | - | - |
| | 4.6159 | $ - | $ - | $ - | $ - | $ - | $ - |

| | | | | | | |
|---|---|---|---|---|---|---|
| Estimated Assessed Value of Real Property | | | | | | |
| Improvements | | $ 1,153,218 | $ 1,153,218 | $ 1,153,218 | $ 1,153,218 | |
| PILOT Payment | | 0% | 100% | 100% | 100% | |
| Taxing Jurisdiction | Tax Rate per $100 | 2024 | 2025 | 2026 | 2027 | Total |
| State Blind Pension | 0.0300 | $ - | $ 345.97 | $ 345.97 | $ 345.97 | $ 1,037.91 |
| Jasper County | 0.1050 | - | 1,210.88 | 1,210.88 | 1,210.88 | 3,632.64 |
| Sheltered Workshop | 0.0852 | - | 982.54 | 982.54 | 982.54 | 2,947.62 |
| Mental Health | 0.0852 | - | 982.54 | 982.54 | 982.54 | 2,947.62 |
| R-VIII School District | 3.6600 | - | 42,207.78 | 42,207.78 | 42,207.78 | 126,623.34 |
| Joplin Road District | 0.2226 | - | 2,567.06 | 2,567.06 | 2,567.06 | 7,701.18 |
| City of Joplin | 0.4279 | - | 4,934.62 | 4,934.62 | 4,934.62 | 14,803.86 |
| | 4.6159 | $ - | $ 53,231.39 | $ 53,231.39 | $ 53,231.39 | $159,694.17 |

**Projected Abatement Amount**
**New Equipment ("Personal Property")**
**(100% abatement for 7 years, 100% PILOT after 7 years)**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Estimated Assessed Value of Personal Property | | | | | | | |
| Improvements | | $ 10,297,084 | $ 8,090,977 | $ 6,357,691 | $ 4,944,999 | $ 3,532,307 | $ 2,119,615 |
| Abatement Percentage | | 100% | 100% | 100% | 100% | 100% | 100% |
| Taxing Jurisdiction | Tax Rate per $100 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| State Blind Pension | 0.0300 | $ 3,089.13 | $ 2,427.29 | $ 1,907.31 | $ 1,483.50 | $ 1,059.69 | $ 635.88 |
| Jasper County | 0.1050 | 10,811.94 | 8,495.53 | 6,675.58 | 5,192.25 | 3,708.92 | 2,225.60 |
| Sheltered Workshop | 0.0852 | 8,773.12 | 6,893.51 | 5,416.75 | 4,213.14 | 3,009.53 | 1,805.91 |
| Mental Health | 0.0852 | 8,773.12 | 6,893.51 | 5,416.75 | 4,213.14 | 3,009.53 | 1,805.91 |
| R-VIII School District | 3.6600 | 376,873.26 | 296,129.78 | 232,691.48 | 180,986.96 | 129,282.43 | 77,577.90 |
| Joplin Road District | 0.2226 | 22,921.31 | 18,010.52 | 14,152.22 | 11,007.57 | 7,862.91 | 4,718.26 |
| City of Joplin | 0.4279 | 44,061.22 | 34,621.29 | 27,204.56 | 21,159.65 | 15,114.74 | 9,069.83 |
| | 4.6159 | $ 475,303.10 | $ 373,471.43 | $ 293,464.65 | $ 228,256.21 | $ 163,047.75 | $ 97,839.29 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Estimated Assessed Value of Real Property | | | | | | |
| Improvements | | $ 1,153,218 | $ 1,153,218 | $ 1,153,218 | $ 1,153,218 | |
| Abatement Percentage | | 100% | 0% | 0% | 0% | |
| Taxing Jurisdiction | Tax Rate per $100 | 2024 | 2025 | 2026 | 2027 | Total |
| State Blind Pension | 0.0300 | $ 345.97 | $ - | $ - | $ - | $ 10,948.77 |
| Jasper County | 0.1050 | 1,210.88 | - | - | - | 38,320.70 |
| Sheltered Workshop | 0.0852 | 982.54 | - | - | - | 31,094.50 |
| Mental Health | 0.0852 | 982.54 | - | - | - | 31,094.50 |
| R-VIII School District | 3.6600 | 42,207.78 | - | - | - | 1,335,749.59 |
| Joplin Road District | 0.2226 | 2,567.06 | - | - | - | 81,239.85 |
| City of Joplin | 0.4279 | 4,934.62 | - | - | - | 156,165.91 |
| | 4.6159 | $ 53,231.39 | $ - | $ - | $ - | $ 1,684,613.82 |

**CITY OF JOPLIN, MISSOURI,**
**the City**

**AND**

**UMB BANK, N.A.,**
**as Trustee**

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# TRUST INDENTURE

**Dated as of August 1, 2016**

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**Relating to:**

**$83,250,000**
**(Aggregate Maximum Principal Amount)**
**City of Joplin, Missouri**
**Taxable Industrial Development Revenue Bonds**
**(Heartland Pet Foods Manufacturing Project)**
**Series 2016**

**TRUST INDENTURE**

**TABLE OF CONTENTS**


Page

Parties ..... 1
Recitals ..... 1
Granting Clauses ..... 2

**ARTICLE I**

**DEFINITIONS**

Section 101. Definitions of Words and Terms ..... 3
Section 102. Rules of Interpretation ..... 9

**ARTICLE II**

**THE BONDS**

Section 201. Title and Amount of Bonds ..... 9
Section 202. Nature of Obligation ..... 9
Section 203. Denomination, Number and Dating of the Bonds ..... 9
Section 204. Method and Place of Payment of Bonds ..... 10
Section 205. Execution and Authentication of Bonds ..... 11
Section 206. Registration, Transfer and Exchange of Bonds ..... 11
Section 207. Persons Deemed Owners of Bonds ..... 12
Section 208. Authorization of the Bonds ..... 12
Section 209. Mutilated, Lost, Stolen or Destroyed Bonds ..... 14
Section 210. Cancellation and Destruction of Bonds Upon Payment ..... 14

**ARTICLE III**

**REDEMPTION OF BONDS**

Section 301. Redemption of Bonds ..... 14
Section 302. Effect of Call for Redemption ..... 15
Section 303. Notice of Redemption ..... 15

**ARTICLE IV**

**FORM OF BONDS**

Section 401. Form Generally ..... 15

**ARTICLE V**

**CUSTODY AND APPLICATION OF BOND PROCEEDS**

Section 501. Creation of Funds ..... 16

Section 502. Deposits into the Project Fund ..... 16
Section 503. Disbursements from the Project Fund ..... 16
Section 504. Completion of the Project ..... 16
Section 505. Deposits into and Disbursements from the Costs of Issuance Fund ..... 17
Section 506. Disposition Upon Acceleration ..... 17

**ARTICLE VI**

**REVENUES AND FUNDS**

Section 601. Deposits Into the Bond Fund ..... 17
Section 602. Application of Moneys in the Bond Fund ..... 17
Section 603. Payments Due on Days Other than Business Days ..... 18
Section 604. Nonpresentment of Bonds ..... 18

**ARTICLE VII**

**SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS**

Section 701. Moneys to be Held in Trust ..... 19
Section 702. Investment of Moneys in Project Fund and Bond Fund ..... 19
Section 703. Record Keeping ..... 19

**ARTICLE VIII**

**GENERAL COVENANTS AND PROVISIONS**

Section 801. Payment of Principal and Interest ..... 19
Section 802. Authority to Execute Indenture and Issue Bonds ..... 20
Section 803. Performance of Covenants ..... 20
Section 804. Instruments of Further Assurance ..... 20
Section 805. Recordings and Filings ..... 20
Section 806. Inspection of Project Books ..... 20
Section 807. Enforcement of Rights Under the Lease ..... 20

**ARTICLE IX**

**DEFAULT AND REMEDIES**

Section 901 Events of Default; Notice; Opportunity to Cure ..... 21
Section 902. Acceleration of Maturity in Event of Default; Rescission ..... 22
Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession ..... 22
Section 904. Appointment of Receivers in Event of Default ..... 22
Section 905. Exercise of Remedies by the Trustee ..... 23
Section 906. Limitation on Exercise of Remedies by Owners ..... 23
Section 907. Right of Owners to Direct Proceedings ..... 24
Section 908. Application of Moneys in Event of Default ..... 24
Section 909. Remedies Cumulative ..... 25
Section 910. Waivers of Events of Default ..... 25

**ARTICLE X**

**THE TRUSTEE**


Section 1001. Acceptance of the Trusts ..... 26
Section 1002. Fees, Charges and Expenses of the Trustee ..... 28
Section 1003. Notice to Owners if Default Occurs ..... 28
Section 1004. Intervention by the Trustee ..... 28
Section 1005. Successor Trustee Upon Merger, Consolidation or Sale ..... 28
Section 1006. Resignation of Trustee ..... 29
Section 1007. Removal of Trustee ..... 29
Section 1008. Appointment of Successor Trustee ..... 29
Section 1009. Vesting of Trusts in Successor Trustee ..... 29
Section 1010. Right of Trustee to Pay Taxes and Other Charges ..... 30
Section 1011. Trust Estate May be Vested in Co-Trustee ..... 30
Section 1012. Accounting ..... 31
Section 1013. Performance of Duties Under the Lease ..... 31


**ARTICLE XI**

**SUPPLEMENTAL INDENTURES**


Section 1101. Supplemental Indentures Not Requiring Consent of Owners ..... 31
Section 1102. Supplemental Indentures Requiring Consent of Owners ..... 31
Section 1103. Company's Consent to Supplemental Indentures ..... 32
Section 1104. Opinion of Counsel ..... 32


**ARTICLE XII**

**SUPPLEMENTAL LEASES**


Section 1201. Supplemental Leases Not Requiring Consent of Owners ..... 32
Section 1202. Supplemental Leases Requiring Consent of Owners ..... 32
Section 1203. Opinion of Counsel ..... 33


**ARTICLE XIII**

**SATISFACTION AND DISCHARGE OF INDENTURE**


Section 1301. Satisfaction and Discharge of this Indenture ..... 33
Section 1302. Bonds Deemed to be Paid ..... 34


**ARTICLE XIV**

**MISCELLANEOUS PROVISIONS**


Section 1401. Consents and Other Instruments by Owners ..... 34
Section 1402. Limitation of Rights Under this Indenture ..... 35
Section 1403. Notices ..... 35
Section 1404. Severability ..... 36
Section 1405. Execution in Counterparts ..... 36

Section 1406. Governing Law ..... 36
Section 1407. Electronic Storage ..... 36
Section 1408. City Consents ..... 37

Signatures and Seals ..... S-1

Exhibit A – Project Site
Exhibit B – Project Improvements and Project Equipment
Exhibit C – Form of Bonds
Exhibit D – Form of Representation Letter

**TRUST INDENTURE**

**THIS TRUST INDENTURE** dated as of August 1, 2016 (the "Indenture"), is between the **CITY OF JOPLIN, MISSOURI,** a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the "City"), and **UMB BANK, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, with a corporate trust office located in St. Louis, Missouri, as Trustee (the "Trustee");

**RECITALS:**

**1.** The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), to purchase, construct, extend, improve and equip certain "projects" (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or businesses for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

**2.** Pursuant to the Act, the City Council passed an ordinance (the "Ordinance") on August 15, 2016, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016, in the maximum principal amount of $83,250,000 (the "Bonds"), for the purpose of acquiring, constructing, improving, purchasing, equipping and installing an expansion of an existing dry pet food manufacturing facility on approximately 46 acres of land located at 8101 East 32nd Street in the City (the "Project Site," as more fully described on **Exhibit A** hereto), including such land and the associated buildings, structures and fixtures (the "Project Improvements," as more fully described on **Exhibit B** hereto) and equipment (the "Project Equipment," as more fully described on **Exhibit B** hereto, the Project Site, the Project Improvements, and the Project Equipment collectively being the "Project"). The Project is designed to be used for the manufacturing, packaging and distributing of dry pet food products.

**3.** The Ordinance authorizes the City to lease the Project to Heartland Pet Foods Manufacturing, Inc., a Delaware corporation (the "Company").

**4.** Pursuant to the Ordinance, the City is authorized to execute and deliver (a) this Indenture for the purpose of issuing and securing the Bonds, (b) the Lease Agreement of even date herewith (the "Lease") with the Company, under which the City, as lessor, will, or will cause the Company to, construct, improve, purchase and install the Project and will lease the Project to the Company, as lessee, in consideration of rentals that will be sufficient to pay the principal of and interest on the Bonds, and (c) the Performance Agreement for the purpose of setting forth the terms and conditions of the Project's exemption from ad valorem real property taxes and certain payments in lieu of taxes to be made by the Company with respect to the Project.

**5.** All things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding obligations of the City, and to constitute this Indenture a valid and legally binding pledge and assignment of the Trust Estate (defined herein) herein made for the security of the payment of the principal of and interest on the Bonds, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

**NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:**

**GRANTING CLAUSES**

That the City, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners (defined herein) thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on all of the Bonds issued and Outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the City of all the covenants, agreements and conditions herein and in the Lease (including but not limited to the purchase option described in the Lease) and in the Bonds contained, does hereby pledge and assign to the Trustee and its successors and assigns until this Indenture has been satisfied and discharged, the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to-wit:

(a) All right, title and interest of the City in and to the Project together with the tenements, hereditaments, appurtenances, rights, easements, privileges and immunities thereunto belonging or appertaining and, to the extent permissible, all permits, certificates, approvals and authorizations;

(b) All right, title and interest of the City in, to and under the Lease (excluding the Unassigned Rights), and all rents, revenues and receipts derived by the City from the Project including, without limitation, all rentals and other amounts to be received by the City and paid by the Company under and pursuant to and subject to the provisions of the Lease; and

(c) All moneys and securities from time to time held by or now or hereafter required to be paid to the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

**TO HAVE AND TO HOLD,** all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned or agreed or intended so to be, to the Trustee and its successors and assigns forever;

**IN TRUST NEVERTHELESS,** upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of all Owners from time to time of the Bonds Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

**PROVIDED, HOWEVER,** that if the City pays, or causes to be paid, the principal of and interest on the Bonds, at the time and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or provides for the payment thereof (as provided in **Article XIII** hereof), and pays or causes to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

**THIS INDENTURE FURTHER WITNESSETH,** and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the City does hereby agree and covenant with the Trustee and with the respective Owners from time to time, as follows:

## ARTICLE I

## DEFINITIONS

**Section 101. Definitions of Words and Terms.** In addition to words and terms defined in the Lease, which definitions shall be deemed to be incorporated herein, and terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

**"Act"** means, collectively, Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended.

**"Additional Rent"** means the additional rental described in **Sections 5.2** and **6.2** of the Lease.

**"Approved Investor"** means (i) the Company, its successor and assigns, including but not limited to any entity receiving an assignment of the Lease as permitted pursuant to **Section 10.7** of the Lease, (ii) a "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933, or (iii) any general business corporation or enterprise with total assets in excess of $100,000,000.

**"Authorized City Representative"** means the Mayor, City Manager, Finance Director, City Clerk or such other person at the time designated to act on behalf of the City as evidenced by written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the City by its Mayor. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of the Authorized City Representative.

**"Authorized Company Representative"** means the Person at the time designated to act on behalf of the Company as evidenced by written certificate furnished to the City and the Trustee containing the specimen signature of such Person and signed on behalf of the Company by an authorized officer of the Company. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Company Representative.

**"Basic Rent"** means the rental described in **Section 5.1** of the Lease.

**"Bond"** or **"Bonds"** means the Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016, in the maximum aggregate principal amount of $83,250,000, issued, authenticated and delivered under and pursuant to this Indenture.

**"Bond Fund"** means the "City of Joplin, Missouri, Bond Fund -- Heartland Pet Foods Manufacturing, Inc." created in **Section 501** of this Indenture.

**"Bond Purchase Agreement"** means the agreement by that name with respect to the Bonds, dated as of August 1, 2016, by and between the City and the Purchaser.

**"Business Day"** means any day other than a Saturday or Sunday or legal holiday or a day on which banks located in the city in which the principal corporate trust office or the principal payment office of the Trustee are required or authorized by law to remain closed.

**"City"** means the City of Joplin, Missouri, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, and its successors and assigns.

**"Closing Date"** means the date identified in the Bond Purchase Agreement for the initial issuance and delivery of the Bonds.

**"Closing Price"** means the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Company from its own funds before the Closing Date plus the costs of issuing the Bonds.

**"Company"** means Heartland Pet Foods Manufacturing, Inc., a Delaware corporation, and its successors or assigns.

**"Completion Date"** means the date of execution of the certificate required pursuant to **Section 504** hereof.

**"Costs of Issuance Fund"** means the "City of Joplin, Missouri, Costs of Issuance Fund -- Heartland Pet Foods Manufacturing, Inc." created in **Section 501** hereof.

**"Cumulative Outstanding Principal Amount"** means an amount equal to the aggregate of all amounts paid into the Project Fund in accordance with the provisions of this Indenture, the Bond Purchase Agreement and the Lease, as reflected in the bond registration records maintained by the Trustee or in the Table of Cumulative Outstanding Principal Amount set forth in the form of Bond in **Section 402** hereof.

**"Event of Default"** means, with respect to this Indenture, any Event of Default as defined in **Section 901** hereof and, with respect to the Lease, any Event of Default as described in **Section 12.1** of the Lease.

**"Financing Document"** means any loan agreement, credit agreement, promissory note, security agreement, financing statement, mortgage, deed of trust, letter of credit, participation agreement, lease agreement, sublease, ground lease, hedging agreement or other document executed by or on behalf of, or for the benefit of, a Financing Party, and all amendments, modifications, restatements, extensions and renewals thereof.

**"Financing Party"** means any Person providing debt, lease or equity financing (including equity contributions or commitments) or hedging arrangements, or any renewal, extension or refinancing of any such financing or hedging arrangements, or any guarantee, insurance, letters of credit or credit support for or in connection with such financing or hedging arrangements, in connection with the ownership, lease, operation or maintenance of the Project or interests or rights in the Lease, or any part thereof, including any trustee or agent acting on any such Person's behalf.

**"Government Securities"** means direct obligations of, or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America.

**"Indenture"** means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of **Article XI** hereof.

**"Investment Securities"** means any of the following securities:

(a) Government Securities;

(b) obligations of Fannie Mae, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;

(c) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by a nationally-recognized bond rating agency;

(d) certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee or any of its affiliates), provided that such certificates of deposit shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit and shall be deposited with the Trustee or a custodian bank, trust company or national banking association. The bank, trust company or national banking association holding each such certificate of deposit required to be so secured shall furnish the Trustee written evidence satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount at least equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(e) shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least $100,000,000, and which shares, at the time of purchase, are rated by S&P and Moody's in one of the two highest rating categories (without regard to any refinements or gradation of rating category by numerical modifier or otherwise) assigned by such rating agencies for obligations of that nature; or

(f) any other investment approved in writing by the Authorized City Representative and the Owners of all of the Outstanding Bonds.

**"Lease"** means the Lease Agreement dated as of August 1, 2016, between the City, as lessor, and the Company, as lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII** of this Indenture.

**"Lease Term"** means the period from the effective date of the Lease until the expiration thereof pursuant to **Section 3.2** of the Lease.

**"Leasehold Security Agreement"** means any leasehold security agreement, leasehold deed of trust, assignment of rents and leases, security agreement or other agreement relating to the Project permitted pursuant to the provisions of **Section 10.4** of the Lease.

**"Moody's"** means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, "Moody's" will be deemed to refer to any other nationally recognized securities rating agency designated by the Authorized Company Representative.

**"Outstanding"** means, when used with reference to Bonds, as of a particular date, all Bonds theretofore authenticated and delivered, except:

(a) Bonds subsequently cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of **Section 1302** hereof; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

**"Owner"** or **"Bondowner"** means the registered owner of any Bond as recorded on the bond registration records maintained by the Trustee.

**"Paying Agent"** means the Trustee and any other bank or trust company designated by this Indenture as paying agent for the Bonds at which the principal of or interest on the Bonds shall be payable.

**"Payment Date"** means the date on which principal or interest on any Bond, whether at the stated maturity thereof or the redemption date thereof, is payable, which shall be December 1 of each year that the Bonds are Outstanding.

**"Performance Agreement"** means the Performance Agreement dated as of August 1, 2016, between the City and the Company, as amended and supplemented from time to time.

**"Permitted Encumbrances"** means, as of any particular time (a) liens for ad valorem taxes, special assessments and other governmental charges not then delinquent, (b) the Indenture, the Lease and the Performance Agreement, (c) liens or security interests granted pursuant to any Leasehold Security Agreement or any Financing Documents, all as now existing or hereafter granted pursuant to the Financing Documents, including any subsequent or additional security instruments relating to any future financings or refinancings, and (d) such exceptions to title set forth in the title report included in the transcript of proceedings relating to the Bonds.

**"Person"** means an individual, partnership, corporation, business trust, joint stock company, limited liability company, bank, insurance company, unincorporated association, joint venture or other entity of whatever nature.

**"Project"** means the Project Site, the Project Improvements and the Project Equipment as they may at any time exist, and all additions, modifications, improvements, replacements and substitutions made to the Project pursuant to the Lease Purchase Agreement as they may at any time exist.

**"Project Costs"** means all costs of purchasing, constructing, extending, improving and equipping the Project, including the following:

(a) all costs and expenses necessary or incident to the acquisition of the Project Site, the construction, extension and improvement of the Project Improvements located on the Project Site, and the acquisition and installation of the Project Equipment;

(b) fees and expenses of architects, appraisers, surveyors, consultants and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of acquisition, purchase, construction, improvement and equipping, preparation of plans, drawings and specifications and supervision of construction and renovation, as well as for the performance of all other duties of architects, appraisers, surveyors and engineers in relation to the acquisition, purchase, construction, improvement and equipping of the Project or the issuance of the Bonds;

(c) all costs and expenses of every nature incurred in acquisition, purchase, construction and improvement of the Project Improvements and otherwise improving the Project Site and purchasing and installing the Project Equipment, including the actual cost of labor, materials, machinery, furnishings and equipment as payable to contractors, builders and materialmen in connection with the acquisition, purchase, construction, improvement and equipping of the Project;

(d) interest accruing on the Bonds during the construction period of the Project;

(e) the cost of title insurance reports, if any, and the cost of any other insurance maintained during the construction period in accordance with **Article VII** of the Lease;

(f) reasonable expenses of administration, supervision and inspection properly chargeable to the Project, legal fees and expenses, fees and expenses of accountants and other consultants, publication and printing expenses, and initial fees and expenses of the Trustee to the extent that said fees and expenses are necessary or incident to the issuance and sale of the Bonds or the construction and improvement of the Project;

(g) all other items of expense not elsewhere specified in this definition as may be necessary or incident to: (1) the authorization, issuance and sale of the Bonds, including costs of issuance of the Bonds; (2) the construction, improvement and equipping of the Project; and (3) the financing thereof; and

(h) reimbursement to the Company or those acting for it for any of the above enumerated costs and expenses incurred and paid by them before or after the execution of the Lease.

**"Project Equipment"** means the personal property to be purchased, constructed, installed and otherwise improved or located on the Project Site pursuant to **Article IV** of the Lease and paid for in whole or in part from the proceeds of Bonds, as described in **Exhibit B** attached hereto, and all additions, alterations, modifications and improvements thereof made pursuant to the Lease.

**"Project Fund"** means the "City of Joplin, Missouri, Project Fund -- Heartland Pet Foods Manufacturing, Inc." created in **Section 501** hereof.

**"Project Improvements"** means the buildings, structures, improvements and fixtures to be purchased, constructed, installed and otherwise improved or located on the Project Site pursuant to **Article IV** of the Lease and paid for in whole or in part from the proceeds of Bonds, as described in **Exhibit B** attached hereto, and all additions, alterations, modifications and improvements thereof made pursuant to the Lease.

**"Project Site"** means all of the real estate as described in **Exhibit A** attached hereto and by this reference made a part hereof, including any existing improvements thereon.

**"Purchaser"** means the entity identified in the Bond Purchase Agreement as the purchaser of the Bonds.

**"S&P"** means Standard & Poor's Ratings Services, a division of McGraw Hill Financial, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, and if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, "S&P" will be deemed to refer to any other nationally recognized securities rating agency designated by the Authorized Company Representative.

**"State"** means the State of Missouri.

**"Supplemental Indenture"** means any indenture supplemental or amendatory to this Indenture entered into by the City and the Trustee pursuant to **Article XI** hereof.

**"Supplemental Lease"** means any supplement or amendment to the Lease entered into pursuant to **Article XII** hereof.

**"Trust Estate"** means the Trust Estate described in the Granting Clauses of this Indenture.

**"Trustee"** means UMB Bank, N.A., a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, and its successor or successors and any other corporation which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

**"Unassigned Rights"** means the City's rights under the Lease to receive moneys for its own account and the City's rights to indemnification or to be protected from liabilities by insurance policies required by the Lease, as provided in the Lease.

**Section 102. Rules of Interpretation.**

(a) Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including public bodies, as well as natural Persons.

(b) Wherever in this Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(c) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision.

(d) Whenever an item or items are listed after the word "including", such listing is not intended to be a listing that excludes items not listed.

(e) The Table of Contents and the Article and Section headings of this Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions hereof.

## ARTICLE II

## THE BONDS

**Section 201. Title and Amount of Bonds.** No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as "City of Joplin, Missouri, Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016." The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to $83,250,000.

**Section 202. Nature of Obligation.** The Bonds and the interest thereon shall be special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease, and not from any other fund or source of the City. The Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in this Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State or any political subdivision thereof, and neither the City, the State or related political subdivision thereof shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation.

**Section 203. Denomination, Number and Dating of the Bonds.**

(a) The Bonds shall be issuable in the form of one fully-registered Bond, in substantially the form set forth in **Exhibit C** hereto, in the denomination of $0.01 or any multiple thereof.

(b) The Bonds shall be dated by the Trustee as of the date of initial delivery thereof as provided herein. If the Bonds are at any time thereafter transferred, any replacement Bonds shall be dated as of the date of authentication thereof.

**Section 204. Method and Place of Payment of Bonds.**

(a) The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for payment of public and private debts.

(b) Payment of the principal of the Bonds shall be made upon the presentation and surrender of such Bonds at the principal payment office of any Paying Agent named in the Bonds. The payment of principal on the Bonds shall be noted on the Bonds on **Schedule I** thereto and the registration books maintained by the Trustee pursuant to **Section 206** hereof. Payment of the interest on the Bonds shall be made by the Trustee on each Payment Date to the Person appearing on the registration books of the Trustee hereinafter provided for as the Owner thereof on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Payment Date by check or draft mailed to such Owner at such Owner's address as it appears on such registration books.

(c) The Bonds and the original **Schedule I** thereto shall be held by the Trustee in trust, unless otherwise directed in writing by the Owner. If the Bonds are held by the Trustee, the Trustee shall, on each Payment Date, send a revised copy of **Schedule I** via facsimile or other electronic means to the Owner, the Company (if not the Owner) and the City. Absent manifest error, the amounts shown on **Schedule I** as noted by the Trustee shall be conclusive evidence of the principal amount paid on the Bonds.

(d) If there is one Owner of the Bonds, the Trustee is authorized to make the final or any interim payments of principal on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated in writing by such Owner and located in the continental United States. The Trustee is also authorized to make interest payments on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated by such Owner and located in the continental United States.

