JOPLIN CITY COUNCIL
REGULAR MEETING AGENDA
MONDAY, OCTOBER 4, 2021
5th FLOOR COUNCIL CHAMBERS
602 S. MAIN ST. JOPLIN MO
6:00 P.M.
This meeting can be viewed live on KGCS-TV channel 21 and regional cable television systems including Sparklight in Joplin; or livestream at http://www.joplinmo.org/182/Video-Multimedia

Persons wishing to address the City Council regarding an item on the agenda should complete a Request to Address Council and give it to the City Clerk prior to the start of the meeting. When your name is called, approach the podium, and state your name clearly for the record. If your request pertains to a Public Hearing item, you do not need to submit a request. You will have five (5) minutes to speak.

PLEASE NOTE: No outside electronic devices are allowed to be used on City equipment without prior City approval. If you have handouts, you must provide 12 copies of the material to the City Clerk.

1. **Call To Order**
   Invocation
   Pledge of Allegiance of the United States of America
2. **Roll Call**
3. **Presentations**
   1. Retirement Resolution For Assistant City Manager Dan Pekarek
4. **Finalization Of Consent Agenda**
5. **Reports And Communications**
   1. Health Department Update
   2. News From The Public Information Office
6. **Citizen Requests And Petitions**
   1. Amber McCormick: Changing Some City Ordinances To Allow A Future TNR Program To Get Cat Population Under Control.
7. **Public Hearings**
   1. Public Hearing Procedures

      Documents:

      PUBLIC HEARING PROC.PDF

   2. RESOLUTION NO. 2021-016
      A RESOLUTION granting a Special Use Permit (1st Request) for the operation of a short-term rental located at4477 Bradley, in the City of Joplin, Jasper County, Missouri.

      Documents:

      RS 2021-016 STAFF REPORT.PDF
      RS 2021-016 SUMMARY.PDF
      RS 2021-016.PDF
      RS 2021-016 MINUTES.PDF

   3. COUNCIL BILL NO. 2021-283
      AN ORDINANCE providing the vacation of a street right-of-way lying on property E. 11th St.

      between S. Rex Ave. and S. Peters Ave., City of Joplin, Jasper County, Missouri.

      Documents:

      CB 2021-283 MINUTES.PDF
      CB 2021-283 STAFF REPORT.PDF
      CB 2021-283 SUMMARY.PDF
      CB 2021-283.PDF

   4. COUNCIL BILL NO. 2021-284
      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 (Single Family Residential) and including in District R-2 (Two Family Residential) property as described below and located at 3329 S. Jackson Ave.

Documents:

CB 2021-284 MINUTES.PDF
CB 2021-284 STAFF REPORT.PDF
CB 2021-284 SUMMARY.PDF
CB 2021-284.PDF

8. **Consent Agenda**

1. Minutes Of The September 17, 2021 City Council Meeting

Documents:

SEPT. 20, 2021.PDF

9. **Resolutions**

10. **Ordinances - Emergency**

1. COUNCIL BILL NO. 2021-149
AN ORDINANCE approving an Agreement with Missouri-American Water Company (MAWC) in the amount of Two Hundred Thirty-Two Thousand Five Hundred and 00/100 dollars ($232,500.00) for water facility relocations required for the 32nd St. Widening project from Schifferdecker Ave. to Central City Rd. and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin; and containing an emergency clause.

Documents:

CB2021-149 32ND ST. WIDENING MAP.PDF
CB2021-149 MOAM 32ND SUMMARY SHEET.PDF
CB2021-149 MOAM 32ND AGREEMENT COUNCIL ORDINANCE.PDF
CB2021-149 CITY LAY WATER FACILITY RELOCATION AGREEMENT.PDF

2. COUNCIL BILL NO. 2021-151
AN ORDINANCE approving an Agreement with Paragon Architecture, LLC in the not to exceed amount of Two Hundred Ninety Thousand Four Hundred and 00/100 dollars ($290,400.00) for architectural design services for Joplin Fire Station #7 and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin; and containing an emergency clause.

Documents:

CB2021-151 SUMMARY SHEET FIRE STA. 7 ARCHITECTURAL SERVICES.PDF
CB2021-151 LOCATION MAP FIRE STATION 7.PDF
CB2021-151- FIRE STATION 7 AGREEMENT.PDF
CB2021-151 COUNCIL ORDINANCE FIRE STA. 7 ARCHITECTURAL SERVICES.PDF

3. COUNCIL BILL NO. 2021-161
AN ORDINANCE authorizing the City of Joplin to enter into an agreement with Rosetta Construction, Inc., in the amount of Two Million Eleven Thousand Seven Hundred Thirty - Four and 60/100 Dollars ($2,011,734.60) for the Joplin Creek Interceptor project; authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin; and containing an emergency clause.

Documents:

CB2021-161 AGREEMENT - JOPLIN CREEK INTERCEPTOR.PDF
CB2021-161 EXHIBIT - JOPLIN CREEK INTERCEPTOR.PDF
CB2021-161 ORDINANCE - JOPLIN CREEK INTERCEPTOR - ROSETTA CONSTRUCTION.PDF
CB2021-161 SUMMARY SHEET - JOPLIN CREEK INTERCEPTOR.PDF
CB2021-161 BID SUMMARY - JOPLIN CREEK INTERCEPTOR.PDF

4. COUNCIL BILL NO. 2021-162
AN ORDINANCE approving a Purchase Order be issued to Summit Truck Group in the amount of One Hundred Sixty-Five Thousand Nine Hundred Thirty-Eight and 11/100 Dollars ($165,938.11) for the purchase of a Pothole Patch Truck; and containing an emergency clause.

Documents:

SUMMARY SHEET 2021-162 POT PATCH TRUCK.PDF

COUNCIL BILL 2021-162 POT PATCH TRUCK.PDF
SUMMIT-09012021103955.PDF

5. COUNCIL BILL NO. 2021-356

AN ORDINANCE approving the contract by and between the City of Joplin and B & D Yardbuilders for the demolition of the structure(s) and clearing of a lot located at 715 W 4TH St. in the City of Joplin, Missouri, for Six Thousand Two Hundred dollars ($6,200.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

Documents:

CB 2021-356 BIDS.PDF
CB 2021-356 PICTURES.PDF
CB 2021-356 SUMMARY.PDF
CB 2021-356.PDF

6. COUNCIL BILL NO. 2021-357

AN ORDINANCE approving the contract by and between the City of Joplin and B & D Yardbuilders for the demolition of the structure(s) and clearing of a lot located at 928 Murphy Ave. in the City of Joplin, Missouri, for Five Thousand One Hundred dollars ($5,100.00); providing how the cost thereof shall be paid; how the assessment thereof shall be made; and containing an emergency clause.

Documents:

CB 2021-357 BID.PDF
CB 2021-357 PICTURES.PDF
CB 2021-357 SUMMARY.PDF
CB 2021-357.PDF

11. Ordinances - First Reading

1. COUNCIL BILL NO. 2021-150

AN ORDINANCE approving an Agreement with Southern Star Central Gas Pipeline, Inc. in the amount of Four Hundred Thirty-One Thousand Nine Hundred Seventy-Six and 00/100 dollars ($431,976.00) for facility relocations required for the 32nd St. Widening project from Schifferdecker Ave. to Central City Rd. and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin.

Documents:

CB2021-150 SOUTHERN STAR 32ND AGREEMENT COUNCIL ORDINANCE.PDF
CB2021-150 SOUTHERN STAR 32ND SUMMARY SHEET.PDF
CB2021-150 MAP.PDF
CB2021-150 AGREEMENT-SOUTHERN STAR.PDF

2. COUNCIL BILL NO. 2021-285

AN ORDINANCE establishing grades and accepting the Final Plat of Abernathy Subdivision located at the Southwest Corner of W. 22nd St. and S. Schifferdecker Ave. in the City of Joplin, Jasper County, Missouri.

Documents:

CB 2021-285 PLAT.PDF
CB 2021-285 SUMMARY.PDF
CB 2021-285.PDF
CCB 2021-285 MINUTES.PDF
CB 2021-285 STAFF REPORT.PDF

3. COUNCIL BILL NO. 2021-286

AN ORDINANCE authorizing the City to enter into an Encroachment Agreement by and between the City of Joplin and Jeffery Neal, authorizing the Planning, Development, & Neighborhood Services Director, or his designee, to execute said Agreement by and on behalf of the City.

Documents:

CB 2021-286 MINUTES.PDF
CB 2021-286 STAFF REPORT.PDF
CB 2021-286 SUMMARY.PDF
CB 2021-286 AGREEMENT.PDF

CB 2021-286.PDF

4. COUNCIL BILL NO. 2021-405
   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, 2021, through October 31, 2022, 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 or his designee to execute said Agreement for the City.

   Documents:

   CB 2021-405 AGREEMENT.PDF
   CB 2021-405 FY22 UPWP.PDF
   CB 2021-405 SUMMARY.PDF
   CB 2021-405.PDF

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

13. **Unfinished Business**

14. **New Business**

    1. Vote To Go Into Closed Session, Which Shall Pertain To The Hiring, Firing, Disciplining, Or Promotion Of An Employee Or Particular Employees Of A Governmental Body Involving Personal Information More Specifically For The Purpose Of Evaluating Certain Council Employees; As Set Forth In Section 610.021(3) RSMo, As Amended, 2020. This Meeting, Record, And Vote To Be Closed To The Extent Provided By Law. The City Council Shall Adjourn At The End Of The Session.

Notice posted at 12:00 p.m. on September 30, 2021

Joplin, built on generations of people with grit and determination, is a regional hub at the crossroads of America. Our diverse people and employers thrive because of our healthy lifestyles, exceptional neighborhoods, lifelong learning opportunities and cultural & recreational amenities.

Ad Omnia Parata ~ Together we are ready for anything.

PUBLIC HEARING PROCEDURES

Persons wishing to testify before the City Council are requested to follow these rules:

1. Proponents of the issue will be asked to present their information, then the opponents will be asked to testify and then rebuttal testimony may be allowed by the Council.

2. Approach the podium and state your name clearly for the record.

3. Please give your testimony as briefly and completely as possible. By the rules of the City Council you have five (5) minutes within which to give your testimony. Please follow the clock on the dais in front of you. You must complete your testimony within the 5-minute time limit.

4. Please do not repeat testimony that has been given previously. We want you to state your facts but limit your information to only new information.

5. Everyone is invited to speak, however, if you have a spokesperson please allow them to speak without interrupting for applause or other demonstrations.

6. When the Public Hearing is closed by the Mayor, no additional testimony is allowed except when invited by the Mayor or other members of the Council.

7. Remember that this is a Public Hearing and all sides have a right to give testimony. Please respect their right to do so.

8. The City Council of the City of Joplin through this introduction, accepts into evidence the 2012 Comprehensive Plan, the Zoning Code of the City of Joplin, the Subdivision Regulations of the City of Joplin, the Telecommunications Ordinance, and the Stormwater Management Regulations of the City of Joplin being Appendices 29-A, 29-B, 29-D, 29-E and 29-F of the Joplin Municipal Code. Report of the Planning and Zoning Commission, recommendations of the City's staff, and other written documentation presented as that information applies to each public hearing.

Thank you for your consideration and understanding.

Z&P Meeting: September 13, 2021
City Council Meeting: October 4, 2021

STAFF PLANNING REPORT
Special Use Permit

CASE 048-21 A request for a Special Use Permit for the operation of a short-term rental.

LOCATION 4477 Bradley Dr.

APPLICANT Rachel Bemo

EXISTING CONDITIONS

Zoning	Land Use	Property Size
R-1	Single-family Home	Approximately 0.8 Acres

SITE CONTEXT

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

TRANSPORTATION

Streets with access	Classification	Right-of-way width
Bradley Dr.	Local	50'

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

No.

UTILITIES Utilities do not need to be extended to the property.

FLOOD PLAIN N/A

STAFF ANALYSIS

IS DEEMED NECESSARY FOR THE PUBLIC CONVENIENCE AT THAT LOCATION.

Short-term rentals are generally offered in residential areas as an alternative form of short-term stay compared to typical hotels and motels. While it is some distance via road route to the property, its location within a residential area is consistent with the majority of short-term rentals found across the country.

IS SO DESIGNED, LOCATED, AND PROPOSED TO BE OPERATED THAT THE PUBLIC HEALTH, SAFETY, AND WELFARE WILL BE PROTECTED.

The residential character of the structure and property will remain unaltered with this proposed use. Conditions set forth below limit the number of individuals that may occupy the rental at any one time based on the number of bedrooms, further securing the residential nature.

IS FOUND TO BE GENERALLY COMPATIBLE WITH THE NEIGHBORHOOD IN WHICH IT IS PROPOSED.

This short-term rental has been in operation prior to the application for this special use permit, and large groups, sometimes exceeding 20 individuals, have stayed at this location. Additionally, the applicant has advertised that the home could sleep up to 26 total people between the upper and lower levels of the house. That number of people staying on a property zoned R-1 is not compatible.

WILL COMPLY WITH THE HEIGHT AND AREA REGULATIONS OF THE DISTRICT IN WHICH IT IS LOCATED UNLESS SPECIFICALLY GRANTED.

The existing building is in compliance with height and area regulations as specified in the R-1 zoning district. No additional structure, or addition to the existing structure, is planned.

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 INJUIOUS EFFECT.

There is ample storage space for vehicles off-street, even when excluding parking areas within the attached garage. Approximately 14 vehicles would be able to park off-street on hard-surface areas. There is a semi-circular drive that provides an adequate and safe loading area.

ADEQUATE UTILITY, DRAINAGE, AND OTHER SUCH NECESSARY FACILITIES HAVE BEEN OR WILL BE PROVIDED.

Utilities are presently in place. Drainage is handled via a stormwater ditch running parallel to the street. No alterations to the site are planned that would increase impervious area or stormwater runoff.

DISCUSSION

The applicant is requesting a Special Use Permit for the first time with this application for the operation of short-term rental, colloquially referred to as an Airbnb. The facility provides up to 14 off-street

parking spaces and employs 0 assistants or employees other than the homeowner.

We have received considerable protest from the properties within 185 feet and those of the Silver Creek community. As of 9 September 2021, the Planning Office has received 65 unique protest petitions.

CONDITIONS

1. This Special Use Permit is issued to Rachel Bemo for the operation of a short-term rental at 4477 Bradley Dr.
2. The permit shall be valid for 1 year upon approval, being eligible for renewal in October 2022.
3. Off street parking for at least two (2) vehicles shall be provided.
4. Occupancy shall be limited to 6 persons total or other limit as set by the City Council.
5. The property owner shall ensure the following information is conspicuously posted within the short-term rental:
    a. Special Use Permit Determination Form.
    b. City of Joplin Noise Ordinance.
    c. Contact info for person(s) responsible for day-to-day operation of the short-term rental.
    d. Trash collection schedule.
    e. That the short-term rental may not be rented solely for weddings, receptions, parties, or other similar event.
6. The compliance with all provisions of the Fire/Safety codes as required by the State Fire Marshal is required.
7. All regulations as stated in Appendix 29-A (Zoning Code) of the Joplin Municipal Code shall be followed at all times.
8. Any other conditions set by the City Council of the City of Joplin.

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.: 048-21
Filing Fee: ~~$500.00~~ $550.00
Date Advertised: 8-27-21
Date Notices Sent 8-27-21
Public Hearing Date: 9-13-21

APPLICANT: Rachel Bemo (formerly Higdon) PHONE: 417-439-9293

ADDRESS: 1813 Central St. Joplin, MO 64801 EMAIL: rachelbemo@att.net

OWNER: Rachel Bemo PHONE:

ADDRESS: EMAIL:

LOCATION OF PROPERTY: 4477 Bradley Drive, Joplin, MO

LEGAL DESCRIPTION: See included Legal Description Affidavit

PRESENT ZONING CLASSIFICATION: R-1 ACREAGE: 0.77

PRESENT USE OF PROPERTY:

PROPOSED LAND USE ACTIVITY: Short term rental
16 up and 10 downstairs.

ADJACENT ZONING AND LAND USE:

	Land Use	Zoning
North	Single family - Yes.	R-1
South	"	R-1
East	"	R-1
West	"	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)

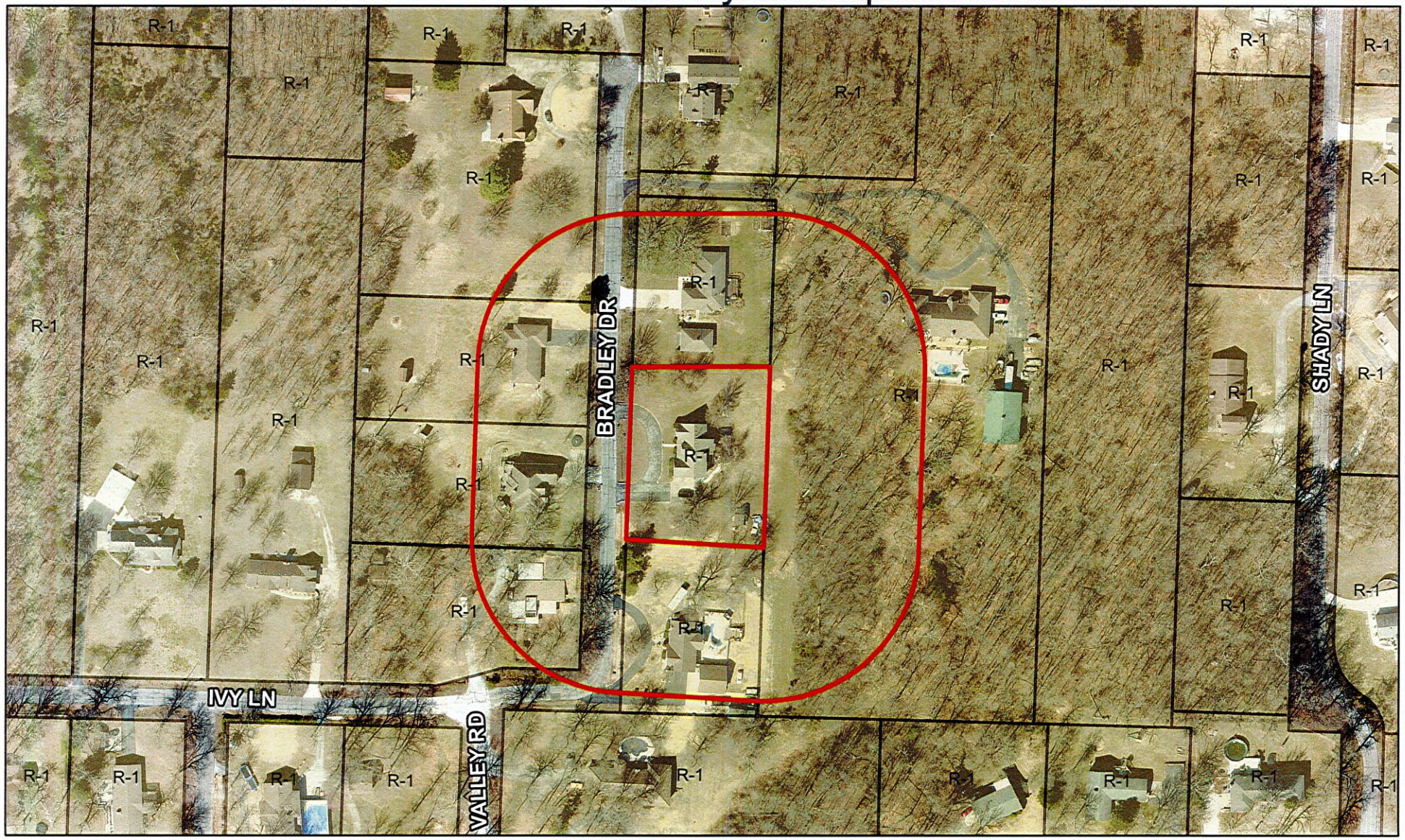
1. Hours of Operation. short term rental - any
2. Days of Operation. short term rental - any
3. Number of Off-street Parking Spaces. 7
4. Signs (Generally signs are limited to one sign not larger that one (1) foot by two (2) feet set no more than six (6) feet off the ground and at least ten (10) feet inside the property line.) none
5. Number of Assistants or employees. 1
6. Nature of the Business. short term rental
7. Location of the Business. 4477 Bradley Drive, Joplin, MO

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: Rachel Bemo DATE: 8/18/21

BY: Rachel Bemo TITLE: n/a

Case 048-21 - 4477 Bradley Dr - Special Use Permit



Case 048-21: 4477 Bradley Dr. - A request for a Special Use Permit (1st Request) for the operation of a short-term rental – Rachel Bemo

N

0 65 130 260 390 520 Feet

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM:
Resolution No. 2021-016 – Special Use Permit (1st Request)

MEETING DATE:
October 4., 2021

ORIGINATING DEPARTMENT:
Planning, Development and Neighborhood Services

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

SUMMARY REQUEST:
Case 048-21: 4477 Bradley Dr. - A request for a Special Use Permit (1st Request) for the operation of a short-term rental – Rachel Bemo.

BACKGROUND:
Short-term rentals are generally offered in residential areas as an alternative form of short-term stay compared to typical hotels and motels. While it is some distance via road route to the property, its location within a residential area is consistent with the majority of short-term rentals found across the country.
The residential character of the structure and property will remain unaltered with this proposed use. Conditions set forth below limit the number of individuals that may occupy the rental at any one time based on the number of bedrooms, further securing the residential nature.

This short-term rental has been in operation prior to the application for this special use permit, and large groups, sometimes exceeding 20 individuals, have stayed at this location. Additionally, the applicant has advertised that the home could sleep up to 26 total people between the upper and lower levels of the house. That number of people staying on a property zoned R-1 is not compatible.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Bolander stated that his office received word today from her manager and they are now looking at a long-term rental. In Joplin, anything rented over 28 days does not require a Special Use Permit. A public hearing is still required, and we did advertise it. We will take public comment, but this office is changing the recommendation to either be stricken or denied.

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

1. This Special Use Permit is issued to Rachel Bemo for the operation of a short-term rental at 4477 Bradley Dr.
2. The permit shall be valid for 1 year upon approval, being eligible for renewal in October 2022.
3. Off street parking for at least two (2) vehicles shall be provided.
4. Occupancy shall be limited to 6 persons total, or another limit as set by the City Council.

5. The property owner shall ensure the following information is conspicuously posted within the short-term rental:
    a. Special Use Permit Determination Form.
    b. City of Joplin Noise Ordinance.
    c. Contact info for person(s) responsible for day-to-day operation of the short-term rental.
    d. Trash collection schedule.
    e. That the short-term rental may not be rented solely for weddings, receptions, parties, or another similar event.
6. The compliance with all provisions of the Fire/Safety codes as required by the State Fire Marshal is required.
7. All regulations as stated in Appendix 29-A (Zoning Code) of the Joplin Municipal Code shall be followed at all times.
8. Any other conditions set by the City Council of the City of Joplin.

PUBLIC COMMENT:

Kyle Cox, 4509 Bradley Dr., Joplin, MO. The unease of coming home to different neighbors every night is a feeling this commission has probably not had.

Deborah Ferguson, 4480 Bradley Dr., Joplin, MO. Basically, when you look at the special use permit, there is criteria on there. Some of those criteria could be given some heavier weight or serious consideration. Going down the check list, it is unnecessary. She doesn't live at the house, nor does the manager. The house was put up for sale and the asking price was so high it didn't sell. It is not about helping other people or opening it up to missionaries or something like this, it is about money. It also causes a significant nuisance to the surrounding homeowners. The house is on a dead end and since this rental has been going on there has been so much traffic going down there. They are operating this like a hotel. This began on July 4th, another rental on July 10th, 17th, 20th and then the 27th. Then two in August. They are not medical students or someone coming in for a seminar. July 4th was a party; July 10th was a monster truck get together. July 14th was a baseball team that walk through the neighborhood and played tag in our yards. There is also a fire hydrant and they routinely park in front of the hydrant. On August 13th there were 4,5,6-year-old got out of an SUV, went to the back of the house into the basement door. They could not get into the house from the front door. Our neighborhood has little kids that play out in the yard and there is so much traffic. This also poses a threat to health, safety, and welfare. There is no on-site manager. This is not a personal issue this is the Integrity of our neighborhood.

David Darch, 4470 Bradley Dr. Joplin, MO. I have worked in Joplin for 15 years for Eagle Picher. We bought there in the cul-de-sac because we do have two little girls, 3-year-old, and a 6-year-old. We just felt the safety when the girls go out to play in the front yard. The big parties that she's been having makes everyone nervous.

Matt Furguson, 4480 Bradley Dr. Joplin, MO. Change vs. Chaos. In 2008 we moved here to raise our children. Looked for a safe community, tight knit community, and vison of a quiet neighborhood. That is what we found. All the kids played in the street because it was a dead-end road, neighbors watch out for everyone. We annexed into the City of Joplin and now imagine someone opening an unlicensed business on your street. Property destruction, mailbox hit multiple times, garbage all over the neighborhood, not to mention all the cars. Compare this to a virus, we are all becoming infected.

Angelee Corkle, 3006 Keller Dr., Joplin, MO. She has lived in Silver Creek since 1963 and on the outskirts and has Wheelan's business next door to me. There is only "one business" that is in the neighborhood of Silver Creek and that is a church. To have an Air B&B with temporary people coming in, if you let them in then what else will want to come into our neighborhood. We want to keep Silver Creek like it was single family.

Gary Jordan, 4467 Bradley Dr., Joplin, MO. The area has been explained to you, there are 10 houses, one faces Ivy Lane, the other nine (9) houses have driveways on to Bradley Dr. It is wide open there, all the lots are 1 acre plus, there are no fences around any of the houses except for the house with the pool and there is one around the pool. I had to put no trespassing signs in my yard. Constantly, people are in my yard and the people's yard behind me. We are facing additional liabilities for her business.

Penny Amiet, 3295 Ivy Lane, Joplin, MO. Lived here since 2016. We bought the property with the intention of being safe, secure residential area. There needed some improvements and we worked with the City of Joplin, and it worked out well. We wanted to do the petitions and the process correctly and I have spoken with Keegan several times. She will take a loss on the money, charging $349.00 per night is what she is charging. Two separate adjoining areas, upstairs and downstairs. There is no fire department that will approve that type of accommodations for occupancy. She continues to rent it out at this price, which is $10,740.00 per month that she stands to make on that property. A lot of money at our expense. We pick up trash, there were 47 cars coming in and out in a half hour up and down that road. We just want to be respected as we do our neighbors.

Cheryl Ayotte, 4510 Hickory Lane, Joplin, MO. I live a couple of blocks from this resident. I feel it is necessary to come. These people talk about the safe, quiet neighborhood that Silver Creek is. It is the most violent, hateful neighborhood I have ever lived in. For three years I have delt with the Community Building that is rented out basically to anyone and they throw wild parties there. This has affected my property, drunk people park/walk onto my property and was literally attacked by a woman on a motorcycle in my own yard. I don't find it to be this peaceful quiet neighborhood. I have put up privacy fence. They are all concerned about the quality of people who live in Silver Creek. Three out of four of my neighbors are all living together. There aren't any married couples, the guy directly across from me two years ago was arrested, and it took seven (7) police officers to load him in the vehicle, he was that drunk. I had a restraining order against him for six (6) months, that has expired, and I live daily in fear. His teenage children shooting at my truck less than a month ago. The city allows what they call a home-based business, 10 years ago a roofer moved in next door to me. He runs a business off that property. Workers come in daily, parking their cars there, trailers in and out, there is a dump trailer sitting there now and two other trucks. This defaces my property. When I received this petition on my front door, I took the time to drive past this property. This property that all these people are talking about is immaculate.

FUNDING SOURCE:
These payments are included in the FY 2020-21budget of the Community Planning Fund.

RECOMMENDATIONS:
Planning & Zoning Commission recommends Denial (6 Favor, 1 Absent)

ATTACHMENTS
RS 2021-016, Staff Planning Report, P&Z Commission Minutes.

P & Z Case 048-21
Rachel Bemo
(P & Z Recommended for Denial)

RESOLUTION NO. 2021-016.

A RESOLUTION granting a Special Use Permit (1st Request) for the operation of a short-term rental located at4477 Bradley, in the City of Joplin, Jasper County, Missouri.

WHEREAS, A public hearing was held before the City Council on August 2, 2021, 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 Lauren Peterson for the operation of a short-term rental located in the City of Joplin, Missouri, on the following described real estate, to-wit:

> All of a tract of land beginning 242.5 feet South of the Northwest Corner of the south one-half of the West one-half of the West one-half of the East one-half of the Northwest Quarter of the Northeast Quarter of Section 30, Township 27, Range 32, in the Village of Silvercreek, now in the City of Joplin, Newton County, Missouri; thence South 207.5 feet along the West line of said tract, thence East parallel with the South line of said tract 165 feet, thence North parallel with West line of said Tract 207.5 feet, thence West parallel with the South line of said tract 165 feet to the point of beginning, except any part thereof, taken, deeded, or used for road or highway purposes. Subject to that part, if any, in streets, roadways, highways, or other public right-of-way,

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

1. . This Special Use Permit is issued to Rachel Bemo for the operation of a short-term rental at 4477 Bradley Dr.
2. The permit shall be valid for 1 year upon approval, being eligible for renewal in October 2022.
3. Off street parking for at least two (2) vehicles shall be provided.
4. Occupancy shall be limited to 6 persons total, or another limit as set by the City Council.
5. The property owner shall ensure the following information is conspicuously posted within the short-term rental:
    a. Special Use Permit Determination Form.
    b. City of Joplin Noise Ordinance.
    c. Contact info for person(s) responsible for day-to-day operation of the short-term rental.
    d. Trash collection schedule.
    e. That the short-term rental may not be rented solely for weddings, receptions, parties, or another similar event.

6. The compliance with all provisions of the Fire/Safety codes as required by the State Fire Marshal is required.
7. All regulations as stated in Appendix 29-A (Zoning Code) of the Joplin Municipal Code shall be followed at all times.
8. 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.

That 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 thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____ _____, 2021, by a vote of _____.

_____
Ryan D. Stanley, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

RS 2021-016

Case 048-21: 4477 Bradley Dr. - A request for a Special Use Permit (1st Request) for the operation of a short-term rental – Rachel Bemo

Mr. Bolander stated that his office received word today from her manager and they are now looking at a long-term rental. In Joplin, anything rented over 28 days does not require a Special Use Permit. A public hearing is still required, and we did advertise it. We will take public comment, but this office is changing the recommendation to either be stricken or denied.

Ms. Bruckner-Sears asked if any of the Commissioners had any questions. They did not. Ms. Bruckner-Sears asked if there was anyone in the audience to speak in favor of this request? There was not. Ms. Bruckner-Sears asked if there was anyone opposed to this request?

Kyle Cox, 4509 Bradley Dr., Joplin, MO. The unease of coming home to different neighbors every night is a feeling this commission has probably not had. There are approximately 150 different neighbors in a months' time. This is uneasy for all the families, kids in the neighborhood playing. Lots of traffic, we live on two lane roads, no place to park.

Deborah Ferguson, 4480 Bradley Dr., Joplin, MO. Basically, when you look at the special use permit, there is criteria on there. Some of those criteria could be given some heavier weight or serious consideration. Going down the check list, it is unnecessary. She doesn't live at the house, nor does the manager. The house was put up for sale and the asking price was so high it didn't sell. It is not about helping other people or opening it up to missionaries or something like this, it is about money. It also causes a significant nuisance to the surrounding homeowners. The house is on a dead end and since this rental has been going on there has been so much traffic going down there. They are operating this like a hotel. This began on July 4th, another rental on July 10th, 17th, 20th and then the 27th. Then two in August. They are not medical students or someone coming in for a seminar. July 4th was a party; July 10th was a monster truck get together. July 14th was a baseball team that walk through the neighborhood and played tag in our yards. There is also a fire hydrant and they routinely park in front of the hydrant. On August 13th there were 4,5,6-year-old got out of an SUV, went to the back of the house into the basement door. They could not get into the house from the front door. Our neighborhood has little kids that play out in the yard and there is so much traffic. This also poses a threat to health, safety, and welfare. There is no on-site manager. This is not a personal issue this is the Integrity of our neighborhood.

David Darch, 4470 Bradley Dr. Joplin, MO. I have worked in Joplin for 15 years for Eagle Picher. We bought there in the cul-de-sac because we do have two little girls, 3-year-old, and a 6-year-old. We just felt the safety when the girls go out to play in the front yard. The big parties that she's been having makes everyone nervous. She has advertised for 26 people there has been more than that there. On the July 4th party you could smell the marijuana when you walk out the door.

Matt Ferguson, 4480 Bradley Dr. Joplin, MO. Change vs. Chaos. In 2008 we moved here to raise our children. Looked for a safe community, tight knit community, and vison of a quiet neighborhood. That is what we found. All the kids played in the street because it was a dead-end road, neighbors watch out for everyone. We annexed into the City of Joplin and now imagine someone opening an unlicensed business on your street. Property destruction, mailbox hit multiple times, garbage all over the neighborhood, not to mention all the cars. Compare this to a virus, we are all becoming infected.

Angelee Corkle, 3006 Keller Dr., Joplin, MO. She has lived in Silver Creek since 1963 and on the outskirts and has Wheelan's business next door to me. There is only "one business" that is in the neighborhood of Silver Creek and that is a church. To have an Air B&B with temporary people coming

in, if you let them in then what else will want to come into our neighborhood. We want to keep Silver Creek like it was single family.

Gary Jordan, 4467 Bradley Dr., Joplin, MO. The area has been explained to you, there are 10 houses, one faces Ivy Lane, the other nine (9) houses have driveways on to Bradley Dr. It is wide open there, all the lots are 1 acre plus, there are no fences around any of the houses except for the house with the pool and there is one around the pool. I had to put no trespassing signs in my yard. Constantly, people are in my yard and the people's yard behind me. We are facing additional liabilities for her business.

Penny Amiet, 3295 Ivy Lane, Joplin, MO. Lived here since 2016. We bought the property with the intention of being safe, secure residential area. There needed some improvements and we worked with the City of Joplin, and it worked out well. We wanted to do the petitions and the process correctly and I have spoken with Keegan several times. She will take a loss on the money, charging $349.00 per night is what she is charging. Two separate adjoining areas, upstairs and downstairs. There is no fire department that will approve that type of accommodations for occupancy. She continues to rent it out at this price, which is $10,740.00 per month that she stands to make on that property. A lot of money at our expense. We pick up trash, there were 47 cars coming in and out in a half hour up and down that road. We just want to be respected as we do our neighbors.

Cheryl Ayotte, 4510 Hickory Lane, Joplin, MO. I live a couple of blocks from this resident. I feel it is necessary to come. These people talk about the safe, quiet neighborhood that Silver Creek is. It is the most violent, hateful neighborhood I have ever lived in. For three years I have delt with the Community Building that is rented out basically to anyone and they throw wild parties there. This has affected my property, drunk people park/walk onto my property and was literally attacked by a woman on a motorcycle in my own yard. I don't find it to be this peaceful quiet neighborhood. I have put up privacy fence. They are all concerned about the quality of people who live in Silver Creek. Three out of four of my neighbors are all living together. There aren't any married couples, the guy directly across from me two years ago was arrested, and it took seven (7) police officers to load him in the vehicle, he was that drunk. I had a restraining order against him for six (6) months, that has expired, and I live daily in fear. His teenage children shooting at my truck less than a month ago. The city allows what they call a home-based business, 10 years ago a roofer moved in next door to me. He runs a business off that property. Workers come in daily, parking their cars there, trailers in and out, there is a dump trailer sitting there now and two other trucks. This defaces my property. When I received this petition on my front door, I took the time to drive past this property. This property that all these people are talking about is immaculate.

Ms. Bruckner-Sears asked if any of the Commissioners had any questions. They did not.

MR. EASTMAN MOVED, SECONDED BY MR. KIMBLE THAT CASE 048-21 BE FORWARDED TO THE CITY COUNCIL WITH THE RECOMMENDATION FOR DENIAL. MOTION CARRIED, WITH MS. BRUCKNER-SEARS, MR. EASTMAN, MR. MCCULLOUGH, MR. KIMBLE, MS. PHILLIPS, AND MS. WARREN "AYE", (6 IN FAVOR, 1 ABSENT)

CB 2021 - 283

Case 049-21: E. 11th St. between S. Rex Ave. and S. Peters Ave. – A request to vacate street right-of-way – Missouri Place Properties.

Mr. Eastman abstained from this case.

Gil Stevens, 23 Pheasant Run, Joplin, MO. He is representing the owner of the property, David Buttrum. There is a street he is asking to be vacated. This property is zoned for duplexes and to make the highest and best use of the property for development, 11th Street needs to be vacated. The owner does want to build duplexes.

Ms. Bruckner-Sears asked if any of the Commissioners had any questions. They did not. Ms. Bruckner-Sears asked if there was anyone in the audience to speak in favor of this request? There was not. Ms. Bruckner-Sears asked if there was anyone opposed to this request? There was not.

MR. KIMBLE MOVED, SECONDED BY MR. MCCULLOUGH THAT CASE 049-21 BE FORWARDED TO THE CITY COUNCIL WITH THE RECOMMENDATION FOR APPROVAL. MOTION CARRIED, WITH MS. BRUCKNER-SEARS, MR. MCCULLOUGH, MR. KIMBLE, MS. PHILLIPS, AND MS. WARREN "AYE", (5 IN FAVOR, 1 ABSENT, 1 ABSTAIN)

Z&P Meeting: September 13, 2021
City Council Meeting: October 4, 2021

STAFF PLANNING REPORT
Vacation

CASE 049-21 A request to vacate 11th Sstreet right-of-way extending East from S. Peters Ave. and S. Rex Ave.

APPLICANT Missouri Place Properties

REPRESENTATIVE Gil Stevens

LOCATION E. 11th St. between S. Rex Ave. and S. Peters Ave.

EXISTING CONDITIONS

Easement Type(s)	Easement Size
Street Right-of-Way	Approximately 400' x 50'

REASON FOR VACATION

Missouri Place Properties has petitioned for this street vacation in order to consolidate their land holdings to the North and South and redevelop the site for future residential development.

UTILITIES CURRENTLY LOCATED IN THE RIGHT-OF-WAY?

Utilities are not currently in the Right-of-Way. Rerouting of utilities is not required to maintain current services to adjoining properties.

UTILITIES PLANNED TO LOCATE IN THE RIGHT-OF-WAY?

No plans for new utilities to be located in the right-of-way.

STAFF ANALYSIS

PRIVATE RIGHTS WILL NOT BE INJURED OR ENDANGERED BY THIS VACATION.

The applicant holds the land on either side of this proposed vacation, so no private party would be affected by the vacation but the applicant.

THE VACATION WILL NOT CAUSE THE PUBLIC TO SUFFER A LOSS OR INCONVENIENCE.

The street right-of-way is presently unimproved. There is no public access through this right-of-way and it currently serves as access to no property.

IN JUSTICE TO THE APPLICANT(S) THE VACATION SHOULD BE GRANTED.

Yes.

DISCUSSION

This vacation is being sought for the consolidation and redevelopment of the site. Missouri Place Properties would be looking at a future residential development in an area that is bounded by E. 10th St., S. Peters Ave., E. 12th St., and S. Rex Ave. This property is presently zoned R-2, and that designation would be extended to the vacated property should this item pass.

Staff recommends approval of Case 049-21.

ENCLOSURES

- Application
- Map

RECEIVED 8-4-21

CITY OF JOPLIN

APPLICATION FOR VACATION OF STREET OR RESERVATION

Return Form and Attachments 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.: 04/9-21
Filing Fee: $550.00
Date Advertised: 8-27-21
Date Notices Sent 8-27-21
Public Hearing Date: 9-13-21

I. Applicant Name: Missouri Place Properties Phone: 417-434-6391
If more than one property applicant, please submit additional names, address and phone numbers on attached sheet(s)

Address: PO Box 2218 Joplin, MO. Zip: 64803-2218

II. Type of vacation requested (check one):

Street Vacation ✓

Alley Vacation ____

Utility Vacation ✓

Other (Please specify) ____

III. Please indicate below the extent to which the following standards are met, in the applicant's opinion.

1. Private rights will not be injured or endangered by the vacation. None

2. The vacation will not cause the public to suffer a loss or inconvenience. None

3. In justice to the applicant(s) the vacation should be granted. yes

IV. Required Attachments:

1. Legal description of the street, alley, or utility easement to be vacated from a deed of record or certified survey. Digital copies are acceptable. Must be legible.

2. Survey or such other drawing acceptable to the Planning / Community Development Manager depicting the street, alley or public reservation sought to be vacated and the properties and property ownerships surrounding said street, alley or public reservation.

3. Affidavit(s) from each owner of land adjoining said area that is proposed to be vacated, whom are not listed as an applicant, indicating their consent to the vacation.

4. Completed Utility Comments forms from the following utility companies indicating their consent to vacate the easement. The following companies must be contacted, and their consent received, before the Public Hearing can take place.

Missouri.com
American Water 417-627-3800 '17'

Utility	Contact	Email	Phone
AT&T	Kenny Kenworthy	kk7429@att.com	417-625-8092
Missouri American Water	~~Andrew Holderness~~ Derec Bass	~~andrew.holderness@amwater.com~~ derec.bass@amwater.com	~~417-623-0676 x1009~~
Liberty Utilities (Power)	Jeff Lebeda	jeff.lebeda@libertyutilities.com	417-625-6159
Republic Services (Trash)			(800) 431-1507
Cable One/Sparklight	Keri Bledsoe	keri.bledsoe@sparklight.biz	
Spire Energy (Gas)*	Ken Stegall	ken.stegall@spireenergy.com	
Spire Energy (Gas)*	Mandy Butkovich	mandy.butkovich@spireenergy.com	816-472-3767
City Sanitary Sewer	Chris Parker	cparker@joplinmo.org	417-624-0820 x584
City Stormwater	Steven Martinez	smartine@joplinmo.org	417-624-0820 x531

*Must contact BOTH contacts at Spire Energy.