(e) If the Company is the sole Owner of the Bonds, then the Company may set-off (by book entry or other reasonable means) its obligation to the City as lessee under the Lease against the City's obligations to the Company as the bondholder under this Indenture. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company may deliver to the Trustee for cancellation the Bonds and the Company shall receive a credit against the Basic Rent payable by the Company under **Section 5.1** of the Lease in an amount equal to the remaining principal on the Bond so tendered for cancellation plus accrued interest thereon.

**Section 205. Execution and Authentication of Bonds.**

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of the City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. If any officer whose signature or facsimile thereof appears on the Bonds ceases to be such officer before the delivery of such Bond, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such Person had remained in office until delivery. Any Bond may be signed by such Persons as at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit C** hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purposes until such Certificate of Authentication has been duly executed by the Trustee. The executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee.

**Section 206. Registration, Transfer and Exchange of Bonds.**

(a) The Trustee shall keep books for the registration and for the transfer of Bonds as provided in this Indenture.

(b) The Bonds may be transferred to an Approved Investor only upon the books kept for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or such Owner's attorney or legal representative in such form as shall be satisfactory to the Trustee. In connection with any such transfer of the Bonds, the City and the Trustee shall receive an executed representation letter signed by the proposed assignee in substantially the form of **Exhibit D** hereto. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new fully registered Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the Outstanding principal amount of such Bond, of the same maturity and bearing interest at the same rate.

(c) In all cases in which Bonds are exchanged or transferred hereunder the provisions of any legend restrictions on the Bonds shall be complied with and the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be cancelled by the Trustee. The City or the Trustee may make a reasonable charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid before any such new Bond shall be delivered. Neither the City nor the Trustee shall be required to make any such exchange or transfer of Bonds during the 15 days immediately preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) If any Owner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner sufficient to pay any governmental charge required to be

paid as a result of such failure, which amount may be deducted by the Trustee from amounts otherwise payable to such Owner under such Owner's Bond.

**Section 207. Persons Deemed Owners of Bonds.** As to any Bond, the Person in whose name the same is registered as shown on the bond registration books required by **Section 206** hereof shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the Owner thereof or a legal representative thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

**Section 208. Authorization of the Bonds.**

(a) The Bonds are authorized in the aggregate maximum principal amount of $83,250,000 for the purpose of providing funds to pay the costs of the Project, which Bonds shall be designated "City of Joplin, Missouri, Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016." The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on December 1, 2027 (subject to prior redemption as provided in **Article III** hereof) and shall bear interest as specified in **Section 208(f)** hereof, payable on the dates specified in **Section 208(f)** hereof.

(b) The Trustee is hereby designated as the Paying Agent. The Owners of a majority of Bonds then Outstanding may designate a different Paying Agent upon written notice to the City and the Trustee.

(c) The Bonds shall be executed without material variance from the form and in the manner set forth in **Exhibit C** hereto and delivered to the Trustee for authentication. Prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

(1) An original or certified copy of the ordinance passed by the City Council authorizing the issuance of the Bonds and the execution of this Indenture, the Performance Agreement, the Bond Purchase Agreement and the Lease;

(2) Original executed counterparts of this Indenture, the Lease, the Performance Agreement and the Bond Purchase Agreement;

(3) A representation letter from the Purchaser in substantially the form attached as **Exhibit D** hereto;

(4) A request and authorization to the Trustee on behalf of the City, executed by the Authorized City Representative, to authenticate the Bonds and deliver the same to or at the direction of the Purchaser upon payment to the Trustee, for the account of the City, of the purchase price thereof specified in the Bond Purchase Agreement. The Trustee shall be entitled to conclusively rely upon such request and authorization as to names of the purchaser and the amount of such purchase price;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the Bonds constitute valid and legally binding limited and special revenue obligations of the City; and

(6) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of the Bonds.

(d) When the documents specified in subsection (c) of this Section have been filed with the Trustee, and when the Bonds have been executed and authenticated as required by this Indenture, either:

(1) The Purchaser shall pay the Closing Price to the Trustee, and the Trustee shall endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to or upon the order of the Purchaser; or

(2) The Company shall submit a requisition certificate in accordance with **Section 4.4** of the Lease, in an amount equal to the Closing Price, and the Trustee shall authenticate and endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to the Company (or another purchaser designated by the Company).

In either case, the Purchaser shall be deemed to have paid over to the Trustee, and the Trustee shall be deemed to have deposited into the Project Fund, an amount equal to the Closing Price.

(e) Following the initial issuance and delivery of the Bonds, the Company may submit additional requisition certificates in accordance with **Section 4.4** of the Lease, and the Trustee shall, based solely of the amount set forth in the requisition, endorse the Bonds in an amount equal to the amount set forth in each requisition certificate. The date of endorsement of each Principal Amount Advanced (as defined in subsection (g) below) as set forth on **Schedule I** to the Bonds shall be the date of the City's approval of each requisition certificate. The Company shall be deemed to have paid over to the Trustee, and the Trustee shall be deemed to have deposited into the Project Fund, an amount equal to the amount of such requisition. The Trustee shall, at the time of each endorsement, send revised **Schedule I** to the Bonds via facsimile or electronic mail to the Purchaser and the Company (if not the sole Owner of the Bonds) and the City. The Trustee shall keep a record of the total requisitions submitted by the Company for the Project, and shall notify the Company and the City in writing if the requisitions submitted exceed the maximum principal amount of the Bonds.

(f) The Bonds shall bear interest at the rate of 3.00% per annum on the Cumulative Outstanding Principal Amount of the Bonds. Such interest shall be payable in arrears on each December 1, commencing on December 1, 2016, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full; provided that the aggregate maximum principal amount shall not exceed $83,250,000 and further provided that the Bonds shall be paid in full no later than December 1, 2027. Interest shall be calculated on the basis of a year of 360 days consisting of twelve months of 30 days each.

(g) The Trustee shall keep and maintain a record of the amount deposited or deemed to be deposited into the Project Fund pursuant to the terms of this Indenture as "Principal Amount Advanced" and shall enter the aggregate principal amount of the Bonds then Outstanding on its records as the "Cumulative Outstanding Principal Amount." On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Owners, pursuant to the redemption provisions of this Indenture, the Trustee shall enter on its records the principal amount paid on the Bonds as "Principal Amount Redeemed," and shall enter the then Outstanding principal amount of the Bonds as "Cumulative Outstanding Principal Amount." The records maintained by the Trustee as to amounts deposited into the Project Fund or principal amounts paid on the Bonds shall be the official records of the Cumulative Outstanding Principal Amount for all purposes, absent manifest error, and shall be in substantially the

form of the Table of Cumulative Outstanding Principal Amount as set out in the form of Bonds in **Exhibit C** hereto. If any moneys are deposited by the Trustee into the Project Fund, then the Trustee shall provide a statement of receipts and disbursements with respect thereto to the City and the Company on a monthly basis. After the Project has been completed and the certificate of payment of all costs is filed as provided in **Section 504** hereof, the Trustee, to the extent it has not already done so pursuant to this Section or **Section 1012** hereof, shall file a final statement of receipts and disbursements with respect thereto with the City and the Company.

**Section 209. Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond becomes mutilated, or is lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City and the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to the Trustee to save each of the City and the Trustee harmless. If any such Bond has matured, instead of delivering a substitute Bond, the Trustee may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the City and the Trustee may require the payment of an amount sufficient to reimburse the City and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

**Section 210. Cancellation and Destruction of Bonds Upon Payment.**

(a) All Bonds which have been paid or redeemed or which the Trustee has purchased or which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity shall be cancelled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee.

(b) All Bonds cancelled under any of the provisions of this Indenture shall be destroyed by the Trustee. The Trustee shall execute a certificate describing the Bonds so destroyed, and shall file executed counterparts of such certificate with the City and the Company.

## ARTICLE III

## REDEMPTION OF BONDS

**Section 301. Redemption of Bonds.**

(a) The Bonds are subject to redemption and payment at any time before the stated maturity thereof, at the option of the Company, (1) in whole, if the Company exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease. If only a portion of the Bonds are to be redeemed, (1) Bonds aggregating at least 10% of the maximum aggregate principal amount of Bonds authorized hereunder shall not be subject to redemption and payment before the stated maturity thereof, and (2) the Trustee shall keep a record of the amount of Bonds to remain Outstanding following such redemption. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

(b) The Bonds are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Sections 9.1(a)** or **(f)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph (b), money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

(c) In connection with a redemption under paragraphs (a) or (b) of this Section, at its option, the Company may deliver to the Trustee for cancellation any Bonds owned by the Company and not previously paid, and the Company shall receive a credit against the amounts payable by the Company for the redemption of such Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest.

**Section 302. Effect of Call for Redemption.** Before or on the date fixed for redemption, funds, Government Securities, or a combination thereof, shall be placed with the Trustee which are sufficient to pay the Bonds called for redemption and accrued interest thereon, if any, to the redemption date. Upon the happening of the above conditions and appropriate written notice having been given, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture. If the Bonds are fully redeemed before maturity and an amount of money equal to the Trustee's and the Paying Agent's agreed to fees and expenses hereunder accrued and to accrue in connection with such redemption is paid or provided for, the City shall, at the Company's direction, deliver to the Company the items described in **Section 11.2** of the Lease.

**Section 303. Notice of Redemption.** If the Bonds are to be called for redemption as provided in **Section 301(a)** hereof, the Company shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Bonds at least 40 days (10 days if the Company is the Owner) prior to the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if the Company is the Owner) prior to the scheduled redemption date by facsimile and by first-class mail stating the date upon which the Bonds will be redeemed and paid, unless such notice period is waived by the Owners in writing.

## ARTICLE IV

## FORM OF BONDS

**Section 401. Form Generally.** The Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be issued in substantially the forms set forth in **Exhibit C** hereto. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirements of law with respect thereto.

## ARTICLE V

## CUSTODY AND APPLICATION OF BOND PROCEEDS

**Section 501. Creation of Funds.** There are hereby created and ordered to be established in the custody of the Trustee the following special trust funds in the name of the City:

(a) "City of Joplin, Missouri, Project Fund – Heartland Pet Foods Manufacturing, Inc." (herein called the "Project Fund");

(b) "City of Joplin, Missouri, Costs of Issuance Fund – Heartland Pet Foods Manufacturing, Inc." (herein called the "Costs of Issuance Fund"); and

(c) "City of Joplin, Missouri, Bond Fund – Heartland Pet Foods Manufacturing, Inc." (herein called the "Bond Fund").

**Section 502. Deposits into the Project Fund.** The proceeds of the sale of the Bonds (whether actually paid or deemed paid under **Section 208(d)** and **(e)** hereof), including Additional Payments provided for in the Bond Purchase Agreement, when received, excluding such amounts required to be paid into the Bond Fund pursuant to **Section 601** hereof, shall be deposited by the Trustee into the Project Fund. Any money received by the Trustee from any other source for the purpose of purchasing, constructing, improving and equipping the Project shall pursuant to any directions from the Person depositing such moneys also be deposited into the Project Fund.

**Section 503. Disbursements from the Project Fund.**

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of, or reimbursement to the Company (or any other party that has made payment on behalf of the Company) for payment of, Project Costs upon receipt of requisition certificates signed by the Company in accordance with the provisions of **Article IV** of the Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions.

(b) If, pursuant to **Section 208(d)** and **(e)** hereof, the Trustee is deemed to have deposited into the Project Fund the amount specified in the requisition certificates submitted by the Company in accordance with the provisions of **Article IV** of the Lease, the Trustee shall upon endorsement of the Bonds in an equal amount be deemed to have disbursed such funds from the Project Fund to the Company (or such other purchaser designated by the Company) in satisfaction of the requisition certificate.

(c) In paying any requisition under this Section, the Trustee may rely as to the completeness and accuracy of all statements in such requisition certificate if such requisition certificate is signed by the Authorized Company Representative. If the City so requests in writing, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the City. The City hereby authorizes and directs the Trustee to make disbursements in the manner and as provided for by the aforesaid provisions of the Lease.

**Section 504. Completion of the Project.** The completion of the acquisition, construction, improvement and equipping of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate required by the provisions of **Section 4.5** of the Lease. As soon as practicable after the Completion Date any balance remaining in the Project Fund shall

without further authorization be transferred by the Trustee to the Bond Fund and applied as provided in **Section 4.6** of the Lease.

**Section 505. Deposits into and Disbursements from the Costs of Issuance Fund.** Money deposited by the Company in the Costs of Issuance Fund shall be used solely to pay costs of issuing the Bonds or refunded to the Company as hereinafter provided. The Trustee shall without further authorization disburse from the Costs of Issuance Fund, to the extent available, money sufficient to pay the amounts shown in a closing memorandum provided to the Trustee on or before the date of delivery of the Bonds, which shall have attached thereto the statements, invoices and related items described in said closing memorandum. The Trustee may rely conclusively on the amounts due as shown in the closing memorandum and will not be required to make any independent inspection or investigation in connection therewith. Any of such money not used to pay costs of issuance by November 1, 2016 shall be refunded to the Company.

**Section 506. Disposition Upon Acceleration.** If the principal of the Bonds has become due and payable pursuant to **Section 902** hereof, upon the date of payment by the Trustee of any moneys due as provided in **Article IX** hereof, any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund by the Trustee, with advice to the City and to the Company of such action.

## ARTICLE VI

## REVENUES AND FUNDS

**Section 601. Deposits Into the Bond Fund.**

(a) The Trustee shall deposit into the Bond Fund, as and when received, (a) all accrued interest on the Bonds, if any, paid by the Purchaser; (b) all Basic Rent payable by the Company to the City specified in **Section 5.1** of the Lease; (c) any Additional Rent payable by the Company specified in **Section 5.2** of the Lease; (d) any amount in the Project Fund to be transferred to the Bond Fund pursuant to **Section 504** hereof upon completion of the Project or pursuant to **Section 506** hereof upon acceleration of the Bonds; (e) the balance of any Net Proceeds (as defined in the Lease) of condemnation awards or insurance received by the Trustee pursuant to **Article IX** of the Lease; (f) the amounts to be deposited in the Bond Fund pursuant to **Sections 9.1(f)** and **9.2(c)** of the Lease; (g) all interest and other income derived from investments of Bond Fund moneys as provided in **Section 702** hereof; and (h) all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by directions from the Person depositing such moneys that such moneys are to be paid into the Bond Fund.

(b) The Trustee shall notify the Company in writing, at least 15 days before each date on which a payment is due under **Section 5.1** of the Lease, of the amount that is payable by the Company pursuant to such Section.

**Section 602. Application of Moneys in the Bond Fund.**

(a) Except as provided in **Section 604** and **Section 908** hereof or in **Section 4.6(a)** of the Lease, moneys in the Bond Fund shall be expended (or deemed to be expended) solely for the payment of the principal of and the interest on the Bonds as the same mature and become due or upon the redemption

thereof before maturity; provided, however, that any amounts received by the Trustee as Additional Rent under **Section 5.2** of the Lease and deposited to the Bond Fund as provided in **Section 601** above, shall be expended by the Trustee for such items of Additional Rent as they are received or due without further authorization from the City.

(b) The City hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and the interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal and interest.

(c) Whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all of the Bonds Outstanding and to pay interest to accrue thereon before such redemption, the City covenants and agrees, upon request of the Company, to take and cause to be taken the necessary steps to redeem all such Bonds on the next succeeding redemption date for which the required redemption notice may be given or on such later redemption date as may be specified by the Company. The Trustee may use any moneys in the Bond Fund to redeem a part of the Bonds Outstanding in accordance with and to the extent permitted by **Article III** hereof so long as the Company is not in default with respect to any payments under the Lease and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest, if any, in all cases when such Bonds have not been presented for payment.

(d) After payment in full of the principal of and interest, if any, on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the fees, charges and expenses of the Trustee, the City and any Paying Agent and any other amounts required to be paid under this Indenture, the Lease and the Performance Agreement, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease.

**Section 603. Payments Due on Days Other than Business Days.** In any case where the date of maturity of principal of or interest, if any, on the Bonds or the date fixed for redemption of any Bonds is not a Business Day, then payment of principal or interest, if any, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest, if any, shall continue to accrue for the period after such date.

**Section 604. Nonpresentment of Bonds.** If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. If any Bond is not presented for payment within one year following the date when such Bond becomes due, whether by maturity or otherwise, the Trustee shall without liability for interest thereon repay to the Company the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Company, and the Owner thereof shall be entitled to look only to the Company for payment, and then only to the extent of the amount so repaid, and the Company shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

## ARTICLE VII

## SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

**Section 701. Moneys to be Held in Trust.** All moneys deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease, and, until used or applied as herein provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

**Section 702. Investment of Moneys in Project Fund and Bond Fund.** Moneys held in the Project Fund and the Bond Fund shall, pursuant to written direction of the Company, signed by the Authorized Company Representative, be separately invested and reinvested by the Trustee in Investment Securities which mature or are subject to redemption by the Owner before the date such funds will be needed. If the Company fails to provide written directions concerning investment of moneys held in the Project Fund and the Bond Fund, the Trustee is authorized to invest in such Investment Securities specified in paragraph (e) of the definition of Investment Securities, provided they mature or are subject to redemption before the date such funds will be needed. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees and cash sweep account fees, which may be deducted from income earned on investments; provided that any such fees shall not exceed the interest income on the investment. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities shall be credited to such fund, and any loss resulting from such Investment Securities shall be charged to such fund. After the Trustee has notice pursuant to **Section 1001(h)** hereof of the existence of an Event of Default, the Trustee shall direct the investment of moneys in the Bond Fund and the Project Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any Fund is insufficient for the purposes of such Fund. In determining the balance in any Fund, investments in such Fund shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or any affiliate or short-term investment department.

**Section 703. Record Keeping.** The Trustee shall maintain records designed to show compliance with the provisions of this Article and with the provisions of **Article VI** hereof for at least six years after the payment of all of the Outstanding Bonds.

## ARTICLE VIII

## GENERAL COVENANTS AND PROVISIONS

**Section 801. Payment of Principal and Interest.** The City covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project and the Lease as described herein, deposit or cause to be deposited in the Bond Fund sufficient sums payable under the Lease promptly to meet and pay the principal of and the interest on the Bonds as they become due and payable

at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. Nothing herein shall be construed as requiring the City to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

**Section 802. Authority to Execute Indenture and Issue Bonds.** The City covenants that it is duly authorized under the Constitution and laws of the State to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City according to the import thereof.

**Section 803. Performance of Covenants.** The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its governing body pertaining thereto. The Trustee may take such action as it deems appropriate to enforce all such covenants, undertakings, stipulations and provisions of the City hereunder.

**Section 804. Instruments of Further Assurance.** The City covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to the payment of the principal of and interest, if any, on the Bonds. The City covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

**Section 805. Recordings and Filings.** The City shall file or cause to be kept and filed all financing statements, and hereby authorizes the Trustee to file or cause to be kept and filed continuation statements with respect to such originally filed financing statements related to this Indenture and all supplements hereto and such other documents as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the Company under the Lease and the rights of the Trustee hereunder. The City will cooperate in causing this Indenture and all Supplemental Indentures, the Lease and all Supplemental Leases and all other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder.

**Section 806. Inspection of Project Books.** The City covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

**Section 807. Enforcement of Rights Under the Lease.**

(a) The Trustee, as assignee, transferee, pledgee, and owner of a security interest under this Indenture, in its name or in the name of the City, may enforce all assigned rights of the City and the Trustee and all obligations of the Company under and pursuant to the Lease for and on behalf of the Owners, whether or not the City is in default hereunder.

(b) The City covenants and agrees that it will enforce all of its rights and all of the obligations of the Company (at the expense of the Company) under the Lease to the extent necessary to preserve the Project in good repair and reasonably safe operating condition, and to protect the rights of the Trustee and the Owners hereunder with respect to the pledge and assignment of the rents, revenues and receipts coming due under the Lease; provided that, the City and the Trustee, as its assignee, shall refrain from enforcing any such right or obligation (except for the rights of the City or the Trustee to receive payments owing to either of them for their own account under the Indenture, the Lease, the Performance Agreement or any other agreement related to the Bonds or for their rights of indemnification or to be protected from liabilities by insurance policies required by the Lease) if so directed in writing by the Owners of 100% of the Outstanding Bonds. The City agrees that the Trustee, as assignee of the rentals and other amounts to be received by the City and paid by the Company under the Lease, or in its name or in the name of the City, may enforce all rights of the City to receive such rentals and other amounts and all obligations of the Company to pay such rentals and other amounts under and pursuant to the Lease for and on behalf of the Owners, whether or not the City is in default hereunder. So long as not otherwise provided in this Indenture, the Company shall be permitted to possess, use and enjoy the Project and appurtenances so as to carry out its obligations under the Lease.

## ARTICLE IX

## DEFAULT AND REMEDIES

**Section 901. Events of Default; Notice; Opportunity to Cure.** If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Default in the due and punctual payment of the principal on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;

(b) Default in the due and punctual payment of the interest on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;

(c) Default as specified in **Section 12.1** of the Lease has occurred; or

(d) Default in the performance, or breach, of any other covenant or agreement under this Indenture.

No default specified above shall constitute an Event of Default until the Trustee or the Owners of 25% in aggregate principal amount of all Bonds Outstanding has given actual notice of such default by registered or certified mail to the City and the Company, and the City and the Company have had 30 days after receipt of such notice to correct said default or cause said default to be corrected and have not corrected said default or caused said default to be corrected within such period; provided, however, if any such default (other than a default in the payment of any money) is such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the City or the Company (as the case may be) within such period and diligently pursued until the default is corrected. While the Company shall have no obligation to cure any default under this Indenture (except for such defaults as result from a default under **Section 12.1** of the Lease), the cure of any default hereunder by the Company shall be accepted as if such cure was made by the City.

**Section 902. Acceleration of Maturity in Event of Default; Rescission.**

(a) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the Trustee may, and upon the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding, shall, by notice in writing delivered to the City and the Company, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest and all other amounts due hereunder shall thereupon become and be immediately due and payable.

(b) If, at any time after such declaration, but before the Bonds have matured by their terms, all overdue installments of principal and interest upon the Bonds, together with the reasonable and proper expenses of the Trustee, and all other sums then payable by the City under this Indenture are either paid or provisions satisfactory to the Trustee are made for such payment (and all sums then payable under the Lease by the Company have been paid to the City), then and in every such case the Trustee shall, but only with the approval of a majority of the Owners of the Bonds then Outstanding, rescind such declaration and annul such default in its entirety. In such event, the Trustee shall rescind any declaration of acceleration of installments of rent payments on the Bonds under **Section 12.2** of the Lease.

(c) In case of any rescission, then and in every such case the City, the Trustee, the Company and the Owners shall be restored to their former position and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

**Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession.** If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** hereof elapses, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and including the rights and the position of the City under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements. The Trustee may lease the Project or any part thereof, in the name and for account of the City, and collect, receive and sequester the rents, revenues and receipts therefrom, and out of the same and any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including without limitation (a) reasonable compensation to the Trustee, its agents and counsel, (b) any reasonable charges of the Trustee hereunder, (c) any taxes and assessments and other charges having a lien that is senior to the lien of this Indenture, (d) all expenses of such repairs and improvements and (e) any amounts payable under the Performance Agreement. The Trustee shall apply the remainder of the moneys so received in accordance with the provisions of **Section 908** hereof. Whenever all that is due upon the Bonds has been paid and all defaults cured, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default. While in possession of such property, the Trustee shall render annually to the City and the Company a summarized statement of receipts and expenditures in connection therewith.

**Section 904. Appointment of Receivers in Event of Default.** If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate or any part thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

**Section 905. Exercise of Remedies by the Trustee.**

(a) Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Bonds then Outstanding and all other amounts due hereunder, and to enforce and compel the performance of the duties and obligations of the City or the Company as herein set forth or as set forth in the Lease, respectively.

(b) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and if requested to do so by (1) the City (in the case of an Event of Default pursuant to **Section 12.1(a)** or **(b)** of the Lease, to the extent that such default relates to Unassigned Rights, or **Section 12.1(c), (d)** or **(e)** of the Lease), or (2) the Owners of 25% in aggregate principal amount of Bonds then Outstanding and indemnified as provided in subsection (l) of **Section 1001** hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient and in the interests of the City or the Owners, as the case may be.

(c) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners, and any recovery of judgment shall, subject to the provisions of **Section 908** hereof, be for the equal benefit of all the Owners of the Outstanding Bonds.

**Section 906. Limitation on Exercise of Remedies by Owners.** No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in **Section 1001(h)** hereof or of which by said subsection the Trustee is deemed to have notice, (b) such default has become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then Outstanding have made written request to the Trustee, have offered it reasonable opportunity either to proceed for such reasonable period not to exceed 60 days following such notice and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in **Section 1001(l)** hereof, and (d) the Trustee thereafter fails or refuses to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

**Section 907. Right of Owners to Direct Proceedings.**

(a) The Owners of a majority in aggregate principal amount of Bonds then Outstanding may, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, including **Section 1001(l)** hereof.

(b) Notwithstanding any provision in this Indenture to the contrary, including paragraph (a) of this Section, the Owners shall not have the right to control or direct any remedies hereunder upon an Event of Default under **Section 12.1(b)** (but only with respect to Unassigned Rights) or **(d)** of the Lease.

**Section 908. Application of Moneys in Event of Default.**

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of any obligations outstanding under the Lease and the Performance Agreement, of the cost and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances incurred or made by the Trustee (including any attorneys fees and expenses) or amounts to be paid pursuant to **Section 903** hereof, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund shall be applied as follows:

(1) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST -- To the payment to the Persons entitled thereto of all installments of interest, if any, then due and payable on the Bonds, in the order in which such installments of interest became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment, ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(2) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Person entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of **Section 910** hereof, then, subject to the provisions of subsection (2) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (1) of this Section.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue.

(c) Whenever all of the Bonds and interest thereon, if any, have been paid under the provisions of this Section, and all fees, expenses and charges of the City and the Trustee and any other amounts required to be paid under this Indenture and the Lease have been paid (including any amounts payable under the Performance Agreement), any balance remaining in the Bond Fund shall be paid to the Company as provided in **Section 602** hereof.

**Section 909. Remedies Cumulative.** No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 910. Waivers of Events of Default.** The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on Bonds, and only upon the written request of the Owners of at least 50% in aggregate principal amount of all the Bonds then Outstanding, provided, however, that (1) there shall not be waived without the consent of the City an Event of Default hereunder arising from an Event of Default under **Section 12.1(b)** or **(c)** of the Lease, to the extent that such default relates to Unassigned Rights, or **Section 12.1(d)**, **(e)** or **(f)** of the Lease, and (2) there shall not be waived without the consent of the Owners of all the Bonds Outstanding (a) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (b) any Event of Default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, all arrears of interest, or all arrears of payments of principal when due, as the case may be, and all reasonable expenses of the Trustee and the City (including reasonable attorneys' fees and expenses), in connection with such default, shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right

consequent thereon, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

## ARTICLE X

## THE TRUSTEE

**Section 1001. Acceptance of the Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, before the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default has occurred and is continuing, subject to **Section 1001(l)** hereof, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, affiliates, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care. The Trustee may conclusively rely upon and act or refrain from acting upon any opinion or advice of counsel, who may be counsel to the City or to the Company, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel addressed to the City and the Trustee.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or except as provided in the Lease and particularly **Section 10.8** thereof, for the recording or rerecording, filing or refiling of this Indenture or any security agreement in connection therewith (excluding the continuation of Uniform Commercial Code financing statements), or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security of the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article VII** hereof.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the Owner or pledgee of Bonds with the same rights that it would have if it were not Trustee. The Trustee shall not be accountable for the use or application by the City or the Company of the proceeds of any of the Bonds or of any money paid to or upon the order of the City or Company under any provision of this Indenture.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent is an Owner, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the Authorized City Representative or an Authorized Company Representative as sufficient evidence of the facts therein contained, and before the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made in **Article VI** hereof, unless the Trustee is specifically notified in writing of such default by the City or by the Owners of at least 25% in aggregate principal amount of all Bonds then Outstanding.

(i) At any and all reasonable times and subject to the Company's reasonable and standard security procedures, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives may, but shall not be required to, inspect any and all of the Project, and all books, papers and records of the City pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Company as confidential.

(j) The Trustee shall not be required to give any bond or surety in respect to the execution of its trusts and powers hereunder or otherwise in respect of the Project.

(k) The Trustee may, but shall not be required to, demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Notwithstanding anything in the Indenture or the Lease to the contrary, before taking any action under this Indenture other than the payments from moneys on deposit in the Project Fund or the Bond Fund, as provided herein, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

**Section 1002. Fees, Charges and Expenses of the Trustee.** The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary expenses reasonably made or incurred by the Trustee in connection with such ordinary services. If it becomes necessary for the Trustee to perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Company has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the City shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Company for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment before payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred.

**Section 1003. Notice to Owners if Default Occurs.** If a default occurs of which the Trustee is by **Section 1001(h)** hereof required to take notice or if notice of default is given as in said subsection (h) provided, then the Trustee shall give written notice thereof to the last known Owners of all Bonds then Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

**Section 1004. Intervention by the Trustee.** In any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners, the Trustee may intervene on behalf of Owners and, subject to the provisions of **Section 1001(l)** hereof, shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding.

**Section 1005. Successor Trustee Upon Merger, Consolidation or Sale.** With the prior written consent of the Company, any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become

successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

**Section 1006. Resignation of Trustee.** The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the City, the Company and the Owners, and such resignation shall take effect at the end of such 30 days, or upon the earlier appointment of a successor Trustee by the Owners or by the City; provided, however, that in no event shall the resignation of the Trustee or any successor trustee become effective until such time as a successor trustee has been appointed and has accepted the appointment. If no successor has been appointed and accepted the appointment within 30 days after the giving of such notice of resignation, the Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

**Section 1007. Removal of Trustee.** The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the City and the Company and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, or (b) so long as no Event of Default under this Indenture or the Lease shall have occurred and be continuing, delivered to the Trustee, the City and the Owners and signed by the Company.

**Section 1008. Appointment of Successor Trustee.** If the Trustee hereunder resigns or is removed, or otherwise becomes incapable of acting hereunder, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee (a) reasonably acceptable to the City may be appointed by the Company (so long as no Event of Default has occurred and is continuing), or (b) reasonably acceptable to the City and the Company may be appointed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the City, by an instrument executed and signed by its Mayor and attested by its City Clerk under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed in the manner above provided. Any such temporary Trustee so appointed by the City shall immediately and without further acts be superseded by the successor Trustee so appointed as provided above. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and qualified to accept such trust with a corporate trust office in the State, and having, or whose obligations are guaranteed by a financial institution having, a reported capital, surplus and undivided profits of not less than $50,000,000. If no successor Trustee has been so appointed and accepted appointment in the manner herein provided, the Trustee or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor shall have been appointed as above provided.

**Section 1009. Vesting of Trusts in Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and the duties and obligations of such predecessor hereunder shall thereafter cease and terminate; but such predecessor shall, nevertheless, on the written request of the City, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the City be required by any predecessor or successor Trustee for more fully and certainly vesting in such successor the trusts, powers,

rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

**Section 1010. Right of Trustee to Pay Taxes and Other Charges.** If any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment or governmental charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Owners hereunder arising in consequence of such failure; any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of 10% per annum, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

**Section 1011. Trust Estate May be Vested in Co-Trustee.**

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either this Indenture or the Lease upon the occurrence of an Event of Default or if the Trustee deems that by reason of any present or future law of any jurisdiction it cannot exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) If the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall be subject to the approval of the Company), each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the City be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to such co-trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

(d) If any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

**Section 1012. Accounting.** The Trustee shall render an annual accounting for the period ending December 31 of each year, to the City, the Company and to any Owner requesting the same and, upon the request of the City, the Company or any Owner, a monthly accounting to any such party, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

**Section 1013. Performance of Duties Under the Lease.** The Trustee hereby accepts and agrees to perform all duties and obligations assigned to it under the Lease.

## ARTICLE XI

## SUPPLEMENTAL INDENTURES

**Section 1101. Supplemental Indentures Not Requiring Consent of Owners.** The City and the Trustee may from time to time, without the consent of or notice to any of the Owners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

(a) To cure any ambiguity or formal defect or omission in this Indenture, or to make any other change which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners;

(b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or either of them;

(c) To more precisely identify any portion of the Project or to add additional property thereto;

(d) To conform the Indenture to amendments to the Lease made by the City and the Company; or

(e) To subject to this Indenture additional revenues, properties or collateral.

**Section 1102. Supplemental Indentures Requiring Consent of Owners.**

(a) Exclusive of Supplemental Indentures covered by **Section 1101** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding may, from time to time, anything contained in this Indenture to the contrary notwithstanding, consent to and approve the execution by the City and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that without the consent of the Owners of 100% of the principal amount of the Bonds then Outstanding, nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or the interest, if any, on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of

interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) If at the time the City requests the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Owner as shown on the bond registration books required by **Section 206** hereof. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

**Section 1103. Company's Consent to Supplemental Indentures.** Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article shall not become effective unless and until the Company shall have consented in writing to the execution and delivery of such Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture (regardless of whether it affects the Company's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Company and any Financing Party at least 15 days before the proposed date of execution and delivery of the Supplemental Indenture.

**Section 1104. Opinion of Counsel.** In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee and the City shall receive, and, shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture and will, upon the execution and delivery thereof, be a valid and binding obligation of the City. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's rights, duties or immunities under this Indenture or otherwise.

## ARTICLE XII

## SUPPLEMENTAL LEASES

**Section 1201. Supplemental Leases Not Requiring Consent of Owners.** The City and the Trustee shall, without the consent of or notice to the Owners, consent to the execution of any Supplemental Lease or Supplemental Leases by the City and the Company as may be required (a) by the provisions of the Lease and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease, (c) so as to more precisely identify the Project or add additional property thereto or (d) in connection with any other change therein which, in the judgment of the Trustee, does not materially and adversely affect the Trustee or security for the Owners.

**Section 1202. Supplemental Leases Requiring Consent of Owners.** Except for Supplemental Leases as provided for in **Section 1201** hereof, neither the City nor the Trustee shall consent to the

execution of any Supplemental Lease or Supplemental Leases by the City or the Company without the mailing of notice and the obtaining of the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102** hereof. If at any time the City and the Company shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed Supplemental Lease and shall state that copies of the same are on file in the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than 50% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Lease shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

**Section 1203. Opinion of Counsel.** In executing or consenting to any Supplemental Lease permitted by this Article, the City and the Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel addressed to the Trustee and the City stating that the executing of such Supplemental Lease is authorized or permitted by the Lease and this Indenture and the applicable law and will upon the execution and delivery thereof be valid and binding obligations of the parties thereof.

## ARTICLE XIII

## SATISFACTION AND DISCHARGE OF INDENTURE

**Section 1301. Satisfaction and Discharge of this Indenture.**

(a) When the principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 1302** hereof, and provision also made for paying all other sums payable hereunder and under the Lease and the Performance Agreement, including the reasonable fees and expenses of the Trustee, the City and Paying Agent to the date of retirement of the Bonds, then the right, title and interest of the Trustee in respect hereof shall thereupon cease, determine and be void. Thereupon, the Trustee shall cancel, discharge and release this Indenture and shall upon the written request of the City or the Company execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the City (subject to the City's obligations under **Section 11.2** of the Lease) any property at the time subject to this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Company under **Section 602** hereof and except funds or securities in which such funds are invested held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The City is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds then Outstanding has been paid or such payment provided for in accordance with **Section 1302** hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

**Section 1302. Bonds Deemed to be Paid.**

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) have been made or caused to be made in accordance with the terms thereof, or (2) have been provided for by depositing with the Trustee or other commercial bank or trust company having full trust powers and authorized to accept trusts in the State in trust and irrevocably set aside exclusively for such payment (i) moneys sufficient to make such payment or (ii) Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, or (3) have been provided for by surrendering the Bonds to the Trustee for cancellation. At such time as Bonds are deemed to be paid hereunder, as aforesaid, they shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed before the stated maturities thereof, no deposit under clause (2) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed before their respective stated maturities, proper notice of such redemption shall have been given in accordance with **Article III** hereof or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds, with respect to which such moneys and Government Securities have been so set aside in trust.

## ARTICLE XIV

## MISCELLANEOUS PROVISIONS

**Section 1401. Consents and Other Instruments by Owners.**

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in Person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds (other than the assignment of ownership of a Bond) if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(i) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(ii) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the City maintained by the Trustee pursuant to **Section 206** hereof.

(b) In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Company shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded; provided, the foregoing provisions shall not be applicable if the Company is the only Owner of the Bonds. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and the pledgee is not the Company or any affiliate thereof.

**Section 1402. Limitation of Rights Under this Indenture.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners, if any, any right, remedy or claim under or in respect to this Indenture, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Owners, as herein provided.

**Section 1403. Notices**. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the City, the Trustee, the Company or Owners if the same is duly mailed, postage prepaid, sent by overnight delivery or other delivery service, as follows:

(a) To the City:

City of Joplin, Missouri
602 S. Main Street
Joplin, Missouri 64801
Attention: City Manager

with copy to:

The Joplin Area Chamber of Commerce
320 E. 4th Street
Joplin, Missouri 64801
ATTN: Rob O'Brian

(b) To the Trustee:

UMB Bank, N.A.
2 South Broadway, Suite 600
St. Louis, Missouri 63102
ATTN: Corporate Trust Department

(c) To the Company:

Heartland Pet Foods Manufacturing, Inc.
11 River Road
Wilton, Connecticut 06897
ATTN: Daniel Comiskey

with a copy to:

Carmody MacDonald P.C.
120 S. Central Ave., Suite 1800
St. Louis, Missouri 63105
ATTN: Josh J. Reinert

(d) To the Owners if the same is duly mailed by first class, registered or certified mail addressed to each of the Owners of Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided that any of the foregoing given to the Trustee shall be effective only upon receipt. All notices given by overnight delivery or other delivery service shall be deemed fully given as of the date when received. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Trustee to the other shall also be given to the Company. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

**Section 1404. Severability.** If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

**Section 1405. Execution in Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 1406. Governing Law.** This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1407. Electronic Storage.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 1408. City Consents.** The Mayor of the City is authorized, unless expressly provided herein, to grant on behalf of the City such consents and waivers relating to the Bonds, this Indenture, the Lease Agreement or the Performance Agreement as may be requested during the term thereof; provided, such consents and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease Agreement or the tax exemption as provided for therein, or materially change the nature of the transaction.

*[remainder of this page intentionally left blank]*

**IN WITNESS WHEREOF**, City of Joplin, Missouri, has caused this Indenture to be signed in its name and behalf by its Mayor and the seal of the City to be hereunto affixed and attested by the City Clerk, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf by a duly authorized officer, all as of the date first above written.

**CITY OF JOPLIN, MISSOURI**

By: _____
Name: Michael Seibert
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Barbara Hogelin
Title: City Clerk

Approved as to form:

_____
City Attorney

**UMB BANK, N.A.,**
as Trustee

By _____
Name:
Title:

[SEAL]

ATTEST:

By _____
Name:
Title:

**EXHIBIT A**

**PROJECT SITE**

The following described real estate located in Jasper County, Missouri:

[**INSERT LEGAL DESCRIPTION FOR EXISTING FACILITY AND NEWLY ACQUIRED PROPERTY**]

## EXHIBIT B

## PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

An expansion of an existing dry pet food manufacturing facility including buildings, site improvements and related fixtures and improvements.

## PROJECT EQUIPMENT

The Project Equipment consist of the following, to the extent paid for in whole with Bond proceeds:

All items of machinery, equipment and parts or other personal property installed or acquired or to be acquired for installation in the Project Improvements or elsewhere on the Project Site.

**EXHIBIT C**

**FORM OF BONDS**

***THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR NEGOTIATED ONLY AS PROVIDED IN THE HEREIN DESCRIBED INDENTURE.***

**No. 1** **Not to Exceed $83,250,000**

**UNITED STATES OF AMERICA**
**STATE OF MISSOURI**

**CITY OF JOPLIN, MISSOURI**
**TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND**
**(HEARTLAND PET FOODS MANUFACTURING PROJECT)**
**SERIES 2016**

| Interest Rate | Maturity Date | Dated Date |
|---|---|---|
| 3.00% | December 1, 2027 | August ___, 2016 |

**OWNER:** **HEARTLAND PET FOODS MANUFACTURING, INC.**

**MAXIMUM PRINCIPAL AMOUNT:** **NOT TO EXCEED EIGHTY-THREE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS**

**THE CITY OF JOPLIN, MISSOURI,** a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the "City"), for value received, promises to pay, but solely from the source hereinafter referred to, to the Owner named above, or registered assigns thereof, on the Maturity Date shown above, the principal amount shown above, or such lesser amount as may be outstanding hereunder as reflected on **Schedule I** hereto held by the Trustee as provided in the hereinafter referred to Indenture. The City agrees to pay such principal amount to the Owner in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts (or by book entry as provided in the Indenture and Lease), and in like manner to pay to the Owner hereof, either by check or draft mailed to the Owner at a stated address as it appears on the bond registration books of the City kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer (or by book entry as provided in the Indenture and Lease), or by wire transfer to an account in a commercial bank or savings institution located in the continental United States. Interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum Interest Rate stated above, payable in arrears on each December 1, commencing on December 1, 2016, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount is paid in full or the Maturity Date. Interest on each advancement of the principal amount of this Bond shall accrue from the date that such advancement is made, computed on the basis of a year of 360 days consisting of 12 months of 30 days each.

As used herein, the term "Cumulative Outstanding Principal Amount" means all Bonds outstanding under the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

**THIS BOND** is one of a duly authorized series of Bonds of the City designated "City of Joplin, Missouri, Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016," in the maximum aggregate principal amount of $83,250,000 (the "Bonds"), to be issued for the purpose of acquiring, constructing, improving and equipping a project located 8101 East 32nd Street in the City (the "Project"). The City will lease the land on which the Project is located (the "Project Site"), the improvements to be made thereon and equipment to be installed therein (collectively, the "Project") to Heartland Pet Foods Manufacturing, Inc., a Delaware corporation (the "Company"), under the terms of a Lease Agreement dated as of August 1, 2016 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Lease"), between the City and the Company, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution, the statutes of the State of Missouri, including particularly the Act, the charter of the City and pursuant to proceedings duly had by the Council of the City.

**THE BONDS** are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of August 1, 2016 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Indenture"), between the City and UMB Bank, N.A., as trustee (the "Trustee"). *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Trustee and the Owners, and the terms upon which the Bonds are issued and secured.

**THE BONDS** are subject to redemption and payment prior to maturity as provided in the Indenture.

**THE BONDS,** including interest thereon, are special obligations of the City and are payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease and not from any other fund or source of the City, and are secured by a pledge and assignment of the Project and of such rents, revenues and receipts, including all rentals and other amounts to be received by the City under and pursuant to the Lease, all as provided in the Indenture. The Bonds do not constitute a general obligation of the City or the State of Missouri, and neither the City nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the City and deposited in a special fund created by the City and designated the "City of Joplin, Missouri, Bond Fund -- Heartland Pet Foods Manufacturing, Inc."

**THE OWNER** of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect

set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

**THIS BOND** is transferable, as provided in the Indenture, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee by the Owner hereof in Person or by such Person's duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer reasonably satisfactory to the Trustee duly executed by the Owner or such Person's duly authorized attorney, and thereupon a new fully registered Bond or Bonds, in the same aggregate principal amounts, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City, the Trustee and any Paying Agent may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

**THE BONDS** are issuable in the form of one fully-registered Bond in the maximum principal amount of $83,250,000.

**THIS BOND** shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

**IT IS HEREBY CERTIFIED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Missouri.

**IN WITNESS WHEREOF,** the City of Joplin, Missouri has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon, and has caused this Bond to be dated the date set forth above.

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds
of the issue described in the
within-mentioned Resolution.

Registration Date: _____

**UMB BANK, N.A.,**
as Trustee

By _____
Authorized Signatory

**CITY OF JOPLIN, MISSOURI**

By: _____
Mayor

ATTEST: (Seal)

_____
City Clerk

**SCHEDULE I**

**TABLE OF CUMULATIVE OUTSTANDING PRINCIPAL AMOUNT**

**CITY OF JOPLIN, MISSOURI**
**TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND**
**(HEARTLAND PET FOODS MANUFACTURING PROJECT)**
**SERIES 2016**

**Bond No. 1**

| Date | Principal Amount Advanced | Principal Amount Redeemed | Cumulative Outstanding Principal Amount | Notation Made By |
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**FORM OF ASSIGNMENT**

***(NOTE RESTRICTIONS ON TRANSFERS)***

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

_____

Print or Typewrite Name, Address and Social Security or
other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept by the Trustee for the registration and transfer of Bonds, with full power of substitution in the premises.

Dated: _____.

_____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

_____

(Name of Eligible Guarantor Institution as defined by SEC Rule 17 Ad-15 (17 CFR 240.17 Ad-15))

By _____
Title: _____

**EXHIBIT D**

**FORM OF REPRESENTATION LETTER**

City of Joplin, Missouri
602 S. Main Street
Joplin, Missouri 64801
Attention: City Manager

UMB Bank, N.A.
2 South Broadway, Suite 600
St. Louis, Missouri 63102
ATTN: Corporate Trust Department

Re: $83,250,000 Maximum Principal Amount of Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016 of the City of Joplin, Missouri

Ladies and Gentlemen:

In connection with the purchase of the above-referenced Bonds (the "Bonds"), the undersigned purchaser of the Bonds (the "Purchaser") hereby represents, warrants and agrees as follows:

**1.** The Purchaser fully understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of August 1, 2016 (the "Indenture"), between the City of Joplin, Missouri (the "City") and UMB Bank, N.A., as trustee (the "Trustee"), and (b) the Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Project (as defined in the Indenture) to Heartland Pet Foods Manufacturing, Inc., a Delaware corporation (the "Company"), under a Lease Agreement dated as of August 1, 2016 (the "Lease"), between the City and the Company, with certain of such rents, revenues and receipts being pledged and assigned by the City to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds.

**2.** The Purchaser understands that the Bonds have not been registered under the Securities Act of 1933, as amended (the "1933 Act"), or the securities laws of any state and will be sold to the Purchaser in reliance upon certain exemptions from registration and in reliance upon the representations and warranties of the Purchaser set forth herein.

**3.** The Purchaser understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds is not made with a view toward their distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.

**4.** The Purchaser agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture.

**5.** The Company has (a) furnished to the Purchaser such information about itself as the Purchaser deems necessary in order for it to make an informed investment decision with respect to the

purchase of the Bonds, (b) made available to the Purchaser, during the course of this transaction, ample opportunity to ask questions of, and to receive answers from, appropriate officers of the City and the terms and conditions of the offering of the Bonds, and (c) provided to the undersigned all additional information which it has requested.

**6.** The Purchaser acknowledges that no offering document has been prepared in connection with the sale of the Bonds. The Purchaser further acknowledges that it has timely received in satisfactory form and manner all proceedings, certificates, opinions, letters and other documents required to be submitted to the Purchaser pursuant to the Bond Purchase Agreement prior to or on the date of the delivery of and payment for the Bonds, and that the City and the Company have in all respects complied with and satisfied all of their respective obligations to the Purchaser which are required under the Bond Purchase Agreement to be complied with and satisfied on or before such date.

**7.** The Purchaser is now, and was when it agreed to purchase the Bonds, familiar with the operations of the Company and fully aware of terms and risks of the Bonds and that the Purchaser is relying on its own knowledge and investigation of facts and circumstances relating to the purchase of the Bonds. The Purchaser believes that the Bonds being acquired are a security of the type that the Purchaser wishes to purchase and hold for investment and that the nature and amount thereof are consistent with its investment program.

**8.** The Purchaser is fully aware of and satisfied with (i) the current status of the title to the Project and any issues related thereto and (ii) the terms, amounts and providers of the insurance maintained pursuant to **Article VII** of the Lease, and the undersigned is purchasing the Bonds with full knowledge of such matters.

**9.** The Purchaser understands and agrees that the interest on the Bonds *is* subject to federal and state income taxation.

**10.** The Purchaser hereby directs the Trustee to hold the Bonds in trust for the undersigned pursuant to **Section 204(c)** of the Indenture.

**11.** The Purchaser is the lessee under the Lease or (i) a "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933, or (ii) any general business corporation or enterprise with total assets in excess of $100,000,000.

Dated: _____, 20___

**[PURCHASER OF BONDS]**

By:_____
Name: _____
Title: _____

**$83,250,000**
**(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)**
**CITY OF JOPLIN, MISSOURI**
**TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS**
**(HEARTLAND PET FOODS MANUFACTURING PROJECT)**
**SERIES 2016**

**DATED AS OF AUGUST 1, 2016**

# BOND PURCHASE AGREEMENT

Mayor and City Council
Joplin, Missouri

Ladies and Gentlemen:

On the basis of the representations, and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Heartland Pet Foods Manufacturing, Inc., a Delaware corporation (the "Purchaser"), offers to purchase from the City of Joplin, Missouri (the "City"), the above-referenced series of Taxable Industrial Development Revenue Bonds (the "Bonds"), to be issued by the City, under and pursuant to Ordinance No. _____ passed by the governing body of the City on August 15, 2016 (the "Ordinance") and a Trust Indenture dated as of August 1, 2016 (the "Indenture"), by and between the City and UMB Bank, N.A., St. Louis, Missouri, as trustee (the "Trustee"). Capitalized terms not otherwise defined herein shall have the meanings set forth in **Section 101** of the Indenture.

## SECTION 1. REPRESENTATIONS AND AGREEMENTS

(a) By the City's acceptance hereof, the City hereby represents to the Purchaser that:

(1) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended, and its Charter to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by this Bond Purchase Agreement, the Ordinance, the Indenture, the Lease, the Performance Agreement and any and all other agreements relating thereto. The proceeds of the Bonds shall be used to finance the Project for Heartland Pet Foods Manufacturing, Inc., a Delaware corporation (the "Company"), and to pay for the costs incurred in connection with the issuance of the Bonds;

(2) There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the City or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act leading up to the issuance of the Bonds or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds, the Ordinance, the Lease, the Indenture or the Performance Agreement; and

(3) Any certificate signed by an authorized representative of the City and delivered to the Purchaser shall be deemed a representation and warranty by the City to such party as to the statements made therein.

(b) The Purchaser represents as follows:

(1) The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is authorized to do business in and is in good standing under the laws of the State of Missouri;

(2) The execution, delivery and performance of this Bond Purchase Agreement by the Purchaser has been duly authorized by all necessary action of the Purchaser and does not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, any law, court or administrative regulation, decree or order applicable to or binding upon the Purchaser, or, to the best of its knowledge, any agreement, indenture, mortgage, lease or instrument to which the Purchaser is a party or by which it is bound;

(3) When executed and delivered by the Purchaser, this Bond Purchase Agreement will be, and is, a legal, valid and binding obligation, enforceable in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies; and

(4) Any certificate signed by an authorized officer or agent of the Purchaser and delivered to the City shall be deemed a representation and warranty by the Purchaser to such party as to the statements made therein.

**SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS**

On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions herein set forth and in the Indenture, the Purchaser agrees to purchase from the City and the City agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

The Bonds shall be sold to the Purchaser by the City on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined) for the Bonds, which amount shall be deposited as provided in the Indenture and shall thereafter on the Closing Date immediately be applied to the payment of Project Costs as provided in the Lease. From time to time after the Closing Date as additional Project Costs are incurred, the Purchaser may make additional payments with respect to the Bonds ("Additional Payments") to the Trustee, which Additional Payments shall be deposited in the Project Fund and applied to the payment of Project Costs at the outstanding principal amount of the Bonds shall increase by each such Additional Payment; provided that the sum of the Closing Price and all such Additional Payments for the Bonds shall not, in the aggregate, exceed $83,250,000.

As used herein, the term "Closing Date" shall mean August ___, 2016, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean, with respect to the Bonds, that certain amount specified in writing by the Purchaser and agreed to by the City as the amount required to fund the initial disbursement from the Project Fund on the Closing Date.

The Bonds shall be issued under and secured as provided in the Ordinance, the Indenture and the Lease authorized thereby and the Bonds shall have the maturity, interest rate and shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a fully registered bond in the maximum aggregate principal denomination of $83,250,000; provided, that the principal amount of the Bonds outstanding at any time shall be that amount recorded in the official bond registration records of the Trustee and further provided that interest shall be payable on the Bonds only on the outstanding principal amount of the Bonds, as more fully provided in the Indenture.

The Company agrees to indemnify and hold harmless the City, the Trustee, and any member, officer, official or employee of the City or of the Trustee and any person controlling the Trustee within the meaning of Section 15 of the Securities Act of 1933, as amended (collectively, the "Indemnified Parties"), against any and all losses, claims, damages, liabilities or expenses whatsoever to the extent caused by any violation by the Company of, or failure by the Company to comply with, any federal or state securities laws in connection with the Bonds; provided, however, the indemnification contained in this paragraph shall not extend to such Indemnified Party if such loss, claim, damage, liability or expense is (a) the result of the Indemnified Party's negligence or willful misconduct, or (b) the Indemnified Party is not following the written instructions of the Owner of the Bonds.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, then provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

**SECTION 3. CONDITIONS TO THE PURCHASER'S OBLIGATIONS**

The Purchaser's obligations hereunder shall be subject to the due performance by the City of the City's obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the City's representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

(a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly executed copy of the Ordinance, the Indenture, the Performance Agreement, this Agreement and the Lease and any other instrument contemplated thereby shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser;

(b) The City shall confirm on the Closing Date by a certificate that at and as of the Closing Date the City has taken all action necessary to issue the Bonds and that there is no controversy, suit or other proceeding of any kind pending or threatened wherein any question is raised affecting in any way the legal organization of the City or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds,

or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof;

(c) The Company shall execute a certificate, dated the Closing Date, to the effect that (i) no litigation, proceeding or investigation is pending against the Company or its affiliates or, to the knowledge of the Company, threatened which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (B) in any way contest the existence or powers of the Company, (ii) no litigation, proceeding or investigation is pending or, to the knowledge of the Company, threatened against the Company that could reasonably be expected to adversely affect its ability to perform its obligations hereunder, (iii) the representations and warranties of the Company herein were and are true and correct in all material respects and not misleading as of the date made and as of the Closing Date, and (iv) such other matters as are reasonably requested by the other parties in connection with the issuance of the Bonds; and

(d) Receipt by the Purchaser and the Company of an approving opinion from Gilmore & Bell, P.C., in form and substance satisfactory to the Purchaser and the Company.