Signature

4 August
Date

Case 049-21 - E. 11th St. between S. Rex Ave. and S. Peters Ave. - Vacation



Case 049-21: E. 11th St. between S. Rex Ave. and S. Peters Ave. – A request to vacate street right-of-way – Missouri Place Properties

N

0 50 100 200 300 400 Feet

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM:
CB 2021-283 Right-of-way Vacation

MEETING DATE:
October 4, 2021

ORIGINATING DEPARTMENT:
Planning, Development and Neighborhood Services

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

SUMMARY REQUEST:
Case 049-21: E. 11th St. between S. Rex Ave. and S. Peters Ave. – A request to vacate street right-of-way – Missouri Place Properties.

BACKGROUND:
The applicant holds the land on either side of this proposed vacation, so no private party would be affected by the vacation but the applicant. The street right-of-way is presently unimproved. There is no public access through this right-of-way and it currently serves as access to no property. This vacation is being sought for the consolidation and redevelopment of the site.

PLANNING & ZONING COMMISSION TESTIMONY:
Gil Stevens, 23 Pheasant Run, Joplin, MO. He is representing the owner of the property, David Buttrum. There is a street he is asking to be vacated. This property is zoned for duplexes and to make the highest and best use of the property for development, 11th Street needs to be vacated. The owner does want to build duplexes.

PUBLIC COMMENT;
None.

FUNDING SOURCE
These payments are included in the FY 2020-21 budget of the Community Planning Fund.

RECOMMENDATION:
Planning & Zoning Commission recommends approval,. **(**5 in Favor, 1 Absent, 1 Abstain)

Staff recommends approval of Case 049-21.

ATTACHMENTS
CB 2021-283, Staff Planning Report, P&Z Commission Minutes

P & Z Case 049-21
Missouri Place
(P & Z Recommended Approval)

COUNCIL BILL NO. 2021-283 ORDINANCE NO.

AN ORDINANCE providing the vacation of a street right-of-way lying on property E. 11th St. between S. Rex Ave. and S. Peters Ave., City of Joplin, Jasper County, Missouri.

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

Section 1. That the vacation of a street right-of-way lying on property East of the East Right-of-way, City of Joplin, Jasper County, Missouri described as follows is hereby vacated, conveyed, relinquished, and reverted to the owners of the abutting lots and land:

All of that part of East Eleventh (11th) Street lying East of the east Right-of-way line of Peters Avenue, and West of the West line of Rex Avenue and adjoining the South line of Lots Numbered Three (3) and Ten (10) all in Shepherd's Addition to the City of Joplin, Jasper County, Missouri, being subject to all easements, right-of-ways, and reservations of record.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 21, by a vote of _____.

_____
Ryan D. Stanley, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

Case 050-21: 3329 S. Jackson Ave. – A request to remove from District R-1 (Single-family Residential) and include in District R-2 (Two-family Residential) for future residential development – Thomas and Susan Coy

Josh Anderson, Hunter and Millard Architects, 1501 S Main St., Joplin, MO. This is the continuance of the Jackson Hills Development; this is just the lot where the duplex is going. Requesting to be removed from R-1 and included in R-2. The PD didn't have to be included in the rezoning. This lot is across from the Ronald McDonald House. The house that was there was demolished, the new duplex architecture will go along with the new rental places across the street and surrounding area. Lots of landscaping.

Mr. Eastman wanted to know if it will face to the south?

Mr. Anderson stated that it would.

Ms. Bruckner-Sears asked if any of the Commissioners had any questions. They did not. Ms. Bruckner-Sears asked if there was anyone in the audience to speak in favor of this request? There was not. Ms. Bruckner-Sears asked if there was anyone opposed to this request? There was not.

MR. EASTMAN MOVED, SECONDED BY MR. KIMBLE THAT CASE 050-21 BE FORWARDED TO THE CITY COUNCIL WITH THE RECOMMENDATION FOR APPROVAL. MOTION CARRIED, WITH MS. BRUCKNER-SEARS, MR. EASTMAN, MR. MCCULLOUGH, MR. KIMBLE, MS. PHILLIPS, AND MS. WARREN "AYE", (6 IN FAVOR, 1 ABSENT)

Z&P Meeting: September 13, 2021
City Council Meeting: October 4, 2021

STAFF PLANNING REPORT
Rezoning

CASE 050-21 A request to remove from District R-1 (Single-family Residential) and include in District R-2 (Two-family residential) for future residential development.

LOCATION 3329 S. Jackson Ave.

APPLICANT Thomas & Susan Coy

EXISTING CONDITIONS

Zoning	Land Use	Property Size
R-1	Vacant	Approx. 0.3 acres

SITE CONTEXT

	North	East	South	West
Existing Zoning	R-1	R-1	R-3-PD	C-O
Land Use	Single-family Residential	Single-family Residential	Vacant/Planned Pocket Community	Surgical Center/Medical

FUTURE LAND USE

Joplin's Future Land Use Map shows this property as future low-density residential.

TRANSPORTATION

Streets with access	Classification	Right-of-way width
S. Jackson Ave.	Collector	60'
W. 34th St.	Local	50'
S. Sergeant Ave.	Local	50'

UTILITIES

Utilities in place.

FLOOD PLAIN

This property is not in a flood plain.

STAFF ANALYSIS

CONSISTENT WITH DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN?

This request is consistent with the Comprehensive Plan. The future land use map does indicate future low-density residential. Two-family development does maintain the character of low-density residential.

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

The current zoning of R-1 is suitable at this property.

THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

The change in zoning will not be detrimental to nearby property. The lot size is significantly larger than the minimum size required for a duplex. There is adequate space for a driveway to be located some distance from the intersection. The R-2 zoning also provides a step down in intensity from the C-O districts and medical uses to the West and the R-1 Districts to the East.

DISCUSSION

This request to rezone to R-2 is for future duplex development on the site. The size of the lot would only permit one duplex under the minimum lot size requirements of the R-2 District. No buffer is required in this case.

The request is found to be consistent with the comprehensive plan and future land use map.

Staff recommends approval of Case 050-21.

ATTACHMENTS

- Application
- Map

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.: 050-21
Filing Fee: $550.00
Date Advertised: 8-27-21
Date Notices Sent 8-27-21
Public Hearing Date: 9-13-21

APPLICANT: HUNTER & MILLARD ARCHITECTS, INC. PHONE: 417-624-8872
ADDRESS: 1501 S. MAIN ST. JOPLIN, MO ZIP: 64804

OWNER: THOMAS & SUSAN COY PHONE:
ADDRESS: 12779 DANNYBROOK LN, JOPLIN, MO ZIP: 64804

LOCATION/ADDRESS OF PROPERTY: 3329 S Jackson

Present Zoning R1 Requested Zoning: R2 Acreage:
Present Use of Property: VACANT LOT

SURROUNDING LAND USE AND ZONING:

	Land Use	Zoning
North		
South		
East		
West		

Character of the Neighborhood: MEDICAL OFFICES ACROSS THE STREET, RESIDENTIAL, WELL KEPT, MIDDLE CLASS

RELATIONSHIP TO EXISTING ZONING PATTERN:

1. Would proposed change create a small, isolated district unrelated to surrounding districts?
   NO
2. Are there substantial reasons why the property cannot be used in accord with existing zoning? YES
   If yes, explain: EXISTING ZONING ONLY ALLOWS SINGLE FAMILY HOMES & THIS PROJECT IS FOR A DUPLEX.

CONFORMANCE WITH COMPREHENSIVE PLAN:

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

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: JACKSON AVE & 34TH ST.
2. Classification of Street(s):
   Arterial _____ Collector _____ Local ALL LOCAL
3. Right-of-Way Width: 40' & 50'
4. Will turning movements caused by the proposed use create an undue traffic hazard?
   NO

IS PLATTING OR REPLATTING REQUIRED IN ORDER TO PROVIDE FOR:

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

UNIQUE CHARACTERISTIC OF PROPERTY AND/OR ADDITIONAL COMMENT:

THE FOLLOWING MUST ACCOMPANY YOUR APPLICATION:

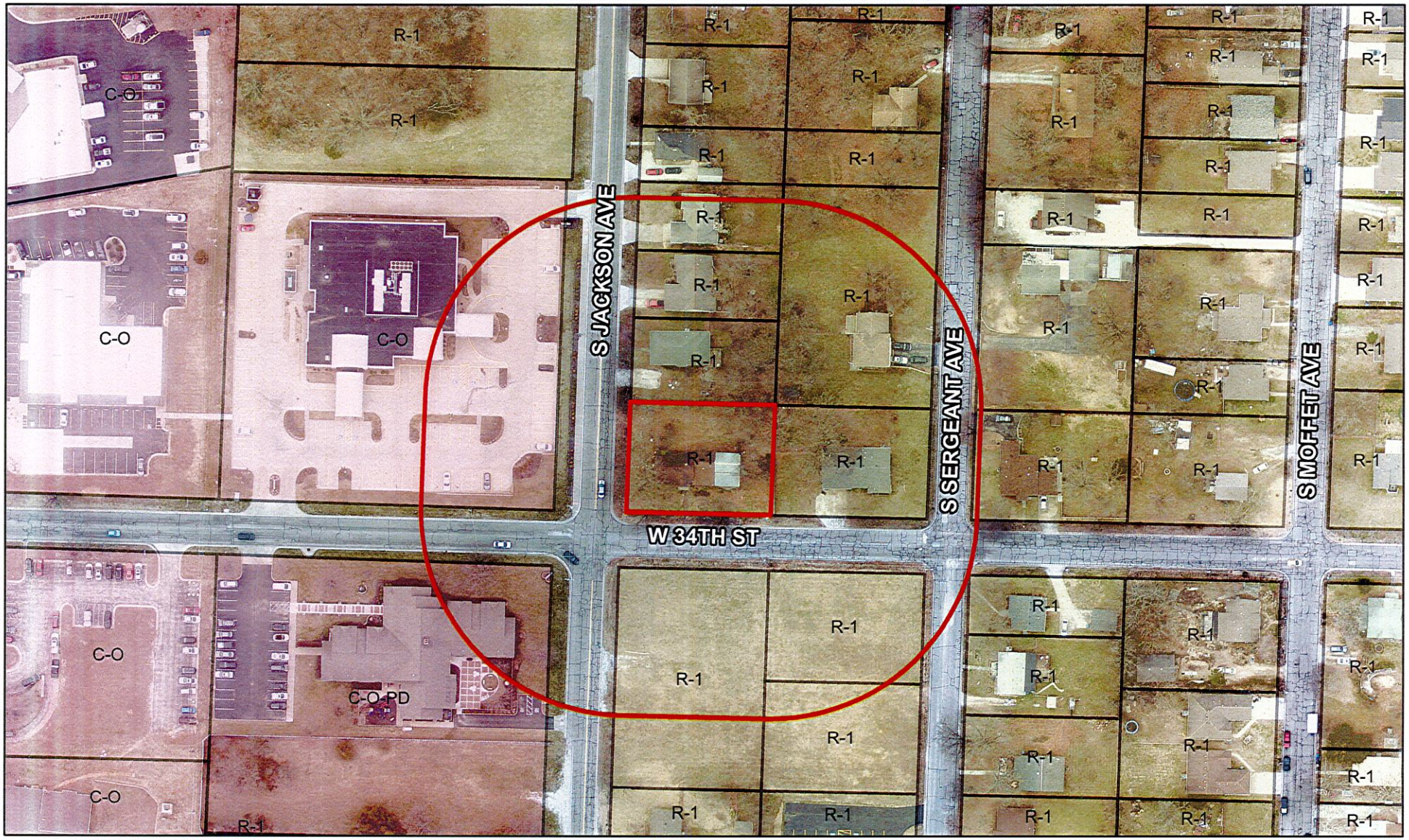
1. One copy of a legal description of the property proposed to be rezoned from a deed or certified survey.
2. One copy of a statement describing the reasoning for the rezoning, the impact of the proposed change, including any traffic conditions that may result; any danger from fire hazards; how the proposed 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

SIGNATURE: _____ DATE: 8/12/21

EMAIL: josh@hunterandmillard.com

TITLE: CREATIVE DIRECTOR (HUNTER & MILLARD ARCHITECTS, INC.)

Case 050-21 - 3329 S. Jackson Ave. - Rezone



Case 050-21: 3329 S. Jackson Ave. – A request to remove from District R-1 (Single-family Residential) and include in District R-2 (Two-family Residential) for future residential development – Thomas and Susan Coy

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM:
CB 2021-284 – Rezone R-1 to R-2.

MEETING DATE:
October 4, 2021

ORIGINATING DEPARTMENT:
Planning, Development and Neighborhood Services

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

SUMMARY REQUEST:
Case 050-21: 3329 S. Jackson Ave. – A request to remove from District R-1 (Single-family Residential) and include in District R-2 (Two-family Residential) for future residential development – Thomas and Susan Coy

BACKGROUND:
The change in zoning will not be detrimental to nearby property. The lot size is significantly larger than the minimum size required for a duplex. There is adequate space for a driveway to be located some distance from the intersection. The R-2 zoning also provides a step down in intensity from the C-O districts and medical uses to the West and the R-1 Districts to the East.

PLANNING & ZONING COMMISSION TESTIMONY:
Josh Anderson, Hunter and Millard Architects, 1501 S Main St., Joplin, MO. This is the continuance of the Jackson Hills Development; this is just the lot where the duplex is going. Requesting to be removed from R-1 and included in R-2. The PD didn't have to be included in the rezoning. This lot is across from the Ronald McDonald House. The house that was there was demolished, the new duplex architecture will go along with the new rental places across the street and surrounding area. Lots of landscaping.

PUBLIC COMMENT;
None.

RECOMMENDATIONS:
Staff recommends approval for Case 050-21.
Planning & Zoning Commission recommends approval for Case 050-21 (6 Favor, 0 Nays, 1 Absent)

ATTACHMENTS
CB 2021-284, Staff Planning Report, P&Z Commission Minutes

P & Z Case 050-21
Thomas and Susan Coy
(P & Z Recommended Approval)

COUNCIL BILL NO. 2021-284 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 (Single Family Residential) and including in District R-2 (Two Family Residential) property as described below and located at 3329 S. Jackson Ave.

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

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

ALL OF LOTS NUMBERED ONE HUNDRED FORTY-TWO (142) AND ONE HUNDRED FORTY-THREE (143) IN DUNWOODYS SUBDIVISION OF THE WEST HALF (W1/2) OF THE NORTHEAST QUARTER (NE1/4) OF SECTION 22, TOWNSHIP 27, RANGE 33, NEWTON COUNTY, MISSOURI

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

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of_____, 2021, by a vote of _____.

Ryan D. Stanley, Mayor

ATTEST:

Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

Peter C. Edwards, City Attorney

JOPLIN CITY COUNCIL
SEPTEMBER 20, 2021
MEETING MINUTES

CALL TO ORDER

The September 20, 2021 regular meeting of the Joplin City Council was called to order at 6:00 p.m. by Mayor Ryan Stanley.

INVOCATION was read by City Clerk Barbara Gollhofer.

PLEDGE OF ALLEGIANCE TO THE UNITED STATES OF AMERICA was led by Dr. Reid Adams.

ROLL CALL

Answering Roll Call were Council Members: Charles Copple, Keenan Cortez, Doug Lawson, Anthony Monteleone, Gary Shaw, Diane Reid Adams Mayor Ryan Stanley, Phil Stinnett, and Christina Williams. Also, in attendance were City Manager Nick Edwards and City Attorney Peter Edwards.

PRESENTATIONS

Mayor Stanley presented a proclamation to Parks Director Paul Bloomberg to proclaim October 2, 2021, as Arbor Day. Mr. Bloomberg thanked Mayor Stanley and invited everyone to the Earth and Arbor Day event at Wildcat Glades on October 2.

Mayor Stanley presented a proclamation to Connie McQuillen to proclaim September 17-23, 2021 as Constitution Week. Mrs. McQuillen accepted the proclamation on behalf of Joplin Daughters of the American Revolution.

Interim Fire Chief Mark Cannon presented an overview of the Winter Weather Warming Center Guidelines. Emergency Management Director Keith Stammer was present to answer questions on this topic.

Interim Fire Chief Mark Cannon introduced Tom Jenkins, a consultant with Canfield/Jenkins, who presented the Fire Dept. Resource Allocation Study. The purpose of the presentation was to provide an overview of the fire department and some of its needs. Chief Cannon and members of the command staff have been working on a 5-year strategic plan and after a new chief is named, the city will bring the strategic plan forward and start to prioritize some of the recommendations.

FINALIZATION OF CONSENT AGENDA

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

REPORTS AND COMMUNICATION

Health Dept. Update

Health Director Ryan Talken presented an update of Covid cases, hospitalizations, and deaths. The downward trend of positive Covid cases, hospitalizations, and deaths continues. For information on Covid and vaccination clinics, call the Health Dept. at 417-623-6122.

News from Public Information Officer, Lynn Onstot

The Guilty By Association Truck Show will be held this coming weekend from Sept 23 - Sept 25, 2021. This year's event will feature the great parade and truck show on Saturday evening. The convoy of about 400 trucks will leave the Joplin Petro area at 6 p.m., heading north on Schifferdecker Avenue to 20th Street. Trucks will follow 20th Street to Main Street and turn right, heading to 26th Street. From there, they'll turn west to Maiden Lane and the Mercy Park area. Drivers will park their trucks along 26th Street from Maiden Lane to approximately Moffet Avenue. The public is invited to come view the trucks, visit with participants, and enjoy the Street Fair. Country music artists Curtis Grimes and Joe Nichols will perform concerts beginning at 7:30. The concert stage will be located on 26th Street at Maiden Lane. If planning to attend, bring a lawn chair or blanket for seating. For more info, go to the CVB's website: VisitJoplinMo.com

The Missouri Southern State University 2021 Homecoming Parade is coming back to downtown. The parade will run down Main Street from 6th St. to 3rd St. at 10:00 am on Saturday, September 25. The football Lions will face Fort Hays State Tigers at 2 p.m. Saturday at Fred Hughes Stadium.

Citizens planning to burn yard debris will need a Burn Permit. The permit is $10 and is good for 3 consecutive days. These are available from Fire Station #1 at 303 East 3rd Street or City's Finance Department here at City Hall. The Fire Station can only accept payment by check or money order. The Finance Department is open from 8 a.m. to 5 p.m. Monday through Friday and can accept cash, check, debit card, money order, or credit card payments. No matter where the Permit is obtained, residents must still inquire with the Joplin Fire Department about weather conditions and if burning is allowed on each day. Residents can obtain this information by calling the Joplin Fire Department at 417-623-0403.

CITIZEN REQUESTS AND PETITIONS

PUBLIC HEARINGS

CONSENT AGENDA

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

Minutes of the September 7, 2021 City Council Meeting

COUNCIL BILL NO. 2021-278 - 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 (Single Family Residential) and including in District R-2 (Two Family Residential) property as described below and located at 2521 S. Connor Ave. **Ordinance No. 2021-120**

COUNCIL BILL NO. 2021-279 - an ordinance providing the vacation of a utility easement lying on property at the Southeast Corner of S. Anderson Ave. and W. 26th St., City of Joplin, Jasper County, Missouri. **Ordinance No. 2021-121**

COUNCIL BILL NO. 2021-280 - an ordinance approving the voluntary annexation by the Council of the City of Joplin, Missouri, of property located at the End of Public Right-of-Way of W. 32nd St., Joplin, Jasper County, Missouri. **Ordinance No. 2021-122**

COUNCIL BILL NO. 2021-282 - an ordinance establishing grades and accepting the Final Plat of Eagles Edge Phase 2 Subdivision located at the end of public right-of-way of W. 32nd St. in the City of Joplin, Jasper County, Missouri. **Ordinance No. 2021-123**

COUNCIL BILL NO. 2021-609 - an ordinance approving the applications of Midwestern Built CrossFit for Monster Games; Ozark Christian College for marketing their 2022 Conference Series; MSSU Alumni for their 2022 Marketing Campaign; JOMO Pride, Inc. for JOMO Pride; Rufus Racing LLC for Summer Roundup Triathlon; Active Lifestyle for Joplin Memorial Run; Neosho Arts Council for Art Con; Joplin Disc Golf Club's 17th Annual Four States Open; Emancipation Celebration Committee, Emancipation "Parks Day"; Carl Junction Chamber of Commerce for the 25th Bluegrass Festival; KEG Media (Fort Smith, Arkansas) for Mother Road Mayhem, and JW Sports Worldwide LLC for Ball'N Prep Girls Basketball Tournament, for utilization of FY22 Festivals and Celebrations support pursuant to Ordinance No. 2000-148, as authorized by the voters on November 7, 2000; authorizing the City Manager to execute appropriate agreements with each such organization for the utilization of such funds. **Ordinance No. 2021-124**

RESOLUTIONS

Mr. Shaw introduced Resolution No. 2021-015 - a resolution approving a request of the appointment of a member and two re-appointments of the Board of Directors of the Northpark Lane Community Improvement District. Motion by Mr. Shaw, second by Mr. Lawson to approve Resolution No. 2021-015. Voting in favor were Council Members: Copple, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley, Stinnett, and Williams, 9. Nays: 0**. Resolution No. 2021-015 was approved**.

ORDINANCES – EMERGENCY

COUNCIL BILL NO. 2021-152

Mr. Stinnett introduced Council Bill No. 2021- 152 - an ordinance declaring the necessity of acquiring for public use certain fee simple right of way, permanent and temporary easements for the purpose of street construction improvements associated with the proposed Connecticut Avenue widening project from 32nd Street south to the I-44 Bridge; authorizing the City Manager and his designees to negotiate for the purpose of acquiring the necessary interests in land; authorizing the City Attorney and his designees to institute condemnation proceedings if such interests in land cannot be acquired by purchase through good faith negotiations; and containing an emergency clause. Motion by Mr. Stinnett, second by Dr. Reid Adams that Council Bill No. 2021-152 be passed on emergency basis. Voting in favor were Council Members: Copple, Cortez, Lawson, Reid Adams, Shaw, Stinnett, and Williams, 7. Nays: Monteleone, 1 Absent: 0. Abstention: Stanley, 1. The Council Bill was declared adopted and entitled **Ordinance No. 2021-125**

COUNCIL BILL NO. 2021-153

Mr. Lawson introduced Council Bill No. 2021-153 - an ordinance declaring the necessity of acquiring for public use certain fee simple right of way, permanent and temporary easements for

the purpose of street construction improvements associated with the proposed Connecticut Avenue widening project from 32nd Street south to the I-44 Bridge; authorizing the City Manager and his designees to negotiate for the purpose of acquiring the necessary interests in land; authorizing the City Attorney and his designees to institute condemnation proceedings if such interests in land cannot be acquired by purchase through good faith negotiations; and containing an emergency clause. Motion by Mr. Lawson, second by Mr. Cortez that Council Bill No. 2021-153 be passed on emergency basis. Voting in favor were Council Members: Copple, Cortez, Lawson, Reid Adams, Shaw, Stinnett, and Williams, 7. Nays: Monteleone, 1 Absent: 0. Abstention: Stanley, 1. The Council Bill was declared adopted and entitled **Ordinance No. 2021-126**

COUNCIL BILL NO. 2021-154

Mr. Stinnett introduced Council Bill No. 2021-154 - an ordinance declaring the necessity of acquiring for public use certain fee simple right of way, permanent and temporary easements for the purpose of street construction improvements associated with the proposed Connecticut Avenue widening project from 32nd Street south to the I-44 Bridge; authorizing the City Manager and his designees to negotiate for the purpose of acquiring the necessary interests in land; authorizing the City Attorney and his designees to institute condemnation proceedings if such interests in land cannot be acquired by purchase through good faith negotiations; and containing an emergency clause. Motion by Mr. Stinnett, second by Mr. Copple that Council Bill No. 2021-154 be passed on emergency basis. Voting in favor were Council Members: Copple, Cortez, Lawson, Reid Adams, Shaw, Stinnett, and Williams, 7. Nays: Monteleone, 1 Absent: 0. Abstention: Stanley, 1. The Council Bill was declared adopted and entitled **Ordinance No. 2021-127**

COUNCIL BILL NO. 2021-521

Mr. Cortez introduced Council Bill No. 2021-521 - an ordinance approving the Real Estate Contract by and between the City of Joplin, Missouri, a Municipal Corporation, and Jasper County Sheltered Facilities Association, a Missouri Nonprofit Corporation, d/b/a Community Support Services of Missouri, for the sale of 2202 South Jackson Avenue; and authorizing the City Manager to execute the same by and on behalf of the City of Joplin; and containing an emergency clause. Motion by Mr. Cortez, second by Mr. Lawson that Council Bill No. 2021-521 be passed on emergency basis. Voting in favor were Council Members: Copple, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stinnett, and Williams, 8. Nays: 0. Absent: 0. Abstention: Stanley, 1. The Council Bill was declared adopted and entitled **Ordinance No. 2021-128**

ORDINANCES – FIRST READING

ORDINANCES – SECOND READING AND THIRD READING

The following persons requested to speak on COUNCIL BILL NO. 2021-281:

Richard Hatfield spoke in opposition to this item by stating Par Lane is too narrow for construction vehicles and equipment, there are potential issues with the retention basin maintenance, and he's concerned about safety due to the increase of construction traffic.

Jerod Huebner spoke in opposition to this item and stated the Plat does not meet all the city's plat requirements. He also has concerns with no buffer, potential drainage ditch issues, safety, quality of life and he questioned if the lot sizes are proper.

William Alt spoke in opposition to this item and stated vehicles have difficulty turning around on Par Lane because it's too narrow. He asked why the project developer is not responsible for the maintenance and improvement of the road since that is the only entrance to the new development.

Mark Lane spoke in opposition to this item and listed several concerns. He said he hoped the builder would work with the residents to resolve some of the concerns.

Ken Myers spoke in opposition to this item and stated he has concerns with the retention/drainage issue, traffic, and construction vehicles.

Barbara Joe stated she had concerns about there being no buffer to prevent construction vehicles from using her property.

Blake Onstot, builder for the project, spoke in favor of this item. He stated he wanted to address the issues and concerns some of the neighbors voiced. He addressed traffic/road access; home values, and home size. He stated his company had no intention of negatively impacting this neighborhood in any way. His goal is to add a beautiful neighborhood in a great Joplin location.

Mr. Copple introduced Council Bill No. 2021-281 - an ordinance establishing grades and accepting the Final Plat of Par Lane Addition located at the End of Right-of-way of W. Par Ln. in the City of Joplin, Jasper County, Missouri. Motion by Mr. Copple, second by Mr. Cortez to pass Council Bill No. 2021-281 on Second and Third Reading. Voting in favor were Council Members: Copple, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley, Stinnett, and Williams, 9. Nays: 0. The Council Bill was declared adopted and entitled **Ordinance No. 2021-129**

UNFINISHED BUSINESS

NEW BUSINESS

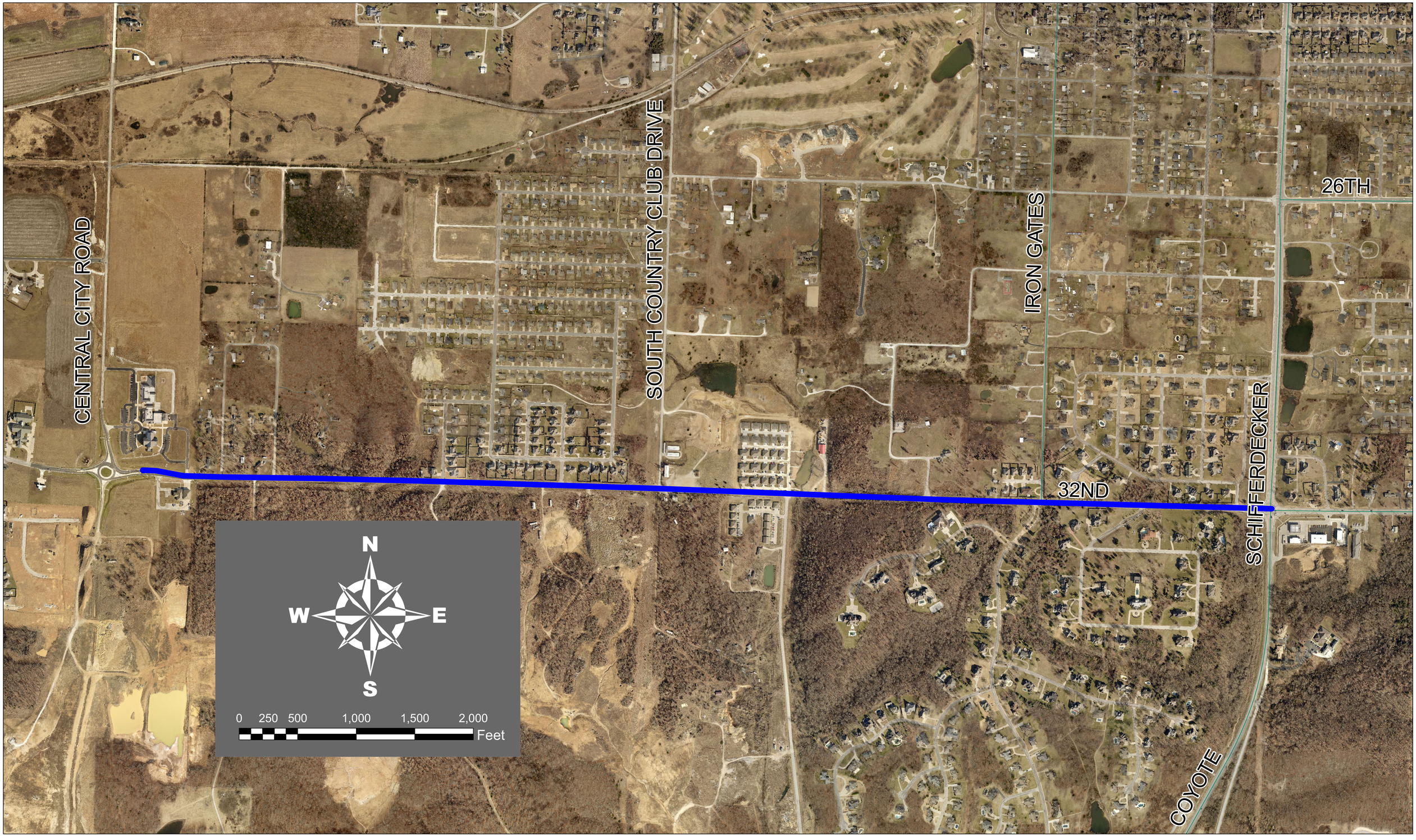
Vote to go into closed session, which shall pertain to the hiring, firing, disciplining, or promotion of an employee or particular employees of a governmental body involving personal information more specifically for the purpose of evaluating certain Council employees; as set forth in Section 610.021(3) RSMo, as amended, 2020. This meeting, record, and vote to be closed to the extent provided by law. The City Council shall adjourn at the end of the session. Motion by Mr. Monteleone, second by Mr. Cortez to go into closed session. Voting in favor were Council Members: Copple, Cortez, Lawson, Monteleone, Reid Adams, Shaw, Stanley, Stinnett, and Williams, 9.

There being no further business, the meeting was adjourned at 8:15 p.m.

Respectfully,

Barbara Gollhofer, City Clerk, MPCC

32nd STREET WIDENING



CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2021-149 Utility Relocation Agreement between City of Joplin and Missouri-American Water Company (MAWC), for the 32nd St. Widening Project from Schifferdecker Avenue to Central City Road

MEETING DATE
October 4, 2021

ORIGINATING DEPT
Public Works-Engineering

ATTACHMENTS
Council Bill 2021-149; Agreement; Location Map

REVIEWED BY
Director of Public Works: David Hertzberg; Finance Director: Leslie Haase; City Attorney: Peter Edwards; City Manager: Nicholas Edwards

SUMMARY
This Council Bill authorizes the City Manager or his designee to enter into an agreement with Missouri-American Water Company (MAWC) in the amount of Two Hundred Thirty-Two Thousand Five Hundred and 00/100 dollars ($232,500.00) for water facility relocations required for the 32nd St. Widening project from Schifferdecker Ave. to Central City Rd.

BACKGROUND
In August 2014, the voters passed the Renewal of the Capital Improvement Sales Tax Program for an additional 10 years. One of the projects was the widening of 32nd Street from Schifferdecker Ave. to Central City Road. During the final design phase of the project, discussions were held between City staff, MAWC and Olsson about including the waterline relocation work in the roadway widening project, to allow the waterline work to be performed concurrently with the widening of the roadway, potentially saving substantial time and money. In July 2021, City Council approved a construction agreement with Emery Sapp & Sons, Inc. (ESS) for the widening of 32nd Street. This agreement with ESS included the relocation of the waterline facilities, with the City to supply all materials required for the relocation. Per this proposed agreement for Water Facility Relocation, MAWC will furnish to the City all pipe materials including pipe, fittings, valves and hydrants necessary to relocate the water facilities. MAWC will also provide inspection services for the installation of the water main.

FUNDING SOURCE
Capital Improvement Sales Tax

RECOMMENDATION
Staff recommends approval of Council Bill 2021-149, Agreement with Missouri-American Water Company (MAWC) in the amount of Two Hundred Thirty-Two Thousand Five Hundred and 00/100 dollars ($232,500.00) for water facility relocations required for the 32nd St. Widening project from Schifferdecker Ave. to Central City Rd. on an emergency basis, in that said ordinance

provides for public improvements and is considered to be an emergency per section 2.12(6) of the HOME RULE CHARTER of the City of Joplin, Missouri, and as such, this ordinance shall become effective immediately upon its passage. Furthermore, approval of this council bill will allow the contractor for the widening project to proceed with the contracted work without any unnecessary delays, and is therefore an emergency.

COUNCIL BILL NO. 2021-149 ORDINANCE NO.

AN ORDINANCE approving an Agreement with Missouri-American Water Company (MAWC) in the amount of Two Hundred Thirty-Two Thousand Five Hundred and 00/100 dollars ($232,500.00) for water facility relocations required for the 32nd St. Widening project from Schifferdecker Ave. to Central City Rd. and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin; and containing an emergency clause.

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

Section 1. That the Agreement with Missouri-American Water Company (MAWC) in the amount of Two Hundred Thirty-Two Thousand Five Hundred and 00/100 dollars ($232,500.00) for water facility relocations required for the 32nd St. Widening project from Schifferdecker Ave. to Central City Rd., for the City of Joplin, a true and accurate copy of said agreement being attached hereto and incorporated herein, be, and the same, is hereby approved.

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

Section 3. That upon the final approval and acceptance of the contractor's work under said contract, in substantial conformance with the attached exhibits, in writing by the Director of Public Works and his certification to the effect to the Director of Finance, the contractor shall be paid from the Capital Improvement Sales Tax fund.

Section 4. That the City hereby declares that this Ordinance dealing with a public improvement, is an emergency within the meaning of Section 2.12(6) of the HOME RULE CHARTER of the City of Joplin, Missouri, and as such, this Ordinance shall become effective immediately upon its passage. Furthermore, approval of this council bill will allow the contractor for the widening project to proceed with the contracted work without any unnecessary delays, and is therefore an emergency.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of_____, 2021, by a vote of_____.

ATTEST: Ryan D. Stanley, Mayor

Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

Peter C. Edwards, City Attorney

Council Bill 2021-149

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

_____

Leslie Haase, Director of Finance

AGREEMENT FOR WATER FACILITY RELOCATION

THIS AGREEMENT FOR WATER FACILITY RELOCATION (hereinafter referred to as "Agreement") is made and entered into as of the _____ day of_____, 20__, by and between MISSOURI-AMERICAN WATER COMPANY, a corporation existing under and by virtue of the laws of the State of Missouri (hereinafter referred to as "MAWC"), and the CITY OF JOPLIN, MO, (hereinafter referred to as "CITY").

RECITALS:

WHEREAS, CITY contemplates the location, widening, construction, and/or improvement of 32nd Street from approximately S Central City Rd east to Schifferdecker Road, in accordance with certain plans titled 32nd Street Widening Improvements on file in the office of the CITY; and

WHEREAS, in carrying out the opening, widening, establishment, and improvement of 32nd Street, it will be necessary to relocate certain portions of MAWC'S water facilities now located partly within CITY right-of-way and partly on the MAWC'S private easement along 32nd Street, in the CITY, and

WHEREAS, CITY plans to fully fund and construct the relocation through the use of its own contractor/Subcontractor, which shall selected from MAWC's list of Qualified Contractors to construct the main relocation; and

WHEREAS, MAWC shall procure the pipe materials and shall be reimbursed by City for total cost thereof in accordance with this agreement; and

WHEREAS, MAWC is willing to accommodate CITY'S needs upon condition that CITY accepts the provisions hereinafter specified and evidences such acceptance by execution hereof in accordance with Section 432.070 RSMo and City Ordinance No. _____.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Article 1
General

1.1 General Requirements are as described below:

(a) City will furnish all labor, materials other than pipe, fittings, valves and hydrants, and supervision necessary to relocate said water facilities of MAWC as shown on the plans marked Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Relocation")

(b) MAWC will furnish to the City all pipe materials including pipe, fittings, valves and hydrants necessary to relocate said water facilities of MAWC as shown on the plans marked Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Relocation").

(c) MAWC will furnish Inspection Services for installation of the main.

(d) City shall pay the entire actual cost of the Relocation Materials and Inspection (hereinafter referred to as the "Actual Cost"). The estimated cost of the Relocation and Inspection is $232,500 (hereinafter referred to as the "Estimated Cost"). Prior to MWAC's delivery of materials to the City for the Relocation, City shall pay to MAWC the Estimated Cost. After completing the Relocation, MAWC shall provide City an Actual Cost Statement. In the event the Actual Cost is less than the Estimated Cost, MAWC shall reimburse to City the difference of the Estimated Cost less the Actual Cost. In the event that site conditions change (i.e. more or less pipe and fittings are required) or the Relocation scope of work changes at the written request of the City, additional charges may apply. City will be responsible to reimburse MAWC for any additional charges above the Estimated Cost within 30 days of receiving the Actual Cost Statement for the Relocation.

(e) City's bid documents shall include a provision requiring only MAWC approved contractors from a list supplied by MAWC for construction of the relocation work

(f) MAWC shall hire an inspector on a full-time basis during main relocation work. City shall reimburse full costs associated with project inspection.

(g) MAWC shall provide the design for the relocation utilizing the designer of the roadway widening project and shall be responsible for all cost associated with the initial design for bidding the work.

(h) City shall secure and shall be responsible for all costs and expenses incurred in connection with the acquisition of all property rights and easements required by this Agreement.

(i) Upon completion of the Relocation, City shall remove all leftover materials and debris resulting from the main relocation work and leave the right-of-way in a neat, workman-like condition, free of holes, unnecessary mounds of dirt (with exception of leaving the trench slightly mounded with dirt for settlement purposes when relocation work is performed in dirt) or other objectionable material.

(j) MAWC and City covenant and agree that they have complied with all applicable laws, statutes and regulations, and have the proper corporate authorization, necessary to enter into this Agreement.

(k) This Agreement shall be binding upon and inure to the benefit and detriment of the successors and assigns of MAWC and City.

Article 2
Plans, Specifications and Pre-Construction Requirements

2.1 Requirements for plans and specifications, as described below:

(a) City shall accept MAWC's Water Main Layout, and MAWC's Special Conditions and Technical Specifications for Installation of Water Facilities, available from MAWC upon request. MAWC shall provide the design for the relocation based on the City construction plans.

(b) In advance of construction of Main Installation, City shall obtain and furnish to MAWC: (i) all requisite permits, easements and approvals by all regulatory authorities having jurisdiction over Main Installation; and (ii). City shall comply with the current issue of MAWC's Special Conditions and Technical Specifications for Installation of Water Facilities, which are incorporated herein by reference and shall comply with any and all construction, material and performance standards uniformly required by MAWC at that time. City shall provide all surveying, materials, transportation, equipment, power, labor, supervision, testing, insurance, bonds, and all else required to construct and place into satisfactory operation the following: all water mains, services, valves, hydrants and all appurtenances thereto and water facilities required to connect to MAWC's existing facilities, in accordance with plans and specifications provided by MAWC.

Article 3
Construction of Water Facilities

3.1 Inspection and Construction of Water Facilities.

(a) City shall permit MAWC or its representatives to inspect and approve all work during and after construction.

(b) City shall transfer all domestic and fire water services for each customer in a manner that will minimize time water is not available to customer. In certain cases this could mean after hours or night time transfers.

(c) MAWC shall hire INP Inspection Services, LLC to perform inspection of the watermain relocation. Installation shall comply with the inspection and testing requirements of MAWC, which requirements shall be reasonable and shall not cause City any unwarranted material delays in the ordinary course of construction. MAWC specifically reserves the right to withhold approval and to forbid connection of any of the facilities constructed pursuant to this Agreement to any part of MAWC's systems unless such facilities have been constructed in accordance with the plans and specifications approved by MAWC and are satisfactory to MAWC or its representatives upon inspection and testing by MAWC or its representatives.

(d) Furthermore, no connections shall be made to facilities to be installed pursuant to this Agreement or to any other facilities of MAWC that are deemed to be illegal connections by the Environmental Protection Agency, or any other agency having jurisdiction over such connection.

(e) City and or City's contractor/subcontractors shall at all times maintain good discipline and order at the site. Inappropriate behavior is forbidden.