**SECTION 4. THE PURCHASER'S RIGHT TO CANCEL**

The Purchaser shall have the right to cancel its obligation hereunder to purchase the Bonds by notifying the City in writing of its election to make such cancellation at any time prior to the Closing Date.

**SECTION 5. CONDITIONS OF OBLIGATIONS**

The obligations of the parties hereto are subject to the receipt of the approving opinion of Gilmore & Bell, P.C., Bond Counsel, with respect to the validity of the authorization and issuance of the Bonds.

**SECTION 6. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY**

All of the representations and agreements by either party shall remain operative and in full force and effect, and shall survive delivery of the Bonds to the Purchaser.

**SECTION 7. PAYMENT OF EXPENSES**

The Company shall pay all reasonable expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds. To the best of the City's knowledge and belief, the only expenses payable by the Company in connection with the issuance of the Bonds (other than fees of the Company's counsel and advisors) are the following: (1) the legal fees of Gilmore & Bell, P.C., (2) recording costs of the memoranda of certain documents executed in connection with the transaction, (3) costs of publication of the notice of bond sale, and (4) the Trustee's initial acceptance fee and first year's administrative fee.

**SECTION 8. NOTICE**

Any notice or other communication to be given under this Agreement may be given by mailing or delivering the same in writing to the appropriate party or parties at the addresses for notice set out in the Indenture.

**SECTION 9. APPLICABLE LAW; ASSIGNABILITY**

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri and may be assigned by the Purchaser with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

**SECTION 10. EXECUTION OF COUNTERPARTS**

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

*[remainder of page intentionally left blank]*

Executed as of the date first written above

Very truly yours,

**HEARTLAND PET FOODS MANUFACTURING, INC.**,
a Delaware corporation,
***as Purchaser***

By: _____
Name:
Title:

Accepted and Agreed to as of the date first written above.

**CITY OF JOPLIN, MISSOURI**

By: _____
Name: Michael Seibert
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Barbara Hogelin
Title: City Clerk

Approved as to form:

_____
Peter C. Edwards, City Attorney

Accepted and Agreed to as of the date first written above.

**HEARTLAND PET FOODS MANUFACTURING, INC.**,
a Delaware corporation,
***as Company***

By: _____
Name:
Title:

BILL NO. 2016-012 ORDINANCE NO.

AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT (HEARTLAND PET FOOD MANUFACTURING PROJECT), CONSISTING OF THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF AN EXPANSION OF A PET FOOD MANUFACTURING FACILITY FOR HEARTLAND PET FOODS MANUFACTURING, INC., A DELAWARE CORPORATION; AUTHORIZING THE CITY OF JOPLIN, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (HEARTLAND PET FOODS MANUFACTURING PROJECT), SERIES 2016, IN A PRINCIPAL AMOUNT NOT TO EXCEED $83,250,000 TO FINANCE THE COSTS OF SUCH PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

WHEREAS, the City of Joplin, Missouri (the "City") is a constitutional charter city and municipal corporation of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri; and

WHEREAS, the City is authorized under the provisions of Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), to purchase, construct, extend, improve and equip certain projects (as defined in the Act) for the purposes set forth in the Act and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable; and

WHEREAS, Heartland Pet Foods Manufacturing, Inc., a Delaware corporation (the "Company"), has proposed a project consisting of acquiring, constructing, improving, purchasing, equipping and installing an expansion of an existing dry pet food manufacturing facility on approximately 46 acres of land located at 8101 East 32nd Street in the City (the "Project"); and

WHEREAS, the City, in accordance with Section 100.050 of the Act, prepared a plan for industrial development (the "Plan"), gave notice of the Plan on July 11, 2016 by mail to the taxing jurisdictions in accordance with Section 100.059.1 of the Act, and held a public hearing regarding the Plan on August 1, 2016, during which hearing those in attendance were given the opportunity to provide comments with respect to the Plan; and

WHEREAS, the City now desires to approve the Plan; and

WHEREAS, the City desires to finance the costs of the Project out of the proceeds of industrial development revenue bonds to be issued under the Act (the "Bonds"); and

WHEREAS, the City has and does hereby find and determine that it is desirable for the economic development of the City and within the public purposes of the Act that the City proceed with the issuance of the Bonds for the purpose described above; and

WHEREAS, Section 4.23 of the City Charter requires that all bonds sold by the City be sold at public sale upon sealed proposals after at least fifteen days' notice in a newspaper published in Joplin, Missouri; and

WHEREAS, a notice of sale was published in the *Joplin Globe* on July 29, 2016 inviting potential bond purchasers to submit bids for the Bonds and the City has received _____ bids for the bonds; and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with approval of the Plan and the issuance of the Bonds that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided;

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

**Section 1. Promotion of Economic Development.** The Council hereby finds and determines that the Project will promote the economic welfare and the development of the City, and the issuance of the Bonds by the City to pay the costs of the Project will be in furtherance of the public purposes set forth in the Act.

**Section 2. Approval of Plan.** The Council hereby approves the Plan attached hereto as **Exhibit A** in accordance with Section 100.050 of the Act.

**Section 3. Authorization and Sale of the Bonds.** The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016, in an aggregate principal amount not to exceed $83,250,000, for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued and secured pursuant to the herein authorized Trust Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rate, shall be in such form, shall be subject to redemption, shall have such other terms and provisions, shall be issued, executed and delivered in such manner and shall be subject to such provisions, covenants and agreements as are specified in the Trust Indenture upon the execution thereof, and the signatures of the officers of the City executing the Trust Indenture shall constitute conclusive evidence of their approval and the City's approval thereof.

The City hereby determines that the sealed proposal for purchase of the bonds submitted by the company was the only bid submitted at the public sale of the Bonds and that it is in the best interest of the City to accept the bid submitted by the Company. The sale of the Bonds to the Company at the interest rate and upon the terms set forth in the Trust Indenture is hereby approved.

**Section 4. Limited Obligations.** The Bonds and the interest thereon shall be limited obligations of the City payable solely out of the payments, revenues and receipts derived by the City from the herein authorized Lease Agreement, and such payments, revenues and receipts shall be pledged and assigned to the Trustee as security for the payment of the Bonds as provided in the Trust Indenture. The Bonds and the interest thereon shall not be deemed to constitute a debt or liability of the City within the meaning of any constitutional provision, statutory limitation or City Charter provision and shall not constitute a pledge of the full faith and credit of the City. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City to levy any form of taxation therefore or to make any appropriation for their payment.

**Section 5. Approval and Authorization of Documents.** The following documents (the "City Documents") are hereby approved in substantially the forms presented to the Council at this meeting (copies of which documents shall be filed in the records of the City), and the City is hereby authorized to execute and deliver the City Documents with such changes therein as shall be approved by the officials of the City executing such documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

(a) Trust Indenture dated as of the date set forth therein (the "Trust Indenture"), between the City and UMB Bank, N.A., as trustee (the "Trustee"), pursuant to which the Bonds shall be issued and the City shall pledge and assign the payments, revenues and receipts received pursuant to the Lease Agreement to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Trust Indenture;

(b) Lease Agreement dated as of the date set forth therein (the "Lease Agreement"), between the City and the Company, under which the City will provide funds for the acquisition, construction, improvement and equipping of the Project and lease the Project to the Company pursuant to the terms and conditions in the Lease Agreement, in consideration of rental payments by the Company which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds;

(c) Bond Purchase Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the Company agrees to purchase the Bonds;

(d) Performance Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the City has granted the Company certain rights with respect to the abatement of ad valorem real property taxes on the Project in consideration for the Company's agreement to pay certain payments in lieu of taxes; and

**Section 6. Execution of Documents.** The Mayor of the City is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor, City Manager or Finance Director of the City is hereby authorized and directed to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds and the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 7. Further Authority.** The Mayor, City Manager, Finance Director, City Clerk and other officials, agents and employees of the City as required are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents. The Mayor is authorized to grant on behalf of the City such consents and waivers relating to the Bonds, the Trust Indenture, the Performance Agreement or the Lease Agreement as may be requested during the term thereof and as the Mayor may deem appropriate with the advice and counsel of city staff; provided, such consents and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease or the tax exemption as provided for therein, or materially change the nature of the transaction.

**Section 8. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage and adoption by the City Council and approval by the Mayor.

PASSED by the City Council of the City of Joplin, Missouri and APPROVED by the Mayor this 15th day of August, 2016.

[SEAL] MAYOR MICHAEL SEIBERT

ATTEST:

BARBARA HOGELIN, CITY CLERK

Approved as to form:

PETER C. EDWARDS, CITY ATTORNEY

EXHIBIT A

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT
(HEARTLAND PET FOOD MANUFACTURING PROJECT)

**CITY OF JOPLIN, MISSOURI,**
**As Lessor,**

**AND**

**HEARTLAND PET FOODS MANUFACTURING, INC.,**
**As Lessee**

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# LEASE AGREEMENT

**Dated as of August 1, 2016**

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**Relating to:**

**$83,250,000**
**(Aggregate Maximum Principal Amount)**
**City of Joplin, Missouri**
**Taxable Industrial Development Revenue Bonds**
**(Heartland Pet Foods Manufacturing Project)**
**Series 2016**

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**Certain rights of the City of Joplin, Missouri (the "City"), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., St. Louis, Missouri, as Trustee under the Trust Indenture dated as of August 1, 2016, between the City and the Trustee.**

**LEASE AGREEMENT**

**TABLE OF CONTENTS**


Page

**ARTICLE I**

**DEFINITIONS**

Section 1.1. Definitions of Words and Terms ..... 2
Section 1.2. Rules of Interpretation ..... 2

**ARTICLE II**

**REPRESENTATIONS**

Section 2.1. Representations by the City ..... 3
Section 2.2. Representations by the Company ..... 4

**ARTICLE III**

**GRANTING PROVISIONS**

Section 3.1. Granting of Leasehold Estate ..... 5
Section 3.2. Lease Term ..... 5
Section 3.3. Possession and Use of the Project ..... 5
Section 3.4. Title to the Project ..... 6

**ARTICLE IV**

**CONSTRUCTION, IMPROVEMENT AND INSTALLATION OF THE PROJECT**

Section 4.1. Issuance of the Bonds ..... 6
Section 4.2. Acquisition, Construction, Improvement and Installation of the Project ..... 6
Section 4.3. Project Costs ..... 7
Section 4.4. Payment for Project Costs ..... 7
Section 4.5. Establishment of Completion Date ..... 7
Section 4.6. Surplus or Deficiency in Project Fund. ..... 8
Section 4.7. Project Property of City ..... 8
Section 4.8. Non-Project Improvements, Machinery and Equipment Property of the Company ..... 8
Section 4.9. Environmental Matters. ..... 8

**ARTICLE V**

**RENT PROVISIONS**

Section 5.1. Basic Rent ..... 9
Section 5.2. Additional Rent. ..... 10
Section 5.3. Obligations of Company Absolute and Unconditional ..... 10
Section 5.4. Prepayment of Basic Rent ..... 11

## ARTICLE VI

## MAINTENANCE, TAXES AND UTILITIES


Section 6.1. Maintenance and Repairs ..... 11
Section 6.2. Taxes, Assessments and Other Governmental Charges ..... 11
Section 6.3. Utilities ..... 12
Section 6.4. Property Tax Exemption. ..... 12


## ARTICLE VII

## INSURANCE


Section 7.1. Title Commitment or Report ..... 12
Section 7.2. Property Insurance ..... 12
Section 7.3. Commercial General Liability Insurance ..... 13
Section 7.4. Workers' Compensation ..... 13
Section 7.5. Blanket Insurance Policies; Self-Insurance ..... 13


## ARTICLE VIII

## ALTERATION OF THE PROJECT


Section 8.1. Additions, Modifications and Improvements at the Project Site ..... 14
Section 8.3. Removal and Replacement of Project Equipment ..... 14
Section 8.3. Permits and Authorizations ..... 15
Section 8.4. Mechanics' Liens ..... 15


## ARTICLE IX

## DAMAGE, DESTRUCTION AND CONDEMNATION


Section 9.1. Damage or Destruction ..... 16
Section 9.2. Condemnation ..... 17
Section 9.3. Bondowner Approval ..... 18


## ARTICLE X

## SPECIAL COVENANTS


Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification ..... 19
Section 10.2. Surrender of Possession ..... 19
Section 10.3. City's Right of Access to the Project ..... 19
Section 10.4. Granting of Easements; Leasehold Mortgages and Financing Arrangements ..... 19
Section 10.5. Indemnification of City and Trustee ..... 22
Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits ..... 22
Section 10.7. Company to Maintain its Corporate Existence. ..... 23
Section 10.8. Security Interests ..... 23

**ARTICLE XI**

**OPTION AND OBLIGATION TO PURCHASE THE PROJECT**


Section 11.1. Option to Purchase the Project ..... 23
Section 11.2. Conveyance of the Project ..... 25
Section 11.3. Relative Position of Option and Indenture ..... 25
Section 11.4. Obligation to Purchase the Project ..... 25


**ARTICLE XII**

**DEFAULTS AND REMEDIES**


Section 12.1. Events of Default ..... 26
Section 12.2. Remedies on Default ..... 27
Section 12.3. Survival of Obligations ..... 27
Section 12.4. Performance of the Company's Obligations by the City ..... 27
Section 12.5. Rights and Remedies Cumulative ..... 28
Section 12.6. Waiver of Breach ..... 28
Section 12.7. Trustee's Exercise of the City's Remedies ..... 28


**ARTICLE XIII**

**ASSIGNMENT AND SUBLEASE**


Section 13.1. Assignment; Sublease ..... 28
Section 13.2. Assignment of Revenues by City ..... 29
Section 13.3. Prohibition Against Fee Mortgage of Project ..... 29
Section 13.4. Restrictions on Sale or Encumbrance of Project by City ..... 29


**ARTICLE XIV**

**AMENDMENTS, CHANGES AND MODIFICATIONS**


Section 14.1. Amendments, Changes and Modifications ..... 29


**ARTICLE XV**

**MISCELLANEOUS PROVISIONS**


Section 15.1. Notices. ..... 30
Section 15.2. City Shall Not Unreasonably Withhold Consents and Approvals ..... 30
Section 15.3. Net Lease ..... 30
Section 15.4. Limitation on Liability of City ..... 30
Section 15.5. Governing Law ..... 30
Section 15.6. Binding Effect ..... 30
Section 15.7. Severability ..... 30
Section 15.8. Execution in Counterparts ..... 30
Section 15.9. Electronic Storage ..... 31
Section 15.10. Complete Agreement ..... 31
Section 15.11. City Consents ..... 31

Signatures and Seal ..... S-1

Exhibit A - Project Site
Exhibit B - Project Improvements
Exhibit C - Form of Requisition Certificate

Appendix I: Performance Agreement

# LEASE AGREEMENT

**THIS LEASE AGREEMENT**, dated as of August 1, 2016 (the "Lease"), is between the **CITY OF JOPLIN, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, as lessor (the "City"), and **HEARTLAND PET FOODS MANUFACTURING, INC.**, a corporation organized and existing under the laws of the State of Delaware, as lessee (the "Company");

**RECITALS**:

**1.** The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (the "Act"), to purchase, construct, extend, improve and equip certain "projects" (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

**2.** Pursuant to the Act, the City Council passed an ordinance (the "Ordinance") on August 15, 2016, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016, in the maximum principal amount of $83,250,000 (the "Bonds"), for the purpose of acquiring, constructing, improving, purchasing, equipping and installing an expansion of an existing dry pet food manufacturing facility on approximately 46 acres of land located at 8101 East 32nd Street in the City (the "Project Site," as more fully described on **Exhibit A** hereto), including such land and the associated buildings, structures and fixtures (the "Project Improvements," as more fully described on **Exhibit B** hereto) and equipment (the "Project Equipment," as more fully described on **Exhibit B** hereto, the Project Site, the Project Improvements, and the Project Equipment collectively being the "Project").

**3.** Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the "Indenture") with UMB Bank, N.A., St. Louis, Missouri, as Trustee (the "Trustee"), for the purpose of issuing and securing the Bonds, as therein provided, and to enter into this Lease with the Company under which the City will construct, improve and equip the Project, and lease the Project to the Company in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds.

**4.** In consideration of the terms and conditions of this Lease, the Ordinance, issuance of the Bonds and certain other agreements, the City and the Company have concurrently herewith entered into a Performance Agreement of even date herewith (the "Performance Agreement"), pursuant to which the Company has agreed to make certain payments in lieu of taxes.

**5.** Pursuant to the foregoing, the City desires to lease the Project to the Company and the Company desires to lease the Project from the City, for the rentals and upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the City and the Company do hereby represent, covenant and agree as follows:

## ARTICLE I

## DEFINITIONS

**Section 1.1. Definitions of Words and Terms**. In addition to any words and terms defined elsewhere in this Lease and the words and terms defined in **Section 101** of the Indenture which definitions are hereby incorporated herein by reference, and terms defined, the following words and terms as used in this Lease shall have the following meanings:

**"Additional Rent"** means the additional rental described in **Sections 5.2** and **6.2** of this Lease.

**"Basic Rent"** means the rental described in **Section 5.1** of this Lease.

**"Environmental Law"** means and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, any other "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials, as now or at any time hereafter in effect.

**"Full Insurable Value"** means the actual replacement cost of the Project less physical depreciation as determined in accordance with **Section 7.1(a)** hereof.

**"Lease Term"** means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** hereof.

**"Net Proceeds"** means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including reasonable attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds.

**"Plans and Specifications"** means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time prior to the Completion Date, the same being duly certified by the Company, and on file with the Company, or with the architect/engineers retained by the Company for the Project, and which shall be available for reasonable inspection by the City, the Trustee and their duly appointed representatives.

**"Project Site"** means the real property upon which the property comprising the Project is located as more fully described in **Exhibit A**.

**"Remedies Notice"** means notice to the Company from the City or the Trustee that the City or the Trustee intends to exercise remedies hereunder.

**Section 1.2. Rules of Interpretation**.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word "including," such listing is not intended to be a listing that excludes items not listed.

## ARTICLE II

## REPRESENTATIONS

**Section 2.1. Representations by the City**. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers;

(b) As of the date of delivery hereof, the City has acquired the Project Site and agrees to construct and improve or cause to be constructed, improved and installed thereon the Project Improvements and Project Equipment. The City agrees to lease the Project to the Company and sell the Project to the Company if the Company exercises its option to purchase the Project or upon termination of this Lease as provided for herein, all for the purpose of furthering the public purposes of the Act;

(c) The purchase, construction, extension, improvement and installation of the Project and the leasing of the Project by the City to the Company will further the public purposes of the Act;

(d) To the City's knowledge, no member of the City Council or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby;

(e) To finance the costs of the Project, the City proposes to issue the Bonds which will be scheduled to mature as set forth in **Article II** of the Indenture and will be subject to redemption prior to maturity in accordance with the provisions of **Article III** of the Indenture;

(f) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project and the net earnings therefrom, including all rents, revenues and receipts to be derived by the City from the leasing or sale of the Project, will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Bonds and amounts owing pursuant to the Lease;

(g) The City will not knowingly take any affirmative action that would permit a lien to be placed on the Project or pledge the revenues derived therefrom for any bonds or other obligations, other than the Bonds, except with the written consent of the Authorized Company Representative; and

(h) The City shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof or potentially as lessee of a portion thereof, except subsequent to an Event of Default hereunder.

**Section 2.2. Representations by the Company**. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is authorized to do business in and is in good standing under the laws of the State of Missouri;

(b) The Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its members the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives;

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Company will not, to the best of the Company's knowledge, conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Company is a party or by which it or any of its property is bound, or the Company's organizational documents, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party;

(d) The estimated costs of the construction, improvement and equipping of the Project are in accordance with sound engineering and accounting principles;

(e) The Project will comply in all material respects with all presently applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations and the Project Equipment will be located at the Project Site; and

(f) The Project is located wholly within the corporate limits of the City of Joplin, Missouri.

## ARTICLE III

## GRANTING PROVISIONS

**Section 3.1. Granting of Leasehold Estate**. The City hereby exclusively rents, leases and lets the Project to the Company, and the Company hereby rents, leases and hires the Project from the City, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

**Section 3.2. Lease Term**. This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have a term commencing as of the date of this Lease and terminating on December 1, 2027.

**Section 3.3. Possession and Use of the Project**.

(a) The City covenants and agrees that as long as neither the City nor the Trustee has exercised any of the remedies set forth in **Section 12.2** hereof following the occurrence and continuance of an Event of Default, , as defined in **Section 12.1** hereof, the Company shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the City's and the Trustee's right of access pursuant to **Section 10.3** hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII** hereof, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Company, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project and will defend the Company's enjoyment and possession thereof against all parties.

(b) Subject to the provisions of this Section, the Company shall have the exclusive right to use the Project for any lawful purpose contemplated by the Act and consistent with the terms of the Performance Agreement. The Company shall use its best efforts to comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. In the event of demonstrated noncompliance with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements the Company will take all reasonable steps to comply with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company may, at its own cost and expense, contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

**Section 3.4. Title to the Project.** The City shall be the sole owner of the Project during the Lease Term.

## ARTICLE IV

## CONSTRUCTION, IMPROVEMENT AND INSTALLATION OF THE PROJECT

**Section 4.1. Issuance of the Bonds**. To provide funds for the payment of Project Costs, the City agrees that, upon request of the Company, it will issue, sell and cause to be delivered the Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for deposit in the Project Fund. The Trustee shall promptly deposit such proceeds, when received, as provided in the Indenture, to be used and applied as hereinafter provided in this Lease and in the Indenture. Alternatively, the Trustee may, (pursuant to **Section 208(e)** of the Indenture) endorse the Bonds in an amount equal to the requisition certificates submitted pursuant to **Section 4.4** below. In that event, the purchaser of the Bonds shall be deemed to have deposited funds with the Trustee in an amount equal to the amount stated in the requisition certificate.

**Section 4.2. Acquisition, Construction, Improvement and Installation of the Project**. The City and the Company agree that the Company, as the agent of the City, shall, but solely from the Project Fund, acquire, construct, improve and install the Project Improvements and the Project Equipment as follows:

(a) The City has acquired the Project Site prior to the execution hereof. Concurrently with the execution of this Lease, (i) a deed and any other necessary instruments of transfer will be delivered to the City and placed of record, and (ii) the commitment for title insurance or ownership and encumbrance report required by **Article VII** hereof will be delivered to the City and the Trustee;

(b) On behalf of the City, the Company will construct and improve the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that would alter the intended purpose of the Project may be made only with the prior written approval of the City. The Company agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Company for its purposes, and that all real and personal property described in the Plans and Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.2**;

(c) The Company will purchase and install the Project Equipment at the Project Site. The Company shall transfer title to the Project Equipment to the City from time to time by bills of sale or other instruments of transfer. On or before March 1 of each year or such other date required by law for reporting personal property declarations, the Company shall furnish to the City, Jasper County and the Trustee a list of items (based on the Company's internal record keeping) comprising the Project Equipment as of January 1 of such year. If the Company makes additions to, or replacements of, the Project Equipment for the purpose of repairing damage or

normal wear and tear, such additions and/or replacements shall become part of the Project Equipment and shall be entitled to the tax exemption afforded by virtue of the City's ownership of the Project Equipment (such addition or replacement may be placed in service on or after the Completion Date). The improper inclusion or exclusion of any Project Equipment pursuant to such list may be rectified by the Company within 30 days after notice of such improper inclusion or exclusion. The improper inclusion or exclusion of an item on or from such list shall not affect the items comprising the Project Equipment for the purpose of this Lease or title thereto as intended by the parties hereto. The Company shall provide such information to the City, Jasper County and the Trustee as may be requested in order to ensure that such list corresponds to the list of Project Equipment maintained by the Trustee pursuant to **Section 10.8**. Each bill of sale or other instrument of transfer and each personal property declaration form shall be of sufficient specificity so as to enable Jasper County's officials (including representatives of the Assessor's office) to determine which personal property as reported on the annual personal property declaration constitutes Project Equipment (and therefore is owned by the City) and which personal property does not constitute Project Equipment (and therefore is owned by the Company). The City and the Company agree that, pursuant to **Section 4.8**, property purchased in whole or in part by the Company with its own funds, and not Bond proceeds, shall not constitute part of the Project Equipment and shall remain the property of the Company and therefore subject to taxation.

(d) The Company will comply with the provisions of Section 107.170 of the Revised Statutes of Missouri, as amended, to the extent applicable to the construction of the Project Improvements; and

(e) The Company agrees that it will use reasonable efforts to cause the acquisition, construction, improvement and installation of the Project to be completed as soon as practicable with all reasonable dispatch. In the event such acquisition, construction, improvement and installation commences prior to the receipt of proceeds from the sale of the Bonds, the Company agrees to advance all funds necessary for such purpose.

**Section 4.3. Project Costs**. The City hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a certificate pursuant to **Section 4.4** hereof. The Company may not submit any requisition certificates for Project Costs incurred after the Completion Date. The Company must submit all requisitions for Project Costs incurred before the Completion Date within three months after the Completion Date.

**Section 4.4. Payment for Project Costs**. All Project Costs as specified in **Section 4.3** hereof shall be paid by the Trustee from the Project Fund as more fully provided in the Indenture, and the City hereby authorizes and directs the Trustee to make disbursements from the Project Fund, upon receipt by the Trustee of certificates in substantially the form attached hereto as **Exhibit C**, signed by an Authorized Company Representative, which disbursements may be recorded via a transaction entry on the trust records held by the Trustee. The Trustee may rely conclusively on any such certificate and shall not be required to make any independent investigation in connection therewith. The submission of any requisition certificate by an Authorized Company Representative shall constitute unto the Trustee an irrevocable determination that all conditions precedent to the payments requested have been satisfied.

**Section 4.5. Establishment of Completion Date.** The Completion Date shall be evidenced to the Trustee by a certificate signed by the Authorized Company Representative stating (a) the acquisition, construction, improvement and installation of the Project has been completed in accordance

with the Plans and Specifications, (b) that all costs and expenses incurred in the acquisition, construction, improvement and installation of the Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Company, and (c) amounts to be retained by Trustee with respect to item (b) above. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The Company and the City agree to cooperate in causing such certificate to be furnished to the Trustee.

**Section 4.6. Surplus or Deficiency in Project Fund.**

(a) Upon receipt of the certificate described in **Section 4.5** hereof, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely to (1) the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (2) at the option of the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

(b) If the Project Fund shall be insufficient to pay fully all Project Costs and to complete the Project free of liens and encumbrances other than Permitted Encumbrances, the Company shall pay, in cash, the full amount of any such deficiency by making payments thereof directly to the contractors and to the suppliers of materials and services as the same shall become due, and the Company shall save the City and the Trustee whole and harmless from any obligation to pay such deficiency.

**Section 4.7. Project Property of City**. The Project Site, the Project Improvements and the Project Equipment, which the Company desires to convey to the City, including all work and materials on the Project as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the City, subject only to this Lease, the Indenture, Permitted Encumbrances, the Financing Documents and the Leasehold Security Agreement, if any.

**Section 4.8. Non-Project Improvements, Machinery and Equipment Property of the Company**. Any improvements or items of machinery or equipment which do not constitute part of the Project and the entire purchase price of which is paid for by the Company with the Company's own funds, and no part of the purchase price of which is paid for from funds deposited pursuant to the terms of this Lease in the Project Fund, shall be the property of the Company and shall not constitute a part of the Project for purposes of **Section 6.4** hereof and therefore are subject to taxation, to the extent otherwise provided by law.

**Section 4.9. Environmental Matters.** The Company acknowledges that is it responsible for maintaining the Project in compliance with all Environmental Laws. In the event that the Company fails to undertake to comply with any final, non-appealable order issued by any local, state or federal authority under applicable Environmental Law, the City or the Trustee, immediately after notice to the Company, may elect (but shall not be required) to undertake such compliance. Any moneys expended by the City or the Trustee in efforts to comply with any applicable Environmental Law (including the reasonable cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and reasonable attorneys' fees) shall be due and payable as Additional Rent hereunder with interest thereon at the average rate of interest per annum on the Bonds, plus two (2)

percentage points, from the date such cost is incurred. There shall be unlimited recourse to the Company to the extent of any liability incurred by the City or the Trustee with respect to any breaches of the provisions of this section.

The Company shall and does hereby indemnify the City, the Trustee and the Bondowners and agree to defend and hold them harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs associated incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the Project during the term of this Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim is raised before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, this indemnity shall only relate to claims resulting from the City's ownership of the Project and the Trustee's acceptance of its duties as Trustee hereunder.

## ARTICLE V

## RENT PROVISIONS

**Section 5.1. Basic Rent.** The Company covenants and agrees to pay to the Trustee in same day funds for the account of the City during this Lease Term, for deposit in the Bond Fund on or before 11:00 a.m., Trustee's local time, on or before each December 1, commencing December 1, 2016 and continuing until the principal of and interest on the Bonds shall have been fully paid, an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal of the Bonds and the interest thereon on such Payment Date, shall be equal to the amount payable on such Payment Date as interest on the Bonds (except as offset pursuant to the right of the Company described herein). On **December 1, 2027** (or such earlier date as the Company may elect to redeem the Bonds), the Company shall also pay an amount equal to all principal then due on the Bonds in connection with such maturity or redemption (subject to the right of the Company to surrender the Bonds in lieu of such payment). All payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture. In furtherance of the foregoing, and notwithstanding any other provision in this Lease, the Indenture, the Bond Purchase Agreement or the Performance Agreement to the contrary, and provided that the Company is the sole holder of the Bonds, the Company may set-off the then-current Basic Rent payment against the City's obligation to the Company as Bondholder under the Indenture in lieu of delivery of the Basic Rent on any Payment Date, without providing notice of such set-off to the Trustee. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company will (a) if the Trustee holds the Bonds, notify the Trustee of the Bonds not previously paid that are to be cancelled or (b) if an entity other than the Trustee holds the Bonds, deliver or cause to be delivered to the Trustee for cancellation Bonds not previously paid. The Company shall receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

**Section 5.2. Additional Rent.** The Company shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts:

(a) all fees, charges and expenses, including reasonable agent and counsel fees and expenses, of the City, the Trustee and the Paying Agent incurred under or arising from the Indenture, this Lease or the Performance Agreement, including but not limited to claims by contractors or subcontractors, as and when the same become due;

(b) all costs incident to the issuance of the Bonds (which are to be paid on the Closing Date) and the payment of the principal of and interest on the Bonds as the same become due and payable, including all costs and expenses in connection with the call, redemption and payment of all Outstanding Bonds;

(c) all fees, charges and expenses incurred in connection with the enforcement of any rights under this Lease, the Indenture or the Performance Agreement by the City, the Trustee or the Owners, including reasonable counsel fees and expenses; and

(d) all other payments of whatever nature which Company has agreed in writing to pay or assume under the provisions of this Lease, the Performance Agreement or the Indenture.

**Section 5.3. Obligations of Company Absolute and Unconditional**.

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this **Section 5.3(a)** or **Section 5.3(b)** is intended or shall be deemed to affect or impair in anyway the rights of the Company to tender Bonds for redemption in satisfaction of Basic Rent as provided in **Section 5.1** and **Section 5.4** hereof, nor the right of the Company to terminate this Lease and repurchase the Project as provided in **Article XI** hereof, nor the right of the offset as provided in **Section 5.1** hereof.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Company of any rights or claims the Company may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Owners and the City. The Company may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully

with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

**Section 5.4. Prepayment of Basic Rent**. The Company may at any time and from time to time prepay all or any part of the Basic Rent provided for hereunder (subject to the limitations of **Section 301(a)** of the Indenture relating to the partial redemption of the Bonds. During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then remaining unpaid, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

The Company, at its option, may deliver to the Trustee for cancellation Bonds owned by the Company and not previously paid, and the Company shall receive a credit against amounts payable by the Company for the redemption of Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest thereon.

## ARTICLE VI

## MAINTENANCE, TAXES AND UTILITIES

**Section 6.1. Maintenance and Repairs**. Throughout the Lease Term the Company shall, at its own expense, keep the Project in reasonably safe operating condition and keep the Project in reasonably good repair, reasonable wear, tear, depreciation and obsolescence excepted, making from time to time all repairs thereto and renewals and replacements thereof it determines to be necessary. Without limiting the generality of the foregoing, the Company shall at all times remain in compliance in all material respects with all provisions of the City's code relating to maintenance and appearance.

**Section 6.2. Taxes, Assessments and Other Governmental Charges**.

(a) Subject to subsection (b) of this Section, the Company shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the City's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Company, before instituting any such contest, gives the City written notice of its intention to do so, (2) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official

or judicial sale therefor, under execution or otherwise, and (3) the Company promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge and to take such actions as may be reasonably requested by the Company related to such proceedings. The Company shall save and hold harmless the City and the Trustee from any costs and expenses the City and the Trustee may incur related to any of the above.

(c) Nothing in this Lease shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit against the payments to be made by the Company under the Performance Agreement to the extent of any ad valorem taxes imposed and paid by the Company with respect to the Project paid pursuant to this Section.

**Section 6.3. Utilities.** All utilities and utility services used by the Company in, on or about the Project shall be paid for by the Company and shall be contracted for by the Company in the Company's own name (or the name(s) of its affiliates), and the Company shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

**Section 6.4. Property Tax Exemption.** The City and the Company expect that while the Project is owned by the City and is subject to this Lease, the Project will be exempt from all ad valorem real and personal property taxes by reason of such ownership, and the City agrees that it will (at the expense of the Company) cooperate with the Company to defend such exemption against all parties. The City and the Company further acknowledge and agree that the City's obligations hereunder are contingent upon the Company making the payments due under and otherwise complying with the terms of the Performance Agreement during the term of this Lease. The terms and conditions of the Performance Agreement are incorporated herein as if fully set forth herein.

## ARTICLE VII

## INSURANCE

**Section 7.1. Title Commitment or Report**. Before conveying title to any real property to the City, the Company will purchase, from a title insurance company reasonably acceptable to the City, a commitment for title insurance or provide such other report in a form reasonably acceptable to the City showing the ownership of and encumbrances on the Project Site. Copies of such report shall be provided to the City and the Trustee.

**Section 7.2. Property Insurance**.

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term a policy or policies of insurance to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions); provided, however, that during the period of time while the facility at the Project Site is under construction, the Company shall obtain and maintain a policy of builder's risk insurance. The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers as may be selected by the Company. The Company shall deliver certificates of insurance for such policies to the City and the Trustee before the

initial acquisition of the Project and promptly after renewal of each insurance policy. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the City and the Company as additional insureds, as their respective interests may appear, shall name the Trustee as loss payee and shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 10 days' advance written notice to the City, the Company and the Trustee, to the extent such a provision can be obtained and is available from the insurer.

(b) In the event of loss or damage to the Project, the Net Proceeds of property insurance carried pursuant to this Section shall be (i) paid over to the Trustee and shall be applied as provided in **Article IX** of this Lease, or (ii) if otherwise directed by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding, as so directed. Insurance monies in an amount less than $1,000,000 may be paid to or retained by the Company to be held in trust and used as provided in **Section 9.1(a)** hereof.

**Section 7.3. Commercial General Liability Insurance**.

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term commercial general liability insurance (including but not limited to coverage for operations, contingent liability, operations of subcontractors, completed operations and contractual liability), under which the City, the Company and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri, as amended (subject to reasonable loss deductible clauses not to exceed the amounts normally or generally carried by the Company). The policies of said insurance shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 10 days' advance written notice to the City, the Company and the Trustee, to the extent such a provision can be obtained and is available from the insurer. Certificates of such policies shall be furnished to the Trustee on the date of execution of this Lease and not less than 30 days before the expiration date of each insurance policy.

(b) In the event of a general liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

**Section 7.4. Workers' Compensation.** The Company agrees throughout the Lease Term to maintain or cause to be maintained the Workers' Compensation coverage required by the laws of the State of Missouri.

**Section 7.5. Blanket Insurance Policies; Self-Insurance.** The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with. The Company may satisfy any of the insurance requirements set forth in this Article using self-insurance or insurance through a subsidiary or affiliate; so long as (i) the insurance is underwritten by a subsidiary or other affiliate of the Company with a separate net worth of at least $150,000,000, or (ii) the Company funds such self-insurance by appropriate reserves in the amounts recommended by independent actuarial reports obtained not less than every three (3) years for the term of this Lease. The Company shall provide to the City and the Trustee copies of financial statements or similar evidence of net worth of such affiliate on the date hereof and every three (3) years, or, in the case of actuarial reports, on the date of delivery of this Lease and, thereafter, not less than 30 days after receipt of such reports.

## ARTICLE VIII

## ALTERATION OF THE PROJECT

**Section 8.1. Additions, Modifications and Improvements at the Project Site**. The Company shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project Improvements or the Project Equipment as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to this Section shall (a) be made in a good and workmanlike manner and in material compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project; provided, however, that additions of improvements, machinery and equipment installed on the Project Site by the Company but not purchased or acquired with proceeds of the Bonds shall not become part of the Project and such property shall be subject to *ad valorem* taxes.

The Company may, at its sole cost and expense, construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Company, and not paid for with Bond proceeds, pursuant to the authority of this Section shall not be included as Project Improvements and, during the life of this Lease, shall remain the property of the Company and may be added to, altered or razed and removed by the Company at any time. All additional buildings and improvements shall be made in a good and workmanlike manner and in strict compliance with all material laws, orders and ordinances applicable thereto and when commenced shall be prosecuted to completion with due diligence. The Company covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, and (b) to promptly and with due diligence either raze and remove or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty. The Company shall pay all *ad valorem* taxes and assessments payable with respect to such additional buildings and improvements which remain the property of the Company. If for any reason the County Assessor determines that such additional buildings and improvements are not subject to *ad valorem* taxes based upon City ownership of the Project, the Company shall make payments in lieu of taxes in an amount equal to the taxes that would otherwise be due.

**Section 8.2. Removal and Replacement of Project Equipment**.

(a) The Company may, if no uncured Event of Default (as defined in **Section 12.1** hereof) exists and is continuing, remove from the Project Site and sell, exchange, replace or otherwise dispose of, without responsibility or accountability to the City or the Trustee with respect thereto, any items of machinery and equipment, or parts thereof, which constitute a part of the Project Equipment and which have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary or which, in the sound discretion of the Company, are otherwise no longer useful to the Company in its operations. Before any such removal of any item of equipment or machinery with a then-market value of greater than $1,000,000, the Company shall deliver to the City and the Trustee a certificate signed by an Authorized Company Representative containing a complete description of any machinery or equipment that the Company proposes to remove. Upon request by the Company, the City will execute and deliver a bill of sale that transfers full and complete title to the Company of the Project Equipment removed. Notwithstanding anything contained herein to the contrary, title to any item of the Project removed from the Project Site shall automatically vest in the Company without further instrument or action, and such

vesting of title shall be self-operative effective upon removal. Any Project Equipment removed from the Project Site shall no longer be entitled to the tax exemption afforded by virtue of the City's ownership thereof.

(b) In all cases, the Company shall pay all of the costs and expenses of any such removal. The Company's right under this Section to remove machinery and equipment constituting a part of the Project Equipment is intended only to permit the Company to maintain an efficient operation by the removal of machinery and equipment that is no longer suitable for any of the reasons set forth in this Section, and such right is not to be construed to permit a removal under any other circumstances and specifically is not to be construed to permit the Company to make a wholesale removal of the Project Equipment.

(c) If the Company makes additions to the Project Equipment or otherwise replaces any Project Equipment for the purpose of repairing damage or normal wear and tear, such additions and/or replacements shall become part of the Project Equipment and shall be entitled to the tax exemption afforded by virtue of the City's ownership of the Project Equipment.

**Section 8.3. Permits and Authorizations**. The Company shall not do or permit others under its control to do any work on the Project Site related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. The City agrees to act promptly on all requests for such municipal permits and authorizations. All such work shall be done in a good and workmanlike manner and in material compliance with all applicable material building and zoning laws and governmental regulations and requirements, and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII** hereof.

**Section 8.4. Mechanics' Liens**.

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project, except Permitted Encumbrances, and the Company shall promptly notify the City of the imposition of such lien of which the Company is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project Site, the Company shall discharge the same of record. Notice is hereby given that the City shall not be liable for any labor or materials furnished the Company or anyone claiming by, through or under the Company upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City in and to the Project or any part thereof.

(b) Notwithstanding paragraph (a) above, the Company may contest any such mechanics' or other similar lien if the Company (1) promptly notifies the City and the Trustee in writing of its intention so to do, (2) diligently prosecutes such contest, (3) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (4) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (5) thereafter promptly procures the record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of any such contest and any appeal therefrom, so long as the Project is not subject to loss or forfeiture. The Company shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall

reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

## ARTICLE IX

## DAMAGE, DESTRUCTION AND CONDEMNATION

**Section 9.1. Damage or Destruction**.

(a) If the Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as is reasonably practicable, shall either (i) make the determination described in subsection (f) below, or (ii) repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding the Project is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Company's option, construct upon the Project Site new buildings and improvements thereafter together with all new machinery, equipment and fixtures which are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (A) the value thereof shall not be less than the value of such destroyed or damaged Project immediately before the occurrence of such damage or destruction and (B) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Project as an enterprise permitted by the Act.

If the Company elects to repair, restore or replace the Project, for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings, improvements and fixtures and all additions thereto and all replacements and alterations thereof and any reference to the words "Project Equipment" shall be deemed to also include any such new machinery and equipment.

Unless the Company makes the determination described in subsection (f) below, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof. Insurance monies in an amount less than $1,000,000 may be paid to or retained by the Company to be held in trust and used as provided herein. Insurance monies in any amount of $1,000,000 or more shall be (i) paid to the Trustee and deposited in the Project Fund and shall be disbursed as provided in **Section 4.4** hereof to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof, or (ii) if determined by the Owners of 100% in principal amount of the Bonds Outstanding, applied as directed by, or on behalf of, such Owners of 100% in principal amount of the Bonds Outstanding. If the Company makes the determination described in subsection (f) below, the Net Proceeds shall be deposited with the Trustee and used to redeem Bonds as provided in subsection (f).

(b) If any of the insurance monies paid by the insurance company as hereinabove provided remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease has not been terminated, the excess shall be deposited in the Bond Fund, subject to the rights of any leasehold mortgagee or Financing Party. Completion of such repairs, restoration, replacement or rebuilding shall be evidenced by a certificate of completion in accordance with the provisions of **Section 4.5** hereof. Unless the Company makes the determination described in subsection (f) below, if the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Company shall pay the deficiency.

(c) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Company shall remain and continue liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.

(d) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(e) The Company agrees to give prompt notice to the City and the Trustee with respect to all fires and any other casualties occurring in, on, at or about the Project Site causing (in the Company's opinion) damage of more than $1,000,000.

(f) If the Company determines that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, or if the Company does not have the right under any Leasehold Security Agreement to use any Net Proceeds for repair or restoration of the Project, any Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same become due, all subject to rights of the mortgagee under the Leasehold Security Agreement (if any) and the Financing Party under the Financing Documents (if any). The Company agrees to be reasonable in exercising its judgment pursuant to this subsection (f). Alternatively, if the Company is the sole owner of the Bonds and it has determined that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the casualty insurance, and retain such proceeds for its own account.

(g) The Company shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

**Section 9.2. Condemnation**.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than $1,000,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City, the Trustee, the mortgagee under the Leasehold Security Agreement (if any) and the Financing Party under the Financing Documents (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire and install or construct substitute improvements and/or equipment.

(b) If the Company determines that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition, installation

or construction of such substitute improvements and/or equipment, so as to place the Project in substantially the same condition as existed before the exercise of the said power of eminent domain, including the acquisition, installation or construction of other improvements suitable for the Company's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Company without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by the Indenture and this Lease other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds).

(c) If the Company determines that it is not practicable or desirable to acquire, install or construct substitute improvements or equipment, any Net Proceeds of condemnation awards received by the Company shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due and payable, provided that if the Company is the sole owner of the Bonds and it has determined that acquiring and constructing substitute improvements is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the condemnation awards, and retain such proceeds for its own account, all subject to the rights of the mortgagee under the Leasehold Security Agreement (if any) and Financing Party under the Financing Documents (if any).

(d) The Company shall not, by reason of its inability to use all or any part of the Project during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The City shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Company.

**Section 9.3. Bondowner Approval**. Notwithstanding anything to the contrary contained in this **Article IX**, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) shall before the application thereof by the City or the Trustee be applied as directed by the Owners or pledgees of 100% of the principal amount of Bonds Outstanding, subject and subordinate to (a) the rights of the City and the Trustee to be paid all their expenses (including reasonable attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds and (b) the rights of the City to any amounts then due and payable under the Performance Agreement.

## ARTICLE X

## SPECIAL COVENANTS

**Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification**. The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the City and the Trustee from, agrees that the City and the Trustee shall not be liable for and agrees to hold the City and the Trustee harmless against, any loss or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project or the Company's use thereof, unless such loss is the result of the City's or the Trustee's gross negligence or willful misconduct. This provision shall survive termination of this Lease.

**Section 10.2. Surrender of Possession**. Upon accrual of the City's right of re-entry to the Project Site to the extent provided in **Section 12.2(b)**, the Company shall peacefully surrender possession of the Project to the City in reasonably good condition and repair; provided, however, the Company may within 90 days (or such later date as the City may agree to) after the termination of this Lease remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and which are not so removed from the Project before the expiration of said period shall be the separate and absolute property of the City.

**Section 10.3. City's Right of Access to the Project**. The City may conduct such periodic inspections of the Project as may be generally provided in the City's code. In addition, the Company agrees that the City and the Trustee and their duly authorized agents may, at reasonable times during normal business hours and, except in the event of emergencies, upon not less than two Business Day's prior notice, subject to the Company's usual business propriety, safety, confidentiality and security requirements, enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) to monitor the purchase and installation provided for in **Section 4.2** hereof as may be reasonably necessary, (c) to examine all files, records, books and other materials in the Company's possession pertaining to the purchase, installation or maintenance of the Project, and (d) upon the occurrence and continuance of an Event of Default, to enforce the remedies provided in in **Section 12.2** hereof.

**Section 10.4. Granting of Easements; Leasehold Security Agreements and Financing Arrangements**.

(a) Subject to **Sections 10.4(c)** and **(d)**, if no Event of Default under this Lease has happened and is continuing, the Company may at any time or times (i) grant subleases (as permitted in **Section 13.1(b)** hereof), easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (ii) release or terminate existing subleases, easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine, or (iii) incur Permitted Encumbrances. The Company may take such actions

and may execute any applicable documents in the Company's own name. No separate signature of or authorization from the City shall be required for the execution and delivery of any such document, although the City agrees to execute and deliver such confirming documents as are described below, under the procedures described below, if the Company chooses to make such a request. All third parties entering into agreements with the Company or receiving delivery of or the benefit of such agreements or documents shall be entitled to rely upon the same as having been executed and delivered by the City, unless such third party has actual or constructive notice, expressly in writing, that the agency herein granted by the City to the Company has been terminated by the City because of an uncured Event of Default hereunder. The City agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any such sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the City and the Trustee of: (i) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (ii) a written application signed by an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, will not materially adversely affect the security intended to be given by or under the Indenture and will be a Permitted Encumbrance or release of a Permitted Encumbrance. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(c)** and **(d)**, upon (i) termination of this Lease for any reason other than the redemption of the Bonds and/or the purchase of the Project by the Company or (ii) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) The Company may mortgage the leasehold estate created by this Lease, with prior notice to but without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such mortgage, and the note or other obligation secured thereby, is delivered to the Coity within thirty (30) days after the execution thereof. The sale of the Company's leasehold estate at a foreclosure sale or trustee's sale under the Leasehold Security Agreement or any assignment in lieu thereof shall not require the consent of the City, if (i) written notice of the proposed sale or assignment is provided to the City at least fifteen (15) days prior thereto, and (ii) before such sale or assignment, all payments then owing to the City under the Performance Agreement are paid.

(c) The City acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project, this Lease and the leasehold estate created hereby and, in connection therewith, the Company may execute Financing Documents with one or more Financing Parties. Notwithstanding anything contained to the contrary in this Lease, the Company may, at any time and from time to time, with prior notice to but without the consent of the City, (i) execute one or more Financing Documents upon the terms contained in this **Section 10.4** and (ii) sublease or assign this Lease, the leasehold estate, any sublease and rights in connection therewith, and/or grant liens or security interests therein, to any Financing Party. Any further sublease or assignment by any Financing Party shall be subject to the provisions of **Section 13.1(c)**. At the expense of the Company, the City agrees to cooperate fully with the Company and take all actions as reasonably requested by the Company in connection with any financing or refinancing of the Company's rights and interests in the Project, including but not limited to the granting of security interests in the Project, the Bonds and the leasehold estate created hereunder, as may from time to time be reasonably requested by any of the Financing Parties.

(d) Upon notice by the Company to the City in writing that it has executed one or more Financing Documents under which it has granted rights in this Lease to a Financing Party, which includes the name and address of such Financing Party, then the following provisions shall apply in respect of each such Financing Party:

(1) there shall be no merger of this Lease or of the leasehold estate created hereby with the fee title to the Project, notwithstanding that this Lease or said leasehold estate and said fee title shall be owned by the same Person or Persons, without the prior written consent of such Financing Party;

(2) the City shall serve upon each such Financing Party (at the address, if any, provided to the City) a copy of each notice of the occurrence of an Event of Default and each notice of termination given to the Company under this Lease, at the same time as such notice is served upon the Company. No such notice to the Company shall be effective unless a copy thereof is thus served upon each Financing Party;

(3) each Financing Party shall have the same period of time which the Company has, after the service of any required notice upon it, within which to remedy or cause to be remedied any payment default under this Lease which is the basis of the notice plus thirty (30) days, and the City shall accept performance by such Financing Party as timely performance by the Company;

(4) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of the Financing Parties under this **Section 10.4(d)** as to such other events of default. Without limiting the generality of the foregoing, the holder of the Leasehold Security Agreement may cause the sale of the leasehold interest of the Company to be sold at foreclosure sale conducted in accordance with applicable law and the terms of the Leasehold Security Agreement, to accept assignment of this Lease in lieu of foreclosure and to appoint a receiver for the Project, all without obtaining the prior written consent of the City but subject to the provisions of **Section 10.4(b)**;

(5) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Financing Party and permitting such Financing Party (or its designee, nominee, assignee or transferee) a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured (provided that the period to remedy such Event of Default shall continue beyond any period set forth in the Lease to effect said cure so long as the Financing Party (or its designee, nominee, assignee or transferee) is diligently prosecuting such cure); provided that the Financing Party (or its designee, nominee, assignee or transferee) shall pay or cause to be paid to the City and the Trustee all expenses, including reasonable counsel fees, court costs and disbursements incurred by the City or the Trustee in connection with any such default; and

(6) the Financing Parties (and their designees, nominees, assignees or transferees) shall have the right to enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Financing Documents and this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without prior written consent of such Financing Party.

(e) In connection with the execution of one or more Financing Documents, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a Financing Party and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Financing Documents. The Company agrees to reimburse the City for any and all costs and expenses incurred by the City pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(f) Notwithstanding the foregoing, the City may agree to other provisions and documents requested by the Company or any Financing Party not contemplated by this **Section 10.4**, subject to approval by ordinance of the City Council.

**Section 10.5. Indemnification of City and Trustee**. The Company shall indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees from and against all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, by or on behalf of any Person, firm or corporation arising from the issuance of the Bonds and the execution of the Performance Agreement, this Lease or the Indenture and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under the Performance Agreement, this Lease or any related document, (c) any contract entered into in connection with the purchase and installation of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1(c)**, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, and (g) any claim relating to the presence on, escape or removal from the Project during the term of the Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim arises before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, the indemnification contained in this **Section 10.5** shall not extend to the City or Trustee to the extent that such claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, are (i) the result of work being performed at the Project Site by employees or agents of the City, or (ii) the result of gross negligence or willful misconduct by the City or the Trustee, or their respective employees or agents. Upon written notice from the City or the Trustee of any such claims or demand, the Company shall defend them or either of them in any such action or proceeding; provided, that the City shall cooperate with the Company and provide reasonable assistance in such defense. All costs related to the defense of the City and/or the Trustee shall be paid by the Company. This **Section 10.5** shall survive any termination of the Performance Agreement and this Lease or the satisfaction and discharge of the Indenture.

**Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits**. The City agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the City will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits. [**DISCUSS ADDITION FOR EEZ OWNERSHIP BENEFITS.**]

**Section 10.7. Company to Maintain its Corporate Existence.** The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it, or may sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter cease operations, dissolve and/or convert into a different type of legal entity, if the surviving, resulting or transferee Person expressly assumes in writing all the obligations of the Company contained in this Lease and the Performance Agreement.

**Section 10.8. Security Interests.** The City and the Company hereby authorize the Trustee to file all appropriate financing and continuation statements as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee under the Indenture. Upon the written instructions of the Owners or pledgees of 100% of the Bonds then Outstanding, the Trustee shall file all instruments the Owners deem necessary to be filed and shall continue or cause to be continued such instruments for so long as the Bonds are Outstanding. The City and the Company shall cooperate with the Trustee in this regard by providing such information as the Trustee may require to file or to renew such statements. The Trustee shall maintain a file showing a description of all Project components, said file to be compiled from the certificates furnished to the Trustee pursuant to **Section 4.4** and **Section 8.2** hereof. At the written request of all of the Owners of the Bonds, the City, at the expense of the Company, and the Company further agree to enter into any other instruments necessary for the creation and perfection of (and continuance of the perfection of) the security interests in the Project benefiting the Owners of the Bonds then outstanding.

## ARTICLE XI

## OPTION AND OBLIGATION TO PURCHASE THE PROJECT

**Section 11.1. Option to Purchase the Project**.

(a) *Purchase of the Entire Project*. The Company shall have, and is hereby granted, the option to purchase the Project at any time, upon payment in full of all Bonds then outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture. To exercise such option the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the forgoing, if the City or the Trustee provides a Remedies Notice to the Company, the Company shall be deemed to have exercised its repurchase option under this Section on the 29th day following the issuance of the Remedies Notice without any further action by the Company; provided said Remedies Notice has not been rescinded by such date (such option to take place on the 29th day following the issuance of the Remedies Notice). The Company may rescind such exercise by providing written notice to the City and the Trustee on or prior to the 29th and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Company in the event of its exercise of the option granted in this subsection shall be the sum of the following:

(1) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all the then outstanding Bonds on the earliest redemption

date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus

(2) an amount of money equal to the Trustee's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus

(3) an amount of money equal to all payments due and payable pursuant to the Performance Agreement through the end of the calendar year in which the date of purchase occurs; plus

(4) an amount of money equal to the City's reasonable fees and expenses for its counsel in connection with such purchase of the Project; plus

(5) the sum of $10.00.