(f) Any modifications to the relocation required as a result of changes in grade, easements or other causes shall be paid for by the City and not subject to MAWC Contribution. All phases of the construction of the Main Installation shall be open at all times to inspection by MAWC or its representatives.

Article 4
Easements and Title

4.1 Grant of Easements. City agrees to prepare, obtain, execute and give to MAWC deeds of easement, which are acceptable to MAWC in MAWC's sole discretion for use and occupancy by MAWC before the Main Installation is accepted. All costs associated with easements for this Development shall be borne by the City. Easements need not be exclusive, but must be private property rights which specifically name MAWC as recipient, and may not be conveyances that are designated "Public," "for public use forever" or that include similar wording that would result in the creation of a public right-of-way in which MAWC could only be a licensee. The Main Installation must be installed in easement(s) unless otherwise approved by MAWC. City must provide an instrument of conveyance to MAWC of all easements needed for the Main Installation that have not already been conveyed to MAWC by deed or recorded plat. The instrument of conveyance must be in a form and substance satisfactory to MAWC in its sole discretion, free of all liens and encumbrances. Where relocation has occurred, City agrees to prepare, and MAWC agrees to execute and deliver to City, a partial release of MAWC's existing private easement along 32nd Street.

4.2 Conveyance of Title.

(a) All City's rights, title and interest to the water pipe, services, fire hydrants, valves and appurtenant facilities thereto within the Development and off-tract water facilities required to connect to MAWC's existing facilities, and constructed within the Development to MAWC's or others existing facilities, in accordance with the plans and specifications approved by MAWC installed under the terms of this Agreement are herewith tendered to MAWC, its successor and assigns. MAWC will accept the Main Installation, release the mains for service connections, and so notify City in writing, if and when City demonstrates to MAWC's satisfaction, that all pipes are chemically and bacteriologically clean, and otherwise conform to all MAWC standards and specifications, and after all other preconditions herein specified have been met and all monies owed MAWC have been received.

(b) All materials installed, facilities constructed and equipment provided by City in connection with construction of facilities under this Agreement and accepted by MAWC shall become the sole property of MAWC as installed, and full legal and equitable title thereto shall be then vested in MAWC, free and clear of any liens, without the requirement of any written document of transfer to MAWC. City agrees to execute and/or deliver promptly such documents

as counsel for MAWC may request to evidence good and merchantable title to said facilities free and clear of all liens.

(c) City shall submit to MAWC (i) copies of paid invoices together with its corresponding lien waiver to MAWC for all engineering and other services, materials installed, construction performed, equipment provided and materials purchased for construction pursuant to this Agreement at the actual cost thereof. If any lien waivers for the work described herein are not available to MAWC at the time of MAWC's acceptance of the Main Installation, an additional Letter of Credit of a form approved by MAWC may be issued to MAWC in an amount equal to the total dollars described on the associated invoices. (See Article 5.3 herein).

(d) Upon completion of work hereunder, City shall remove all equipment belonging to it or used under its direction or by its contractor or its subcontractors, and shall dispose of all unused materials, rubbish, surplus excavated materials and debris in a manner reasonably acceptable to MAWC. City shall repair all roads, sidewalks, parkways and all else affected by its work, which repairs shall be made in accordance with the requirements of MAWC and governmental agencies having proper jurisdiction.

(e) It is specifically provided by and between the parties hereto that it is the express intention and agreement of the parties that the legal effect of this Agreement shall be that no mechanics' lien or claim may be filed or maintained by anyone including, but not limited to, any of the parties hereto, any contractor, subcontractor or materialman performing labor or furnishing materials in any way relative to any of the covenants and agreements of this Agreement. In furtherance of the foregoing provision, the parties agree that no contract or subcontract for either labor or materials performed or furnished in furtherance of this Agreement has been or shall be entered into prior to the expiration of ten (10) days from the date of the execution hereof.

Article 5
Indemnification by City

5.1 To the fullest extent permitted by law, and subject to the limitations of the Missouri Tort Claims Act, and excepting MAWC's own negligence, City shall save and hold MAWC harmless from and against all suits or claims against MAWC that may be based upon any injury or alleged injury to any person or property that may occur, or that may be alleged to have occurred, in the course of the performance of this Agreement by City or by any subcontractor, whether such claims shall be claimed that the alleged injury was caused through any act or omission of City or of any subcontractor, and City shall, at its own cost and expense, pay all charges of attorneys and all cost and other expenses arising therefrom, or incurred in connection therewith, and if any judgment shall be rendered against MAWC in any such action or actions, City shall, at its own cost and expense, satisfy and discharge the same. MAWC shall give City prompt notice of threat or institution of any such suit or claim. MAWC retains the right to approve the attorneys hired by City or to select its own attorneys, the charges for which shall be paid by City.

Article 6
Warranties and Covenants of City

6.1 City shall guarantee all construction, materials and workmanship provided under this Agreement for one year after "Final Acceptance" by MAWC. "Final Acceptance" is defined as the date when City has received written acceptance of the facilities installed per this Agreement from MAWC, completed all construction required by this Agreement and corrected all punch list items requested by MAWC to the satisfaction of MAWC. City warrants that all construction, materials and workmanship provided under this Agreement will be completed substantially in accordance with the plans and specifications for said facilities as approved by MAWC. All areas affected by the Main Installation shall be restored to MAWC's reasonable satisfaction prior to the acceptance of the Main Installation. If weather conditions prohibit restoration of said affected areas, MAWC may require a written statement from the City indicating City's responsibility to complete restorations at the earliest opportunity.

6.2 City covenants and agrees that any repairs that become necessary to correct all defects and deficiencies in construction, materials and workmanship that are associated with the facilities and appurtenances installed per this Agreement during the warranty period shall be performed by MAWC at City's expense. City, for a period of one (1) year after Final Acceptance by MAWC, shall (i) do what is necessary to keep all hydrants at proper elevation, relative to surrounding grade; (ii) promptly pay for the repair of, or any other damages to MAWC's water facilities and appurtenances thereto attributed directly or indirectly to construction by or for City, or any of its subcontractors. Inspection and approval of facilities by MAWC shall not waive any right of MAWC under this Agreement. Repairs other than to water mains, hydrants, or appurtenances during the warranty period or consequential damage shall be the responsibility of City. If repairs, including any site restoration costs, are not made after ten (10) days' notice by MAWC, MAWC or MAWC's agents shall make said repairs at City's expense. All costs incurred by MAWC as a result of repairs to the Main Installation and any consequential damages, including but not limited to site restoration costs, that occur during said one year warranty period will be invoiced to the City by MAWC. The City agrees to pay said invoice within thirty (30) days of receipt of the invoice.

6.3 Modifications to the water system necessitated by changes in the plan of Development by City (grading, alignment, etc.) shall be paid for by City.

Article 7
Miscellaneous

7.1 Waiver. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

7.2 Cooperation. City and MAWC will cooperate fully with each other in all matters relating to obtaining all approvals of all regulatory agencies required in order for MAWC to provide water service to the Development.

7.3 Modification.

7.4 Recording. MAWC may record this Agreement or a memorandum thereof in accordance with the laws of the State of Missouri.

7.5 Force Majeure. Neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, other than for payment of money obligations specified herein, in case such failure, default or delay in performing any of its obligations specified herein is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, passage of laws, orders of the court, adoption of rules, ordinances, acts, failures to act, decisions or orders or regulations of any government or military body or agency, office or commission, delays in receipt of material, or any other cause, whether of similar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome. Should any of the foregoing occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement. MAWC shall not in any event incur any liability to City for consequential or other damages which may result from delays in initiating service or interruptions or other malfunctions of service. MAWC shall have no obligation to accept the main installation if any action, law suit, proceeding or cause of action is pending or threatened with respect to installation.

7.6 Notices. All notices, consents, requests, demands and other communications hereunder are to be in writing and are deemed to have been duly given, made or delivered: (i) when delivered in person, (ii) three (3) days after deposited in the United States mail, first class postage prepaid, (iii) in the case of telegraph or overnight courier services, one (1) business day after delivery to the telegraph company or overnight courier service with payment provided, or (iv) in the case of telex or telecopy or facsimile, when sent, verification received, in each case addressed as follows:

if to MAWC:

Attn: Engineering
727 Craig Road
St. Louis, MO 63141

with a copy to:

Attn: General Counsel
727 Craig Road
St. Louis, MO 63141

if to City:

_____
_____
_____
_____
_____

or to such other address as any party hereto may designate by notice to the other parties in accordance with the terms of this Article.

7.7 No Agency Relationship. It is understood that in the construction and installation of the Main Installation, City, its contractors and agents are independent contractors and are not acting as the agents or employees of MAWC and therefore shall not incur any costs or expenses on behalf of MAWC and that MAWC is not an agent of the City and shall not incur any costs or expenses on behalf of the City.

7.8 Entire Agreement. Subject to the MAWC's tariffs on file with and approved by the Missouri Public Service Commission as amended from time to time, and rules issued by the Missouri Public Service Commission that regulate MAWC operations, this Agreement sets forth the complete understanding between City and MAWC, and any amendments hereto to be effective must be in writing. All prior negotiations and agreements between the parties hereto are superseded by this Agreement. Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person, firm or corporation (other than the parties hereto and their permitted assigns) any rights or remedies under or by reason of this Agreement, or any term, provision, condition, undertaking, warranty, representation, indemnity, covenant or agreement contained herein.

7.9 Regulatory Jurisdiction and Approval. This Agreement is intended to be consistent with applicable rules and regulations on file with the Missouri Public Service Commission. This Agreement is subject to such approval of the Missouri Public Service Commission to the extent required by law.

710 Governing Law. This Agreement shall be governed by the laws of the State of Missouri, without regard to conflict of laws rules.

7.11 This Agreement shall become a contract and the Date of Acceptance shall be the date the Agreement is returned to MAWC fully executed.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officials.

ATTEST: MISSOURI-AMERICAN WATER COMPANY

_____ _____

_____, Name and Title

ATTEST: CITY

_____ _____

_____, Name and Title

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2021-151 Agreement with Paragon Architecture, LLC for Architectural Design Services for Joplin Fire Station #7

MEETING DATE
October 4, 2021

ORIGINATING DEPT
Public Works/Fire Department

ATTACHMENTS
Council Bill 2021-151; Agreement; Location Map

REVIEWED BY
Director of Public Works: David Hertzberg; Interim Fire Chief: Mark Cannon; Finance Director: Leslie Haase; City Attorney: Peter Edwards; City Manager: Nicholas Edwards

SUMMARY
This Council Bill authorizes the City Manager or his designee to approve an agreement with Paragon Architecture, LLC in the not to exceed amount of Two Hundred Ninety Thousand Four Hundred and 00/100 dollars ($290,400.00) for architectural design services for Joplin Fire Station #7.

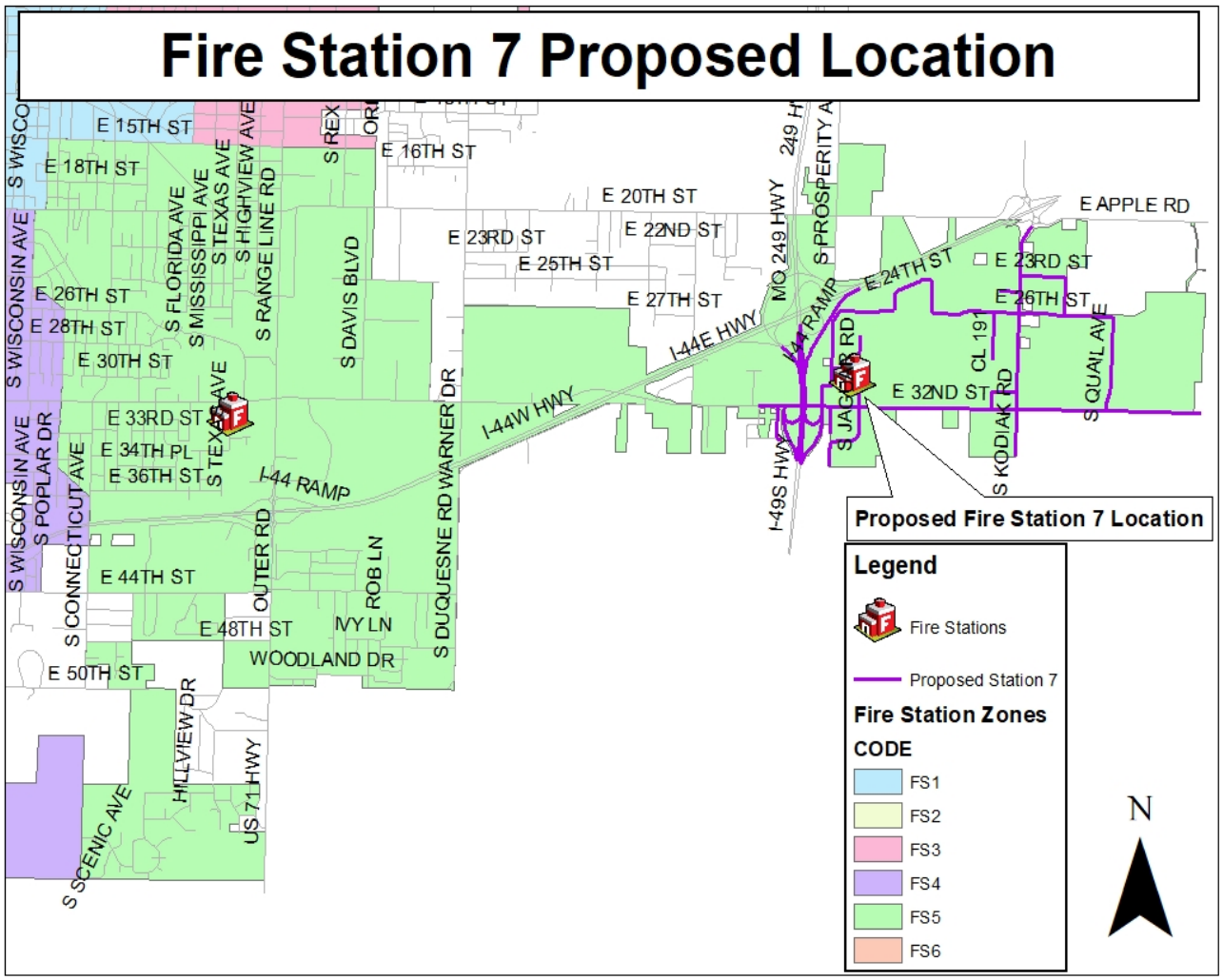
BACKGROUND
In 2006 the citizens of Joplin, Missouri voted on and passed the Public Safety Sales Tax. One of the projects listed included the addition of an Eastside station (Fire Station 7). In 2016, a 2 square acre parcel of land was approved for purchase in the approximate area of 30th Street and CR 220 (now known as Jaguar Road). In that same year, the above-mentioned parcel of land was purchased and is ready for the second phase of this project. Phase II is the design and construction of Fire Station 7.

In accordance with the City of Joplin's procurement policies, a Request for Qualifications for Architectural Services was advertised in the Joplin Globe on March 21, 2021, with submittals due to the City by April 13, 2021. Qualification submittals were received from eight architectural firms, which were reviewed and scored by teams comprised of both City Fire Department and Public Works personnel. Based on the scoring, Paragon Architecture, LLC was selected as the most qualified firm to provide the requested services. A scoping meeting was held with Paragon to determine the scope of work to be included in the design agreement. The fees submitted by Paragon Architecture, LLC have been reviewed by City staff and found to be within industry standards.

FUNDING SOURCE
Public Safety Sales Tax

RECOMMENDATION

Staff recommends approval of Council Bill 2021-151, Agreement with Paragon Architecture, LLC for Architectural Design Services for Joplin Fire Station #7 in the not to exceed amount of Two Hundred Ninety Thousand Four Hundred and 00/100 dollars ($290,400.00) for architectural design services for Joplin Fire Station #7 on an emergency basis, in that said ordinance provides for public improvements and is considered to be an emergency per section 2.12(6) of the HOME RULE CHARTER of the City of Joplin, Missouri, and as such, this ordinance shall become effective immediately upon its passage. Furthermore, approval of this council bill will allow this agreement to be executed in the City's Fiscal Year 2021, and is therefore an emergency.



This property will adequately protect the Cross-Roads Industrial park as well as several businesses, residents along East 32nd Street and parts of both I-44 and I-49 that are currently outside the 1.5-mile road distance from Station 5. Station 7 will also provide services within the boundary area (in blue) of 16th Street to the north, Connecticut to the west, and the city limits to the south and east. This station will also provide mutual and automatic aid support to the Redings Mill Fire Department to the south, and the Dueneweg Fire Department to the east.

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Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the **20th** day of **September** in the year **2021**
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Joplin
602 South Main Street
Joplin, MO. 64801

and the Architect:
(Name, legal status, address and other information)

Paragon Architecture, LLC.
637 W. College Street
Springfield, MO. 65806
(417) 885-0002
erwin@paragon-architecture.com

for the following Project:
(Name, location and detailed description)

Joplin Fire Station #7 - #21-658
Located at corner of East 30th Street and South Jaguar Road

New fire station is presumed to be 3-bay drive through station with living and workspaces accommodating up to 5 personnel.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.
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ARTICLE 1 INITIAL INFORMATION

(Paragraphs deleted)

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

(Paragraphs deleted)

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Exhibit A: Scope of Services

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Project is located at corner of East 30th Street and South Jaguar Road.

(Paragraph deleted)

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

TBD

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

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.1 Design phase milestone dates, if any:

Anticipate:
Schematic Design Phase: mid-November (SD completion)
Design Development Phase: end of December 2021 (DD completion)
Construction Document Phase: mid-March 2022 (CD completion)
Bid Date: mid-April 2022

.2 Construction commencement date:

Anticipate: June 2022

.3 Substantial Completion date, or dates:

Anticipate: Spring 2023

.4 Other milestone dates:

N/A

(Paragraphs deleted)
§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Bid.

§ 1.1.6 N/A

(Paragraphs deleted)
§ 1.1.6.1 N/A

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Chief Mark Cannon, Interim Fire Chief
City of Joplin
303 E. 3rd Street
Joplin, MO. 64801
(417) 624-0820
mcannon@joplinmo.org

(Paragraphs deleted)
§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

TBD

(Paragraphs deleted)
§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

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N/A

.2 Civil Engineer:

N/A

.3 Other, if any:
(List any other consultants and contractors retained by the Owner.)

N/A

(Paragraphs deleted)
§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

Brad Erwin, President
Paragon Architecture, LLC.
637 W. College Street
Springfield, MO. 65806
(417) 885-0002
erwin@paragon-architecture.com

(Paragraphs deleted)
§ 1.1.11 N/A

(Paragraphs deleted)
§ 1.1.11.1 N/A

§ 1.1.11.2 N/A

§ 1.1.12 Other Initial Information on which the Agreement is based:

TBD

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Architect shall appropriately **propose adjustment to** the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use **Paragon Architecture, LLC. document titled, "Exhibit D: Digital Data Transmittal Agreement"** to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in **Paragon Architecture, LLC. document titled, "Exhibit D: Digital Data Transmittal Agreement"** shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

(Paragraphs deleted)

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§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

(Paragraph deleted)
§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

(Paragraph deleted)
§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

(Paragraphs deleted)
§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

(Paragraph deleted)
§ 2.5.1 Commercial General Liability with policy limits of not less than **One million dollars** ($ **1,000,000.00**) for each occurrence and **Two million dollars** ($ **2,000,000.00**) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than **One million dollars** ($ **1,000,000.00**) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than **One million dollars** ($ **1,000,000.00**) each accident, **One million dollars** ($ **1,000,000.00**) each employee, and **One million dollars** ($ **1,000,000.00**) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than **Two million dollars** ($ **2,000,000.00**) per claim and **Four million dollars** ($ **4,000,000.00**) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 Upon request, the Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

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ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

(Paragraphs deleted)

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 **as per Exhibit A: Scope of Services** and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 **or Exhibit A: Scope of Services** are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without **written notice to** the Architect.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

(Paragraphs deleted)

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall **comply with** laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement **and** delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall **comply with the Owner's directive regarding the requirement of the project so long as it is not in violation of building code or ADA compliance.**

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, and elevations; and may include some combination of perspective sketches, or digital **representations**. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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§ 3.2.5.1 The Architect shall consider **sustainable** design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain **sustainable** design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work. **The Owner retains the right to choose alternative materials based on budget during design.**

§ 3.2.6 N/A

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

(Paragraphs deleted)

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, elevations, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements.

§ 3.3.2 N/A

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the **budget for** the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

(Paragraphs deleted)

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the **draft of the Contract for Construction and corresponding Exhibit A: Insurance and Bonds, any Supplementary Conditions to the A201-2017 General Conditions of the Contract for Construction,** and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3 **and Exhibit A: Scope of Services.**

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner **in writing** of any adjustments to the **budget for** the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

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§ 3.5 Permitting and Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in **(1) permitting and review process with Authorities Having Jurisdiction;** (**2**) obtaining either competitive bids or negotiated proposals; (**3**) confirming responsiveness of bids or proposals; (**4**) determining the successful bid or proposal, if any; and (**5**) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

(Paragraphs deleted)

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents, **in accordance with Exhibit A: Scope of Services.**

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- **.1** facilitating the distribution of Bidding Documents to prospective bidders;
- **.2** organizing and conducting a pre-bid conference for prospective bidders;
- **.3** preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- **.4** organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, **the** Architect shall consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

(Paragraphs deleted)

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- **.1** **facilitating** the **distribution** of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- **.2** organizing and participating in selection interviews with prospective contractors;
- **.3** **preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda.**

§ 3.5.3.3 If the Proposal Documents permit substitutions, **the** Architect shall consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

(Paragraphs deleted)

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction **and its associated Supplementary Conditions**. If the Owner and Contractor modify AIA Document A201–2017 **or the associated Supplementary Conditions**, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

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§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

(Paragraphs deleted)

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3 **in accordance with Exhibit A: Scope of Services**, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site **observations** to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner **in writing** (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work**, in writing.**

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall **request** inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents **in consultation with the Owner.**

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017 **or in the associated Supplementary Conditions**, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

(Paragraphs deleted)

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

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§ 3.6.4 Submittals

(Paragraphs deleted)

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

(Paragraphs deleted)

§ 3.6.5.1 The Architect may **authorize** minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

(Paragraphs deleted)

§ 3.6.6.1 The Architect shall:

- **.1** conduct **site observations** to determine the date or dates of Substantial Completion and the date of final completion;
- **.2** issue Certificates of Substantial Completion;
- **.3** forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- **.4** issue a final Certificate for Payment based upon a final **site observation** indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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§ 3.6.6.2 The Architect's **site observations** shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, **with** additional compensation, **unless marked otherwise in Exhibit A: Scope of Services,** conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

(Paragraphs deleted)

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in **Exhibit A: Scope of Services** as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

(Table deleted)

§ 4.1.2 Description of Supplemental Services

(Paragraphs deleted)

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

See Exhibit A: Scope of Services and Exhibit C: Hourly Bill Rates

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

See Exhibit A: Scope of Services and Exhibit C: Hourly Bill Rates

§ 4.1.3 N/A

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 **or as per Exhibit A: Scope of Services**, shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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(Paragraphs deleted)

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need.

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, **value engineering or redesign after completion of Design Development, Construction Documents, or Bidding Phases;**

.2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

.3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;

.6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.7 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,

.8 Assistance to the Initial Decision Maker, if other than the Architect;

.9 Owner-initiated design changes to Instruments of Services based on proposed cost savings, or changes from previous direction. Compensation at hourly rates as per Exhibit C;

.10 Hazardous Waste: Any hazardous waste or asbestos required to be removed, encapsulated or otherwise contained during the course of this project will result in Additional Services. Architect will additionally be indemnified from any and all liability associated with removal, encapsulation or containment of hazardous waste or asbestos.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;

.2 Responding to **an extensive number of** Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker; **or**,

.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

.1 **Two** (**2**) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

.2 **N/A**

.3 **One** (**1**) **site observation visit** for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 **One** (**1**) **site observation visit** for any portion of the Work to determine final completion.

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.5 Any subsequent site observation visits associated with achieving Substantial Completion or Final Completion will be billed by the Architect on an hourly basis as per Exhibit C: Hourly Bill Rates.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than **45** days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services **at hourly bill rates as per Exhibit C: Hourly Bill Rates,** to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within **Sixteen** (**16**) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

(Paragraphs deleted)

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

(Paragraph deleted)

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

5.2.1 N/A

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

(Paragraph deleted)

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

(Paragraph deleted)

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

(Paragraphs deleted)

§ 5.7 N/A

(Paragraphs deleted)

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§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or **suspected** defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service **so that the Architect may take measures to minimize the consequences of such a defect.**

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 N/A

ARTICLE 6 COST OF THE WORK

(Paragraphs deleted)

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar

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conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, **as** identified as the Architect's responsibility in Section 4.1.1, as **an Additional** Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within **60** days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 authorize rebidding or renegotiating of the Project within a reasonable time;
.3 terminate in accordance with Section 9.5;
.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
.5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.2 and 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work,the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3.In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

(Paragraphs deleted)

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner, **Contractor or Sub-Contractor, or anyone for whom the Client is legally liable makes, consents to, allows, authorizes or approves changes to any Instruments of Service (eg: plans, drawings, reports, specifications or other documents) prepared by the Architect** uses the Instruments of Service without retaining the authors of the Instruments of Service, and these changes are not approved in writing by the Architect, the Client recognizes that such changes and the results thereof are not the responsibility of the Architect nor Architect's consultant(s). Furthermore, the Owner releases the Architect and Architect's consultant(s) from all claims and causes

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of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

(Paragraphs deleted)

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction **and its associated Supplementary Conditions.** The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

(Paragraphs deleted)

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding

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dispute resolution shall be the following:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 8.3 of this Agreement

[X] Litigation in a court of competent jurisdiction **in Greene County, Missouri.**

[ ] Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration (N/A)
(Paragraphs deleted)
§ 8.3.1
§ 8.3.1.1
§ 8.3.2
§ 8.3.3

§ 8.3.4 Consolidation or Joinder (N/A)
(Paragraphs deleted)
§ 8.3.4.1
§ 8.3.4.2
§ 8.3.4.3

§ 8.4 N/A

ARTICLE 9 TERMINATION OR SUSPENSION

(Paragraphs deleted)
§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted, **except where the Architect has failed to perform his duties as set forth in the contract. Because of the substantial cost incurred by the Architect to stop and restart a project once it is underway, should this project's progress be halted at any time for 30 or more days by the Owner, for any reason, a project restart fee of 10% of the total fee earned to date will be due and payable immediately.**

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice **except where the Architect has failed to perform his duties as set forth in the contract.**

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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§ 9.5 N/A

§ 9.6 If the Owner terminates this Agreement, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

$1,000.00

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

(Paragraphs deleted)

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction **and its associated Supplementary Conditions**.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. **Should additional photos be needed in the future, the Owner agrees to provide reasonable access to the facility.** However, the Architect's materials shall not include the Owner's

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confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, **and as per Exhibit A: Scope of Services**, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum
(Insert amount)

$255,000.00 base fixed fee

- Includes architectural design; and engineering professional services (Civil, MEP, Structural) as pass-through expenses.
- *Plus* anticipated reimbursables (mileage, project website, printing) estimated $8,000.00.
- *Does not include* Supplemental Services. See item 11.1.3.

.2 Percentage Basis
(Insert percentage value)

( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

Supplemental Services recommended by Architect for this project, pending Owner selection, are not included in the base fixed fee. The list of recommended supplemental services with fee:

- Geotechnical Report, including geological records review and site reconnaissance due to known historical mining activity in the area: $10,900.00
- Milestone Cost Estimating: $16,500.00

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§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See Exhibit A: Scope of Services and Exhibit C: Hourly Bill Rates

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

See Exhibit A: Scope of Services and Exhibit C: Hourly Bill Rates

§ 11.4 N/A

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	**Fifteen**	percent (	**15**	%)
Design Development Phase	**Twenty**	percent (	**20**	%)
Construction Documents Phase	**Forty-five**	percent (	**45**	%)
Permitting & Procurement Phase	**Five**	percent (	**5**	%)
Construction Phase	**Fifteen**	percent (	**15**	%)
Total Basic Compensation	one hundred	percent (	100	%)

(Paragraphs deleted)
§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit C: Hourly Bill Rates

(Table deleted)
(Paragraphs deleted)
(Table deleted)
§ 11.8 Compensation for Reimbursable Expenses
(Paragraphs deleted)
§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation **to/from project site** and authorized out-of-town travel and subsistence;
.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
.3 Permitting and other fees required by authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, and standard form documents;
.5 Postage, handling, and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

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.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;

.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;

.9 All taxes levied on professional services and on reimbursable expenses;

.10 Site office expenses;

.11 **NA**

.12 Other similar Project-related expenditures;

.13 **Architect's project website for hosting and managing project communication and documentation.**

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus **Zero** percent (**0** %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

§ 11.10 Payments to the Architect
(Paragraphs deleted)
§ 11.10.1 Initial Payments
§ 11.10.1.1 An initial payment of **Zero** ($ **0.00**) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 N/A

§ 11.10.2 Progress Payments
(Paragraphs deleted)
§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid **Thirty** (**30**) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

1.5 % monthly

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner **upon request.**

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

12.1 The Architect will suspend Work on the Project if invoices become thirty (30) days past due (60 days from date of invoice). On invoices not paid in sixty-five (65) days, the Architect reserves the right to place a lien on the subject parcel. In the event that Paragon Architecture, LLC. engages legal counsel for the collection of any bills/invoices outstanding under this Agreement, the Owner/Client agrees to pay attorney's fees and costs

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incurred by the Architect in the collection of the accounts due it by Owner/Client. The Architect and their consultants shall not be responsible for any problems caused by time delays resulting from non-payment.

12.2 The Architect shall not release documents prepared by them or signed and sealed drawings on delinquent accounts.

12.3 The Client/Owner understands and agrees that the Architect's Basic Services under this Agreement include project site observation and review of the Contractor's performance. Should the Client/Owner elect to exclude the Architect from involvement in any portion of the construction phase of the Project, the Client/Owner assumes all responsibility for interpretation of the Construction Documents and for construction observation and waives any claims against Architect that may be in any way connected thereto. To the extent provided by law, the Client/Owner agrees to indemnify and hold harmless Architect from any loss, claim, or cost arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Construction Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the Architect. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation of the Owner's rights or defenses with regard to any applicable sovereign, governmental or official immunities and protections as provided by federal and state constitutions, statutes, and laws.

12.4 If, due to Architect's omission, a required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event shall the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the project.

12.5 In recognition of the relative risks, rewards and benefits of the project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees that, to the fullest extent permitted by law, and not withstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Architect for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes shall not exceed the fees paid by the Owner. Higher limits of liability may be negotiated for additional fee.

12.6 To assist in Paragon Architecture's tax compliance, upon final acceptance, the Contracting Officer or an Authorized Representative of the owner of the building, agrees to execute any documents related to Section 179D of the Internal Revenue Code. Paragon Architecture will be responsible for preparing these documents, all accompanying documentation and the contents therein. Paragon Architecture, LLC. will be designated the sole Section 179D beneficiary.

12.7 Stamp on Drawings: Architect shall not be liable for any plans or specifications produced under this agreement until such drawings are stamped as approved by all Authorities Having Jurisdiction.

12.8 After five (5) years from Substantial Completion, any legal cost arising to defend third party claims made against the Architect in connection with the project shall be borne by the Owner.

12.9 The Owner and Architect agree, that due to the nature of construction, certain costs and changes may be required during the project and that a Design & Construction Contingency be included in the Cost of the Work as outlined in Section 6.3. Owner agrees to establish a Design & Construction Contingency of 4% of the Cost of Work within the project budget for Owner changes in the construction and unknown conditions of the project, and for omissions, ambiguities or inconsistencies in the construction documents. The Design & Construction Contingency shall be allocated, respectively, to construction changes and unknown conditions (3/4) and to construction documents (1/4). The Design & Construction Contingency shall be used, as required, to pay for any such increased cost and changes due to construction modifications or adjustment to the construction documents. Any amount remaining in the Contingency Fund upon completion of the Project will be credited to the Owner.

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12.10 It is acknowledged that the Architect has been requested by the Owner to subcontract certain laboratory testing services on behalf of the Owner. The Architect agrees to do so in reliance upon the Owner's assurance that the Owner shall make no claim or bring any action at law or in equity against the Architect as a result of these subcontracted services. The Owner understands that the Architect has not performed any independent evaluation of the testing laboratory's data and the Owner shall not rely upon the Architect to determine the quality or reliability of the testing laboratory's reports. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from the services performed by the testing companies and for tests recommended by the Architect and not completed per the Owner's direction, except only those damages, liabilities or costs caused by the negligence or willful misconduct of the Architect.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect

.2 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

Exhibit A: Scope of Services;
Exhibit C: Hourly Bill Rates;
Exhibit D: Digital Data Transmittal Agreement;
Paragon Architecture "Fee Proposal for Professional Design Services" dated September 17, 2021;
A201-2017 General Conditions for of the Contract for Construction (reference);
Supplementary Conditions to the A201-2017

Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

.3 Other documents:
(List other documents, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

CITY OF JOPLIN	**PARAGON ARCHITECTURE, LLC.**
OWNER (Signature)	**ARCHITECT** (Signature)
David Hertzberg, Public Works Director	Brad Erwin, President
(Printed name and title)	*(Printed name, title, and license number, if required)*

(Table deleted)(Paragraphs deleted)

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1310 S Main St
Joplin, MO 64801
417-885-0002
paragonarchitecture.com

EXHIBIT A: Scope of Services

September 17, 2021

LEGEND			PROJECT INFO	
X	Included as Basic Service		Project:	Joplin Fire Station 7
#	Number Included-Quantity		Client:	City of Joplin
A	Additional Service		Use:	New Fire Station
S	Supplemental Service		Size:	approximately 8,500 sf total
R	Reimbursable Expense			
N	Excluded/Not in Contract (or blank)			
			Construction Method:	Design/Bid/Build
	Client=CL Architect =AR Consultant=C		Schedule:	SD to begin in mid-October 2021

	BASIC SERVICES		#	Responsibility/Notes
S	0.02.1	Geotechnical Engineering (Soil Borings)	C	Terracon Consultants – supplemental service
	0.02.2	Topographical, Boundary, Public Utilities Survey		excluded – survey previously performed
	0.02.3	Private Utilities Survey		excluded – no private utilities assumed on site
X	0.02.4	Civil Engineering	C	Olsson – included in base fee
	0.02.5	Landscape Architecture		excluded
X	0.02.6	Structural Engineering	C	Toth & Associates – included in base fee
X	0.02.7	Mechanical, Electrical, Fire Protection Engineering	C	Olsson – included in base fee
X	0.02.8	Audio/Visual	C	Olsson – back boxes and conduit included (similar to scope as FS2),
X	0.02.9	Telecom/Data	C	Olsson – back boxes and conduit included (similar to scope as FS2),
X	0.02.10	Security/CCTV	C	Olsson – back boxes and conduit included (similar to scope as FS2),
	0.02.11	Specialty Lighting Design		
X	0.02.12	Kitchen/Food Service Design		Paragon & GLMV – basic kitchen design included (similar scope as FS2)
	0.02.12	Commissioning Agent		
A	0.02.13	Special Inspections & Third Party Material Testing	C	excluded – will be additional service procured at later date

	PROGRAMMING		#	Responsibility/Notes
X	1.01.1	Review Furnished Program, Budget, Schedule		
	1.03	Agency Consulting/ Review/ Approval		
X	1.03.1	Zoning and Land Use review		
X	1.05	Programming		
	1.05.1	Programming Charrette		
	1.06	Space Schematics/ Flow Diagrams		
	1.06.1	Square Foot, Area, and Space Requirements Analysis		
	1.07	Existing Facility Survey for As-Built Drawings		
	1.09	Economic Feasibility Study		
X	1.32	Project Budgeting and Preliminary Cost Estimate		High level SF cost provided at Programming Phase.
	1.41	Presentation(s) or Board Meetings		
X	1.42	Site Visit(s)	1	

	MASTER PLANNING AND SITE ANALYSIS		#	Responsibility/Notes
	2.03.1	Pre-Application Conference		
X	2.03.2	Planning and Zoning Coordination		
	2.09	Economic Analysis		
	2.13	Site Analysis and Selection		
X	2.14	Site Development Planning		
	2.19	Zoning Process Assistance		
X	2.21	Site Plan(s) Design Documentation		
	2.21.1	Revision(s) to Site/ Master Plan		
	2.32	Project Budgeting and Preliminary Cost Estimate		
	2.33	Fundraising Material		
	2.41	Presentation(s) or Board Meetings		

	SCHEMATIC DESIGN		#	Responsibility/Notes
X	3.01.1	Client Meetings(s) – Design Review	3	
	3.03	Agency Consulting / Review / Response		
X	3.03.2	Pre-Application Conference	1	
X	3.21	Architectural Design/ Conceptual Scheme(s)	1	

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X	3.21.1	Revision(s) to Conceptual Design	1	
	3.21.2	Exterior Rendering(s)		
	3.21.3	Interior Rendering(s)		
X	3.32	Estimate Probable Construction Costs	1	GLMV – supplemental service
	3.33	Presentation Rendering Board(s)		
	3.41	Presentation(s) or Board Meetings		

	DESIGN DEVELOPMENT		**#**	**Responsibility/Notes**
X	4.01.1	Client Meetings(s) – Design Review	6	4 project design meetings, 2 interior design meetings
	4.01.4	Project Development Review Meeting(s)		
X	4.21	Architectural Development Documentation		
X	4.21.1	Minor Revisions to Design Development Documents	1	
X	4.21.2	Exterior Rendering(s)	1	
	4.21.3	Interior Rendering(s)		
R	4.22.2	Progress set(s) 100% DD		Physical prints invoiced as reimbursable expense.
	4.27.1	Furniture layouts and selections		
X	4.29.1	Outline Specifications		
X	4.32	Estimate Probable Construction Costs	1	GLMV – supplemental service
	4.33	Presentation Rendering Board(s)		
	4.34	Presentation(s) Board Meetings		

	CONSTRUCTION DOCUMENTS		**#**	**Responsibility/Notes**
X	5.01.1	Const. Documents Coordination Meeting(s)	3	Milestone review meetings.
X	5.01.2	Documents Sign-Off Meeting	1	
	5.02.1	Pre-Permit Application Conference		
X	5.03	Building Permit Submittal	1	
X	5.03.1	Agency Reviews and Responses		
X	5.21	Architectural Construction Documentation		
X	5.21.1	Final Code Compliance Matrix(s)	1	
	5.21.2	Casework/Millwork Detailed Document Drawing(s)		
R	5.22.2	Progress set(s) 100% CD		Physical prints invoiced as reimbursable expense.
X	5.23	Respond to Permit Review Comments		
X	5.29	Interior Design and Finish Selections		Planned to occur during Design Development Phase.
	5.30	Fast Track Construction Coordination		
S	5.32	Estimate Probable Construction Costs	2-3	GLMV – supplemental service
X	5.33	Final Rendering(s)	1	
	5.34	Presentation(s) Board Meetings		
A	5.99	Value Engineering or Redesign During or After CD Phase		

	SPECIFICATIONS		**#**	**Responsibility/Notes**
X	5.28	Book Specification	1	Physical prints invoiced as reimbursable expense.
	5.28.1	Sheet Specifications on Drawings		
	5.28.2	Red Mark Client Supplied Specifications		

	BIDDING/PRICING /PERMITTING		**#**	**Responsibility/Notes**
X	6.01	Respond to Bidder Questions		
X	6.02	Pre-Bid Conference	1	
X	6.03	Prepare Addendums		
X	6.37	Analysis of Alternates/Substitutions		
X	6.38	Analysis of Bids		
X	6.39	Attend Bid Opening Conference	1	
	6.40	Construction Contract Agreements		
R	6.97	Bid Sets		Physical prints invoiced as reimbursable expense.
A	6.99	Value Engineering During or After Bidding/Pricing		

	CONSTRUCTION		**#**	**Responsibility/Notes**
X	7.01	Administration		
X	7.01.1	Pre-Construction Conference	1	
X	7.01.2	Construction Progress Meetings	20	Anticipated attendance at 2 OAC meetings per month during construction phase.
	7.34	Presentation(s)/Board Meetings		
X	7.41	Office Construction Administration		
X	7.41.1	RFI Contractor Coordination		
X	7.41.2	Review Shop Drawings and Submittals		
X	7.41.3	Respond to Contractor RFIs/ASIs		

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X	7.41.4	Review Contractor Pay Requests	10	Anticipated 1 pay application review per month throughout construction phase.
X	7.42	Site/ Field Observation Visit(s)	10	1 site visit anticipated per month during construction phase.
X	7.42.1	Construction Observation Reports	10	Created and distributed following each SOV.
X	7.42.2	Substantial Completion Inspection	1	
X	7.42.3	Punch List Validation Visit at Final Completion	1	
X	7.46	Prepare Change Orders		
X	7.49	Project Closeout		
X	7.50	Review O&M Manuals		
X	7.52	Prepare Record Drawings	1	1 set of “as-constructed’ documents to be prepared.