At its option, to be exercised at least 5 days prior to the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

(b) *Purchase of Project Equipment*. The Company shall have, and is hereby granted, the option to purchase all or a portion of the Project Equipment at any time, upon payment in full of a portion of the Bonds then outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture, in the amount described in this subsection. To exercise such option the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and in case of a redemption of Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. The purchase price payable by the Company in the event of its exercise of the option granted in this subsection shall be the sum of the following:

(1) the amount of money equal to the portion of the Cumulative Outstanding Principal Amount on the closing date for such purchase that is attributable to the portion of the Project Equipment to be removed, which shall be determined by dividing (i) the total Project Costs paid with respect to such Project Equipment under **Section 4.4** hereof, by (ii) the total of all Project Costs paid under **Section 4.4** hereof, and then multiplying such quotient by the Cumulative Outstanding Principal Amount at the time of the closing date for such purchase and rounding such product to the nearest $1,000, which amount shall be deposited to the Bond Fund and applied to redeem outstanding Bonds in an equal principal amount on the earliest redemption date next succeeding the closing date); plus

(2) an amount of money equal to the interest to accrue to such redemption date on the Bonds to be redeemed pursuant to paragraph (1) immediately above and redemption expense, which amount shall be deposited to the Bond Fund; plus

(3) an amount of money equal to the Trustee's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus

(4) an amount of money equal to the City's reasonable fees and expenses for its counsel in connection with such purchase of Project Equipment; plus

(5) the sum of $10.00.

At its option, to be exercised at least 5 days prior to the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

Upon payment of the purchase price relating to all or a portion of the Project Equipment, the Trustee shall note in its records the removal of such portion of the Project Equipment from the Project. The Company shall deliver to the City UCC Termination Statements and a bill of sale for such portion of the Project Equipment to be executed and delivered by the City upon deposit of such purchase price in the Bond Fund. If the Project Equipment is to be physically removed from the Project, the Company shall pay all the costs and expenses of any such removal and shall immediately repair at its expense all damage to the remaining Project caused thereby.

**Section 11.2. Conveyance of the Project**. At the closing of the purchase of the entire or all remaining portions of the Project pursuant to this Article, the City will upon receipt of the purchase price deliver to the Company the following:

(a) A release from the Trustee of the Project from the lien and/or security interest of the Indenture and this Lease and appropriate termination of financing statements as required under the Uniform Commercial Code; and

(b) Documents, including without limitation a special warranty deed as to the Project Site, conveying to the Company legal title to the Project, as it then exists, in recordable form, subject to the following: (i) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the City; (ii) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease; (iv) Permitted Encumbrances other than the Indenture, this Lease and the Performance Agreement; and (v) if the Project or any part thereof is being condemned, the rights and title of any condemning authority.

**Section 11.3. Relative Position of Option and Indenture**. The option to purchase the Project granted to the Company in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default under this Lease or the Indenture, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option (including the payment of all amounts specified in **Section 11.1** hereof) and further provided that all options herein granted shall terminate upon the termination of this Lease.

**Section 11.4. Obligation to Purchase the Project**. The Company hereby agrees to purchase, and the City hereby agrees to sell, the Project upon the occurrence of (a) the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (b) the final payments due under the Performance Agreement. The amount of the purchase price under this Section shall be $10.00 plus an amount sufficient to redeem all the then Outstanding Bonds, plus accrued interest and the reasonable fees and expenses of the City and the Trustee.

## ARTICLE XII

## DEFAULTS AND REMEDIES

**Section 12.1. Events of Default**. If any one or more of the following events occurs and is continuing beyond any applicable notice and/or cure period, it is hereby defined as and declared to be and to constitute an "Event of Default" under this Lease:

(a) Default in the due and punctual payment of Basic Rent or Additional Rent within 10 days after written notice thereof from the City or the Trustee to the Company that the Company failed to make such payment. Anything herein to the contrary notwithstanding, no failure or default specified in paragraph (a) of this **Section 12.1** shall constitute an Event of Default until actual notice of such failure to make such payment by registered or certified mail shall be given by the City or the Trustee to the Company and the Company shall have had ten (10) days after receipt of such notice to correct said failure and shall not have corrected said failure within such period; or

(b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company's part to be observed or performed, and such default shall continue for 60 days after the City or the Trustee has given the Company written notice specifying such default (or such longer period as is reasonably required to cure such default; provided that (1) the Company has commenced such cure within said 60-day period, and (2) the Company diligently prosecutes such cure to completion); or

(c) The Company: (1) admits in writing its inability to pay its debts as they become due; or (2) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (3) makes an assignment for the benefit of creditors; or (4) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company's consent or acquiescence, vacated or set aside; or (5) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (7) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(d) the Company vacates, abandons, ceases operations, fails to occupy or is ejected from the Project Site or any material portion thereof, and the same remains uncared for or abandoned for a period of one year; or

(e) The occurrence and continuance of an "Event of Default" by the Company under the Performance Agreement, following any applicable notice and grace period provided in the Performance Agreement.

**Section 12.2. Remedies on Default**. If any Event of Default referred to in **Section 12.1** hereof has occurred and continues beyond the period provided to cure, then the City may at the City's election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of this Lease in the Indenture), then or at any time thereafter, and while such default continues, take any one or more of the following actions:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable, as provided in the Indenture; provided that if the Company has paid all obligations due and owing under the Indenture, this Lease and the Performance Agreement, the City shall convey the Project to the Company in accordance with **Section 11.2** hereof; or

(b) give the Company written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 60 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Owners shall tender or be deemed to have tendered the Outstanding principal amount of the Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with **Section 11.1(a)** hereof, the Company's rights to possession of the Project shall cease and this Lease shall thereupon be terminated, and the City may enter the Project Site and take possession of the Project and if the Company has paid all obligations due and owing under the Indenture, this Lease and the Performance Agreement, the City shall convey the Project to the Company in accordance with **Section 11.2** hereof.

**Section 12.3. Survival of Obligations**. The Company covenants and agrees with the City and Owners that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Company shall continue to pay the Basic Rent and Additional Rent (to the extent the Bonds remain Outstanding) and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease; provided, however, that except for the indemnification contained in **Section 10.5** hereof, upon the payment of all Basic Rent and Additional Rent required under **Article V** hereof, and upon the satisfaction and discharge of the Indenture under **Section 1301** thereof, and upon the Company's exercise of the purchase option contained in **Article XI** hereof or upon the events provided in **Section 12.2(b)** hereof, the Company's obligation under this Lease shall thereupon cease and terminate in full, except that obligations with respect to compensation and indemnification of the City and the Trustee shall not so terminate.

**Section 12.4. Performance of the Company's Obligations by the City**. Upon an Event of Default, the City, or the Trustee in the City's name, may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 60 days after written notice of such failure is given the Company by the City or the Trustee, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City or the Trustee and all necessary incidental reasonable costs and expenses incurred by the City or the Trustee (including, without limitation, reasonable attorney's fees and expenses) in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the Trustee on demand, and if not so paid by the Company, the City or the Trustee shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the Company in the payment of Basic Rent.

**Section 12.5. Rights and Remedies Cumulative.** The rights and remedies reserved by the City and the Company hereunder are in addition to those otherwise provided by law and shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. Notwithstanding anything in this **Section 12.5** or elsewhere in this Lease to the contrary, however, the Company's option to purchase the property as provided in **Article XI** above shall not be terminated upon an Event of Default unless and until this Lease is terminated to the extent permitted pursuant to **Section 12.2(b)** above.

**Section 12.6. Waiver of Breach**. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of any covenant, agreement or undertaking by the Company, the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving City's right to exercise any of its rights and remedies provided for herein with respect to any such default or defaults of the Company which were in existence at the time such payment or payments were accepted by the City.

**Section 12.7. Trustee's Exercise of the City's Remedies**. Whenever any Event of Default has occurred and is continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

## ARTICLE XIII

## ASSIGNMENT AND SUBLEASE

**Section 13.1. Assignment; Sublease**.

(a) The Company may assign this Lease in whole or in part, without the necessity of obtaining the consent of the Trustee, subject, however, to each of the following conditions:

(i) The Company shall obtain the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, to each assignment, unless such sale, transfer or assignment is to an entity controlled by or under common control with or controlling the Company, or such sale, transfer or assignment is otherwise permitted under **Section 10.7** hereof, in which event no written consent of the City shall be required, but, in such event, the Company shall provide the City with advance written notice of such assignment.

(ii) The assignee shall assume the obligations of the Company hereunder to the extent of the interest assigned; and

(iii) Such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;

(iv) Such assignment shall include the entire then unexpired term of this Lease; and

(v) The Company shall, promptly following the completion of any such assignment, furnish or cause to be furnished to the City and to the Trustee a true and complete copy of each such assignment and assumption of obligations, as the case may be.

(c) Any assignee of all the rights of the Company shall agree to be bound by the terms of this Lease, the Performance Agreement and any other documents related to the issuance of the Bonds. Upon such assignment of all the rights of the Company and agreement by the assignee to be bound by the terms of this Lease, the Performance Agreement and any other documents related to the Bonds, the Company shall be released from and have no further obligations under this Lease, the Performance Agreement or any agreement related to the issuance of the Bonds.

(d) The Company may sublet less than 10% of the Project to a single entity for any lawful purpose under the Act. The Company shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the Trustee a true and correct copy of each such sublease. Any sublease may provide, at the Company's option, that the City's consent shall not be required in respect of any further subletting thereunder if such further subletting is for a similar purpose as the original sublease and is for a purpose permissible under the Act.

**Section 13.2. Assignment of Revenues by City**. The City shall assign and pledge any rents, revenues and receipts receivable under this Lease and all interest in the Project, to the Trustee pursuant to the Indenture as security for payment of the principal of, interest and premium, if any, on the Bonds and the Company hereby consents to such pledge and assignment.

**Section 13.3. Prohibition Against Fee Mortgage of Project**. The City shall not mortgage its fee interest in the Project, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

**Section 13.4. Restrictions on Sale or Encumbrance of Project by City**. During this Lease Term, the City agrees that, except to secure the Bonds to be issued pursuant to the Indenture, it will not sell, assign, encumber, transfer or convey the Project or any interest therein, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

## ARTICLE XIV

## AMENDMENTS, CHANGES AND MODIFICATIONS

**Section 14.1. Amendments, Changes and Modifications**. Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of Bonds and before the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the parties hereto, the Trustee (given in accordance with the provisions of the Indenture, which consent, however, shall not be unreasonably withheld), and the written consent of all of the Owners.

## ARTICLE XV

## MISCELLANEOUS PROVISIONS

**Section 15.1. Notices.** All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be governed by **Section 1403** of the Indenture.

**Section 15.2. City Shall Not Unreasonably Withhold Consents and Approvals**. Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold, delay or refuse to give such approvals or consents or refuse to execute or delay in executing such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any additional project or matter unrelated to the Project subject to zoning, building permit or other regulatory approvals by the City.

**Section 15.3. Net Lease**. The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same become due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the City and the Trustee) have been paid in full the Trustee or the City holds unexpended funds received in accordance with the terms hereof such unexpended funds shall, after payment therefrom of all sums then due and owing by the Company under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Company.

**Section 15.4. Limitation on Liability of City**. No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

**Section 15.5. Governing Law**. This Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

**Section 15.6. Binding Effect**. This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns.

**Section 15.7. Severability**. If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

**Section 15.8. Execution in Counterparts**. This Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 15.9. Electronic Storage**. The parties hereto agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 15.10 Complete Agreement. THE COMPANY AND THE CITY UNDERSTAND THAT ORAL OR UNEXECUTED AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT THE COMPANY AND THE CITY FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS THE COMPANY AND THE CITY REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS LEASE AND THE PERFORMANCE AGREEMENT, WHICH ARE THE COMPLETE AND EXCLUSIVE STATEMENTS OF THE AGREEMENT BETWEEN THE COMPANY AND THE CITY, EXCEPT AS THE COMPANY AND THE CITY MAY LATER AGREE IN WRITING TO MODIFY THIS LEASE OR THE PERFORMANCE AGREEMENT.**

**Section 15.11. City Consents.** The Mayor of the City is authorized, unless expressly provided herein, to grant on behalf of the City such consents and waivers relating to the Bonds, the Indenture, the Performance Agreement or this Lease as may be requested during the term thereof; provided, such consents and/or waivers shall not increase the principal amount of the Bonds, increase the term of this Lease or the tax exemption as provided for herein, or materially change the nature of the transaction.

*[remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

**CITY OF JOPLIN, MISSOURI**

By: _____
Name: Michael Seibert
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Barbara Hogelin
Title: City Clerk

Approved as to form:

_____
City Attorney

**HEARTLAND PET FOODS MANUFACTURING, INC.**,
a Delaware corporation

By: _____
Name:
Title:

**EXHIBIT A**

**PROJECT SITE**

The following described real estate located in Jasper County, Missouri:

[**INSERT LEGAL DESCRIPTION FOR EXISTING FACILITY AND NEWLY ACQUIRED PROPERTY**]

## EXHIBIT B

## PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

An expansion of an existing dry pet food manufacturing facility including buildings, site improvements and related fixtures and improvements.

## PROJECT EQUIPMENT

The Project Equipment consist of the following, to the extent paid for in whole with Bond proceeds:

All items of machinery, equipment and parts or other personal property installed or acquired or to be acquired for installation in the Project Improvements or elsewhere on the Project Site.

**EXHIBIT C**

**FORM OF REQUISITION CERTIFICATE**

Requisition No. _____
Date: _____

**REQUISITION CERTIFICATE**

**TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF AUGUST 1, 2016, BETWEEN CITY OF JOPLIN, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF AUGUST 1, 2016, BETWEEN CITY OF JOPLIN, MISSOURI AND HEARTLAND PET FOODS MANUFACTURING, INC..**

The undersigned Authorized Company Representative hereby states and certifies that:

1. A total of $_____ is requested to pay for Project Costs (as defined in the Indenture) of the Project Improvements and/or Project Equipment. The total amount of this requisition and all prior requisitions are as follows:

| ***Date of Project Costs*** | ***Amount Submitted in this Requisition*** | ***Requisitions Submitted to Date (Including this Requisition)*** |
|---|---|---|
| | | |
| | | |
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| | | |
| | | |

2. Said Project Costs shall be paid in whole from Bond proceeds in such amounts, to such payees and for such purposes as set forth on **Schedule 1** hereto.

3. Each of the items for which payment is requested are or were desirable and appropriate in connection with the construction and improvement of the Project (as defined in the Trust Indenture), have been properly incurred and are a proper charge against the Project Fund, and have been paid by the Company or are justly due to the Persons whose names and addresses are stated on **Schedule 1**, and have not been the basis of any previous requisition from the Project Fund.

4. As of this date, except for the amounts referred to above, to the best of my knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the construction and improvement of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof.

**HEARTLAND PET FOODS MANUFACTURING, INC.**

By: _____
Authorized Company Representative

Approved this _____ day of _____, 20___.

**CITY OF JOPLIN, MISSOURI**

By: _____
Authorized City Representative

**SCHEDULE 1 TO REQUISITION CERTIFICATE**

**PROJECT COSTS**

| Payee and Address | Description | Amount |
|---|---|---|

With respect to any personal property described in this Requisition Certificate and for which Project Costs are disbursed pursuant to this Requisition Certificate, in consideration of such disbursement, such personal property is hereby BARGAINED and SOLD, and the Company by these presents does now GRANT and CONVEY, unto the CITY OF JOPLIN, MISSOURI, and its successors and assigns, all of its right, title and interest, if any, in and to such personal property, and such personal property shall constitute a portion of the "Project" as defined under the Lease Agreement dated as of August 1, 2016, between the Company and the City. The property is being conveyed "as is," "where is" and "with all faults" as of the date of this Requisition Certificate, without any representation or warranty whatsoever as to its condition, fitness for any particular purpose, merchantability, or any other warranty, express or implied.

**APPENDIX I**

**PERFORMANCE AGREEMENT**

(See Tab No. __)

**City of Joplin** **City Council Agenda Item**

**REQUESTED COUNCIL MEETING DATE**: August 1, 2016 (hearing and 1st reading)
August 15, 2016 (bond sale and final readings)

**ITEM:** Council Bill No. 2016-012 authorizing the City of Joplin, Missouri, to issue its Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016 and authorizing the execution of other documents connected therewith.

**ORIGINATING DEPARTMENT:** Legal Department
**ATTACHMENTS:** Council Bill No. 2016-012; copy of Chapter 100 Plan, Bond Purchase Agreement; Trust Indenture; Lease Agreement; Performance Agreement.

| | | |
|---|---|---|
| **DEPARTMENT HEAD:** | Peter C. Edwards | **DATE:** |
| **CITY MANAGER:** | Sam Anselm | **DATE:** |
| **PUBLIC WORKS:** | Nick Heatherly | **DATE:** |
| **FINANCE DIRECTOR:** | Leslie Haase | **DATE:** |

**INTRODUCTION:**

The Council Bill authorizes the execution of documents and issuance of Bonds relating to an economic development project consisting of the expansion of an existing dry pet food manufacturing facility. Council Bill No. 2016-012 authorizes the City to issue its Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016, for the purpose of providing funds to pay the costs of acquiring, constructing, improving, purchasing, equipping and installing an expansion of an existing dry pet food manufacturing facility on approximately 46 acres of land in the City, including the land and associated buildings, structures, fixtures and equipment (the "Project"). The Project is designed to be used for the manufacturing, packaging and distributing of dry pet food products and the incentives will benefit Heartland Pet Foods Manufacturing, Inc., a Delaware corporation (the "Company"). The Council Bill authorizes the City to enter into certain agreements in connection with the issuance of the Bonds; and authorizes the City to take certain other actions in connection with the issuance of the Bonds.

**DISCUSSION:**

Joplin, along with Jasper County, Missouri, has offered a number of incentives to the Company to build the existing dry pet food manufacturing facility located at 8101 East 32nd Street, Joplin, MO. The City passed an ordinance granting enhanced enterprise zone abatement in the amount of 100% abatement for improvements to real property for the existing facility until 2023. Additionally, the County issued a Chapter 100 bond in 2013, which granted 100% abatement for approximately $55,000,000 in machinery and equipment installed in the existing facility, which abatement is effective from 2015 through 2019. Since the original project was completed, the property has been annexed into the City of Joplin.

The current project involves a building expansion with approximately $43,250,000 in project costs for

land and real property improvements and $40,000,000 in machinery and equipment. The Chapter 100 Plan provides 100% abatement for the real property improvements for 10 years and for the machinery and equipment for 7 years. Payments in lieu of taxes represent the value of the underlying real estate, the value of the existing building after the enhanced enterprise zone abatement terminates, and the value of the new machinery and equipment after the 7-year abatement period for personal property ends. The Project is anticipated to add 45 new jobs at the site.

Heartland Pet Foods Manufacturing, Inc., a Delaware corporation (the "Company"), is a subsidiary of Blue Buffalo Company. Blue Buffalo is a large company that produces and distributes dog and cat food in the United States. It offers dry foods, wet foods, and treats for puppies, adult dogs, and senior dogs, dry foods, wet foods, treats, and litters for kittens, adult cats, and mature cats. The company is based in Wilton, Connecticut.

Chapter 100 Revenue Bonds are authorized pursuant to Chapter 100 of the Missouri Revised Statutes. This funding vehicle provides for the City to be the actual owner of the project. The project then is leased to the Company. During the time the Bonds remain unpaid and the City owns the project, the project is exempt from real and personal property taxes because title to the project is held by the City as a tax-exempt entity. Chapter 100 Revenue Bonds are paid solely from revenue received from the project and such Bonds are not an obligation or debt of the City, except for the obligation to apply lease payments to the bond debt service. Thus, in the unlikely event that the Company was to default on the payment of its obligations under the Bond documents, the City is not liable to make such payments from any source other than revenue received from the project. In addition, because such Bonds do not constitute a debt of the City within the meaning of any constitutional or statutory limitation, the bonding capacity of the City is not affected by their issuance.

Since, as is stated above, the City will technically be the owner of all of this project, the sales taxes will be abated at one hundred percent (100%) for the construction materials purchased for the project in the State of Missouri and the real and personal property taxes will be abated as described above.

Additionally, the Performance Agreement requires that:

The Company will maintain 175 Jobs at the average wage and the average benefits at the project for so long as the Bonds are unpaid. In the event that the Company fails to maintain 175 jobs at the average wage and the average benefits at the project, then the Company shall be required to pay a pro-rata portion of the property taxes abated in the test year, based on the employment numbers. Also, if the Company fails to complete the project on time or spend at least 80% of the projected investment at the project site, the Company will lose a portion of the abatement value during the period of failure. Additionally, if the Company vacates the project site for more than 6 months, the Company loses the entire value of the abatement during the period of abandonment.

(Green Sheet cont'd – Council Bill No. 2016-012 authorizing the City of Joplin, Missouri, to issue its Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016 and authorizing the execution of other documents connected therewith)

**RECOMMENDATION:**

PCE:ab
attachments

# JOPLIN AREA TRANSPORTATION STUDY ORGANIZATION




FISCAL YEAR 2016

UNIFIED PLANNING WORK PROGRAM

NOVEMBER 1, 2015 TO OCTOBER 31, 2016

CITY OF JOPLIN
DEPARTMENT OF PLANNING, DEVELOPMENT, AND NEIGHBORHOOD SERVICES
602 MAIN STREET
JOPLIN, MISSOURI 64804
(417) 624-0820

*UPWP Amendment No. 2 • Approved by the JATSO Policy Board on June 23, 2016.*

## List of Acronyms

| | |
|---|---|
| CART | Citizens Advisory Recovery Team |
| CPG | Consolidated Planning Grant |
| FHWA | Federal Highway Administration |
| FTA | Federal Transit Administration |
| FY | Fiscal Year |
| GIS | Geographic Information Systems |
| HSTCC | Harry S. Truman Coordinating Council |
| JATSO | Joplin Area Transportation Study Organization |
| MAP-21 | Moving Ahead for Progress in the 21st Century |
| MAPS | Metropolitan Area Public Transit System |
| MoDOT | Missouri Department of Transportation |
| MOU | Memorandum of Understanding |
| MPO | Metropolitan Planning Organization |
| O & D | Origin & Destination Study |
| PIP | Public Involvement Plan |
| SAFETEA-LU | Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users |
| TIP | Transportation Improvement Program |
| UPWP | Unified Planning Work Program |

# INTRODUCTION

## PURPOSE

The Joplin area transportation planning process is an on-going work effort that constitutes a branch of planning work activities developed by the Joplin Area Transportation Study Organization (JATSO) staff. The purpose is to analyze and evaluate various types of data (such as demographic, socio-economic, land use and scientific) in order to provide a rational basis for making short-range and long-range decisions about transportation needs in the Joplin metropolitan area. The planning process identifies present and future needs, and develops plans, policies, and projects to carry out objectives identified in the long-range transportation plan.

The Joplin area continues to make strides in redeveloping the area's transportation network while planning for future growth. During FY 2015, a master plan was completed for the Joplin Regional Airport. In addition, public transportation routes were expanded to include service to the new Mercy Hospital and other areas in the city of Joplin. Currently there are two TIGER Grant funded projects that are open in the City of Joplin: the 20th Street Overpass and the Maiden Lane widening. The 20th Street Overpass is underway, with 20th street closed for widening of New Hampshire Avenue. This project should be completed late in the summer of 2016. Maiden Lane is being widened from 22nd Street to 26th, with new sidewalks and a trail in Cunningham Park, which will be completed in the winter of 2015. Improvements to 26th Street and Schifferdecker Avenue were TIGER Grant projects completed in July 2015.

The JATSO continues to work on priorities facing our region, including recovery from the May 2011 tornado. Many Disaster Recovery projects are in progress, funded by Community Development Block Grants, and will have significant impacts on the region. The JATSO MPO area continues to attract businesses and focus on economic growth as well. Additionally, JATSO and City of Joplin staff continue to be involved in the 4-States Clean Air Alliance, ensuring air quality standards and compliance in our MPO region.

The transportation planning process is required by federal regulations as a prerequisite to the receipt of federal capital and operating assistance. The end result from this continuing, cooperative, and comprehensive process will include plans and programs that match and enhance the comprehensively planned development of the metropolitan area. In addition, the planning process and requirements mandated by the enacted by the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU) and Moving Ahead for Progress in the 21st Century (MAP-21) which took effect October 1, 2012 will be addressed as part of the Joplin Area Transportation Study Organization's (JATSO) planning activities.

## ORGANIZATION

On May 20, 1983, Governor Christopher Bond of Missouri signed the letter of approval designating the JATSO as the Metropolitan Planning Organization (MPO) for the Joplin metropolitan area under Title 23 of the U.S. Code.

The MPO has designated the City of Joplin as the contracting agent for service agreements involving federal planning funds from the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). The Harry S. Truman Coordinating Council, the local regional planning commission, represents the smaller villages and unincorporated area on the JATSO Policy Board. The JATSO organization consists of six members from the City of Joplin, and one member from each of the following: Harry S. Truman Coordinating Council, City of Webb City, City of Carl Junction, MoDOT Southwest District, Newton County, and Jasper County.

The organization and responsibilities of the various agencies involved in the transportation planning process are defined in this Unified Planning Work Program (UPWP), the Memorandum of Understanding, and the JATSO bylaws.

## FUNDING FOR THE UPWP

Funding for the UPWP comes from three sources: the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the City of Joplin. FHWA Planning and FTA Section 5303 funds are combined into one category, called a Consolidated Planning Grant (CPG), and provide 80 percent of the UPWP funds. The Federal planning funds require a 20 percent local match. This local match is provided by the City of Joplin general revenue funding source.

## PLANNING FACTORS

The Federal transportation planning requirements require the metropolitan transportation planning process to be continuous, cooperative, and comprehensive; and that the JATSO UPWP provide for consideration and implementation of projects, strategies and services that will address the following eight factors:

1. Support the economic vitality of the Joplin metropolitan area, especially by enabling global competitiveness, productivity and efficiency;
2. Increase the safety of the transportation system for motorized and non-motorized users;
3. Increase the security of the transportation system for motorized and non-motorized users;
4. Increase the accessibility and mobility of people and freight;
5. Protect and enhance the environment, promote energy conservation, improve the quality of life and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
6. Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;
7. Promote efficient system management and operation; and
8. Emphasize the preservation of the existing transportation system.

## Eligible Items

There are a number of activities that are considered eligible for transportation planning funds. These include street inventories, map preparation, aerial photography and photogrammetry, traffic volume studies, land use studies, and other studies that support the transportation planning process. Other eligible activities include systems development and project planning, economic and fiscal studies related to streets, project evaluation studies, and compilation of reference statistics.

## Public Involvement Plan

The purpose for the Public Involvement Plan (PIP) adopted in 2009 is to involve the public in the planning process, since the purpose of regional planning is to meet public mobility needs.

The PIP outlines a process for the public comments on the LRTP, TIP, UPWP, Title VI/ Environmental Justice and at public meetings. The PIP states that all changes to documents and plans that require board approval, except for the PIP itself, shall have a news release issued and be posted to the JATSO webpage seven (7) days prior to any action by the governing board for the purposes of public comment. The PIP shall have a 45-day public comment period. A paper copy of the PIP can be acquired at Joplin City Hall, Metropolitan Area Public Transit System (MAPS) office and vehicles, Webb City City Hall, Carl Junction City Hall, and Harry S. Truman Coordinating Council offices. An electronic copy of the PIP can be obtained at the JATSO website (http://joplinmo.org/index.aspx?NID=738). Other information pertaining to Title VI (Civil Rights Act of 1964), Limited English Proficiency (LEP) Plan, and American with Disabilities Act contact information can also be found at this website.

JATSO staff will be conducting a review of the current 2009 PIP during FY 2016 in order to ensure conformity with the requirements of 23 CFR 450.316. This includes extending comment periods on JATSO work products, meeting with stakeholders and invested interest groups, and reassessing the methods of communication with the public.

## FY 2016 Program Goals

The annual transportation planning program begins on November 1, 2015 and continues through October 31, 2016. The UPWP is directed toward the continuation and improvement of existing activities and the development of those activities mandated by federal regulations. For fiscal year 2016, JATSO's goals are:

- Improve metropolitan transportation planning through better cooperation and communication from JATSO, MoDOT, and ONEDOT. (All Tasks)
- Increase public and public agency participation in the JATSO transportation planning process. (Tasks 1, 2, 4, and 5)
- Update the 2016-2019 TIP as needed (Task 1)

# TASK 1. TRANSPORTATION IMPROVEMENT PROGRAM (TIP)

**Objective:** JATSO staff will maintain a fiscally constrained area-wide programmed listing of transportation improvement projects inside the Joplin metropolitan planning area for a four-year period that is consistent with JATSO's long-range transportation plan.

**Current Status:** The JATSO FY 2016-2019 TIP was approved October 29, 2015 and will be modified throughout FY 2016 as needed by the completion of JATSO TIP amendments and/or administrative actions.

**Tasks Completed in FY 2015**

- Staff amended the JATSO FY 2014-2017 TIP to include updated or new projects.
- Staff maintained and monitored the projects in the JATSO FY 2014-2017 TIP
- Developed and approved the FY 2016-2019 TIP

**Work Items**

- *Administration* – 70% ($9,646)
    - Complete TIP modifications as needed
    - Prepare the FY 2016 Annual Listing of Obligated Projects
- *Outreach* – 30% ($4,134)
    - Conduct Public Meetings

**Public Participation**

- Prior to adopting a TIP a public meeting will be held by the Policy Board. A news release will be issued and posting to the JATSO webpage will be done seven (7) days in advance of the public meeting. The public is encouraged to formulate comments regarding the TIP document.

**End Products**

- Update JATSO FY 2016-2019 TIP with amendments as needed
- Prepare the FY 2016 Annual Listing of Obligated Projects
- Develop and execute JATSO/MoDOT Annual Self Certification

**Schedule for Completion**

- Activities will be on-going from November 1, 2015 through October 31, 2016

**Budget**

| Total Cost | Federal Funds (80%) | Local Funds (20%) |
|---|---|---|
| $ 13,780 | $ 11,024 (CPG Funds) | $ 2,756 (City of Joplin) |

# TASK 2. UNIFIED PLANNING WORK PROGRAM (UPWP)

## ADMINISTRATION & OPERATIONS

**Objective:** JATSO staff will maintain the approved UPWP for the current FY 2016 and develop the FY 2017 UPWP.

**Current Status:** This task is on-going with activities occurring on a day-to-day or on-demand basis.

**Tasks Completed in FY 2015**

- Staff carried out projects in the FY 2015 UPWP, including
    - Developed the FY 2016 UPWP
    - Conducted four public meetings
    - Created and provided informational handouts at all public meetings
    - Participated in the FHWA/FTA 2015 Planning Process Review
    - Completed an update of the Long-Range Transportation Plan

**Work Items**

- *Administration* – 34% - ($ 22,216)
    - Monitor and maintain the FY 2016 UPWP ($ 3,097)
    - Prepare and transmit quarterly progress reports to MoDOT ($ 6,193)
    - Prepare the FY 2017 UPWP ($ 6,558)
    - Document all MPO activities ($ 2,368)
    - Participate in the FHWA/FTA Planning Process Review follow-up ($1,320)
    - Program additional tasks in FY 2016 as needed ($2,680)
- *General Transportation Planning* – 42% - ($ 27,325)
    - Participate in MoDOT district and statewide planning activities ($ 6,831)
    - Prepare minor amendments to the Long-Range Transportation Plan as needed ($ 4,099)
    - Maintain inventory of transportation needs and priorities ($ 6,558)
    - Conduct JATSO Policy Board meetings ($ 2,733)
    - Ongoing coordination of JATSO activities with disaster recovery planning efforts ($ 5,738)
    - Staff professional development ($ 1,372)
- *Outreach* – 24% - ($ 15,180)
    - Conduct public meetings ($ 9,108)

- Create informational hand-outs for public use ($ 3,795)
- Ongoing outreach to JATSO member agencies ($ 1,518)
- Ensure agencies receiving federal transportation funds maintain accurate financial records ($759)

**Public Participation:**

- Prior to adopting a Unified Planning Work Program a public meeting will be held by the Policy Board. A news release will be issued and posting to the JATSO webpage will be done seven (7) days in advance of the public meeting. The public is encouraged to formulate comments regarding the UPWP document.

**End Products:**

- Four (4) FY 2016 quarterly progress reports to MoDOT
- The JATSO FY 2017 UPWP completed in September 2016
- Maintain and update prioritized list of needs in the JATSO area as needed
- Minor Long-Range Transportation Plan amendments if needed
- Create information hand-outs for public use as needed

**Schedule for Completion**:

- Activities will be on-going from November 1, 2015 through October 31, 2016.

**Budget**

| Total Cost | Federal Funds (80%) | Local Funds (20%) |
|---|---|---|
| $ 64,721 | $ 51,776.80 (CPG funds) | $ 12,944.20 (City of Joplin) |

# TASK 3. GEOGRAPHIC INFORMATION SYSTEMS (GIS)

**Objective:** JATSO staff will work with the City of Joplin, the Harry S. Truman Coordinating Council, and other local governments and agencies to update and create databases and collect and input data into the JATSO's GIS.

**Current Status:** The City of Joplin updates zoning maps within the Joplin corporate boundaries. Census information, other socio-economic data, and additional transportation data of the Joplin area is inserted into GIS databases as it becomes available. Midland GIS Solutions continues to host the GIS website for the purposes of managing information.

**Tasks Completed in FY 2015**

- Staff maintained and updated street, trail, subdivision, zoning, sewer, flood plain, and ownership GIS layers.

**Work Items**

- *Administration* – 55% - ($ 27,560)
    - Maintain and update GIS layers used by JATSO, the Metro Area Public Transit System (MAPS), the Harry S. Truman Coordinating Council and local governments and agencies.
- *Annual ESRI licensing fee* – 30% - ($14,350)
- *Maintaining the GIS website* – 15% – ($7,200)

**End Products**

- Maintained GIS layers
- Updated street, subdivision, zoning, and property ownership layers.
- Updated aerial photography and contour, flood plain, census, environmental and traffic count layers as needed.
- Updated data and maps to reflect change in transit/multi-modal facilities

**Schedule for Completion**

- Activities will be on-going from November 1, 2015 through October 31, 2016.

**Budget**

| Total Cost | Federal Funds (80%) | Local Funds (20%) |
|---|---|---|
| $49,110.00 | $39,228.00 | $9,822.00 |

# TASK 4. TRANSIT PLANNING

**Objective:** JATSO staff will provide program and administrative support for the Metropolitan Area Public Transit System (MAPS) and the Sunshine Lamp Trolley system. JATSO staff will complete long and short-range transit planning responsibilities.

**Current Status**: JATSO continues to assist MAPS with program support and administration.

**Tasks Completed in FY 2015**

- Staff monitored the MAPS and collected data and information.
- Staff monitored the Sunshine Lamp Trolley system.
- Staff expanded trolley service to the southwest Joplin area, including the new Mercy Hospital site. The new trolley route began service spring 2015.
- Staff planned for the development of a transfer station and updated trolley routes.

**Work Items**

- *Administration – 100%* - ($47,541.00)
    - The MAPS transit coordinator collects and records transit data and information and reports the data findings to local, state and federal government agencies.

      ($15,281)
    - The MAPS transit coordinator and JATSO staff use data and information to complete short and long-range planning responsibilities. ($16,979)
    - Transit coordinator monitors and analyzes Sunshine Lamp Trolley system.

      ($15,281)

**End Products**

- Transit coordinator carries out the daily operations of MAPS.
- Transit coordinator provides MoDOT and FTA with necessary transit data and documentation.

**Schedule for Completion**

- Activities will be on-going from November 1, 2015 through October 31, 2016.

**Budget**

| Total Cost | Federal (80%) | Local Funds (20%) |
|---|---|---|
| $47,541.00 | $ 38,032.80 (FTA Sec. 5307) | $ 9,508.20 (City of Joplin) |

# TASK 5. PROGRAMS, SOFTWARE & HARDWARE

**Objective:** To maintain and improve an interactive JATSO website for the Joplin metropolitan planning area and maintain and improve JATSO's TransCAD software.

**Current Status:** The MPO's main website is included on the City of Joplin's website, (http://joplinmo.org/index.aspx?nid=738). The site contains information about JATSO, meeting agendas, minutes, and notices, and work products.

**Tasks Completed in FY 2015**

- JATSO staff maintained an interactive website that includes zoning, street, subdivision, and parcel information. News releases and agendas were posted to the City of Joplin's main webpage.
- Staff computer was upgraded.

**Work Items**

- Updating TransCAD software – 75% – ($15,008.40)
- Maintaining the JATSO website – 7% - ($1,320)
- Maintaining JATSO's TransCAD model – 18% - ($3,820)

**End Products**

- Maintain an interactive GIS website that includes zoning, street, subdivision, parcel, and any other pertinent information.
- Maintain JATSO's website and make regular updates to keep the public informed.

**Schedule for Completion**

- Activities will be on-going from November 1, 2015 through October 31, 2016.

**Budget**

| Total Cost | Federal Funds (80%) | Local Funds (20%) |
|---|---|---|
| $ 20,148.40 | $ 16,118.72 | $ 4,029.68 |

# TASK 6. COMPREHENSIVE PLAN UPDATE (PHASE II)

**Objective:** Update the current Joplin Area Comprehensive Plan (Phase II)

**Current Status:** The existing land use code for the Disaster Recovery Area does not encourage or permit the types of sustainable redevelopment identified in the Comprehensive Plan.

**Tasks Completed in FY 2015:**

- JATSO staff worked on developed an RFQ
- A selection committee was formed
- Top two consultants were interviewed and scored

**Work Items:** The 2012 Comprehensive Plan was adopted in July 2012. The updated plan addresses sustainable redevelopment in the Disaster Recovery Area, especially along the 20th Street Corridor. However, the goals and recommendations in the Comprehensive Plan cannot be achieved without a land use code update for the Disaster Recovery Area. Coordinating land use and transportation planning is an important component of sustainable development, a topic that received support from Joplin area residents in the Citizens Advisory Recovery Team (CART) plan. Area residents understand the impact that land use decisions have on their transportation decisions and needs.

The Comprehensive Plan, Metropolitan Transportation Plan, and CART all include recommendations for access management, sidewalks, and bicycle, trail and transit connections. The three aforementioned plans along with a land use code update work together to promote effective land use and transportation decisions in the Disaster Recovery Area.

The MTP, adopted in 2016, has a total of nine (9) goals, four (4) of which directly relate to land use. The following goals can be found in the LRTP:

- Goal I: Provide for the development of a transportation system that is supported by and complements land development and enhances community development.
- Goal IV: Provide for a balanced transportation system that provides a choice of travel modes for different individuals and activities.
- Goal VIII: Maintain low environmental impact from the transportation system within the metro area.
- Goal IX: Develop a future transportation system that encourages energy conservation.

The MTP recognizes the importance of connecting transportation and land use to provide an effective, sustainable, and multi-modal transportation system. An updated land use code for the Disaster Recovery Area will allow the impacted area to redevelop as a model for sustainable development.

**End Products:** An updated land use code that will help staff and the public make informed development decisions and achieve goals identified in the 2012 Comprehensive Plan will be adopted by the City of Joplin.

**Public Participation:** Public Participation is one of the most important elements when developing a land use code. JATSO will hold numerous stakeholder, focus group, and public meetings for the update.

**Schedule for Completion**: The selected consultant with staff assistance will conduct multiple public participation events and present drafts for public comment throughout FY 2016 and the first half of FY 2017. A final draft will be reviewed and approved by the Policy Board by the end of FY 2017.

**Budget:**

| Total Cost | Federal Funds (60%) | Local Funds (40%) |
|---|---|---|
| $ 100,000 | $60,000 (CPG Funds) | $40,000 (City of Joplin) |

# TASK 7. BICYCLE AND PEDESTRIAN TRANSPORTATION PLAN UPDATE

**Objective:** Update the JATSO Bicycle and Pedestrian Transportation Master Plan.

**Current Status:** The Bicycle-Pedestrian Transportation Plan for the Metropolitan Joplin Area was last updated in 2001.

**Work Items:** In the last fifteen years, there have been numerous bicycle and pedestrian projects in the planning area; additionally, following the May 2011 tornado in Joplin, many roads have been or will be reconstructed with increased bicycle and pedestrian infrastructure. This plan should be updated to gain an accurate assessment of the connectivity and existing infrastructure in the planning area as well as update the bicycle and pedestrian related goals of JATSO. The plan should provide JATSO with a prioritized list of non-motorized transportation needs in the planning area.

The Comprehensive Plan, Metropolitan Transportation Plan, and CART all include recommendations for access management, sidewalks, and bicycle, trail and transit connections. Goals 4, 6, 7, 8, and 9 of the 2036 MTP support the need for an up-to-date Bicycle and Pedestrian Transportation Plan by encouraging economic vitality, environmental justice, and support for individuals with low-income or disabilities.

**End Products:** An updated Bicycle and Pedestrian Transportation Plan for the JATSO planning area that will help the staff and public encourage sustainable and accessible multi-modal transportation planning and programming in the region.

**Public Participation:** This plan update will include three (3) public meetings as well as a public involvement survey to be used by JATSO.

**Schedule for Completion:** The selected consultant with staff assistance will conduct multiple public participation events and present drafts for public comment throughout FY 2016 and the first half of FY 2017. A final draft will be reviewed and approved by the Policy Board by the end of FY 2017.

**Budget:**

| Total Cost | Federal Share (80% CPG) | Local Match (20%) |
|---|---|---|
| $100,000 | $80,000 | $20,000 |

## TASK FUNDING SUMMARY FOR FY 2016

| Task Funding Summary | | | | |
|---|---|---|---|---|
| Task | Total CPG funds* | Total 5307 Funds | Local City of Joplin | Total Funds |
| Transportation Improvement Program | $ 11,024.00 | $ - | $ 2,756.00 | $ 13,780.00 |
| Unified Planning Work Program | $ 51,776.80 | $ - | $ 12,944.20 | $ 64,721.00 |
| Geographic Information Systems | $ 39,228.00 | $ - | $ 9,807.00 | $ 49,035.00 |
| Transit Planning | $ - | $ 38,032.80 | $ 9,508.20 | $ 47,541.00 |
| Programs, Software, and Hardware | $ 16,118.72 | $ - | $ 4,029.68 | $ 20,148.40 |
| Comp. Plan Update, Phase II | $ 60,000.00 | $ - | $ 40,000.00 | $100,000.00 |
| Bike/Ped Plan Update | $ 80,000.00 | $ - | $ 20,000.00 | $100,000.00 |
| Total | $258,147.52 | 38,032.80 | $99,045.08 | $395,225.40 |
| Note: *includes PL and 5303. | | | | |

## SUMMARY BY FUNDING SOURCE

| Funding Summary by Funding Source | |
|---|---|
| FHWA PL & FTA Section 5303 Funds (Consolidated Planning Grant) | $258,147.52 |
| Local Match (20% of Consolidated Funds-FHWA PL Funds and FTA Section 5303 Funds) | $99,045.08 |
| FTA Section 5307 Share | $38,032.80 |
| Local Match (20% of Total Task Cost using FTA Section 5307 Funds) | $ 9,508.20 |
| Total Programmed | $404,733.60 |

## CPG BALANCE TRACKING FOR FY 2016

| CPG Balance Tracking | |
|---|---|
| 2016 | |
| End of FY 2015 CPG balance | $896,510.11 |
| FY 2016 CPG allocation | $192,386.00 |
| CPG funds programmed for FY 2016 | $258,147.52 |
| Maximum 5 year balance | $918,641.00 |
| CPG funds balance after FY 2016 | $830,748.59 |

JATSO greatly appreciates the advice and technical assistance provided by MoDOT, FHWA, and FTA in the course of conducting local planning activities. JATSO recognizes that planning is a multi-faceted activity, requiring knowledge of a variety of subjects. The dedication and cooperative spirit displayed by these agencies is greatly appreciated.

The preparation of this UPWP is financed in part by FTA and FHWA Consolidated Planning Grant funds that are administered by MoDOT.

## JATSO Organizational Chart

Staff is located at the City of Joplin offices and are dedicated to JATSO activities.

**Full-time staff**

Robert Lolley, Transit Coordinator (1.0 FTE)
Taylor Cunningham, Planner (1.0 FTE)

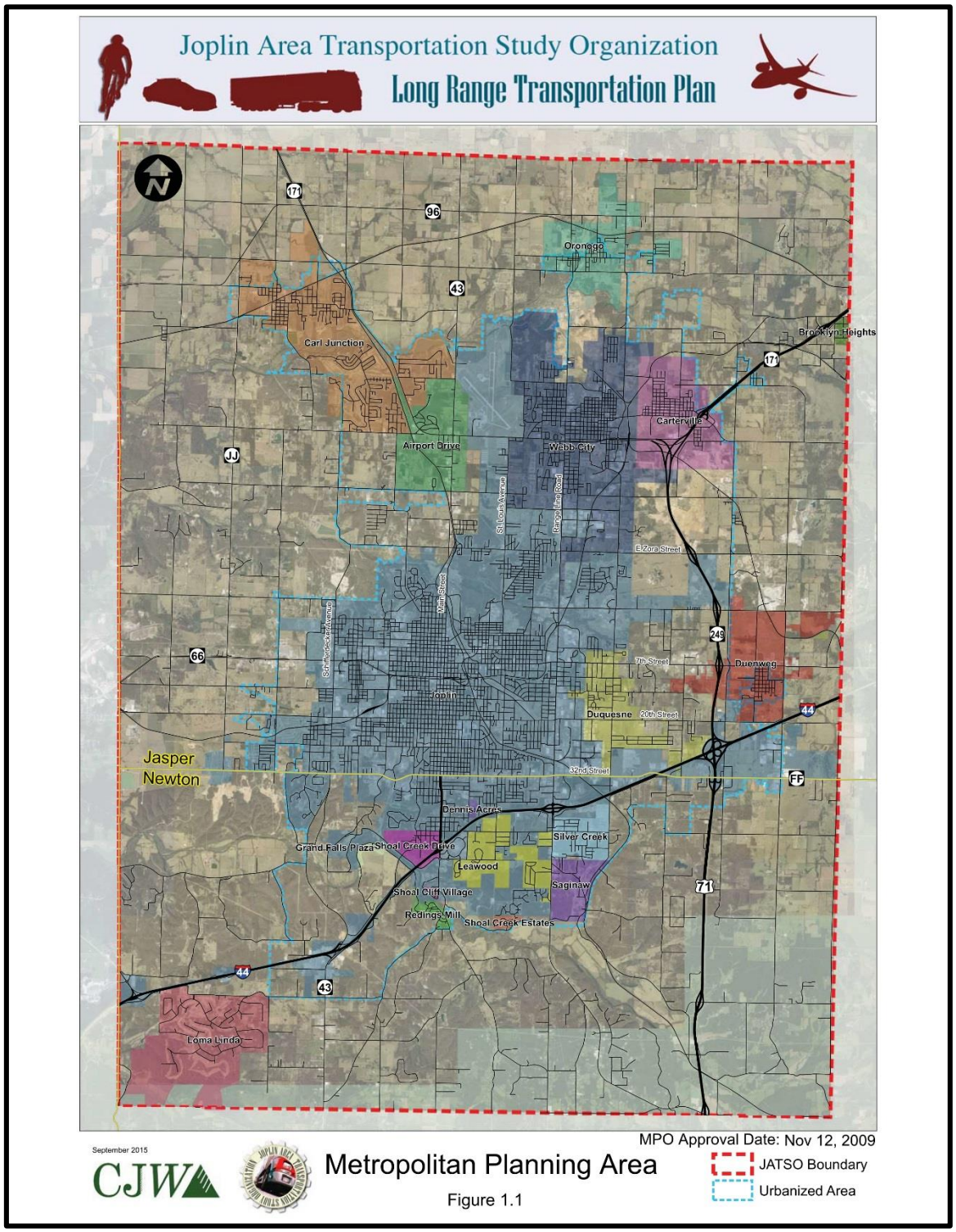
**Part-time staff**

Troy Bolander, Director of Planning, Development and Neighborhood Services (0.5 FTE)
Lindsay Dunn, Planning, Development and Neighborhood Services Clerk (0.5 FTE)
John Gilligan, GIS Coordinator (0.5 FTE)

**JATSO Policy Board Voting Members**

| **Chairman Nick Heatherly** | **Director of Public Works** | **City of Joplin** |
|---|---|---|
| **Vice Chairman Troy Bolander** | Director of Planning, Development, and Neighborhood Services | City of Joplin |
| **Dan Salisbury** | Assistant Director of Public Works | City of Joplin |
| **Lynden Lawson** | Assistant Director of Public Works – Operations | City of Joplin |
| **Robert Lolley** | Transit Coordinator | City of Joplin |
| **Steve Stockham** | Airport Manager | City of Joplin |
| **Carl Francis** | Interim City Administrator | City of Webb City |
| **Steve Lawver** | City Administrator | City of Carl Junction |
| **Jill Cornett** | Director | Harry S. Truman Coordinating Council |
| **Darieus Adams** | Commissioner | Jasper County |
| **Marilyn Ruestman** | Commissioner | Newton County |
| **Becky Baltz** | Southwest District Engineer | Missouri Department of Transportation |
| **Michael Swan, Alternate** | Transportation Planner | Harry S. Truman Coordinating Council |
| **Frank Miller, Alternate** | Senior Transportation Planner | Missouri Department of Transportation |

# JATSO Metropolitan Planning Area (MPA) Boundary Map



CCO Form: TP02
Approved: 09/97 (BDG)
Revised: 09/15 (BDG)
Modified:

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION**
**TRANSPORTATION PLANNING CONSOLIDATION GRANT AGREEMENT**
**FIRST AMENDMENT**

THIS FIRST AMENDMENT is entered into by the City of Joplin (hereinafter, "Grantee") and the Missouri Highways and Transportation Commission (hereinafter, "Commission").

WITNESSETH:

WHEREAS, the parties have previously entered into a *Transportation Planning Consolidated Grant Agreement* (hereinafter, "Original Agreement") which was executed by the Grantee on November 16, 2015, and by the Commission on December 3, 2015; and

WHEREAS, the parties wish to amend the Agreement between the parties to include two new tasks:

1) City of Joplin Comprehensive Plan Update, Phase II
2) Bicycle and Pedestrian Transportation Plan Update

NOW, THEREFORE, in consideration of these mutual covenants, promises and representations, the parties agree as follows:

(1) CONTRACT PRICE AND PAYMENT: That paragraph (9) (A) of the Original Agreement is deleted and replaced with:

(9) CONTRACT PRICE AND PAYMENT:

(A) Total Price: For the work described in this Agreement, the Grantee shall receive payment based on actual costs, as defined in subparagraph B of paragraph (9) up to the maximum amount of $258,147.52 defined as consolidated planning funds. The local matching share shall be 20 percent for funds provided under 23 U.S.C. Section 104(f) and under 49 U.S.C. Section 5303. The local matching share may be either cash or direct cost match or a combination of both.

(2) SCOPE OF SERVICES: Appendix A entitled "FY 2016 FHWA PL and FTA Section 5303 Scope of Services", which was attached to the Original Agreement, is deleted and replaced with a revised "FY 2016 FHW PL and FTA Section 5303 Scope of Services" which is attached to this Amendment as "Amended Appendix A".

(3) EFFECTIVE DATE: This Amendment shall be effective as soon as all parties have signed and shall cover approved work from the Unified Planning Work Program during FY 2016.

(4) ORIGINAL AGREEMENT: Except as amended, modified, or supplemented by this Amendment, terms and conditions of the Original Agreement and all prior amendments between the parties shall remain in full force and effect and the unaltered provisions of the Original Agreement and prior Amendments shall extend and apply to this First Amended Agreement.

IN WITNESS WHEREOF, the parties have entered into this Amendment on the date last written below.

Executed by the Grantee this ____ day of _____, 20__.

Executed by the Commission this ____ day of _____, 20__.

| | |
|---|---|
| MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION | (GRANTEE)_____ |
| _____ | _____ |
| Title:_____ | Title:_____ |
| Attest: | Attest: |
| _____ | _____ |
| Secretary to the Commission | Title:_____ |
| Approved as to Form: | Approved as to Form: |
| _____ | _____ |
| Commission Counsel | Title:_____ |
| | Ordinance Number _____ |

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: August 1, 2016

Item: Agreement with Missouri Department of Transportation
Originating Department: Planning, Development, and Neighborhood Services

Attachments: 1) Copy of Agreement
2) Copy of UPWP 2016
3) Council Bill No. 2016-369

Department Head: Troy Bolander
Finance Department: Leslie Haase
City Attorney: Peter Edwards
City Manager: Sam Anselm

Recommended Action: Approval of Contract Agreement between the City of Joplin and Missouri Department of Transportation for Federal Transportation Planning Assistance.

SUMMARY:

This is an annual agreement between the Missouri Department of Transportation and the City of Joplin for Federal Transportation Planning Assistance. The purpose of this agreement is to allow the Joplin Metropolitan Planning Organization (whereas the City of Joplin is the designated recipient of the assistance) to receive monetary support to complete transportation planning duties and projects that are eligible for federal financial assistance.

The City will receive an 80% reimbursement of expenses. This year's expenses will total no more than three hundred and fifty-seven thousand one hundred and ninety-two dollars and sixty cents ($357,192.60). The reimbursement consists of two-hundred and fifty-eight thousand one hundred and forty-seven dollars and fifty-two cents ($258,147.52) in Federal Consolidated Planning Grant Funds. The City will pay 20% of the project costs incurred to a maximum of ninety-nine thousand and forty-five dollars and eight cents ($99,045.08) to draw down the Federal assistance.

The Joplin Metropolitan Planning Organization (MPO) will use a portion of the assistance to pay for administrative support and technical work completed by the Director of Planning, Development, and Neighborhood Services, the Planner, and other support staff from the City of Joplin. The remainder of the assistance will be used to help finance eligible planning projects.

Attached is the amended 2016 Unified Planning Work Program (UPWP) that provides more detail on the planning projects being conducted during the next fiscal year. The Joplin Area Transportation Study Organization (JATSO) Policy Board voted to adopt the UPWP at their

meeting on October 29, 2015. On June 23, 2016, the JATSO voted to amend the UPWP to include tasks six (6) and seven (7) which include a Zoning Code Update for the City of Joplin and an update to the Bicycle and Pedestrian Transportation Plan. JATSO is the designated MPO held with the responsibility of providing transportation policy and overseeing the federal transportation planning process for the Joplin region.