	POST OCCUPANCY SERVICES		**#**	**Responsibility/Notes**
	8.51	Start-up Assistance		
	8.53	Warranty Assistance		
X	8.53.1	One Year Warranty Observation/ Report	1	

	SUSTAINABLE DESIGN STRATEGIES		**#**	**Responsibility/Notes**
		Proposed LEED (Certified) Level		
	10.01	Identify & Develop Sustainable Design Goals		
	10.01.1	Assist in Developing Sustainable Design Strategies		
	10.01.2	Identify Likely & Potential LEED Credits to Pursue		
	10.02	Sustainable Design Strategies		
	10.02.1	Envelope		
	10.02.2	Daylighting		
	10.02.3	Mechanical & Electrical Systems		
	10.02.4	Water Use Reduction & Storm Water Management		
	10.02.5	Materials & Resource Conservation		
	10.02.6	Indoor Environmental Quality		
	10.03	Whole Building Energy Analysis		
	10.04	LEED Certification & Submission Fees		

	ADDITIONAL SERVICES		**#**	**Responsibility/Notes**
	10.11	Scale Model Construction		
	10.12	Life Cycle Cost Analysis		
	10.14	Energy Studies		
	10.70	Tenant Related Services		
	10.71	Graphic Design		
	10.73	Non-Building Equipment Selections		
	10.74	Project Promotion/Public Relations		
	10.75	Leasing Brochures or Fire Evacuation Plans		
	10.76	Expert Witness or Other Legal Proceedings		
	10.77	Materials and System Testing		
	10.81	Mock Up Services		
	10.82	Still Photography		
	10.83	3D CADD Model Fly Through		
	10.86	Digital Data Transmission to Owner’s Consultant		

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EXHIBIT C – HOURLY BILLING RATES

Administrative Assistant:	$50 per hour
Accounting/Management Support:	$75 per hour
BIM Technician:	$85 per hour
Project Administrator:	$85 per hour
Interior Designer:	$100 per hour
Contract Administrator:	$100 per hour
Project Coordinator:	$100 per hour
Job Captain:	$100 per hour
Project Manager:	$130 per hour
Project Director:	$150 per hour
Principal Architect:	$150 per hour

Engineering

Administrative Assistant	$55 per hour
Draftsman	$65 per hour
Project Engineer - Level I	$65 per hour
Project Engineer - Level II	$80 per hour
Project Engineer - Level III	$90 per hour
Project Engineer - Level IV	$105 per hour
Project Engineer - Level V	$115 per hour
Project Engineer – Level VI	$130 per hour
Project Manager	$160 per hour
Principal Engineer	$185 per hour

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September 17, 2021

Client: City of Joplin
Project: Joplin Fire Station 7
RE: Fee Proposal for Professional Design Services

Thank you for the opportunity to submit a fee proposal for the new Fire Station 7 to be located at East 30th Street and South Jaguar Road in Joplin, MO. We look forward to continuing our working relationship throughout the process of this project.

Proposed scope of work:

- Design services for Fire Station 7, located at East 30th Street and South Jaguar Road in Joplin, MO
- Program and overall floor plan to be nearly identical to Fire Station 2 with the following potential anticipated improvements:
  - Additional apparatus bay
  - Improvements to dorm room/restroom relationship
  - Enhanced decontamination
  - Shift specific food lockers
  - Alternative HVAC system
- Design/Bid/Build delivery method anticipated.

See attached Exhibit A for proposed scope of services and attached scheduled for proposed project schedule.

We are proposing the following Professional Design Services:

Basic Services:	Fixed fee of $255,000.00
Supplemental Services:	
Geotechnical Report, including geological records review and site reconnaissance due to known historical mining activity in the area	$10,900.00
Milestone Cost Estimating	$16,500.00
Mileage, project website and printing invoiced as reimbursable expenses	estimated $8,000.00
Total:	estimated $290,400.00

We will follow up with the formal, finalized contract once this fee proposal is accepted.
In reviewing this fee proposal for professional design services, please let me know if you have any questions.

Thank you for the opportunity,

Jessica Struckhoff, AAIA
Project Manager
Paragon Architecture

_____
City of Joplin

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General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

Joplin Fire Station #7 - #21-658
Located at corner of East 30th Street and South Jaguar Road.

THE OWNER:
(Name, legal status and address)

City of Joplin
602 S. Main Street
Joplin, MO. 64801

THE ARCHITECT:
(Name, legal status and address)

Paragon Architecture, LLC.
637 W. College Street
Springfield, MO. 65806

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ADDITIONS AND DELETIONS:
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15 CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

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G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

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§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

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specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

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§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- **.1** The change in the Work;
- **.2** The amount of the adjustment, if any, in the Contract Sum; and
- **.3** The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

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.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

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.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

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or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

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approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- **.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- **.1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

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§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

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§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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SUPPLEMENTARY CONDITIONS TO THE A201-2017 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION **Joplin Fire Station #7 - #21-658**

The following supplements modify, delete from or add to the AIA Document A201–2017, "General Conditions of the Contract for Construction." Where any Article of the General Conditions is modified or any paragraph, subparagraph or clause thereof is modified or deleted by these supplements, the unaltered provisions of that Article, Paragraph, Subparagraph, or Clause shall remain in effect.

INDEX

Page 3, column 2: APPEND as follows: "Architect's Inspections/Observations"

ARTICLE 1: GENERAL PROVISIONS

1.1.1 REVISE to read:

"…prior to the execution of the Contract, included in the Project Manual, other documents listed…", and;

STRIKE the last sentence beginning, "Unless specifically enumerated…."

1.2.4 ADD new subparagraph 1.2.4:

"In case of conflict in or between any of the Contract Documents, or provisions thereof, the Contractor will be deemed to have estimated on, and agreed to provide, the greater quantity or better quality of materials and work unless the Contractor shall have, before submission of bid, asked for and obtained written decision of the Architect as to which method or materials will be required."

1.6.1 APPEND as follows:

If "giving notice" is provided by electronic transmission (i.e.: email), the transmission requires a "*Read Receipt.*"

1.6.2 APPEND as follows:

A "Notice of Claim," however, shall not be transmitted nor accepted via electronic transmission (i.e.: email).

1.7 REVISE to read:

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties agree to use custom Paragon Architecture, LLC. document titled, "**Exhibit D: Digital Data Transmittal Agreement,**" to establish the protocols for the development, use, transmission, and exchange of digital data.

1.8 REVISE to read:

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in custom Paragon Architecture, LLC. document titled, "**Exhibit D: Digital Data Transmittal Agreement**," shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to the building information model, and each of their agents and employees.

ARTICLE 2: OWNER

2.1.2 DELETE entire paragraph beginning: "The Owner shall furnish to the Contractor…"

2.2 DELETE entire section beginning: "Evidence of the Owner's Financial Arrangements" and subparagraphs related to 2.2

2.3.1 APPEND the paragraph with the following sentence:

The Contractor shall provide information or assistance as the Architect or Owner may request in connection with obtaining permits, only when such assistance does not add cost to the Contractor.

2.3.4 REVISE the first sentence to read:

"The Owner shall furnish surveys, if available, describing…"

REVISE the remaining paragraph to read:

"…accuracy of information furnished by the Owner but only after first diligently reviewing such information and advising Owner of discrepancies or problems the Contractor observes. The Contractor shall exercise proper precautions relating to the safe performance of the Work in its reliance on Owner-supplied information. Other than the metes and bounds noted in the survey, if any, Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines, or the presence or absence of easements. The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications, and other Construction Documents and has no duty to notify Contractor of same. Owner does not warrant the adequacy or accuracy of any Drawings, Plans, Specifications, or other Construction Documents."

2.3.5 REVISE the second sentence to read:

"…under the Owner's control and reasonably necessary and relevant to…"

2.4 REVISE the first sentence to read:

"…Work that is defective or otherwise not in accordance…"

"…by Section 12.2 or repeatedly or materially fails…"

"…Contract Documents or fails to supply sufficient skilled workers or suitable materials or equipment, the Owner may…"

ARTICLE 3: CONTRACTOR

3.2.5 ADD new subparagraph 3.2.5:

"The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where the requested information is available to the Contractor from a careful study of the Contract Documents, field conditions, other Owner- provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation."

3.5.1 REVISE the last sentence to read:

"If required by the Architect or Owner, the Contractor shall furnish…"

APPEND with the following sentence:

"All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in Article 12 hereof."

3.5.3 ADD new subparagraph 3.5.3:

"Each Subcontractor, Sub-Subcontractor, or Supplier shall guarantee to the General Contractor all work, portions of work, and items supplied, as the case may be, against defects resulting from the use of any inferior materials, equipment or workmanship for one (1) year from the date of final completion or beneficial occupancy of the project by the Owner, whichever is earlier. It shall be the General Contractor's responsibility to ensure compliance to the warranty by each Subcontractor, Sub-Subcontractor, or Supplier. In any case where, in fulfilling the requirements of this Contract or Warranty, the Contractor, Subcontractor, Sub-subcontractor, or Supplier disturbs any other work in place or under contract, he shall be responsible to perform, arrange, and pay for restoring such to original condition."

3.6 REPLACE Subparagraph 3.6 in its entirety with the following:

TAXES - The Owner will exercise their tax-exempt status and require that all bid amounts NOT include sales tax on materials. The Owner will furnish a copy of the Exemption from Missouri Sales and Use Tax letter from the State of Missouri and a Project Exemption Certificate for the construction of this Project that must be provided to all subcontractors, and material suppliers. All invoices must be retained by the Construction Manager for a period of five (5) years and are subject to audit by the Missouri Department of Revenue.

3.7.3 REVISE to read:

"If the Contractor or any person or entity for whom Contractor is responsible, including its Subcontractors performs Work…"

3.9.1 REVISE first sentence to read:

"The Contractor shall supervise and direct the Work competently and efficiently in accordance with the Contract Documents. The Contractor shall employ…"

3.10.3 APPEND last sentence with:

"…Owner and Architect. Whenever it becomes apparent from the latest schedule or otherwise that any completion date on the original schedule, subject to adjustment as provided under the Contract Documents, may not be met, Contractor shall take some or all of the following actions at no additional cost to the Owner to put the Project back on schedule: (i) increase construction manpower in such quantities as will eliminate the backlog of Work; (ii) increase the number of working hours per shift, shifts per working day, working days per week or the amount of construction equipment, or a combination of the aforesaid, which will substantially eliminate the backlog of Work; (iii) reschedule activities to achieve maximum practical concurrences of accomplishment of activities. If Contractor fails to take any of the above actions within seventy-two (72) hours after receiving written notice from the Owner or Architect of the slip in schedule, the Owner may, but shall not be obligated, to take action to attempt to put the Project back on the original schedule, subject to the adjustments permitted hereunder, and deduct the cost of such actions from the Contract Sum. If the balance of the unpaid Contract Sum is insufficient to

cover such costs, the Contractor shall reimburse the Owner for such costs within ten (10) days of demand therefor by Owner."

3.11.1 ADD new Subparagraph:

The Contractor shall keep up-to-date a complete "as built" set of white prints, which shall be corrected to show all changes in layout from the original Drawings and Specifications concerning architectural, civil, structural, mechanical, electrical items and General Work not issued as detail sheets including as applicable the location of capped pipes by two dimensions, depth below grade or invert elevation; actual invert elevation for all soil and waste; additional valves, junction boxes, etc.. and change orders issued during construction. This set of drawings shall be kept on the project and used only for this purpose.

3.13 APPEND sentence with:

"…materials or equipment. During the progress of the Work, the Contractor shall keep the premises free of waste materials, rubbish, and other debris resulting from the Work. At the completion of the work, the Contractor shall remove all tools, appliances, construction equipment, machinery, waste materials and debris, and surplus materials and shall leave the site clean and ready for occupancy by the Owner If the Contractor fails to do so, Owner may upon seven (7) days' prior written notice arrange for such removal at the Contractor's cost."

3.16 APPEND with:

"…wherever located. Other representatives of the Owner, testing agencies and governmental agencies shall have access to the Work at reasonable times for their observation, inspection and testing. The Contractor shall provide proper and safe conditions for such access. Contractor, its Subcontractors and employees of any of them shall wear appropriate identification badges at all times while on the Owner's Project site if required by Owner, and shall additionally comply fully with the Owner's visitor policies and security regulations."

3.18.1 REVISE to read:

"…hold harmless the Owner, its Board, administration, employees and agents, Architect, Architect's consultants, and agents…"

3.18.2 REVISE to read:

"…under this Section 3.18 by an employee of the Contractor, a Supplier, a Subcontractor, anyone…"

ARTICLE 4: ARCHITECT

4.2.2 REVISE to read:

from "…on-site inspections…" to "…on-site observations…"

4.2.2.1 ADD new sub-paragraph:

"The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work."

4.2.5 APPEND with:

"…in such amounts. All payments to the Contractor shall be subject to Owner's approval."

4.2.9 REVISE as follows:

from "…will conduct inspections…" to "…will conduct an on-site observation…"

4.2.12 REVISE the second sentence to read:

"When making such interpretations and decisions, the Architect will not be liable for…"

4.2.13 REVISE first sentence to read:

"The Owner's decisions on…"

ARTICLE 7 CHANGES IN THE WORK

7.2.2 ADD new Subparagraph:

The combined maximum allowable Overhead and Profit margins (from each the General Contractor and the Sub-Contractor separately) for any change order shall not exceed ten percent (10%). Bond & Insurance combined charges shall not exceed two percent (2%). Total Overhead, Profit, Bonds and Insurance shall not exceed twelve percent (12%) (from each the General Contractor and the Sub-Contractor separately).

ARTICLE 8 TIME

8.1.5 ADD new subparagraph 8.1.5:

"The Contract Time for completion of the Contract for the Project, under the **Base Bid**, as listed on the Project Timeline and mutually agreed between Owner and Contractor from the date of Commencement of the Work to Substantial Completion of the Work as defined in Subparagraph 9.8.1, including authorized adjustments thereto."

8.3.1 APPEND paragraph with:

If an extension of time is granted to the Contractor under the terms of the Contract Documents, the Contractor shall absorb all costs for General Conditions and General Requirements during the time extension; any exception will require Owner's written approval.

8.3.4 ADD subparagraph 8.3.4:

"The Contractor shall have no claim for damages against either the Owner or the Architect by reason of delay if the date of Substantial Completion of the work is within the Contract Time as defined in Subparagraph 8.1.5."

ARTICLE 9: PAYMENTS AND COMPLETION

9.3.3.1 ADD new subparagraph 9.3.3.1 as follows:

With each Application and Certificate of Payment, submit Partial/Conditional Waivers and Release of Liens; from the Contractor, subcontractors, sub-subcontractors and suppliers for the construction period covered by the previous application.

9.3.3.2 ADD new subparagraph 9.3.3.2 as follows:

Immediately, upon receipt of each Progress Payment and upon receipt of the Final Payment as provided in Article 9 of the General Conditions, the Contractor shall provide Owner with a statement under oath, acknowledging receipt of such payment and certifying that Contractor has paid all Subcontractors the sums due and owing to Subcontractors as evidenced by the Application for Payment and attached Lien Waivers. Such acknowledgment and certification will be in a form acceptable to the Architect and Owner. Contractor shall not be entitled to receive any further payments pursuant to the Agreement unless and until Contractor is in compliance with the terms of this paragraph. Contractor acknowledges the right of Owner to advise subcontractors and sub-subcontractors that Owner has made a Progress Payment or has made final payment to the Contractor. The Architect may decline to approve any Application for Payment and the owner shall not be required to make any Progress Payments or Final Payment to the contractor if the Contractor is in violation of any term or condition of this Agreement, the General Conditions of the Contract (AIA Document A201), or the Supplementary General Conditions, or if the Contractor fails to timely provide any information reasonably requested by Owner.

9.4.1 REVISE to read:

"The Architect will, within ten days after receipt of the Contractor's Application for Payment …"

9.4.2 REVISE to read:

from "…exhaustive or continuous on-site inspections…" to "…exhaustive or continuous on-site observations…"

ADD to paragraph:

The Architect tracks receipt of required pay reports for each pay application submitted for Owner's review. The Architect shall not be responsible for verifying conformance with state or federal payroll requirements.

9.6.9 ADD subparagraph 9.6.9:

With respect to Work, **5%** Retainage shall be withheld from all construction work until the Work is 100% complete. Retainage on account of Work shall be released upon the Substantial Completion of the Work, less 200% of the value of any uncompleted Work or Punch list items and the Owner's estimate of any post-Substantial Completion damages identified as "liquidated damages" and payable as per primary Owner-Contractor agreement. All Retainage shall be fully released within thirty (30) Days of Final Completion of the Work. No interest will be paid for payments due and unpaid under the Contract Documents.

9.8.1.1 ADD supplementary paragraph:

Substantial Completion of the "Work" for the Owner's "intended use" shall be further defined as the point when the LAST of each of the following has occurred:

1. The Work or contract scope has been completed with the other terms of the contract and with the Architect's plans and specifications.
2. All equipment and installation of all mechanical, electrical, plumbing, temperature controls, terminations of cabling for telephone and data, equipment start up and testing has been completed and ALL required inspections have occurred and signed off by the inspection authority.
3. The Owner has received approval from Authority Having Jurisdiction (AHJ).

9.8.3 REVISE to read:

from "…Architect will make an inspection…" to "…Architect will make a site observation…";

from "If the Architect's inspection discloses…" to "If the Architect's observation discloses…";

from "…submit a request for another inspection…" to "…submit a request for another site observation…"

APPEND Subparagraph 9.8.3 with the following sentence:

The Contractor shall reimburse the Owner for the Architect's additional services made necessary by the Contractor's failure to finally complete the Work within sixty (60) days after Project Substantial Completion. The provisions of Paragraph 8.3, Delays and Extension of Time, shall apply to this Subparagraph.

9.8.3.1 ADD subparagraph 9.8.3.1:

If additional site visits or inspections are required, Contractor shall reimburse Owner for additional costs billed by Architect.

9.9.2 REVISE as follows: from "…shall jointly inspect…" to "…shall jointly observe…"

9.10.2 APPEND paragraph with:

The Contractor shall satisfy immediately any lien or encumbrance which, because of any act or default of the Contractor, is filed against the premises, and shall indemnify and save the Owner harmless against all resulting loss and expenses, including attorney's fees. The Contractors shall provide Final Lien Waiver from all subcontractors and material suppliers before project closeout.

9.11 LIQUIDATED DAMAGES
ADD new Paragraph 9.11 and Subparagraphs 9.11.1 and 9.11.2:

9.11.1 If the Contractor refuses, neglects, or fails to complete the Work within the time stated at each Phase (or Substantial Completion Date) in the Contract, then the Contractor and the Contractor's surety, if any, shall be liable for and shall pay the Owner, not as penalty but as liquidated damages, the sum of TBD **($TBD.00)** for each calendar day that the Contractor is in default after the time stipulated in the Contract for completing the Work of each Phase until the Work is Substantially Complete. The Owner may withhold from payments due the Construction Manager, such amounts as may be assessed as liquidated damages. Upon Substantial and Final Completion of the Work, the Owner may adjust the Contract Sum by the amount of the assessed liquidated damages.

9.11.2 For each consecutive calendar day that the Work remains incomplete after the date established for Final Completion, the Owner will retain from the compensation otherwise to be paid to the Contractor the sum of TBD dollars **($TBD.00).** This amount is the minimum measure of damages the Owner will sustain by failure of the Contractor to complete all remedial work, current deficient work, clean up the project, and other miscellaneous tasks as required to complete all work specified. This amount is in addition to the liquidated damages prescribed within 9.11.1 above.

9.12 ADD new paragraph 9.12 and Subparagraph 9.12.1:

9.12 **ARCHITECT'S COMPENSATION FOR ADDITIONAL INSPECTIONS OR WORK**

9.12.1 When the Architect's services are required for inspections to verify acceptance of the Work in addition to those Inspections listed under Paragraphs 9.8 and 9.9, the Architect's compensation for such services shall be based on the Architect's invoice to the Owner. The Invoice, when approved by the Owner, shall be the basis for adjusting the Contract Sum by Change Order to compensate the Owner for the Architect's additional services.

9.13 ADD new paragraph 9.13 and Subparagraph 9.13.1:

9.13 **COMMISSIONING AGENT AND TESTING AND BALANCING CONTRACTOR'S COMPENSATION FOR ADDITIONAL INSPECTIONS OR WORK**

9.13.1 When the Commissioning Agents or Testing and Balancing Agency's additional services are required because of incomplete work as outlined in Sections 019113 and Section 230593 of the specifications, these services shall be based on the Agency's invoice to the Owner. The Invoice, when approved by the Owner, shall be the basis of adjusting the Contract sum by Change Order to compensate the Owner for the additional services.

ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY

10.3.5 REVISE to read:

The Contractor shall indemnify and hold harmless the Owner, its Board, administration, agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from (1) hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.1 DELETE second sentence beginning "If the parties…"

13.4.1 DELETE entire clause, and REVISE to read:

Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangement for such test, inspections, and approvals with an independent testing laboratory or entity selected by the Owner, or with the appropriate public authority. If required, the Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The cost of these items are included in the **Fee Proposal**. The Owner shall bear costs of test, inspections, or approvals that arise as the result of a change in laws or regulations that do not become effective and that the parties are not aware of until after bids are received or negotiations concluded. Testing and inspection requirements are more specifically set forth in a mutually approved Responsibility Matrix, with the Contractor being responsible for building permit & plan review fees, trade permits, tap fees and temporary utility installation, and inspections required of the AHJ and the Owner being responsible for utility service charges, special inspections and third party material testing.

ARTICLE 14: TERMINATION OR SUSPENSION OF THE CONTRACT

14.1.3 REVISE to read:

"If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for authorized Work properly executed as provided for in the Contract Documents."

14.4.3 STRIKE "…and the termination fee, if any…"

ARTICLE 15: CLAIMS AND DISPUTES

15.1.2 DELETE last sentence beginning: "The Owner and Contractor waive…"

15.1.5 APPEND with the following:

There shall be no increase in the Contract Sum due to an increase in Contract Time due to weather related delays, although there may be an agreement as to an increase in Contract Time as set forth in Section 15.1.6 below.

15.1.6.2 APPEND as follows:

A. Time extensions for unusually severe weather. This provision specifies the procedure for determination of time extensions for unusually severe weather in accordance with the Construction Agreement. In order for a time extension to be approved under this clause, the following conditions must be satisfied:
   i. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.
   ii. The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the contractor.

B. The following schedule of monthly anticipated adverse weather delays shall constitute the base line for monthly weather time evaluations. The contractor's schedule shall include these anticipated adverse weather delays in all weather-dependent activities. Contractor acknowledges that there will be delays in which work cannot be completed due to the weather and that a certain number of lost days are to be expected under normal weather conditions. For projects less or more than a calendar year, lost weather days shall be prorated for the months of construction in accordance with the following schedule. Anticipated weather days for allocation/proration only.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY
WORK DAYS BASED ON (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
5	5	4	4	3	3	2	2	3	4	4	5

C. Upon acknowledgement of the Notice to Proceed and continuing throughout the contract, the contractor shall record on the daily reports, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical path activities for 50 percent or more of the contractor's scheduled work day.

D. The number of actual adverse weather delays days shall include days impacted by actual adverse weather (even if weather occurred in previous month), be calculated chronologically from the first to the last day

of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in chart above, qualifying days may be converted to calendar days, giving full consideration for equivalent fair weather work days, and a contract amending the contract time will be authorized.

15.2.5 REVISE the third sentence to read:

"…shall be final and binding on the parties but subject to mediation if the parties agree at the time to mediation, and, if the parties…"

15.2.6 REVISE to read:

"Either party may file for agreed upon mediation of an initial…"

15.2.6.1 REVISE the first sentence to read:

"…demand in writing that the other party file for mediation if the parties have agreed to mediation at the time."

15.3.1 APPEND to read:

"…condition precedent to binding dispute resolution if the parties have agreed to mediation at the time."

15.3.2 REPLACE Subparagraph 15.3.2 in its entirety with the following:

The parties shall endeavor to resolve their claims by mediation. A request for mediation shall be filed in writing with the other party to the Agreement. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

15.4 DELETE entire 15.4 paragraphs and subparagraphs related to Arbitration, and Consolidation or Joinder.

ARTICLE 16: REGULATIONS

ADD new article:

16.1 **Prevailing Wage** (Missouri statute Section 290.250 RSMo)

Not less than the prevailing hourly rate of wages, as set out in the wage order attached to and made part of the specifications for work under the contract, must be paid to all workers performing work under the contract. The Construction Manager will forfeit a penalty to the contracting public body of $100 per day (or portion of a day) for each worker that is paid less than the prevailing rate for any work done under the contract by the Construction Manager or by any subcontractor.

16.2 **Safety Training** (Missouri statute Section 292.675 RSMo)

The Construction Manager and all subcontractors to the contract must require all on-site employees to complete the ten-hour safety training program required under Section 292.675, RSMo, if they have not previously completed the program and have documentation of done so. The Construction Manager will forfeit a penalty to the contracting public body of $2500 plus an additional $100 for each employee

employed by the Construction Manager or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training.

16.3 **Boycott Israel** (Missouri statute Section 34.600 RSMo)

For contracts $100,000 and greater, Construction Manager /Contractor/Vendor certifies it is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

COUNCIL BILL NO. 2021-151 ORDINANCE NO.

AN ORDINANCE approving an Agreement with Paragon Architecture, LLC in the not to exceed amount of Two Hundred Ninety Thousand Four Hundred and 00/100 dollars ($290,400.00) for architectural design services for Joplin Fire Station #7 and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin; and containing an emergency clause.

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

Section 1. That the Agreement with Paragon Architecture, LLC in the not to exceed amount of Two Hundred Ninety Thousand Four Hundred and 00/100 dollars ($290,400.00) for architectural design services for Joplin Fire Station #7, for the City of Joplin, a true and accurate copy of said agreement being attached hereto and incorporated herein, be, and the same, is hereby approved.

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

Section 3. That upon the final approval and acceptance of the consultant's work under said contract, in substantial conformance with the attached exhibits, in writing by the Director of Public Works and his certification to the effect to the Director of Finance, the consultant shall be paid from the Public Safety Sales Tax fund.

Section 4. That the City hereby declares that this Ordinance dealing with a public improvement, is an emergency within the meaning of Section 2.12(6) of the HOME RULE CHARTER of the City of Joplin, Missouri, and as such, this Ordinance shall become effective immediately upon its passage. Furthermore, approval of this council bill will allow this agreement to be executed in the City's Fiscal Year 2021, and is therefore an emergency.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of_____, 2021, by a vote of_____.

ATTEST: Ryan D. Stanley, Mayor

Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

Peter C. Edwards, City Attorney

Council Bill 2021-151

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

_____

Leslie Haase, Director of Finance

AGREEMENT
BETWEEN
CITY OF JOPLIN AND

CITY		CONTRACTOR	
CITY OF JOPLIN **602 S. MAIN STREET** **JOPLIN, MO 64801**		Name: **Rosetta Construction, LLC** Address: P.O. Box 14024 Springfield, MO 65814	
Attention:		Attention: Mr. Victor Rosetta	
Department:		Phone:	Fax:
Phone:	Fax:		

THIS AGREEMENT, made and entered into this ____ day of _____, 2021, by the parties identified above.

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

JOPLIN CREEK INTERCEPTOR REPLACEMENT

The City and Contractor agree to the following:

1. Manner and Time for Completion. The Contractor will furnish all supervision, labor, tools, equipment, materials and supplies necessary to perform, and to perform said work at Contractor's own expense in accordance with the contract documents and any applicable City ordinances and state and federal laws within 180 calendar days from the date Contractor is ordered to proceed, which order shall be issued by the Director of Public Works within 30 days after the date of this contract.

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

3. Insurance Requirements. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City of Joplin, insurance of such types and in such amounts as may be necessary to protect it and the interests of the

City of Joplin against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City of Joplin. Regardless of such approval, it shall be the responsibility of the contractor to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under the Contract Documents.

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

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

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

As of January 1, 2021, the minimum coverage for the insurance referred to herein shall be as set out below:

a. Workers' Compensation…. Statutory coverage per RSMo 287.010 et seq

Employer's Liability……. $1,000,000.00

b. Commercial General Liability Insurance, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and endorsed for blasting if blasting required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Two Million Nine Hundred Forty Thousand Eight Hundred Sixty-eight and no/100 Dollars ($2,940,868.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Forty-one Thousand One Hundred Thirty and no/100 Dollars ($441,130.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least $1,000,000 for all claims to property arising out of a single occurrence and at least $100,000 to any one owner with respect to damages to property. Contractor agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorneys' fees of Contractor, its employees, officers or agents. Contractor agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

c. Automobile Liability Insurance covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at least Two Million Nine Hundred Forty Thousand Eight Hundred Sixty-eight and no/100 Dollars ($2,940,868.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Forty-one Thousand One Hundred Thirty and no/100 Dollars ($441,130.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

d. Owner's and Contractor's Protective Liability Insurance to protect the City, its agents, servants and employees from claims which may arise from the performance of this Contract, with limits of at least Two Million Nine Hundred Forty Thousand Eight Hundred Sixty-eight and no/100 Dollars ($2,940,868.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Forty-one Thousand One Hundred Thirty and no/100 Dollars ($441,130.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

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

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

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

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

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

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

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

4. Performance, Labor, and Materials Payment Bond: The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the City and on the forms approved by the City, each bond shall be in the amount of Two Million Eleven Thousand Seven Hundred Thirty-Four and 60/100 Dollars ($2,011,734.60) (full amount of contract) conditioned upon the full and faithful performance of all major terms and conditions of this contract and payment of all labor and material suppliers. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bond(s) hereto attached for its faithful performance and payment of labor and material suppliers, the City shall deem the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the City to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Contractor shall be deemed to be due under this contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the City. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds $25,000.00 must be listed in United States Treasury Circular 570.

5. Certification Regarding Disbarment, Eligibility, Indictments, Convictions or Civil Judgements for all Federal Aid Projects:
By signing and submitting the bid, the president or authorized official of the bidder, under penalty of perjury under the laws of the USA, shall certify that, except as noted in the exceptions, the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor or any position involving the administration of federal funds:
(Reference can be made to "The System for Award Management" website as a helpful resource).

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

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

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

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

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

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

6. Contractor's responsibility for subcontractors. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City or between any subcontractors.

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

8. Liquidated Damages. Time of completion of work by the Contractor is of the essence. Should Contractor, or in the case of default, the surety, fail to complete the work within the time specified in the contract, or within such extra time as may be allowed in accordance with City of Joplin Standard Specifications, Division 0000, General Requirements and Provisions, Section 0400.19, (http://mo-joplin.civicplus.com/DocumentCenter/View/3460) Contractor (or surety) shall be liable to the City in the amount of $500.00 per day for each and every calendar day that the contract remains uncompleted after the time allowed for completion, as liquidated damages, and not as a penalty, it being stipulated that actual damages to the City and the public arising from Contractor's failure to timely complete the work would be difficult, if not impossible, to ascertain. The amount assessed as liquidated damages may be withheld from any moneys otherwise due to Contractor from the City.

9. Termination. The City reserves the right to terminate this contract by giving at least five (5) days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract.

10. City's Right to Proceed. In the event this contract is terminated pursuant to Paragraph 8, then the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

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

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

13. Liability and Indemnity.

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

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

c. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

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

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

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

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

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

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

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

a. This Contract
b. All Change Orders
c. Bid Plans and Specifications
d. City of Joplin Standard Specifications (Latest Revised Edition)
e. Invitation to Bid
f. Instructions to Bidders
g. Bid
h. Contractors Statement of Qualifications
i. Anti-Collusion Statement
j. Agreement
k. Notice of Award
l. Notice to Proceed

m. Performance Bond
n. Payment Bond (Labor and Materials)
o. General Conditions of Contract
p. Supplemental General Conditions
q. All Addenda

Notice to Contractors: This contract, together with the other documents enumerated in this paragraph, forms the contract between the parties. These documents are as fully a part of the contract as if attached hereto or repeated herein. The Contractor agrees to perform all of the work described in the contract documents and to comply with the terms and conditions defined therein for a total sum of Two Million Eleven Thousand Seven Hundred Thirty-Four and 60/100 Dollars ($2,011,734.60), said amount being subject to any approved addenda or change order.

17. Subsurface Conditions. Contractor agrees that information contained in the published reports and public actions of the Missouri Division of Geology and Land Survey shall be conclusive and binding upon the Contractor as to what subsurface conditions at the job site are reasonably anticipated or reasonably foreseeable. Contractor acknowledges and agrees that it shall not be entitled to any adjustment in the Contract Sum or Contract Times for any concealed condition of any nature, including but not limited to unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, in addition to the information contained in the published reports and public actions of the Missouri Division of Geology and Land Survey. Contractor recognizes that it has assumed the risks of concealed conditions and is being compensated for assuming these risks.

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

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

20. Nondiscrimination. The Contractor 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 Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a)ii and 41 C.F.R. § 60-741.5(a), if applicable.

a. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits 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 contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

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

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

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

22. Notices. All notices required or permitted hereinunder and required to be in writing may be given by FAX or by first class

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

23. Records and Audits. The Contractor shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for three years after the expiration of this Contract.

24. Authorized Employees. Contractor acknowledges that Section285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Contractor therefore covenants that is not knowingly in violation of subsection 1 or Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully to work in the United States.

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

26. 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 Contractor shall take appropriate steps to assure compliance.

27. 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 Contractor shall take appropriate steps to assure compliance.

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

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

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

31. Safety Training. Pursuant to Missouri Revised Statute Section 292.675, Contractors and subcontractors who sign a contract to work on public works projects must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within sixty (60) days of beginning work on the construction project. Contractors and subcontractors in violation of this provision will forfeit to the public body $2,500 plus $100 a day for each employee who is employed without training. Public bodies and contractors may withhold/assess these penalties from the payment due to those contractors and subcontractors if found to be in non-compliance.

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

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

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

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

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

CONTRACTOR: **ROSETTA CONSTRUCTION, LLC**

By: _____

Printed Name: _____

Title: _____

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 therefor.

_____

Leslie Haase, Director of Finance

CITY OF JOPLIN, MISSOURI

By: _____

David Hertzberg, Public Works Director

APPROVED AS TO FORM

_____

Peter Edwards, City Attorney

N
W E
S

Existing 36" to be Replaced with Proposed 48"

Existing 42" to Remain In Place

SOCCER FIELD

Existing 36" Aerial Crossing to be Replaced with a Proposed 48" Aerial Crossing

Existing 42" Aerial Crossing to be Replaced with a Proposed 48" Aerial Crossing

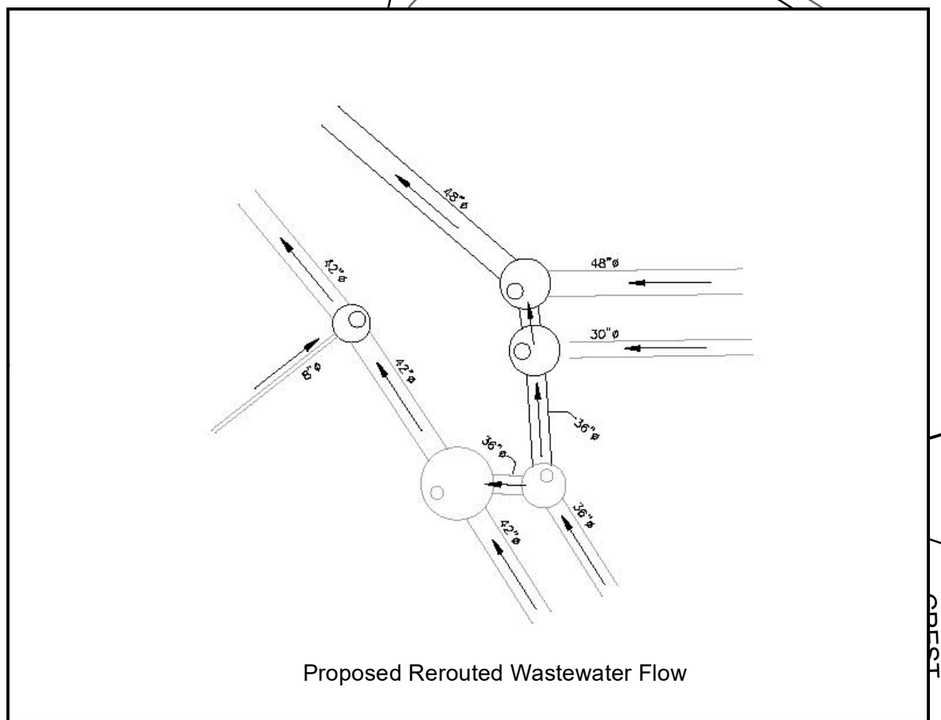
Existing 30" to be Replaced with a Proposed 48"

Existing 42" to Remain In Place

Existing Junction Box to be Removed and Wastewater Flow to be Rerouted

LONE ELM

CRESTWOOD



Proposed Rerouted Wastewater Flow

COUNCIL BILL NO. 2021-161 **ORDINANCE NO**

AN ORDINANCE authorizing the City of Joplin to enter into an agreement with Rosetta Construction, Inc., in the amount of Two Million Eleven Thousand Seven Hundred Thirty Four and 60/100 Dollars ($2,011,734.60) for the Joplin Creek Interceptor project; authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin; and containing an emergency clause.

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

Section 1. That the agreement by and between the City of Joplin and Rosetta Construction, Inc., for the Joplin Creek Interceptor project, a true and accurate copy of said agreement being attached hereto and incorporated as "Exhibit "A," be and the same is hereby approved.

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

Section 3. That upon the final approval and acceptance of the contractor's work under said contract, in substantial conformance with the attached exhibits, in writing by the Director of Public Works and his certification to the effect to the Director of Finance, the contractor shall be paid the sum due there from Sanitary Sewer Fund No. 415-4542-540-8625.

Section 4. That the City hereby declares that this Ordinance dealing with a public improvement, is an emergency within the meaning of Section 2.12 (6) of the Home Rule Charter of the City of Joplin, Missouri, and as such, this Ordinance shall become effective immediately upon its passage. Specifically, adoption of this Council Bill on an emergency basis allows the contractor to begin the lengthy procedure of materials procurement as quickly as possible.

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

_____, 2021 by a _____ vote.

_____

ATTEST: Ryan D. Stanley, Mayor

_____

Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____

Peter C. Edwards, City Attorney

COUNCIL BILL 2021-161

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

_____

Leslie Haase, Director of Finance

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
CB 2021-161 - Approval of Agreement with Rosetta Construction, Inc. for the Joplin Creek Interceptor project

MEETING DATE
October 4, 2021

ORIGINATING DEPT
Public Works-Engineering

ATTACHMENTS
CB 2021-161 Ordinance; Agreement; Bid Summary; Exhibit Map

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

SUMMARY
This Council Bill approves an agreement with Rosetta Construction, Inc. in the amount of Two Million Eleven Thousand Seven Hundred Thirty Four and 60/100 Dollars ($2,011,734.60) for the Joplin Creek Interceptor project.

BACKGROUND
Two major sanitary sewer trunk lines converge at a junction box located 1/3-mile west of N. Main Street (directly west of Ozark Christian College). These parallel trunk lines carry wastewater flows from a vast area ranging from Joplin High School to the Crossroads Industrial Park, including the cities of Duquesne and Duenweg. On May 4, 2020, Council approved a work authorization with Allgeier, Martin and Associates, Inc. (AMA) to design capacity improvements between the junction box and Lone Elm Rd. As part of this project, the smaller diameter pipe will be replaced with a 48-inch pipe, leaving the other 42-inch pipe in place, as shown in the Exhibit. Also, the junction box will be replaced to enhance the hydraulic efficiency of the wastewater flows.

The project was advertised on August 21, 2021, and bids were opened on September 16, 2021, in accordance with the City of Joplin's procurement policies. Bids were received from 3 contractors; Rosetta Construction, Inc. was confirmed to be the lowest bidder. The low bid was below the Engineer's estimate. Public Works intends to provide construction inspection and administration.

FUNDING SOURCE
FY 2020-2021 budget of the Wastewater fund

RECOMMENDATION
Staff recommends adoption of this Council Bill on an Emergency basis; being an ordinance

relating to a public improvement is an emergency within the meaning of Section 2.12(6) of the HOME RULE CHARTER of the City of Joplin, Missouri and the Council hereby declares that this ordinance shall be in full force and effect from and after its passage. Specifically, adoption of this Council Bill on an emergency basis allows the contractor to begin the lengthy procedure of materials procurement as quickly as possible.

BID SUMMARY

PROJECT: JOPLIN CREEK INTERCEPTOR
DATE OF BID OPENING: SEPTEMBER 16, 2021 2:00 p.m.

CONTRACTOR	TOTAL BASE BID
D & E Plumbing & Heating, Inc.	$ 3,056,551.60
Kissick Construction Company, Inc.	$ 4,023,341.30
Rosetta Construction, Inc.	$ 2,011,734.60
ENGINEER'S ESTIMATE	$ 2,300,000.00

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2021-162
Replacement of a Pothole Patch Truck (Chassis & Body)

MEETING DATE
October 4, 2021

ORIGINATING DEPARTMENT
Public Works - Operations

ATTACHMENTS
CB2021-162 Ordinance; Sales Quotation from Summit Truck Group

REVIEWED BY
Director of Public Works - David Hertzberg, Director of Finance - Leslie Haase, City Attorney - Peter Edwards, City Manager – Nicholas Edwards

SUMMARY
This Council Bill approves the issuance of a Purchase Order to Summit Truck Group in the amount of One Hundred Sixty-Five Thousand Nine Hundred Thirty-Eight and 11/100 Dollars ($165,938.11) for the purchase of a Pothole Patch Truck (Chassis & Body).