RECOMMENDATION:

Staff recommends approval of this annual agreement with the Missouri Department of Transportation, so the MPO can carry out their transportation planning activities.

COUNCIL BILL NO. 2016-369 ORDINANCE NO.

AN ORDINANCE approving an Agreement between the City of Joplin, Missouri, and Missouri Highway and Transportation Commission which will provide FHWA Metropolitan Planning Assistance and FTA Section 5303 assistance, hereafter known as Consolidated Planning Funds, from November 1, 2015, through October 31, 2016, in accordance with the rules of the U.S. Department of Transportation, Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) under 49 U.S.C. Section 5303 and 23 U.S. Code Sections 104(F) and 134 to conduct comprehensive and transportation planning programs, as the City of Joplin has been designated to conduct transportation planning programs for the Joplin Area Transportation Study Organization; authorizing the City Manager to execute said Agreement for the City.

BE IT ORDAINED BY THE CITY OF JOPLIN, MISSOURI, AS FOLLOWS:

Section 1. That the City enters into an Agreement with the State of Missouri, acting by and through the State Highway and Transportation Commission of Missouri, which will provide two-hundred and fifty-eight thousand one hundred and forty-seven dollars and fifty-two cents ($258,147.52) in consolidated planning funds under 23 U.S.C. Section 104(f) and 49 U.S.C. Section 5303, to complete comprehensive and transportation planning programs, a copy of said Agreement being attached hereto and made a part hereof by reference.

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

Section 3. This CPG Agreement must be submitted to, reviewed, and passed by the Missouri Highway and Transportation Commission for financial assistance to be made available to the City of Joplin, Missouri.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this ___ day of _____, 2016, by a vote of_____.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

City of **JOPLIN** City Council Agenda Item

## Requested Council Meeting Date: August 1, 2016

**Item:** Council Bill No. 2016-370 authorizing and approving an Agreement between the City of Joplin and Gould Evans Affiliates.

**ORIGINATING DEPARTMENT:** Planning, Development and Neighborhood Services
**ATTACHMENTS**: 1) Council Bill No. 2016- 370
2) Contract
3) Scope of Services

**PUBLIC WORKS DIRECTOR:** Nick Heatherly
**PLANNING & CD DIRECTOR:** Troy Bolander
**FINANCE DIRECTOR:** Leslie Haase
**CITY ATTORNEY:** Peter C. Edwards
**CITY MANAGER:** Sam Anselm

**INTRODUCTION:**

This Council Bill authorizes the City of Joplin to enter into Agreement with Gould Evans Affiliates for Planning Services relating to the update of the City of Joplin's Zoning Code.

**DISCUSSION:**

This Council Bill authorizes the City of Joplin to enter into an Agreement with Gould Evans Affiliates for Planning Services to update the Zoning Code, authorizing the City Manager to execute said Agreement in substantially similar form.

This update should encompass recommendations laid out in the City of Joplin's Comprehensive Plan, which was updated in 2012. This plan was adopted after the May 2011 tornado and builds on the pro-active response of the Citizens Advisory Recovery Team (CART). This Plan includes a number of goals and development standards and also lays out specific corridors which are held to higher development standards. The zoning ordinance should also incorporate current and best planning practices, as well as provide clarification and consistency, remove contradictions or obsolete regulations, and to incorporate graphic illustrations, as may be appropriate. This update will involve working through a collaborative process that involves a variety of stakeholders, culminating in a fully updated, user-friendly zoning code that is simple, flexible, easily understood by the general public, and easily administered by staff.

The planning firm will work closely with City staff and leadership to update the Zoning Code, including such items as the Subdivision Regulations, Telecommunications Regulations, Storm Water Management Regulations, and Sediment and Erosion Control Regulations (Appendices 29-A, 29-B, 29-D, 29-E, and 29-F).

**RECOMMENDATION:**

Staff recommends this Council Bill be approved.

COUNCIL BILL NO. 2016-370 ORDINANCE NO.

AN ORDINANCE authorizing the City of Joplin to enter into an Agreement with Gould Evans Affiliates for Planning Services relating to the update of the City of Joplin Zoning Code; authorizing the City Manager to execute said Agreement for the City, and amending the Annual Budget of the City of Joplin for the Fiscal Year 2015-2016 as adopted by Ordinance 2015-168 on October 19, 2015

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

Section 1. That the City enter into an Agreement by and between the City of Joplin and Gould Evans Affiliates dealing generally with the update of the City of Joplin's Zoning Code amount not to exceed One Hundred and One Thousand Eight Hundred Dollars ($101,800.00), attached hereto as Exhibit A.

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

Section 3. That fiscal year 2015-2016 budgeted appropriations as adopted by Ordinance 2015-168 be amended by increasing appropriations by the total amount of Seventeen Thousand Five Hundred Dollars and No Cents ($17,500.00).

Section 4. That the Director of Finance is hereby directed to make all necessary entries in the City records to show the increase in appropriations.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this_____day of_____, 2016, by a vote of_____.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

THIS AGREEMENT made this ___ day of July, 2016 by and between the City of Joplin, MO ("Client") and Gould Evans, P.C., a Missouri Professional Corporation ("Consultant").

**WITNESSETH**

**WHEREAS,** the Client desires to engage the Consultant to render certain agreed upon professional planning services for preparation of a Development Code Update, and the Consultant is willing to provide such services, all upon the terms set forth below.

**NOW THEREFORE,** in consideration of these premises, the parties hereto agree as follows:

1. **Scope of Services:** The Consultant will undertake work assigned by Client relating to *Attachment A: Scope of Services.*

2. **Time and Performance:** The Consultant's services shall commence upon execution of this Agreement by both parties. Once approved by the Client, the Consultant shall complete the tasks described in the Scope of Services within 18 months from the date of execution of this Agreement, unless delayed by circumstances beyond Consultant's control.

   The Consultant will exercise reasonable skill, care and diligence in the performance of its services, and will carry out its responsibilities in accordance with the customarily accepted planning practices in Consultant's community. The Client shall be responsible for the timely delivery of data and support information requested by the Consultant in a manner that will allow the Consultant the ability to perform its services within the time frame noted above.

   Compensation: The Consultant shall be compensated, a fixed fee not-to-exceed **$ 101,800.00**, including reimbursable expenses. Consultant will bill based upon the percentage of work complete by Phase, up to the maximum fees stated above. Consultant will not exceed the maximum fees stated above without written authorization from the Client.

3. **Payment:** The Client shall pay the amount due within 30 days after receipt of Consultant's invoice. If the invoice is not paid within 30 days, the Consultant may suspend services upon written notice to the Client. If a portion of the Consultant's statement is disputed, the Client shall pay the undisputed portion by the due date. Interests on amounts due and unpaid shall accrue at the rate of 1.5% per month from date due until paid. In any action to recover payment due, Consultant shall be entitled to recover its attorney's fees costs. The Client shall advise the Consultant in writing of the basis for any disputed portions of the statement within 7 days of receipt of invoice. Undisputed portions of the invoice shall be timely paid by Client notwithstanding such disputed portions.

4. **Time and Expense Records:** The Consultant shall keep and maintain time and expense records relating to the scope of services described above, together with supporting receipts, vouchers, and appropriate documentation. As necessary, these records and other appropriate documentation may be required to support invoices submitted to the Client. The Client shall have the right to examine such records as it deems necessary upon reasonable notice to the Consultant at Consultant's place of business during normal business hours.

5. **Authorization of Changes:** Any changes or additional tasks required for the performance of this Agreement and any compensation due for the provision of additional services shall only be authorized by the Client in writing, and the Consultant shall first request such changes in writing. The Consultant shall be compensated for any additional tasks so approved and authorized, based upon a fee determined by the Consultant and Client for such additional professional services.

6. **Liability:** The Consultant agrees to indemnify and hold harmless the Client, its employees, officials, agents and representatives, from any and all losses of whatever kind to the extent caused by Consultant's negligent acts of failure to act in performance of this Agreement. The Client agrees to indemnify and hold harmless the Consultant, its staff and employees and affiliates from any and all losses of whatever kind to the extent caused by Client's negligent acts or failure to act in performance of this Agreement.

7. **Disputes/Termination:** Each party may terminate this Agreement with written notice to the other party. In the event of such termination, provided the consultant is not then in default under this Agreement, the Client shall pay the Consultant its compensation and expenses to and through the receipt of termination notice, upon documentation of those costs by written invoice to the Client.

8. **Ownership of Documents:** Upon receipt of final payment by Consultant, all original final documents, studies or graphic materials, drawings, plans and digital files prepared by the Consultant shall be deemed property of the Client except as to confidential matters or trade secrets of the Consultant (if identified as such in writing by the Consultant), but only after the final payment by the Client for the same. The Consultant shall be permitted to retain copies, including reproducible copies, of the Consultant's drawings, specifications and other documents. The Client's right of ownership in all such documents shall not prohibit the Consultant from future utilization of design or planning drawings or concepts in the ordinary course of Consultant's business and the Client hereby grants the unrestricted permission to use all such data contained in the Consultant's drawings, text and other documents.

   The Client shall prohibit any Contractor and its subcontractors or suppliers from utilizing the Consultant's drawings or other documents on other projects not authorized by the Client. In the case of any future reuse of the documents by the Client without Consultant's direct professional involvement, the Consultant's and Consultant's consultants' names shall be removed from all such documents and the Consultant shall not be liable to the Client in any manner whatsoever for their reuse. Due to the potential exposure to liability when reused, the Client agrees to indemnify and hold harmless the Consultant, Consultant's consultants, their agents, and employees, from and against any claims, damages, losses and expenses including, but not limited to, attorney's fees, arising out of or resulting from the Client's reuse of any such drawings or documents other than for use in this Project with Consultant's direct involvement, including any claims brought by any third-parties, and including any claims relating to the Consultant's or its consultants' negligent preparation of any such drawings or other documents. The Client's obligations under this paragraph shall survive any termination of this Agreement and shall be binding upon the Client's successors and assigns.

9. **Confidentiality of Findings:** Any reports, information, date or intellectual property whatsoever given or prepared as assembled by the Consultant under this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the Client, except for those uses specified in Item 10, Public Relations.

10. **Public Relations:** Consultant shall have the right to retain and utilize copies of all work it produces on the Project for citation and dissemination in the Consultant's resume, brochures and other generally recognized forms of professional public relations.

11. **Extent of Agreement:** This Agreement represents the entire and integrated agreement between the Client and Consultant and supersedes all prior negotiations, representations or agreement, either

written or oral. This Agreement may be amended only by written instrument signed by both the Client and Consultant.

12. **Severability:** Should any of the provisions of this Agreement be determined to violate any state law or City ordinance, that shall not affect the validity of the other terms of this Agreement and there shall be added to this Agreement a legal, valid or enforceable term or provision as similar as possible to the stricken provision.

13. **Applicable Law:** Parties agree that Missouri law is controlling in interpreting this Agreement.

14. **Insurance:** Consultant shall maintain, at its own expense, the following insurance with insurance companies reasonably acceptable to Client:

    (a) Professional Liability Insurance in the amount of five hundred thousand Dollars ($500,000.00) (per claim and aggregate, with all coverage retroactive to the earlier of the date of this Agreement and the commencement of Consultant's services under this Agreement) covering personal injury, bodily injury and property damages to the extent caused by consultant's negligent acts, errors or omissions, which coverage shall be maintained for a period of three (3) years after the date of final payment under this Agreement.
    (b) Commercial General Liability Insurance, occurrence form, (including completed operations and broad-form contractual liability) in the amount of five hundred thousand Dollars ($500,000.00) combined single limit per occurrence and aggregate covering personal injury, bodily injury and property damage, which insurance shall name the Client as an additional insured.
    (c) Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, in the amount five hundred thousand Dollars ($500,000.00) covering bodily injury and property damage, which insurance shall name the Client as an additional insured.
    (d) Worker's Compensation Insurance, which shall fully comply with applicable law, and employer's liability insurance with limits of not less than one hundred thousand Dollars ($100,000.00) per accident / $1 Million disease policy limit / $1 Million disease each employee. Consultant shall provide a valid waiver executed by its workers compensation and employer's liability insurance carrier of any right of subrogation against Client or its employees for any injury to a covered employee working on Client's premises.

Upon execution of this Agreement, Consultant shall provide to Client Certificates of Insurance reflecting the required coverages at their request. The certificates shall specify the date when such insurance expires. Each policy and each Certificates of Insurance shall provide that Client shall be given not less than thirty (30) days' written notice before cancellation, non-renewal of coverage of such insurance except for non-payment. A renewal certificate shall be furnished to Client prior to the expiration date of any coverage, and Consultant shall give Client written notice of any reduction or other material modification in such insurance no later than thirty (30) days prior to such change.

15. **Assignment:** Consultant shall not assign this Agreement or any part hereof, or the right to any payments to be received hereunder, without prior written consent of Client. However, Consultant may subcontract portions of the services the subconsultants without violating this provision.

16. **Mediation:** In the event that a dispute shall arise between the parties to this Agreement, then as a condition precedent to an arbitration or legal action by either party, the parties agree to participate in

at least four hours of mediation, as needed, in an effort to resolve the dispute. The parties agree to split the mediator's fees equally. The mediation shall be administered by a mutually agreeable mediation service and shall be held in Kansas City, Missouri, unless another location of mutually agreed upon.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first written above,

| | |
|---|---|
| FOR:<br>**CITY OF JOPLIN, MO** | FOR:<br>**GOULD EVANS.** |
| Name: _____ | Name: Dennis Strait, AIA, ASLA |
| Signature: _____ | Signature: _____ |
| Title: _____ | Title: Principal |
| Date: _____ | Date: _____ |

# Attachment A: Scope of Services

## *PHASE 1 – INITIATION*

The Initiation phase quickly mobilizes stakeholders and establishes key benchmarks and a time line for the project.

**Task 1.1 Work Plan:** A detailed Work Plan will establish a formal time line and benchmarks for key deliverables.

**Task 1.2 Public Engagement Strategy:** Gould Evans will work with City Staff and key stakeholders to develop a public participation strategy specific to Joplin's planning issues, past public participation experiences, existing communication networks and constituency groups. Based on our experience on similar past projects, at a minimum we see this involving the following groups:

- *Advisory Committee* – broad cross section of stakeholders to provide general oversight, project advocacy, policy direction and general regulation review
- *Technical Committee* – a small group of those most familiar with the day-to-day administration of the City's development regulations. This group will provide technical support and direction, and perform detailed review and comment on draft regulations
- *Focus Groups/Special Issue Subcommittees* – Depending on the make-up of the Advisory Committee, and other input, special topic groups may need to be formed to provide more detailed guidance and oversight of certain topics. These groups will typically align with the Critical Issues tasks in Phases 2 and 3
- *Planning and Zoning Commission and City Council* – In addition to any role on the above committees, these groups will be provided periodic project status updates at regular meetings and their role in the official adoption process

A critical component of our public engagement strategy is outlining the different types and levels of information that each of these groups will need to perform their roles on this project.

**Task 1.3 Kick-off Meetings:** Outline the Work Plan and Public Engagement Strategy, identify primary objectives, establish time lines, and assign roles and responsibilities for different participants.

*Consultant Responsibilities:*

- Collect and review all relevant background data
- Develop detailed Work Plan
- Finalize Public Engagement Strategy
- Review all relevant planning and regulatory documents
- Conduct project kick-off meeting

*Client Responsibilities:*

- Provide all relevant background data, plans and reports, in electronic versions where applicable
- Assist with Work Plan and Public Engagements Strategy
- Assemble project teams (Technical Committee and Advisory Committee)
- Coordinate and schedule kick-off meetings

*Meetings:*

- Work Plan & Public Engagement Strategy (via conference call with Client / PM)
- Kick-off Meetings with Technical and Advisory Committee

## *PHASE 2 – ANALYSIS*

The Analysis phase sets the foundation for the informed discussion among all stakeholders regarding regulatory strategies appropriate to achieve Joplin's' planning goals.

**Task 2.1 Regulation Audit:** This report will analyze specific connections between the development regulations and the Comprehensive Plan and the Economic Development Strategy. In direct response to the City's most recent policies it is important to determine what is working, what is not, what is missing.

**Task 2.2 Critical Issues Summaries:** These summaries provide a brief (2-6 page) white paper on the key topics identified in the Kick-off Meeting, Analysis or Regulation Audit. A typical code re-write may have five to eight of these critical issues that are most important to the success of the project and require special facilitation. This format has proven successful in getting broad input and endorsement of concepts and approaches, without getting mired in specific regulatory language. With this direction, a more "technical" group can set about the task of drafting, reviewing and revising regulations.

*Consultant Responsibilities:*

- Assist with selecting applicable critical issues.
- Prepare Regulation Audit
- Participate in bi-monthly project management team meetings/conference calls with client
- Prepare Critical Issues Summaries (5 to 8 anticipated)
- Present Regulation Audit and Critical Issues summaries to the Technical Committee and Advisory Committee for review and comment

*Client Responsibilities:*

- Provide staff list of most common regulatory issues impacting implementation of the Plan (recurring problems, past difficult project files, etc.)
- Participate in bi-monthly project management team meetings/conference calls with consultant
- Coordinate and schedule Advisory Committee and Technical Committee meetings
- Review and comment on Plan Conformance Report.
- Assist with identification and prioritization of critical issues for further analysis

*Meetings:*

- Technical Committee and Advisory Committee meetings on Regulation Audit and Critical Issues Summaries

### *PHASE 3 – DISCUSSION*

The Discussion phase help builds understanding and ownership in the direction of the project.

**Task 3.1 Public Open House:** This is the public kick-off event. The open house, exhibits and supporting materials will have three key objectives: (1) provide clear links to the policies and priorities of the Comprehensive Plan; (2) elevate the understanding or important development concepts and potential regulatory strategies; and (3) clearly convey the physical impact that existing and potential regulations have on development and investment in the community. Discussions at this Open House will focus on high-level direction of the project and assessments of concepts. Public input from this session will be summarized for the Advisory Committee to consider.

**Task 3.2 Critical Issues Workshop:** Some issues require a more in-depth discussion with stakeholders and those impacted by potential regulatory strategies. The Critical Issues Summaries will provide a foundation for these discussions. The format of these discussions may include sub-committees, focus groups, or special invites to defined constituencies, but will depend on the issues selected in the Analysis phase and on the final Public Engagement Strategy. Either 2 separate workshops, or a 2-day event of public open houses and focus groups (or comparable event(s) in time and meeting preparation) may be incorporated based on the final Public Engagement Strategy.

**Task 3.3 Draft Regulation Framework:** Based on the outcomes of these initial public engagement tasks, a Draft Regulation Framework will be created. It will be an annotated outline of the subdivision and zoning regulations identifying: (1) areas in need of change—new provisions that are needed or old approaches that do not align with current policies; (2) areas to maintain in current form; and (3) areas to revise and amend, but keep the substantive provisions and intent the same.

*Consultant Responsibilities:*

- Prepare materials and facilitate Public Open House.
- Prepare materials and facilitate Critical Issues Workshop(s)
- Prepare Draft Framework (with Technical Committee and/or Advisory Committee and incorporated into Critical Issues Workshop events)

*Client Responsibilities:*

- Assist with Public Open House and Critical Issues Workshop(s)
- Review and comment on Draft Framework

*Meetings:*

- Public Open House
- Critical Issues Workshop(s) / Focus Groups
- Technical and Advisory Committee meetings on Draft Framework

### *PHASE 4 – INITIAL DRAFTS*

The Initial Draft will be the first point in the project to review in a comprehensive perspective the many regulatory strategies and concepts that have been discussed with the project to date.

**Task 4.1 Initial Draft:** Based on the input from the Analysis phase and the Discussion phase, our team has the ability to craft specific regulatory strategies appropriate to Joplin. We will prepare an initial draft of the development regulations that best implement the Joplin Comprehensive Plan.

**Task 4.2 Special Issue Sub-committees/Interim Drafts:** Typically the drafting process involves at a minimum an Initial Draft and a Final Draft to be reviewed by the Technical Committee and Advisory Committee. Additionally, past projects have proven that an "Interim Drafts," refining technical issues and reviewed by staff, a technical committee or a special topic sub-committee is often necessary. Interim Drafts are usually topic specific or focused on things that have been the most contentious in the Critical Issue Discussion. This "three tiered" approach to drafts and reviews can result in more streamlined review and comment process. It focuses attention on the correct details for the correct people, and organizes the efforts of groups who may not want to be bogged down by the overall code or may have special interest in an issue. It also respects the time commitments of many individuals who volunteer time to this significant effort.

**Task 4.3 Review and Comment Period:** The Initial Draft and any necessary Interim Drafts are vetted through a review and comment period. Typically this involves only the Technical Committee, Advisory Committee, and any necessary subcommittees. Following delivery of the documents, a two- to three-week period is typically necessary for these groups to consider the documents and provide feedback.

*Consultant Responsibilities:*

- Prepare Initial Draft of the regulation update
- Participate in project management team meetings/conference calls with client
- Prepare Executive Summary/Status Reports for Planning and Zoning Commission and City Council
- Conduct Initial Draft discussion meeting with Technical and Advisory Committee
- Develop review and comment process open for Technical Committee and/or Advisory Committee.
- Assist in the identification and preparation of any interim drafts necessary

*Client Responsibilities:*

- Give consultant direction and/or provide supporting research for interim drafts.
- Participate in project management team meetings/conference calls with consultant
- Participate in Technical Committee review and comment process and provide direction
- Provide one consolidated set of review and comment notes from the Technical Committee on the Initial Draft and any necessary Interim Drafts

*Meetings:*

- Technical and Advisory Committee meeting on Initial Draft
- Conference Calls with PM and/or Technical Committee in any interim drafts.

### *PHASE 5 – FINAL DRAFT*

The Final Draft is the first professional recommendation of the consultant team on regulations appropriate for the City of Joplin.

**Task 5.1 Final Draft:** Using the input gained from the review and comment of the Initial Draft we will prepare the Final Draft of the development regulations. Much of the text is nearly finalized, allowing us to develop detailed graphics to support the text, and finalize formatting.

**Task 5.2 Review and Comment Period:** Similar to the Initial Draft phase, the Final Draft is available for a second round of review and comment by the Technical Committee and Advisory Committee.

**Task 5.3 Public Open House/Public Official Work Session:** The Final Draft also provides a good opportunity to reveal the full set of regulations to the general public. “Executive summaries” and “How to Use” guidance will be created to orient people to key regulatory strategies. Additionally, this same information will be presented at a joint work session of the Joplin Planning and Zoning Commission and City Council. It is important that this first introduction of a complete draft be presented in an informal setting outside of the official public hearing process. This will enable a better understanding of what is changing and why, and still allow time for feedback and adjustment.

*Consultant Responsibilities:*

- Review and evaluate comments from the Initial Draft review process
- Finalize format and layout of regulations, and prepare final graphics
- Prepare Final Draft of development regulations based upon Phase 4 input
- Review Final Draft of regulations with Technical Committee and Advisory Committee
- Hold one public open house or other stakeholder review on Final Draft
- Conduct Final Draft work sessions with the Joplin Planning and Zoning Commission and City Council

*Client Responsibilities:*

- Provide direction on final format and layout of the regulations
- Assist in coordination of review and comment process with the Advisory Committee and give direction on the proposed drafts
- Provide one consolidated set of review and comment notes from the Technical Committee on the Final Draft

*Meetings:*

- Technical and Advisory Committee meetings on Final Draft
- Public Open House – Final Draft
- Joint Planning and Zoning Commission/ City Council Work Session

### *PHASE 6 – ADOPTION*

The Adoption Phase provides the official review and comment process, and allows formal adoption of the new development regulations.

**Task 6.1 Adoption Draft:** The Adoption Draft will incorporate comments from the discussion and review of the Final Drafts of the regulations. This draft will enter the formal review and comment process.

**Task 6.2/6.3 Planning and Zoning Commission Hearing:** Our team will support up to two meetings for the adoption process, which is anticipated to be a public hearing before the Joplin Planning and Zoning Commission, and official adoption by the City Council. Additional meetings can be accommodated

through additional services, or the Consultant can support staff with information and advice for additional meetings

*Consultant Responsibilities:*

- Review and evaluate comments from the Final Draft review process
- Prepare proposed Adoption Draft regulations based on Phase 5 input
- Prepare Executive Summary
- Present Adoption Draft of regulations at formal public hearings and meetings
- Prepare Publication Copy of formally adopted regulations

*Client Responsibilities:*

- Direct consultant on all officially adopted changes to the adoption drafts that resulted from the formal public review process
- Coordinate distribution of all review and meeting materials
- Coordinate scheduling of all public hearings and meetings

*Meetings:*

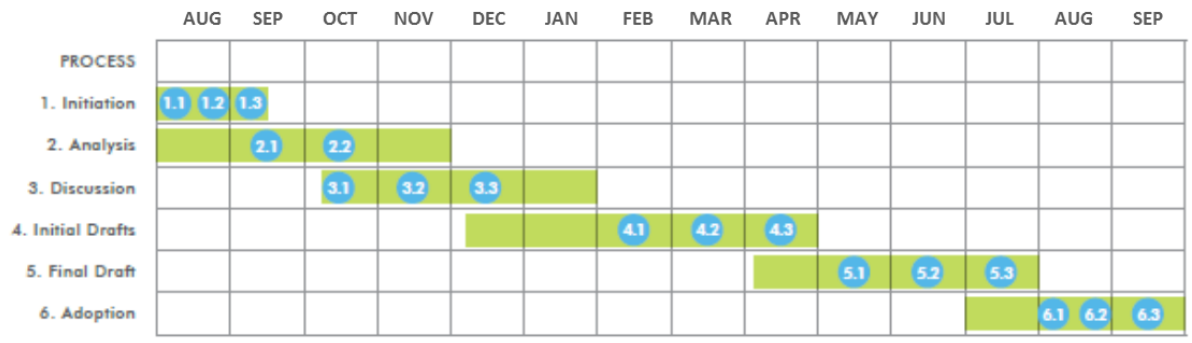
- Planning and Zoning Commission Hearing
- City Commission Formal Adoption
- Final adopted deliverable

# Proposed Fee

The proposed fee is a lump sum fee based on the RFP and proposed scope of services. It is negotiable in any manner that best meets the needs of the community and the budget and priorities of the City. As a continuing service to our clients Gould Evans offers technical support for the initial year after adoption of the code. This includes up to 60 hours of on-call assistance with staff for interpretation issues, plan review and application, or other similar issues.

| Phase | Fee |
|---|---|
| Phase 1: Initiation | $ 5,300. |
| Phase 2: Analysis | $ 14,500. |
| Phase 3: Discussion | $ 19,500. |
| Phase 4: Initial Draft | $ 33,800. |
| Phase 5: Final Draft | $ 21,300. |
| Phase 6: Adoption | $ 7,400. |
| **TOTAL FEE** | **$101,800.** |

# Proposed Schedule



# Zoning Code Update - Procurement

## Bid Tabulation

| | Reviewer 1 | Reviewer 2 | Reviewer 3 | **Average Score** |
|---|---|---|---|---|
| Camiros | 30 | 33 | 20 | **27.7** |
| Gould Evans | 34 | 39 | 34 | **35.7** |
| White & Smith | 34 | 37 | 35 | **35.3** |

## Interview Rating

| | Reviewer 1 | Reviewer 2 | Reviewer 3 | Reviewer 4 | **Average Score** |
|---|---|---|---|---|---|
| Gould Evans | 15 | 15 | 13 | 15 | **14.5** |
| White & Smith | 14 | 14 | 14 | 15 | **14.3** |