BACKGROUND
Due to the wear and tear on equipment, the Street Maintenance Division needs to replace a Pothole Patch Truck. The Truck being replaced is a 2000 International Pothole patch truck. This vehicle has been running hot and has parts that have finally been rusting out. The lifespan of a Pothole Patch Truck can vary but is usually around 10-12 years. Historically, vehicles and equipment replaced by the Street Division will then be declared surplus property and will be placed into the city auction.
The City is utilizing the Sourcewell bid to find a replacement for the Pothole Patch Truck. The decision was made by the Public Works Department to use the Sourcewell to purchase the Pothole Patch Truck from Summit Truck Group. This equipment meets city specification and mirrors existing equipment.
This truck was approved in the FY 2020-2021 budget.

FUNDING SOURCE
Transportation Sales Tax.

RECOMMENDATION
Staff recommends adoption of this Council Bill on an Emergency basis; being an ordinance dealing with appropriations, the availability of the equipment, to be an emergency within the meaning of Section 2.12(4) of the HOME RULE CHARTER of the City of Joplin, Missouri, and as such, this Ordinance shall become effective immediately upon its passage.

COUNCIL BILL NO. 2021-162 ORDINANCE NO.

AN ORDINANCE approving a Purchase Order be issued to Summit Truck Group in the amount of One Hundred Sixty-Five Thousand Nine Hundred Thirty-Eight and 11/100 Dollars ($165,938.11) for the purchase of a Pothole Patch Truck; and containing an emergency clause.

WHEREAS, Summit Truck Group holds the Sourcewell bid #060920-NVS for Pothole Patch Truck purchases.

WHEREAS, in the FY 2020-2021 budget process, Council approved and budgeted funds to cover the purchase of a Pothole Patch Truck.

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

Section 1. That a Purchase Order to be issued to Summit Truck Group for a replacement Pothole Patch Truck in the amount of One Hundred Sixty-Five Thousand Nine Hundred Thirty-Eight and 11/100 Dollars ($165,938.11), be and the same is, hereby approved.

Section 2. That Fiscal Year 2020-2021 budgeted reflect an appropriation in the total amount of One Hundred Sixty-Five Thousand Nine Hundred Thirty-Eight and 11/100 Dollars ($165,938.11) for the replacement of a Pothole Patch Truck.

Section 3. That the City hereby declares this Ordinance, being an ordinance dealing with a appropriations, the availability of equipment, to be an emergency within the meaning of Section 2.12(4) of the HOME RULE CHARTER of the City of Joplin, Missouri, and as such, this Ordinance shall become effective immediately upon its passage. Specifically, this Ordinance approves an appropriation that is budgeted.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2021, by a vote of _____.

_____
Ryan D. Stanley, Mayor

ATTEST:

_____
Barbara Golhoffer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

COUNCIL BILL 2021-162

I hereby certify that a sufficient amount is available in the Transportation Sales Tax Fund for these appropriations to pay the amounts called for in the referenced agreement.

_____

Leslie Haase, Director of Finance

Sourcewell Awarded Contract
Contract # 060920-NVS

International Trucks is pleased to provide you with this proposal compliant with all terms of the Sourcewell Vehicles and Chassis Contract #060920-NVS awarded to Navistar, Inc for new International Trucks. If you have any questions regarding enrollment in Sourcewell or detailed contract terms and conditions, please see your International Truck sales representative.

	PROPOSAL PREPARED FOR:	PROPOSAL PREPARED BY:
Sourcewell Member:	City of Joplin, MO	Summit Truck Group
Contact:	Dean Smith	Clayton White
Address:	1301 W 2nd St.	2800 S Davis Blvd
City/State/Zip:	Joplin, MO 64801	Joplin, MO 64801
Phone:	417-624-0820	417-439-0701
Email:	dsmith2@joplinmo.org	clayton.white@summittruckgroup.com

Proposal Number	1885-01
Date	8/24/2021
Quantity of this Specification	1
Single Sourcewell Transaction Total Volume	1

Chassis				
	New 2023 International MV607 Chassis		$	120,490.00
	Base Chassis List	$ 94,163.00		
	Options List	$ 26,327.00		
	Sourcewell Contract Discount	34.5%	$	(41,569.05)
	Volume Incentive		$	-
	Net Sourcewell Chassis Price		$	78,920.95
Sourcewell Partner Body				
			$	-
			$	-
		4.00%	$	-
Non-Sourcewell Dealer Supplied Body				
	Pro-Patch TCM 500-80-DHER		$	90,116.00
			$	-
	Handling Fee	1.00%	$	901.16
Additional Post Build Work				
	Dealer Prep		$	1,000.00
			$	-
			$	-
			$	-
			$	-
			$	-
	Handling Fee		$	-
Service Contracts				
			$	-
			$	-
			$	-
Additional Freight				
			$	-
			$	-
Additional Floorplan				
			$	-
			$	-
Additional Fees & Taxes				
	Concession to equalize with MODOT contract		$	(5,000.00)
			$	-
			$	-
Final Sourcewell Customer Price FOB			**$**	**165,938.11**

Terms:



MV607 SBA

Sales Proposal For:

City of Joplin

Presented By:

Summit Truck Group

Prepared For:
City of Joplin
Dean Smith
602 S Main St.
Joplin, MO 64801-2316
(417)624 - 0820
Reference ID: Asphalt Patcher

Presented By:
Summit Truck Group
Clayton White
2800 S. Davis Boulevard
JOPLIN MO 64804 -
(417)781-2766



Model Profile
2023 MV607 SBA (MV607)

AXLE CONFIG:	4X2
APPLICATION:	Construction Dump
MISSION:	Requested GVWR: 35000. Calc. GVWR: 38000 Calc. Start / Grade Ability: 38.07% / 1.50% @ 55 MPH Calc. Geared Speed: 89.2 MPH
DIMENSION:	Wheelbase: 209.00, CA: 141.90, Axle to Frame: 65.00
ENGINE, DIESEL:	{Cummins B6.7 300} EPA 2021, 300HP @ 2600 RPM, 660 lb-ft Torque @ 1600 RPM, 2600 RPM Governed Speed, 300 Peak HP (Max)
TRANSMISSION, AUTOMATIC:	{Allison 3500 RDS} 5th Generation Controls, Wide Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Oil Level Sensor, with 80,000-lb GVW and GCW Max, On/Off Highway
CLUTCH:	Omit Item (Clutch & Control)
AXLE, FRONT NON-DRIVING:	{Meritor MFS-12-122A} I-Beam Type, 12,000-lb Capacity
AXLE, REAR, SINGLE:	{Dana Spicer S26-190} Single Reduction, 26,000-lb Capacity, R Wheel Ends Gear Ratio: 5.57
CAB:	Conventional, Day Cab
TIRE, FRONT:	(2) 12R22.5 Load Range H HSR2 (CONTINENTAL), 483 rev/mile, 75 MPH, All-Position
TIRE, REAR:	(4) 12R22.5 Load Range H HSR2 (CONTINENTAL), 483 rev/mile, 75 MPH, All-Position
SUSPENSION, REAR, SINGLE:	31,000-lb Capacity, Vari-Rate Springs, with 4500-lb Capacity Auxiliary Rubber Springs
PAINT:	Cab schematic 100WP Location 1: 9219, Winter White (Std) Chassis schematic N/A

Code	Description
MV60700	Base Chassis, Model MV607 SBA with 209.00 Wheelbase, 141.90 CA, and 65.00 Axle to Frame.

AXLE CONFIGURATION

1ANA	AXLE CONFIGURATION {Navistar} 4x2
	Notes : Pricing may change if axle configuration is changed.

ENGINE

12ERL	ENGINE, DIESEL {Cummins B6.7 300} EPA 2021, 300HP @ 2600 RPM, 660 lb-ft Torque @ 1600 RPM, 2600 RPM Governed Speed, 300 Peak HP (Max)
12XCS	CARB EMISSION WARR COMPLIANCE Federal, Does Not Comply with CARB Emission Warranty
12WZE	CARB IDLE COMPLIANCE Federal, Does Not Comply with California Clean Air Idle Regulations
12VHP	EMISSION, CALENDAR YEAR {Cummins B6.7} EPA, OBD and GHG Certified for Calendar Year 2021
12UYE	RADIATOR Aluminum, 2-Row, Cross Flow, Over Under System, 717 SqIn Louvered, with 313 SqIn Charge Air Cooler, Includes In-Tank Oil Cooler
	Includes : DEAERATION SYSTEM with Surge Tank : HOSE CLAMPS, RADIATOR HOSES Gates Shrink Band Type; Thermoplastic Coolant Hose Clamps : RADIATOR HOSES Premium, Rubber
12TSY	FAN DRIVE {Borg-Warner SA85} Viscous Type, Screw On
	Includes : FAN Nylon
12VBR	AIR CLEANER with Service Protection Element
12703	ANTI-FREEZE Red, Extended Life Coolant; To -40 Degrees F/ -40 Degrees C, Freeze Protection
12WSY	BLOCK HEATER, ENGINE {Phillips} 120V/750W, for Cummins ISB/B6.7 Engines
	Includes : BLOCK HEATER SOCKET Receptacle Type; Mounted below Drivers Door
12XAT	ENGINE CONTROL, REMOTE MOUNTED Provision for; Includes Wiring for Body Builder Installation of PTO Controls, with Ignition Switch Control, for Cummins ISB/B6.7 and ISL/L9 Engines
12WPV	OIL PAN 15 Quart Capacity, For Cummins ISB/B6.7 Engines
12VXT	THROTTLE, HAND CONTROL Engine Speed Control; Electronic, Stationary, Variable Speed; Mounted on Steering Wheel

TRANSMISSION

13AVL	TRANSMISSION, AUTOMATIC {Allison 3500 RDS} 5th Generation Controls, Wide Ratio, 6-Speed with Double Overdrive, with PTO Provision, Less Retarder, Includes Oil Level Sensor, with 80,000-lb GVW and GCW Max, On/Off Highway
13WUS	ALLISON SPARE INPUT/OUTPUT for Rugged Duty Series (RDS) and Regional Haul Series (RHS), General Purpose Trucks, Package Number 223, Modified for Single Input Auto Neutral
13WEH	AUTOMATIC NEUTRAL Allison Transmission Shifts to Neutral When Parking Brake is Engaged and Remains in Neutral When Parking Brake is Disengaged, without On/Off Switch
13WVV	NEUTRAL AT STOP Allison Transmission Shifts to Neutral When Service Brake is Depressed and Vehicle is at Stop; Remains in Neutral Until Service Brake is Released

Code	Description
13XAL	PTO LOCATION Customer Intends to Install PTO at Left Side of Transmission
13WYU	SHIFT CONTROL PARAMETERS {Allison} 3000 or 4000 Series Transmissions, Performance Programming
13WLP	TRANSMISSION OIL Synthetic; 29 thru 42 Pints
13WET	TRANSMISSION SHIFT CONTROL Column Mounted Stalk Shifter, Not for Use with Allison 1000 & 2000 Series Transmission

CLUTCH

11001	CLUTCH Omit Item (Clutch & Control)

REAR AXLES, SUSPENSIONS

14AHK	AXLE, REAR, SINGLE {Dana Spicer S26-190} Single Reduction, 26,000-lb Capacity, R Wheel Ends . Gear Ratio: 5.57
14VAJ	SUSPENSION, REAR, SINGLE 31,000-lb Capacity, Vari-Rate Springs, with 4500-lb Capacity Auxiliary Rubber Springs

FRONT AXLES

2ASC	AXLE, FRONT NON-DRIVING {Meritor MFS-12-122A} I-Beam Type, 12,000-lb Capacity

FRONT SUSPENSIONS

3ADC	SUSPENSION, FRONT, SPRING Parabolic Taper Leaf, Shackle Type, 12,000-lb Capacity, with Shock Absorbers Includes : SPRING PINS Rubber Bushings, Maintenance-Free

CABS, COWLS, BODIES

16030	CAB Conventional, Day Cab Includes : CLEARANCE/MARKER LIGHTS (5) Flush Mounted
16ZBT	ACCESS, CAB Steel, Driver & Passenger Sides, Two Steps per Door, for use with Day Cab and Extended Cab
16BAM	AIR CONDITIONER with Integral Heater and Defroster
16VKB	CAB INTERIOR TRIM Classic, for Day Cab Includes : CONSOLE, OVERHEAD Molded Plastic with Dual Storage Pockets, Retainer Nets and CB Radio Pocket; Located Above Driver and Passenger : DOME LIGHT, CAB Door Activated and Push On-Off at Light Lens, Timed Theater Dimming, Integral to Overhead Console, Center Mounted : SUN VISOR (2) Padded Vinyl; 2 Moveable (Front-to-Side) Primary Visors, Driver Side with Toll Ticket Strap
16VLK	CAB REAR SUSPENSION Air Suspension, for Mid Cab Height
16GED	GAUGE CLUSTER Base Level; English with English Electronic Speedometer Includes : GAUGE CLUSTER DISPLAY: Base Level (3" Monochromatic Display), Premium Level (5" LCD Color Display); Odometer, Voltmeter, Diagnostic Messages, Gear Indicator, Trip Odometer, Total Engine Hours, Trip Hours, MPG, Distance to Empty/Refill for

Code	Description
	: GAUGE CLUSTER Speedometer, Tachometer, Engine Coolant Temp, Fuel Gauge, DEF Gauge, Oil Pressure Gauge, Primary and Secondary Air Pressure or Auxiliary Air Pressure (if Air Equipped) : WARNING SYSTEM Low Fuel, Low DEF, Low Oil Pressure, High Engine Coolant Temp, Low Battery Voltage (Visual and Audible), Low Air Pressure, Primary and Secondary (if Air Equipped)
16XJN	INSTRUMENT PANEL Flat Panel
16HKT	IP CLUSTER DISPLAY On Board Diagnostics Display of Fault Codes in Gauge Cluster
16SNT	MIRRORS (2) Aero Pedestal, Power Adjust, Heated, Turn Signals, Black Heads and Arms, 6.5" x 14" Flat Glass, Includes 6.5" x 6" Convex Mirrors, for 102" Load Width
	Notes : Mirror Dimensions are Rounded to the Nearest 0.5"
16JPT	SEAT, DRIVER {National 2000} Air Suspension, Mid Back, Vinyl, 2 Position Front Cushion Adjustment, -3 to +14 Degree Back Angle Adjust
16SMP	SEAT, TWO-MAN PASSENGER {National} Vinyl, Less Under Seat Storage Compartment
16XCK	WINDOW, MANUAL (2) and Manual Door Locks, Left and Right Doors

FRAMES

1CAH	FRAME RAILS Heat Treated Alloy Steel (120,000 PSI Yield); 10.375" x 3.705" x 0.438" (263.5mm x 94.1mm x 11.1mm); 456.0" (11582mm) Maximum OAL
1LNG	BUMPER, FRONT Contoured, Steel, Painted Gloss Black
1570	TOW HOOK, FRONT (2) Frame Mounted
1WEJ	WHEELBASE RANGE 199" (505cm) Through and Including 254" (645cm)

BRAKES

4091	BRAKE SYSTEM, AIR Dual System for Straight Truck Applications
	Includes : BRAKE LINES Color and Size Coded Nylon : DRAIN VALVE Twist-Type : GAUGE, AIR PRESSURE (2) Air 1 and Air 2 Gauges; Located in Instrument Cluster : PARKING BRAKE CONTROL Yellow Knob, Located on Instrument Panel : PARKING BRAKE VALVE For Truck : QUICK RELEASE VALVE On Rear Axle for Spring Brake Release: 1 for 4x2, 2 for 6x4 : SPRING BRAKE MODULATOR VALVE R-7 for 4x2, SR-7 with relay valve for 6x4/8x6
4AZA	AIR BRAKE ABS {Bendix AntiLock Brake System} 4-Channel (4 Sensor/4 Modulator) Full Vehicle Wheel Control System
4XDC	BRAKES, FRONT {Meritor 15X4 Q-PLUS CAST} Air S-Cam Type, Cast Spider, Fabricated Shoe, Double Anchor Pin, Size 15" X 4", 13,200-lb Capacity
4EXP	BRAKE CHAMBERS, FRONT AXLE {Bendix} 20 SqIn
4LAG	SLACK ADJUSTERS, FRONT {Gunite} Automatic
4XCZ	BRAKES, REAR {Meritor 16.5X7 P} Air S-Cam Type, Cast Spider, Cast Shoe, Double Anchor Pin, Includes Greaseable and Zinc Coated Anchor Pins, Size 16.5" X 7", 38,000-lb Capacity per Axle
4EXU	BRAKE CHAMBERS, REAR AXLE {Bendix EverSure} 30/30 SqIn Spring Brake
4LGG	SLACK ADJUSTERS, REAR {Gunite} Automatic
4SPA	AIR COMPRESSOR {Cummins} 18.7 CFM

Code	Description
4VKH	AIR TANK LOCATION (2) Mounted Under Battery Box, Outside Right Rail, Under Cab

STEERING

5PSA	STEERING GEAR {Sheppard M100} Power
5708	STEERING COLUMN Tilting
5CAW	STEERING WHEEL 4-Spoke; 18" Dia., Black

DRIVELINES

6DGG	DRIVELINE SYSTEM {Dana Spicer} 1710, for 4x2/6x2

EXHAUST SYSTEMS

7BME	EXHAUST SYSTEM Horizontal Aftertreatment System, Frame Mounted Under Right Rail Back of Cab, Includes Single Short Horizontal Tail Pipe
7SCP	ENGINE EXHAUST BRAKE for Cummins ISB/B6.7/ISL/L9 Engine with Variable Vane Turbo Charger

ELECTRICAL SYSTEMS

8000	ELECTRICAL SYSTEM 12-Volt, Standard Equipment Includes : DATA LINK CONNECTOR For Vehicle Programming and Diagnostics In Cab : HAZARD SWITCH Push On/Push Off, Located on Instrument Panel to Right of Steering Wheel : HEADLIGHT DIMMER SWITCH Integral with Turn Signal Lever : PARKING LIGHT Integral with Front Turn Signal and Rear Tail Light : STARTER SWITCH Electric, Key Operated : STOP, TURN, TAIL & B/U LIGHTS Dual, Rear, Combination with Reflector : TURN SIGNAL SWITCH Self-Cancelling for Trucks, Manual Cancelling for Tractors, with Lane Change Feature : TURN SIGNALS, FRONT Includes Reflectors and Auxiliary Side Turn Signals, Solid State Flashers; Flush Mounted : WINDSHIELD WIPER SWITCH 2-Speed with Wash and Intermittent Feature (5 Pre-Set Delays), Integral with Turn Signal Lever : WINDSHIELD WIPERS Single Motor, Electric, Cowl Mounted : WIRING, CHASSIS Color Coded and Continuously Numbered
8GXD	ALTERNATOR {Leece-Neville AVI160P2013} Brush Type, 12 Volt, 160 Amp Capacity, Pad Mount, with Remote Sense
8RPP	ANTENNA Shark Fin, Roof Mounted
8THB	BACK-UP ALARM Electric, 102 dBA
8VUX	BATTERY BOX Steel, with Plastic Cover, 25" Wide, 2-3 Battery Capacity, Mounted Right Side Under Cab
8MJT	BATTERY SYSTEM {Fleetrite} Maintenance-Free, (2) 12-Volt 1900CCA Total, Top Threaded Stud
8HAB	BODY BUILDER WIRING Back of Day Cab at Left Frame or Under Sleeper, Extended or Crew Cab at Left Frame; Includes Sealed Connectors for Tail/Amber Turn/Marker/ Backup/Accessory Power/Ground and Sealed Connector for Stop/Turn
8XAH	CIRCUIT BREAKERS Manual-Reset (Main Panel) SAE Type III with Trip Indicators, Replaces All Fuses
8518	CIGAR LIGHTER Includes Ash Cup

Code	Description
8HAH	ELECTRIC TRAILER BRAKE/LIGHTS Accommodation Package to Rear of Frame; for Combined Trailer Stop, Tail, Turn, Marker Light Circuits; Includes Electric Trailer Brake Accommodation Package with Cab Connections for Mounting Customer Installed Electric Brake Unit, Less Trailer Socket
8XKC	HEADLIGHTS Halogen, with Daytime Running Lights, Automatic Twilight Controlled
8XHN	HORN, AIR Single Trumpet, Black, with Lanyard Pull Cord
8VAY	HORN, ELECTRIC Disc Style
8WWJ	INDICATOR, LOW COOLANT LEVEL with Audible Alarm
8718	POWER SOURCE Cigar Type Receptacle without Plug and Cord
8RPT	RADIO AM/FM/WB/Clock/USB Input/Auxiliary Input
8RMV	SPEAKERS (2) 6.5" Dual Cone Mounted in Doors
8WTK	STARTING MOTOR {Delco Remy 38MT Type 300} 12 Volt, Less Thermal Over-Crank Protection
8TKK	TRAILER AUXILIARY FEED CIRCUIT for Electric Trailer Brake Accommodation/Air Trailer ABS; with 30 Amp Fuse and Relay, Controlled by Ignition Switch

FRONT END

9WAY	FRONT END Tilting, Fiberglass, with Three Piece Construction
9HAD	GRILLE Chrome
9AAB	LOGOS EXTERIOR Model Badges
9AAE	LOGOS EXTERIOR, ENGINE Badges

SPEEDOMETER, TOOLS, MISC

10JPA	CUSTOMER IDENTITY for Sourcewell
10060	PAINT SCHEMATIC, PT-1 Single Color, Design 100 Includes : PAINT SCHEMATIC ID LETTERS "WP"
10761	PAINT TYPE Base Coat/Clear Coat, 1-2 Tone
10SLV	PROMOTIONAL PACKAGE Government Silver Package

FUEL TANKS

15SRE	FUEL TANK Top Draw, Non-Polished Aluminum, D-Style, 19" Tank Depth, 50 US Gal (189L), Mounted Left Side, Under Cab
15WDG	DEF TANK 7 US Gal (26L) Capacity, Frame Mounted Outside Left Rail, Under Cab
15LMS	FUEL/WATER SEPARATOR 12 VDC Electric Heater, Includes Pre-Heater, Includes Water-in-Fuel Sensor, Cummins Supplied on Engine

WHEELS, TIRES - FRONT

27DTJ	WHEELS, FRONT {Maxion 90541} DISC; 22.5x8.25 Rims, Painted Steel, 2-Hand Hole, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs
7382155415	(2) TIRE, FRONT 12R22.5 Load Range H HSR2 (CONTINENTAL), 483 rev/mile, 75 MPH, All-Position

WHEELS, TIRES - REAR

Code	Description
28DTJ	WHEELS, REAR {Maxion 90541} DUAL DISC; 22.5x8.25 Rims, Painted Steel, 2-Hand Hole, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs
7382155415	(4) TIRE, REAR 12R22.5 Load Range H HSR2 (CONTINENTAL), 483 rev/mile, 75 MPH, All-Position

WHEELS MISC OPTIONS

29PAR	PAINT IDENTITY, FRONT WHEELS Disc Front Wheels; with Vendor Applied White Powder Coat Paint
29PAS	PAINT IDENTITY, REAR WHEELS Disc Rear Wheels; with Vendor Applied White Powder Coat Paint

BODY INTEGRATION

60AKG	BDY INTG, PTO ACCOMMODATION for (3) Latched Rocker Switches, (1) PTO Switch, (2) Generic Switches to Control (3) 30 amp relays, with Programmable Interlocks, for Body Builder Hook up in the Engine Compartment Left Side, Recommended for Automatic Transmissions
	Services Section:

WARRANTY

40129	WARRANTY Standard for MV Series, Effective with Vehicles Built July 1, 2017 or Later, CTS-2020A

H.D. INDUSTRIES, Inc.

Pro-Patch Pot Hole Patcher

P.O. BOX 8250 · JACKSONVILLE, TEXAS 75766 · (903) 586-6126 · www.pro-patch.com

August 24, 2021

Dean Smith
City of Joplin, MO

Dear Mr. Smith:

Thank you for requesting information on the Pro-Patch Asphalt Pothole Patcher. I appreciate your interest and I am sending you this quote with recommended options for a well-equipped patch unit. However, you can add or delete items to best suit your needs. The Pro-Patch can be purchased through TIPS, the Texas Buyboard or HGAC.

1.	Basic Unit Model TCM 500-80 DHER	$57,950.00
2.	Emulsion Automatic Rejuvenator System	2,232.00
3.	1.25 Cubic yard 30" Spoils Bin Gravity Dump	2,215.00
4.	Hydraulic Bi-fold Steel Top Doors	4,998.00
5.	25 CFM Hydraulic Air Compressor	3,970.00
6.	Air-line hose reel with 20' of hose	625.00
7.	Hydraulic Rear Lift Platform for compactor Plate or Roller w/Breaker Mount	3,050.00
8.	Hydraulic Secondary Auger Motor	1,999.00
9.	Diesel Fuel Hose Reel w/20 FT Hose	375.00
10.	8 Gallon Drip & Waste Pan	490.00
11.	10 Gallon Stainless Steel Water Tank	620.00
12.	50 Gallon Frame Mounted LP Gas Bottle	1,895.00
13.	Superior Signal SRTA16, 16-Light Arrow Board	1,525.00
14.	Four (4) Maxxima M20484YCL 4" Amber LED Strobe Lights, Grill Mount	450.00
15.	Meteorlight SY2000 Strobe Light LED, Pedestal Mount	355.00
16.	Maxxima Rectangular 6.5" Oval Tail Lights, Backup and Amber Strobes	665.00
17.	22" x 46" Work Deck	1,147.00
18.	Backup Camera RVS-770613- KIT1 Color w/ Audio Sound	595.00
19.	Four (2) Asphalt Lute/Shovel Holder, 1 on each side	320.00
20.	Chelsea Hot Shift PTO	2,195.00
21.	Electronic Engine Throttle Control	362.00
22.	10 lb ABC Fire Extinguisher	160.00
23.	Color: Black	Included
	Subtotal	**$88,393.00**
	Delivery and Training	**$1,723.00**
	TOTAL	**$90,116.00**

Delivery ~~in 120—150~~30-45 days after receiving ~~purchase order~~chassis.

Pricing is good for 90 days. I hope this information is helpful to you. If you have any questions or need any additional information, please feel free to give me a call at 1-800-256-6126. Thank you.

Sincerely,

Harold Dillingham,

Harold Dillingham, President

H.D. INDUSTRIES, Inc.

Pro-Patch Pot Hole Patcher

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ASPHALT POTHOLE PATCHER
SPECIFICATIONS MODEL TCM 500-80-DHER

1. **GENERAL**
The ***Pro-Patch*** model TCM 500-80-DHER is a unitized asphalt repair machine capable of making permanent asphalt repairs under most weather conditions.

2. **BODY DIMENSIONS**
The body is 112" long, 54" high and 78" wide. Hopper is 10 gauge steel and 16 gauge insulated jacket. It has Diamond Tread safety step side fenders with body assist handles. Body has L.E.D. style stop, turn, emergency flashers and marker lights. The body has a lockable tool storage compartment measuring 83" long, 18" deep and 10" high. All electrical wiring shall be color coded, soldered, shrink wrapped in polyvinyl, and incased in conduit. ***MUD FLAPS INCLUDED.***

3. **BODY INSULATION**
The asphalt aggregate hopper and road oil tank are fully insulated with 2" industrial, high temperature 12R factor insulation encased in a double steel jacket.

4. **CAPACITY**
The asphalt aggregate hopper holds 500 cubic yards level full or 7 tons maximum load.

5. **HEATING SYSTEMS**
The body shall have a dry radiant heat chamber heated by 2 each 67,000 BTU retort tube propane burners with vertical exhaust stacks. **The exhaust stack dampeners are electronically actuated to close when burners are off to reduce heat loss**. The burners are thermostat controlled and regulated at 10 PSI. The ignition system is 12 volt DC with electronic igniter. Gas burner has a safety shut-off on loss of flame or excessive temperature. Automatic safety shut-off when diesel pump is operating. Burner has two stages, ignites on 10 oz. pressure, operates at 10 PSI, on high burn regulated by the same thermostat as the electric heater. Thermostats will be 0/300° F. solid state. *Systems using Heat Transfer Oil are not acceptable.*

6. **ELECTRONIC CONTROLS**
All electronic controls will be solid state shock resistant. Thermostat for tack oil tank is 50/200° F. Thermostat for asphalt aggregate hopper is 0/300° F. Digital with temperature read out. Thermostat for the asphalt hopper has built in high limit safety shut down switch. Same thermostat controls the 12 volt LP Gas fired system and the 220 volt electric heating system.

7. **EMULSION OIL TANK CAPACITY AND HEATING SYSTEM**
The tank, built onto the main body, has a capacity of 80 gallons and a double steel jacket with 2" insulation. The tank is equipped with a heat transfer system with an adjustable temperature valve that is capable of heating the emulsion oil from 0 to 150° F., using the truck engine coolant system as the heat source. *The emulsion pump and all lines are in an insulated heated area*. The tank has 220 volt thermostat controlled ***NEMA explosion proof*** dry well electric heater. Tank has an 8" fill spout and a 2" gate valve on tank drain. *For ease of maintenance or change out of heater, tank does not have to be drained.*

8. **EMULSION REJUVENATOR**
The tank is equipped with an automatic rejuvenation system, Patent No. 16597547, that will help keep the emulsion oil from separating which will prevent pump and lines from clogging up and eliminate sludge build-up in the tank.

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ASPHALT POTHOLE PATCHER
SPECIFICATIONS MODEL TCM 500-80-DHER

9. **ELECTRIC HEATING SYSTEM**
The asphalt aggregate hopper and liquid asphalt oil tank is heated by a 220 volt, 62 kw ***OSHA required NEMA explosion proof*** dry well electric heater, thermostat controlled with 25' of cord with dual in-line 30 amp fuses with MOV 220 vac surge absorber. The heating system is capable of maintaining heated material up to 300° F. during non-working hours.

10. **HYDRAULIC CONTROL VALVE**
Five spool, two-way, variable flow with 2200 PSI relief valve. The valve controls hydraulic screw conveyor, hydraulic doors, asphalt agitator, liquid asphalt pump and tool circuit. **The valve has an internal or external safety design that will protect the operator and not allow the screw conveyor or asphalt agitator to operate when the doors are open.** This system is designed to divert hydraulic oil pressure back to the tank. Electric solenoids on hydraulic valve are not acceptable due to mechanical override feature and ease of bypassing system. The valve is operated from the rear of machine by remote levers. To reduce maintenance problems the main directional control valve stack has no electric solenoids.

11. **HYDRAULIC OPERATED STEEL TOP DOORS**
Two (2) hydraulically operated bi-fold steel top doors with hex brake for rigidity. Doors are insulated with 2" of high temperature insulation in a double steel jacket. The doors have rain seal caps and flex plates to keep asphalt out of door hinges. Each door shall have a 1 ½" bore with 13" stroke hydraulic cylinder with bypass and flow control valves. The controls for doors are at the rear of the unit.

12. **HYRAULIC REAR LIFT PLATFORM FOR COMPACTOR**
Equipped with a hydraulically operated lift platform for loading or unloading compactor plate. The platform has a Safety latch in the up position, an in cab "platform down" indicator light with compactor holding down brackets and A pavement breaker mount. All controls for platform are at the rear of the unit.

13. **ASPHALT DISPENSING SYSTEM, SCREW CONVEYOR TYPE**
10' long by 6" diameter progressive screw conveyor has hard surfaced flights welded continuously on 2" scheduled 80 pipe and is ball bearing mounted. Conveyor is driven by a 13,000 in.lb. torque variable speed hydraulic motor with forward and reverse. Shall have a delivery chute with 120° of pivot. *All bearings can be greased through a feeder line mounted outside the unit from ground level.*

14. **HYDRAULIC SECONDARY AUGER MOTOR**
A secondary, hydraulic, 13,000 in. lb. torque, variable speed booster motor installed at rear of auger to assist in dispensing bad or stiff asphalt mix. This also eliminates shearing coupler keys and bolts in the auger shaft

15. **ASPHALT AGITATOR**
The agitator shaft is built into the premix hopper and designed to break up asphalt bridging due to vibratory compaction. The scheduled 160 shaft has 12 spikes and is ball bearing mounted and driven by a 13,000 in.lb. torque variable speed hydraulic motor with forward and reverse. *All bearings can be greased through a feeder line mounted outside the unit from ground level.*

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16. **FRAME MOUNTED LP GAS BOTTLE**
50 Gallon frame mounted LP gas Bottle with quick fill connector, 10 PSI regulator and fuel sight gauge.

17. **HAND TORCH**
For drying off repair site and cleaning hand tools, the unit has a 200,000 BTU propane hand torch with shut-off valve and 10' of hose with hose rack. Hand torch has mounting bracket for transport.

18. **TEMPERATURE GAUGES**
The unit has two 3" dial type, stainless steel temperature gauges that constantly monitor the temperature of the asphalt hopper and road oil tank.

19. **LIQUID ASPHALT OIL PUMP**
A hydraulically driven, 1 1/2" self-priming, variable speed, reversible, rotary gear pump with relief valve. Operating at 20 GPM at 1200 RPM, 100 PSI. *The emulsion pump and all oil lines are in an insulated heated area.* The pump will circulate the emulsion oil to prevent separation and to crush any lumps that may form and cause clogging of the spray tip. *Air injection systems do not have this capability.*

20. **DIESEL FUEL / RELEASING AGENT STORAGE TANK**
An 18 gallon capacity tank, equipped with a 1.6 gpm @ 60 psi 12 volt DC pump and a hand sprayer for cleaning tools and unit. There shall be a connector valve for flushing road oil pump and lines and a 1" drain. For easy hopper cleaning access and to spray hopper before loading, units with a work deck shall have an additional front mounted spray wand with 3 ft. of hose.

21. **DIESEL FUEL / RELEASING AGENT HOSE REEL**
Hose reel for diesel fuel / releasing agent, spray wand has 20' of hose. Reel is spring loaded auto-retractable.

22. **LIQUID ASPHALT HAND SPRAYER**
A 5' x 3/8" wand, equipped with fan nozzle and Deadman Control Valve. Sprayer hose is 15' x 1/2" with a reversible pump and diesel flush system for cleaning pump and lines.

23. **HYDRAULIC PUMP**
PTO Direct mount hydraulic pump is gear type, variable speed at 12 GPM and has an operating pressure of 2000 PSI at 900 RPM.

24. **HYDRAULIC OIL RESERVOIR**
30 gallon capacity with sight and temperature gauge, ventilated fill cap, 150 micron sump strainer and a 10 micron return filler with 1" gate cutoff valve at filter.

25. **HYDRAULIC OIL COOLER**
An AKG 15 tube hydraulic oil cooler with shroud. Fan operates on 12 vdc and is thermostat controlled at 115° F.

26. **HYDRAULIC HOSE AND FITTINGS**
All high pressure hoses and crimped fittings have a minimum of 8000 PSI burst pressure.

ASPHALT POTHOLE PATCHER
SPECIFICATIONS MODEL TCM 500-80-DHER

27. **HYDRAULIC AIR COMPRESSOR**
A separate self-contained 25 CFM @ 125 PSI. 1200 RPM hydraulic driven air compressor with 60 PSI oil pump and cooling fan, used to blow out repair sight and other compressed air demands. Hydraulic and electric controls are located at right rear of unit. Air compressor comes with quick couplers, 20 foot air hose, 5 foot air blow gun with deadman control valve, 5 gallon air tank with cable assisted condensation drain and 150 psi relief valve.

28. **AIR-LINE HOSE REEL**
An air-line hose reel with 20' of hose. Reel is spring loaded auto-retractable.

29. **WATER TANK**
A frame mounted stainless steel ten (10) gallon tank with valve and hose. Water supply for asphalt compactor plate.

30. **DRIP PAN**
An eight (8) gallon drip pan for waste oil combination, for flushing pump, spray wand and lines at the end of the work Day, with necessary valve for draining.

31. **WORK DECK**
22"x46" work deck shall be constructed of ¼" angle iron and 3/16" expanded metal and expanded metal steps with assist hand rails and shall be mounted between truck and hopper body. Deck provides easy and safe access to emulsion oil tank and asphalt hopper.

32. **SPOILS BIN**
The spoils bin is 30" wide with a 1.25 cubic yard capacity, gravity dump. Asphalt spoils may be loaded or discharged from both sides of the truck.

33. **16-LIGHT DIRECTIONAL ARROW BOARD**
State D.O.T. Approved Superior Signal model SRTA16. With 16 amber (L.E.D.) lights, 32 flash patterns, 8 patterns per function. Arrow flashing left, right, and warning bar.
The board is mounted on the rear of the patch unit with in cab controls.

34. **STROBE LIGHT**
A pedestal mounted Meteorlight model SY2000 LED Amber, 80 Flashes per minute.

35. **GRILL MOUNT STROBE LIGHT**
Two (2) Superior Signal SS-SYLED04-AA, LED Amber or White 4" Front Grill Strobe Lights, 22 flash patterns.

36. **MAXXIMO STT RECTANGLE 6.5" OVAL TAIL LIGHTS**
LED RED, CLEAR, AMBER, & STROBE tail lights

37. **BACKUP CAMERA**
Backup Camera RVS-770613 – Kit1 Color w/ audio sound

38. **ASPHALT LUTE AND SHOVEL HOLDERS**
Two (2) each spring loaded asphalt lute and shovel holders. One (1) mounted driver's side and one (1) mounted curb side of unit.

39. **P.T.O.**
A Chelsea, 280 Series, Hot Shift with over speed.

ASPHALT POTHOLE PATCHER
SPECIFICATIONS MODEL TCM 500-80-DHER

40. **ELECTRONIC THROTTLE CONTROL**
A two (2) or three (3) speed, depending on application, rear mounted remote switch allows operator more control over which speed and pressure each particular job requires. As a safety feature, the switch will not function unless the park brake is set on the vehicle.

41. **FIRE EXTINGUISHER**
10 LB ABC Fire Extinguisher

42. **COLOR**
Black. Two (2) parts epoxy primer, two (2) finish coats polyurethane with epoxy hardener.

43. **SERVICE MANUALS AND TRAINING**
H.D. Industries, will furnish two (2) parts, service and operators manuals with a two (2) day training program for each machine and delivery.

44. **WARRANTY**
H.D. Industries warrants the ***Pro-Patch*** Asphalt Pothole Patcher for a full twelve (12) months against defects in material and workmanship of the body and on all parts and labor. Warranty work will be performed by Maryland Industrial Trucks. The contact person is Person Christ Hirsch. He can be reached at 410-6361255 EXT. 1018 or at chirsch@mdindustrialtrucks.com.

The warranty shall also include factory technical support by emailing info@pro-patch.com or call 1-800-256-6126. The Purchaser or end user shall be given a password that will give them 24 hour operating and maintenance instructions on any computer or smart phone.

H.D. Industries, Inc.
Pro-Patch Asphalt Pothole Patcher Price List
Sourcewell

EFFECTIVE : 2021

Brand Name	Model No.	Description	% Off List Price	List Price	Price
Truck Mounted Pro-Patch					
Pro-Patch	TCM 300-40 DHE	3 Cubic Yard Truck Mounted Dry Heat Asphalt Pothole Patcher with 40 gallon built on Tack Oil Tank	5.00%	$69,825.00	$ 66,500.00
Pro-Patch	TCM 425-80 or 100 DHE	4.25 Cubic Yard Truck Mounted Dry Heat Asphalt Pothole Patcher with 80 or 100 gallon built on Tack Oil Tank	5.00%	$75,950.00	$72,153.00
Pro-Patch	TCM 500-80 or 100 DHE	5 Cubic Yard Truck Mounted Dry Heat Asphalt Pothole Patcher with 80 or 100 Gallon Built on Tack Oil Tank	5.00%	$76,950.00	$73,103.00
Pro-Patch	TCM 600-80, 100, or 120 DHE	6 Cubic Yard Truck Mounted Dry Heat Asphalt Pothole Patcher with 80, 100, or 120 Gallon Built on Tack Oil Tank	5.00%	$77,950.00	$ 74,053.00
Truck Mounted Dump Body Units					
Pro-Patch	TMD 425-80 or 100DHE	4.25 Cubic Yard Truck Mounted Dump Body Dry Heat Asphalt Pothole Patcher with 80 or 100 gallon built on Tack Oil Tank	5.00%	$75,950.00	$ 72,153.00
Pro-Patch	TMD 500-80 or 100DHE	5 Cubic Yard Truck Mounted Dump Body Dry Heat Asphalt Pothole Patcher with 80 or 100 gallon built on Tack Oil Tank	5.00%	$76,950.00	$ 73,103.00
Truck Mounted Units with Diesel Fired Burners					
Pro-Patch	TCM 425-80-DHED	4.25 Cubic Yard Truck Mounted Diesel Fired Dry Heat Asphalt Pothole Patcher with 80 Gallon Independent Tack Oil Tank	5.00%	$75,950.00	$ 72,153.00
Pro-Patch	TCM 500-80-DHED	5 Cubic yard Truck Mounted Diesel Fired Dry Heat Asphalt Pothole Patcher with 80 Gallon Independent Tack Oil Tank	5.00%	$76,950.00	$ 73,103.00
All Electric Units with Emulsion Pump System					
Pro-Patch	TCM 425-80-AEEP	4.25 Cubic Yard Truck Mounted All Electric Asphalt Pothole Patcher with 80 Gal. Built on Tack Oil Tank	5.00%	$89,250.00	$ 85,000.00
Pro-Patch	TCM 500-80-AEEP	5 Cubic Yard Truck Mounted All Electric Asphalt Pothole Patcher with 80 Gal. Built on Tack Oil Tank	5.00%	$89,900.00	$ 85,405.00
Pro-Patch	TCM 600-80 or 100AEEP	6 Cubic Yard Truck Mounted All Electric Asphalt Pothole Patcher 80 or 100 Gal. Built on Tack Oil Tank	5.00%	$91,600.00	$ 87,020.00
All Electric Units with Air Injected Emulsion System					
Pro-Patch	TCM 425-80-AEA	4.25 Cubic Yard Truck Mounted All Electric Asphalt Pothole Patcher with 80 Gal. Built on Tack Oil Tank	5.00%	$89,250.00	$ 85,000.00
Pro-Patch	TCM 500-80-AEA	5 Cubic Yard Truck Mounted All Electric Asphalt Pothole Patcher with 80 Gal. Built on Tack Oil Tank	5.00%	$89,900.00	$ 85,405.00
Pro-Patch	TCM 600-80-AEA	6 Cubic Yard Truck Mounted All Electric Asphalt Pothole Patcher with 80 Gal. Built on Tack Oil Tank	5.00%	$91,600.00	$ 87,020.00
Truck Mounted Units with CNG Gas Burners					

H.D. Industries, Inc.
Pro-Patch Asphalt Pothole Patcher Price List
Sourcewell

CLOSING DATE:	10-Sep-2021	DEPT:	Planning & Community Development
STARTING TIME	10:00 AM		
CLOSING TIME:	10:20 AM	BID OPENED BY:	Kim Newhouse
Demolition of all structures		LOCATION:	715 W. 4th St.

COMPANY	BIDS
B & D Yardbuilders	$6,200.00
Big John's Heavy Equipment	$7,998.40
Clay Cole Trucking	NO BID
Gator Industrial	$6,730.00
Nelson's Enterprises	NO BID


COUNCIL BILL 2021-356
715 W 4TH ST.
09/16/2021


09/16/2021


09/16/2021


09/16/2021

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill No. 2021- 356, Building Regulations

MEETING DATE
October 4, 2021

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

SUMMARY
This council bill approves the contract by and between the City of Joplin and with B & D Yardbuilders to remove the structures, and any remaining debris including foundation and footings 715 W 4TH St.

BACKGROUND
The above listed address was "tagged" as a dangerous building on April 29, 2021. The structures were determined to be dangerous under sub sections of the Dangerous Building Code (Section 26-612, Joplin City Code). On August 27, 2021, an advertisement for bids was published in the Joplin Globe with bids being received on September 10, 2021 for the removal of structures and any reaming debris including footings and foundations. At that time bids were received as follows.

Gator Industrial	$6,730.00
Big Johns	$7,998.40
B & D Yardbuilders	$6,200.00

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

FUNDING SOURCE
These payments are included in the FY 2020-21 budget of the Revolving Fund.

RECOMMENDATION
City Staff recommends that the demolition removal contract be awarded to B & D Yardbuilders for $6,200.00 and that it be approved on an emergency basis within the meaning of section 2.12 (1) for the immediate preservation of public health and welfare.

ATTACHMENTS
Council Bill No. 2021- 356, Photograph of Property, Bid Tabulation

COUNCIL BILL NO. 2021-356 ORDINANCE NO.

AN ORDINANCE approving the contract by and between the City of Joplin and B & D Yardbuilders for the demolition of the structure(s) and clearing of a lot located at 715 W 4TH St. in the City of Joplin, Missouri, for Six Thousand Two Hundred dollars ($6,200.00); 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 B &D Yardbuilders in the amount of Six Thousand Two Hundred dollars ($6,200.00) is hereby approved for the demolition of the structure(s) and clearing of lot area located at 715 W 4TH St.

Section 2. The contractor will be paid in case 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 715 W 4TH St. and legally described as:

ALL OF THE WEST 62 ½ FEET OF LOT NUMBERED SEVENTY-THREE (73) IN MOFFET'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 is an emergency pursuant to Section 2.12(1) of the Home Rule Charter in that it is an ordinance for the immediate preservation of public peace, property, health, safety, or morals. Specifically, this ordinance approves the award of a contract to a demolition contractor for the demolition and removal of a structure determined to be dangerous by the Joplin Building Board, and because this structure has been deemed dangerous and a nuisance, its immediate removal is required to preserve public safety and health. The City Council hereby declares that this ordinance shall be in full force and effect from and after its passage.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of_____, 2021, by a vote of _____.

_____
Ryan D. Stanley, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

CLOSING DATE:	10-Sep-2021	DEPT:	Planning & Community Development
STARTING TIME	10:00 AM		
CLOSING TIME:	10:20 AM	BID OPENED BY:	Kim Newhouse
Demolition of all structures		LOCATION:	928 S. Murphy Ave

COMPANY	BIDS
B & D Yardbuilders	$5,100.00
Big John's Heavy Equipment	$7,498.50
Clay Cole Trucking	NO BID
Gator Industrial	$6,928.00
Nelson's Enterprises	NO BID


COUNCIL BILL 2021-357
928 MURPHY AVE.
09/16/2021


09/16/2021


09/16/2021


09/16/2021

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill No. 2021- 357, Building Regulations

MEETING DATE
October 4, 2021

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

SUMMARY
This council bill approves the contract by and between the City of Joplin and with B & D Yardbuilders to remove the structures, and any remaining debris including foundation and footings 928 Murphy Ave.

BACKGROUND
The above listed address was "tagged" as a dangerous building on May 18, 2021. The structures were determined to be dangerous under sub sections of the Dangerous Building Code (Section 26-612, Joplin City Code). On August 27, 2021, an advertisement for bids was published in the Joplin Globe with bids being received on September 10, 2021 for the removal of structures and any reaming debris including footings and foundations. At that time bids were received as follows.

Gator Industrial	$6,928.00
Big Johns	$7,498.50
B & D Yardbuilders	$5,100.00

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

FUNDING SOURCE
These payments are included in the FY 2020-21 budget of the Revolving Fund.

RECOMMENDATION
City Staff recommends that the demolition removal contract be awarded to B & D Yardbuilders for $5,100.00 and that it be approved on an emergency basis within the meaning of section 2.12 (1) for the immediate preservation of public health and welfare.

ATTACHMENTS
Council Bill No. 2021- 357, Photograph of Property, Bid Tabulation

COUNCIL BILL NO. 2021-357 ORDINANCE NO.

AN ORDINANCE approving the contract by and between the City of Joplin and B & D Yardbuilders for the demolition of the structure(s) and clearing of a lot located at 928 Murphy Ave. in the City of Joplin, Missouri, for Five Thousand One Hundred dollars ($5,100.00); 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 B & D Yardbuilders in the amount of Five Thousand One Hundred dollars ($5,100.00) is hereby approved for the demolition of the structure(s) and clearing of lot area located at 928 Murphy Ave.

Section 2. The contractor will be paid in case 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 928 Murphy Ave. and legally described as: ALL OF LOT NUMBERED FORTY-TWO (42) IN BYERS & MURPHYS 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 is an emergency pursuant to Section 2.12(1) of the Home Rule Charter in that it is an ordinance for the immediate preservation of public peace, property, health, safety, or morals. Specifically, this ordinance approves the award of a contract to a demolition contractor for the demolition and removal of a structure determined to be dangerous by the Joplin Building Board, and because this structure has been deemed dangerous and a nuisance, its immediate removal is required to preserve public safety and health. The City Council hereby declares that this ordinance shall be in full force and effect from and after its passage.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of_____, 2021, by a vote of _____.

_____
Ryan D. Stanley, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

COUNCIL BILL NO. 2021-150 ORDINANCE NO.

AN ORDINANCE approving an Agreement with Southern Star Central Gas Pipeline, Inc. in the amount of Four Hundred Thirty-One Thousand Nine Hundred Seventy-Six and 00/100 dollars ($431,976.00) for facility relocations required for the 32nd St. Widening project from Schifferdecker Ave. to Central City Rd. and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin.

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

Section 1. That the Agreement with Southern Star Central Gas Pipeline, Inc. in the amount of Four Hundred Thirty-One Thousand Nine Hundred Seventy-Six and 00/100 dollars ($431,976.00) for facility relocations required for the 32nd St. Widening project from Schifferdecker Ave. to Central City Rd., for the City of Joplin, a true and accurate copy of said agreement being attached hereto and incorporated herein, be, and the same, is hereby approved.

Section 2. That the City Manager of the City of Joplin, Missouri, or his designee, is hereby authorized and directed to execute said agreement, or agreement in substantially similar form, by and on behalf of the City of Joplin with Southern Star Central Gas Pipeline, Inc.

Section 3. That upon the final approval and acceptance of the contractor's work under said contract, in substantial conformance with the attached exhibits, in writing by the Director of Public Works and his certification to the effect to the Director of Finance, the contractor shall be paid from the Capital Improvement Sales Tax fund.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of_____, 2021, by a vote of_____.

ATTEST: Ryan D. Stanley, Mayor

Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

Peter C. Edwards, City Attorney

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

_____
Leslie Haase, Director of Finance

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2021-150 Utility Relocation Agreement between City of Joplin and Southern Star Central Gas Pipeline, Inc., for the 32nd St. Widening Project from Schifferdecker Avenue to Central City Road

MEETING DATE
October 4, 2021

ORIGINATING DEPT
Public Works-Engineering

ATTACHMENTS
Council Bill 2021-150; Agreement; Location Map

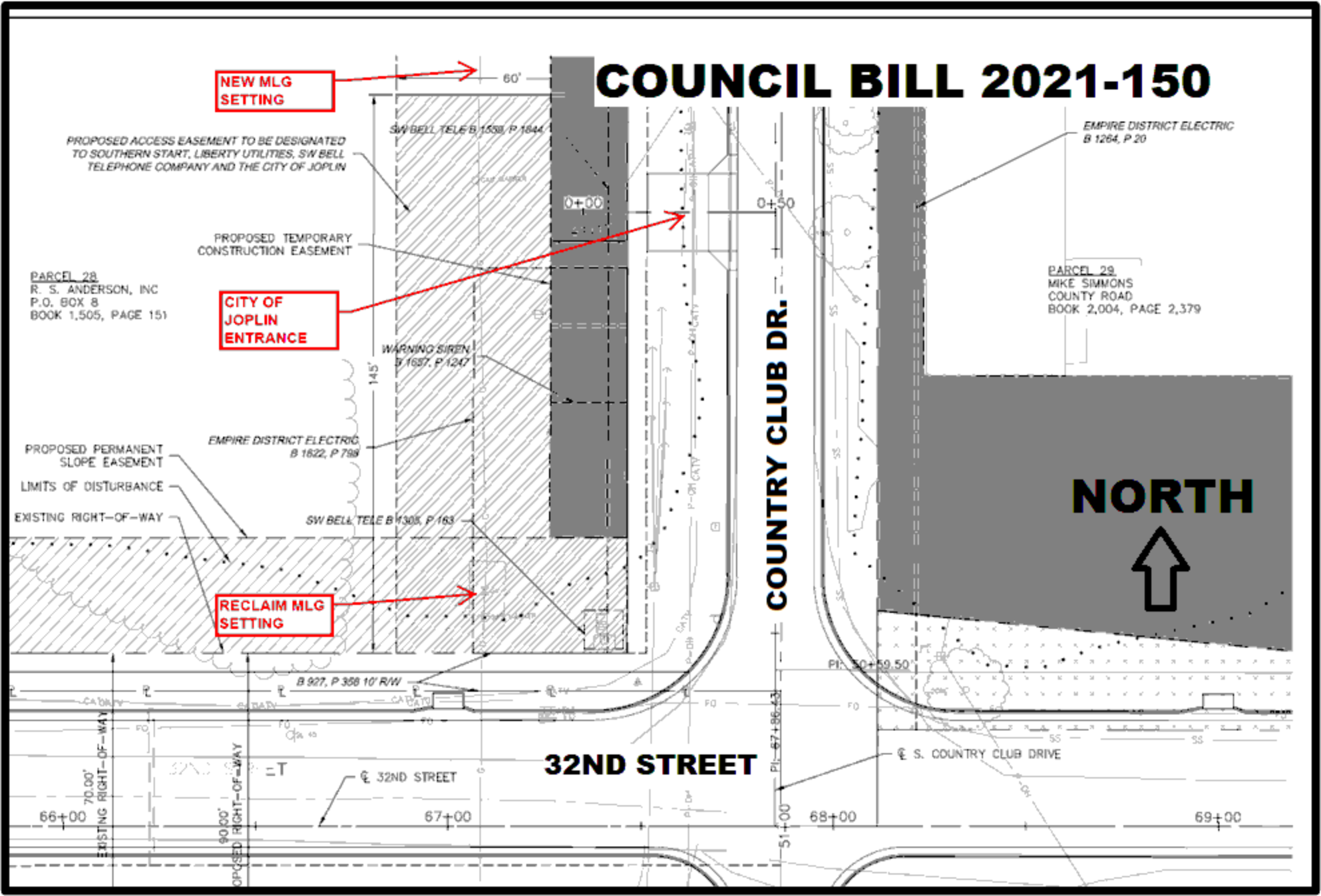
REVIEWED BY
Director of Public Works: David Hertzberg; Finance Director: Leslie Haase; City Attorney: Peter Edwards; City Manager: Nicholas Edwards

SUMMARY
This Council Bill authorizes the City Manager or his designee to enter into an agreement with Southern Star Central Gas Pipeline, Inc. in the amount of Four Hundred Thirty-One Thousand Nine Hundred Seventy-Six and 00/100 dollars ($431,976.00) for facility relocations required for the 32nd St. Widening project from Schifferdecker Ave. to Central City Rd.

BACKGROUND
In August 2014, the voters passed the Renewal of the Capital Improvement Sales Tax Program for an additional 10 years. One of the projects was the widening of 32nd Street from Schifferdecker Ave. to Central City Road. In July 2021, City Council approved a construction agreement with Emery Sapp & Sons, Inc. (ESS) for the widening of 32nd Street. Completion of this project requires the relocation of a 20" mainline gate setting located at the northwest corner of 32nd Street and Country Club Drive. Southern Star will perform this relocation in the spring of 2022.

FUNDING SOURCE
Capital Improvement Sales Tax

RECOMMENDATION
Staff recommends approval of Council Bill 2021-150, Agreement with Southern Star Central Gas Pipeline, Inc. in the amount of Four Hundred Thirty-One Thousand Nine Hundred Seventy-Six and 00/100 dollars ($431,976.00) for facility relocations required for the 32nd St. Widening project from Schifferdecker Ave. to Central City Rd. on first reading.


COUNCIL BILL 2021-150
NEW MLG SETTING
60'
SW BELL TELE B 1538, P 1844
PROPOSED ACCESS EASEMENT TO BE DESIGNATED TO SOUTHERN START, LIBERTY UTILITIES, SW BELL TELEPHONE COMPANY AND THE CITY OF JOPLIN
0+00
0+50
EMPIRE DISTRICT ELECTRIC B 1264, P 20
PROPOSED TEMPORARY CONSTRUCTION EASEMENT
PARCEL 28
R. S. ANDERSON, INC
P.O. BOX 8
BOOK 1,505, PAGE 151
CITY OF JOPLIN ENTRANCE
PARCEL 29
MIKE SIMMONS
COUNTY ROAD
BOOK 2,004, PAGE 2,379
WARNING SIREN B 1657, P 1247
145'
EMPIRE DISTRICT ELECTRIC B 1622, P 799
PROPOSED PERMANENT SLOPE EASEMENT
LIMITS OF DISTURBANCE
EXISTING RIGHT-OF-WAY
SW BELL TELE B 1305, P 163
COUNTRY CLUB DR.
NORTH
RECLAIM MLG SETTING
B 927, P 358 10' R/W
PI: 50+59.50'
32ND STREET
℄ S. COUNTRY CLUB DRIVE
PI: 67+86.43
℄ 32ND STREET
70.00' EXISTING RIGHT-OF-WAY
90.00' PROPOSED RIGHT-OF-WAY
66+00
67+00
68+00
69+00
51+00

STATE OF MISSOURI TRACT 32948

COUNTY OF JASPER LINE FP

RELOCATION AND REIMBURSEMENT AGREEMENT
City of Joplin Project Number 015-2768
32nd Street Widening, Central City Road to Schifferdecker Avenue

THIS AGREEMENT, entered into by and between SOUTHERN STAR CENTRAL GAS PIPELINE, INC. (formerly Cities Service Gas Company), a Delaware Corporation with its principal place of business being 4700 State Route 56, Owensboro, Kentucky 42304 respectively, hereinafter referred to as "COMPANY" and THE CITY OF JOPLIN, Missouri, a Missouri Municipality having an address of 602 S. Main, Joplin, MO 64801, hereinafter referred to as "CITY". COMPANY and CITY may be individually referred to as "PARTY" or collectively as "PARTIES";

WITNESSETH:

WHEREAS, COMPANY is the owner of COMPANY's FACILITIES and easements, therefore across the following land to wit:

WHEREAS, by virtue of a certain Right of Way Contract, Granting of Condemnation from the Circuit Court of Jasper County, Missouri to Cities Service Gas Company on the 27th day of September, 1977. Said Tract being described as: E/2 Sec. 19, T27N, R33W, except N/2 NW/4 NE/4 of said Section, Newton County, Missouri and all of the SE/4 and all of the E 1000' of the NE/4 lying S of the Railroad tracks in Sec. 18, T27N, R33W, except Railroad right-of-way and except the South 35 feet for roadway, Jasper County, Missouri. Recorded in Recorder of Deeds Office, Jasper County, Missouri in Book 1204, Pages 1703- 1720).

WHEREAS, COMPANY owns and operates a Twenty Inch (20") natural gas pipeline designated as "FP" with valves and other appurtenances thereto ("COMPANY's FACILITIES") across property described in the above-referenced agreements belonging to the landowners of record at the time the right of way and easement agreements were granted; and

WHEREAS, the CITY desires that the COMPANY's FACILITIES be relocated for improvements to 32nd Street, from Central City Road to Schifferdecker Avenue in which the City of Joplin shall widen the existing roadway (the "IMPROVEMENTS") located in the part of SE/4 SE/4 SE/4 of Section 18 Township 27N Range 33W, Jasper County, MO; and

WHEREAS, under the terms of this Agreement, COMPANY is willing to relocate COMPANY's FACILITIES to accommodate the IMPROVEMENTS.

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, COMPANY and CITY agree as follows:

1. COMPANY shall relocate a 20" Mainline Gate Setting for the IMPROVEMENTS as shown on "Public Street Plans for 32nd Street Widening, Central City Rd. to Schifferdecker Ave., Sections 17, 18, 19 & 20, Township 27N, Range 33W, City of Joplin, Missouri, Jasper & Newton Counties, Missouri, dated September 21, 2020 3:46 pm designated as "Exhibit A & B" attached hereto and made a part hereof. The CITY shall be responsible for any and all costs associated with the planning, design, engineering,

development, and relocation of COMPANY's FACILITIES. Where relocation has occurred, CITY agrees to prepare, and COMPANY agrees to execute and deliver to CITY, a partial release of COMPANY's existing private easement along 32nd Street.

2. CITY agrees that upon execution of this Agreement to reimburse COMPANY $431,976.00 (the "PAYMENT") for the CITY's costs and charges for the relocation of COMPANY's FACILITIES. This estimate, designated as "Exhibit C" attached hereto and made a part hereof, is not considered to be a minimum or a maximum.

   Should the total relocation cost be less than the PAYMENT, COMPANY shall refund the difference to CITY within thirty (30) days of the COMPANY's final accounting. In the event the actual costs and charges for the relocation of COMPANY's facilities exceed the PAYMENT, the CITY shall pay the COMPANY the balance due within thirty (30) days of the date of COMPANY's invoice.

3. CITY shall be responsible for any and all costs associated with relocation of COMPANY's FACILITIES, including without limitation, acquisition of necessary land rights, permits, engineering, drafting, surveying, construction, materials, company labor, overheads and any legal costs associated therewith.

4. COMPANY reserves the right upon written demand to secure additional advances from the CITY in the event that the CITY alters its IMPROVEMENTS in any manner, including without limitation, changes in the scope of work of the IMPROVEMENTS or changes in the relocation of COMPANY's FACILITIES.

5. CITY agrees to advance the COMPANY the balance of the monies due under this Agreement. In order to ensure proper and timely credit of the payment to the COMPANY, payment must be mailed to the following address and to the attention of the person below:

   SOUTHERN STAR CENTRAL GAS PIPELINE, INC.
   Attn: Property Accounting – Job C63825
   4700 State Route 56
   Owensboro, KY 42301

6. In the event a PARTY requires a change in work, additional work to be done, or requires additional or different material to be used ("CHANGE[S]"), CITY agrees to pay COMPANY all additional indirect and direct costs incurred by COMPANY to accommodate any and all CHANGES made by a PARTY.

7. Subject to any natural gas commitments, COMPANY will endeavor to commence performance of work contemplated by this Agreement with reasonable diligence once all land rights and permits have been secured for the relocation provided that COMPANY shall not be obligated to commence or continue performance of the work in the event, in COMPANY's sole opinion, weather conditions or an event of force majeure prevents such work by COMPANY or its contractor. In no event shall COMPANY be liable for any consequential or incidental damages to CITY or any person or entity, including, without limitation, any third-party beneficiary to this Agreement.

8. To the fullest extent permitted by law, and subject to the limitations of the Missouri Tort Claims Act, CITY agrees to indemnify, save and hold harmless COMPANY, its parent, affiliates, and the employees, officers, directors, and agents thereof, from and against any loss, claim, cost or expense incurred by COMPANY including without limitation, losses resulting from claims for damage to property or injuries to or death of persons, and judgments, court costs and attorneys' fees which directly result from arise out of, or are claimed to have arisen out of, the construction, maintenance or other operations of CITY, its contractors and subcontractors, on any CITY property or easements. Prior to the commencement of the construction proposed hereunder, CITY shall provide COMPANY certificates of insurance evidencing coverage of $1,000,000.00 general liability for the construction of the proposed IMPROVEMENTS and containing thirty (30) days' notice of cancelation. This paragraph shall survive termination of this Agreement.

9. All work performed on COMPANY property and easements shall be performed in a workmanlike manner and in compliance with acceptable governmental and industry standards and codes. CITY agrees that it

shall be responsible for the full cost of restoration of the area(s) disturbed.

10. COMPANY shall make efforts to have the relocation of COMPANY's FACILITIES completed before June 1, 2022 unless delayed for adverse weather or force majeure events.

11. CITY acknowledges that the natural gas pipeline is cathodically protected and hereby relieves COMPANY of any liability for damage to any IMPROVMENTS or any additions thereto due to said cathodic protection.

12. COMPANY will be required to obtain environmental approvals prior to the CITY performing work on COMPANY's workspace. COMPANY anticipates approvals being received prior to April 1, 2022 unless unforeseen issues arise. COMPANY will not be liable for any costs associated with CITY's work being delayed for COMPANY failing to obtain the environmental permits by April 1, 2022. Upon authorization to proceed by COMPANY, CITY will remove the habitats (trees, brush, etc.) for species protected by the Migratory Bird Treaty Act along with the habitats for the Northern Long-eared Bat on COMPANY's workspace prior to April 1, 2022. Failure to remove the habitats by April 1, 2022 will require COMPANY to perform environmental field assessments that may identify the presence of these species resulting in the construction start being delayed. CITY will be responsible for all costs associated with these delays

13. If CITY determines that relocation of COMPANY's FACILITIES is no longer necessary or shall be delayed, CITY may terminate this Agreement by providing written notice to COMPANY. CITY shall compensate COMPANY for all purchased materials and costs associated with the project, including costs associated with the return of materials purchased, engineering costs, and land acquisition costs incurred up to and including the date of cancellation. COMPANY shall apply the PAYMENT towards all costs incurred and refund the remaining PAYMENT funds within sixty (60) days of COMPANY closing its books on the project and final accounting.

14. In the event of a dispute, the PARTIES agree that they shall, in good faith, seek alternative means to resolve the dispute.

15. This Agreement does not create, and shall not be construed as creating, a partnership, joint venture, fiduciary, franchise, association or similar relationship between the parties hereto.

16. Neither this Agreement nor any provision contained herein may be amended, waived, discharged or terminated, except by an instrument in writing signed by the party against which enforcement of such amendment, waiver, discharge or termination is sought.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to the choice of law provisions. The parties hereto (i) agree that venue is proper in any judicial proceeding brought in connection with a dispute arising under this Agreement in any state or federal court of competent jurisdiction located within the state of Missouri. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THE AGREEMENT.

18. Entire Agreement. This Agreement and the documents delivered pursuant hereto constitute the entire agreement between COMPANY and CITY with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between COMPANY and CITY with respect to the subject matter hereof.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. This Agreement can be electronically signed, and electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. Electronic copies of any signed original agreement will be deemed the same as delivery of an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date first written above.

[*signature page to follow*]

CITY OF JOPLIN, MISSOURI:	SOUTHERN STAR CENTRAL GAS PIPELINE, INC.
_____	_____
By: David Hertzberg_____	By: Shawn Patterson
Name: _____	Name: _____
Title: Director of Public Works	Title: Chief Operations Officer

STATE OF MISSOURI

COUNTY OF JASPER

ACKNOWLEDGEMENT OF CITY

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on this _____day of_____, 2021, personally appeared David Hertzberg, who being duly sworn, did say that he is Director of Public Works, of the City of Joplin, Missouri, a Missouri Municipal corporation and that said instrument was signed on behalf of said City by authority of its City Council, and said Director of Public Works acknowledged said instrument to be the free act and deed of said City.

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year above written.

_____
Notary Public

My Commission Expires:_____

COMMONWEALTH OF KENTUCKY

COUNTY OF DAVIESS

ACKNOWLEDGEMENT FOR CORPORATION

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on the _____day of _____, 2021, personally appeared Shawn Patterson who being duly sworn, did say that he is the Vice President and Chief Operations Officer of Southern Star Central Gas Pipeline, Inc., a Delaware corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and Shawn Patterson acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year written above.

_____
Notary Public

My Commission Expires: _____

PUBLIC STREET PLANS FOR

32ND STREET WIDENING

CENTRAL CITY RD. TO SCHIFFERDECKER AVE.

SECTIONS 17, 18, 19 & 20, TOWNSHIP 27N, RANGE 33W

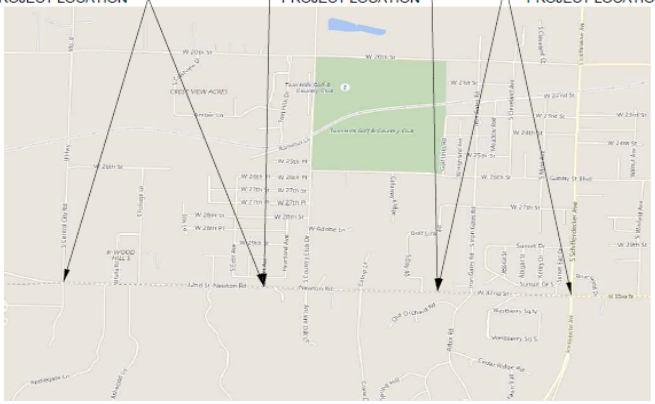
CITY OF JOPLIN, MISSOURI

JASPER & NEWTON COUNTIES, MISSOURI

"A" PLANS PROJECT LOCATION

"B" PLANS PROJECT LOCATION

"C" PLANS PROJECT LOCATION



LOCATION MAP

NOT TO SCALE

LEGEND

SURVEY CONTROL POINT
SURVEY BENCHMARK
SURVEY TEMPORARY BENCHMARK
GAS METER
GAS RISER
GAS MANHOLE
GAS REGULATOR
TELEVISION PEDESTAL
FIBER BOX
FIBER PEDESTAL
CABLE BOX
CABLE VAULT
TELEPHONE PEDESTAL
STORM MANHOLE
STORM GRATE
SANITARY MANHOLE
YARD LIGHT
LIGHT POLE
POWER POLE
POWER POLE W/ LIGHT
GUY WIRE
STUMP
BUSH
EVERGREEN TREE
DECIDUOUS TREE
TRAFFIC SIGNAL BOX
TRAFFIC SIGNAL MANHOLE
TRAFFIC SIGNAL POLE W/ ARM
TRAFFIC SIGNAL POLE
TRAFFIC SIGNAL CONTROL BOX
TRAFFIC SIGNAL PEDESTAL
ELECTRIC MANHOLE
ELECTRIC METER
ELECTRIC PANEL
ELECTRIC BOX
ELECTRIC CABINET
ELECTRIC JUNCTION BOX
SPRINKLER HEAD
SPRINKLER CONTROL VALVE
WATER METER PIT
WATER METER
WATER VALVE
FLAG POLE
SIGN
BOLLARD
WOOD POST
STEEL POST
COLUMN
BORE HOLE

SECTION LINE
PROPERTY LINE
CENTER LINE
PROPOSED ROW LINE
EXISTING ROW LINE
UTILITY EASEMENT
EXISTING MAJOR CONTOUR
EXISTING MINOR CONTOUR
PROPOSED MAJOR CONTOUR
PROPOSED MINOR CONTOUR
EXISTING TELEPHONE LINE
EXISTING SANITARY LINE
EXISTING STORM LINE
EXISTING GAS LINE
EXISTING WATER LINE
EXISTING CHAIN LINK FENCE
EXISTING OVERHEAD ELECTRIC
EXISTING FIBER OPTIC CABLE
EXISTING FIRE LINE
GRADING LIMITS
TEMPORARY CONSTRUCTION EASEMENT
PROPOSED PERMANENT EASEMENT
PROPOSED CHAIN LINK FENCE
PROPOSED WOOD PRIVACY FENCE
EXISTING TREELINE
CONSTRUCTION LIMITS
UNDERBRUSH

ASPHALT PAVEMENT
CONCRETE SIDEWALK
CONCRETE DRIVE
AGGREGATE SURFACE
ASPHALT OVERLAY
STAMPED CONCRETE PAVEMENT
DETECTABLE WARNING SURFACE
CURB RAMP
ROCK BLANKET

ABBREVIATION TABLE

M.G.	MATCH GRADE
PVT.	PAVEMENT
T.O.C.	TOP OF CURB
B.C.	BACK OF CURB
E.P.	EDGE OF PAVEMENT
R/W	RIGHT-OF-WAY
T.C.E.	TEMPORARY CONSTRUCTION EASEMENT
PROP.	PROPOSED
EXIST.	EXISTING
TYP.	TYPICAL
(R)	REMOVAL
CONST.	CONSTRUCT
T.B.M.	TEMPORARY BENCHMARK
C.P.	CONTROL POINT
D.N.C.	DO NOT CHECK/FIELD
U.I.P.	USE IN PLACE
ADJ.	ADJUST
EL.	ELEVATION
EASMT.	EASEMENT
B-B	BACK OF CURB TO BACK OF CURB DIMENSION
℄	CENTERLINE

MISSOURI ONE CALL SYSTEM, INC.
1-800-DIG-RITE = 811
www.mo1call.com

THE EXISTING UTILITY LOCATIONS SHOWN ON THE PLANS ARE APPROXIMATE AND MAY NOT INCLUDE ALL LINES PRESENT. THE CONTRACTOR SHALL BE RESPONSIBLE TO CALL "1-800-DIG-RITE" AND COORDINATE FIELD LOCATION OF EXISTING UNDERGROUND UTILITIES PRIOR TO BEGINNING GRADING ACTIVITIES. (1-800-DIG-RITE CALL BEFORE YOU DIG!)

DESIGN DESIGNATION

MAJOR ARTERIAL
DESIGN SPEED: 40 MPH
POSTED SPEED: 40 MPH
CLEAR ZONE = 16'



SECTION 17,18, 19 & 20, T-27-N, R-33-W
JASPER & NEWTON COUNTIES, MISSOURI

VICINITY MAP

UTILITIES INFORMATION

ELECTRIC
LIBERTY UTILITIES
602 JOPLIN ST., JOPLIN, MO 64801
BOB BATCHAR
(417) 625-5160

NATURAL GAS
SPIRE ENERGY
520 E. 4TH ST., JOPLIN, MO 64801
KEN MITCHELL
(417) 626-4831

TELEPHONE
AT&T
321 W. 4TH ST., JOPLIN, MO 64801
KENNETH HENSWORTHY
(417) 625-8090

WATER
MISSOURI-AMERICAN WATER CO.
2650 E. 32ND ST. – SUITE 121
JOPLIN, MO 64804
DAVID QUINN
(417) 623-0676 EXT. 1004

CABLE TELEVISION
CABLE ONE DIGITAL
112 E. 32ND ST., JOPLIN, MO 64804
RANDY HENNESY
(417) 206-0399

INDEX OF SHEETS

SHEET NO.	TITLE
1	TITLE SHEET
2	GENERAL LAYOUT PLAN
3–6	CURB GRADE CONTROL AND ALIGNMENT DATA
7	GENERAL NOTES
8	OVERALL SUMMARY OF QUANTITIES
9–12	GEOTECHNICAL BORE LOCATIONS AND BORE LOGS
13–21	CONSTRUCTION SEQUENCING
~~22–29~~	~~STREET LIGHTING PLANS~~
~~30–31~~	~~LIGHTING AND ELECTRICAL DETAILS~~
32	SANITARY SEWER EXTENSION PLAN
33–34	STANDARD DETAILS PAVING DETAILS
35–42	STORM DRAIN DETAILS
43–45	RETAINING WALL DETAILS

"A" PLANS - CENTRAL CITY RD. TO JENNIFER AVE

A1	TITLE SHEET
A2	SUMMARY OF QUANTITIES
A3–A9	RIGHT-OF-WAY AND EASEMENT PLANS
A10–A16	DEMOLITION AND REMOVAL PLANS
A17–A20	TYPICAL SECTIONS
A21–A34	ROADWAY PLAN AND PROFILES
A35–A37	SIDE STREET PLAN AND PROFILES
A38–A41	INTERSECTION LAYOUTS
A42–A43	DRIVE LAYOUTS
A44–A45	DRAINAGE AREA MAP AND CALCULATIONS
A46–A51	STORM DRAIN PROFILES
A52–A58	STRIPING PLANS
A59–A95	CROSS SECTIONS

"B" PLANS - JENNIFER AVE. TO E. OF DAY RD.

B01	TITLE SHEET
B02	SUMMARY OF QUANTITIES
B03–B12	RIGHT-OF-WAY AND EASEMENT PLANS
B13–B21	DEMOLITION AND REMOVAL PLANS
B22–B24	TYPICAL SECTIONS
B25–B38	ROADWAY PLAN AND PROFILES
B39–B48	SIDE STREET PLAN AND PROFILES
B49–B49	INTERSECTION LAYOUTS
B50–B54	DRIVE LAYOUTS
B55–B57	DRAINAGE AREA MAP AND CALCULATIONS
B58–B70	STORM DRAIN PROFILES
B71	RETAINING WALL PLAN AND PROFILES
B72–B79	STRIPING PLANS
B80–B120	CROSS SECTIONS

"C" PLANS - E. OF DAY RD. TO SCHIFFERDECKER

C1	TITLE SHEET
C2	SUMMARY OF QUANTITIES
C3–C7	RIGHT-OF-WAY AND EASEMENT PLANS
C8–C12	DEMOLITION AND REMOVAL PLANS
C13–C14	TYPICAL SECTIONS
C15–C24	ROADWAY PLAN AND PROFILES
C25–C26	SIDE STREET PLAN AND PROFILES
C27–C28	INTERSECTION LAYOUTS
C29–C31	DRIVE LAYOUTS
C32–C33	DRAINAGE AREA MAP AND CALCULATIONS
C34–C36	STORM DRAIN PROFILES
C37–C41	STRIPING AND SIGNAGE PLANS
C42–C68	CROSS SECTIONS

PREPARED & SUBMITTED BY:

OLSSON
702 S. MAIN STREET
JOPLIN, MISSOURI 64801

BRIAN COOMES P.E. DATE

I CERTIFY THESE PLANS WERE PREPARED BY ME OR UNDER MY IMMEDIATE PERSONAL SUPERVISION.

APPROVED BY:

CITY OF JOPLIN, MISSOURI

CITY ENGINEER DATE

olsson

Olsson - Civil Engineering
Missouri Certificate of Authority #001392
702 S. Main St
Joplin, MO 64801

TEL. 417.781.0643 www.olsson.com

PRELIMINARY
NOT FOR CONSTRUCTION

REV. NO.	DATE	REVISIONS DESCRIPTION	BY
		REVISIONS	

OVERALL TITLE SHEET

32ND STREET WIDENING
CITY OF JOPLIN

JOPLIN, MISSOURI

2020

drawn by: DMW/CWS
checked by: PMT/BRC
approved by: BRC
QA/QC by: PMT/BRC
project no.: 015-0768
drawing no.: S_TTL_ROW
date: 8.14.2020

SHEET
1 of 45

Exhibit "A"

Exhibit "B"

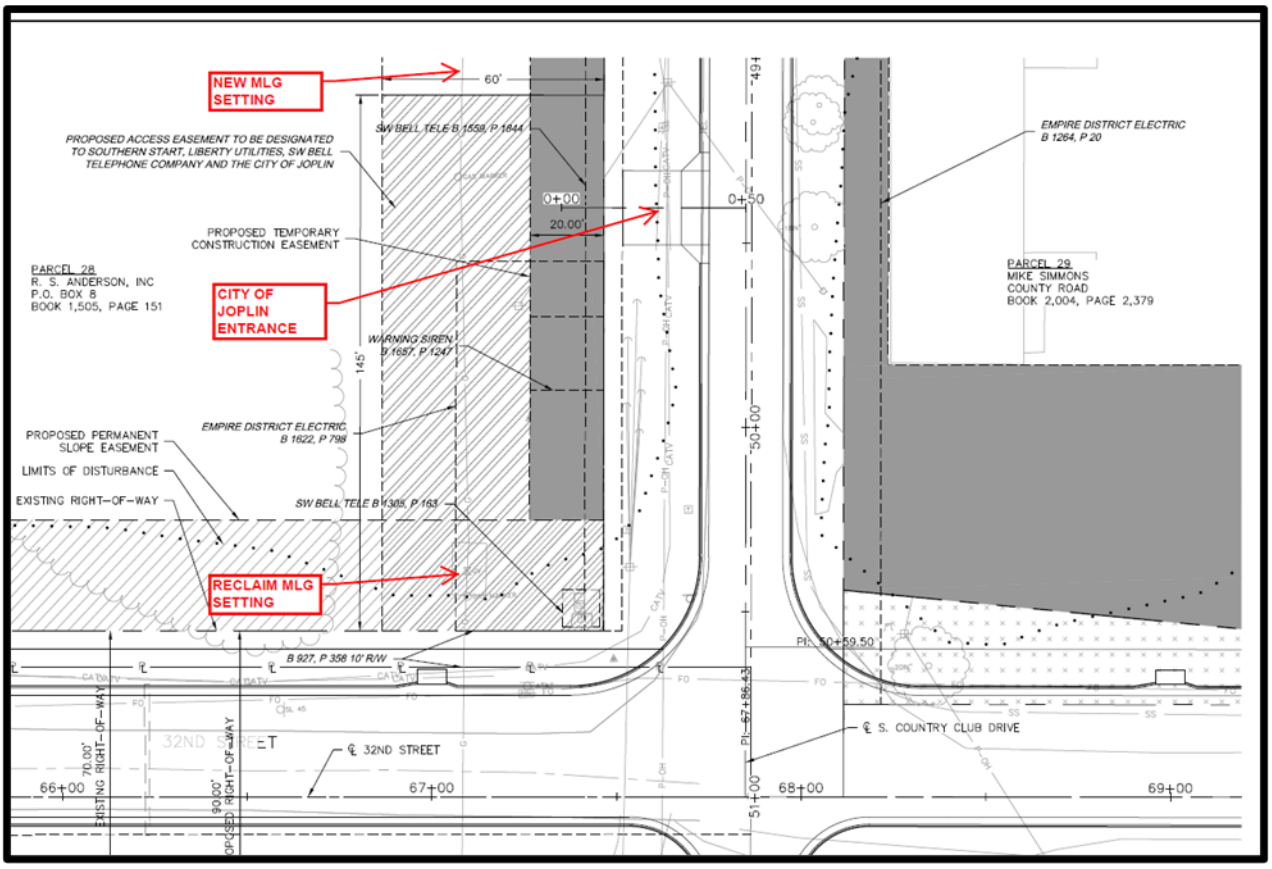

NEW MLG SETTING
60'
SW BELL TELE B 1558, P 1644
PROPOSED ACCESS EASEMENT TO BE DESIGNATED TO SOUTHERN START, LIBERTY UTILITIES, SW BELL TELEPHONE COMPANY AND THE CITY OF JOPLIN
0+00
20.00'
0+50
EMPIRE DISTRICT ELECTRIC B 1264, P 20
PROPOSED TEMPORARY CONSTRUCTION EASEMENT
PARCEL 28
R. S. ANDERSON, INC
P.O. BOX 8
BOOK 1,505, PAGE 151
CITY OF JOPLIN ENTRANCE
PARCEL 29
MIKE SIMMONS
COUNTY ROAD
BOOK 2,004, PAGE 2,379
WARNING SIREN
B 1657, P 1247
145'
EMPIRE DISTRICT ELECTRIC B 1622, P 798
PROPOSED PERMANENT SLOPE EASEMENT
LIMITS OF DISTURBANCE
EXISTING RIGHT-OF-WAY
SW BELL TELE B 1305, P 163
RECLAIM MLG SETTING
50+00
PI: 50+59.50
B 927, P 358 10' R/W
PI: 57+86.43
℄ S. COUNTRY CLUB DRIVE
32ND STREET
℄ 32ND STREET
70.00' EXISTING RIGHT-OF-WAY
90.00' PROPOSED RIGHT-OF-WAY
66+00
67+00
68+00
69+00
51+00

Exhibit "C"

Estimate Summary

SOUTHERN STAR
CENTRAL GAS PIPELINE

Relocate Line FP 32nd Street MLG Valve for City of Joplin

C63825 PDF 3369

Rev 0

COST ESTIMATE

Based on Scope Dated 02/25/21, Rev. 0

Gate 1

SUMMARY

Scope: Relocation of MLG Valve, Line FP 20" at 32nd Street in the City of Joplin.

Assumptions:

1. Contract labor for construction and inspection.
2. SSCGP to perform project design/engineering, survey, drafting, project management, land, and environmental.
3. Line can be taken out of service; CNG Trailer required.
4. In Service: 5/4/2022; Construction Start 4/18/2022
5. Project is 100% Reimbursable.

Category	R-Job Retirement	C-Job Estimate
Materials		$94,899
Construction	$3,500	$189,600
Survey		$0
Right-of-Way		$1,700
Legal & Public Affairs		$0
Environmental		$200
Inspection		$31,579
Engineering		$0
Southern Star		$46,743
A&G Overhead		$19,711
AFUDC		$4,774
SUBTOTAL	$3,500	$389,205

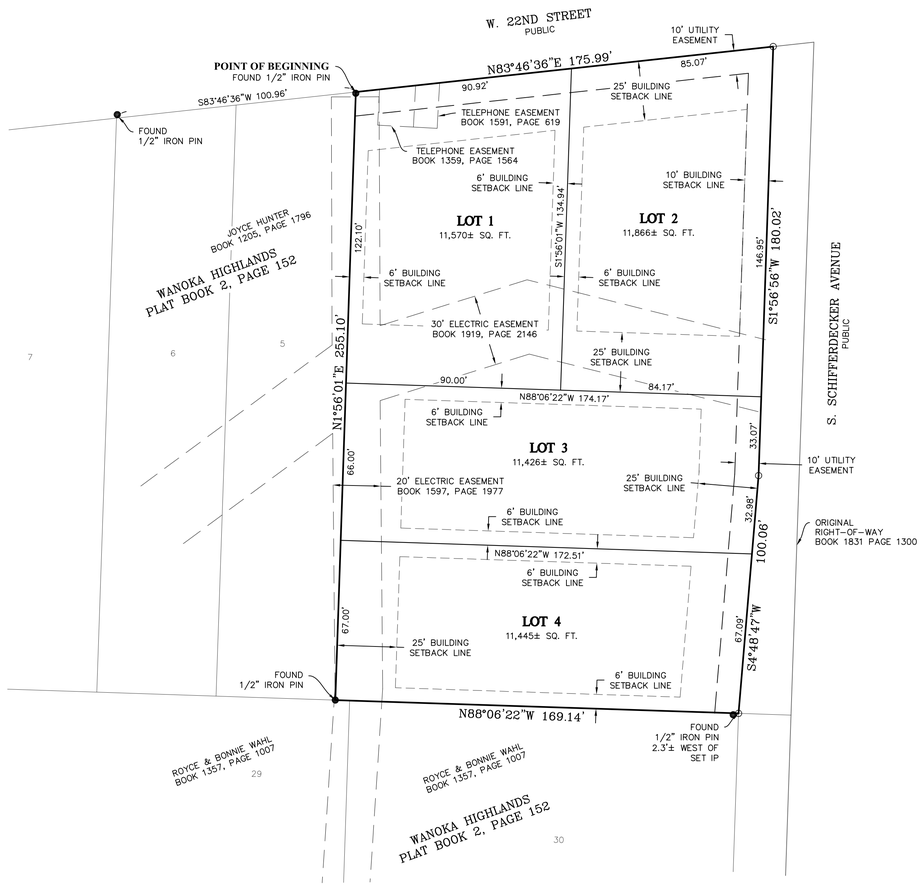
R-Job & C-Job Subtotal	$392,705	
R-Job & C-Job Contingency	$39,271	
R-Job & C-Job Total	**$431,976**	Reimbursable 100%

FINAL PLAT OF
ABERNATHY SUBDIVISION
BEING A REPLAT OF LOTS 1-4 AND A-B OF WANOKA HIGHLANDS
A SUBDIVISION IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI

FLOOD NOTE
BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS IN ZONE X OF THE FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 29097C0258E, WHICH BEARS AN EFFECTIVE DATE OF NOVEMBER 2, 2012 AND IS NOT IN A SPECIAL FLOOD HAZARD AREA. NO FIELD SURVEYING WAS PERFORMED TO DETERMINE THIS ZONE.



LOCATION SKETCH
SECTION 17
T 27 N, R 33 W
SCALE: 1"=2000'



GRID

GRAPHIC SCALE
30 0 15 30 60 120
(IN FEET)
1 inch = 30 ft.

LEGEND
- ● FOUND IRON PIN-AS NOTED
- ○ SET MONUMENT STAMPED A/E INC LC 62
- PROPERTY LINE
- BUILDING SETBACK LINE
- EASEMENT LINE

NOTES
1) BEARINGS BASED ON GRID NORTH OF THE MISSOURI COORDINATE SYSTEM OF 1983, WEST ZONE.
2) THIS SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

SOURCE OF DEED
JOHN VAUGHN & CATHY STOVER
BOOK 2482, PAGE 15

DEVELOPER AND OWNER
JON ABERNATHY
1901 NORTH RANGELINE RD
JOPLIN, MISSOURI 64801

ENGINEER/LAND SURVEYOR
ANDERSON ENGINEERING, INC.
811 E. 3RD STREET
JOPLIN, MISSOURI 64801
GREGORY B. BOWERS, P.L.S.

SUBDIVISION INFORMATION

TOTAL ACRES:	1.06±
SMALLEST LOT AREA:	11,426± SQ FT (LOT 3)
LARGEST LOT AREA:	11,866± SQ FT (LOT 2)
TOTAL NO OF LOTS:	4
CURRENT ZONING:	R-1
PRELIMINARY APPROVAL:	4-12-21
ACCURACY STANDARD:	URBAN

ZONING DATA
SUBJECT PROPERTY IS ZONED R1
(SINGLE-FAMILY RESIDENTIAL DISTRICT)

BUILDING SETBACK REQUIREMENTS

FRONT: 25'
SIDE: 6'
SIDE CORNER LOTS: COLLECTOR STREETS 15'
REAR: 25'

SURVEY DESCRIPTION
A TRACT OF LAND BEING A PART OF LOTS ONE (1), TWO (2), THREE (3), FOUR (4), A AND B IN WANOKA HIGHLANDS A SUBDIVISION IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI AS RECORDED IN PLAT BOOK 2, PAGE 152 IN THE RECORDER OF DEEDS OFFICE IN JASPER COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 1/2" IRON PIN AT THE NORTHWEST CORNER OF LOT FIVE (5) OF THE AFOREMENTIONED SUBDIVISION; THENCE NORTH 83°46'36" EAST ALONG THE SOUTH RIGHT-OF-WAY OF 22ND STREET AS NOW LOCATED, 175.99 FEET TO A SET PIN AND CAP STAMPED A/E INC LC 62 ON THE WEST RIGHT-OF-WAY OF SCHIFFERDECKER AVENUE AS NOW LOCATED; THENCE SOUTH 01°56'56" WEST ALONG SAID WEST RIGHT-OF-WAY, 180.02 FEET TO A SET PIN AND CAP STAMPED A/E INC LC 62 AT THE INTERSECTION OF THE NORTH LINE OF LOT THREE (3) OF WANOKA HIGHLANDS SUBDIVISION, AFORESAID, AND THE WEST RIGHT-OF-WAY OF SCHIFFERDECKER AVENUE; THENCE CONTINUING ALONG SAID WEST RIGHT-OF-WAY SOUTH 04°48'47" WEST, 100.06 FEET TO A SET PIN AND CAP STAMPED A/E INC LC 62; THENCE LEAVING SAID WEST RIGHT-OF-WAY NORTH 88°06'22" WEST ALONG THE SOUTH LINE OF LOT B OF WANOKA HIGHLANDS SUBDIVISION, 169.14 FEET TO A FOUND 1/2" IRON PIN AT THE SOUTHWEST CORNER OF SAID LOT B; THENCE NORTH 01°56'01" EAST ALONG THE EAST LINE OF LOT FIVE (5) OF SAID WANOKA HIGHLANDS SUBDIVISION, 255.10 FEET TO THE POINT OF BEGINNING. BEARINGS BASED ON THE MISSOURI COORDINATE SYSTEM OF 1983, WEST ZONE, CONTAINING 1.06 ACRES MORE OR LESS.

CITY APPROVAL
THIS FINAL PLAT OF ABERNATHY SUBDIVISION, BEING A REPLAT OF LOTS 1-4 AND A-B OF WANOKA HIGHLANDS, INCLUDING EASEMENTS AND RIGHTS-OF-WAY ACCEPTED BY THE CITY COUNCIL HAS BEEN SUBMITTED TO AND APPROVED BY THE JOPLIN CITY COUNCIL BY ORDINANCE NO._____ ____, DULY PASSED AND APPROVED BY THE MAYOR ON THE _____ DAY OF _____, 20____, OF JOPLIN, MISSOURI.

_____ MAYOR

ATTEST:

_____ PUBLIC WORKS DIRECTOR

_____ CITY CLERK

ACKNOWLEDGMENT
STATE OF MISSOURI)
) SS
COUNTY OF JASPER)

BE IT REMEMBERED THAT ON THIS _____ DAY OF _____, 20 ____ BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, CAME_____TO ME PERSONALLY KNOWN TO BE THE SAME PERSON WHO EXECUTED THE FOREGOING INSTRUMENTS IN WRITING AND DULY ACKNOWLEDGED THE EXECUTION OF SAME, IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY NOTARY SEAL THE DAY AND THE YEAR ABOVE WRITTEN.

_____ (SEAL)
NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

SURVEYORS CERTIFICATE
KNOW ALL MEN BY THESE PRESENTS:
THAT I, RONALD W. WALLACE, DO HEREBY CERTIFY THAT THIS PLAT WAS PREPARED UNDER MY SUPERVISION FROM AN ACTUAL SURVEY OF THE LAND HEREON DESCRIBED AND IN ACCORDANCE WITH THE CURRENT MISSOURI STANDARDS FOR URBAN PROPERTY SURVEYS, PREPARED BY ANDERSON ENGINEERING, INC., AND THAT THE CORNER MONUMENTS AND LOT CORNER PINS WERE PLACE OR WILL BE PLACED WITHIN 12 MONTHS AFTER RECORDING PLAT.
LAST REVISION DATE AUGUST 5, 2021
ANDERSON ENGINEERING, INC. L.C. 62
by

_____ RONALD W. WALLACE, P.L.S. 2019015191

8-5-21 DATE

OWNER'S CERTIFICATE AND DEDICATION
SAID LAND HAS BEEN SUBDIVIDED AS SHOWN HEREON. STREETS AND EASEMENTS ARE RELINQUISHED AND DEDICATED TO THE PUBLIC. ALL TAXES AND SPECIAL ASSESSMENTS DUE AND PAYABLE HAVE BEEN PAID IN FULL, IN WITNESS WHERE OF, I, JON ABERNATHY, HAVE HEREUNTO SET MY HAND,
THIS _____ DAY OF _____, 20____,

(Signed)_____
JON ABERNATHY

CERTIFICATE OF RECORDING

ANDERSON ENGINEERING
EMPLOYEE OWNED
ENGINEERS - SURVEYORS - LABORATORIES - DRILLING
811 E. 3RD STREET
JOPLIN, MISSOURI 64801
PHONE (417) 782-7399

FIELD: JSW DATE: 8-4-21
DRAWN: JBM/SLM FIELD BK:
CHECKED: GBB JOB NO: 20JO20095

JOP 100-6098
SHT. 1 OF 1 REV. ___

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM:
CB 2021-285 – Final Plat Review, Abernathy Subdivision.

MEETING DATE:
October 4, 2021

ORIGINATING DEPARTMENT:
Planning, Development and Neighborhood Services

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

SUMMARY REQUEST:
Case 051-21: Final Plat Review – A request to review the Final Plat of Abernathy Subdivision located at the Southwest corner of the intersection of W. 22nd St. and S. Schifferdecker Ave. – Jon Abernathy

BACKGROUND:
The final plat approval is for Abernathy Subdivision located at Southwest corner of W. 26th St. and S. Winfield Ave. This subdivision will be 4 residential lots, zoned R-1 Single-family residential. This zoning is appropriate for the existing use as well as the area and conforms to the future land use map.

PLANNING & ZONING COMMISSION TESTIMONY:
Keegan Stanton, 602 S. Main Street, Joplin, MO, representing the applicant today because the applicant has to attend his daughter's birthday party. This is a request from John Abernathy, for Abernathy Sub-division. This is the final plat, the preliminary plat came before this commission a few months ago. It is only four (4) lots, and it is a re-plat. Reduction from six (6) lots to four (4) lots. Two of the lots will face 22nd Street and two will face Schifferdecker. The lots on Schifferdecker will be required to have their driveways as far away as from the intersection on 22nd Street to avoid conflicts.

PUBLIC COMMENT;
None.

FUNDING SOURCE
These payments are included in the FY 2020-21 budget of the Community Planning Fund.

RECOMMENDATION:
Staff recommends approval of Case 051-21.
Planning and Zoning Commission approved Case 051-21 (6 Favor, 1 Absent,)

ATTACHMENTS:
CB 2021-285, Planning Report, Commission Minutes, Abernathy Subdivision Plat

P & Z Case 051-21
Jon Abernathy.
(P & Z Recommended Approval)

COUNCIL BILL NO. 2021-285 ORDINANCE NO.

AN ORDINANCE establishing grades and accepting the Final Plat of Abernathy Subdivision located at the Southwest Corner of W. 22nd St. and S. Schifferdecker Ave. in the City of Joplin, Jasper County, Missouri.

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

Section 1. That the grades in the Plat of Subdivision located at Southwest Corner of W. 22nd St. and S. Schifferdecker Ave. in the City of Joplin, Jasper County, Missouri be and the same are hereby fixed and established as follows:

A TRACT OF LAND BEING A PART OF LOTS ONE (1), TWO (2), THREE (3), FOUR (4), A AND B IN WANOKA HIGHLANDS A SUBDIVISION IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI AS RECORDED IN PLAT BOOK 2, PAGE 152 IN THE RECORDER OF DEEDS OFFICE IN JASPER COUNTY, MISSOURI BEING MORE PARTIBULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A FOUND ½" IRON PIN AT THE NORTHWEST CORNER OF LOT FIVE (5) OF THE AFOREMENTED SUBDIVISION; THENCE, NORTH 83°46'36" EAST ALONG THE SOUTH RIGHT-OF-WAY OF 22ND STREET AS NOW LOCATED, 175.99 FEET TO A SET PIN AND CAP STAMPED A/E INC LC 62 AT THE INTERSECTION OF THE NORTH LINE OF LOT THREE (3) OF WANOKA HIGHLANDS SUBDIVISION, AFORESAID, AND THE WEST RIGHT-OF-WAY OF SCHIFFERDECKER AVENUE; THENCE CONTINUING ALONG SAID WEST RIGHT-OF-WAY SOUTH 04°48'47" WEST, 100.06 FEET TO A SET PIN AND CAP STAMPED A/E INC LC 62; THENCE LEAVING SAID WEST RIGHT-OF-WAY NORTH 88°06'22" WEST ALONG THE SOUTH LINE OF LOT b OF WANOKA HIGHLANDS SUBDIVISION, 169.14 FEET TO A FOUND ½" IRON PIN AT THE SOUTHWEST CORNER OF SAID LOT B; THENCE NORTH 01°56'01" EASTALONG THE EAST LINE OF LOT FIVE (5) OF SAID WANOKA HIGHLANDS SUBDIVISION, 255.10 FEET TO THE POINT OF BEGINNING. BEARINGS BASED ON THE MISSOURI COORDINATE SYSTEM OF 1983, WEST ZONE, CONTAINING 1.06 ACRES MORE OR LESS.

Section 2. That said plat, having been filed showing that the lots have been staked out and platted and the streets and alleys have been dedicated to the public for public use, and that the proper levels have been run and the grades established for said addition, is hereby accepted by the City of Joplin, Jasper County, Missouri, and according to the statutes of the State of Missouri.

Section 3. That the City Clerk is hereby authorized and directed to endorse upon such plat the approval of the Council under her hand and the Seal of the City of Joplin, Missouri.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2021, by a vote of _____.

_____
Ryan D. Stanley, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

Case 051-21: Final Plat Review – A request to review the Final Plat of Abernathy Subdivision located at the Southwest corner of the intersection of W. 22nd St. and S. Schifferdecker Ave. – Jon Abernathy

Keegan Stanton, 602 S. Main Street, Joplin, MO, representing the applicant today because the applicant has to attend his daughter's birthday party. This is a request from John Abernathy, for Abernathy Sub-division. This is the final plat, the preliminary plat came before this commission a few months ago. It is only four (4) lots, and it is a re-plat. Reduction from six (6) lots to four (4) lots. Two of the lots will face 22nd Street and two will face Schifferdecker. The lots on Schifferdecker will be required to have their driveways as far away as from the intersection on 22nd Street to avoid conflicts.

Ms. Bruckner-Sears asked if any of the Commissioners had any questions?

Mr. Kimble wanted to know how far away does the driveway need to be from the intersection of 22nd Street and Schifferdecker?

Mr. Stanton stated for residential we do not have a specific distance requirement, for commercial on a stop sign controlled intersection, it would be 120 feet he thought.

Ms. Bruckner-Sears asked if there was anyone in the audience to speak in favor of this request? There was not. Ms. Bruckner-Sears asked if there was anyone opposed to this request? There was not.

MR. KIMBLE MOVED, SECONDED BY MR. EASTMAN THAT CASE 051-21 BE FORWARDED TO THE CITY COUNCIL WITH THE RECOMMENDATION FOR APPROVAL. MOTION CARRIED, WITH MS. BRUCKNER-SEARS, MR. EASTMAN, MR. MCCULLOUGH, MR. KIMBLE, MS. PHILLIPS, AND MS. WARREN "AYE", (6 IN FAVOR, 1 ABSENT).

Z&P Meeting: September 13, 2021
City Council Meeting: October 4, 2021

STAFF PLANNING REPORT
Final Plat

CASE 051-21 Final Plat Review

NAME OF SUBDIVISION Abernathy Subdivision

LOCATION: Southwest corner of W. 22nd St. and S. Schifferdecker Ave.

APPLICANT: Jon Abernathy

PRESENT ZONING: R-1

PRESENT LAND USE: Vacant

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

SUBDIVISION:

Number of lots
4

TRANSPORTATION:

Streets with access	Classification	Right-of-way width
W. 22nd St.	Local	50'
S. Schifferdecker Ave.	Arterial	95'

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

No. The corner lot will be required to have its driveway on 22nd St. and those fronting Schifferdecker Ave. will be required to place their driveways as far South on the lot as possible to be clear of conflict with the intersection.

UTILITIES: In place. Cuts into Schifferdecker will be limited.

FLOOD PLAIN: N/A

STAFF ANALYSIS:

DOES THE PROPOSED SUBDIVISION COMPLY WITH THE CITY'S SUBDIVISION REGULATIONS?

Yes.

DISCUSSION:

The final plat approval is for Abernathy Subdivision located at Southwest corner of W. 22nd St. and S. Schifferdecker Ave. This subdivision will be 4 residential lots, zoned R-1 Single-family residential. This zoning is appropriate for the existing use as well as the area and conforms to the future land use map. The Final Plat does require City Council approval. This plat meets the requirements of the subdivision regulations.

Michael and Kyle Carder are seeking a 4-lot residential subdivision for single-family residential uses located at the Southwest corner of W. 22nd St. and S. Schifferdecker Ave. Utilities will not need to be extended. This is a replat of 6 existing lots.

Staff recommends approval of Case 051-21

ENCLOSURES:

Application
Final Plat

CITY OF JOPLIN, MISSOURI

FINAL PLAT CHECKLIST

Subdivision No.: 051-21
Date Filed: _____
Date of Meeting: 9-13-21
Filing Fee: _____

Return Form To:
Planner
602 S. Main St.
Joplin, Missouri 64802
417-624-0820 Ext. 511
FAX 417-625-4738

I. Name of Subdivision: Abernathy Subdivision

II. Name of Owner: Jon Abernathy

III. Name of Subdivider: Jon Abernathy

IV. Name of Person who prepared the Plat: Anderson Engineering Inc

V. Date of Hearing: Sept 13, 2021

VI. Location of Property by Streets: _____

VII. Present Zoning of Property: R1

VIII. Present Uses of Property: Single-Family Residential

IX. No. of Acres in Total Tract: 1.06 No. of Lots: 4

Instructions:
The following checklist is to be completed and may accompany the Final Plat when it is submitted to the Planning and Zoning Commission. If the answer to any of the questions is "No," a written explanation should accompany this checklist.

IX. Does the Final Plat show the following information?	Yes	No
A. Name of the subdivision	x	
B. Location of section, township, range, county and state, including the descriptive boundaries of the subdivision based on an accurate traverse, giving angular and linear dimensions which must be mathematically correct.	x	
C. Location of monuments or bench marks. Location of such monuments shall be shown in reference to existing official monuments or the nearest established street, lines, including the true angles and distances to such reference points or monuments.	x	
D. The location of lots, blocks, streets, public highways, alleys, parks and other features, with accurate dimensions in feet and		

decimals of feet with the length of radii on all curves, and other information necessary to reproduce the plat on the ground. Dimensions shall be shown from all curbs to lot lines.	x	
E. Lots numbered clearly. Blocks numbered or lettered clearly in the center of the block.	x	
F. Exact locations, widths and names of all streets and alleys to be dedicated.		x
G. Boundary lines and descriptions of the boundary lines of any area other than streets and alleys, which are to be dedicated or reserved for public use.		x
H. Minimum area and associated minimum elevation for the building on each lot planned as a building site when requested by the Planning and Zoning Commission.		x
I. Building setback lines on the front and side streets with dimensions.	x	
J. Name and address of the registered land surveyor preparing the plat.	x	
K. Scale of plat, 1" = 100' or larger, date or preparation and north point.	x	
L. Statement dedicating all easements, streets, alleys, and all other areas not previously dedicated.	x	
XI. Was the original on mylar, tracing cloth, or similar material, and were 10 copies submitted?		x
XII. Have all acknowledgments been signed?		
A. Owner or owners and all mortgager.		x
B. Dedications or reservations.		x
C. Surveyor preparing plat.		x
XIII. Has certification been submitted stating that all taxes and special assessments due and payable have been paid?	x	
XIV. Deed Restrictions:		
A. Are any deed restrictions planned for subdivision?		x

B. If so, has a copy been submitted? _____ _____

XV. How has installation of the following improvement been guaranteed?

	Construction	Bond	Petition (%)
Streets	_____	_____	_____
Water	_____	_____	_____
Sewer	_____	_____	_____
Sidewalks	_____	_____	_____
Other, as required			
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

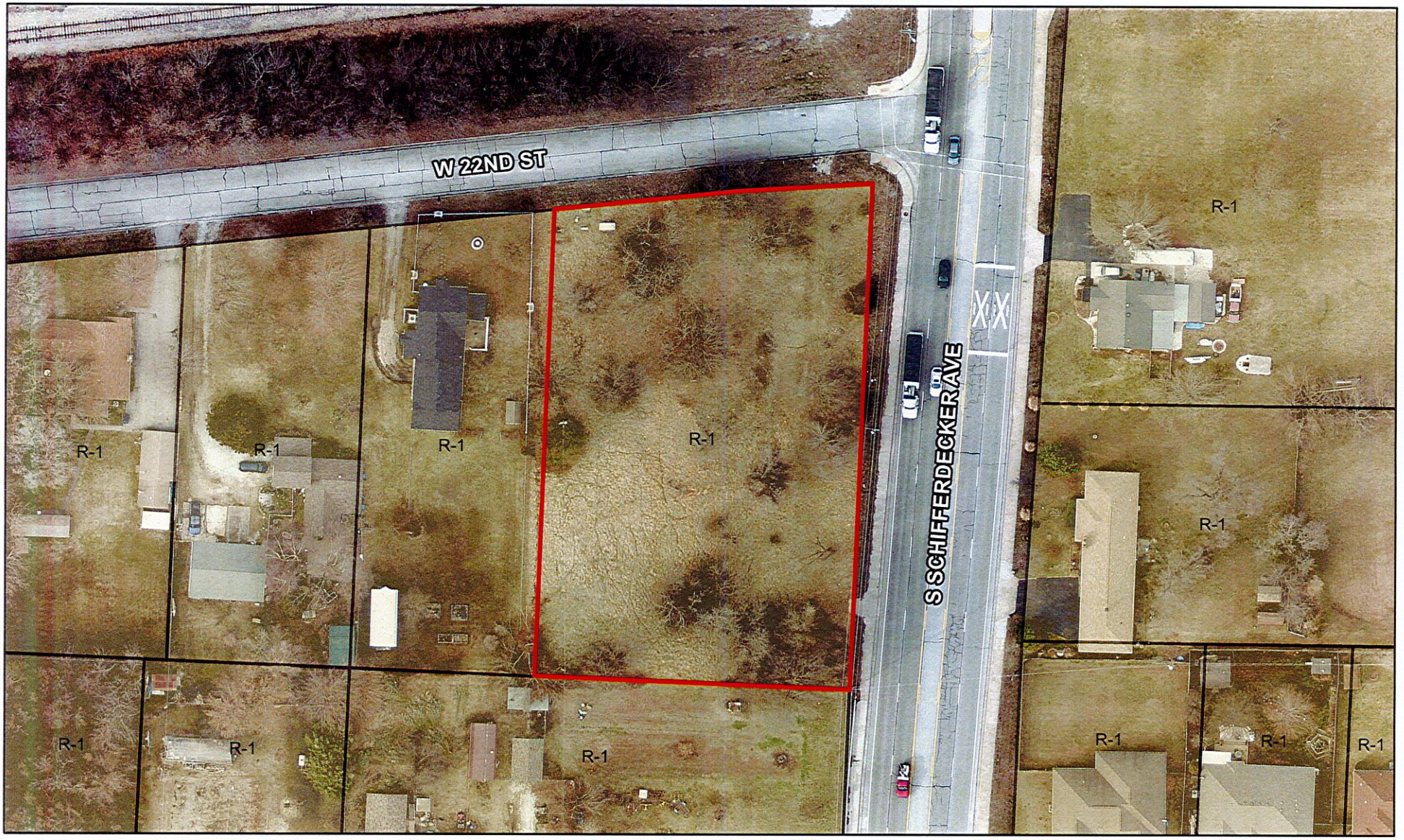
XVI. Are additional comments attached? _____ x_____

Preliminary plats that do not meet subdivision regulations will not be processed to the Planning and Zoning Commission until corrected.

_____ _____

Signature Date

Case 051-21 - Southwest corner of W. 22nd St. and S. Schifferdecker Ave. - Final Plat Review



Case 051-21: Final Plat Review – A request to review the Final Plat of Abernathy Subdivision located at the Southwest corner of the intersection of W. 22nd St. and S. Schifferdecker Ave. – Jon Abernathy

N

0 30 60 120 180 240 Feet

Case 052-21: Encroachment Agreement – A request to encroach in the public right-of-way located at 512-520 S. Virginia Ave. – Jeff Neal

Jeff Neal, 307 Meadowood Circle, Carl Junction, MO. We are requesting an encroachment into a public alley that was mandated in a 1916 ordinance that runs to a vacated alley behind the buildings. The purpose of this encroachment would be to allow for new tenant access to the north side of the building. The entire building is being redeveloped and $3.7 million renovation using historic tax credits for approximately 21 to 24 apartments upstairs. The entire downstairs is leased except this space opening to the north which is reserved for lobby. The vacant lot to the north, which we own, will be renovated as green space for the tenants.

Ms. Bruckner-Sears asked if any of the Commissioners had any questions. They did not. Ms. Bruckner-Sears asked if there was anyone in the audience to speak in favor of this request? There was not. Ms. Bruckner-Sears asked if there was anyone opposed to this request? There was not.

MS. PHILLIPS MOVED, SECONDED BY MR. KIMBLE THAT CASE 052-21 BE FORWARDED TO THE CITY COUNCIL WITH THE RECOMMENDATION FOR APPROVAL. MOTION CARRIED WITH MS. BRUCKNER-SEARS, MR. EASTMAN, MR. MCCULLOUGH, MR. KIMBLE, MS. PHILLIPS, AND MS. WARREN "AYE", (6 IN FAVOR, 1 ABSENT)

Z&P Meeting: September 13, 2021
City Council Meeting: October 4, 2021

STAFF PLANNING REPORT
Encroachment Agreement

CASE 052-21 A request to encroach in the public right-of-way.

LOCATION 512-520 S. Virginia Ave.

APPLICANT Jeff Neal

EXISTING CONDITIONS

Zoning	Land Use	Property Size
R-1	Vacant	Approx. 0.3 Acres

SITE CONTEXT

	North	East	South	West
Existing Zoning	C-2	C-1	C-2	C-2
Land Use	Vacant Downtown Commercial	Parking Lot	Downtown Commercial Use	Downtown Commercial Use

FUTURE LAND USE

Joplin's Future Land Use Map describes this property as future retail commercial.

TRANSPORTATION

Streets with access	Classification	Right-of-way width
S. Virginia Ave.	Local	60'

UTILITIES

Utilities are existing.

FLOOD PLAIN

This property is not in the flood plain.

STAFF ANALYSIS

WILL THE PUBLIC SUFFER A LOSS OR INCONVENIENCE BY THE ENCROACHMENT INTO THE RIGHT-OF-WAY?

No. City staff has determined that the encroachment proposed would not result in an inconvenience to loss to the public. The alley that remains was provided as access to a now-vacated North-South alley on this block. This alley was not vacated at the time and is still considered public-right-of-way. Due to an existing skybridge over the alley and limited space for maneuverability beyond that, emergency vehicles do not access the building via this alley.

REASON FOR ENCROACHMENT AGREEMENT.

Jeff Neal has requested an encroachment agreement in a side alley to allow for an entrance to the Pennington Building – to be known as 500 Commons Development. This project is a redevelopment and renovation of the existing building into 48 apartment units. The encroachment would be 76 feet long and extend 8 feet into the alley right-of-way. This would allow space for an entrance to the apartments as the grade of the alley and that of the door misalign. The existing alley is 20 feet wide and 130 feet long.

Staff recommends approval of Case 052-21.

ATTACHMENTS

- Map

Case 052-21 - 512-520 S. Virginia Ave. - Encroachment Agreement



Case 051-21: Final Plat Review – A request to review the Final Plat of Abernathy Subdivision located at the Southwest corner of the intersection of W. 22nd St. and S. Schifferdecker Ave. – Jon Abernathy

N

0 20 40 80 120 160 Feet

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM:
CB 2021-286 – Encroachment Agreement

MEETING DATE:
October 4, 2021

ORIGINATING DEPARTMENT:
Planning, Development and Neighborhood Services

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

SUMMARY REQUEST:
Case 052-21: Encroachment Agreement – A request to encroach in the public right-of-way located at 512-520 S. Virginia Ave. – Jeff Neal

BACKGROUND:
City staff has determined that the encroachment proposed would not result in an inconvenience to loss to the public. The alley that remains was provided as access to a now-vacated North-South alley on this block. This alley was not vacated at the time and is still considered public-right-of-way. Due to an existing skybridge over the alley and limited space for maneuverability beyond that, emergency vehicles do not access the building via this alley.

PLANNING & ZONING COMMISSION TESTIMONY:
Jeff Neal, 307 Meadowood Circle, Carl Junction, MO. We are requesting an encroachment into a public alley that was mandated in a 1916 ordinance that runs to a vacated alley behind the buildings. The purpose of this encroachment would be to allow for new tenant access to the north side of the building. The entire building is being redeveloped and $3.7 million renovation using historic tax credits for approximately 21 to 24 apartments upstairs. The entire downstairs is leased except this space opening to the north which is reserved for lobby. The vacant lot to the north, which we own, will be renovated as green space for the tenants.

PUBLIC COMMENT;
None.

FUNDING SOURCE
These payments are included in the FY 2020-21 budget of the Community Planning Fund.

RECOMMENDATION:
Staff recommends approval of Case 052-21.
Planning and Zoning Commission approved Case 052-21 (6 Favor, 1 Absent,)

ATTACHMENTS:
CB 2021-286, Planning Report, Commission Minutes, Exhibit A

ENCROACHMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2021, by and between Jeff Neal hereinafter referred to as "Owner" and the City of Joplin, Missouri, a Municipal Corporation, hereinafter referred to as "City".

RECITALS

1. Jeff Neal is the owner of the tract of property generally located at 512-520 S. Virginia, Joplin, Jasper County, Missouri, abutting City right-of-way, said City right-of-way being described as:

   > The South eight (8) feet of the north twenty-one (21) feet of Lot 72 in Porter's Addition to Murphysburg, now a part of the City of Joplin, extending thirty-three (33) feet from the Virginia Avenue on the east to 23 feet from the Porter Alley on the west.

2. The owner wishes to encroach the side alley to allow for entrance to the Pennington Building. The encroachment would be Seventy-Six (76) feet long and extend eight (8) feet into the alley right-of-way.

3. In consideration of the sum of One Dollar ($1.00) and other valuable considerations, the receipt of which is hereby acknowledged, the City grants Owner, his/her heirs, successors and assigns, the ability to maintain the encroachment as described herein and as illustrated on the attached Exhibit "A" (map).

4. Owner and his/her heirs, successors, and assigns agree that City shall not be held liable for any damage to property or structures located within the encroachment due to normal maintenance or repair activities of the City of its assigns. The owner and his/her heirs, successors, and assigns, agree to indemnify and hold harmless the City, its officers, employees, agents, and the members of the City Council from any and all liability claims, suits, actions, damages, costs, or other consequences resulting from the encroachment and use thereof.

5. Nothing herein shall grant unto Owner or his/her heirs, successors, or assigns, the right to extend the encroachment beyond the area described above, although Owner shall maintain the same in compliance with the Code of Ordinances of the City of Joplin.

6. In the event City determines that the encroachment described herein materially impacts upon the City's or general public's ability to utilize City's property, Owner agrees, at their sole and exclusive cost, to move or otherwise remove such encroachment described herein so that it no longer encroaches upon City's right-of-way, within sixty (60) days after notification by City.

7. The provisions herein shall operate as a covenant running with the land.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement, this _____ day of _____, 2021.

CITY OF JOPLIN, MISSOURI

A Municipal Corporation

By: _____
David Hertzberg
Director of Public Works

By: _____
Owner

STATE OF MISSOURI)
) ss.
COUNTY OF JASPER)

On this _____ day of _____, 2021, before me personally appeared _____, to me known to the be the persons described in and who acknowledge that he or she, as Owner, executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal in my office in Joplin, Missouri, the day, and year last above written.

_____
Notary Public

My Commission Expires:

STATE OF MISSOURI)
) ss.
COUNTY OF JASPER)

On this _____ day of _____, 2021, before me personally appeared David Hertzberg, to me personally known, who being by me duly sworn did state that he is the Director of Public Works of the City of Joplin, Missouri, that the seal affixed to the foregoing instrument is the Corporate Seal of said Corporation, and that the instrument was signed on behalf of said corporation by authority of its City Council pursuant to Ordinance No. _____ ___, passed by the City Council of the City of Joplin, Missouri, on _____ for the consideration stated therein and no other, and the said Director of Public Works acknowledges said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid the day and year above written.

_____
Notary Public

My Commission Expires:

IN THE RECOREDER'S OFFICE

STATE OF MISSOURI)
) ss.
COUNTY OF JASPER)

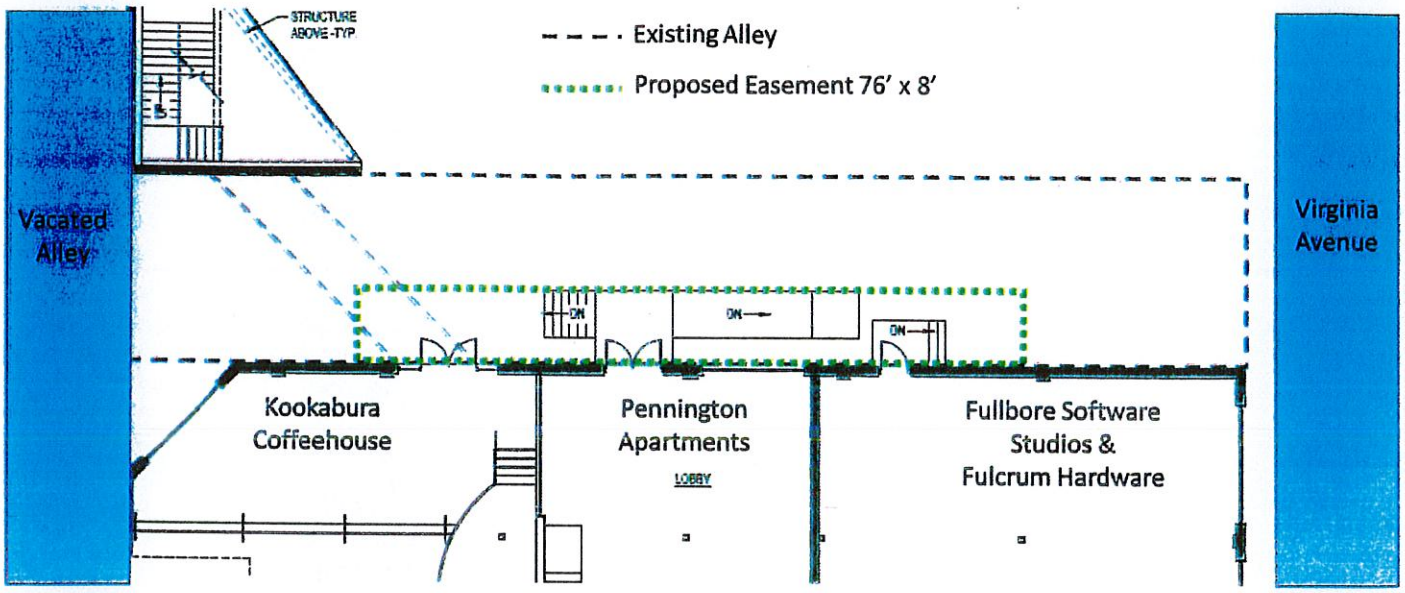
I, _____ Recorder of Deeds of Jasper County, do hereby certify that the within instrument of writing was, with the certificate thereon, at _____ o'clock and __ _____ minutes on __ M. on the _____ day of _____, 2021, duly filed for record in this office, and is recorded in the records of this office in Book _____ at Page _____.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at __ _____, this _____ day of _____, 2021.

RECORDER

By: _____

EXHIBIT A



200 Block Commons, LLC: Easement Request for Pennington Apartments Development

COUNCIL BILL NO. 2021-286 ORDINANCE NO.

AN ORDINANCE authorizing the City to enter into an Encroachment Agreement by and between the City of Joplin and Jeffery Neal, authorizing the Public Works Director, or his designee, to execute said Agreement by and on behalf of the City.

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

Section 1. That the Encroachment Agreement by and between the City of Joplin, Missouri and Jeffery Neal, a true and accurate copy of the same being attached hereto and marked Exhibit "A", be and the same is hereby approved.

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

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2021, by a vote of _____.

_____
Ryan D. Stanley, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

CCO Form: TP01
Approved: 12/93 (GWS)
Revised: 04/21 (BDG)
Modified:

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION PLANNING CONSOLIDATED GRANT AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Joplin (hereinafter, "Grantee").

WITNESSETH:

WHEREAS, 23 U.S.C. Sections 104(f) and 134, and 49 U.S.C. Section 5303, provide metropolitan transportation planning funds for metropolitan planning organizations as designated by the Governor of the State of Missouri; and

WHEREAS, the Commission is the state agency designated to receive and dispense both the above named funds to accomplish metropolitan transportation planning in the Joplin urbanized area; and

WHEREAS, the Grantee has been designated by the Governor of the State of Missouri as the local organization to conduct transportation planning for the Joplin urbanized area and to receive and expend the above named funds on its behalf; and

WHEREAS, the Grantee has described the transportation planning work to be carried out and included a complete budget detailing the use of the above named funds in an annually updated Unified Planning Work Program (UPWP); and

WHEREAS, the UPWP is accepted by the Commission, the Grantee, and the United States Department of Transportation (hereinafter, "USDOT"), describing the purposes and funding of all program components to be annually accomplished under this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

(1) PURPOSE AND SOURCE OF FUNDS: The purpose of this Agreement is to assist the Grantee in financing project expenses that are eligible for federal financial assistance. The Commission will make a grant from available federal funds in a manner consistent with the rules of the USDOT, Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) under 23 U.S.C. Sections 104(f) and 134 and 49 U.S.C. Section 5303. These rules include 2 C.F.R. Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. The catalog of federal domestic assistance identification number (CFDA) is 20.205 for funds under 23 U.S.C. Sections 104(f) and 134 and 20.505 for funds under 49 U.S.C. Section 5303. The

amount of available funds is limited by the unused portion of the above planning funds allocated to the Joplin urbanized area under the above acts and any amendments thereto.

(2) SCOPE OF WORK AND BUDGET: Grantee will undertake and complete the program of work specified in the approved UPWP and the budget or scope of services (Appendix A).

(3) REPORTS:

(A) All draft reports, the cost of which will be considered a direct cost, will be submitted to the Commission for review prior to printing in final form. The Commission will be provided with an electronic copy of each draft and the final report.

(B) All reports, drawings, estimates, surveys, memoranda and other papers submitted by the Grantee shall be dated and bear the Grantee's name.

(4) PUBLICATION PROVISIONS:

(A) Copyright: Papers, interim or final reports, forms or other materials which are a part of the work under contract may be copyrighted without written approval of the Commission, and FHWA or FTA as appropriate.

(B) Request for Publication: Either party to the Agreement or FHWA or FTA may initiate a request for publication of reports or any request thereof.

(C) Abstracts: When the scheduled time for presentation of a paper does not permit formal review and approval of a complete report, abstracts may be used for notification of intent to present a paper based on the study. Such presentation must protect the interests of the other party by the inclusion of a statement in the paper and in the presentation to the effect that the paper has not been reviewed by the other party or FHWA or FTA.

(D) Publication: Publication by either party shall give credit to the other party or FHWA or FTA unless upon failure of agreement of any report of the study, FHWA, FTA or either of the contracting parties requests that its credit acknowledgment be omitted and then the following statement shall be added:

> "The opinions, findings and conclusions expressed in this publication are those of the authors and not necessarily those of the Missouri Highways and Transportation Commission, the Federal Highway Administration or the Federal Transit Administration."

(E) Use of Data: After acceptance of reports, all parties are free to use the data and results for whatever purpose.

(F) Cooperative Participation: All reports shall contain a statement crediting the cooperative participation of all agencies, including the USDOT, FHWA or FTA as appropriate.

(G) Freedom of Information: The publication provisions contained in this paragraph (4) are subject to the provisions of Chapter 610, RSMo, and all applicable laws of the United States Government concerning freedom of information.

(5) RETENTION OF RECORDS: The Grantee or any approved subcontractor shall be required to maintain accounting records and other evidence pertaining to the cost incurred regarding the study and to make the records available to the Commission at its office at all reasonable times during the contract period and for three years from the date of the final payment of federal funds. Such accounting records and other evidence pertaining to the costs incurred will be made available for inspection by the Commission, FHWA, FTA, or any authorized representative thereof, and copies shall be furnished if requested.

(6) INFORMATION FURNISHED AND WORK PERFORMED BY THE GRANTEE: The Grantee shall make available to the Commission upon request all of the data, reports, analysis, transcripts of hearings, maps, drawings, tables, and other pertinent background information related to the scope of services under this Agreement.

(7) INFORMATION AND WORK FURNISHED BY THE COMMISSION: The Commission shall make available to the Grantee all of the data, reports, analysis, transcripts of hearings, maps, drawings, tables and other pertinent background information related to the scope of services under this Agreement that the Commission deems necessary and non-confidential. No report, information, data or other materials provided to the Grantee shall be given to any individual or organization without the written approval of the Commission.

(8) PROJECT TIME PERIOD: Work under this Agreement shall begin November 1, 2021 and extend to October 31, 2022. No work shall be performed under this Agreement until a notice to proceed is received from the Commission.

(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 $441,689 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.

(B) Progress Payments: The Commission agrees to make progress payments to the Grantee not more than monthly upon receipt of a proper invoice and certification for services actually performed under this Agreement. Certification of

services will be documented by a progress report submitted at least quarterly within 30 days after the end of the reporting period. However, the last progress report may be waived and included in the final or project completion report. Each progress report shall include tasks, what percentage of each task has been completed and overall task completion rate. Invoices will be based on actual costs incurred. Each invoice will show the breakdown of the cost incurred among the Grantee and the Commission. Such progress payments will be based on actual cost incurred. In no instance shall the progress payments exceed the percentage of work completed, per the judgment of the Commission's engineer. The accounting for and billing of project charges will be accomplished as follows:

1. The Grantee will establish cost principles for use in determining the allowability of individual items of costs in accordance with 2 C.F.R. Part 200, "*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*."

2. Direct labor charges shall be based on actual time expended at the current approved gross salary of the assigned staff member.

3. Employee fringe benefits shall be based on a provisional rate, subject to audit, of direct labor costs. This rate is set on the basis of the employer's actual cost for group life insurance, health insurance, pension plan, workers compensation, holidays, F.I.C.A. taxes, accrued costs for sick leave, vacation and other items included in the Grantee's approved fringe benefit package to the total annual salaries paid. This rate is reviewed and adjusted annually and will be specified in the fiscal year scope of services.

4. Indirect costs shall be based on the approved cost allocation plan supported by the Grantee's annual budget for the fiscal year in which the scope of services is to be carried out. A rate is calculated on the basis of the estimated total annual administrative expenses, excluding known unallowable costs as prescribed in various federal regulations, including 2 C.F.R. Part 200, divided by the sum of total annual salaries chargeable as direct labor. Calculation of the indirect rate is specified in the cost allocation plan and is approved by the audit agency. The indirect rate is audited and adjusted at each fiscal year end by the audit agency. The applicable rate will be specified in Appendix A.

5. Other direct costs charges shall be based on actual cost of supplies and equipment purchased or rented for exclusive use of this project. Procurement of supplies and equipment should be in accordance with procedures established by the State of Missouri and Paragraph (26).

(C) Compensation: Compensation shall be paid by the Commission to the Grantee for work performed hereunder subject to the limitations of subparagraphs A and B of this paragraph (9), as supported by Appendix A.

(D) Direct Costs: The following are considered as direct costs and

chargeable as such:

1. Salaries and fringe benefits.

2. Other non-salary expenses directly related to the completion of the work program activities, such as: classified advertising, contractual services, data processing, equipment maintenance and rental, meetings and conferences, postage, publications, reproduction, supplies, travel and long distance calls.

(E) Final Payment: The final payment will be made only after acceptance by the Commission of a project completion report, summarizing the results of the job elements under this Agreement, considered to be satisfactory to the Commission. This project completion report is due within 60 days after the Agreement end date. The Commission's obligation will extend only to those costs incurred as verified by the final audit. A final audit will be completed after the acceptance of the project completion report. If Grantee was over compensated according to final audit results, Grantee will reimburse the Commission the amount as specified by the final audit. If additional compensation is due Grantee, Grantee will present a supplemental invoice to the Commission for payment of the amount specified by the final audit.

(F) Checks: Checks in payment for the services rendered hereunder shall be drawn to the order of the City of Joplin. The Grantee hereby agrees that the acceptance of the check so drawn shall constitute full payment for the Commission to the Grantee for the services for which such payments are made. The parties, acting through their authorized representatives, may also arrange for the electronic transfer of funds instead of a physical check.

(G) Title to Work Products: The making of payments to the Grantee in the manner aforesaid shall vest in the Commission title to the studies, documents and material produced by the Grantee under the terms of this Agreement up to the time of such payments, and the Commission shall have the right to use the same for any public purpose or make any desirable alterations thereto without other further compensation to the Grantee or to any other such agency or persons.

(H) Single Audit Requirement: If the Grantee receives $750,000 or more per year total of all Federal assistance from all sources including Federal funds under this Agreement, it shall be required to have an independent annual single audit done in accordance with 2 C.F.R. Part 200, "*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*." A copy of the audit report shall be submitted to the Missouri Department of Transportation (MoDOT) within 30 days of the issuance of the report. Subject to the requirements of 2 C.F.R. Part 200, if the Grantee obtains less than $750,000, the Grantee may be exempt from 2 C.F.R. Part 200 auditing requirements, but records must be available for review by applicable State and Federal authorities in accordance with Paragraph (5). The Commission reserves the right to audit expenditures under this Agreement independently in a separate report.

(10) INSPECTION OF RECORDS: The Grantee shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the Grantee's contractor and subcontractor on the herein project. The Grantee shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the work program and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(11) CHANGES: The Commission or the Grantee may, from time to time, request changes in the scope of UPWP work. Changes in the scope of UPWP work that do not involve any increase or decrease in the amount of the Grantee's compensation shall be made with the mutual agreement of the parties to this Agreement evidenced by letters from each to the other. Changes involving adjustments to limiting amounts contained in the scope of UPWP work of any increase or decrease in the total amount of compensation which are mutually agreed upon by and between the Commission and the Grantee shall be incorporated in written amendments or supplements to this Agreement.

(12) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the Grantee shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Grantee's wrongful or negligent performance of its obligations under this Agreement.

(B) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(13) TERMINATION OF AGREEMENT:

(A) Non-Performance: If Grantee shall for any cause fail to perform any of the provisions of this Agreement or fail to complete any of the work described in this Agreement, the Commission may terminate this Agreement. Also, the Commission may terminate this Agreement if the conduct or progress of the work is such that it is not up to professional standards of objectiveness, fairness, accuracy and completeness.

(B) Correction: The Commission may provide Grantee with a written notice of the defect(s) in Grantee's performance specifying a period of time for Grantee to correct such defect(s).

(C) Written Notice: To terminate this Agreement, the Commission must

give Grantee at least 15 days written notice specifying the reason(s) for termination.

(D) Partial Payment: If the Commission terminates the Agreement, the Commission shall be liable only for the work rendered to the date of termination based on the compensation described in the scope of services. Grantee, for itself, its successors, assigns and legal representatives, agrees to accept this amount of compensation in full satisfaction of all claims for compensation under this Agreement. This does not abrogate the Grantee's right under law.

(E) Work Products: In the event of termination, Grantee shall deliver to the Commission, as property of the Commission, all designs, reports, drawings, studies, estimates, surveys, computations, memoranda, documents and other papers or materials either furnished by the Commission or prepared by or for the Grantee under this Agreement. In addition, ownership of all designs, reports, drawings, studies, estimates, models, computations, etc. prepared under this Agreement shall vest in the Commission, at the Commission's option. The Commission reserves the right to postpone or abandon further work of the type described by this Agreement or to cause such work to be continued or completed in such manner, by such person(s), and under such terms and agreements as the Commission shall determine.

(14) DISPUTES: The Commission's chief engineer will in all cases decide any and all questions which may arise in connection with the work not disposed of by agreement among or between the parties to the contract.

(15) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, Grantee agrees as follows:

(A) Civil Rights Statutes: The Grantee shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 2000e), as well as any applicable titles of the Americans with Disabilities Act). In addition, if the Grantee is providing services or operating programs on behalf of Department or the Commission, it shall comply with all applicable provisions of Title II of the Americans with Disabilities Act.

(B) Administrative Rules: The Grantee shall comply with the administrative rules of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the USDOT (49 CFR Subtitle A, Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The Grantee shall not discriminate on grounds of the race, color, religion, sex, national origin, age or disability of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Grantee shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Subtitle A, Part 21.5 including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material

and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the Grantee. These apply to all solicitations either by competitive bidding or negotiation made by the Grantee for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the Grantee of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, sex, national origin, disability, or age of any individual.

(E) Information and Reports: The Grantee shall provide all information and reports required by the Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the USDOT to the pertinent to ascertain compliance with other such contracts, orders and instructions. Where any information required of the Grantee is in the exclusive possession of another who fails or refuses to furnish this information, the Grantee shall so certify to the Commission or the USDOT as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the Grantee fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including but not limited to:

1. Withholding of payments to the Grantee under the Agreement until the Grantee complies; and/or

2. Cancellation, termination or suspension of the Agreement, in whole or in part.

(G) Incorporation of Provisions: The Grantee shall include the provisions of paragraph (15)(A) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the USDOT. The Grantee will take such action with respect to any subcontract or procurement as the Commission or the USDOT may direct as means of enforcing such provisions, including sanctions for noncompliance; provided that it in event the Grantee becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Grantee may request the United States to enter into such litigation to protect the interests of the United States.

(H) Title VI Program Reporting Requirements: The Grantee shall comply with data collection and reporting requirements subject to Title VI of the Civil Rights Act of 1964 and the implementing regulations of 28 CFR Part 42, Subpart F and 49 CFR Part 21. Such general and program specific required information shall be provided to the Commission yearly if updated information is warranted or at a minimum of every three

years. Required submittals shall be made by December of the current agreement period.

(16) SECTION 504 ASSURANCES: The Grantee shall comply with all the requirements imposed by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sections 790 *et seq.*) and the administrative rules of the USDOT (49 CFR Subtitle A, Part 27).

(17) RESTRICTION ON LOBBYING: The Grantee shall comply with the requirements of 31 U.S.C. Section 1352.

(18) NO OBLIGATION BY THE FEDERAL GOVERNMENT: The Grantee acknowledges and agrees that, notwithstanding any concurrence by the USDOT in or approval of the solicitation or award of the underlying contract, absent the express written consent by the USDOT, the USDOT is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Grantee or any other party pertaining to any matter resulting from this Agreement. The Grantee agrees that it will ensure that the contractor will include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(19) CLEAN WATER: The Grantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Part 1251 *et seq*. The Grantee will require its contractor to report each violation to the Grantee and understands and agrees that the Grantee will, in turn, report each violation as required to assure notification to FHWA and the appropriate United States Environmental Protection Agency (hereinafter, "EPA") Regional Office. The Grantee agrees that it will ensure that the contractor agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FHWA.

(20) ENERGY CONSERVATION: The Grantee agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6321 *et seq*.).

(21) FEDERAL CHANGES: The Grantee shall at all times comply with all applicable FHWA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the most recent issued FHWA Master Agreement, as they may be amended or promulgated from time to time during the term of this Agreement. The Grantee's failure to comply shall constitute a material breach of this Agreement.

(22) CLEAN AIR: The Grantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 7401 *et seq*. The Grantee shall ensure that its contractor will report each violation to the Grantee. The Grantee will, in turn, report each violation as required to assure notification to FHWA

and the appropriate EPA Regional Office. The Grantee also agrees to include these requirements in each contract exceeding $100,000 financed in whole or in part with Federal assistance provided by FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(23) PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS:

(A) The Grantee acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 *et seq*. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Subtitle A, Part 31, apply to its actions pertaining to this Agreement. The Grantee shall ensure that the contractor will certify or affirm the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract of the FHWA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Grantee further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the USDOT reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Grantee to the extent the USDOT deems appropriate.

(B) The Grantee also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the USDOT under a contract connected with a project that is financed in whole or in part with Federal assistance provided by FHWA and FTA under 23 U.S.C. Sections 104(f) and 134 and 49 USC 5303, the USDOT reserves the right to impose the penalties of 18 USC 1001 on the Grantee, to the extent the USDOT deems appropriate.

(C) The Grantee agrees to include the above two clauses in each of its contracts financed in whole or in part with Federal assistance provided by FHWA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

(24) DEBARMENT AND SUSPENSION: The Grantee agrees to comply with the requirements of the *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered* Transaction as submitted with the grant application.

(25) SUBCONTRACTING: All work to be subcontracted shall be identified in the UPWP, regardless of amount. All subcontracts of $50,000 or more shall be submitted to the Commission for review and approval. Grantee's approved contracting administration procedures may be used provided assurance is given that they conform to applicable Federal statutes, executive orders and regulations in accordance with 49 CFR Part 18 or 23 CFR Part 172 and Missouri statutes. Approval to subcontract for services incidental to the study operations, such as printing and computer services, is not required. Copies of all executed subcontracts, except those for incidental services, shall be furnished to the Commission.

(26) EQUIPMENT AND INSTRUMENTATION:

(A) All equipment and instrumentation to be purchased under this agreement shall be identified specifically in the UPWP. Equipment or instrumentation mean an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals $5,000 or more. Grantee's approved procurement procedures may be used provided assurance is given that they conform to applicable Federal statutes, executive orders and regulations in accordance with 2 C.F.R. Part 200 and Missouri statutes.

(B) Purchases costing less than $5,000 are not subject to 2 C.F.R. Part 200 but shall follow Grantee's procurement procedures. However, purchases may not be subdivided to avoid this limitation. The Grantee certifies that no equipment and instrumentation listed for purchase in the UPWP have been included in the indirect costs approved for this Agreement.

(27) TRAVEL: The Commission approves Grantee staff travel expenses for work performed under this Agreement and provided for in the scope of services. Any additional travel must have prior approval of the Commission to be eligible for a direct cost reimbursement. The rate of reimbursement shall be in accordance with the Grantee's approved travel policy.

(28) COMPLIANCE WITH LAWS: The Grantee agrees to comply with all federal, state and local laws and ordinances applicable to the prosecution of the work covered by this Agreement.

(29) DISADVANTAGED BUSINESS ENTERPRISES: Grantee agrees to prepare and submit for the Commission's approval, a disadvantaged business enterprise plan as defined in 49 CFR Part 26, if Grantee receives financial planning assistance from the U.S. Department of Transportation and will award prime contracts exceeding $250,000 in a single fiscal year or if Grantee is required to do so by 49 CFR Part 26.21.

(30) BUDGET:

(A) Summary: Appendix A, Section 1, includes a budget summary, which lists the following:

1. Estimated Expenditures: These would be the total of all UPWP components by federal funding type funded under this Agreement itemized by various cost categories. These categories may include but are not limited to: salaries, fringe benefits, indirect costs, contract services, equipment, data processing, meeting, conference, travel, printing, publications, supplies and other or miscellaneous expenses.

2. Estimated Revenues: These are the total anticipated funding and agency sources by federal funding type for work funded under this Agreement.

(B) Payment: The Grantee will receive payment by the Commission based on the following:

1. Agency Funding Participation: Appendix A, Section 2, lists estimated funding participation by various agencies for the UPWP program components funded under this Agreement. For the work by program component described in the UPWP and similarly identified in Appendix A, Section 2, payment will be made from the appropriate funds based on the proportionate share of FHWA PL or FTA Section 5303 funds, or consolidation of the two funds, being utilized from the Commission. The relationship of the manpower and cost borne under this Agreement to the total manpower and cost required to complete each program component is derived from the approved UPWP. The obligation of the Commission shall not exceed the amounts set out in Paragraph (9), Subparagraph (A).

2. Details of Missouri FHWA PL and/or FTA Section 5303 Matching Funds: Appendix A, Section 2, also lists the respective amounts of local matching funds by providing agency and the program components of the UPWP to which they are applied for the Missouri federal funds utilized under this Agreement. Application of local matching funds in the form of direct cost match or cash from the Commission to the various program components will be determined by the Commission in accordance with Missouri laws. Use of Commission local matching funds by the Grantee shall be based on the proportionate share of cost by program component as given in Appendix A, Section 2. Local matching funds from the Commission shall not exceed the federally required matching share for any Missouri federally funded program component. The Commission's cash payment obligation shall be in accordance with Paragraph (9), Subparagraph (A).

(C) Procedures: The following procedures shall be followed when deviations from Appendix A or the scope of services program components occur or are anticipated to occur:

1. Cost Overruns:

A. Program component overruns of thirty percent (30%) or less will be considered as eligible costs provided:

(I) The total scope of services dollar amount is not increased or;

(II) If the total scope of services dollar amount is increased, an amended scope of services is executed between the Commission and the Grantee.

B. Program component overruns in excess of thirty percent (30%) will require a written request for approval and include the anticipated

amount of overruns on other program components.

C. Requests for overruns in program components shall be in writing and include the anticipated amount of overruns on other program components.

2. Agency Funding Participation: Revisions in the agency (i.e. FHWA, FTA, HUD, EPA) funding participation as shown in the scope of services require written approval by the Commission's chief engineer. Requests for revisions shall include the reason for the revisions, the proposed agency funding and the effect of the revisions on program components.

3. The Grantee shall monitor costs and initiate timely requests for approval as outlined above. Retroactive revisions of this scope of services will not be allowed.

(31) AMENDMENTS: Any change in this Agreement, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the Grantee and the Commission.

(32) COMMISSION REPRESENTATIVE: The Commission's chief engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement.

(33) ENGINEER: As provided in this Agreement, “Engineer” means the Chief Engineer or any other authorized representative of the Commission. Where the specific term “Chief Engineer” is used, it shall mean the Chief Engineer exclusively.

(34) ASSIGNMENT: The Grantee shall not assign or delegate any interest in the Agreement and shall not transfer any interest in the Agreement, whether by assignment or notation without the prior written consent of the Commission.

(35) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Grantee shall comply with all local, state and federal laws and regulations relating to the performance of the Agreement.

(36) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

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IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the Grantee on _____(Date).

Executed by the Commission on _____(Date).

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION	GRANTEE
_____	By _____
Title _____	Title _____
ATTEST:	ATTEST:
_____ Secretary to the Commission	By _____
	Title _____
Approved as to Form:	Approved as to Form:
	By _____
_____ Commission Counsel	Title _____

Appendix A

Task Funding Breakdown

Task	CPG funds	5307 funds	Local funds	Total
Program Support and Administration	$100,746		$25,186	$125,932
Short Range Transportation Planning	$44,096		$11,024	$55,120
Long Range Transportation Planning	$231,275		$57,819	$289,093
Transit Planning		$75,008	$18,752	$93,760
Geographic Information Systems	$65,573		$16,393	$81,966
Total	$441,689	$75,008	$129,174	$ 645,872

Source Funding Breakdown

Funding Summary by Source	
Consolidated Planning Grant Funds	$ 441,689
5307 Funds	$ 75,008
Local Match	$ 129,174
Total Funds Allocated	$ 645,872

CPG Balance Tracking

JATSO CPG Balance Tracking	
CPG Balance as of 8/2/21	$ 785,527
Estimated FY 2022 allocation	$ 209,267
Remaining FY 2021 CPG Funds to be expended	$ (80,000)
CPG Funds Programmed for FY 2022	$ (441,689)
Remaining Unprogrammed Balance	$ 473,105

JOPLIN AREA

Transportation Study Organization

Fiscal Year 2022 Unified Planning Work Program

Approved by the JATSO Policy Board on September 16, 2021

Introduction

Purpose

The Joplin area transportation planning process is an on-going work effort that constitutes the 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) 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 Metropolitan Transportation Plan (MTP). The transportation planning process is required by federal regulations as a prerequisite to the receipt of federal capital and operating assistance. The 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 are mandated by the Moving Ahead for Progress in the 21st Century (MAP-21), and the Fixing America's Surface Transportation Act (FAST Act).

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 JATSO organization is governed by the JATSO Policy Board that consists of six members from the City of Joplin, and one member from each of the following organizations: Harry S. Truman Coordinating Council, City of Webb City, City of Carl Junction, MoDOT Southwest District, Newton County, and Jasper County. The Harry S. Truman Coordinating Council is the local regional planning commission and represents smaller villages and unincorporated area on the JATSO Policy Board. The organization and responsibilities of the various agencies involved in the metropolitan 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 these sources: FHWA, FTA, the City of Joplin, and local jurisdictions, as applicable. 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 except where jurisdictions are completing individual planning projects.

Planning Factors

The Federal transportation planning regulations require the metropolitan transportation planning process to be continuous, cooperative, and comprehensive; and that the JATSO UPWP provide for 4 consideration and implementation of projects, strategies and services that will address the following ten 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.
9. Improve the resiliency and reliability of the transportation system and reduce or mitigate storm water impacts of surface transportation
10. Enhance travel and tourism

In 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21) was signed into law. MAP21 transformed federal transportation grant programs by establishing new requirements for performance management and performance-based planning and programming to ensure the most efficient investment of federal transportation funds. The Fixing America's Surface Transportation Act (FAST Act) was signed into law in 2015 and continued the performance management and performance-based planning and programming requirements of MAP-21 with minor changes. In implementing MAP-21 and the FAST Act, state Departments of Transportation (DOTs), MPOs and providers of public transportation must

- establish performance targets that reflect the measures;
- report on progress towards achieving those targets
- develop performance-based plans implement a performance-based approach to planning and programming

Eligible Work Activities

There are multiple work activities that are considered eligible for federal transportation planning funds. Eligible work activities must support the JATSO regional transportation planning process.

Public Participation Plan

The purpose for the Public Participation Plan (PPP) adopted in 2016 is to involve the public in the planning process, since the purpose of regional planning is to meet public mobility needs. The PPP outlines a process for the public comments on the MTP, TIP, UPWP, Title VI/ Environmental Justice and at public meetings. See Table 1 for the comment periods required for various MPO work products. A paper copy of the PPP 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. Electronic copies of the PPP, Title VI Plan and Limited English Proficiency Plan can be found on the City of Joplin website at this link: https://www.joplinmo.org/922/Plansand-Publications.

FY 2022 Program Goals

The annual transportation planning program begins on November 1, 2021 and continues through October 31, 2022. 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 2022, JATSO's goals are:

1. Increase community engagement by using the JATSO website, social media, and other online tools to reach as many residents of the JATSO planning area as possible.
2. Develop and adopt the 2022-2025 JATSO TIP in accordance with state and federal standards.
3. Assess the active transportation network in the JATSO metropolitan planning area (MPA) to find creative opportunities to increase network connectivity and ease of use.
4. Continue to improve the operational and technical capacity of the JATSO metropolitan transportation planning process.
5. Monitor and respond to the ongoing COVID-19 crisis in the JATSO MPA.

Task 1 – Program Support and Administration

Objective

JATSO staff will manage the transportation planning program for the metropolitan planning area, conduct public meetings, develop and administer the UPWP, and attend professional development and training events

Status

This task is on-going with activities occurring on a day-to-day or on-demand basis.

FY 2021 Work Items Completed

- Amended FY 2021 UPWP as needed
- Submitted UPWP quarterly progress reports and invoices to MoDOT
- Developed the FY 2022 UPWP

- Conducted five public meetings
- Updated the JATSO website with current information and work products
- Participated in monthly coordination meetings with MoDOT
- Participated in the February 2021 Statewide Planning Partner meeting
- Built new JATSO website

FY 2022 Work Items

- Develop the FY 2023 UPWP
- Make any necessary amendments to the FY 2022 UPWP
- Plan and conduct public meetings in accordance with the PPP
- Maintain and update the JATSO website
- Monitor and update planning documents
- Prepare and transmit quarterly progress reports and invoices to MoDOT
- Participate in MoDOT's district and statewide planning partner activities
- Participate in trainings, webinars, and conferences related to transportation planning as they become available

Public Participation

Any adoption of a UPWP or UPWP amendment will comply with JATSO's Public Participation Plan. This requires a seven (7) day public comment period prior to JATSO meetings and any updates to the UPWP. A news release will be issued and posted to the JATSO webpage in advance of the public meeting.

FY 2022 End Products

- FY 2023 UPWP
- Any necessary amendments to the FY 2022 UPWP
- Four (4) quarterly progress reports and invoices submitted to MoDOT

Schedule for Completion

This work is ongoing.

Task 1 Budget Breakdown

Budget Item	Total Cost	Federal Share	Local Share
Staff Time	$118,776	$95,021	$23,755
Software	$350	$280	$70
Website	$906	$725	$181
File Cabinet	$300	$240	$60
New laptop	$1,500	$1,200	$300
Travel Expenses	$2,000	$1,600	$400
Conferences and Seminars	$1,000	$800	$200

Dues and Memberships	$1,100	$880	$220
Total	$125,932	$100,746	$25,186

Task 2 – Short Range Transportation Planning

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 metropolitan transportation plan. JATSO updates its TIP every other year.

Status

Staff developed the FY 2022-2025 TIP during FY 2021 for approval by the JATSO Policy Board. FY 2022 work on the TIP will include updates and amendments.

FY 2021 Work Items Completed

- Maintained and monitored the projects in the JATSO FY 2020-2023 TIP
- Updated the 2020-2023 TIP as needed
- Prepared the FY 2020 Annual Listing of Obligated Projects
- Coordinate with local jurisdictions on transportation projects to promote regional coordination and cooperation in carrying out planning program activities
- Voted to support MoDOT performance targets
- Incorporated target measures into the TIP and MTP
- Created and adopt the 2022-2025 TIP

FY 2022 Work Items

- Amend the FY 2022-2025 TIP as needed
- Prepare the FY 2021 Annual Listing of Obligated Projects
- Coordinate with local jurisdictions on transportation projects to promote regional coordination and cooperation in carrying out planning program activities
- Incorporate performance measures and targets into the TIP and MTP as needed
- Plan and coordinate projects that support JATSO transportation infrastructure
- Conduct Public Meetings for TIP adoption and amendments in accordance with the Public Participation Plan

Public Participation

Prior to adopting a TIP, a public meeting will be held by the Policy Board. A news release will be issued and posted to the JATSO webpage fourteen (14) days in advance of the public meeting. TIP amendments will have a public comment period of seven (7) days. The public is encouraged to formulate comments regarding the TIP document.

FY 2022 End Products

- Board approved FY 2022-2025 TIP

- FY 2021 Annual Listing of Obligated Projects

Schedule for Completion

Activities will be on-going from November 1, 2021 through October 31, 2022

Task 2 Budget Breakdown

Budget Item	Total Cost	Federal Share	Local Share
Staff Time	$55,120	$44,096	$11,024
Total	$55,120	$44,096	$11,024

Task 3 – Long Range Transportation Planning

Long range transportation planning's purpose is to prepare for the long-term health and growth of the regional transportation system, both motorized and non-motorized. This includes JATSO's Metropolitan Transportation Plan (MTP) and Bicycle and Pedestrian Plan (BPP). Additional tools, studies, and plans that pertain to long-range transportation planning are found in Task 3.

Status

Transportation needs in the JATSO planning area continue to evolve and require more data and tools to provide for transportation planning needs. Three additional studies or assessments are planned for FY 2022, as well as a Complete Streets training and payment of the annual invoice for aerial photography.

FY 2021 Work Items Completed

- Adopted the 2045 JATSO MTP in March 2021
- 80% completed Joplin Active Transportation Assessment

FY 2022 Work Items

- Retain professional services to conduct a freight assessment of the JATSO area
- Retain professional services to conduct a maintenance assessment and plan for Webb City to define long-term transportation maintenance needs
- Retain professional services to conduct a traffic study in Joplin
- Retain professional services to provide Complete Streets training for staff and community leaders
- Pay annual invoice for aerial photography agreement
- Finish remainder of work for Joplin Active Transportation Assessment that was delayed due to COVID-19

Public Participation

JATSO will work with the consultants on all projects to create robust public engagement plans that comply with the PPP.

FY 2022 End Products

- Complete JATSO Freight Study
- Complete Webb City maintenance assessment and plan
- Complete Joplin traffic study
- Provide one Complete Streets training
- Complete Joplin Active Transportation Assessment

Schedule for Completion

All studies and trainings are expected to be completed by the end of FY 2022.

Task 3 Budget Breakdown

Budget Item	Total Cost	Federal Share	Local Share
Staff Time	$ 36,747	$ 29,398	$ 7,349
Freight Study	$ 180,000	$ 144,000	$ 36,000
Local Traffic Studies	$ 45,000	$ 36,000	$ 9,000
Complete Streets Training	$ 5,000	$ 4,000	$ 1,000
Aerial Photography	$ 22,346	$ 17,877	$ 4,469
Total	$ 289,093	$ 231,275	$ 57,819

Task 4 – Transit Planning

Objective

The Transit Coordinator will provide program and administrative support for the Metropolitan Area Public Transit System (MAPS) and the Sunshine Lamp Trolley system. The Transit Coordinator will conduct long and short-range transit planning responsibilities.

Status

The Transit Coordinator continues with program support and administration.

FY 2021 Work Items Completed

- Transit Coordinator monitored the MAPS and collected data and information.
- Transit Coordinator monitored the Sunshine Lamp Trolley system.
- Transit Coordinator planned for the development of a transfer station and updated trolley routes.

FY 2022 Work Items

- The Transit Coordinator collects and records transit data and information and reports the data findings to local, state and federal government agencies.
- The Transit Coordinator and JATSO staff use data and information to complete short and long-range planning responsibilities.
- The Transit Coordinator monitors and analyzes Sunshine Lamp Trolley system.
- Review transit targets and update TAMP plan if necessary.
- The Transit Coordinator will continue to plan for the development of a transfer station and updated trolley routes with available resources.

Public Participation

The Transit Coordinator and MPO staff will hold public meetings and gather input in accordance with the Public Participation Plan.

FY 2022 End Products

- The Transit coordinator carries out the daily operations of MAPS.
- The Transit coordinator provides MoDOT and FTA with necessary transit data and documentation.

Schedule for Completion

Activities will be on-going from November 1, 2021 through October 31, 2022.

Task 4 Budget Breakdown

Budget Item	Total Cost	Federal Share	Local Share

Staff Time	$ 93,760	$ 75,008	$ 18,752
Total	$ 93,760	$ 75,008	$ 18,752

Task 5 – Geographic Information Systems

Objective

JATSO staff will work with the City of Joplin, the Harry S. Truman Coordinating Council, and other local agencies to update and create databases and collect and input data into the JATSO's GIS.

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 JATSO's GIS databases as it becomes available.

FY 2021 Work Items Completed

- Staff maintained and updated street, trail, subdivision, zoning, sewer, flood plain, and ownership GIS layers.
- ArcMap software license was renewed through ESRI
- Maintain and update GIS layers used by JATSO, MAPS, the Harry S. Truman Coordinating Council and local governments and agencies.
- Annual ESRI licensing fee
- Maintaining the GIS website

FY 2022 Work Items

- Maintain and update GIS layers used by JATSO, MAPS, HSTCC, and member local governments and agencies
- Renew annual ESRI ArcMap license
- Maintain the GIS website

FY 2022 End Products

- Updated and maintained GIS layers
- Updated ArcMap software license

Schedule for Completion

Activities will be on-going from November 1, 2021 through October 31, 2022.

Task 5 Budget Breakdown

Budget Item	Total Cost	Federal Share	Local Share
Staff Time	$ 65,966	$ 52,773	$ 13,193
ESRI License Update	$ 16,000	$ 12,800	$ 3,200
Total	$ 81,966	$ 65,573	$ 16,393

Financial Summary Tables

Task Funding Breakdown

Task	CPG funds	5307 funds	Local funds	Total
Program Support and Administration	$100,746		$25,186	$125,932
Short Range Transportation Planning	$44,096		$11,024	$55,120
Long Range Transportation Planning	$231,275		$57,819	$289,093
Transit Planning		$75,008	$18,752	$93,760
Geographic Information Systems	$65,573		$16,393	$81,966
Total	$441,689	$75,008	$129,174	$ 645,872

Source Funding Breakdown

Funding Summary by Source	
Consolidated Planning Grant Funds	$ 441,689
5307 Funds	$ 75,008
Local Match	$ 129,174
Total Funds Allocated	$ 645,872

CPG Balance Tracking

JATSO CPG Balance Tracking	
CPG Balance as of 8/2/21	$ 785,527
Estimated FY 2022 allocation	$ 209,267
Remaining FY 2021 CPG Funds to be expended	$ (80,000)
CPG Funds Programmed for FY 2022	$ (441,689)
Remaining Unprogrammed Balance	$ 473,105

JATSO Information

Organizational Chart

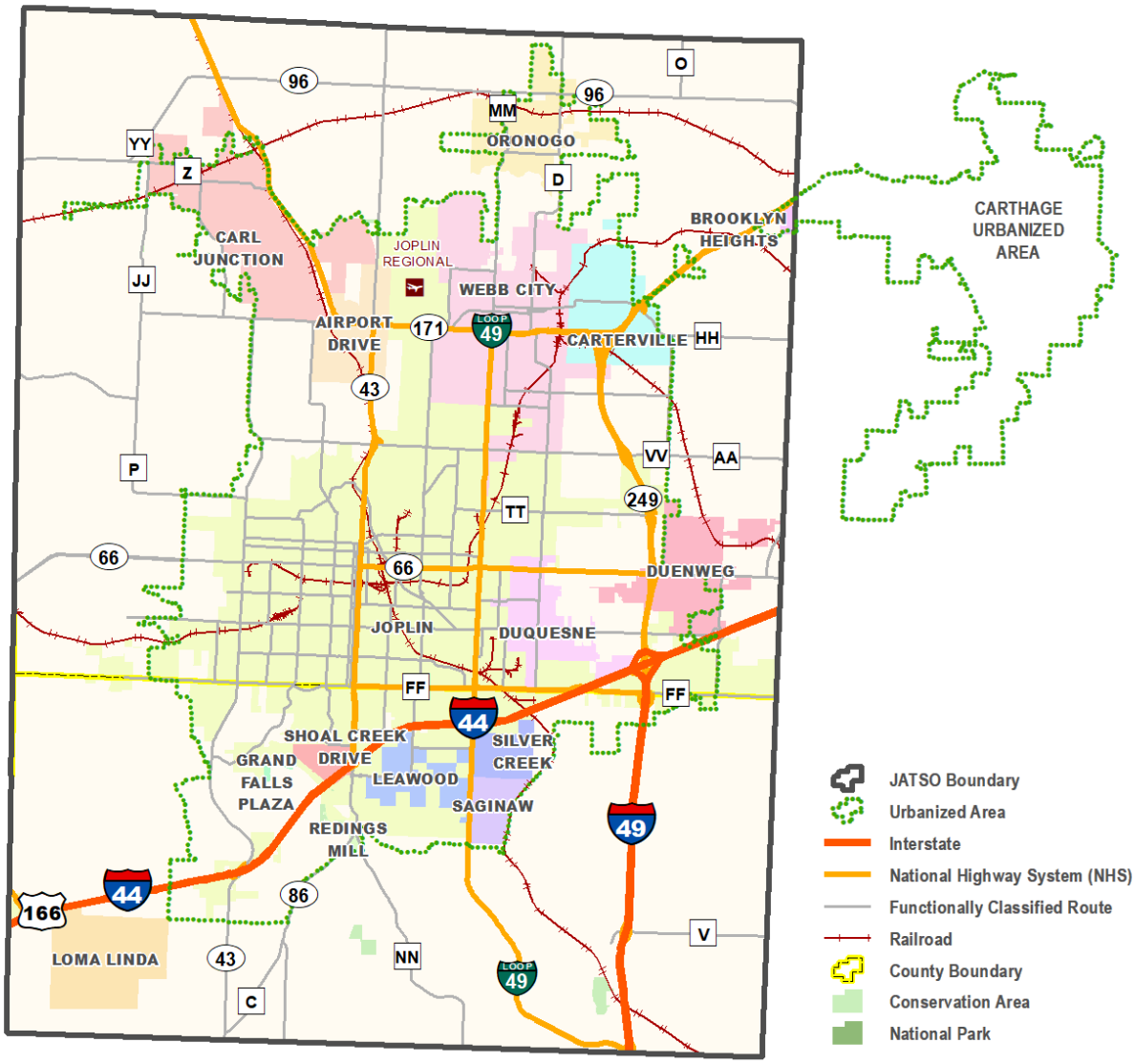
- Taylor Cunningham, Senior Transportation Planner (1.0 FTE)
- Robert Lolley, Transit Director (1.0 FTE)
- John Gilligan, GIS Coordinator (0.8 FTE)
- Troy Bolander, MPO Staff Director (0.5 FTE)
- Patricia Heagel, Planning and Development Assistant Director (0.25 FTE)
- Mallory Wicklund, Finance Budgeting (0.25 FTE)
- Lindsay Dunn, Clerk (0.25 FTE)
- David Hertzberg, JATSO Board Chairman (0.1 FTE)
- Dan Johnson, Public Works Assistant Director (0.1 FTE)
- Lynden Lawson, Public Works Director of Operations (0.1 FTE)

Employee	Task 1	Task 2	Task 3	Task 4	Task 5
Taylor Cunningham	X	X	X		
Robert Lolley				X	
John Gilligan					X
Troy Bolander	X	X	X		
Patricia Heagel	X	X	X		
Mallory Wicklund	X				
Lindsay Dunn	X				
David Hertzberg	X	X	X		
Dan Johnson	X	X	X		
Lynden Lawson	X	X	X		

Voting Members

Name	Agency	Title
David Hertzberg	City of Joplin	Director of Public Works; Chair
Troy Bolander	City of Joplin	Director of Planning; Vice Chair
Lynden Lawson	City of Joplin	Assistant Director of Public Works – Operations
Dan Johnson	City of Joplin	Assistant Director of Public Works – Engineering
Steve Stockham	City of Joplin	Airport Manager
Robert Lolley	City of Joplin	Transit Director
Carl Francis	City of Webb City	City Administrator
Steve Lawver	City of Carl Junction	City Administrator
Garrett Brinks	Harry S. Truman Coordinating Council	Executive Director
Dave Taylor	Missouri Department of Transportation	Area Engineer
Darieus Adams	Jasper County	Commissioner
Bill Reiboldt	Newton County	Commissioner
Frank Miller	Missouri Department of Transportation	Southwest District Planning Manager; Alternate
Transportation Planner	Harry S. Truman Coordinating Council	Transportation Planner; Alternate
Dakota Rusk	City of Joplin	Traffic Engineer; Alternate

JATSO Boundary Map



Designated by Governor Bond in May 1983.

CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill No. 2021- 405 - Agreement with Missouri Department of Transportation

MEETING DATE
October 4, 2021

REVIEWED BY
Director of Planning, Development & Neighborhood Services-Troy Bolander, Director of Finance-Leslie Haase, City Attorney- Peter Edwards, City Manager- Nicholas Edwards

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 $645,872. The reimbursement consists of $441,689 in Federal Consolidated Planning Grant Funds and $75,008 in FTA Section 5307 funding. The City will pay 20% of the project costs incurred to a maximum of $129,274 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 staff in the Engineering department. The remainder of the assistance will be used to help finance eligible planning projects. Those projects include a freight analysis study for the Joplin area and finishing the Active Transportation Assessment for the City of Joplin.

Attached is the 2022 Unified Planning Work Program (UPWP) that provides more detail on the planning projects being conducted during the next fiscal year. JATSO is the designated MPO with the responsibility of providing transportation policy and overseeing the federal transportation planning process for the Joplin region.

FUNDING SOURCE
These payments are included in the FY 2021-2022 budget of the Transportation Sales Tax..

RECOMMENDATION
Approval of Contract Agreement between the City of Joplin and Missouri Department of Transportation for Federal Transportation Planning Assistance

ATTACHMENTS
Council Bill No. 2021- 405, Copy of FY 2022 UPWP, Copy of FY 2022 CPG agreement.

COUNCIL BILL NO. 2021-405 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, 2021, through October 31, 2022, 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 or his designee 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 the reimbursement of four hundred and six hundred eighty-nine dollars ($441,689) 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.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this ___ day of _____, 2021, by a vote of_____.

_____
Ryan D. Stanley, Mayor

ATTEST:

_____
Barbara L. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney